IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 2861 OF 2006
ALONG WITH
CIVIL APPEAL NOS. 2286, 2316, 2320, 2321, 2319, 2317 & 2318 OF 2006

IN THE MATTER OF:

Aligarh Muslim University Old Boys Alumni Association ... APPELLANT

VERSUS

Naresh Agarwal ...RESPONDENTS

REJOINDER NOTE ON BEHALF OF MR. KAPIL SIBAL, SR. ADV.

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Introduction

1. The present Rejoinder is structured in five parts. Part I demonstrates that contrary to the submissions of the Respondent, the founder's group and the Muslim minority were an integral part of the governance structure of AMU since 1920. Part II lays out the broader analysis of Article 30, which clarifies the correct interpretation of the phrase "*establish and administer*" under Article 30. The correct constitutional position is that Article 30 confers two rights which operate separately in time: the "right to establish" and the "right to administer." A minority educational institution (MEI) is the *subject* of rights under Article 30. To constitute an MEI that can invoke the protection of Article 30, (i) there must be a religious or linguistic minority and (ii) that minority must have established the educational institution. The "right to administer" then *flows* from the fact of establishment and is not a *directive* to administer in any particular way and cannot be interfered with by the State. This is the correct conjunctive meaning of "establish and administer." Part III demonstrates that there was no legal "surrender" of "rights" on part of the Muslim community in *choosing* to incorporate AMU through an Act of the Governor General in Council and that an argument to the contrary is violative of Article 14. Part IV argues that an educational institution can simultaneously be of minority character under Article 30 and an institution of national importance under Entry 63, List I of the Constitution. Finally Part V demonstrates that the Legislative Debates on Aligarh Muslim University can not and do not give rise to any conclusion that AMU is not a minority educational institution.

2. At the outset, it is submitted that ***Basha's*** findings on who had powers of administration under the Act of 1920 were not a part of the ratio in the case and were only returned in response to a misguided second argument taken by the Petitioners in that case. In the face of a formalist test for interpreting the meaning of the word "establish" under Article 30, the Petitioners in ***Basha*** had argued that even if the fact of passing of a legislation resulted in a finding that AMU was not established by the Muslim minority, since it was being administered by Muslims, it should be extended the protection of Article 30 (**@Page 16, Vol. III A)**. It is in this context that, after arriving at a finding that the Muslim minority did not establish AMU in

the formalist sense, the Hon'ble Court in ***Basha*** analysed the administrative structure under the 1920 Act and held that since "final control" over administration in AMU was not in hands of the Muslim minority, it was not a minority educational institution that can invoke the protection of Article 30 **(@ page 14, placitum A and @Page 22, placitum F, Volume III A).** This finding is not a part of the ratio in ***Basha*** and was rendered in response to the additional contention of the Petitioners in that case. ***Basha's*** own finding **@Page 17, Vol. III A,** states that if AMU is held to be established by the Muslim minority, the minority would certainly have the "right to administer" it. By its own admission therefore, ***Basha*** need not have returned any finding on the structure of administration under the AMU Act, given that it had already held AMU was not established by the Muslim minority. Hence the ratio of ***Basha*** is limited to its ruling on establishment. Nonetheless, this rejoinder will address both the fact of administration by the founding members of AMU and clarify the law on Article 30.

Part I: Factual Argument on Administration

The Muslim Minority were an integral part of the governance structure of the University as incorporated by the AMU Act, 1920 and had the power of administration.

3. The Respondents' argument that the founding Muslim minority did not have powers of administration of the University at the time the AMU Act was passed in 1920, is patently incorrect in light of a plain reading of the provisions of the 1920 Act as it was enacted and as it stood on 26.01.1950. It is submitted that the Muslim minority was an integral part of the governance structure of the University as incorporated by the AMU Act, 1920 and had power of administration.
4. In ***TMA Pai*** @ para 50, ambit of the "right to administration" was set out as including:
    (i) right to admit students (subject to an objective and rational procedure of selection)
    (ii) to set up a reasonable fee structure (without capitation fees)

(iii) to constitute a governing body (for which qualifications may be prescribed by the state)

(iv) to appoint staff (teaching and non-teaching); and

(v) to take action if there is dereliction of duty on the part of any employees.

5. It is submitted that the Act of 1920 bestowed these powers of administration in the hands of the founding members and provided for their continued exercise by the Muslim minority. Each of these five aspects in ***TMA Pai*** was with the founding community.

5.1. To constitute a governing body (for which qualifications may be prescribed by the state)

a) The AMU Act confers supreme governing powers on the Court. Section 23 unequivocally states that the supreme governing body of the University is the "**Court".** Section 23(1) sets out the membership of the Court - it is to comprise of the Chancellor, the Pro-Chancellor, the Vice-Chancellor and such other persons; provided that no person other than a Muslim can be a member thereof. Thus, the supreme governing body is entirely in the hands of the minority. This is the plain language of the law and it cannot be argued that one must go behind this to arrive at a finding that some other body, was, in fact, the supreme governing authority.

b) The First Statutes under Clause 8 sets out the following as the membership of the Court - all of whom were Muslim:-

Ex officio	**Founders/Life**	**Ordinary Members**
Chancellor	124 Foundation Members	10 persons from States that have contributed Rs 1 L upwards
Pro-Chancellor	Life Members - every person who has contributed	60 persons who made donations of Rs 500 upwards

	upwards of Rs 1 L - this is predominantly Muslim rulers.	
Vice-Chancellor		40 persons elected by registered graduates of whom not less than 20 [50%] are graduates of MAO and recognised Associations.
		20 persons elected by the All-India Muhammadan Educational Conference from amongst its own members
		10 persons nominated by the Chancellor
		33 persons representing Muslim education 9 - Islamia Colleges 15- Learned professions 9 - learned in Muslim religion
		15 elected by the Academic Council from among its own members

c) Quorum was only 25 members [Clause 13(3)]

d) The Court was thus not only entirely Muslim, it was dominated by 'Foundation Members' and persons selected by the founders of the MAO Societies and of AMU. At least 20 persons had to be graduates of MAO College as well.

e) The Court has the power, under Section 23:

- Review the acts of the Executive Council and Academic Council [Section 23(2)]
- The power to amend, repeal or add to the First Statutes [Section 28(2)]

- Making Statutes and amending or repealing the same [Section 23(3)]
- Considering Ordinances [Section 23(3)]
- Considering and passing resolutions on the Annual Report and Audit [Section 23(3)]
- Electing persons to serve on the authorities of the University and appointing officers. [Section 23(3)]
- Such others powers conferred by the Statutes [Section 23(3)]
- Direct the Executive Council and Academic Council to take action, on the basis of recommendations made by the Lord Rector [Section 23(2)]

f) **The Executive Council:** Section 24 states that the Executive Council shall be the executive body of the University.

g) Clause 15(1) of the First Statutes provides that the Executive Council shall comprise of not more than 30 members of which 20 members are elected by the Court and one is the Vice-Chancellor, one is the Pro-Vice Chancellor and one is a nominee of the Vice-Chancellor.

h) Of these 30, only 11 members formed quorum [Clause 15(5)]. Thus, the Executive Council is predominantly from the Court which is primarily comprised of the founders' Muslim group.

