



Guardians of Faith or Oppressors of Rights?: Constitutional Rights of Children vs. Madrasas

A REPORT

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Contents

Preface & Acknowledgement

1. Introduction
2. Rationale and Motivation
3. RTE Act, 2009- Fundamental right to elementary education
4. Madrasa Board- A white elephant of misleads
5. Fund flow
6. UDISE Code – Need for Distinction between Madrasas & Schools
7. Unregistered and Unmapped Madrasas
8. Evolution pattern of Madrasas in Contemporary India
9. Uncovering the misuse of open school system
by Jamiat Ulema-e-Hind
10. The Negligents
11. Discussion & Recommendations

Abbreviations

Preface & Acknowledgement

The National Commission for Protection of Child Rights has been set up under the Commission for Protection of Child Rights (CPCR) Act, 2005 to ensure that children enjoy their rights and develop in a free and fair environment. To realize this aim, Section 13 of the said Act assigned certain functions to the Commission that intend to ensure that the legal and constitutional rights of children are protected.

Our Constitution recognizes the significance of education and, in 2002, established the right to education as a fundamental right for all children. Subsequently, in 2009, legislation was enacted to ensure this right to free and compulsory education is extended to children without any discrimination. The Right to Education (RTE) Act, 2009, is grounded in the belief that achieving values such as equality, social justice, and democracy is only possible through the provision of inclusive education for all. However, a conflicting picture between fundamental right of children and right of minority communities has been created. For many years, India was under the rule of various powers including Muslims, yet today many children from the community are still deprived of their rights and lag behind in terms of education. The effort to explore this further and hold wider consultations with the students, teachers and communities, began in 2015-16.

The report would not have been possible without the administrative support of the Member Secretary, Ms. Rupali Banerjee Singh and Members of the Commission. I also extend my gratitude to Government of India for their support in Commission's endeavours. I thank Ministry of Education for their continuous support. I am thankful to Dr. Madhulika Sharma, PR&TE (Education) for her contribution in the entire process of making of this report and also the team of Education Division of NCPCR especially Shri Brijesh Kumar (Consultant) and Ms. Bharati (DEO).

In summary, this report is the culmination of nine years of dedicated effort and contributions from numerous individuals in various capacities. It is my hope that this report will guide us toward creating a comprehensive roadmap that ensures all children across the country grow up in a safe, healthy, and productive environment. By doing so, they will be empowered to contribute meaningfully to the nation-building process in a more holistic and impactful way. Together, we hope this report will serve as a catalyst for constructive discussions and actionable strategies that promote the holistic development of all children irrespective of their religion, contributing positively to India's educational landscape.

Priyank Kanoongo
Chairperson, NCPCR

Chapter 1 Introduction

Nearly three decades before leaders across the world made the landmark commitment to children's rights by adopting the United Nations Convention on the Rights of the Child (UNCRC) in 1989, India recognized the essentiality of education for leading a life of dignity and included education of children as one of the ideals that the State should consider when formulating policies and enacting laws. Article 39(f) mandates that the State should ensure children have the opportunities and facilities to develop in a healthy, dignified manner, free from exploitation and abandonment. Article 45 requires the State to strive to provide free and compulsory education for all children up to the age of 14.

Thereafter in 1992, India became a signatory to the United Nations Convention on the Rights of the Child (UNCRC), which outlined various rights, including education, and obligated signatory nations to safeguard these rights. In the landmark case being “Unni Krishnan v. State of Andhra Pradesh; AIR 2178, 1993 SCR (1) 594”, this Hon’ble Court affirmed that the right to education is an integral part of the fundamental right to life under Article 21 of the Constitution. This expanded the scope of Article 21, which had been progressively broadened during the 1980’s and 1990’s to encompass the right to “live with dignity.” As a result, various Directive Principles of State Policy, which are ordinarily non-justiciable under Article 37, were brought within the enforceable scope of Article 21. The significance of this was further solidified in the year 2002 when the Parliament passed the Eighty-Sixth Amendment Act, introducing Article 21-A into the Constitution. This new provision mandates the State to provide free and compulsory education to all children aged 6-14, in a manner determined by the State. In 2009, Article 21A was operationalized through the Right to Education (RTE) Act, mandating free education for all children aged 6-14 and requiring private, unaided schools to reserve 25% of seats for economically disadvantaged groups.

Later in 2012, in the landmark case of *Society for Unaided Private Schools vs the Union of India* (hereafter ‘Society’) (2012 6 SCC 102), Section 12(1)(c) was challenged on the basis that it was an unreasonable restriction on the right to carry on a trade or business under Article 19(1)(g). The Supreme Court upheld the constitutional validity of the provision and required unaided schools to apply Section 12(1)(c) in their administration. However, all minority schools were exempted from it on the basis that

the provision will violate the right of minorities as defined in Article 29 to conserve their language, script and culture, and as defined in Article 30 to establish and administer educational institutions of their choice. As a follow-up to this Judgment, the Right of Children to Free and Compulsory Education (Amendment) Act, 2012 was passed by Parliament, which clarified that the provisions of the RTE Act which applied to minority schools were to be subjected to Articles 29 and 30. The Amendment Act also inserted Sub-section 5 in Section 1 of the Act and stated that *nothing contained in this Act shall apply to Madrasas, Vedic Pathshalas and educational institutions primarily imparting religious instruction.*

In May 2014, Section 12(1)(c) was again challenged in the Supreme Court in *Pramati Educational & Cultural Trust & Ors. vs Union of India & Ors* (hereafter 'Pramati') (WP (C) No.416 of 2012). Hon'ble Court in the said cases while appreciating the spirit of the provisions under the Constitution of India exempted religious education institutions from the ambit of the Right to Education Act, 2009, however, the children studying in these institutions have never been exempted from the ambit of Article 21A of the Constitution of India in any judicial decision or constitutional interpretation. Article 15 of the Constitution of India ensures that all children have equal rights and therefore, attending a madrasa for religious education does not exempt these children from the protection and rights as outlined under Article 21A, which mandates free and compulsory education for children aged 6 to 14. Articles 29 and 30 refer to the rights of specific communities to conserve their culture and establish educational institutions, while Article 21A specifically addresses the educational rights of children.

However, the exemption of institutions led to exclusion of children attending only religious institutions from the formal education system under the RTE Act, 2009. Thus, while Articles 29 and 30 protected minority rights, children in these schools were deprived of equal access to quality education under the RTE Act. What was intended to empower children ultimately created new layers of deprivation and discrimination due to wrong interpretation. The RTE Act, prophesied as an enabling tool, became a tool of deprivation and discrimination.

The National Commission for Protection of Child Rights (NCPCR) followed a multipronged approach to examine the educational rights of children of minority communities with regard to their exclusion from the right to education provided

under the Constitution of India, in particular reference to the children studying in Madrasas. In order to examine the impact of exemptions to the minority institutions on the education of children studying in such institutions across the country, began conducting consultations with the concerned stakeholders and later undertook a study to examine and further published a report titled "Impact of Exemption under Article 15(5) w.r.t. Article 21A of the Constitution of India on Education of Children of Minority Communities". With respect to categorization of Madrasas it was concluded that Madrasas can be categorized into the following types:

- a) *Recognized Madrasas*: Madrasas that are imparting religious education and may be imparting formal education to some extent but which is not as per Right to Education Act, 2009. These Madrasas are recognized by State Madrasa Board and are having a UDISE code. In 2015-16, there were 10,064 recognized madrasas in India. However, only these madrasas are taken into consideration in the Sachar Committee Report (2006) that, thus assumes that a mere 4% children attend madrasas. Further, only these recognized madrasas are eligible to avail funding from Government.
- b) *Unrecognized Madrasas*: Madrasas found ineligible for recognition by the State Government are grouped under this category. They may be ineligible for a variety of reasons including, but not limited to, not imparting formal education, having non-compliant infrastructure, appointing unsuitable teachers, etc.
- c) *Unmapped Madrasas*: Madrasas that have never applied for recognition are grouped under this category. The UDISE does not take into consideration these madrasas that are established traditionally, which have not applied for recognition to the State Government. These unmapped madrasas may or may not be attached to any religious or government organization and maybe having their own set of norms or guidelines. It is extremely difficult to ascertain their specific number and the number of children going to these institutions since they have never been mapped formally. However, this is the common type of Madrasas in India, having largest number of children enrolled.

Though determining the exact number of children attending these institutions is quite challenging, an attempt has been made to estimate the number of children that may be attending these Madrasas. Available data from different sources have been used to understand the magnitude of the problem in terms of children attending Madrasas.

Based on U-DISE Data 2021-22

Total enrolment in 2021-22 (class I-VIII)	18.86 crore
Percentage enrolment of Muslim Children	15.2 %
Enrolment of Muslim children in numbers	2.86 crore (15.2% of 18.86 crore)
Total number of Muslim children in India in the age 6-13 years (estimate)	4.11 crore
Number of Muslim children that are out-of-school	1.2 crore (4.11 – 2.86 crore)

Sachar Committee Report

4 percent Muslim children attend Madrasa	16.44 lakh (4% of 4.11 crore, estimate)
Remaining Muslim children in other institutions or are out-of-school	3.94 crore (4.11 crore- 16.44 lakh)
Enrolment as per UDISE	2.86 crore
Not enrolled	1.1 crore (3.94-2.86= 1.1 approx.)

Based on Census 2011

Total number of children not attending any educational institutions (out-of-school) in India in the age 6-13 years	3.81 crore
Total number of children in India in the age 6-13 years	20.83 crore
Percentage of out-of-school children	18.2%
Total number of Muslim children in India in age 6-13 years (estimate)*	4.11 crore
Total number of Muslim Children Out of School Children	75 lakh

* The census provides religion wise population data in age-groups and not by specific year of age. So, the required Muslim population data is available in two groups 5-9 years and 10-14 years. The total muslim population for 5-14 years is 4,29,29,978. Total population in 5-14

years is 25,96,37,338. To draw the estimate for Muslim population in the age group of 6-13 years, following calculation is made-

Total population in 5-14 years is 25,96,37,338

Total muslim population for 5-14 years is 4,29,29,978

Total population of 5 years old- 2,60,54,230 (which is 2.15 % of total 5-14 years population)

So, the estimate Muslim population of 5 years of age- 2.15% of 4,29,29,978= 9,22,994

Total population of 14 years old- 2,52,58,169 (which is 2.08 % of total 5-14 years population)

Therefore, the estimate Muslim population of 14 years of age- 2.08% of 4,29,29,978= 8,92,943

Total number of Muslim children in India in the age 6-13 years (estimate)=
(Total muslim population for 5-14 years) minus (estimate Muslim population of 5 years of age plus estimate Muslim population of 14 years of age)

That is, (4,29,29,978)- (9,22,994 + 8,92,943) = 4,11,14,041 = 4.11 crore (approx..)

Interactions with children studying in minority and religious institutions revealed a profound insight: the 'benefits' and 'entitlements' they are deprived of hold significant meaning for them. Access to these basic facilities would foster a sense of belonging within society, instilling pride and a recognition of their equality and worth. The Commission has also filed a written submission in the matter of Anjum Kadari Vs. Union of India in Special Leave Petition (Civil) No. 008541 of 2024 and have submitted that Right to Education is of utmost importance as the same has been found its place in Article 21 of the Constitution of India and therefore it is necessary that all children up to the age of 14 years be provided with formal schooling as mandated by the Constitution and the States be directed to be obligated to provide such schooling wherein children upto class 5 attends school for 4 hours and children from classes 6th to 8th attend school for 6 hours and therefore any violation of the said provisions is not only against the welfare of the children and but the same is also against our constitutional ethos and principles.

Complexity of the issue

The Indian Constitution provide equal rights for all. The RTE Act, 2009, originally enacted, did not discriminate between children on any basis. Since, independence, children from different social-economic background have benefitted from the country's education

system. However, the issue of formal education of children from muslim community has been a complex one. The community leaders present some excuse or the other justifying the defibrante deprivation of children. However, it needs to be understood that India is a secular country and hence its education is also secular. In 1945, Deoband movement got divided and a separate political party called the Jamiat Ulema-e-Islam (JUI) was established as a competitor to Jamiat Ulema-e-Hind. Though on the outside the political leaders were opposing the idea partition. The reason for the same was the ideology that India can't be left outside "tabligh". The then president of the Jamiat-Ulema-e-Hind, Maulana Hussain Ahmad Madani attended a conference convened by ulema in Delhi in 1945. In his presidential address he said, *it is the non-Muslims who are in the field of action for this "tabligh" of Islam and form the raw material for this splendid activity.. we are opposed to the idea of limiting the right of missionary activities of Islam within any particular area. The Muslims have got a right in all the nooks and corners of India by virtue of the great struggle and grand sacrifices of their ancestors in this country. Now it is our duty to maintain that claim and try to widen its scope, instead of giving it up.* The same learned maulana has said elsewhere: *'If Dara had triumphed, Muslims would have stayed in India but not Islam. Since Aurangzeb triumphed, both Muslims and Islam were here to stay!'* According to the maulana, the faith Dara followed was not genuine Islam because Dara wanted to tolerate the Hindus. He did not insist on the rule of the Shariat. He did not interpret religion 'correctly, that is, in strict accordance with the tradition¹. Therefore, the descendants are still opposing the idea of providing formal education to children because they want only the teaching of Islam to be followed and to widen their claim for tabligh² over each and every part of the nation.

¹ Dalwai, Hamid (2023). Muslim Politics in India (pp. 30-31). Penguin Random House India Pvt. Ltd., Haryana.

² <https://en.wikipedia.org/wiki/Tabligh>

Note: It is important to state that Section 1 (5) of the RTE Act, 2009 exempts the *Madrasas, Vedic Pathshalas and educational institutions primarily imparting religious instruction*. Recognizing that Muslims are the largest minority in the country and in response to reports of child rights violations in madrasas, the Commission under its mandate as per the CPCRA Act, 2005 and RTE Act, 2009, is addressing the issue of children attending these institutions. The objective is to create the path for extending their fundamental rights and related entitlements/benefits, ensuring they have the same opportunities to enjoy these rights as all other children in the country. The recommendations suggested by the Commission may also be subsequently applied to other such institutions. It is also to be understood that the objective behind this exercise and the report is not to hurt any religious sentiments, nor it is to denounce any religious institution. The core objective of the report is to pave a way for the children to enjoy their fundamental right and take the opportunity to get quality education similar to other children. Any misinterpretation of the report by individuals would suggest a lack of recognition and appreciation for the Constitution of India, indicating that their personal interests may be at risk. In the event of any misinterpretation or distortion of the arguments presented in the report, the more pressing question to ask would be: *what interest could possibly be greater than the bright and prosperous future of our children?*

Chapter 2 Rationale and Motivation

As stated in the previous chapter, the foremost concern to be addressed is the fundamental right of a child and hence, the Commission took steps to resolve the issue that prevents the State from fulfilling its duty for the children. The meaning of not getting formal education is not just limited to attending school compulsorily up to class VIII. Free and compulsory quality elementary education entails norms and standards pertaining to the physical aspect of education i.e., basic minimum infrastructure, number of teachers, books, uniform, Mid-day Meal etc. However, children, not covered under the ambit of the Act because of the exemption of the institution, are deprived of these benefits and their right to access the learning environment created as a result of these provisions. Moreover, as these institutions are neither documented nor officially recognized, the living conditions of the children remain largely unknown unless cases of child rights violations are reported and brought to attention.

The National Commission for Protection of Child Rights (hereafter referred as NCPCR or the Commission) is responsible for children irrespective of the place. As per Section 13(1) (j) of the Commission for Protection of Child Rights (CPCR) Act, 2005, NCPCR is mandated to take suo-moto notice of matters related to deprivation and violation of child rights. The Commission can inspect any place of residence or institution meant for children, under the control of the Central Government or any State Government or any other authority, including any institution run by a social organisation; where children are detained or lodged for the purpose of treatment, reformation or protection and take up with these authorities for remedial action, if found necessary.

NCPCR is a statutory body constituted under Section 3 of the Commission for Protection of Child Rights (CPCR) Act, 2005 to protect child rights and other related matters in the country. It is further mandated to monitor the proper and effective implementation of the Protection of Children from Sexual Offences (POCSO) Act, 2012, Juvenile Justice Act, 2015, and Right to Free and Compulsory Education (RTE) Act, 2009. Safeguarding the rights of all children up to 18 years is a statutory obligation of the Commission, making it a priority of the highest importance.

