

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

**VOLUME I-C**

WRITTEN SUBMISSIONS ON BEHALF OF SR. ADV. KAPIL SIBAL

FOR THE APPELLANT

Table of Contents

*Part A: Historical Context and Genesis of the Institution ..... 4*  
*Part B: Errors in Azeez Basha..... 9*  
*Part C: Indicia ..... 25*

1. This reference arises out of an Order dated 12 February 2019 in Civil Appeal No.2286 of 2006 by which a three-judge bench comprising of Chief Justice

Ranjan Gogoi (as he then was), Justice L. Nageswara Rao and Justice Sanjiv Khanna referred the question of the correctness of the view expressed in *S. Azeez Basha and Anr. v. Union of India* reported in 1968 AIR 662 (hereinafter referred to as “*Azeez Basha*”) for consideration by a bench comprising seven judges along with the following constitutional question that had been framed for consideration by eleven judges in *TMA Pai v. State of Karnataka*, (2002) 8 SCC 481, but was left to be answered by the regular bench: (CCC Vol. 3A @pg 3) order of reference (CCC Vol. 3A @pg 216)

*“3(a) What are the indicia for treating an educational institution as a minority educational institution? Would an institution be regarded as a minority educational institution because it was established by a person (s) belonging to a religious or linguistic minority or its being administered by a person (s) belonging to a religious or linguistic minority?”*

2. The present reference arose in the context of appeals filed against a judgement and order dated 05.01.2006 passed by the Hon’ble Allahabad High Court in Special Appeal No. 1321 of 2005 wherein it was held that the Aligarh Muslim University (AMU) is not and never has been a minority educational institution and thus, Article 30 of the Constitution of India does not apply to them (hereinafter referred to as the “**Impugned Judgement**”). (CCC Vol. 3A @pg 29 at 59)

3. The Impugned Judgement also held that AMU cannot provide reservation to students belonging to Muslim community and consequently quashed Resolution dated 15.01.2005 passed by the Academic Council and Resolution dated 19.02.2005 passed by the Executive Council approving G.O.I Order dated 25.02.2005 which provided for 50% reservation for Muslims.
4. The Impugned Judgement relied upon the judgement of this Hon'ble Court in *Azeez Basha* and held that the statutory amendments to AMU Act passed in 1981 is a usurpation of judicial power and declared amended Sections 2(1), 5(2)(c) and the amended Preamble as unconstitutional (*CCC Vol 4A @pg 48*). Several SLPs including by the present Petitioner came to be filed before this Hon'ble Court against the said judgment.
5. During the course of hearing of the said matters, this Hon'ble Court noted that the issue arising in *Azeez Basha* had been referred to a bench of seven (7) judges in *Anjuman-e-Rahmania v. Distt Inspector of Schools*, but was not decided when that matter was heard along with the batch in *TMA Pai (supra)*. It was for this reason that question 3(a) above along with the question of correctness of the decision in *Azeez Basha* was placed before this bench of seven (7) learned judges by the reference order dated 12 February 2019.
6. In these written submissions, the Appellants strenuously contend that the said holding in *Azeez Basha* re the indicia of a minority educational institution

(hereinafter referred to as “MEI”) and its application to the Aligarh Muslim University is incorrect and ought to be overruled. Therefore, these submissions are structured into three parts. *Part A* discusses the historical context of the genesis of the institution. *Part B* evaluates each finding in *Azeez Basha* and provides reasons for why they cannot be sustained. *Part C* of these submissions then answers the constitutional question for reference, i.e. what are the indicia for treating an educational institution as a minority educational institution?

### **Part A: Historical Context and Genesis of the Institution**

7. The Aligarh Muslim University (AMU) was established as far back as 1870 when Late Sir Syed Ahmad Khan studied the prevailing conditions and found the Muslim community to be neglected and backward due to their neglect of modern education. He conceived the idea of the University and further organised a committee to devise means for the educational regeneration of the Indian Muslims. It was then decided to establish a Muhammedan college for the educational advancement of Muslims in India.
8. On 12.05.1872 a society called “The Muhammedan Anglo-Oriental (M.A.O) College Foundation Committee” started collecting subscriptions to realise the goal that Sir Syed Ahmad Khan had conceived.
9. Not only did the college impart liberal education to Muslims in literature and science but also instructions were to be given in Muslim religion and traditions.