Ex officio	**Elected**
Vice-Chancellor [elected by Court from among its members]	20 members elected by the Court
Pro-Vice- Chancellor [appointed by Court]	6 members elected by the Academic Council
Principal of an Intermediate College maintained by the university elected by the Vice-Chancellor	
Treasurer	

i) **Academic Council:** Section 25 states that the Academic Council shall be the academic body of the University and, subject to the Act, Statutes and Ordinances, have control and general regulation of, and be responsible for maintenance of standards of instruction and conferment of degrees.

j) The constitution of the Academic Council is provided in the Statutes. The First Statute stipulates that the Academic Council comprises of:

Member	**Description**
Vice Chancellor	Elected by the Court from amongst its members
Pro-Vice Chancellor	Appointed by the Court
Chairman of the Departments of Studies	A total of 15 departments which included 6 Islamic religious or cultural departments: (1) Sunni theology; (2) Shia theology; (3) Islamic studies; (4) Arabic languages and literature; (5) Urdu and (6) Persian.
Proctor	Appointed by the Executive Council [Clause 7 of the First Statutes]
Librarian	Appointed by the Executive Council [Clause 7 of the First Statutes]
2 persons elected by the Court	Directly elected by the Court
2 persons nominated by the Visiting Board	Nominated by the Visiting Board whose majority membership comprises the Executive Council
5 members co-	

opted by other members	

k) Of these, only 11 members constituted quorum for the Academic Council. Thus, 8 were directly under the control of the Court. In addition, the heads of 6 departments were persons who were scholars in Islamic related fields. Thus, the majority of the Academic Council were members of the minority or represented their culture.

l) **Chancellor, Pro-Chancellor and Vice-Chancellor:** Section 3 provides that the First Chancellor, Pro-Chancellor and Vice-Chancellor were appointed by a notification of the Governor-General in the Gazette of India. This was a transitory provision and does not give any indication as to the regular governance structure for the University. In any case, each of these persons who were notified by the Governor-General as the First Chancellor, Pro-Chancellor and Vice-Chancellor were from the founders' minority group.

m) The successor to the first Chancellor is elected by the Court [Section 17(1)], who, by virtue of his office, is the "Head of the University" [Section 17(3)]. Similarly, the successor to the first Pro-Chancellor is elected by the Court [Section 18(1)], who carries on the functions of the Chancellor in his absence. Thus, the Court has the power to elect the head of the institution.

n) The successor to the first Vice-Chancellor is elected by the Court from ***amongst its members*** [Section 19(1)]. This requires that the Vice-Chancellor must be Muslim, and must be a person who enjoys the confidence of the Foundation members who comprise the majority of the Court's members. This is direct evidence of the central role given to the founders of AMU in its administration.

o) The powers of the Vice-Chancellor are to be prescribed by the Statutes. Clause 3 of the First Statutes grants the Vice-Chancellor the powers to convene meetings of the Court and the Executive Council, to perform such acts as are necessary to carry out the provisions of the Act, Statutes and Ordinances, take action in an emergency and be the sole medium of communication between the University and the External authorities. Thus, the day to day

administration was in the hands of a person who had to be appointed by the Court from amongst its members.

p) The Pro-Vice Chancellor is also appointed by the Court [Section 20(1)].

q) **Lord Rector:** The Lord Rector is not a person who can be said to be administering the University. Rather, the Lord Rector, as a titular head, has been given the powers of oversight to prevent serious cases of maladministration.

r) The Lord Rector has the power, under Section 13(1) to make inspection and to cause inquiry. This requires him to give notice of his intention to do so to the University. This is the nature of an external check/oversight against maladministration and does not relate to administration of the University. On arriving at a conclusion from such inspection and inquiry, the Lord Rector has to first address the Vice-Chancellor as to these results, who in turn has to communicate this to the Court along with the "advice" of the Lord Rector. The Court thereafter, has to decide its course of action and then communicate the same to the Vice-Chancellor who in turn will communicate it to the Lord Rector [Section 13(4)]. It is only in the case of inaction that the Lord Rector can step in and issue directions. [Section 13(5)]

s) **Visiting Board:** The Visiting Board comprises of:-

- Governor
- Members of the Executive Council
- One Governor's nominee
- One Education Minister's nominee

t) The predominant membership of the Visiting Board comprises the members of the Executive Council members. Thus, the actions of the Visiting Board are under the de facto control of the Executive Council

u) The powers of the Visiting Board under Section 14(2) are to inspect the University for the purpose of satisfying itself that the proceedings of the University are in conformity with its Act, Statute, and Ordinances. This is also, therefore, merely an oversight power, to ensure that the laws applicable are being adhered to. This does not relate to administration.

v) The Visiting Board, under Section 14(2), has the power to annul proceedings that are not in conformity with the laws of the university, but even this requires a hearing with full natural justice. Thus, this is also entirely in the nature of powers of review and not of administration.

w) **Other authorities** - Section 21 states that the powers of other authorities to be prescribed by the Statutes and Ordinances. The Court has the power to amend and pass new Statutes.

5.2. To admit students

a) Section 32 provides that admission of students shall be made by the Admission Committee comprising the Pro-Vice-Chancellor; the Principal of an Intermediate College selected by the Vice-Chancellor and such other persons appointed by the Academic Council. This body is thus a body that necessarily enjoys the confidence of the Court.

b) Section 32(4) provides that students of MAO shall be permitted to complete their course of study and be permitted to take examinations for their degrees at AMU.

c) Section 29(c) and (d) states that the Ordinances may provide for the conditions under which students may be admitted; admission of students.

d) The Executive Council has the power to make Ordinances [Section 30(1)] though the first Ordinance was framed as directed by the Governor General.

5.3. To set up a reasonable fee structure

a) Section 5(10) of the Act 1920 states that the University has the power to demand and receive such fees as are prescribed in the Ordinances.

b) Section 29(h) states that the Ordinances may provide for the fees to be charged

c) The Executive Council has the power to make Ordinances [Section 30(1)] though the first Ordinance was framed as directed by the Governor General.