Cases of child rights violation in Madrasas

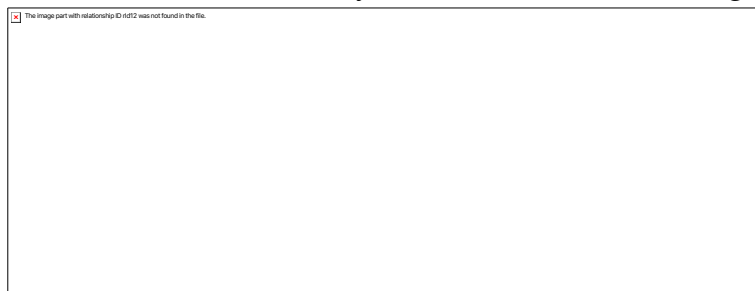
In the course of fulfilling its functions and responsibilities, the NCPCR encountered numerous instances of violations of the rights of children attending Madrasas. This section outlines some of these cases out of



numerous issues such issues to illustrate the severity of the issue and highlight what prompted the Commission to pursue a comprehensive resolution.

a) The Commission took suo-moto cognizance of a newspaper report wherein a minor boy was recovered after eight years with changed name and religion. The minor boy was recovered from an Adhaar Card Centre where he was sent to change his name from Rahul to Mohammad Azhar (Name changed for the purpose of protecting the identity of minor) in Adhaar Card. In order to further inquire the matter, a team from the Commission visited the Madrasa, in the district of Uttar Pradesh which the child was attending after he went missing eight years ago. As per the information received from the District Department of Minority Welfare, Uttar Pradesh, the said Madrasa was recognized. Yet it took eight long years and a coincidence for a child to be reunited with the family.

b) NCPCR took cognizance of the information about a boy and a Muslim cleric being injured in an explosion in a Madrasa in Saran, Bihar. It was found that in the illegal Madrasa in Motirajpur village, children were trained to make bombs.



c) In 2009, a 21-year-old cleric was arrested on charges of indulging in unnatural sex from the madrasa he teaches in at Hazrat Nizamuddin. Shehzad allegedly drugged the child and took him to the terrace of the madrasa where he sodomised him twice.

- d) The team of District administration conducted inspection in Darul Uloom Sayeediya Yateemkhana in 2023. Though it is an orphanage but the the children were not being sent to school despite the management having their own private school nearby. 200 children were found to be residing in the yateemkhana. The yateemkhana was not registered under the Juvenile Justice Act, 2015 and neither it was complying with the basic requirements enlisted in the Act with regard to infrastructure and other norms.
- e) The Commission has been in receipt of complaints regarding the fatwas issued by Darul Uloom Deoband which contained references from a book titled 'Bahishti Zewar'. It is pertinent to mention here that the said book contained content which is not only improper but is also objectionable and illegal regarding children as the same contains text regarding engaging in a sexual relationship with a minor, the book is also alleged to be taught to children in madrasas, and further fatwas containing such objectionable information is accessible for all.
- f) During the course of inquiry, it was found that a book titled Taleem-ul-Islam-English-By Shaykh Mufti Kifayatullahr which is a book on fundamentals of Islam, its basic tenets and laws of shariah has also made part of the curriculum prescribed by Bihar Madrasa Board for Class II.³ On perusal of the said book on the Madrasa board website, the list contained the said book in Urdu of a publisher in Pakistan⁴. However, on perusal of its English translation⁵ it was observed that the book was originally published in Pakistan and the discusses regarding supremacy of Islam.

Such and numerous other incidents forced the Commission to take up the issue of rights of children attending these institutions. The autonomy of a community based on religion is taking its toll on the innocent children that are attending these institutions. Madrasas, especially those operating outside formal government oversight, are not adhering to basic safety standards and child protection policies. Instances of child labor, physical punishment, or inadequate living conditions have been reported, raising alarm for safety and future of the children. These reports have led to calls for benefitting the children under their fundamental rights to ensure that children attending these institutions are safe and receive all opportunities that any other children would receive being citizen of this country.

³ <https://www.bsmeb.org/books/class-2>

⁴ <https://drive.google.com/file/d/1hKDMzsfL9RKgsnCRJzLZk0S4AUdTVmye/view>

⁵ (<https://archive.org/details/Taleem-ul-Islam-EnglishByShaykhMuftiKifayatullahr.a>)

Chapter 3

RTE- Fundamental right to elementary education

The Right to Education Act which flows from the Right to Life under Article 21 of the Constitution of India makes it an obligation on the State to provide free and compulsory education to all children group of 6-14 years without any discrimination or prejudice and ensure that children go to neighbourhood schools for availing formal education as per Section 6 of the RTE Act, 2009. The Act also prescribes regulations regarding minimum physical infrastructure, staff and facilities that all schools are required to provide, as well as educational benefits such as the requirement for students to be taught in age-appropriate classes, for students that are out-of-school to be placed in a special training centre before enrolment in schools, barring schools from charging capitation fee or using screening procedure in admission, and prohibit corporal punishment etc.

The RTE Act, 2009, in its Schedule lay down Norms and Standards which gives details about number of teachers, structure of building, minimum number of working days/instructional hours in an academic year, teacher learning equipment, library and a provision for co-curricular activities etc. This not only limits the growth of the child, but also limits the available opportunities which could have given them a good career opportunity.

Another important feature of the Act is that it provides for an institutional mechanism for monitoring of the implementation of the Act through the National/ State Commissions for Protection of Child Rights. Section 31 of RTE Act, 2009 provides for monitoring of several issues relating to child's right to free and compulsory education. Education being the fundamental Right is not just limited to rendering education to children, but it also includes giving various 'Entitlements' which enable a child to get education in a sustainable manner. These include- uniforms, textbooks, Library with books, newspapers, magazines, sports equipment, play material, Mid-day Meal, special training for age-appropriate education, transfer Certificates, completion certificates etc. The right to free and compulsory education is a culmination of various factors, entitlements, benefits, duties and functions of stakeholders.

The Madrasa's, however, do not have any provisions for any of the above-mentioned entitlements. Madrasa's education is neither all-encompassing nor thorough. It isn't

helping children advance since it lacks so many crucial components of learning. The Madrasa's are infringing on children's fundamental right to a good education by failing to provide these basic requirements. Children are denied not only a suitable education but also a healthy atmosphere and improved opportunities for growth. To elaborate, the RTE Act, 2009 aims to address the issue of Out-of-School children by ensuring their enrollment and retention in schools through various provisions and safeguards through the following provisions:

- a) **Compulsory Education:** It is mandatory for the Government to provide free and compulsory education to all children in the specified age group, including those out of school, ensuring they can enroll and complete their elementary education.
- b) **Provision for Special Training Centres for Out of School Children:** Special Training Centres (hereafter referred as STCs) for Out of School Children (hereafter referred to as OoSC) are set up under section 4 of the RTE Act, 2009. Special Training shall be based on especially designed/developed curriculum, syllabus and text Material- as per the age appropriate and approved by the academic authorities i.e. NCERT/SCERT.
- c) **Non-Discrimination:** Prohibits discrimination in admission, retention, and completion of education based on various factors such as gender, socio-economic background, caste, or religion. This is to ensure that all Out-of-School children have equal access to education without any barriers.
- d) **Monitoring & Grievance Redressal:** The RTE Act establishes mechanisms for monitoring the implementation of the Act and addressing grievances related to the denial of admission or any violation of the rights provided under the Act.
- e) **Infrastructure & Resources:** It emphasizes adequate infrastructure, teaching staff, and learning materials to provide quality education which includes provisions for additional classrooms, trained teachers, libraries, and other resources to create a conducive learning environment.

Quality education also encompasses the content being taught and the methods employed in delivering that education. Section 29 of the RTE Act, 2009, defines 'Curriculum and education procedure', wherein it says that academic authority should be specified by the appropriate government, which further will decide the curriculum, course and evaluation procedure for the children. It states that,

(1) The curriculum and the evaluation procedure for elementary education shall be laid down by an academic authority to be specified by the appropriate Government, by notification.

(2) The academic authority, while laying down the curriculum and the evaluation procedure under sub-section (1), shall take into consideration the following, namely-

(a) conformity with the values enshrined in the Constitution;

(b) all round development of the child;

(c) building up child's knowledge, potentiality and talent;

(d) development of physical and mental abilities to the fullest extent;

(e) learning through activities, discovery and exploration in a child friendly and child-centered manner;

(f) medium of instructions shall, as far as practicable, be in child's mother tongue;

(g) making the child free of fear, trauma and anxiety and helping the child to express views freely;

(h) comprehensive and continuous evaluation of child's understanding of knowledge and his or her ability to apply the same.

The aforementioned issues of curriculum, teacher eligibility, non-transparency/funding, and violations of the law of land, the Madrasa also fails to provide holistic environment to the children. Majority of Madrasa's have no idea as to how to plan social events or extracurricular activities, like field trips, that could provide students with some level of experiential learning. In light of the same it is most respectfully submitted that many children in the country attend Madrasas, however, they provide by and large, religious teaching with very little participation in the national mainstream education system.

To provide education in schools which are duly defined under Section 2(n) of the RTE Act, 2009 is the duty of the State. It is important to highlight the definition of a school which is defined under Section 2(n) of the RTE Act, 2009, which means "any recognised school imparting elementary education". The 86th Constitutional Amendment Act not only provides a Fundamental Right to the children to get elementary education, but it also obliges the State through Directive Principles of State Policy. The State being the guardian of all and also through the doctrine of "parens patrie" is liable under a duty to provide education through the mandate of Article 51(k). However, the fact of getting education in Madrasa through State fund instead of getting enrolled in a proper school obstructs the aforementioned Constitutional mandate.

Moreover, a child receiving education in Madrasas lacks fundamental knowledge of the school curriculum laid down by academic authorities that is mandatorily offered in formal schools. The State cannot support such activities, as this violates Article 21A of the Constitution of India, which guarantees the right to education. Since Madrasas fall outside the definition of school given under the Act, the children or their families cannot be pursued to attend Madrasas and not enrol in formal schools. Madrasas are not only a unsuitable place to receive 'fundamental' education but also in absence of entitlements as provided under Section 19, 21,22, 23, 24, 25, and 29 of the RTE Act. Furthermore, Madrasa do not only render an unsatisfactory and insufficient model for education but also have an arbitrary mode of working which is wholly and in absence of a curriculum and evaluation procedure as laid down under Section 29 of the Right to Education Act, 2009.

Chapter 4

Madrasa Board- A white elephant of misleads

As mentioned in Chapter 1, Madrasas are categorized into 3 types. Out of these, recognized Madrasas are the ones that are the ones imparting religious education but may or may not be imparting formal education. Even if formal education is provided, the same is not as per the Right to Education Act, 2009. According to Unified District Information System for Education (UDISE), recognised Madrasa are those that are recognised either by Waqf Board or Madrasa Board. Though the Madrasas are running across the country in all States/UT, but on the basis on the information available, only few States namely Bihar, Chhattisgarh, Odisha, Uttar Pradesh, West Bengal, Madhya Pradesh, Rajasthan, Uttarakhand have Madrasa Board.

The Commission examined the information available regarding the different Madrasas Boards across the above-mentioned States and the information available suggest that there are various anomalies and flaws as being beyond the scope of the RTE Act, 2009. The major points of diversion are-

1. Curriculum not as per the RTE Act, 2009

This irregular/incompetent curriculum out rightly leaves an impact on the academic and mental growth of the child which further leads a generation into a stagnant and underdeveloped future. It is also pertinent to highlight here that the Commission have found various abnormalities in the curriculum published by these Madrasas Boards. Further, the Commission on perusal of the list of books available on the website of the Madrasa Board have also found objectional content in Diniyat books being included in their curriculum. It is humbly submitted that on perusal of the Diniyat books as available on the website, it has been observed that as per the prescribed curriculum, the Madrasa Board through the books, are teaching texts that professes about Supremacy of Islam.

Further, the Commission on perusal of the list of books available on the website of the Bihar Madrasa Board have also found objectional content in Diniyat books namely Taleem-ul-Islam-urdu-by Shaykh Mufti Kifayatullah r.a, Imamia Deenyat Part-01 (for Shia). It was also observed that some books which were published in Pakistan were also a part of Diniyat Books being taught by the Board.

Another book titled Taleem-ul-Islam-English-By Shaykh Mufti Kifayatullahr which is a book on fundamentals of Islam, its basic tenets and laws of shariah has also made part of the curriculum prescribed by Bihar Madrasa Board for Class II.⁶ On perusal of the said book on the Madrasa board website, the list contained the said book in Urdu of a publisher in Pakistan⁷. However, on perusal of its English translation⁸ it was observed that the book was originally published in Pakistan and the discusses regarding supremacy of Islam. Some of the excerpts from the book are reproduced below –

“Taleem-ul-Islam Book I- Lessons in Islam - Page 6

Q. Who created you ?

Ans. Al-lāh created us, our parents, the heavens, the earth and all other things.

Q. How did Al-lāh create the world ?

Ans. He created it by His might and decree.

Q. What do we call those who do not believe in Al-lāh ? #

Ans. They are called Kafirs (unbelievers).

Q. Some people worship objects other than Al-lāh or believe in two or three gods. What are such people called ?

Ans. Such people are called Kafirs (unbelievers) or Mushriks (polytheists).

Q. Will the polytheists attain Salvation ?

Ans. The polytheists shall never attain salvation. They shall, instead, be doomed to eternal punishment and affliction.

.....”

“Taleem-ul-Islam -Book II- Section (I) Requirements of Faith - Pg.4

LĀ-ILĀHA -IL- LAL-LĀH MUHAM-MA-DUR-RASŪLUL – LĀH.

It means: None but Al-lāh is worthy of worship and Muham-mad is the messenger of Al-lāh.⁹

.....”

A true copy of Screenshots obtained from the website are at Annexure-

Similarly, in another book prescribed by the Bihar Madrasa Board for Class II namely, Imamia Deenyat Part -01 (For Shia), which is a book of Islamic Education being taught

⁶ <https://www.bsmeb.org/books/class-2>

⁷ <https://drive.google.com/file/d/1hKDMzsfL9RKgsnCRJzLZk0S4AUdTVmye/view>

⁸ (<https://archive.org/details/Taleem-ul-Islam-EnglishByShaykhMuftiKifayatullahr.a>)

⁹ <https://archive.org/details/Taleem-ul-Islam-English-ByShaykhMuftiKifayatullahr.a/page/n19/mode/2up>

in these Madrasas under the category of Diniyat books. Further, on perusal of the book from the link available, it was observed that the same was in urdu. However, on perusal of the English translation as available online¹⁰, it was observed that the said book contains texts which talks about supremacy of Islam. Some excerpts from the book are reproduced below:

“Lesson Two – Tawheed (Unity)

Is the creator of the whole world one and only one?

Of course, yes.

Why can't there be two Gods?

Because if there were two Gods, they will be dependent on each other. And one who is dependant is created; he cannot be the creator (Allah).

.....”

A true copy of Screenshots obtained from the website is at Annexure ----

2. Quality Education and Infrastructure-

During interaction with the State Authorities and upon analyzing the Madrasa Education Board constitution and functions it has been observed that the Madrasas lack trained and qualified teachers as prescribed by NCTE which is an academic authority notified by the Ministry of Education under section 29 of the RTE Act, 2009. For instance, as per the Bihar State Madrasa Education Board Act, 1981, the services of the approved teachers and non- teaching staff of a recognised Madrasa shall be under the supervision of the Board. Subject to the regulations prescribed under this Act their services shall be controlled by the Board or Madrasa. No teacher of the Madrasa shall be discharged or dismissed from service without the prior approval of the Board. In some cases, it has been observed that teachers don't even possess a Bachelor of Education/Diploma in Education or even meet the necessary qualification. The teachers appointed in Madrasas are largely dependent upon the conventional methods used in learning Quran and other religious texts. This scanty and unregularized working in Madrasas creates a haywire system which just stands alone on the conventional ground of religion. The Right to Education Act of 2009, on the other hand, establishes extrinsic requirements and standards for teacher eligibility and obligations. The RTE, 2009 under Section 23 to Section 25 lays down the Qualification, Duties and Pupil-Teacher ratio for the teachers, which makes it a comprehensive model for the teachers. In absence of these provisions the children are

¹⁰ <https://archive.org/details/imamia-deeniyat/page/n23/mode/2up>

left in the hands of unskilled teachers. Further, the RTE Act, 2009, in its Schedule lay down Norms and Standards which gives details about Number of teachers, structure of building, Minimum number of working days, Teacher learning equipment, Library and a provision for co-curricular activities. Such details are not available with regard to Madrasas Boards. This absence not only limits the growth of the child, but also limits the available opportunities which could have given them a good career opportunity. Also, the Madrasas lack adequate physical infrastructure as per Section 19 of the RTE Act, 2009 and detailed in the Schedule, such as labs, libraries and other resources that are crucial to create a conducive learning environment.

3. Religious Education and not following the principle of secularism-

Even if the recognized Madrasas are funded by the State Government, the Madrasas Boards define Madrasas as primarily an institution that offers Islamic education. Therefore, these institutions impart Islamic Education and fundamental education is not provided to the children as per their right to quality education under the RTE Act, 2009. In Madhya Pradesh Madrasa Board Adhiniyam, 1998, "Madrasa" is defined as an educational institution providing instructions in Arabic and Islamic studies and recognised as such by the Board. As per Uttarakhand Madrasa Education Board Act, 2016, Madrasa-Education means education in Arabic, Urdu, Persian, Islamic-studies, Tibb, logic, Philosophy and includes such other branches of learning as may be specified by the Board from time to time. Similarly, the Rajasthan Madrasa Board Act, 2020 defines Madrasa as an educational institution registered with the Madrasa Board and imparting instruction in Madrasa Education; and Madrasa Education is a system of education which includes studies in Islamic history and culture, and theology, and also includes general education which *prepares* the student to appear for exams conducted by Central Board of Secondary Education, Council for the Indian School Certificate Examinations, Rajasthan Board of Secondary Education or Secondary Education Boards of other States.

