
CASE COMMENT ON VISHWA LOCHAN MADAN V. UNION OF INDIA

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ABSTRACT

The case of Vishwa lochan Madan v. union of India is a landmark judgement that deals with the legal status of fatwas and whether it is creating a parallel judicial system for Muslims. The court ruled that the fatwas and Dar ul Qazas have no legal status in society, and hence, it cannot be said to establish a parallel judicial system in the country. With this case comment, I have analyzed the judgement and stated reasons as to why the court erred by not considering the psychological effects of the fatwas issued by the Dar ul Qazas.

Introduction

The case discussed in the case note is that of Vishwa Lochan Madan versus Union of India & Ors. The judgement was given by the two-judge bench of Justice Chandramouli Kr. Prasad and Justice Pinaki Chandra Ghose in the year 2014. The case comes under the bracket of the intersection of religious family adjudicatory forums with the functioning of the judiciary. It deals with the contention that the issuance of Fatwas by the muftis under Islamic law is creating a parallel judicial system which is chipping away at the judicial system established by the State. With this case note, I wish to give a brief background of the case, along with the major issues addressed by it, the arguments advanced by the parties on either side, analyze the judgement and argue that the issuance of fatwas consolidates the position of Muslim personal law by intersecting with state courts¹ and having an obligatory effect on the Muslims for whom these fatwas have been issued, rather than being an alternative medium of jurisprudence.

Background of the case

Mr. Vishwa Lochan Madan, a lawyer, filed a writ petition in the year 2005 seeking the Supreme court to ban the issuance of Fatwas by the Dar-ul-Qazas alleging that they are functioning as a parallel judicial system that are undermining the judicial systems prevalent in the country.² One of the defendants along with the Union of India was the All-India Muslim Personal Law Board or the AIMPLB. It is a religious non state organization that comprises of Ulemas. Muslim scholars who are recognized as experts in the Islamic Law are referred to as Ulemas.³ The AIMPLB is responsible for running religious forums or courts called Dar-ul-Qazas, which contain muftis who issue fatwas.⁴ Muftis are Muslim jurists qualified to give legal opinions or fatwas. Fatwas are authoritative legal rulings based on Islamic canonical law, i.e., Shariat Law.⁵ The writ petition was filed due to the objectionable nature of the fatwas issued in matrimonial disputes. The petitioner sought a declaration that the activities of the AIMPLB and other similar organizations for the establishment of a Muslim Judicial system and setting up of Dar-ul-Qazas and the subsequent issuing of

¹ Katherine Lemons, *Sharia Courts and Muslim Personal Law in India: Intersecting Legal Regimes*, 52 *LAW & SOCIETY REVIEW* 603 (2018).

² *Vishwa Lochan Madan v. Union of India*, (2014) 7 SCC 707.

³ *Id.*

⁴ Jeffrey A. Redding, *Secularism, the Rule of Law, and 'Shari'a Courts': An Ethnographic Examination of a Constitutional Controversy*, 57 *ST. LOUIS U. L.J.* 339 (2013).

⁵ *Vishwa Lochan Madan v. Union of India*, (2014) 7 SCC 707.

judgements and fatwas on the basis of Shariat law in India be declared absolutely illegal, illegitimate, and unconstitutional.⁶ Further, he requests the State to take steps to disband and dissolve the Dar-ul-Qazas and Shariat Courts. The petitioner seeks to restrain the respondents from establishing a parallel judicial system and interfering with matrimonial matters of Muslims by passing judgements or fatwas. Lastly, he prays that the Supreme court direct the AIMPLB to stop training or appointing Muftis for the rendering of fatwas.

Issues

The major issue that the Supreme court was called upon to decide in the petition was whether Dar-ul-Qazas were unconstitutional because the decisions were issued by religious authorities and not overlooked by the State, thereby functioning as “parallel judicial systems”.

Further, the petition also focused on the issue of the validity and binding value of the fatwas issued by the Dar-ul-Qazas.