5.4. To appoint staff (teaching and non-teaching); and (v) to take measures for dereliction of duty

a) Section 27 (c) of the Act provides that the Statutes may provide for the terms of office and method and conditions of appointment of the officers of the University.

b) Clause 20 of the First Statutes provides that the appointments of the teaching staff are to be made by the Executive Council.

c) Section 36 provides that every salaried officer and teacher shall be appointed on written contract and any dispute shall be referred to a tribunal consisting of one member appointed by the Executive Council, one by the teacher concerned and an umpire by the Visiting Board. Thus, this tribunal is also under the control of the minority through its dominance in the Executive Council and the Visiting board.

5.5. To take action if there is dereliction of duty on the part of any employees.

a) Under Statute 5, the Registrar is appointed on the recommendation of a Selection Committee constituted for this purpose, who shall hold office for a tenure of five years which may be renewed by the Executive Council. **(@Page 64, Vol. 3 G).**

b) Under Statute 5(4)(a), the Registrar shall have power to take disciplinary action against such of the employees of the University as may be *specified in the orders of the Executive Council…***(@Page 65, Vol. 3 G).**

c) Further, under Statute 40 "Removal of Members and Employees" **(@Page 103, Vol. 3G)**, the Executive Council shall be entitled to dismiss a teacher on grounds of misconduct. The Vice Chancellor too, may suspend a teacher against whom misconduct is alleged and shall report the case to the Executive Council. The process of dismissal of employees therefore is within the powers of the Executive Council, a largely Muslim Body.

Thus, the Act of 1920 bestowed these powers of administration in the hands of the founding members and provided for their continued exercise by the Muslim minority

Part II: Broader Analysis of Article 30(1)

6. **The Respondents have argued that in order to determine whether a particular institution is a Minority Educational Institution ("MEI"), a "twin test" must be satisfied. First, the minority must show that they have established the institution in question, and second, they must demonstrate that they are administering it. This argument of the Respondents**

is mounted on the strength of the word "and" in "establish and administer" in Article 30.

7. **It is submitted that this is an incorrect exposition of constitutional law.**
8. In the first instance, it is submitted that the purpose of Article 30 is to grant substantive equality to minorities in India and to make them secure and confident, as equal citizens, in a democratic, secular republic. The historical context of this right is important, since the Constitution framers evolved this right as a promise to minorities in response to events leading to the Partition of India, and to assuage those that believed separate electorates were necessary to safeguard the rights of minorities. [***St. Xaviers (opinion of Khanna J.)*** @ para 75, Vol 5A at p. 226]
9. Article 30 is a group right and not an individual right. There cannot be surrender of rights under Article 30 by a pre-constitutional voluntary act of affiliation for the purpose of state recognition [***In Re Kerala*** @ Vol 5A **at p. 66**] since this would result in depriving future generations of the right. [***St. Xaviers*** **(opinion of Mathew J. and Chandrachud J.)** @ para 162, Vol 5A at p. 263].
10. Given its important role in the foundational character of India, Article 30 is couched in the widest terms and its scope cannot be whittled away or narrowed. [***In Re Kerala*** @ Vol 5A at p. 62; ***Sirajbhai*** @ Vol 5A at p. 113]. The phrase "of their choice" in Article 30 includes secular education at all levels [***St. Xaviers (opinion of Ray J.)*** @ para 12, Vol 5A at p. 200; ***St. Xaviers (opinion of Khanna J.)*** @ para 96, Vol 5A at p. 242]
11. The Respondent's articulation of the meaning of Article 30 narrows the right granted to minorities and is contrary to the law laid down by 7 distinguished judges in ***In Re Kerala***. It is submitted that on a true interpretation of Article 30, supported by transformative goals of the constitution framers, an institution is a minority educational institution if:
    i. The community in question is a "religious or linguistic minority"
    ii. This minority community "established" the educational institution

    Once these two conditions are met, the right to administer will *flow* from the fact of establishment.

12. Thus, the right to establish and the right to administer operate separately in time, i.e. the right to administer *follows* the right to establish. It is in this sense that the right under Article 30 is conjunctive. Seven distinguished judges of this Court, in ***In Re Kerala*** held (@ Vol5A at p. 60);

> *"It must not be overlooked that Art. 30(1) gives the minorities two rights, namely, (a) to establish, and (b) to administer, educational institutions of their choice. The second right clearly covers pre-Constitution schools..."*

13. In other words, once the minority exercises its right to establish, they have the right to administer the institution they establish. This is the meaning of the word "and" in the phrase *"establish <u>and</u> administer."*

14. It is further submitted, that whether or not a minority has established an institution, is to be evaluated by discovering the *genesis* of the institution. This involves:

    a) Whether the impetus for the educational institution was by the minority (can be a single member)
    b) Whether the purpose was predominantly the educational advancement of the minority
    c) Whether the initial steps were by the minority
    d) Steps by non-minorities including by govt does not negate the efforts of the minorities if such assistance was towards a known purpose, i.e., towards a purpose of educational advancement of the minority.

15. The **genesis test** can be answered by direct evidence or where such direct evidence does not exist, through circumstantial evidence that, when seen in totality, lead to the conclusion that the institution's genesis is in the minority community."Minority" identity is a historical fact of who established the institution and the ascertainment of the historical fact can be from historical materials other than the text of the Act. The legislation is merely the vehicle through which the body corporate is given legal form and is not the means through which "minority" identity is expressed. In other words, this is not an identity conferred by statute. However, even if the Act must be analysed to ascertain the historical fact, the AMU Act 1920 sufficiently

captures the historical fact of establishment by the Muslim community by preserving powers of management of affairs and day to day administration in the hands of the minority community.

16. In the present case, there is overwhelming direct evidence that (a) the impetus behind AMU was the secular education of Indian Muslims; that (b) the purpose behind seeking a teaching university for Muslims was the advancement of education of the Muslim community; that (c) the initial steps were taken by members of the minority community and (d) that donations were towards the recognised purpose of setting up a Muslim university. The administrative or governance structure of the University is irrelevant in the face of such direct evidence. In some cases, the predominant presence of minority community members in the governance structure for the administration of the institution could be a circumstance that indicates that its purpose is for the minority community. However, this is separate from the "right of administration" which is attracted upon establishment.

17. Further a comparison with *other Universities* such as Annamalai University **(@Page 538, Vol. 4 I),** to compare the texts of their respective enactments is a fruitless exercise. This is because each institution has different founding moments and the nature of recognition of that history will be acknowledged in different ways. The context of each institution is unique and therefore the legislative intent to expressly recognise this history or recognise it by implication is unique in each instance. In any case, the powers conferred upon the Court under the AMU Act, are far greater than the ones conferred upon the Founder of Annamalai. **(Compare Section 11 of Annamalai University Act 1929 @Page 544, Vol. 4 I and Section 23 of AMU Act 1920 @Page 11, Vol. 3 G)** The AMU Court had the power to elect the Chancellor, Pro-Chancellor, Vice Chancellor, along with appointment of the Registrar. The Court also had the power to make Statutes and Ordinances as well as control the functioning of the EC. Finally, the effect of ***Basha*** in that, the legislature began to overtly declare the historical fact of establishment in some legislations to safeguard the status of the institution, cannot be used to ascertain the correctness of ***Basha.***

18. Hence AMU is able to demonstrate the fulfilment of both conditions i.e., its founding group was a minority and that this minority community established the institution.