4. Non-implementation of various rights of children-

India is signatory to UNCRC and have different specific child related Acts that ensure development and protection of children as enshrined in our Constitution. However, these Madrasa deprive children from the facilities and entitlements which are provided to students studying in regular schools. This include uniform, books,

MidDay meal etc. denying them equal opportunity, stripping these children off their entitlements, taking away the sense of belongingness to the society, negating the principle of social justice and disallowing numerous disadvantaged children who belong to their own religion, an opportunity to be included in the mainstream education. These 'benefits' and 'entitlements' that they are deprived of, hold a much deeper meaning for these children. For them, access to these basic facilities would instill a sense of belongingness to the society; a sense of pride and acknowledgment of them being equal and no less.

Similarly, other child related Acts that prohibit any kind of abuse, harassment, child labour etc. are also applicable to schools but Madrasa are not required to comply with these provisions or have been violating these Laws. Rule 2B(2) of the CLPR Amendment Rules, 2017 states that *where a child receiving education in a school remains absent consecutively for thirty days without intimation to the Principal or Head Master of the school, then, the Principal or Head Master shall report such absence to the concerned nodal officer* . This preventive law however, is only applied to children who are attending formal school.

Further, it is also pertinent to mention here that a large number of States having Madrasa Boards or running recognized Madrasas across the States are providing Islamic religious education and instructions to Non-Muslims and Hindus which is also a blatant violation of Article 28 (3) of the Constitution of India. In this regard, State Governments need to take immediate steps to remove Hindu and non-muslim children from Madrasas.

5. Lack of accountability

Schools being the institutions that provide formal education to children are defined under the RTE Act, 2009 and have to follow certain norms besides the Act that fixes their accountability towards the children, their education, safety and over-all wellbeing. Section 18 of the RTE Act, 2009 states that no school shall be granted recognition unless it fulfils norms and standards specified under section 19. Section 19 further states that no school shall be established, or recognised, under section 18, unless it fulfils the norms and standards specified in the Schedule. The Act also discusses about the condition for withdrawal of recognition. Additionally, Ministry of Education (MoE) has framed guidelines for fixing accountability of school. No such details/mechanism is available in case of Madrasas. Therefore, these institutions lack accountability and transparency in their functioning.

6. Madrasa Boards are not Academic Authorities-

The Board of Madrasa Education cannot be regarded as an academic authority because it is merely a body with the power to conduct exams. While an academic authority is specified under Section 29 of the RTE Act and must be notified by the Central Government at the National Level and the State Government at the State Level, the Board of Madrasa is performing all the activities of an academic authority under this Board. The exams administered by the Board of Madrasa Education and the books prescribed are not as per the curriculum given by NCERT and SCERT, keeping the students of Madrasas behind those who fall within the purview of RTE. Moreover, merely giving prescribed textbooks of NCERT to the students does not lead to compliance of the curriculum as textbooks are merely a supplementary part of the curriculum. Curriculum also include evaluation procedure, pedagogy, co-curricular activities and much more. Curriculum refers to the overall goals, plans, arrangements, and practices that shape the experiences of students in schools. Thus 'curriculum' does not just refer to the subject content of textbooks and other teaching-learning materials (TLMs) and their pedagogy, but also includes aspects such as school environment and culture. It is indeed only through such holistic and integrated changes across all these key aspects of the curriculum that we will be able to positively transform the overall learning experiences of our students.¹¹ Therefore, the act of supplying textbooks and convincing everyone that they are following the curriculum is a demonstration of the limited comprehension of the curriculum, whose core is education in an holistic environment and textbook is a part of it. Furthermore, how can a teacher educate without a professional compliance when a driver cannot operate a vehicle without a licence. Furthermore, it is a flagrant violation of a child's fundamental constitutional right to education to impart instruction that is entirely in the context of religion and that does not adhere to the requirements of the RTE Act, 2009, or any other applicable laws. Innocent children suffer as a result of the religious subject of education becoming institutionalized in Madrasas.

As per the information shared by the States, there are around 11000 non-muslim children attending Madrasas in these States with Madrasa Boards. The details are given below-

¹¹ NCERT (2023). National Curriculum Framework for School Education (NCF-SE)

Sr. No.	State	Non-Muslim Children in Madrasas
1.	Bihar	69
2.	Chhattisgarh	2159
3.	Madhya Pradesh	9446
4.	Odisha	0
5.	Rajasthan	3103
6.	Uttarakhand	42
7.	Uttar Pradesh	Data not provided
8.	West Bengal	Data not provided
	Total	14,819

Brief of the States Madrasas Education Board and/or the Acts under which these are constituted is stated below-

1. Bihar State Madrasa Education Board Act, 1981 defines Madrasa as an educational institution providing instruction in Arabic, Persian and Islamic studies and recognized as such by the Board. As per Section 7 of the Act, the Powers and functions of the Board include to grant recognition to Madrasa; to prescribe by regulation the syllabi, the courses of studies to be followed and the books to be studied in Madrasa and for examination conducted by the Board; to undertake the preparation, publication or sale of text books and other reference books for use in Madrasa within the resources available for the purpose; to maintain and publish from time to time lists of books approved for use in Madrasa and for examinations conducted by the Board and to remove such books from any such lists. However, these provisions are in violation with Section 29 of the RTE Act, 2009 which mandates the academic authorities i.e. NCERT and NCTE to deal with matters related to curriculum including books and related to teachers and teacher training, respectively.
2. West Bengal Board of Madrasa Education Act 1994 defines Madrasa as an educational institution imparting instruction in Madrasah Education. Further, Madrasa Education means a system of education in which instruction is imparted in Arabic, Islamic history and culture, and theology, and includes—
 - i) High Madrasa Education System which, in addition to covering Arabic language and Islamic history and culture, imparts general education above

primary education stage with a view to qualifying students for admission to a certificate, diploma or degree course instituted by a university or by a Government or by any statutory authority, and includes such other type of education as the State Government may, in consultation with the Board, specify;

- ii) Senior Madrasa Education System which imparts instruction in Arabic language and literature, Islamic theology, history, culture and jurisprudence and some general education with a view to qualifying students for a certificate, diploma or degree of the Board or a University or a Government or any other statutory authority.;

The Act also outlines role and functions of the Board including to grant or refuse recognition to Madrasa; to provide by regulations, after considering the recommendations of the Syllabus Committee, if any, the curriculum, syllabus, courses or studies to be followed and books to be studied in recognized Madrasas for examinations instituted by the Board; to undertake, if necessary, with the approval of the State Government, the preparation, publication or sale of text- books and other books for use in recognized Madrasas; to maintain and publish, from time to time, list of books approved for use in recognized Madrasahs and for examinations instituted by the Board and to remove the name of any such book from any such list; to institute various Madrasah Examinations and such other similar examinations as it may think fit and to make regulations in this behalf.

As per the website of West Bengal Board of Madrasa Education (<https://wbbme.org/about-us/>) there are two types of Education system in West Bengal. One is School Education system and other is Madrasa Education system. In Madrasa Education system two categories of institutions are functioning: one is recognized by the West Bengal Board of Madrasa Education and aided by the Govt. of West Bengal with entire liability of Salary, Retirement and other benefits (Gratuity, Pension, Leave etc.) of teaching and non-teaching staff. The Govt. also bear financial liabilities for infrastructure development, incentives and other facilities i.e. free textbooks, sanitation, and drinking water etc. The other category of Madrasas are established, run and maintained by the individual or by community or by organization etc. and those are called Muktab or Khariji Madrasas.

3. Madhya Pradesh Madrasa Board Adhiniyam, 1998 defines Madrasa as an educational institution providing instructions in Arabic and Islamic studies and recognised as such by the Board. The powers of the board include granting recognition to Madrasas; to prescribe the syllabus for primary and middle level Madrasa Education and to arrange for the conduct of the examination of Class V and VIII and to award certificates.
4. Chhattisgarh Madrasa Board Adhiniyam, 1998 is same as that of Madhya Pradesh. It defines Madrasa as an educational institution providing instructions in Arabic and Islamic studies and recognised as such by the Board. Additionally, the Chhattisgarh Madrasa Board (Sanshodhan) Act, 2007 includes in the powers of the Board- To prescribe the syllabus for primary (Class I to V), middle (Class VI to VIII) standard, Urdu Adeeb, Urdu Mahir, Urdu Moallim, Moulvi, (High School), Aalim (Higher Secondary) High School and Higher Secondary correspondence courses or Madrasa Education, and to arrange for the conduct of their examinations and to award certificates.
5. Uttarakhand Madrasa Education Board Act, 2016 defines Madrasa-Education as education in Arabic, Urdu, Persian, Islamic-studies, Tibb, logic, Philosophy and includes such other branches of learning as may be specified by the Board from time to time. The functions of the board includes- to prescribe course of instructions, text-books, other books and instructional material, if any, for Tahtania (primary), Faukquania (junior high school), Munshi (high school-persian), Maulavi (high school-arabic), Alim (intermediate), Kamil (graduation), Fazil (postgraduation) and other courses; prescribe the course books, other books and instruction material of courses of Arbi, Urdu and Pharsi for classes up to High School and Intermediate standard in accordance with the course determined there for by the Board of High School and Intermediate Education; to prepare manuscript of the course books other books and instruction material; prescribe standard for the appointment of Urdu translators and Basic Urdu Teachers in the various offices of the State and ensure through the appointing authority necessary action with respect to filling up of the vacant posts.
6. Uttar Pradesh Board of Madrasa Education Act, 2004 defines Madrasa-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 functions of the Board include to prescribe course of instructions, text-books, other books and instructional material, if any, for Tahtania, Fauquania, munshi, Maulavi, Alim, Kamil, Fazil and other courses; 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; 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.

7. Rajasthan Madrasa Board Act, 2020 defines Madrasa as an educational institution registered with the Madrasa Board and imparting instruction in Madrasa Education. Further, Madrasa Education means a system of education which includes studies in Islamic history and culture, and theology, and also includes general education which prepares the student to appear for exams conducted by Central Board of Secondary Education, Council for the Indian School Certificate Examinations, Rajasthan Board of Secondary Education or Secondary Education Boards of other States.
8. The Odisha State Board of Madrasa Education (OSBME) was formed by the Government of Odisha in the year 1971, before the formation, the Madrassa students' examination in the state was conducted by the Bihar Madrasa Board. Government of Odisha established the Odisha State Board of Madrasa Education (OSBME) in the year 1971 by passing resolution under the State Government Education Rules (Resolution No. 33931 dated 31.08.1971), since then till now the Odisha State Board of Madrasa Education (OSBME) is continuously working for the promotion of education. Initially the Odisha State Board of Madrasa Education (OSBME) was constituted for 3 years, after that it was renewed from time to time by the government, and now, under the aegis of DSE (O), the Odisha State Board of Madrasa Education (OSBME) is constantly engaged in the task of taking education to the masses. Directorate of Secondary Education serves as a bridge between elementary and higher education and prepares younger generation between the age group of 14-18 years for entry into higher education. The Directorate of Secondary Education, Odisha has been set up in the year 1983 to look into the Secondary Education in the State. The Director, Secondary Education, Odisha is the Administrative Authority for Odisha State Board of Madrasa

Education (OSBME) under the School and Mass Education Department, Government of Odisha. Functions of Odisha State Board of Madrasa Education (OSBME) includes - to conduct examinations of the courses being taught in the affiliated Madrasas of the state on the basis of the syllabus prescribed by the Madrasa Examination Board; to determine the course of study and recommended books for the different stages of madrasa education; to conduct the examination on the basis of rules prescribed by the Board; to admit the candidates to the examinations as per the rules framed by the Board; to grant recognition to Madrasas on the basis of rules made by the Board; to perform the functions entrusted by the Government to the Madrasa Board in the interest of Madrasa Examinations; to bring proposal on necessary policies and decisions to strengthen the Madrasa Board and to present the proposal through the Secretary to the Director for approval.

A Madrasa works in an arbitrary manner and runs in an overall violation of the Constitutional mandate, RTE Act, 2009 and the Juvenile Justice Act, 2015. It cannot be overlooked that a child getting education in such an Institution will be devoid of basic knowledge of school curriculum which is provided in a school. A school is defined under Section 2(n) of the RTE Act, 2009, which means any recognised school imparting elementary education. A Madrasa being out of this definition have no right to compel children or their families to receive Madrasa education. A Madrasa is not only a unsuitable/unfit place to receive 'proper' education but also in absence of entitlements as provided under Section 19, 21,22, 23, 24, 25, and 29 of the RTE Act. Further, Madrasa do not only render an unsatisfactory and insufficient model for education but also have an arbitrary mode of working which is wholly in absence of a standardized curriculum and functioning. Further, due to the absence of provisions of RTE Act, 2009, the Madrasas are also deprived of entitlement as in Section 21 of the Act of 2009 pertaining to School Management Committee due to which Madrasas lack Committee for the purpose of monitoring its working because of which the parents are deprived of information regarding the progress of their children.

The Madrasa Boards constituted under the State Acts are a violation of children's right to education. As per Article 254 of the Indian Constitution, *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, 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.

Given the doctrine of harmonious construction of fundamental rights, several provisions of RTE do not interfere with the administrative rights of the minority, such as prevention of physical and mental cruelty towards students, quality checks on pedagogical and teacher standards, entitlements to students from disadvantaged back-ground such as free uniform, books and other scholarships, ensuring physical, psychological, mental and sexual safety of the child. While the RTE Act does not discriminate between children, the complete immunity of minority schools and institutions from its operations, establishes that a child studying in these institutions is deprived of and to that extent discriminated against. Hence, the children studying in unmapped Madrasas and other minority and religious institutions are not getting benefits of their fundamental right. Moreover, by enrolling children from non-Muslim communities, these institutions are violating Article 28 (3) of the Constitution that prohibits educational institutions from obligating the children to take part in any religious instruction, without the consent of parents.

To conclude, the right provided to minority institutions under Article 30 (1) of the constitution of India cannot be taken as unconditional or absolute. This right is subject to the basic principles of equality and secularism of the Constitution and individual rights of the children. In *Bal Patil & Anr vs Union Of India & Ors*, (2005), Hon'ble Supreme Court stated that '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. Prohibiting discrimination on grounds of religion, race, caste, sex or place of birth, the Constitution, under Article 15 also states that State shall not discriminate against any citizen on grounds only of religion and State can make special provision for women and children. Let alone special provisions, the exemption of institutions with minority status have led to discrimination among children those who are enrolled in institutions with minority status; those who are seeking education in unmapped religious institutions. Moreover, the right to freedom of religion given under Article 25 (1) is subject to the other provisions in Fundamental Rights including Article 21A, Right to Education which is constitutionally unconditional.

Hence, it can be inferred from the above discussion that Madrasas Boards pose multifaceted challenges to the realisation of rights of children, from not providing quality education to exclusion from mainstream education to lack of accountability. With the growing need for special laws and protection of children from crime and violence, India is engaged in enactment of legislations and special laws for children from time to time. The child protection system has been able to develop a much stronger mechanism that prioritizes the best interests of all children. In such scenario, addressing the concerns surrounding role, functions and essentiality of Madrasas holds utmost importance.

Also, the Government is spending taxpayers money on activity that is beyond RTE Act, 2009. There is a formal education system governed by the law and State has the duty to provide education to all children, without discrimination, in the neighbourhood schools defined under Section 2(n) of the RTE Act, 2009. In this case, spending public money on educational institutions of one particular religion and keeping the children away from their fundamental rights is violation of our Constitution and the RTE Act, 2009.

Role of Association of Indian University (AIU)

The Government of India vide its notification no.F.11-3/2016-Sch.3 dated 15.11.21 entrusted the responsibility of granting equivalence to Grade10 and Grade12 Board exams/qualifications/courses conducted by various School Education Boards of India to Association of Indian University (AIU) for the purpose of admission to higher education and employment in the Government services. The order also mentioned that a Standard Operating Procedure (SOP) will be prepared for this purpose for all school Boards in India. The SOP shall ensure that the applicant School Education Board is following the Right of Children to Free and Compulsory Education (RTE) Act, 2009, extant National Curriculum Framework (NCF) and National Education Policy (NEP) 2020 compliant and that the teachers in schools affiliated to the Board possess qualifications as laid down by National Council for Teacher Education (NCTE). As per the SOP, *complete and authentic information including enrolment of students and teachers and infrastructural facilities are not available about Madrasa schools. Some data are there in Unified District Information System for Education (UDISE) portal about Madarsa Schools but those are incomplete. Student's studying in Madarsa schools, in general, do not get opportunity to appear in various competitive exams. A major reason for the same appears to be issue of equivalence of class 10 and class 12 certificates being given to the*

students by the State Madarsa Boards. The certificates of class 10 and class 12 issued by the Madarsa Boards are not uniformly recognized across the country. Some States have made efforts towards recognition/equivalence of certificates issued by Madarsa Boards within their own States or with other School Exam Boards. Some of the Madarsa Boards have equivalence of certificates of class 10 and class 12 with their State education Board or with other Education Boards. However, there is not much awareness about the equivalence of Madarsa Boards certificates. It was also pointed out that Right to Education Act 2009 is not applicable to the Madrasa schools as per section 1 of sub-section (4) and sub-section (5) of the RTE Act. The teachers in Madrasa schools are, in general, appointed by the Madarsa management. There is no uniformity in qualifications and service conditions of Madarsa teachers. Most of the Madarsa schools follow their own curricula and textbooks. Some of the Madarsa Boards in coordination with UNICEF and SCERT have published textbooks in Urdu for classes 1 to 8 and NCERT text books for classes 9 to 12. Thus, it was pointed out to the Committee that the above issues need to be considered while formulating SOP's for granting equivalence to certificates of Madarsa Boards.