In consequence of the efforts of the committee, a school was opened in May 1873.

In 1876, the school became a high school and in 1877, Lord Lytton, the then Viceroy of India, laid the foundation stone for the establishment of a college.

10. By the turn of the 19th century, the idea of establishing a Muslim University gathered strength and funds were collected towards this goal. By 1911, a Muslim University Association was established for the purpose of establishing AMU as a Muslim University. Thereafter, long negotiations began between the Association and the Government of India.

11. A large sum of money was collected by the Association for the University as the Government of India had made it a condition that Rs 30 lakhs must be collected for the University before it could be established. This detailed history is recounted in the list of dates appended to the present submissions as Annexure A.

12. As a culmination of this process, the Aligarh Muslim University Act, 1920 was enacted. The Act itself sets out the genesis of the foundation of this University by the Muslim Community.

13. The scheme of the Act is as follows:

The long title states that this is: *“An act to establish and incorporate a teaching and residential **Muslim** University at Aligarh”*.

## 6

The Preamble of the Act states: Whereas it is expedient to establish and incorporate a teaching & residential **Muslim University** at Aligarh (emphasis added).

Section 4 states that all rights, powers and privileges of the Societies of MAO College should transferred and vested in the University.

Section 5 of the Act elaborates the Powers of the University which are, in effect, the powers to enable the administration of the Institution.

5(2) – to promote Oriental and **Islamic Studies** and give instruction in **Muslim Theology and Religion** and to impart moral & physical training.

5(12) – to do all such other acts and things whether incidental to the powers aforesaid or not as may be requisite in order to further the objects of the university as a teaching and examining body to cultivate and promote art, science and other branches of learning including professional studies, technology, **Islamic learning and Muslim Theology** and to promote the interest of its students (emphasis added).

Section 7: A sum of rupees 30 lakhs **which were collected by the Muslims Community** were used to create a reserve fund for the recurring expenditure of the University. (emphasis added)

Section 8: Special provision for the observance of the Purdah by **exempting women from attending lectures and tutorial classes.**

Section 9: **Compulsory instructions in Muslim religion for the Muslim students.**

Section 12: Establishment and maintenance of Intermediate Colleges and Schools for the purpose of preparing students for admission to the University with provision for instructions in **Muslim Religion & Theology** in such colleges and schools (emphasis added).

Section 17: Chancellor shall be elected by the Court and will be the head of the University.

Section 18: Pro-chancellor shall be elected by the Court.

Section 19: The Vice-Chancellor shall be elected by the Court **from amongst its members.**

Section 20: The Pro-Vice Chancellor shall be appointed by the Court.

Section 23: Powers and Composition of the University Court

- i. **No person other than a Muslim shall be a member of the Court.**
- ii. The Court shall be the **supreme governing body** of the university and shall exercise all the powers of the university not otherwise provided for by this Act, Statute, Ordinances and the Regulations. **It**

**shall have power to review acts of the Academic Council & Executive Council.**

Section 27 (j): The instruction of the Muslim students in **Muslim religion and Theology** Statutes may be provided for the instructions of the students in Muslim Religion and Muslim Theology.

Section 28(c) No Statute dealing with the instruction of **Muslim students in Muslim Religion Theology** shall require the approval of Visiting Board and Governor General in Council.

Statute 8: Composition of the Court – **List of 124 foundation members given as annexure appended to the Act, contained the names only of eminent members of the Muslim Community.**

Statute 20: **All faculty appointments by the Executive Council would be under the general control of the Court.**

Statute 21 : Registered Graduates have to be either of AMU or if of other universities must have been students of MAO college for at least two years.

14. It is abundantly clear from the above provisions that the character of the University was in its name itself: The preamble and the long title of the 1920 Act specify its purpose as a “Muslim University” at Aligarh. The money for the conversion of MAO College into a University was raised primarily by the Muslim



community. Compulsory instruction in Muslim religion for Muslim students was provided, and the University Court was conceived as a “supreme governing body” that would be composed only of Muslims. The Court elected the Chancellor, and elected the Vice-Chancellor from amongst its members.

