



such as schools and colleges are tools and instrumentalities in the pursuit and promotion of such activities. In other words, the competence to establish educational institutions of the above class, towards imparting knowledge on the above-mentioned fields of study was made available under the said legislations.

6. Prior to the Constitution, there was no other legislation that conferred competence on any set of persons to establish a University as such. There was no legislation that conferred competence to establish universities. In the absence of a law conferring/granting competence to establish a defined class of institutions, namely a university, the question of establishing a university did not arise. The Aligarh Muslim University is a product of stand alone legislation enacted by the then existing Provincial Legislature. The antecedent events namely the establishment of Muhammadan Anglo-Oriental College sought to be connected with the coming into being of the Aligarh Muslim University cannot be said to be any part of the competence to establish the university as such. The Muhammadan Anglo-Oriental College was setup by the Muslim community deriving its competence granted under the enabling provisions of the Societies Registration Act. That legal competence to setup educational institutions such as a school or a college cannot be extended to legal competence to set up an University. In other words, the power to establish a given class of educational institutions must be granted under a statute. Prior to the Constitution, there was no power/competence available under any legislation either to establish any University or to convert a school or a college into a University. Consequently, the community of persons who had set up the Muhammadan Anglo-Oriental College did not have the competence to establish any University and the Aligarh Muslim University, was not established by them in the above legal sense and understanding. Establishment of a college is different from establishing a university and the one does not and did not merge into the other. *Azeez Basha* (1968) 1 SCR 833 rightly understands this position and rightly did it hold that since the University was not established by the Muslim minority, it did not have the right to administer it.
7. In order therefore that after the coming into force of the Constitution, a minority community can claim the protection under Article 30, it must first have the legal competence to establish a particular class of institutions. The Societies Registration Act like the law relating to Trusts, continue, to be part of an enabling legal framework, by reason of which schools and colleges can be established. There must therefore exist a similar enabling legislation that either enables or facilitates or grants competence to establish a University. The scheme of the University Grants Commission Act to the extent it regulates all matters relating to universities, including deemed universities is comparable to such an enabling law. In the absence of a competence or authority granted or conferred under a law to establish an University, no person whether belonging to a minority community or otherwise, can establish a University.
8. The words, "*educational institutions of their choice*" cannot be construed by itself conferring an authority to establish any class of institutions regardless of any legal

competence to do so.. The authority to establish a given class of institutions, must first precede and be traceable to and must be located under an enabling statute. The choice aspect of educational institutions will then follow. Within the scope of an enabling legal framework which may confer the authority to establish institutions, the choice aspect will be unfettered and free. This is the essence of Article 30. So neither prior to the Constitution nor under the Constitution a minority community was clothed with the authority to establish a University. In this legal sense no infirmity can be ascribed to Asheesh Basha.

9. The unfettered freedom to establish educational institutions “*of their choice*” does not extend to the grant of exemption from the obligations to abide by other constitutional demands and requirements, for example, the obligation to honour provisions relating to reservations, or matters relating to regulations of appointments of teaching and non teaching staff, etc and including general regulations relating to standards and quality of education. The choice aspect of institutions does not exempt the minority from constitutionally sanctioned regulations or constitutional prescriptions which are themselves as important as the choice. As long as State does not impinge on the choice and which the State cannot, Article 30 is intact.
10. The claim raised that *Azeez Basha* (supra) has wrongly interpreted the words “*establish and administer*”, is misconceived. The question is not only of disjunctive or conjunctive reading. The fundamental question is one of the competence or the authority to set up an university. This being so, there is no warrant or need for reconsidering *Azeez Basha*, as it has no application to any post-constitutional institutions including an university. It therefore follows that for the purpose of Article 30, educational institutions need not necessarily include an University and such educational institutions are subject to relevant regulatory regimes .