As per the above observation by AIU, and given the fact that the SOP stresses on the need of compliance of RTE Act, 2009, and that the Madrasas are exempted from the said Act, the equivalence if provided to the Madrasa Boards shall be unconstitutional and a violation of the Constitution, the Act as well as the SOP.

Chapter 5 Fund Flow

It has been reported in several reports over the year that educational attainment of Muslim communities is the lowest among all the religious communities in India. Against the popular perception that the children of the Muslim community are not able to achieve the educational goals like other children because to lack of special funds for them to bring them out of this situation, it has been found that funding is least of the issues for Madrasas. As per the information available on Ministry of Education's PAB minutes Rs. 120 crores have been allocated in financial year 2019-20 for Centrally Sponsored Scheme for Providing Education to Madrasas/Minorities (SPEMM) comprising- *Scheme for Providing Quality Education in Madrasas (SPQEM) and Infrastructure Development of Minority Institutes (IDMI)*. The scheme provides support to the recognized Madrasas.

However, it needs to be seen that though it is a substantial amount for the Government to pay, it is dwarfed by the scale of funding made available to Madrasas each year through different religious customs/rituals. Madrasas that are so far functioning independent of any Government intervention may not take recognition from the State and come under the ambit of Government regulation for availing the funding under the above schemes. Even the increase in funding through various schemes would not be able to match the amount of funding that Madrasas receive as part of the amount generated through their yearly rituals. However, the funding received from any of the sources is not reflected on standard of education for want of answerability and accountability. Hence, to improve the standard of education of children from this community, it is important to bring them under the ambit of RTE Act and extend the fundamental right to each and every child. The Government needs to review the need of such a scheme that is supporting the activities that are in violation of the RTE Act, 2009 and contributing in keeping children away from formal education.

An analysis of the amount of money generated through different activities is given below. Madrasas receive a part of this collection every year. The analysis is an approximation based on the available information that may vary across time and States but the estimate is towards the lower side only.

1. Zakat

Zakat refers to the obligation that an individual has to donate a certain proportion of wealth each year to charitable causes. Zakat is a mandatory process for Muslims.

Zakat is equal to 2.5 percent of total savings and wealth per household.

Estimate household saving in India = Rs. 26,099 billion (2016)¹²

Total number of households – 24.95 crore (Census 2011)

Average saving per household = Rs. 1.04 lakh

2.5 percent of Rs. 1.04 lakh = Rs. 2,615 (approx..) per household

Total amount for 3.1 crore Muslim households (Census 2011) = Rs. 8,106.50 crore (estimate)¹³

2. Id-ul-fitr (Fitrana)

Every Muslim is obliged to make a payment of *Fitrana* at the end of Ramadan which is equivalent to price of one meal for each member of a family. The exact amount is fixed locally by the religious leaders.

Estimate population of Muslims in India in 2023¹⁴= 19.7 crore (approx..)

If Average estimated amount of Fitrana in India is taken = Rs. 50 per person

Estimate of amount collected = Rs. 50 X 19.7 crore = Rs. 985 crore

3. Qurbani

Qurbani is an Islamic ritual of animal sacrifice of a livestock animal during Eid al-Adha. The skin is normally donated in name of madrasas, sold in the leather market such as Kanpur leather factories and the money generated is then given to the Madrasas.

¹² As per MOSPI data quoted in <https://tradingeconomics.com/india/personal-savings>

¹³ This is based on approximate savings, the wealth owned by the families is not added. Hence, the actual amount will be much higher than this estimate.

¹⁴ <https://economictimes.indiatimes.com/news/india/muslim-population-in-india-is-nearly-20-crore-in-2023-govt-in-lok-sabha/articleshow/102011439.cms?from=mdr>

Estimate number of sheep or goats sacrificed across the country = 3 crore

Average cost of skin per piece= Rs. 150/-

Income generated by selling the skin= Rs. 450 crore (estimate)

4. Further, the net income generated from Waqf properties¹⁵- Rs 1,20,000 crore

In addition, the income from rent and foreign funding. For the above data, it may be inferred that the funding available with Madrasas is collected *in name of* children but are not spent for their care and development. The fact of children getting education in Government funded Madrasa including unmapped madrasas which are receiving funds from the State Government is a clear cut violation of the law of land and such an education which is devoid of basic curriculum, eligibility and holistic environment cannot be furthered on the expenses of the State.

¹⁵ <https://ndtv.in/india/property-of-waqf-board-in-india-know-accounts-of-every-state-6321833>

Chapter 6

UDISE Code – Need for Distinction between Madrasas & Schools

As discussed in previous chapters, the Commission while monitoring the implementation of the RTE Act, 2009 had come across the issue of a large number of children who do not attend school but attend religious institutions such as Madrasas. As noted earlier, it was also observed by the Commission that the data on exact number of unmapped Madrasa and number of children attending those Madrasas was not available. Further, whether these children are enrolled in schools and receiving fundamental education was also not clear.

Taking cognizance of the issue, the Commission then wrote to Chief Secretaries of all States to conduct a detailed inquiry of Madrasas enrolling non-muslim children and also undertake mapping of unmapped Madrasas in the State. During this process, the Commission came to know that in different States, Madrasa are getting Unified District Information System for Education (UDISE) Codes despite not fulfilling the norms and standards as per the RTE Act, 2009. Whereas the Commission has got to understand during the various interactions with the State Authorities that having a UDISE Code is considered to be certification for Madrasas to operate as schools. However, the UDISE Code and recognition from Madrasas Board does not guarantee that these Madrasas are following the provisions of RTE Act, 2009.

What is UDISE+ and UDISE Code?

UDISE+ (Unified District Information System for Education Plus) is one of the largest Management Information Systems initiated by Department of School Education and Literacy, Ministry of Education, GoI covering more than 14.89 lakhs of schools, 95 lakhs of teachers and 26.5 crores of children.

In the early 1990s, as part of the District Primary Education Programme (DPEP) national endeavour, a school based computerised information system was designed and developed. An Education Management Information System (EMIS), called the District Information System for Education (DISE) was created for Classes I to V for planning and monitoring the implementation of DPEP in 42 Districts of seven selected States. Over the years this was extended to cover the entire elementary level of education till Class VIII. In 2008- 09, with the introduction of the Rashtriya

Madhyamik Siksha Abhiyan (RMSA), a separate and dedicated Secondary Education Management Information System (SEMIS) was started for Classes IX to XII. Subsequently, in 2012-13, the Unified District Information System for Education (UDISE) was launched by integrating the DISE for elementary education and SEMIS for secondary education. Responding to certain limitation of the UDISE, the Department developed UDISE+ system with many unique features. ¹⁶ UDISE+ is operational in all the districts of the country.¹⁷

UDISE+ has a mandate of collecting information from all recognized schools imparting formal education from Pre-primary to XII. Information collected through the digital platform of UDISE+, is utilized for the planning, optimized resource allocation and implementation of various education-related programs and assessments of progress made. UDISE+, collects information through an online Data Collection Form (DCF) on parameters ranging from school, infrastructure, teachers, enrolments, examination results etc. The schools which get onboarded successfully on the platform are provided a UDISE Code, which acts as a national level unique identifier. The 11-digit UDISE code acts as a unique identifier for all the recognized schools imparting formal education from pre-primary to XII, onboarded on UDISE+ platform. Every school in the country is given a unique UDISE code. If a new school is established, the school needs to get a UDISE code for establishing their unique identity.

It is important to note that UDISE Code is given to a *school* that is established in any States/UT. As per the RTE Act, 2009 a school is defined as- *any recognised school imparting elementary education and includes--*

- a) *a school established, owned or controlled by the appropriate Government or a local authority;*
- b) *an aided school receiving aid or grants to meet whole or part of its expenses from the appropriate Government or the local authority;*
- c) *a school belonging to specified category; and*
- d) *an unaided school not receiving any kind of aid or grants to meet its expenses from the appropriate Government or the local authority;*

¹⁶ UDISE+ Booklet (April 2019) available at <https://udiseplus.gov.in/#/en/page/publications>

¹⁷ <https://udiseplus.gov.in/#/en/page/about>

Also, as per Section 1(5) of the RTE Act, 2009, the Act is not applicable to madrasas, Vedic pathshalas and educational institutions primarily imparting religious instruction.

Based on the above information, though Madrasas do not qualify to receive a UDISE Code, the Ministry of Education has been issuing the unique identification code to the Madrasas and collecting data. In 2014-15, the survey of schools included the category to count recognised madrasas across the country. The report released had separate categories for recognised and unrecognised madrasas, unlike in the past when madrasas were included in the category of unrecognised schools. During the Central Grant in Aid Committee (CGIAC) meeting held on 14.01.2016 for the year 2015-16, a decision was taken that only those Madarsas which have U-DISE Codes or an Unique Identity/ Registration code given by State Governments would be assisted.¹⁸

Commission's Intervention

Given the fact that UDISE+ information collection mechanism for an objective evaluation of the school education system, Commission wrote to Secretary, Department of School Education & Literacy, Ministry of Education vide letter dated 25.06.2024 (Annexure) to issue necessary directions to States/UTs to conduct inspections of the existing Madrasas with UDISE Code and withdraw recognition of such Madrasa that do not comply with the norms and standards given in the RTE Act, 2009, with immediate effect. It was further requested that as the UDISE system is the source of data for the school education system with respect to schools, the same may not be extended to Madrasas. A separate category of UDISE may be created to capture information about all recognized, unrecognized and unmapped Madrasas.

Acting on this, Department of School Education & Literacy, Ministry of Education has issued a letter dated 10.07.2024 to Education Secretaries of all States/UTs and sought a report of inspection of the Madrasas as suggested by the Commission. The Department has also sent a reminder email to the States/UTs for furnishing the reports.

¹⁸ <https://pib.gov.in/PressReleasePage.aspx?PRID=1524644>

Chapter 7

Unregistered and Unmapped Madrasas

With the enactment of RTE Act, 2009, imparting fundamental education to every child in a recognized school has become mandatory, but the annual data by MoE suggests that there are a large number of children attending institutions that are not recognized. Even though these schools are unrecognized, the number of such schools and their enrolment is captured by the annual data presented by UDISE+. Another category of institutions that reflect in the data are recognized and unrecognized Madrasas. As per UDISE+ 2021-22, there are 19965 recognized Madrasa and as per 2020-21 report there are 4037 unrecognized Madrasas in the country.

What remains missing in any data source in the country is another category of institutions which enrol children in the name of education but neither these institutions, nor the children attending these institutions are reflected in any educational data, because of this children are deprived of their fundamental right to education. These are the **unmapped Madrasas** functional across States, accommodating an uncounted number of children. Since these institutions are unmapped, they remain unrecognized as well. These are mostly run by private religious sects. For instance, Darul-Uloom Deoband is one such organization that has several affiliated Madrasas across the country that are not necessarily mapped and recognized by the State. Consequently, what kind of curriculum is followed in these institutions; whether these institutions provide quality education or not; and the information on the environment these institutions provide to children also remains unknown. This is also evident in the numerous complaints that NCPCR receive regarding neglect, ill-treatment, corporal punishment and sexual abuse of children. Children attending all such institutions (unrecognised and/or unmapped madrasas) are treated as Out of School, even if they provide regular education. In 2007-2008, Darul Uloom Deoband opposed the Government of India's Madrasa Board scheme, as a result of this opposition, the government ultimately halted the implementation of the scheme¹⁹.

As per an answer to the Rajya Sabha question²⁰ the data provided by the States suggest that there are only 19132 recognized Madrasas and 4878 unrecognized Madrasas.

¹⁹ History of Darul Uloom Deoband (2012), Maktaba Darul Uloom, Uttar Pradesh

²⁰ <https://sansad.in/getFile/annex/251/AU118.pdf?source=pqars>

There are 19613 recognized Madrasa and 4037 unrecognized Madrasas in the country (UDISE+ 2020-21). The enrolment for recognized Madrasa is 2693588 and for unrecognized Madrasa is 540744. That means the average enrolment per recognized Madrasa is 137 and per unrecognized Madrasa is 134. Based on the estimation of 1.1 crore muslim children that are out-of-school and attending Madrasas, there could be more than 80000 unmapped Madrasas in the country, attended to by children but being virtually missing from the education picture of the country and hence, without any regulation, hence depriving children of their rights. Therefore, it is very important that mapping of all these unrecognized unmapped institutions needs to be urgently undertaken. This has also been recommended by the CABE Sub-Committee to Devise Pathways for Re- engaging Out of school children.

Taking a step towards this and ensure that all children are enrolled for formal education, the Commission sent a letter dated 08.12.2022 to Chief Secretaries of all States/UTs to take following action-

- a) Conduct a detailed inquiry of all Government Funded/Recognized Madrasas who are admitting non-Muslim children in the State/UT. The inquiry should include physical verification of children attending such Madrasas. Subsequent to the inquiry, admit all such children in schools for availing formal education.
- b) Undertake mapping of all unmapped Madrasas in the State/UT and admit all children into Schools for availing formal education with immediate effect.

Subsequently, reminder letters were send followed by summon notices to the States/UTs where requisite action was not provided by the States/UTs. Important highlights of the data shared by the States/UTs and observations made by the Commission are as follows-

1. **Andhra Pradesh**²¹- The State has shared a report dated 19.01.2024. As per the report, there are 203 recognized Madrasas with no non-muslim children. No

21

https://www.google.com/search?q=madrasas+in+andhra+pradesh&client=safari&sca_esv=6350d5eca2fae0eb&rls=en&biw=1225&bih=677&ei=MFYgz_CCFsOhnesP152Y2As&ved=0ahUKewjw2o2Fh4GJAXDUGcHHdcOBrs4ChDh1QMIDw&uact=5&oq=madrasas+in+andhra+pradesh&gs_lp=Egxnd3Mtd2l6LXNlcniAIGm1hZHJhc2FzIzluIGFuZGhyYSBwcmFkZXNoMgYQABgWGB4yBhAAGBYHjLEAAyGAQYhgMYigUyCxAAGIAEGIYDGIoFMgsQABiABBIGAXiKBTIIEAAYGAQYogQyCBAAGIAEGKIEMggQABiABBiiBEjGKIDEAlJO3ABeAGQAQKYAfEDoAGzKKoBcJAuMTguNC4zLjG4AQPIAQD4AQGYAhigAokjqAiuWgIWEAAYAxioAhjIAhjqAhiMxiPAdgBAciFhAuGAMyTAiy5QIY6gIYjAMyJwHYAQHCAhQQABiABBjjBBi0AhjpBBjqAtgBAsiCHRAuGIAEGJECGLQCGMcBGloFGOoCGI4FGK8B2AECwglUEAAYGAQYkQIYtAIYigUY6gLYAQLCAGsQABiABBIRAhikBclCERAUgIAEGLEDGNEGDGIMBGMcBwglLEAAYGAQYsQMYgwhCAgUQABiABMICBRAuGIAEwglLEc4YgAQYsQMY1ALCAg4QABiABBixAxidARiKbclCDhAuGIAEGLEDGIMBGIoFwglOEAAyGAQYkQIYyQMYgXCAGsQABiABBisAxikBclCDRAuGIAEGLEDGEMYigXCAG4QLhiABBjHARIORivAcICCBauGIAEGLEDwglIEAAYGAQYsQPCAhEQABiABBIRAhixAxjAxiKbclCCHAAGIAEGEMYigXCAGoQLhiABBhDGIoFwglIEAAYGAQYsQMYQxiDARiKbclCDhAAGIAEGJECLEDGIoFwglIEAAYFhgeGA_CAGcQABiABBgNwglIEAAYBRgNGB7CAgoQABGFGA0YHhgPmAMrugYGCAEQARgKugYECAIYB5IHCDuEMTcuNC4yoAe77QE&scient=gws-wiz-serp

unmapped Madrasas has been reported by the State. However, as per Commission's observation, there are Madrasas in Andhra Pradesh that are not registered and are still unmapped.