15. Section 28(c) was a crucial provision which provided that no statute dealing with the instruction of Muslim students in Muslim religion shall require the approval of the Visiting Board and Governor General in Council. This provision is another clear indication of the Minority Character of Aligarh Muslim University.

### **Part B: Errors in Azeez Basha**

16. It is respectfully submitted that the findings in *Azeez Basha* cannot be sustained for the following reasons:

16.1. The history and genesis of the Aligarh Muslim University shows that the University owes its inception and existence to the Muslim community. It is hence “established” by a minority community. The test of “establishment” cannot possibly be a formalistic test of whether or not a University is given state recognition or incorporated through an enactment of the Central or State Legislature, particular in light of the fact that now under the UGC (Establishment of and Maintenance of Standards in Private Universities) Regulations, 2003, *all* private universities must be established under a separate State Act.

- 16.2. It cannot be argued that an MEI surrenders its minority status in exchange for state recognition of the degrees awarded by it. If that were to be the case, Article 30 would become a dead letter. State recognition of the degrees awarded by a University is sine qua non for its existence, and if State recognition of degrees issued by a University established as an MEI comes at the price of its minority status, there is effectively no right in the minority communities under Article 30 to establish Universities of their choice.
- 16.3. It has been held by an 11 Judge Bench of this Hon'ble Court in *T.M.A. Pai v. State of Karnataka* (2002) 8 SCC 481 @ para 136, that the right to administer a University *does not include* within it the right to *mal-administer*. As such, argument in *Azeez Basha* that the existence of supervisory control or regulation by the State over an MEI is indicative of a community having relinquished its right to administer the University runs contrary to *TMA Pai*.
- 16.4. Similarly, the intake of students who belong to communities *other* than the minority that has established the MEI, or the absence of compulsory religious instruction, does not result in a loss of minority status under Article 30 as those are constitutional requirements under Articles 14, 15 and 28 of the Constitution.

**The main reasons given in *Azeez Basha* for denial of minority status to Aligarh Muslim University are enumerated and analysed in detail below:**

**I. Finding in *Azeez Basha*: Because Aligarh Muslim University came into existence through an Act of the Central Legislature, it was ‘established’ by the legislature and cannot be said to have been ‘established’ by the minority community.**

17. Despite acknowledging that the historical genesis of AMU lay in initiatives taken by the Muslim community, this Court in *Azeez Basha* held that prior to the Constitution coming into force, the Muslim minority *could have* established a University without state recognition, but chose instead to incorporate a University by legislation in order to have their degrees recognised by the Government. As such, the moment it was incorporated by an Act of the Legislature, it surrendered its minority status and could no longer be categorised as an MEI. This argument, if accepted, would reduce Article 30 to a dead letter for the following reasons:

17.1. First, prior to the Constitution coming into force, while private individuals were empowered to establish a University, the degrees of such University were not bound to be recognised by the Government. Essentially, a private individual could establish a University, but the degrees they awarded would be meaningless and technically add no qualifications to a student because the degree is not recognised by the Government. Under such circumstances, a minority community seeking to establish a University has *no choice* but to

seek the help of the Government in *formally* establishing the University. Therefore, to aver that an MEI in the nature of a University that is initiated and promoted by a minority community would lose its minority status in law because it was *required* of them to obtain Governmental recognition through a legislation to have their degrees recognised is to render Article 30 a dead letter, for no educational institution could be even marginally viable without recognition. It is apposite to note that *Azeez Basha* recognises that an absence of state recognition would not have attracted many students (thus acknowledging the lack of viability of the institution itself).