19. It follows that the Respondents' attempt to use "the right to administer" as an *independent test and an imperative to the minority community* laid down by Article 30 is incorrect. This is further elaborated upon below.

20. It has been held by this Hon'ble Court that the right to administer *flows* from the fact of establishment. It is a right that inheres in the minority once it is proved that the MEI has been established by them.

21. A Constitution Bench in ***St. Stephen's*** held (Page 413, Vol. 5A)

> *"It should be borne in mind that the words "establish" and "administer" are to be read conjunctively.* ***The right claimed by a minority community to administer the educational institution depends upon the proof of establishment of the institution****.* ***The proof of establishment of the institution, is thus a condition precedent for claiming the right to administer the institution."***

22. A similar articulation is present in ***State of Kerala v. V.R.M. Provincial*** **(Page 166-167, Vol 5A).** It is pertinent to note that this passage also states that once the minority can claim a right to administer, having established the institution, they may do so in the "manner they see fit". Any attempt to control and take away this freedom to administer will amount to an encroachment of the right. The Court holds as such:

> ***"…[I]t is sufficient to say that the clause contemplates two rights which are separated in point of time. The first right is the initial right to establish institutions of the minority's choice.*** *Establishment here means the bringing into being of an institution and it must be, by a minority community. It matters not if a single philanthropic individual with his own means, founds the institution or the community at large contributes-the funds. The position in law is the same and the intention in either case must be to found an institution for the benefit of a minority community by a member of that community. It is equally irrelevant that in addition to the minority community others from other minority communities- or even from the majority community can take advantage of these institutions. Such other communities bring in income and they do not have to be turned away to enjoy the protection.*
>
> ***The next part of the right relates to the administration of such institutions.*** *Administration means 'management of the affairs' of the institution. This management must be free of control so that the founders or their nominees* ***can mould the institution as they***

think fit, and in accordance with their ideas of how the interests of the community in general and the institution in particular will be best served*. No part of this management can be taken away and vested in another body without an encroachment upon the guaranteed right."*

23. Therefore "the right to administer" is meant to be interpreted as a ***continuing*** right to administer on part of the minority community establishing the University and ***not a test*** for the identification of an MEI. In other words, once a minority establishes an educational institution, that institution becomes the *subject* of the "right to administer" under Article 30 [***St Stephen's*** @ para 28, Vol 5A at p. 413]. They then enjoy the *content* of the right of administration, which includes the right to "*day to day administration"* and the right to "*conduct and manage the affairs of the institution"* which is a right that can be exercised *"through a body of persons in whom the founders of the institution have faith.." "and confidence."* [***St. Xaviers (opinion of Ray J.)*** @ para 40-41, Vol 5A at p. 206; ***TMA Pai*** @ para 50, Vol 5A at p. 613; ***St Stephen's*** @ para 41, p. 417; para 54, Vol 5A at p. 422]

24. As such, the Respondents conflate an evaluation of the governance structure created at the inception of the educational institution (which is part of the test of establishment), with the *continued right of the minority to administer* the institution once it has been established by them.

25. Further, Article 30 itself does not mandate any specific way of administering. The manner of exercise of the *content* of the right of administration is in the hands of the *subject* of the right – the minority educational institution may choose to have only minority members in charge of administration or they may have non-minority members. They may adhere closely to comparable government models for governance structure or they may choose to evolve their own structures, provided these meet the overall regulatory regime. If a minority educational institution designs its governance structure in a manner that allows the presence of non-minority and/or external members, this does not alter their legal status. Prescribing such a condition otherwise, would be to read a limitation into the provision that substantively controls the manner in which the minority chooses to administer its educational institution.

26. However, it is not submitted that the right to administer is an unqualified right. Petitioners subscribe to the judgments of this Court which have held that regulation of minority

educational intuitions is permissible as part of a broader regulatory regime for education provided it meets the <u>*dual test*</u> (***Sirajbhai*** @ Vol 5A at *p. 114;* ***Mother Provincial*** *@ para 10,* Vol 5A at *p. 167;* ***St. Xaviers (opinion of Khanna J.)*** @ para 92, Vol 5A at p. 239; ***In Re Kerala*** @ Vol 5A at *p. 71;* ***TMA Pai*** *@ para 107,* Vol 5A at *p. 634*):

a) It must be reasonable;

b) It must be regulative of the educational character to ensure excellence of the institution.

27. The power to regulate emerges from Article 19(6) [reasonable restriction to Art 19(1)(g) since education falls under 'occupation'- ***TMA Pai*** *@ para 18-20,* Vol 5A at *p. 604*] read with Article 30 which means the right to administer and not to *mal*-administer [***TMA Pai*** @ para 136, Vol 5A at p. 649; ***In Re Kerala*** @ Vol 5A at p. 71].

28. Regulations that relate to the field of establishment of educational institutions cannot make the factum of establishment, which includes the facets of aid and recognition, dependent on surrender of their constitutional right of administration, i.e., regulations that allow government/external invasion into the day to day administration of the institution [***In Re Kerala*** @ Vol 5A at p. 76]. Since, recognition is crucial to the utility of the educational institution for the minority community, recognition cannot be made contingent on surrender of minority status or of the essence of the right to administration. [***St. Xaviers (opinion of Ray J.)*** @ para 14, 17, 18, Vol 5A at p. 200; ***St. Xaviers (opinion of Khanna J.)*** @ para 98, Vol 5A at p. 243]

29. 'Final control' in the nature of oversight and review can be retained under a government or statutory body to ensure checks and balances, uniformity of standards, fairness, and to prevent maladministration [I***n Re Kerala*** @ p.71; ***St. Xaviers (opinion of Ray J.)*** @ para 46-47, Vol 5A at p. 208]. If recognition or aid is made contingent on a structure of governance that hollows out the right under Article 30, such a regulation would not pass the dual test of Article 30.

30. Finally, to minutely dissect the number of Muslims, or Christians present in the administration, and to insist that they must be present in a certain percentage, is to *first* project and promote

insularity, which offends the principle of secularism and *second* undermine that education, as a secular activity, is best served by enlisting people with the requisite competence for the task of administering the University.