2. **Arunachal Pradesh-** The State vide letter dated 17.05.2023 has reported that there are no recognized/government funded madrasas in the State. Also, no unmapped Madrasa is reported.
3. **Assam-** the Assam government has dissolved the State Madrasa Education Board as part of its decision to convert government-run madrasas into regular schools. This is a positive step towards extending right to education of all children. In December 2020, the Assam Legislative Assembly passed a bill to repeal the Assam Madrasa Education (Provincialisation) Act, 1995, effectively ending state-run madrasas. However, the state of children attending unmapped Madrasa hasn't changed. In response to Commission's notices, the Secretary of Department of School Education, Govt. of Assam sought guidance from the Commission vide letter dated 27.03.2024 wherein it was submitted that the Private run Madrassas in the State are not currently included in the Unified District Information System for Education (UDISE). Children falling within the age group of 6-14 years and enrolled in these Madrassas are within the ambit of the Right of Children to Free and Compulsory Education (RTE) Act, 2009. However, under the present policy decision of the State, the Government run Madrassas had been abolished. Again registering another format of Madrassas i.e. the Private madrassas in UDISE could be seen as contradictory to the State policy. It was also noted in the letter that it might be viewed as a back-door entry into the education system. On the other hand, not mapping these Madrassas could be seen as a non-compliance to the advisory of the NCPCR. In response, the Commission sent a letter addressing the query raised. It was stated that the Commission has not asked to register the unmapped Madrsasa under the UDISE or any other platform. As clear from all the previous communications, the Commission has asked to conduct mapping of the Madrasas and enrol the children in formal education system. No further response has been received from the State.

4. **Bihar**²²- After repeated reminders and summon notice, the Bihar administration shared a report on 11.06.2024 stating that there are 1942 non-funded Madrasas on the State. Out of these, 1536 have UDISE+ Code. There are 69 non-muslim children in non-funded/aided Madrasas. The report does not contain further information on whether or not the children are enrolled in formal schools. The State has not reported about conducting mapping of unmapped Madrasas. Inconsistencies have been found in the Bihar Madrasa Board curriculum. When the Commission visited Bihar in the matter of explosion in a Madrasa in Saran, Bihar, it was found that the Madrasa in Motirajpur village was not registered.
5. **Chhattisgarh**- As per the information shared with the Commission, Chhattisgarh has 271 recognized/funded Madrasas in which 2159 non-muslim children are enrolled. It also states that non-muslim children are not imparted religious education as only curriculum prescribed by SCERT is implemented. However, as per the Chhattisgarh Madrasa Board Adhiniyam, 1998, Madrasa is defined as an educational institution providing instructions in Arabic and Islamic studies and recognised as such by the Board. Seven more Madrasas have been reported but it appears that the State has not conducted any mapping of Madrasas nor any further detail on status of formal education of children has been provided²³.
6. **Delhi**²⁴- Delhi has submitted that there are 61 Madrasas on the Waqf land. The minority Commission has given nil report as per the submitted reply. It appears that the State has not conducted any mapping of unmapped Madrasas.
7. **Goa**- Through the letter dated 12.01.2024, Goa has submitted that there are no Government funded/recognized Madrasas. It appears that the State has not conducted any mapping of Madrasas as search on the internet reveals that Goa has close to 10 Madrasas²⁵.

²²https://www.google.com/maps/search/madrasas+in+bihar/@14.7542515,68.581309,5z?entry=ttu&g_ep=EgoyMDI0MTAwNS4yIKXMDSoASAFOAw%3D%3D

²³https://www.google.com/maps/search/madrasas+in+chhattisgarh/@21.8625315,81.399758,9z/data=!3m1!4b1?entry=ttu&g_ep=EgoyMDI0MTAwNS4yIKXMDSoASAFOAw%3D%3D

²⁴https://www.google.com/maps/search/madrasas+in+delhi/@28.592099,77.1452459,12z/data=!3m1!4b1?entry=ttu&g_ep=EgoyMDI0MTAwNS4yIKXMDSoASAFOAw%3D%3D

²⁵https://www.google.com/maps/search/madrasas+in+goa/@15.338846,73.8803044,12z/data=!3m1!4b1?entry=ttu&g_ep=EgoyMDI0MTAwNS4yIKXMDSoASAFOAw%3D%3D

8. **Gujarat-** As per the information submitted vide letter dated 20.05.2024, the State does not have any recognized/funded Madrasa. However, after mapping 1315 have been identified attended by 80494 children. Out of these, 73119 children are admitted in formal schools whereas remaining children are yet to be enrolled. During the process of mapping, it has been informed to the Commission that the Government officials were attacked by the goons in State of Gujarat. However, as informed, the State has concluded the mapping exercise.
9. **Haryana-** As per the information submitted vide letter dated 08.01.2024, the State does not have any recognized/funded Madrasa. However, there are 153 unrecognized Madrasa attended by 23 non-muslim children.
10. **Himachal Pradesh-** The State submitted its reply on 16.02.2024. There are 10 recognized private Madrasa in the State with no non-muslim children. No unmapped Madrasa has been reported.
11. **Jharkhand-** As per the information submitted vide letter dated 05.01.2024, the State has 4 recognized/funded Madrasa with 14 non-muslim children. All 14 children are receiving formal education. However, no information of mapping of unmapped madrasa has been shared by the State²⁶.
12. **Karnataka-** As per the information submitted vide letter dated 18.01.2024, there are 406 residential Madrasas in the State with 14281 children receiving formal education out of total 19307 children. There are 1250 non-residential Madrasas with 92903 children out of which 89619 are receiving formal education. None of the children are from non-muslim communities. The State has not provided any response on mapping and it appears that the exercise has not been carried out²⁷.
13. **Kerala-** There has not reported any Madrasas (recognized/funded/unmapped) in the State. However, various news reports suggests that there are many Madrasas functional in the State but the exact number is unknown. As per a

²⁶https://www.google.com/maps/search/madrasas+in+jharkhand/@23.6290265,84.482123,8z/data=!3m1!4b1?entry=ttu&g_ep=EgoyMDIOMTAwNS4yIKXMDSoASAFQAw%3D%3D

²⁷https://www.google.com/maps/search/madrasas+in+karnataka/@23.2807576,75.1169522,5z/data=!3m1!4b1?entry=ttu&g_ep=EgoyMDIOMTAwNS4yIKXMDSoASAFQAw%3D%3D

news report dated 28.07.2021 published in The Hindu *Chief Minister Pinarayi Vijayan told the Assembly on July 28 that the State government is not spending anything from its coffers to pay salaries or other benefits to madrasa teachers.* As per the report, a welfare fund has been set up for madrasa teachers, to which each madrasa teacher and the respective madrasa committee make monthly contributions of ₹50 each²⁸. The welfare fund currently has 23,809 madrasa teachers as members. Recently, The Kerala High Court has asked the State government why it was associated with the religious affairs of a particular community²⁹. Many news reports can be found where children have been abused in Madrasas³⁰.

14. **Madhya Pradesh-** The State vide letter dated 05.01.2024 has submitted that there are 1505 recognized/Government funded Madrasas with 9417 non-muslim children and 29 unrecognized Madrasas with 59 non-muslim children. The state has not conducted the mapping survey or have not apprised the Commission about the progress made in this regard³¹.

15. **Maharashtra** - During the summon hearings of State Officers of Maharashtra, it was submitted that the State is not receiving any satisfactory response from the District Authorities. Therefore, it was decided that individual summon notices shall be issued to the District Collectors of all Districts in Maharashtra. Thereafter, reports were received from the Districts and as per the updated data shared by the Districts after conducting mapping, there are around 2700 Madrasas with 7855 non-muslim children out of total 122470 children. Out of the total number of children, 44853 children are receiving formal education. 456 children are from outside Maharashtra. However, no conclusive information on whether the non-muslim children and other children are receiving formal education.

²⁸ <https://www.thehindu.com/news/national/kerala/government-does-not-spend-anything-on-salaries-for-madrasa-teachers-says-cm-pinarayi-vijayan/article35578512.ece>

²⁹ <https://www.newindianexpress.com/states/kerala/2024/Jul/09/kerala-hc-questions-govts-role-in-madrasa-teachers-welfare-fund>
<https://organiser.org/2023/11/27/208187/bharat/disturbing-pattern-unveiled-25-cases-of-sexual-abuse-in-keralas-madrasas-expose-troubling-history-of-victimisation/>

³⁰ <https://organiser.org/2024/07/02/245353/bharat/kerala-madrasa-teacher-abdur-rahiman-sentenced-to-triple-life-sentence-for-sexually-assaulting-a-7-year-old-girl/>

³¹ [https://www.google.com/search?client=safari&sca_esv=bdf8bb53bc4f4985&rls=en&tbs=lf:1,lf_ui:2&tbm=cl&q=madrasa+in+madhya+p+radesh&rflfq=1&num=10&sa=X&ved=2ahUKEwjRr82NvoOJAxv7xTgGHRrQG00QjGp6BAGhEAE&biw=1225&bih=677&dpr=2#rfl=hd::si::mv:\[\[25.085405599999998,81.94309919999999\],\[21.8906339,74.6270643\]\];tbs:lf:1!m4!1u3!2m2!3m1!1e1!1m4!1u2!2m2!2m1!1e1!2m1!1e2!2m1!1e3!3s!AE,lf:1,lf_ui:2](https://www.google.com/search?client=safari&sca_esv=bdf8bb53bc4f4985&rls=en&tbs=lf:1,lf_ui:2&tbm=cl&q=madrasa+in+madhya+p+radesh&rflfq=1&num=10&sa=X&ved=2ahUKEwjRr82NvoOJAxv7xTgGHRrQG00QjGp6BAGhEAE&biw=1225&bih=677&dpr=2#rfl=hd::si::mv:[[25.085405599999998,81.94309919999999],[21.8906339,74.6270643]];tbs:lf:1!m4!1u3!2m2!3m1!1e1!1m4!1u2!2m2!2m1!1e1!2m1!1e2!2m1!1e3!3s!AE,lf:1,lf_ui:2)

16. **Manipur-** As per the information submitted vide letter dated 14.05.2024, there are 121 Madasas recognized by the Waqf Board. Out of these, three Madrasas have non-muslim children. However, when the DCPO conducted inspection of these three Madrasas, no non-muslim child was found. It appears that mapping exercise has not been carried out by the State.
17. **Meghalaya-** The State vide letter dated 11.01.2024 has reported that there are no recognized/government funded madrasas in the State. However, there are 5 Madrasas which are now providing formal education, the report suggests. Also, no unmapped Madrasa is reported. An alarming situation was raised by the Chairperson during his visit to Ampati in may 2024. The Chairperson shared with the State authorities about his visit. While interacting with a child who was returning from Madrasa, the child stated that *we are just studying religious education and he doesn't want to become any professionals like doctors or advocates but are preparing ourselves for the 'Akirat' meaning life after death, they are preparing themselves for the day of judgment.*
18. **Mizoram-** Similarly, the State vide letter dated 26.10.2023 has reported that there are no recognized/government funded madrasas in the State. Also, no unmapped Madrasa is reported.
19. **Nagaland-** As per the report dated 12.06.2023, there is only one unmapped Madrasa and no Madrasa is registered under the State Government.
20. **Odisha-** Odisha has submitted data of 166 Madrasas that are recognized/government funded (letter dated 17.02.2024). There are no non-muslim children. The reply does not contain information regarding mapping of unmapped Madrasas. It appears that mapping exercise has not been carried out by the State³².

³²[https://www.google.com/search?q=madrassa+in+odisha&client=safari&sca_esv=ddf8bb53bc4f4985&rls=en&biw=1225&bih=677&tbm=cl&ei=ZpWHZ7HdDd2C4-EP6aW8yAM&ved=0ahUKewixqNuRvoOJAxVdwTgGHekSDzkQ4dUDCAk&uact=5&oq=madrassa+in+odisha&gs_lp=Eg1nd3Mtd2I6LWxvY2FslhFtYWRyYXNhlGluIG9kaXNoYTILEAAyAQYkQIYigUyCxAAGIAEGIYDGIoFMgsQABiABBIGAxikBTILEAAyAQYhgMYigUyCxAAGIAEGIYDGIoFMggQABiABBiiBEifC1Dfa1j4CHAAeACQAQCYAbACoAGeDKoBBzAuMy4zLjG4AQPIAQD4AQGYAgagAusMwglGEAAyFhgewgIFEAAyGATCAggQA BgWGB4YD8ICCBAAAGBYChgemAMaAiAYBkgCHMC4yLjQuMaAH5C0&sclient=gws-wiz-local#rfi=hd;:;mv:\[\[22.6397273,87.2288288\],\[20.1091895,83.85887269999999\]\];tbs:lrf:!1m4!1u3!2m2!3m1!1e1!1m4!1u2!2m2!2m1!1e1!2m1!1e2!2m1!1e3!3sIAE,lf:1,lf_ui:2](https://www.google.com/search?q=madrassa+in+odisha&client=safari&sca_esv=ddf8bb53bc4f4985&rls=en&biw=1225&bih=677&tbm=cl&ei=ZpWHZ7HdDd2C4-EP6aW8yAM&ved=0ahUKewixqNuRvoOJAxVdwTgGHekSDzkQ4dUDCAk&uact=5&oq=madrassa+in+odisha&gs_lp=Eg1nd3Mtd2I6LWxvY2FslhFtYWRyYXNhlGluIG9kaXNoYTILEAAyAQYkQIYigUyCxAAGIAEGIYDGIoFMgsQABiABBIGAxikBTILEAAyAQYhgMYigUyCxAAGIAEGIYDGIoFMggQABiABBiiBEifC1Dfa1j4CHAAeACQAQCYAbACoAGeDKoBBzAuMy4zLjG4AQPIAQD4AQGYAgagAusMwglGEAAyFhgewgIFEAAyGATCAggQA BgWGB4YD8ICCBAAAGBYChgemAMaAiAYBkgCHMC4yLjQuMaAH5C0&sclient=gws-wiz-local#rfi=hd;:;mv:[[22.6397273,87.2288288],[20.1091895,83.85887269999999]];tbs:lrf:!1m4!1u3!2m2!3m1!1e1!1m4!1u2!2m2!2m1!1e1!2m1!1e2!2m1!1e3!3sIAE,lf:1,lf_ui:2)

21. **Punjab**- Punjab has reported one recognized/government funded Madrasa with two non-muslim children. The Madrassa have UDISE Code. No response on mapping of unmapped Madrasas is reported³³.
22. **Rajasthan**- As per the information submitted by the State vide letter dated 11.02.2023 and 16.05.2024, there are total 3699 recognized Madrasas with 1,97,000 children. Out of these 3103 non-muslim children. No response is received regarding mapping of the Madrasas³⁴.
23. **Sikkim**- Through the letter dated 13.05.2024, the State has submitted that there are no Government funded/recognized Madrasas. No information regarding mapping has been provided.
24. **Tamil Nadu**³⁵- As per the information submitted by the State vide letter dated 17.05.2024, the State has submitted that there are no Government funded/recognized Madrasas. No information regarding mapping has been provided.
25. **Telangana**³⁶- As per the information submitted by the State vide letter dated 11.01.2024, the State has submitted that there are no Government funded/recognized Madrasas. No information regarding mapping has been provided.
26. **Tripura**- As per the information submitted by the State vide letter dated 16.05.2024 and 13.09.2024, there are 180 Government funded/recognized Madrasas with five non-muslim children. All non-muslim children are shifted to formal schools. There are also 50 private unrecognized Madrasas with total 3534 children out of which 2774 are receiving formal education and admission of remaining children was in process.

³³https://www.google.com/maps/search/madrasas+in+punjab/@20.9317797,74.5020925,5z/data=!3m1!4b1?entry=ttu&g_ep=EgoyMDI0MTAwNS4yIKXMDS0ASAFQAw%3D%3D

³⁴https://www.google.com/maps/search/madrasas+in+rajasthan/@17.3724778,67.9289209,5z/data=!3m1!4b1?entry=ttu&g_ep=EgoyMDI0MTAwNS4yIKXMDS0ASAFQAw%3D%3D

³⁵https://www.google.com/maps/search/madrasas+in+tamil+nadu/@11.5229972,77.8327498,8z/data=!3m1!4b1?entry=ttu&g_ep=EgoyMDI0MTAwNS4yIKXMDS0ASAFQAw%3D%3D

³⁶https://www.google.com/maps/search/madrasas+in+telangana/@17.6389779,78.2976529,10z/data=!3m1!4b1?entry=ttu&g_ep=EgoyMDI0MTAwNS4yIKXMDS0ASAFQAw%3D%3D

27. **Uttar Pradesh-** The report shared by the State on 09.07.2024 states that there are 4349 recognized Madrasas and 11057 Madrasas have provisional recognition and 4204 were denied recognition. There are total 648112 children in all these Madrasas combined. Chief Secretary, Uttar Pradesh has issued a notice to District Collectors of all Districts stating that the children attending 4204 unrecognized Madrasas should be admitted in formal education system. For this, District level committees to be constituted that would include ADM, District Basic Shiksha Adhikari (BSA) and District Minority Welfare Officer. This Committee shall extend cooperation to Regional Officer (Police). However, the Commission has not received a final detailed report on the compliance of this order including the number of unmapped Madrasas, number of non-muslim children and status of formal education of children. Some of the largest Madrasas are situated in Uttar Pradesh such as Darul Uloom Deoband, Darul Uloom Nadwatul Ulama (Lukhnow) and Madrasa Jamiatul Ashrafia Bareilvi. The status of mapping of these Madrasas is still unknown³⁷.

28. **Uttarakhand-** During the summon hearings of State Officers of Uttarakhand, it was submitted that the State is not receiving any satisfactory response from the District Authorities. Therefore, it was decided that individual summon notices shall be issued to the District Collectors of all Districts in Uttarakhand. As per the information provided by the Districts, there are 96 Madrasas with 42 non-muslim children. Out of total 2012 children in these Madrasas, 549 are receiving formal education. Four unmapped Madrasas are also reported.