17.2. Post the Constitution of India coming into force, the establishment of Universities is now governed by UGC Act, 1956 and the UGC (Establishment of and Maintenance of Standards in Private Universities) Regulations, 2003 (quoted below) issued thereunder, by which all private universities have to now be established under a separate State Act. Regulation 3 of this reads as follows:

*“UGC (Establishment of and Maintenance of Standards in Private Universities) Regulations, 2003*

*3. Establishment and recognition of Private Universities*

*3.1. Each private university shall be established by a separate State Act and shall conform to the relevant provisions of the UGC Act, 1956, as amended from time to time.”*

- 17.3. It is clear from the reading of this regulation that *all* private Universities “**shall be established**” *by a separate State Act*. This is a mandatory requirement. Such a mandatory and technical requirement of the law cannot erode the fundamental rights of minorities under Article 30.
- 17.4. At this juncture, it is pertinent to note the meaning of the word “Establish” as under Article 30 of the Constitution. “Establish” in the sense of Article 30 is a reference to the genesis, i.e., the historical initiative, impetus, promotion, and purpose behind the institution, and not a reference to the legal routes the University must follow to receive State recognition. If the genesis of the University can show that the initiative, impetus and promotion is owed to a particular minority community, then such University must be said to be “established” by such community under Article 30. In this sense, the word ‘establish’ is akin to the word ‘found’ - an equivalency which was accepted by a Constitution Bench of this Hon’ble Court sitting as a bench of 6 judges in *State of Kerala v. Very Rev Mother Provincial*, 1971 (1) SCR 734 @ para 8 [CCC Vol5A @p.166]. Fulfilling a mandatory requirement of the law to

bring the educational endeavour to fruition, does not make the University any less established by the minority community.

17.5. Further, Section 10 of the National Commission for Minority Educational Institutions Act, 2004 (quoted below), insofar as it makes a reference to Universities established 'by' a law, would be rendered otiose if the interpretation in *Azeez Basha* is upheld. Section 10 of the Act reads as follows:

*“National Commission for Minority Educational Institutions Act, 2004*

*Section 10 - (1) Subject to the provisions contained in any other law for the time being in force, any person, who desires to establish a Minority Educational Institution may apply to the competent authority for the grant of no objection certificate for the said purpose.*

...

*(4) The applicant shall, on the grant of a no objection certificate or where the Competent authority has deemed to have granted the no objection certificate, be entitled to commence and proceed with the establishment of a Minority Educational Institution in*

*accordance with the rules and regulations, as the case may be, laid down **by or under** any law for the time being in force.*

17.6. Section 10 makes the following apparent: (i) that the establishment of an MEI may *originate* from a person or a community; (ii) such person must obtain an NOC from the competent authority and (iii) in order to *proceed with establishment*, the applicable rules and regulations as laid down by or under law must be followed. This necessarily could *only* mean that the origin of a University as an MEI commences as the desire of a person from a minority community to establish one for the purpose of the minority community, following which all the regulations as laid down by the law must be followed for such desire to come to fruition. Section 10 therefore recognises the presence of other laws that may lay down requirements that a prospective University must follow. The words “by or under any law” signify the interplay between the general UGC regulations applicable to all Universities and Section 10 of the NCMEI Act, 2004. Therefore, the finding in *Azeez Basha* is *ex facie* erroneous.

17.7. Several Universities have been granted minority status by the National Commission for Minority Educational Institutions that have been enacted by Acts of State Legislature. All of these would lose their minority status if the reasoning in *Azeez Basha* is accepted.

**II. Finding in *Azeez Basha*: MAO Societies surrendered their minority status in return for recognition of their degrees granted by the 1920 Act**

18. It is respectfully submitted that this finding is incorrect for the following reason.

Each University, for its degrees to be recognised, follows one of the following routes:

- A. An existing institution is recognised and incorporated as a University by means of a statute
- B. A new institution is incorporated and granted the status of a University by a statute
- C. An existing institution is granted 'deemed to be University' status under Section 3 of the UGC Act.

19. If by obtaining recognition for its degrees from the State an institution loses minority status, then institutions established and recognised under all 3 routes would lose their minority status and the right under Article 30 would become a dead letter.

20. In *TMA Pai (supra)* @para 138 [CCC Vol5A @p.650], it was held that minority and non-minority institutions have to both comply with the laws of the land, and that minority institutions must be allowed to do what non-minority institutions are permitted to do. Thus, any interpretation of the law that prevents a minority institution from being able to structure an educational institution in a corporeal



form that allows for its degrees to be recognised by the state would be against the ratio in *TMA Pai (supra)*. This Hon'ble Court in *In re the Kerala Education Bill (supra)* [CCC Vol5A @p.60], has also held that Article 30 applies to educational institutions that were founded prior to Independence.