Part III: No "Surrender" of the "Right to Establish" an MEI

31. The Respondents have argued that this Hon'ble Court in ***Azeez Basha***, recognised the "choice" that minorities had in the pre-Constitution era, to set up an educational institution, including a University, without government intervention. As such, the Learned SG cited examples of IIT Roorkee, Visva-Bharati, St. Stephen's, Jamia Milia Islamia and other such institutions to buttress the point that those interested in establishing a Muslim minority educational institution could have done so independently, without bowing to the imperial government. Under such circumstances, the decision (or "choice") to incorporate AMU through a legislative Act of the Government, amounted to a surrender of any minority status that they may have been entitled to in the post-Constitution era under Article 30. This argument is misconceived and liable to be rejected.

32. The Muslim minority wanted to establish a University which could grant degrees of its own which would be recognised by the Government. A recognised degree, (as has explicitly been acknowledged in ***Basha***) is critical to **empowerment** and access to opportunities predicated on a University education. The regulatory framework which existed at the time was that in order to be recognised, an Act of the Legislature was necessary. Subscribing to a regulatory framework that would offer better opportunities to students who enrolled with the institution, is a choice that has no relation to a surrender of minority status. The history elaborated upon in the previous section provides direct evidence of the deep involvement, engagement, and vision of the Muslim minority to establish AMU *through* a legislative act of the Governor General in Council.

33. As such, it is well settled by Constitution Benches comprising 9 ***St. Xaviers (opinion of Mathew J. and Chandrachud J.)*** **@ para 162**, Vol 5A at p. 263 and 11 judges [***TMA Pai (opinion of Kirpal J.)*** @ para 141, Vol 5A at p. 650; (***opinion of Ruma Pal J.***) para 375, Vol

5A at p. 733]; and 7 judges in ***In Re Kerala*** @ Vol 5A **at p. 66** that adherence to a regulatory regime, whether pre or post-constitutional, cannot amount to surrender of rights or of minority status under Article 30.

34. Pertinently, this Court in ***St. Stephen's*** commented upon this issue in the context of St. Stephen's College's affiliation with the University of Delhi in 1922 and the argument that this resulted in a loss of minority status. Rejecting this argument, the Court held **(Page 417, Vol. 5A)**

> *"It was contended that St. Stephen's College after being affiliated to the Delhi University has lost its minority character. The argument was based on some of the provisions in the Delhi University Act and the Ordinances made thereunder. It was said that the students are admitted to the University and not the College as such. But we find no substance in the contention. In the first place, it may be stated that the State or any instrumentality of the State cannot deprive the character of the institution, founded by a minority community by compulsory affiliation since Article 30(1) is a special right to minorities to establish educational institutions of their choice. The minority institution has a distinct identity and the right to administer with continuance of such identity cannot be denied by coercive action."*

35. Further, that an Act of the competent legislature is required in order for degrees to have government recognition is a requirement that has continued into independent India. Under the UGC Act of 1956, *all* Universities must be incorporated by an Act of Parliament or the State Legislature as the case may be. This regulatory framework made by the Parliament, an ordinary piece of legislation, can under no circumstances revoke or extinguish the efforts of a minority community who have first envisioned the University. The framework has been designed to ensure a certain standard and uniformity in tertiary education, and will not be equated with the surrender of minority status of any institution that has been established after the Constitution has come into force in light of Article 30. Aligarh Muslim University cannot be penalised now, for conforming to the same regulatory framework, albeit under another government. That the government in question is an imperial government that colonised the country is of *no relevance* to the constitutional question at hand.

36. In fact, the argument of the Respondents falls hopelessly foul of Article 14. This Court in ***In Re Kerala Education Bill*** has squarely held that Article 30(1) applies to both pre-Constitution and post-Constitutional MEIs. The Court held **(Page 60, Vol. 5A)**:

"We do not think that the protection and privilege of Article 30(1) extends only to the educational institutions established after the date of our Constitution came into operation or which may hereafter be established. On this hypothesis the educational institutions established by one or more members of any of these communities prior to the commencement of the Constitution would not be entitled to the benefits of Article 30(1)... ***There is no reason why the benefit of Article 30(1) should be limited only to educational institutions established after the commencement of the Constitution. The language employed in Article 30(1) is wide enough to cover both pre-Constitution and post-Constitution institutions."***

37. As such, the judgments recognise parity between institutions established before and after the Constitution coming into force. Consequently, the tests to determine "establishment" of such institutions cannot espouse different standards. Therefore, to penalise AMU for conforming to a regulatory framework that continues into independent India is blatantly discriminatory. In other words, incorporation by a Statute cannot imply loss of minority character for both pre and post-constitutional institutions.

38. The Ld. SG also argued that there was no concept of the fundamental rights of minorities pre-Constitution, and also that the MAO/MUF Societies surrendered the right of the Muslim community over the educational institutions that were founded by these societies which surrender is binding upon the entire community even after the coming into force of the Indian Constitution. Reliance was placed on the judgement in ***Dargah Committee v. Syed Hussain Ali (1959) SCR 995,*** to support this point. However, that case related to surrender of properties that were held by a religious denomination. Unlike the right to property which did exist in the pre-Constitutional era and could be surrendered, the right to establish and administer educational institutions did not exist. If the right did not exist in 1920, there is no question of surrender of the right at that time. In ***In Re Kerala*** @ Vol 5A at p. 66, 7 distinguished judges of this Hon'ble Court held that:

"Nor do we think that there is any substance in the argument advanced by learned counsel for Kerala that this Bill has not introduced anything new and the Anglo-Indian schools are not being subjected to anything beyond what they have been submitting to under the Education Acts and Codes of Travancore or Cochin or Madras. ***In 1945 or 1947 when those Acts and codes came into operation there were no fundamental rights and there can be no loss of fundamental right merely on the ground of non-exercise of it. There is no case of estoppel here, assuming that there can be an estoppel against the Constitution****. There can be no question, therefore, that the Anglo-Indian educational institutions.. are*

being subjected to onerous conditions and the provisions of the said Bill … violate their rights under Art. 30 (1) in that they are prevented from effectively exercising those rights."