29. **West Bengal-** In response to the communication by the Commission, a letter dated 15.05.2024 was received stating that Whereas, Article 29 (2) of the Constitution of India has given right to every individual to take admission in any Educational Institution of their choice and that there shall be no discrimination on the grounds of religion, race or caste. Completely ignoring

³⁷[https://www.google.com/search?q=madrassa+in+uttar+pradesh&client=safari&sca_esv=bdf8bb53bc4f4985&rls=en&biw=1225&bih=677&tbm=icl&ei=kpwH7Z7_B6bf4-EPg4iEsQ4&ved=0ahUKEwi-kNOmvoOJAxWm7zgGHQMEIeYQ4dUDCAk&uact=5&oq=madrassa+in+uttar+pradesh&gs_l=Jp=Eg1nd3Mtd2l6LWxvY2FslhhtYWRyYXNhIGluHV0dGFYIHByYWRlc2gyCxAAGIAEGJECGIoFMgYQABgWGB4yAhAmMgIQJJCECYyAhAmMgsQABiABBIGAXiKBTILEAAYgAQYhgMYigUyCxAAGIAEGIYDGIoFMgsQABiABBIGAXiKBUiiHVCZB1i1GnAAeACQAQGYAecDoAG9D6oBCTAuMi4zLjAuMrgBA8gBAPgBAZgCBqACqgzCAGUQABiABMICCBAAGIAEGKIEmAMAIAYBkgcJMC4yLjMuMC4xoAf4OQ&sclient=gws-wiz-local#rlfi=hd.;si.;mv:\[\[28.994793899999998,84.4298651\],\[26.6368908,76.8615358\]\];tbs:lrf:!1m4!1u3!2m2!3m1!1e1!1m4!1u2!2m2!2m1!1e1!2m1!1e2!2m1!1e3!3sIAE,lf:1,lf_ui:2](https://www.google.com/search?q=madrassa+in+uttar+pradesh&client=safari&sca_esv=bdf8bb53bc4f4985&rls=en&biw=1225&bih=677&tbm=icl&ei=kpwH7Z7_B6bf4-EPg4iEsQ4&ved=0ahUKEwi-kNOmvoOJAxWm7zgGHQMEIeYQ4dUDCAk&uact=5&oq=madrassa+in+uttar+pradesh&gs_l=Jp=Eg1nd3Mtd2l6LWxvY2FslhhtYWRyYXNhIGluHV0dGFYIHByYWRlc2gyCxAAGIAEGJECGIoFMgYQABgWGB4yAhAmMgIQJJCECYyAhAmMgsQABiABBIGAXiKBTILEAAYgAQYhgMYigUyCxAAGIAEGIYDGIoFMgsQABiABBIGAXiKBUiiHVCZB1i1GnAAeACQAQGYAecDoAG9D6oBCTAuMi4zLjAuMrgBA8gBAPgBAZgCBqACqgzCAGUQABiABMICCBAAGIAEGKIEmAMAIAYBkgcJMC4yLjMuMC4xoAf4OQ&sclient=gws-wiz-local#rlfi=hd.;si.;mv:[[28.994793899999998,84.4298651],[26.6368908,76.8615358]];tbs:lrf:!1m4!1u3!2m2!3m1!1e1!1m4!1u2!2m2!2m1!1e1!2m1!1e2!2m1!1e3!3sIAE,lf:1,lf_ui:2)

Union Territories (UTs)

- **Andaman & Nicobar Islands-** As per the information provided vide letter dated 16.01.2024, there are no Government funded Madrasas in the UT. However, 42 non-funded Madrasas have been reported with no non-muslim children. As per the reply, all students attending Madrasas are also availing formal education in schools.
- **Chandigarh-** As per the information provided vide letter dated 21.05.2024, there are total 10 unrecognized Madrasas with 908 muslim children and 2 non-muslim children. None of these are attending formal schools. Seven non-muslim children who were earlier attending Madrasas are now enrolled in schools. Apart from these, there are 32 masjids imparting religious education with around 1500 children.
- **Dadra & Nagar Haveli/Daman & Diu-** As per the information provided vide letter dated 31.01.2023, there are no Government funded Madrasas in the UT. As per the reply, there are two (2) Madrasas that are not funded by the Government. However, no response has been received on whether children attending these Madrasas are availing formal education or not.
- **Jammu & Kashmir-** The reply submitted to the Commission vide letter dated 29.07.2024 states that there are 51 government funded Madrasas in the UT and no non-muslim children are found to be attending these Madrasas. However, no information on mapping of unmapped Madrasas has been received.
- **Ladakh-** There are no Government funded Madrasas as per the information received in the Commission. However, five (5) non-funded Madrasas have been reported with 245 children. As per the reply, all students attending Madrasas are also availing formal education in schools.
- **Lakshadweep-** As per the information provided vide letter dated 10.01.2024, there are no Government funded Madrasas in the UT. It is also reported that all Madrasas are private-run institutions with no non-muslim

children. As per the reply, all students attending Madrasas are also availing formal education in Government schools.

- **Puducherry**- As per the information provided vide letter dated 23.02.2024, no non-muslim children are attending Madrasas. The reply is incomplete as detailed information has not been provided including number of Madrasas, number of unmapped Madrasas and whether they are receiving formal education is not provided.

In light of the above, it is clear that in all very few Madrasas are registered with Madrasa Board which has failed the children in providing basic education as these Madrasas have not been providing facilities and entitlements as per the RTE Act, 2009. Teachers who are appointed in Madrasas are appointed through the individual management of Madrasas failing to uphold the standards laid down under the Schedule of RTE Act stating the Norms and Standards for a school. In some cases, it has been observed that teachers don't even possess a Bachelor of Education/Diploma in Education or even meet the necessary qualification. These institutions are functioning on the whims and fancies of religious institutions such as Darul Uloom Deoband and hence need to be closed as institutions for formal education of children.

Also, most of the States/UTs have been reluctant to conduct mapping of unmapped Madrasas. The responsibility for providing religious education lies with the respective communities, which are given adequate provisions under the Constitution of India, particularly under Articles 29 and 30, which protect the rights of minorities to establish and administer educational institutions. However, without resorting to any form of appeasement, it is crucial for the State to fulfill its constitutional duty, as mandated by the Right to Education (RTE) Act, 2009, to ensure that every child receives formal, quality education. Failure to do so constitutes an institutional violation of fundamental rights, as the State is responsible for safeguarding children's access to education that meets the standards set forth by the Constitution and the RTE Act, 2009.

Chapter 8

Evolution Pattern of Madrasas in Contemporary India

As mentioned earlier, the syllabus employed at the Indian madrasas also went through a process of gradual transformation, particularly during the reign of the Mughal Emperor Aurangzeb. During Aurangzeb's time, in 17th century, a team was created to prepare a digest of Islamic Law. It was called *Dars-e-Nizami*. Dars-e-Nizami (or Dars-i Nizamiya) is a traditional Islamic curriculum that has been widely used in South Asian madrasas (Islamic seminaries) for centuries. It was developed by Mullah Nizamuddin Sihalvi (also known as Mullah Nizamuddin of Lucknow) in the early 18th century. The curriculum was designed to train scholars in Islamic theology, law (fiqh), philosophy, and other related disciplines. It remains influential in many Islamic educational institutions, particularly in the Deobandi, Bareilvi, and Ahl-i Hadith schools of thought.

Aurangzeb also commissioned the Fatwa-e-Alamgiri, a massive compilation of Hanafi Islamic law, which aimed to provide a uniform legal code for Muslims in his empire. Shah Abdul Rahim was one of the leading ulama (Islamic scholars) involved in this project³⁸. He, along with other scholars, worked to compile, organize, and codify the legal rulings and fatwas from various earlier Hanafi texts into a comprehensive legal document. The Fatwa-e-Alamgiri served as a basis for Islamic governance and judicial decisions in the Mughal Empire, and Shah Abdul Rahim's contributions were significant in ensuring that the codification adhered to orthodox Islamic principles. The creation of the Fatwa-e-Alamgiri helped institutionalize the role of qadis (Islamic judges) and muftis (scholars who issue legal opinions, or fatwas) in the Mughal legal system³⁹. Qadis and muftis often held considerable power in local courts, issuing legal rulings based on their interpretation of Islamic texts, especially the Fatwa-e-Alamgiri. This gave Maulvis and religious scholars a greater say in the legal system and the daily lives of Muslims in the empire.

According to Jamal Malik, the document stiffened the social stratification among Muslims and broke from the consensus of Hanafi Law. He argues certain punishments reified the established categories: it introduced that Muslim nobles such as Sayyids

³⁸[https://en.wikipedia.org/wiki/Shah_Abdur_Rahim#:~:text=Shah%20Abdur%20Rahim%20\(Persian%3A%20شاه%20Abdur%20Rahim%20philosopher%20Shah%20Waliullah%20Dehlawi.](https://en.wikipedia.org/wiki/Shah_Abdur_Rahim#:~:text=Shah%20Abdur%20Rahim%20(Persian%3A%20شاه%20Abdur%20Rahim%20philosopher%20Shah%20Waliullah%20Dehlawi.)

³⁹ https://en.wikipedia.org/wiki/Fatawa_%27Alamgiri

were exempt from physical punishments, the governors and landholders could be humiliated but not arrested nor physically punished, the middle class could be humiliated and put into prison but not physically punished, while the lowest class commoners could be arrested, humiliated and physically punished⁴⁰.

Further, Shah Abdul Rahim and the Darul Uloom Deoband are connected through a lineage of Islamic scholarship in India. Though Shah Abdul Rahim himself did not directly establish the Deoband movement, his influence on subsequent generations of Islamic scholars laid the groundwork that eventually contributed to the founding of the Darul Uloom Deoband in 1866.

Shah Abdul Rahim (1644-1719) was the founder of Madrasah-i Rahimiyah in Delhi, a theological educational institution which later played a part in the religious emancipation of Muslim India and became the breeding ground of mujahideen⁴¹ (people who engage in jihad⁴²), interpreted in a jurisprudence of Islam as the fight on behalf of God, religion or the community like Shah Waliullah and Shah Abdul Aziz Dehlawi. This madrasa was established in the late 17th century and became a significant institution for the dissemination of Islamic education and jurisprudence in northern India. His son, Shah Waliullah Dehlawi (1703–1762), expanded the influence of this madrasa, and his ideas of Islamic thought became a major influence on later scholars, including those who would form the Deobandi movement⁴³.

Shah Waliullah Dehlvi (1703–1762) and Ahmad Shah Abdali (1722–1772) are historically connected through their shared involvement in the political and military landscape of 18th-century India. Shah Waliullah, sought to revive Islamic governance and resist the weakening of Muslim rule in the subcontinent. Ahmad Shah Abdali, an Afghan ruler and founder of the Durrani Empire, was drawn into the Indian political sphere due in part to the appeal made by Shah Waliullah. Responding to the appeal from Shah Waliullah Dehlvi, Abdali attacked India and Third Battle of Panipat in 1761 resulted in one of the largest and bloodiest conflicts of the 18th century. Historical

⁴⁰ Jamal Malik (2008), *Islam in South Asia: A Short History*, Brill Academic, ISBN 978-9004168596, p. 195.

⁴¹ <https://en.wikipedia.org/wiki/Mujahideen>

⁴² Jihad- In an Islamic context, it encompasses almost any effort to make personal and social life conform with God's guidance, such as an internal struggle against evil in oneself, efforts to build a good Muslim community (ummah), and struggle to defend Islam. In non-Muslim societies, the term is most often associated with offensive warfare and violence. <https://en.wikipedia.org/wiki/Jihad>

⁴³ https://en.wikipedia.org/wiki/Shah_Waliullah_Dehlawi

records suggest that lakhs of Indian soldiers and civilians were massacred during and after the battle.

Later, Shah Abdul Aziz Dehlawi⁴⁴ (1746-1824) who was known for his expertise in Hadith studies, emphasized the purification of Islam and the need to counter the influences of non-Islamic practices. He inherited Madrasah-i Rahimiyah from his father, Shah Waliullah. Shah Abdul Aziz's role in continuing the madrasa tradition, had a lasting impact on Islamic education in India. The Dars-e-Nizami curriculum, which Shah Abdul Aziz contributed to by teaching and refining, became the foundational curriculum of madrasas, including Darul Uloom Deoband which is still being followed.

Shah Muhammad Ishaq⁴⁵ (1783–1846), grandson of Shah Abdul Aziz and a leading Hadith scholar, played a pivotal role in preserving the tradition of his great-grandfather, Shah Waliullah Dehlawi. His emphasis on the study of Hadith and the purification of Islamic practices deeply influenced the foundation of later Islamic movements, including the Deoband school. Though he migrated to Makkah in 1841, his teachings were transmitted through key students, who contributed to the development of Deoband's curriculum.

Shah Waliullah Dehlawi had another son, Shah Abdul Ghani (1746-1824). Shah Abdul Ghani had a son Shah Ismail Dehlvi. When a new Islamic religious movement appeared in northern India under the leadership of Shah Ahmad Barelvi (1786 – 1831), he was joined by two members of the Shah Waliullah family: Shah Ismail Dehlvi (1771-1831) and Maulvi Abdul Hai (died 1828) who joined it because they shared its mission and objectives. The agenda of the new movement known as Tariqah-i-Muhammadiyah was to purify the tenets of Islam from Hindu customs, traditions and cultural practices.⁴⁶ Shah Ismail wrote a treatise Taqwiyat-ul-Iman. Taywiyat-ul-iman was first published in 1242 (1826-27 G) at the time when Shah Suheed, Shah Ahmad Barelvi had migrated along with a group of Mujahidin⁴⁷ from their beloved native land and an armed struggle (Jihad⁴⁸) was about to take place for the liberation and purification of India. As per the book, worshipping idols and the so-called "Sanctums

⁴⁴ https://en.wikipedia.org/wiki/Shah_Abdul_Aziz_Dehlavi

⁴⁵ https://en.wikipedia.org/wiki/Shah_Muhammad_Ishaq

⁴⁶ https://en.wikipedia.org/wiki/Shah_Ismail_Dehlvi

⁴⁷ <https://en.wikipedia.org/wiki/Mujahideen>

⁴⁸ <https://en.wikipedia.org/wiki/Jihad>

of saints” is an act of Shirk; worshipping the places of saints is an act of the worst people; giving credit to the influence of planets (Zodiac signs), is an act of Shirk⁴⁹. Shirk in Islam means idolatry, polytheism, and the association of God with other deities⁵⁰. The book is preached at the Darul Uloom Deoband and held in high esteem by the Tablighi Jamaat movement⁵¹.

Shah Ahmed Bareilvi (1786-1831) Sayyid Ahmad is revered as a major scholarly authority in the Ahl-i Hadith and Deobandi movements⁵². He is revered as a major scholarly authority in the Ahl-i Hadith and Deobandi movements. He was inclined to stay in the tutelage of Shah Abdul Aziz, who was the son of Shah Waliullah, in Delhi. For Shah Ahmad India was “Darul Harb” (the abode of war) and therefore jihad was obligatory for the Muslims⁵³.

One of Ishaq’s students, Shah Muhammad Qasim Nanautavi (1833–1879), was co-founder of Darul Uloom Deoband and a major figure in the Deobandi movement. Shah Muhammad Qasim Nanautavi was born in Nanauta, a village located in the Saharanpur District of Uttar Pradesh. Nanauta has a legacy of socio-political importance which continues even today.⁵⁴

The Deobandi movement, which emerged from the Darul Uloom Deoband, advocates for governance that aligns with Islamic principles and Sharia (Islamic law). According to Deobandi scholars, governance should ideally be based on the teachings of the Quran, Hadith (sayings of the Prophet Muhammad), and the principles of Fiqh (Islamic jurisprudence). Maulana Shah Muhammad Qasim Nanautavi’s writings, are central to understanding the Deobandi position on governance. His works highlight the necessity of living by Sharia in all aspects of life, including governance. Darul Uloom Deoband’s official website and publications, also reflect the institution's commitment to the propagation of Islamic teachings based on the Quran, Hadith, and the works of Islamic jurists. Al-Nanawtawi addressed not only the common people

⁴⁹ Taqwiyyat-ul-Iman

⁵⁰ <https://www.britannica.com/topic/shirk>

⁵¹ <https://archive.org/details/taqwiyyat-ul-iman-english#:~:text=In%20order%20to%20achieve%20this,by%20the%20Tablighi%20Jamaat%20movement.>

⁵² https://en.wikipedia.org/wiki/Syed_Ahmad_Bareilvi

⁵³ https://en.wikipedia.org/wiki/Shah_Ismail_Dehlvi

⁵⁴ <https://www.newindianexpress.com/nation/2024/Apr/08/peevd-rajputs-threaten-to-up-ante-against-bjp-in-up>

but also the Ulama and convinced them to raise concrete steps for defending the political hegemony of Muslims in their respective regions against the forces⁵⁵.