21. In so far as the rights of the minority community as enjoyed by the MAO Societies are concerned, Section 4 of the AMU Act, 1920 states that “*all property, movable and immovable, and all rights, powers and privileges of the said Societies and all property, movable and immovable, and all rights, powers and privileges of the Muslim University Foundation Committee shall be transferred to and vest in the University.*” Thus, the substance of the rights enjoyed by the MAO Societies and the substance of its character as an MEI were not extinguished by the passing of a legislation. Rather, all rights, powers, privileges and liabilities were inherited by the new legal entity incorporated through the AMU Act, 1920, which was a continuation of the MEI founded by the MAO Societies.

**III. Finding in *Azeez Basha*: Supervisory control of the University is with the State and the Visitor, who has overriding powers of supervision, is the President of India**

22. This Hon'ble Court in *T.M.A. Pai (supra)* @ para 136 cited with approval the judgment rendered in *In Re Kerala Education Bill (supra)* where it was held [CCC Vol5A @p.649]:

*“136. Decisions of this Court have held that the right to administer does not include the right to maladminister. It has also been held that the right to administer is not absolute, but must be subject to reasonable regulations for the benefit of the institutions as the vehicle of education, consistent with national interest. General laws of the land applicable to all persons have been held to be applicable to the minority institutions also - for example, laws relating to taxation, sanitation, social welfare, economic regulation, public d order and morality.*

*137. It follows from the aforesaid decisions that even though the words of Article 30(1) are unqualified, this Court has held that at least certain other laws of the land pertaining to health, morality and standards of education apply. The right under Article 30(1) has, therefore, not been held to be absolute or above other provisions of the law, and we reiterate the same. By the same analogy, there is no reason why regulations or conditions concerning, generally, the welfare of students and teachers should not be made applicable in order to provide a proper academic atmosphere, as such provisions do not in any way*

*interfere with the right of administration or management under Article 30(1).”*

23. As such, this Hon'ble Court in *Azeez Basha* has misconstrued the supervisory role of the Lord Rector and Visiting Board in the amendment of Statutes and Ordinances. In this context it is important to understand the following:

23.1. The original Statutes which were appended with the Act in 1920 and were passed by the Governor-General in Council were a result of long negotiations between the Government of India (as it then was) and the Muslim community. Such negotiations resulted in preserving the unique character of the MAO College in the soon to be incorporated University, i.e. its minority Muslim character. The Lord Rector was given supervisory powers to ensure that no authority of the University does anything which was contrary to the Act and Statutes or which in any way changes the original character of the institution which was converted into a University through an Act.

23.2. Further, the Statutes and Ordinances set out the structure for governance in the University: for instance the Statutes gave a very crucial role to the Court in the administration of the University i.e. Constitution of Executive Council where majority of the members (that is 22 out of 30) were elected by the Court itself, appointments, election of the Vice-Chancellor and Treasurer and appointment of the Registrar etc. Any change in Statutes without the approval

of Lord Rector would have given sweeping powers to the University bodies which may in future have led to vital changes impinging on the character of the University. Even the bodies of the University cannot be given the power to bring radical changes that eviscerate its foundational character as a Muslim university.

23.3. As any arbitrary changes in the composition of such bodies and mode of appointment of higher university officials through perverse amendments in Statutes and Ordinances might impinge upon the original character of the institution, the AMU Act rightly decided to safeguard against such eventualities by providing for a Lord Rector and the Visiting Board.

24. Thus, the Appellant respectfully submits that any act by any official of the University or by any authority of the University which is contrary to Act, Statutes, and Ordinances is clearly covered by the expression “mal-administration” and such a right is not part and parcel of Article 30(1). The decisions of this Hon’ble Court on this issue are clear that right to administer does not include right to mal-administer.

25. In *St. Stephens v. University of Delhi*, (1992) 1 SCC 558 @ para 88 [CCC Vol5A@p.435], a Constitution Bench of this Hon’ble Court held that educational institutions can and must be regulated in a manner that is “*conducive to making*

*the institution an effective vehicle of education for the minority community or other persons who resort to it.”*

26. Therefore, it is clear that a provision which ensured efficient administration and was intended to curb mal-administration has been erroneously interpreted in *Azeez Basha* to deny Aligarh Muslim University its minority character.