39. Even if such surrender was legally permissible, the events leading up to the enactment of the 1920 Act do not evidence any such surrender of AMU's identity as a minority institution.

a. First, there was substantial external supervision over the MAO College as it stood prior to the incorporation of AMU. MAO College was established in 1877 and detailed Rules of MAO College were framed by its founders under the title Laws of Mohammadan Anglo Oriental College which was called a Code. The college was registered under the provisions of Act XXI of 1860 (The Act for the registration of Literary, Scientific and Charitable Society). A comparison of the governance structure of MAO College and AMU is at **Chart A**.

b. Secondly, the Ld. SG's own argument is that this compliance was under a "take it or leave" mode and was thus not freely exercised; it involved adherence to governance structures that were insisted upon by the British Government that allowed for external oversight over the University's functioning. Such forced compliance can never amount to surrender or waiver in law.

c. In fact, the historical materials bear out a different story. These show that negotiations were engaged in on both sides from 1911 up to 1920 when the AMU Act was finally enacted. Several concessions were also made on the government side. For example, an all Muslim supreme governing body and religious instruction of Islam was conceded by the government.

d. The Respondents attempted to argue that because certain other institutions eschewed legal recognition of their diplomas and degrees, AMU must be treated differently, and must "pay the price" for accepting legal regulation and for actions amounting to loyalty to the British government. Reliance was placed on the examples of IIT Rourkee, Osmania University, Jamia Millia Islamia, Bihar Vidyapeeth, Kashi Vidyapeeth and Gujarat Vidyapeeth who did not comply with government regulations and were not recognised. These counterfactuals argued by the Ld. SG has no relevance to the case at hand. First, that certain groups, as part of a larger civil disobedience movement, decided

to eschew compliance with the regulatory regime and did not seek government aid or legal recognition does not result in a finding, as a matter of law, that AMU's compliance with the regime of the Government of India amounts to legal surrender of its rights. Secondly, it is not correct that all these institutions did not have any recognition. For example, IIT Rourkee:

A. **IIT Rourkee** was established in 1847 by Sir James Thomason, an administrator for the East India Company who was the Lt. Governor of the North-western Province for the purposes of training primarily British engineers to work on the Ganges Canal, which was the primary mode by which the East India Company transported goods and raw materials. On 25 November 1847, a notification was issued by the government of the North Western Province establishing the college and the first prospectus was issued. Col. R Maclagan of the East India Company was the first principal of the College. On the death of Sir Thomason, the College was renamed as the Thomason College of Civil Engineering. In 1864, the college was nominally affiliated to the University of Calcutta. In 1935, the first bath of Indian commissioned officers from the Indian Military Academy joined the college. The decision to convert the college into a university was based on a recommendation made way back in 1939, by the Jwala Prasad committee on reorganising Thomason College. The committee headed by him had recommended that the college should be raised to the status of a university to kickstart various courses in sciences and engineering at undergraduate, post graduate and research levels. Before any action could be taken, World War II began and the plans for expansion got sidetracked by the uncertainty of war. The Jwala Prasad committee's recommendation to reorganise Thomason College was taken up soon after Independence. In February, 1948, the Rourkee University Act was passed by the provincial legislature making the Thomason College into University of Rourkee. [Pages 56 and 57, 61 of "175 Years of IIT Rourkee" Book:

https://acrobat.adobe.com/link/review?uri=urn%3Aaaid%3Ascds%3AUS%3Abfa7ae4d-1ec0-33a3-87c5-5bda4aba0f18 relying on K V Mital, History of Roorkee University, 1949-96 [University of Roorkee, 1997]

B. **Osmania University** was set up under the farman of the Nizam of Hyderabad which was a princely state and not a provincial territory of the British Raj. Thus, it was the Nizam who was the sovereign ruler and hence official authority for granting recognition in that territory.

e. Thirdly, none of these institutions were premier institutions of liberal higher education on par with AMU. For example, Jamia Milia Islamia, which was born out of the merging of two political movements - the Khilafat Movement and the Non-Cooperation Movement, had political goals in addition to education. It participated in the Bardoli resolution of the Congress Working Committee of the Indian National Congress in 1922 which, *inter ali*a, declared refusal to pay taxes and had many of its teachers and students imprisoned. However, its degree was not recognised, and even after Independence, Jamia needed several changes to its working before the university commission of the Government of India granted it deemed to be a university status which was only in 1962.

f. The founders of AMU, in seeking to expand the MAO College into a premier institution for higher education were **working towards the empowerment** and upliftment of their community. If there was any loyalty on their part, it was to their community and its empowerment. It is my right to seek empowerment through higher education. It cannot be disregarded that it is only through higher education that Indians could participate in nation building through enrolling in the ICS. All the stalwarts of the Indian freedom movement were educated at premier universities in Britain, and many served in the ICS. Negotiating and seeking recognition for higher education under the existing regulatory framework, for the purpose of self empowerment and advancement of members of a community, is in no way antithetical to the goals of self determination and participation in national life.

g. The Respondent's argument is also self-contradictory in that they also argue that seeking affiliation to British operated and British established Universities, such as, the Allahabad University (to which MAO College was affiliated), and compliance with their regulatory requirements did not result in surrender of right or betrayal of the Freedom Movement, but that award of one's own degree through the AMU Act amounts to legal surrender of rights. There is no distinction, in the legal sense, between different forms of compliance with standards and regulations. One cannot preserve rights and minority status, while the other obliterates the same, unless such express intention is borne out in the regulations themselves.

h. Thirdly, the intent of the founders of AMU who were engaged in negotiations with the British Government is consistent - to set up a university for the advancement of secular education especially among Indian Muslims. This is consistent across the speeches and correspondence. This contradicts any argument of voluntary surrender or waiver of rights.

i. Fourthly, the MAO/MUF Societies were dissolved under Section 4 of the AMU Act, 1920 while at the same time vesting all *"rights, power and privileges"* of these Societies in the University incorporated under the Act. Thus, there was no surrender of any rights in the sense of exhaustion of these rights, but rather, these rights were to continue to be exercised by the constituents of the MAO/MUF Societies in their new legal avatar. [Section 4]

j. Finally, even if it could be argued that enactment of the 1920 Act resulted in a surrender of identity by the MAO/ MUF Societies which was the "price" to be paid for recognition under a pre-constitutional colonial regime, our democratic Constitution cannot be a vehicle for enforcement of unjust bargains driven by the British Crown and its colonial policies. The Hon'ble Court in ***Azeez Basha*** was called upon to interpret the contours of Article 30 as a core part of a foundational promise of equality under the Indian Constitution, and not to enforce formalistic diktats of a colonial regime that has long gone. Provisions of Part III that relate to the larger principles of equality and minority

rights, must be interpreted and enforced in a manner that enlarges substantive equality. It cannot be interpreted in a formalistic and static manner, but must be read dynamically and purposively so as to give full effect to the content of the right.

Part IV: Declaration of AMU as an Institution of National Importance under Entry 63 does not Extinguish its Character as a Minority Educational Institution.

40. **The Respondents argue that as Entry 63, List I *declares* AMU to be an institution of national importance and hence, it cannot be a MEI. The Ld. SG's argument was:**

> *"It is clear that a University which was and is clearly an institution of national importance, has to be a non-minority institution. It is submitted that owing to the obviously secular ethos and nature of the nation and the Constitution, considering the fact that AMU is an institution of "national character" it cannot be considered to be a minority institution irrespective of the question whether it was established and administered by the minority at the time of inception or not."*

41. The Respondents have also argued that the size and stature of AMU necessarily implies that it cannot be a minority educational institution.

42. It is submitted that two consequences necessarily follow from this argument:

    a) An institution of national importance cannot be an MEI and vice versa.
    b) If a pre-existing MEI is designated as an institution of national importance, it cannot remain an MEI and must reflect "national character".