Darul Uloom Deoband

A poem entitled ‘Shah Waliullah aur Darul Uloom Deoband’ by Mawlana Nasim Ahmad Faridi Amrohawi states that the Darul Uloom is the only memorial to Waliullah’s association in India⁵⁶. The Darul-Uloom, Deoband, is today a renowned religious and academic center in the Islamic world. In the sub-continent it is the largest institution for the dissemination and propagation of Islam and the biggest headspring of education in the Islamic sciences⁵⁷. It was established in 1866 in Deoband, Uttar Pradesh and was founded by Muhammad Qasim Nanaotawi (1832–1879) and Rashid Ahmad Gangohi (1829–1905). The institution’s strict adherence to classical Islamic principles, conservative views on social issues, and disregard for the Law of the land have been in discussions recently. The Deobandi movement’s political wing, Jamiat Ulema-e-Hind, took birth in 1919⁵⁸.

Darul Uloom Deoband adopted innovative strategies and developed a vast network of other associated political and proselytizer organizations—such as Jamiat Ulema-e-Hind, Majalas-e Ahrar-e Islam, Jamiat Ulema-e Islam, Tablighi Jamat, and Darul Ifta (Department to issue fatwa) —extended its influence and attracted the larger Muslim population not only in South Asia but across the Muslim world and emerged to be one of the dominant sects of Islam⁵⁹. Darul Uloom Deoband’s self-proclaimed VC was also instrumental in creating All India Muslim Personal Law Board (AIMPLB). All India Muslim Personal Law Board was established in 1972 to oppose the Adoption Bill that had been tabled in the Parliament by Mr. H. R. Gokhle, then Union Law Minister⁶⁰. Hence, it was conceptualized to violate the rights of children.

In India, Darul Uloom Deoband became the center of a vast madrasa network, which has had a profound influence on Islamic education. These madrasas are institutions

⁵⁵ <https://turkvehint.org/al-nanawtawis-political-ideology/>

⁵⁶ <https://zakariyya.wordpress.com/2007/05/06/shah-waliullah-and-darul-uloom-deoband/>

⁵⁷ <https://darululoom-deoband.com/en/>

⁵⁸ <https://www.newindianexpress.com/magazine/2022/Jan/08/cradle-of-chaoson-the-deobandi-sect-2403881.html>

⁵⁹ https://www.google.com/url?sa=j&url=https%3A%2F%2Fhamdardislamicus.com.pk%2Findex.php%2Fhi%2Farticle%2Fdownload%2F326%2F243%2F2111&uct=1723195648&usg=mZj4VqEAvnQh95oZ1LnKukTRjvE.&opi=89978449&ved=2ahUKewju_O4o_6IAxW3vGMGHbIEL3YQwtwHKAB6BAgBEAE

⁶⁰ <https://aimplboard.org/introduction.html>

that provide religious instruction based on the *Dars-i-Nizami* curriculum. During Aurangzeb's time, in 17th century, a team was formed to prepare a digest of Islamic Law. The Dars-i Nizami system was developed by Nizamuddin Sihalivi⁶¹. It primarily aimed to comprise the study of religious sciences from step one to the highest levels of intellectual spheres. Moreover it has been observed via numerous complaints that Madrasa works in an arbitrary manner and that it runs in an overall violation of the Constitutional mandate, RTE Act, 2009 and the Juvenile Justice Act, 2015.

Disregard to the Right of Children to Elementary Education in India

With regard to Darul Uloom Deoband, an analysis of their website highlighted a serious concern in regard to definite practices pertaining to syllabus and teaching-learning materials in schools, sex ratio of the teachers in schools and inclusive education. Also, the inquiries put forth were among the many questions which had been asked by parents regarding their concerns with respect to religious education being imparted to their children by the scholars at the Darul Uloom⁶². In response to the query raised by a parent regarding an incident where the child was hit on face by the teacher clearly shows the disregard for the rights of the child. Though the incident is pertaining to another country, but as Madrasas under Darul Uloom Deoband is also functional in India which further raises concern that the same philosophy of permitting corporal punishment to the children studying in Madrasas also exist in India, whereas inflicting of corporal punishment to children in schools is strictly prohibited under the RTE Act, 2009. Further, the same is violation of Section 17 RTE Act, 2009, which is reproduced hereinafter:

17. Prohibition of physical punishment and mental harassment to child. –

- (1) No child shall be subjected to physical punishment or mental harassment.
- (2) whoever contravenes the provisions of sub-section (1) shall be liable to disciplinary action under the service rules applicable to such person.

Further, while examining the answers provided by the scholars, it was observed that the children were completely imparted education relying on religious scriptures. In the absence of the RTE Act, 2009 the students studying in Madrasas are also deprived

⁶¹ https://en.wikipedia.org/wiki/Dars-i_Nizami

⁶² https://ncpcr.gov.in/uploads/16835312236458a5d7a48c2_report-on-impact-of-exemption-under-article-155-wrt-article-21a-of-the-constitution-of-india-on-education-of-children-of-minority-communities--march-2021.pdf

of the facilities and entitlements which are provided to students studying in regular schools. Thus, denying access to the fundamental right of the children which were protected by the RTE Act of 2009.

Gender Discrimination

Darul Uloom Deoband has been found to be traditional gender roles, emphasizing the separation of men and women in public life. Deobandi scholars have issued fatwas (religious edicts) that restrict women's access to certain professions, education, and public spaces, which may perpetuate gender inequality within Muslim societies. For instance, in one of the inquiry put forth wherein a parent seeks guidance for education of his daughters if there are no Islamic schools nearby and the girls have to study in a co-education school. To this, it was replied that the girls should be taught in an Islamic school and be taught by lady teachers only⁶³.

Extremist Ideology

Though Darul Uloom Deoband Madrasa was founded in Deoband in district Saharanpur, Uttar Pradesh but it has been impacting people professing Islamic culture and practices across the country and many countries abroad. According to the information available the Deoband Madrasa fanned out across South Asia and has also set up seminaries, or madrassas, teaching an austere version of Islam, particularly along the Pakistan-Afghanistan border. It has also been alleged by Taliban extremists groups to have been influenced by the religious and political ideologies of Darul Uloom Deoband Madrasa.⁶⁴ The rift within Deoband movement became evident when Shabbir Ahmed Usmani, a Deobandi scholar, founded a new and separate political party called the Jamiat Ulema-e-Islam (JUI) in 1945. JUI was established as a competitor to Jamiat Ulema-e-Hind. With this the deep schism within the Deoband movement had reached a point of no return. After partition in 1947, the spiritual home of the Deobandi movement remained in India, but Pakistan was now its political centre⁶⁵.

⁶³ https://ncpcr.gov.in/uploads/16835312236458a5d7a48c2_report-on-impact-of-exemption-under-article-155-wrt-article-21a-of-the-constitution-of-india-on-education-of-children-of-minority-communities--march-2021.pdf

⁶⁴ <https://www.npr.org/2021/09/08/1034754547/taliban-ideology-roots-deobandi-islam-india>

⁶⁵ <https://www.newindianexpress.com/magazine/2022/Jan/08/cradle-of-chaos-on-the-deobandi-sect-2403881.html#:~:text=After%20partition%20in%201947%2C%20the,leading%20the%20struggle%20for%20Pakistan.>

Further, the Deoband Madrasa, issues fatwas online as well as offline and have a very strict and conservative interpretation of Sharia, as evidenced by its issuance of roughly 250,000 fatwas (legal pronouncements), which restrict followers in terms of faith, life, and many other aspects.⁶⁶ The same has also been highlighted by Author Yoginder Sikand in his book *Bastions of the Believers* by wherein he writes –

Pg.73 The founders of the Deoband Madrasa did not see themselves as simply managing a school. Rather, along with the later Deobandis, they took a leading role in community affairs, seeking to transmit the Islamic reformist message to a wider society using novel means such as publishing tracts and tomes, training missionaries to debate with theologians of other religions and other Muslim groups , working among local Muslim communities. Another means that the Deoband madrasa used in this regard was the fatwa, through which it sought to provide guidance to individual Muslim in ‘correct’ belief , ritual practice and social behaviour in the light of the classical texts of the Hanafi school. In 1892 the madrasa launched a full-fledged department of fatwas (dar ul-ifta). Requests for fatwas came from Muslims from all over India and abroad, from countries such as Afganistan and Burma. ”

Exposing children to inappropriate content through Fatwas

The Commission has been in receipt of complaints regarding the fatwas issued by Darul Uloom Deoband which contained references from a book titled ‘Bahishti Zewar’. It is pertinent to mention here that the said book contained content which is not only improper but is also objectionable and illegal regarding children as the same contains text regarding engaging in a sexual relationship with a minor, the book is also alleged to be taught to children in madrasas, and further fatwas containing such objectionable information is accessible for all. Some excerpts from the book is reproduced below: -

“ Mas’ala 5. If anyone has sexual intercourse with a minor girl, then bath is not obligatory for her, but in order to make her used to bath she may be required to take bath. ”

“ Conditions : When Bath is obligatory or Non- Obligatory -

⁶⁶ chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://mideast.shisu.edu.cn/_upload/article/files/0a/b4/0c8b82df4b6882d3bc654c97852e/17372d78-2f78-457c-96d5-a1f4f2856c19.pdf

Mas'ala 4. If a man indulges in sexual intercourse with a minor girl, bath will not be obligatory if there is no seminal discharge. "

" Breaches of Fast :

Mas'ala 4. If anyone committed sexual intercourse with a dead woman or with a minor girl who does not excite passion or with an animal or embraced or kissed anyone or masturbated and in all such cases semen came out, then the fast will be disrupted but recompensation will not be due. "

Further, one of the fatwas was issued regarding establishing of physical relationship with a minor girl which is not only misleading but is also in violation of the provisions under the POCSO Act, 2012. Another fatwa was issued on the website of the Darul Uloom Deoband wherein a question was asked by an individual from Pakistan regarding suicide attack on non- Muslims forces wherein a statement of "Consult your local Scholar" is made by the Darul Uloom Deoband instead of responding that the query is invalid or illegal in nature. Such statements by Darul Uloom Deoband are reinforcing the belief towards legitimizing intentional homicide, terrorist attack among non-Muslims and further is also highly terrorizing for the country as well as a matter of national security.

Further, the Commission has also taken cognizance of another objectional content on website of Darul Uloom Deoband wherein a fatwa talks about the invasion of India (Ghazwa-e-Hind) and how whoever will be martyred in it shall be a great martyr. In this regard, it is humbly submitted that Darul Uloom Deoband being an academic body of Islamic education and affiliating Madrasas across South Asia has been issuing fatwas which are exposing children to hatred against one's own country and eventually causing them unnecessary mental and physical suffering.

Hence, being left ignorant of the world around them, many students develop an 'inferiority complex', being 'alienated from the rest of society' and unable to 'adjust with the environment'⁶⁷.

⁶⁷ Yoginder Sikand, Muslim Education in Contemporary India: A Classified and Annotated Bibliography, New Delhi: Hope India Publications, 2008.

Chapter 9
Uncovering the misuse of open school system
by Jamiat Ulema-e-Hind

In 2021, Commission released a report on Impact of Exemption under Article 15(5) w.r.t. Article 21A of the Constitution of India on Education of Children of Minority Communities. The report highlighted how children studying in religious educational institutions such as Madrasas are not receiving benefits of their fundamental right to education given by the Constitution of India. After this, in 2022, Jamiat Ulema-e-Hind signed an MoU with the National Institute of Open Schooling (NIOS) to justify the act of keeping children away from formal schools at elementary level. The MoU allowed children attending Madrasas to appear in exams from the open school. Free and compulsory elementary education is a fundamental right of all children as per Article 21A of the Indian Constitution. The Right to Education Act, 2009 extends this right to the children and offering open schooling for Classes III, V and VIII is in direct conflict with Right to Education Act, 2009. There are around 15 Lakh schools in the country and the Government has established schools at every 1-3 km providing children access to elementary education. However, in case State government is not providing recognition to school in certain areas, NIOS may provide option for students for completing elementary education through open schools. But what is the need of offering education through open schooling for elementary level in Madrasas?

The Commission, under Section 13 (1) (j) of the CPCMR Act, 2005, has taken cognizance of the complaint seeking immediate action against the open school being run by Jamiat Ulama-i-Hind with support from National Institute of Open Schooling (NIOS). The Commission further examined the details and it has been found that Jamiat Ulama-i-Hind has established Jamiat Open School on lines of NIOS for Madrasa students, enabling them to pursue 'mainstream' education. Dr. Shoaib Raza Khan, Assistant Director, NIOS has also been quoted saying that it is a path-breaking initiative and assured that NIOS is ready to extend all possible cooperation to Jamiat.

What is Jamiat Ulema-e-Hind? It is a politico-religious party catering to the political ambitions of the Deoband movement⁶⁸. The then president of the Jamiat-Ulema-e-Hind,

⁶⁸ Allem, Charles (2006). *God's Terrorists: The Wahhabi Cult and the hidden Roots of modern Jihad* (pg. 268). Little Brown Book Group, London.

Maulana Hussain Ahmad Madani attended a conference convened by ulema in Delhi in 1945. In his presidential address he said, *It is the non-Muslims who are in the field of action for this "tabligh" of Islam and form the raw material for this splendid activity.. we are opposed to the idea of limiting the right of missionary activities of Islam within any particular area. The Muslims have got a right in all the nooks and corners of India by virtue of the great struggle and grand sacrifices of their ancestors in this country. Now it is our duty to maintain that claim and try to widen its scope, instead of giving it up.* The same learned maulana has said elsewhere: *'If Dara had triumphed, Muslims would have stayed in India but not Islam. Since Aurangzeb triumphed, both Muslims and Islam were here to stay!'* According to the maulana, the faith Dara followed was not genuine Islam because Dara wanted to tolerate the Hindus. He did not insist on the rule of the Shariat. He did not interpret religion 'correctly, that is, in strict accordance with the tradition'⁶⁹.

Regarding the Jamiat Open School, a letter dated 13.03.2024 was sent to Chairperson, NIOS seeking their response on seven (7) specific points. The NIOS submitted a letter number 24-1-1-NIOS/SSS/Minority Cell/ dated 22.03.2024 in response to Commission's letter dated 13.03.2024. The same has been examined along with the MoU signed between NIOS and Jamiat Ulema-i-Hind and other supporting documents provided along with said letter. As per the reply submitted by NIOS, a Memorandum of Understanding (MoU) dated 06.01.2022 has been signed between National Institute of Open Schooling (NIOS) and an NGO named Jamiat Ulema-i-Hind. After examining the MOU, it was found that nowhere in the document Jamiat Ulema-i-Hind is authorized to use the term 'Jamiat Open School'. Merely entering into an agreement with NIOS does not allow the NGO to propagate itself as an open school. No institution can function as a 'school/open school' unless it is recognized as a school under RTE Act, 2009 or respective State Education Act or is mandated to do so under any other Act/Law/Statute/Government Notification. Based on the information available, Jamiat Ulema-i-Hind is misusing the MoU signed with NIOS. Prima facie, it is an act of breach of the agreement and needs further inquiry under Section 405 and 415 of the Indian Penal Code (IPC).

It is important to mention here that Article 30 of the Constitution of India is the right of 'minority communities' to establish and administer educational institutions of their choice; and right of the 'institutions', thus established, against any kind of discrimination. Whereas Article 21A of the Constitution is the 'fundamental right' of all children in the age of 6-14 years. The Article had a universal applicability for which a Law was enacted- the RTE Act of 2009. Again, as per Section 1(5) of the RTE Act, 2009 the Act is not applicable

⁶⁹ Dalwai, Hamid (2023). Muslim Politics in India (pp. 30-31). Penguin Random House India Pvt. Ltd., Haryana.

to Madrasas, Vedic Pathshalas and other institutions imparting religious education. However, it does not exclude children based on religion from enjoying their fundamental right to education.

As evident from the submission made by Jamiat Ulema -i-Hind to NIOS, the NGO is well aware that the RTE Act, 2009, meant for extending the fundamental right to children, is not applicable to Madrasas and *thousands of Madrasas are connected with Jamiat Ulema -i-Hind and Jamiat helps them in establishing and managing their institutions.* The Jamiat Ulema -i-Hind, knowingly, is depriving children from receiving formal elementary education by not facilitating them in attending school and rather just attend Madrasas, which do not provide elementary education. In its reply given to NIOS, Jamiat Ulema-i-Hind states that *quality education is not in the fortune of crores of children.* It seems that Jamiat Ulema-i-Hind is trying to assert that children in Madrasas are devoid of their fundamental right due to the Authorities responsible for implementation of the RTE Act, 2009.

Also, on one hand Jamiat Ulema-i-Hind states it is performing its duty in providing *students from the margins of society who have lacked the opportunity to gain formal education with the opportunity to receive secondary level qualification,* and on the other hand is knowingly keeping children away from getting quality elementary education in schools. What attempt has Jamiat Ulema -i-Hind made to enroll these children in mainstream education system that includes close to 15 lakh schools across the country? By not letting the children get elementary education as per the RTE Act, 2009, Madrasas connected with Jamiat Ulema-i-Hind are violating the Constitution and the Law, and the incorrect interpretation of the MoU signed with NIOS is providing them with an opportunity to legalize this violation of child rights in an organized manner.