Arguments Advanced by the Parties

Arguments of the respondents

The union of India asserts that no Muslims are bound to follow the fatwas as they are advisory in nature. The Dar-ul-Qazas are only to be looked at as arbitrators, mediators or negotiators for family matters or civil disputes among Muslims.⁷ The Union further contends that Dar-ul-Qazas can be seen as an amicable and inexpensive manner to settle disputes outside courts, and hence have no authority to enforce its orders.⁸ Therefore, it cannot be said to be a parallel judicial system. The AIMPLB contends that it is not a parallel judicial system as it is an informal way of delivering justice and that the fatwas cannot be enforced and hence are not binding in nature.⁹ The Dar-ul-Uloom of Deoband, named as respondent No. 10 in this case argues that it does not have the authority to enforce the fatwas and it is the choice of the parties who obtain fatwas to act in accordance with it or not.¹⁰ However, they also stated that God fearing Muslims obey the fatwas, while others may disobey them. The States of U.P. and Madhya Pradesh, which are also respondents pleaded that the fatwas have no legal

⁶ Id.

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

⁸ Vishwa Lochan Madan v. Union of India, (2014) 7 SCC 707.

⁹ Vishwa Lochan Madan v. Union of India, (2014) 7 SCC 707.

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

value as they are advisory in nature and permit Muslims to approach courts established by the state instead for resolution of disputes.¹¹ Therefore, the main contention of all the respondents for the reasons stated above is that the Dar-ul-Qazas are ADR mechanisms and the fatwas are not binding in nature and hence, they do not set up a “parallel judicial system” for Muslims.

Arguments of the petitioner

The petitioner, Vishwa Lochan Madan, contended that the Dar-ul-Qazas were illegal and the fatwas issued by them void as it established parallel judicial systems for Muslims in states where these Qazas were established.¹² He alleged that the AIMPLB gave their full support to the issuance of these fatwas and hence strived for the establishment of a parallel judicial system. He drew the court’s attention to three fatwas issued by the Dar-ul-Qazas, namely the fatwa given by the Dar-ul-Uloom of Deoban in Imrana’s case, that issued in Asoobi’s case, and another issued in the case of Jatsonara. Incidentally, all three cases dealt with rape of the three women by their respective father in laws. The fatwas issued in these cases essentially directed the women to accept the rape and dissolved their marriages to their husbands. Further, the women accepted the orders of these fatwas and did not approach the courts established by the state. The petitioner also contends that the setting up of Dar-ul-Qazas defeats the purpose of the essential function of resolution of disputes by the sovereign state, which can never be abnegated from.

Analysis

The judge took into consideration all the arguments forwarded by the petitioner and the respondents and passed a judgement that the establishment of Dar-ul-Qazas and the issuance of fatwas has no legal recognition or status. It is not binding on the individual for whom it has been issued. Therefore, it was decided that the grievance of the petitioner that it establishes a parallel judicial system is misconceived. While I agree with the judgement of the court that Dar-ul-Qazas do not constitute a parallel judicial system, I believe that the court does not take into consideration the effect that the fatwas have on Muslim individuals, even though they are not declared to be binding, and hence do end up intersecting with the courts established by the State.

¹¹ Vishwa Lochan Madan v. Union of India, (2014) 7 SCC 707.

¹² Vishwa Lochan Madan v. Union of India, (2014) 7 SCC 707.

The judges touched upon the issue of the psychological effect the fatwas can have on the persons for whom it is issued if they chose not to abide by them. The court also held that Dar-ul-Qazas cannot give out fatwas affecting the rights of an individual, unless asked for.

Respondent No. 10 emphasized in their arguments that God fearing individuals are answerable to the Almighty and will have to face consequences due to their rejection to follow the fatwas issued to them.¹³ This instills a fear driven by religion in persons upon not following of the Fatwas issued. There is a major impact of religion on human beings and it is a persisting fight between the freedom of conscience and religion, that is, the Muslims for whom the fatwas are issued are forced to make the choice between religion and personal values, which can heavily impact their mental well-being. Further, not following the fatwas may lead to social stigmatization and a fall in social standing of people in the Muslim community. A majority of the Muslim populace against whom fatwas are issued feel that they are bound to follow them due to a profound sense of crisis. They are in constant confrontation between modern ideals and religious practices and there is an intensified concern over Islam's capacities over modern law.¹⁴

Due to these factors, Muslim individuals may choose to follow a fatwa issued to them, however bizarre and obnoxious it may seem.