It is submitted that this argument and the consequences that follow from it ought not to be accepted by this Hon'ble Court for the following reasons.

43. First, educational institutions can *simultaneously* be of national importance and of minority character. There is no definition of words "national importance" in either the Constituent Assembly Debates or the Constitution. The Respondents cannot read into Entry 63, a requirement for an institution of national importance to reflect a "national character", which according to the Respondents, means representative of all communities of the country. Further,

the argument that an MEI cannot be an institution of national importance is premised on the **false assumption that MEIs are insular institutions that have nothing to do with either secular education, or communities other than the one that established it.**

44. Second, the State cannot expropriate a minority educational institution and extinguish such character by recognising it as an institute of national importance. If the State did in fact want to **recognise a pre-existing MEI as an institute of national importance, which in the case of AMU, it did so by virtue of Entry 63, it cannot result in the expropriation of the minority educational institution and extinguish such character. Allowing such an act of expropriation would erode the very essence of Article 30 of the Constitution.** Therefore, by suggesting that an institution of national importance cannot *by definition* be an MEI, the Respondents set up a false conflict between Article 30 and Entry 63, List I which cannot be accepted.

45. It should be noted that Entry 63 was merely a continuation of Entry 13, List I in Section 100 of the Government of India Act, 1935 which also vested legislation with respect to Banaras Hindu University and AMU with the Federal Legislature. The **subject of the Constituent Assembly Debates** dated 30th August 1949, **(@Page 112-119, Vol IV B)** over which the Ld. SG has placed reliance, was not whether Aligarh Muslim University was a minority educational institution or not under the terms of Article 30, **but the apprehension of excessively wide powers being given to the Parliament to declare any institution as one of national importance. The statements made by Mr. Naziruddin Ahmad and Shri H.V. Kamath makes no reference to the applicability of Article 30 or otherwise, and hence cannot be taken as proof of the Assembly's intention to deprive AMU of its minority status.** In fact, B. R. Ambedkar, in reference to the Parliament's powers stated that,

> "it is desirable to retain those words, because there might be institutions which are of such importance from a cultural or from a national point of view and whose financial position may not be as sound as the position of any other institution and may require help and assistance of the Centre." **(@Page 118, Vol. IV B)**

Thus, it will be seen that the idea of "national importance" was not thought of by B.R. Ambedkar as one which would be restricted to a national character but would also cover institutions that have cultural significance such as AMU.

46. With respect to the defence of the 1951 and 1965 Amendments by the SG, it is pertinent to note that **Entry 63 of List I is a *legislative field* over which the Parliament under Article 246(1) has the power to make law. Such a law will undoubtedly be an *ordinary law* that is to be subject to the provisions of Part III of the Constitution and in particular Article 30.** Therefore, amendments of 1951, 1965, 1981 *and* any future amendments made to the Aligarh Muslim University Act, 1920 will have to conform to the provisions of Article 30.

47. The Ld. Solicitor General also sets up a false equivalency between Banaras Hindu University, other educational institutions of national importance and AMU. As such, the Ld. Solicitor General argues that AMU ought to reflect the "national" character of the country. Therefore, it is argued that AMU cannot be an institution solely for the benefit of the Muslim minority, or predominantly admit only Muslim students. In support, the Solicitor General cites *non-minority* institutes of national importance **(Annexure A @Page 115, Vol II B)** for the proposition that their corpus of students reflects the "national" character of the country. By national character it is argued that the body of students must be from "all walks of life" - a euphemism for "all religions". In other words, the SG objects to the fact that a majority of students in AMU are Muslims, and being an institution of national importance under Entry 63 of List I, ought to be more "diverse" as well as allow for reservation under Article 15(5) which will admit students from other communities as well. This, in the opinion of the Ld. Solicitor General will further the cause of social justice. Learned Solicitor General pressed into service the establishment of Banaras Hindu University, (also an institution under Entry 63) and the Constituent Assembly Debates on Entry 63 in order to strengthen the argument. **(@Page 9-12, Vol. II B)**

48. It is respectfully submitted that this argument must be rejected. **Banaras Hindu University and other institutions of national importance which are not established by a minority, do not attract the protection of Article 30.** AMU on the other hand is unequivocally

established by a minority and hence the subject of Article 30. Therefore, the former's student body composition, or reservation policies cannot be extended to AMU.

49. **The Respondents also rely on Article 15(5)** of the Constitution which relates to special provisions to be made for SC/ST/SEBCs in educational institutions to argue that the exemption granted to MEIs is in the nature of an *exception to equality.* Hence, they argued that the test for determination of an MEI must be extremely strict so as to not defeat a policy of social justice.

50. **It is respectfully submitted that there is no danger to the provisions of Article 15(5) or in general to social justice because of an exception which exempts MEIs from its operation. Article 30 is itself, a recognition of rights of communities that *also* require special protection.** In this sense, the exemption of MEIs in Article 15(5) is *not* an exception to equality but simply a different facet of it, which seeks to balance the needs of different sections of society whether on the basis of religion, or caste and class.

51. Further, institutions of excellence may also be granted statutory exemption from certain forms of reservation in addition to minority educational institutions. Section 4 of the THE CENTRAL EDUCATIONAL INSTITUTIONS (RESERVATION IN ADMISSION) ACT, 2006 states that the Act will not to apply *inter alia*, to institutions of excellence, research institutions, institutions of national and strategic importance specified in the Schedule to the Act in addition to not applying to Minority Educational Institutions. Thus, the constitutional and regulatory scheme envisages different mechanisms in different institutions to ensure equality across the board and recognises that different institutions cater to different needs of society and of the country. Article 30, as an integral part of this scheme, must be given its full effect.

52. Finally, the Respondent's contention of institutions of national importance being required to reflect the "national character" fails on the ground that *several* such institutions do not adequately admit students belonging to the Muslim minority. As such, these institutions themselves are lacking as far as creating student bodies that represent the country. The Sachar

Committee Report, 2006 in the Chapter of Differentials in Educational Attainment: Higher Education makes the following observations on the admission of Muslims:

a. **IIMs:** About one out three Muslim applicants is selected, which compares favourably with, in fact is somewhat better, than the success rate of other candidates. Despite a better success rate Muslims constitute only 1.3% of students studying in all courses in all IIMs in India, and in absolute numbers they were only 63 out of 4743. **(@Page 68 of the Report)**
b. **IITs:** In the case of the IITs, out of 27,161 students enrolled in the different programmes, there are only 894 Muslims. The share of Muslims in the post-graduate courses is just about 4% but it is even lower in undergraduate courses at 1.7%. **(@Page 69 of the Report)**
c. **Premier Colleges:** Only one out of twenty five students enrolled in Undergraduate courses and only one out of every fifty students in Postgraduate courses is a Muslim. **(@Page 69 of the Report)**
d. **University Enrolment:** the status of Muslims in PG courses is equally disappointing. Only about one out of twenty students is a Muslim. This is significantly below the share of OBCs (24%) and SC/STs (13%). **(@Page 71 of the Report)**

Part V: Legislative Debates do not Render AMU a Non-Minority Institution

53. **The Respondents placed reliance on legislative debates to argue that AMU is not a minority educational institution.** First, minority status is a legal fact that emerges from the fact that an educational institution is established by a minority. Therefore, in so far as the fact of establishment is concerned, legislative debates, at best, demonstrate legislative intent in recognising this historical fact. The aspect of administration, as already explained, is a right that flows from minority status, and changes to the scope of administrative autonomy do not negate the minority identity. With that caveat in mind, several important speeches made in 1951, 1965, and in 1981 reveal the recognition of the historical fact that AMU was founded by the Muslim minority.