27. Such provisions for a Visitor are seen in various State enactments regulating private universities. Further, the Governor is the Visitor / Chancellor of a number of private universities, both minority and non-minority. This does not make them state run institutions. By way of illustration, a list of Universities from the Raj Bhavan Website(s) of certain States are set out in **Appendix B** to demonstrate that the same include private universities, both minority and non-minority.

**IV. Finding in *Azeez Basha*: Students of AMU aren't all Muslims and the compulsory imparting of religious instruction was taken away after the Constitution came into force.**

28. This Court has categorically held in *T.M.A. Pai (supra) @ para 149* [CCC Vol5A@p.653], and *In Re Kerala Education Bill (supra)* [CCC [Vol5A@p.61](#)] that the admission of students who belong to other communities does not result in the MEI shedding its minority character and ceasing to be a minority institution. In fact, it was also held in *In Re Kerala Education Bill (supra)* and affirmed by *T.M.A Pai (supra)* that the object of Article 29 and 30 being the

conservation of a distinct language, script and culture of a minority, the objective may be better served by propagating the same amongst members of other communities.

29. *In re Kerala Education Bill (supra)* [CCC Vol5A@ p. 62] has clarified that the choice to impart a broader liberal education does not take away from the minority character of the institutions:

*“As such minorities will ordinarily desire that their children should be brought up properly and efficiently and be eligible for higher university education and go out in the world fully equipped ,with such intellectual attainments as will make them fit for entering the public services, educational institutions of their choice will necessarily include institutions imparting general secular education also. In other words, the Article leaves it to their choice to establish such educational institutions as will serve both purposes, namely, the purpose of conserving their religion, language or culture, and also the purpose of giving a thorough, good general education to their children.”*

30. Thus, in order for AMU to qualify as a minority educational institution, it is not necessary that all students must belong only to that minority community. Provisions regarding non-discrimination on the basis of caste, creed, race or class

are seen in the governing statutes of a large number of Universities recognised as minority educational institutions by NCMEI.

31. Finally, doing away with compulsory imparting of religious instruction (Section 9 of the AMU Act, which was repealed) does not divest an MEI of its minority character. Compulsory religious education, being inconsistent with Article 28 of the Constitution, had to be done away with. However, Section 5(2)(a) and (c) of the AMU Act, 1920, as amended, retains provisions for religious instruction and to promoting “*especially*” the educational and cultural advancement of Muslims of India under the powers of the University:

“Section 5(2) (a) to promote Oriental and Islamic studies and give instruction in Muslim theology and religion and to impart moral and physical training;

(c) to promote especially the educational and cultural advancement of the Muslims of India;”

Section 29 provides for the power to issue Ordinances for, inter alia, “(j) the giving of religious instruction.”

32. Further, it is important to note that in the judgement in *Ahmedabad St. Xavier’s College Society v. State of Gujarat*, (1974) 1 SCC 717 [CCC Vol5A @ p.204], it was held that a minority institution based on religion and language had the right

to establish and administer educational institutions for *imparting general secular education and still not lose its minority character*. At para 30, Justice A. N. Ray held: *“The right to administer is to be tempered with regulatory measures to facilitate smooth administration. The best administration will reveal no trace or colour of minority. A minority institution should shine in exemplary eclecticism in the administration of the institution. The best compliment that can be paid to a minority institution is that it does not rest on or proclaim its minority character.”*

Therefore, neither the absence of religious instruction, nor the presence of general secular education can alter the minority status of AMU.

**V. The donors of AMU were predominantly Muslims, but were not all Muslims**

33. The genesis of the institution has to be the betterment of the minority community in question, and the initiative has to be on behalf of the said community. Stray donations from individuals who are not members of the minority community cannot alter the character of an institution. Those who donated were donating towards the purpose for which the MEI was founded, i.e., the educational advancement of Muslims of India, and could be considered as benefactors of the community. The support of a small number of non-Muslim individual donors cannot be read to eviscerate the very purpose of the initiative which was rooted in the educational advancement of the minority community. The purpose remained focused on the religious identity of the target community.