Even though fatwas are not binding in nature, many Muslims accept the judgements given to them by the Dar-ul-Qazas and do not approach state established courts for assistance or do not have the knowledge of the law that they have the option of approaching state established courts. In the case of Asoobi, referred to by the petitioner, she was raped by her father-in-law, and she was issued a fatwa which ruled that she cannot file a police complaint against him. This order directly interferes with the working of the state mechanism as a crime has been committed against a woman and she has accepted a fatwa barring her from exercising her rights. Though she need not follow this order, the religious, conservative, and orthodox nature of the fatwa binds her to it. Moreover, since majority of the fatwas are issued for matrimonial and familial matters, it is mostly the women who are aggrieved by them, even though the women approached the Dar-ul-Qazas for their legal opinion. A fatwa cannot be a justification for a violent crime. In many countries, women have been targeted by these

¹³ Vishwa Lochan Madan v. Union of India, (2014) 7 SCC 707.

¹⁴ Hussein Ali Agrama, *Ethics, Tradition, Authority: Towards an Anthropology of the Fatwa*, 37 AMERICAN ETHNOLOGIST 2 (2010).

fatwas by the claim that disobeying of the fatwas will induce to live a non-Islamic life.¹⁵ Hence the fatwas issued can be deemed to be discriminatory in nature and can be used by male counterparts to impose them on women.

Another reason as to why followers of Islam choose to be bound under the fatwas is the tedious process of approaching the courts established by the State. The 238th law commission of India report has emphasized that the pendency of litigation in courts has made it impracticable to dispose of cases within a reasonable time.¹⁶ It will be a speedier for the parties to approach religious forums, such as the Dar-ul-Qazas, in the case of Muslims, than go through courts appointed by the State. Muslims count on such “qualified jurists” or muftis appointed by the court to give their opinion and issue fatwas, which they believe is justiciable. However, the authenticity of these qualified jurists can be questioned as Muslims often seek such opinions from Maulvis presiding over small mosques, who are too ignorant to even lead prayers, let alone render scholarly opinions on delicate matters.¹⁷ Hence, such maulvis or muftis of the Dar-ul-Qazas will be deemed to give authenticated opinions due to the power they hold, and the Muslims seeking direction will be subject to follow such opinions even though it has no binding value.

Since it is evident that fatwas are perceived as binding, even though they have no effect of law, and hence have a psychological effect on the Muslims for whom it is issued, it is in my opinion that the state should intervene on a case-by-case basis and refer certain non sensical fatwas, that are in contravention to the laws of the country and put Personal law at a higher standing, to state instituted courts or Lok Adalats. Muslims should be educated about their basic rights and their right to waive off the fatwa given to them. The court should also issue a person, preferably from the legal field, to oversee the functioning of Dar-ul-Qazas. Hence, the Supreme court should look extensively into the psychological angle and make provisions to ensure that individual rights of persons are not affected due to the fatwas.

Conclusion and Remarks

The two-judge bench that presided over the case have rightly decided that the Dar-ul-Qazas

¹⁵ cad, *fatwas against women*, 27 OFF OUR BACKS 3 (1997).

¹⁶ 238th Report of the Law Commission of India (2011), <https://lawcommissionofindia.nic.in/reports/report238.pdf>.

¹⁷ Saif Mahmood, *Misunderstanding a good judgement*, The Hindu (May 12, 2017), <https://www.thehindu.com/opinion/op-ed/misunderstanding-a-good-judgment/article11272231.ece1>.

do not constitute a parallel judicial system. However, they have erred by giving a vague judgement on the issue of fatwas and the psychological effect it can have. The issues with ignoring the psychological effect of the fatwas are that it will lead to the social stigmatization and discrimination of Muslims if they choose not to obey the fatwas. Further, the Dar-ul-Qazas which are mostly Muslim women, who are one of the most marginalized groups in Indian society, end up being the ones robbed of their basic rights. While the Dar-ul-Qazas do provide a speedier way of redressal of disputes, they do contain ill-informed muftis incapable of giving out fatwas in line with the law. The Muslims who choose to be bound by the fatwas, ultimately place personal law at a higher level than the constitution, which leads to the blatant discrimination within communities of Muslims, in particular, Muslim women. Hence, the courts should look into the issuance of the fatwas, and ensure that the individual for whom it has been issued is not forced to forego his right of conscience for the sake of fear of religious persecution from his community. The state established courts must take into consideration the mental effect of the fatwas and guarantee individual rights to Muslims by putting certain mechanisms in place to ensure that the fatwas are accepted by their own personal will, with awareness of their full rights.