54. In the 1965 debates, while moving the bill, Shri MC Chagla asserts that though the administrative structure was being changed, "the character of the UNiversity has in no way been touched," that it was not a "substantive legislation" and that the purpose of the amendments was as a temporary measure to address the incident of attempt to murder that occurred in the University (@ Vol 3J at p. 273, 274, 275). He also stated that "Aligarh Muslim University is an institution in which the greatest emphasis should be placed upon Muslim culture" (@ p. 276) and he calls it a "Muslim University" (@p. 277)

55. In response to M. C. Chagla's assertion that AMU is not minority, Mr. Frank Antony made an impassioned speech explaining the correct constitutional position under Article 31 (@ Vol 3J at p. 427). He spoke of AMU's history (@p. 431) and analysed the provisions of the Act of 1920. He finally urged that while regulatory powers can be exercised, the rights of the Muslim minority could not be effaced by law (@p. 433).

56. Shri M C Chagla responded to this speech (@ p. 549) by arguing that the establishment of the University was by the legislature and not the minority, which was the argument he would eventually make in defence of this amendment in ***Basha.*** On analysing the Act, he stated that the day to day administration was in the hands of the Executive Counil which was not exclusively Muslim, but Shri Chagla failed to observe that 21 members of the Executive Council were members of the Court and 2 were appointed by them. (@p. 550).

57. On 6 September Shri Frank Antony moved an amendment to the Bill to retain the description of the Court as the supreme governing body (@p. 674). In response to Shr Chagla's assertion that AMU's character would be preserved, he argued that "what character does the university have except its Muslim character?" (@p. 675) He argued that establish means who founded the University and not in the formalist sense of whether it was passed by legislation or not. (@p. 677). Finally, he quotes the assurance of the Prime Minister that the members nominated under the new 1965 scheme would be predominantly Muslim. (@p. 679). His final speech also reiterated these arguments that the test for Article 30 is who founded the institution (@p. 694).

58. Other important speeches describing Aligarh as minority include:

a) Shri M R Masani (@Vol 3J at p. 281) - Acknowledging the history of AMU as founded by the Muslim minority and that from the provisions of the Act of 1920 it is "fair to conclude that this is an institution of Muslim culture… predominantly by and for the benefit or purposes of a minority by the minority." (@ p. 282). He makes reference to a Committee of Inquiry Report of 1961 which stated that the 1951 amendments did not change the Muslim character of the institution. He also states that it cannot be equated with BHU since the majority community does not have the benefit of Article 30 (@p. 285).

b) Shri Koya (@ Vol3J at p. 543) - describing AMU as a minority institution.

c) Shri Mohammad Ismail (@ Vol 3J at p. 680 – 682) - describing the history of AMU as a minority institution and that it was "all along understood as a Muslim minority institution." (@ p. 682).

59. In the 1981 Debates, while moving the Bill, the Minister of Education, Smt. Sheila Kaul unequivocally states that the amendment was to acknowledge the historical fact that AMU was founded by the MAO Societies and by the Muslim minority (@Vol 4C at p. 1154). The 1981 amendment was not restricted to amending the Preamble alone, but substantially revoked the 1965 amendments by restoring the status of the Court as the supreme governing body by amending Section 23 of the Act. The purpose is reiterated by the Hon'ble Minister at p. 1227.

60. Shri Ram Jethmalani supported the 1981 amendment and quoted extensively from the recommendations of the Minorities Commission in his speech (@ Vol 4C at p. 1524). He stated that "upto 1965, nobody had doubted the minority character of this institution." (@p. 1525) and states that he has not the slightest doubt that ***Basha*** is incorrect as a matter of law.

61. Shri Valayar Ravi (@p. 1527) also went into the history of AMU and stated that the Minorities Commission had found it to be a minority institution. He quotes the Report and says:

> "Again, I quote from the Report: *"Fund collecting had begun in earnest. In January,1911, a Muslim University Foundation Committee was established followed by a Constitution Committee set up in Feb-ruary to draft the Act, the Statutes and Regulation of the University.'* Then it goes on: *"Thus, as the Chatterjee Report records,"the movement for the establishment of the Muslim Uni-versity continued to gather strength from year to year till on the 10th June, 1911, the Government of India communicated to the Secretary of the State the desire of the Muslim Community and recommended that sanction might be given to the establishment of such a University at*

Aligarh." So, it is very clear from the Report of the Minorities Commission that it is the effort of the Muslim com-munity that formed a Committee to collect funds. They have been given full support by the British Government, they have been given land and everything in the name of the Muslim community and the Muslim University is all along estab-lished. That is why Mr.Servai himself says that merely on technical interpretation of the word 'establish', it cannot take away the historical fact that the Muslim community has done all their best to establish the Univer-sity and the Muslim character of the University exists. And everyone knows—there may be other people who studied there—that this University at Aligarh always flourished as an embodiment of Muslim culture, the culture of the minority community in the country, and has also given leadership to the educational and cultural flourishing of the minority communities of the country."

62. In so far at Shri G.M. Banatwalla's comments are concerned, he argued that the Bill is not sufficient in restoring the extent of autonomy that ought to be available under Article 30, but does not concede that AMU is not a minority institution. He says (@Vol 4C at p. 1503): *"The present Bill claims to ameliorate the situation; but the pro-visions of this Bill do not adequately and substantially satisfy the aspira-tions of the Muslims."*

63. Therefore, it is submitted that this Hon'ble Court must hold that ***Basha*** was wrongly decided; that formal incorporation of an institution through statute or recognition under a regulatory scheme would not be part of the indicia for ascertaining whether an institution is a minority educational institution; that presence of regulatory oversight by government to guard against maladministration would also not be part of the indicia for ascertaining whether an institution is a minority educational institution; and that therefore, that AMU was clearly established by the Muslim community and is a minority education institution for the purposes of Article 30.