Time and again, the Commission has highlighted that all those children who are not in formal schooling system are deprived of their fundamental right to elementary education including the entitlements such as Midday Meal, uniform, trained teachers etc. As per the Brochure of Jamiat Open School, *“Out of courses offered by NIOS, the open basic education program with three levels, addresses the need of the madarsa students from standard-3 to standard-8, but it requires additional burden, resources and change in the curricula of the madarsas. Therefore, the most suitable option for madarsa student is its academic secondary course equivalent to class X”.* Copy of brochure enclosed.

The Jamiat Ulema-i-Hind UK highlights Jamiat Open School in India as one of the projects on its website (<https://www.jamiatulama.co.uk/projects>). Through the same website, Jamiat Ulama-i-Hind UK seeks donations (<https://www.jamiatulama.co.uk/donations>) in

name of supporting Jamiat. It may also be noted that as per the website of Charity Commission for England and Wales, Jamiat Ulema-i-Hind UK Limited (Charity number: 1129245) also operates in Pakistan and Bangladesh. The details available at <https://register-of-charities.charitycommission.gov.uk/charity-search/-/charity-details/4042518/what-who-how-where>

As mentioned earlier, Jamiat Ulema-i-Hind is charging more money than the fees prescribed by NIOS from children in name of open school. As per the Brochure of Jamiat Ulema-i-Hind, from enrolment to appearance in exams the estimated cost per student is 10,000 Indian Rupees which is more than the fees structure given by NIOS. The additional money is said to be for *bearing the costs of providing services, comfort and infrastructure to enable the students to qualify in the secondary level examination*. Further, Jamiat Ulema-i-Hind also claims to be providing training through local teachers, teaching sessions and study material to the students and coordinates with study centers of the NIOS. As per the reply received from NIOS, no Madrasas or any institution of Jamiat Ulema-i-Hind has been notified as accredited study centre by NIOS. If so, what kind of training are they providing to the children? What is the study material provided by Jamiat Ulema-i-Hind especially when NIOS is already providing the necessary support through Study Centres, material and Personal Contact Programme (PCP)? It is also mentioned in the Brochure that a part of the donations received in Student's account goes as NIOS admission and exam fees and other as Jamiat Open School Tuition Fees. When NIOS is already providing the necessary support and academic assistance, why extra money is being charged from children whom they say are *marginalized and underprivileged*?

A list of 38 teachers and staff has been submitted and since 2021-22, more than 14,000 children have been admitted in NIOS by Jamiat Ulema-i-Hind. It is nowhere mentioned in the MoU that Jamiat Ulema-i-Hind will provide teachers and coordinators to the children. Also, most of the teachers and staff are not trained in pedagogy and are not required in the current open school system provided by NIOS. The NIOS offers a range of subjects to choose from for Secondary and Senior Secondary Courses. At Secondary Level, a student has to select from a list of 39 subjects including 19 languages and at Senior Secondary level, the choice has to be made from a set of 44 subjects including 13 languages. On the contrary, Jamiat Ulema-i-Hind restricts this choice by recommending the five subjects to 'madrasa' children. This does not align with NIOS's aim of catering to the needs of a heterogeneous group of learners. This needs to be seen as a violation of the MoU, where one of the roles of Jamiat Ulema-i-Hind is to facilitate admission and develop publicity material by restricting the choice that is to be made by the students.

Jamiat Ulema-i-Hind is seeking foreign donations through a bank other than the State Bank of India. As per 17(1) of the Foreign Contribution (Regulation) Act, 2010 inserted through the Foreign Contribution (Regulation) Amendment Act, 2020- *Every person who has been granted certificate or prior permission under section 12 shall receive foreign contribution only in an account designated as "FCRA Account" by the bank, which shall be opened by him for the purpose of remittances of foreign contribution in such branch of the State Bank of India at New Delhi, as the Central Government may, by notification, specify in this behalf.* This needs to be further investigated by the FCRA Wing, MHA. Also, as per the brochure the funds can be donated in the account of Jamiat or designated NGO. Who are these designated NGOs also needs to be investigated.

Chapter 10 The Negligents

As per the Constitution of India, it is the responsibility of the State to provide elementary education. This is enshrined in Article 21A, which mandates free and compulsory education for all children aged 6 to 14 years, ensuring their fundamental right to education. Additionally, the Directive Principles of State Policy under Article 45 emphasize the duty of the State to provide early childhood care and education to children below the age of six years.

The RTE Act, 2009 also places the responsibility on both the Central Government, State Governments and Local Authorities to ensure the provision of free and compulsory education to all children aged 6 to 14 years. It outlines various duties of the Government/Authorities under Section 6, 7, 8 and 9. For carrying out the provisions of this Act, the appropriate Government and the local authority are made responsible for establishing, a school within the prescribed limits. Under Section 8 the appropriate Government is also responsible to provide free elementary education to every child of the age of six to fourteen years; and ensure compulsory admission, attendance and completion of elementary education by every child of the age of 6 -14 years.

Clearly the responsibility of the Government is towards *every child in the age of 6-14 years*. However, the Commission has observed during formal/informal interactions with the Authorities that the sensitivity towards violation of children's right to education is not as much as other child right violations. The lack of awareness on the true spirit of RTE Act and the exemption of certain institutions have created a misleading picture even for the implementing Authorities and it is believed that the institutional rights of minorities are over and above the fundamental right of children. Many families, unaware of the rights of their children, continue to allow their children to miss out on opportunities for growth and a more fulfilling life.

This issue is far from new. Since independence and the adoption of our Constitution, it has become clear that the State Governments have consistently failed to fulfill its obligation to provide formal fundamental education to all children, leaving those from certain communities deprived of this critical right. This failure can be attributed either to the oversight of those tasked with this responsibility or their intention to appease specific sections of society for personal advantage. Despite the fact that in independent India, Education Minister's from Muslim community served for almost 20 years, still only 5.5% students belong to Muslim community (AISHE, 2019-20)⁷⁰

⁷⁰ https://www.education.gov.in/sites/upload_files/mhrd/files/statistics-new/aishe_eng.pdf

The first Education Minister of independent India, Maulana Abul Kalam Azad, was founding member of the Anjuman-i-Ulama-i-Bangala in 1913, which would become the Jamiat Ulema-e-Bangala branch of the Jamiat Ulema-e-Hind in 1921⁷¹. He visited Deoband in A.H. 1370 (1950-1951)⁷². Maulana Azad delivered a speech in which, after mentioning the peculiarities of the ideal of life at the Darul Uloom, its academic importance and greatness and his longstanding relations with it.

He further stated that there are other systems of education are also current in the country; people rush towards them but you closed your eyes against schools and colleges in order to acquire proficiency in the religious sciences. This is indeed a very auspicious intention. But the question is 'Is this knowledge that you are acquiring a means or an objective'? If your mind failed to understand this, I should warn you that you are not doing the right work. Other peoples have always considered knowledge to be a means but it is a peculiarity of the Muslims that they always considered knowledge not a means but an end. There are 24 universities in India; there are colleges and hundreds of thousands of schools which have now reached even villages. The education that is imparted in them is considered a means, not an end. Education is acquired in them merely for this that government services may be had and higher posts may be bagged. The man who goes there believes that as long as he has no degree from there he cannot earn his livelihood. But I wish to remind you that the knowledge to acquire which you have knelt down here respectfully, that knowledge is the end and not a means. It is not acquired as a means but it is acquired for the reason that its acquirement is a duty. The Muslims have always acquired knowledge for the sake of knowledge, not as a means; they never acquired knowledge for this that thereby they would earn their living.⁷³

In light of above, the idea doesn't seem to match what was promised by the Constitution of India to the children. Before 86th Amendment in 2002, Article 45 read as- The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years.

UNICEF has been working in India almost since independence. The Commission has apprised UNICEF of the violation of the RTE Act, 2009 on several occasions. However, the agency didn't take any corrective action in this regard. Instead, a UNICEF representative collaborated with Bihar Madrasas Board for developing its curriculum.

As mentioned earlier, only 5.5% students in higher education belong to Muslim Minority. On the other hand, Scheduled Caste students constitute 14.7% and Scheduled Tribes students constitute 5.6% of the total enrolment and 37% students belong to Other Backward Classes. The SC/ST communities have not been privileged

⁷¹ https://en.wikipedia.org/wiki/Maulana_Azad

⁷² <https://hijri.habibur.com/1370/>

⁷³ History of Daul Uloom Deoband (1980), pp. 252-254

to have many Education Ministers from their own community. Despite the opportunity of getting benefit of reservation under different category, the representation of Muslim population is less in higher education. These figures can be attributed to the fact that no parallel system of education was ever constituted for SC/ST whereas children from Muslim communities are being drawn towards Madrasas. Both Dr. B.R. Ambedkar and Mahatma Jyotirao Phule were strong advocates for education, particularly for marginalized communities, viewing it as a tool for social upliftment and empowerment. Dr. Ambedkar once said, शिक्षा वह शेरनी का दूध है जो पीएगा दहाड़ेगा. Following the ideals of their leaders, people from these communities realised the importance of education and attended formal education. This shows that leader lead the way for society. The SC/ST community took the idea from their leaders and supported education but the representatives of Muslim community didn't carry forward the teaching of their religion and instead kept children away from their fundamental right to serve their own selfish purposes.

As a justification of its poor representation in education, is often remarked that there are no schools in the Muslim dominated areas. The Commission has not received complaint regarding absence of school because of any particular religions dominance on the area. This is clear misrepresentation of the facts as there are close to 15 lakh schools in the country. Government of India and respective State Governments are responsible for providing schools in the area of every 1 km (primary school) and 3 km (elementary school). Another argument presented is that school education is violation of their freedom under Article 29 and 30 of the Constitution. However, all learned representatives of the community would agree that Article 21A will prevail over Article 29 and 30.

Today, madrasas operate in a highly varied manner, lacking uniformity in aspects such as funding, facilities, affiliations, and recognition. The only element capable of fostering consistency and unity among the different theologies, sects, and schools is the fundamental education enshrined in the Constitution of India. The Commission initiated dialogues with community leaders, Maulvis, and madrasa students to gain insights into their perspectives and aspirations. Through this process, differing viewpoints from lawmakers, political figures, and religious leaders familiar with the Constitution emerged. However, these leaders have been unable to definitively clarify whether Article 21 (Right to Life and Personal Liberty) should take precedence over Articles 29 and 30, which protect cultural and educational rights of minorities. Those who oppose the idea of children from the Muslim community receiving formal education should be asked: Are their own children attending madrasas exclusively, or are they benefiting from formal schooling as well? This raises a critical question about whether they apply the same standards to their own families or whether they recognize the importance of formal education for personal and societal growth.

Chapter 11

Discussion & Recommendation

In 2012, the RTE Act, 2009 was amended to exempt the institutions 'primarily imparting religious education', thus excluding the children studying in these institutions from the fundamental right. However, *Pramati Educational & Cultural Trust ® & Others vs. Union of India & Others WP (C) No.416 of 2012* while appreciating the spirit of the provisions under the Constitution of India exempted Madrasas from the ambit of the Right to Education Act, 2009, however, the children studying in the Madrasas have never been exempted from the ambit of Article 21A of the Constitution of India in any judicial decision or constitutional interpretation.

The denial to extend right to education to children by the exempted institutions not just deprives the children of their most important fundamental right to education but this exclusion/denial of these children snowballs into depriving the child of their fundamental right to Equality before law (Article 14); prohibition of discrimination on grounds of religion, race, caste, sex or place of birth (Article 15(1)); and also interrupts States' responsibility under Article 13 (2) to not make any law which takes away or abridges the rights conferred under the fundamental rights and any law made in contravention of this clause shall, to the extent of the contravention, be void. Hence, due to the wrong interpretation of the Act, instead of an enabling tool, becomes a depriving tool for the children studying in minority schools. In addition, by not providing religious education, the institutions are also not contributing in protecting the interest of minorities and conserving their language, script and culture [Article 29(1)] for which these institutes are primarily given the minority status.

Further, Madrasa does not only render an unsatisfactory and insufficient model for education but also have an arbitrary mode of working which is wholly in absence of a standardized curriculum. It is important to understand that Article 28(1) and Article 28(2) cannot be read in isolation and it has to be read in light of Article 21A. A conjoint reading of Article 21 with Article 28 makes it mandatory for the State to make all the possible efforts to provide education to the children in Schools as defined under section 2(n) of the Act. The fact of children getting education in Government funded Madrasa including unmapped madrasas which are receiving funds from the State Government is a clear cut violation of the law of land and such an education which is devoid of basic curriculum, eligibility and holistic environment cannot be furthered on the expenses of the State.

Also, it has been found that many non-muslim children are also attending Madrasas. Making a child profess any other religion different from their religion at birth shall amount to violation of section 75 of the Juvenile Justice Act 2015 (JJ Act 2015). Not

only are children's fundamental rights being infringed through grants, but the Juvenile Justice Act 2015 (JJ Act 2015) is also being disregarded. Any provision to exclude children from the benefits of the right to education is to be considered as against the spirit of the Constitutional principles with which the Constitution was adopted by the people for ourselves. Protection of the children's Right to Education is of utmost importance as the same has been found its place in Article 21 of the Constitution of India and therefore it is necessary that all children up to the age of 14 years be provided with formal schooling as mandated by the Constitution.

Recommendation

As noted earlier, the Commission is not against religion or religious education nor it is condemning any religious institution. However, religious education cannot be at the expense of formal education that is their Fundamental Right under the Constitution of India. In view of above and based on the facts and discussion in the report, following recommendations are put forth-

1. Making a child profess any other religion different from their religion at birth shall amount to violation of section 75 of the Juvenile Justice Act 2015 (JJ Act 2015). Not only are children's fundamental rights being infringed, but the Juvenile Justice Act 2015 (JJ Act 2015) is also being disregarded. Sometimes it is also done by institutions functioning on State funds. Any provision to exclude children from the benefits of the right to education is to be considered as against the spirit of the Constitutional principles with which the Constitution was adopted by the people for ourselves. Article 29(2) of the Constitution states that *no citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.* Article 28 (3) states that *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.* However, largely, the States/UTs could not furnish the consent of parents of non-muslim children for letting their children attend Madrasas that imparts Islamic education. **Therefore, it is recommended that all non-muslim children be taken out of Madrasas and admitted in schools for receiving fundamental education as per the RTE Act, 2009.**
2. It has been reiterated in the report that how formal education of all children is their fundamental rights and hence all children have the right to receive quality education as per the RTE Act, 2009. The States are obligated to provide such schooling wherein children upto class 5 attends school for 4 hours and children

from classes 6th to 8th attend school for 6 hours. Not able to fulfil this duty is not only against the welfare of the children and but the same is also against our constitutional ethos and principles. It has been observed during the course of making this report that both religious education and fundamental education can be provided concurrently but not together in a single institute. **Hence, the States should ensure that all children from Muslim community who are attending Madrasa, whether recognized or unrecognized, are enrolled in formal schools and received education of the prescribed time and curriculum as per the RTE Act, 2009.**

3. The State funds should not be spent on any other kind of instruction that is not a part of the RTE Act, 2009 as this would be violation of rights of children. The religious education is the responsibility of the concerned community for which they are given adequate provisions under the Constitution. Without indulging in any kind of appeasement, the State should recognize their responsibility enshrined upon them by the Constitution and the RTE Act, 2009 and dedicate their resources in ensuring that children get formal quality education. Not doing so is a violation of fundamental rights in an institutional manner. Moreover, merely constituting a Board or taking a UDISE Code does not mean that the Madrasas are following the provisions of RTE Act, 2009. Article 30 (2) of the Constitutions that that *the state shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.* Hence, there is no discrimination against any minority groups. However, any funding that is given to an institution in guise of education that affects the implementation of the RTE Act, 2009 is unconstitutional. **Therefore, it is recommended that State funding to the Madrasas and Madrasa Boards be stopped across all States/UTs and Madrasa Boards should be discontinued and closed down.**⁷⁴
4. The misuse of the MoU signed between NIOS and Jamiat Ulema-e-Hind (JUH) has also highlighted the role of NIOS in the entire process. Knowing that it is a Constitutional obligation of the State to provide free and compulsory elementary education to all children, NIOS signed an MoU with JUH knowing that these children are not attending formal education in schools till class VIII. The MoU contributed in keeping these children out of school. **Therefore, Ministry of Education (MoE) may initiate action in this regard to examine the role of NIOS.**

⁷⁴ In case of Uttar Pradesh, subject to the Judgment of the Hon'ble Supreme Court on SLP (Civil) No. 008541 of 2024

Abbreviations

IPC	Indian Penal Code
JUH	Jamiat Ulema-e-Hind
JJ Act	Juvenile Justice (Act)
NCPCR	National Commission for Protection of Child Rights
MOE	Ministry of Education (formerly known as the Ministry of Human Resource Development)
NCERT	National Council for Educational Research and Training
NIOS	National Institute of Open Schooling
POCSO	Protection of Children from Sexual Offences (Act)
QCI	Quality Council of India
RTE	Right to Education (Act)
SCPCR	State Commission for Protection of Child Rights
STC	Special Training Centre
UDISE	Unified District Information System For Education
UNICEF	United Nations International Children's Emergency Fund



National Commission for Protection of Child Rights (NCPCR)
Chandralok Building, 5th Floor, 36 Janpath
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