**Part C: Indicia**

34. On the question framed in the reference, that is, the indicia for recognition of an educational institution as having been “established” as an MEI, it is submitted that there is one determinative factor that must be considered: the *genesis* of the institution. The question of genesis must be considered in terms of:

(1) the purpose for which the institution was founded which must be for the educational advancement of the concerned minority community;

(2) the identity of the individuals or groups that founded the institution for the said purpose must be substantially of the concerned minority;

(3) the identity of the individuals or groups that substantially provided funds for the founding of the institution must be that of the concerned minority;

35. This position finds support in *Azeez Basha* as well which says that the history of the institution must be assessed. Further, the six judges bench in *State of Kerala v. V. R. Mother Provincial* (1970) 2 SCC 417 @ para 8 [CCC Vol 4A @ p. 166] says one philanthropist can ‘found’ an institution by taking the initiative. Thus, the idea for the educational institution must be conceived by a member of the concerned minority.

36. In addition, *TMA Pai* states that minority educational institutions must be guaranteed maximum autonomy in relation to: (a) method of recruitment of teachers; (b) charging of fees; (c) admission of students; (d) the power to choose governing body; (e) the power to discipline employees. In fact, *TMA Pai* states @ para 139 that: “*Like any other private unaided institutions, similar unaided educational institutions administered by linguistic or religious minorities are assured maximum autonomy in relation thereto; e.g. method of recruitment of teachers, charging of fees and admission of students. They will have to comply with the conditions of recognition, which cannot be such as to whittle down the right under Article 30.*” However, these are the consequences of minority status, not the tests for it.

37. *TMA Pai* clarifies that the state or other controlling authorities, however, can always prescribe the minimum qualifications, salaries, experience and other conditions bearing on the merit of an individual for being appointed as a teacher of an educational institution. This cannot denude the institution of its minority character.

38. What are **not** indicia of determining minority character: It is submitted the following criteria cannot be considered while evaluating the status of an educational institution:

- (1) Governmental supervision similar to other institutions or universities
- (2) governmental regulations to ensure adherence to standards and to prevent maladministration.

- (3) identical structure with non-minority universities
- (4) degree recognition or affiliation
- (5) some non-minority members in the academic and executive bodies.
- (6) governmental aid

Drafted by:

Settled by: Kapil Sibal, Sr. Adv.

Mohammad Nizamuddin Pasha, Adv

Aftab Ali Khan, AoR

Aparajita Jamwal, Adv

Rishabh Parikh, Adv

Rupali Samuel, Adv

Sumedha Sarkar, Adv

Filed by:

Aftab Ali Khan

CC1596

**Appendix B****GOVERNANCE**

As per the website of Haryana Raj Bhavan (<https://haryanarajbhavan.gov.in/charges-held-by-the-governor>) the Governor is the Visitor of the following Private Universities:

**Hon'ble Governor is visitor of the following private Universities in the State:**

- The NorthCap University (NCU), Gurugram
- Apeejay Stya University, Gurugram
- Amity University, Manesar (Gurugram)
- Maharishi Markandeshwar University, Sadopur(Ambala)
- NIILM University, Kaithal
- Baba Mast Nath University, Rohtak
- M.V.N. University, Palwal
- Sushant University, Gurugram
- Shri Guru Gobind Singh Tricentenary University, Gurugram
- Jagannath University, Bahadurgarh
- G.D. Goenka University, Sohna Road, Gurugram
- K.R. Mangalam University, Sohna Road, Gurugram
- S.R.M. University, Sonapat
- Ashoka University, Sonapat
- **Al-Falah University, Faridabad**
- BML Munjal University, Gurugram
- Manav Rachna University, Faridabad
- PDM University, Jhajjar
- Starex University, Gurugram
- IILM University, Gurugram
- World University of Design, Sonipat
- Om Sterling Global University, Hisar
- Rishihood University, Sonapat
- Geeta University, Panipat

The list of Private Universities in Uttarakhand of which the Governor is the Visitor / Chancellor is available here:

<https://governoruk.gov.in/private-universities>

**ANNEXURE-A**  
**LIST OF DATES**

Sl. No.	Date	Event	Document
1.	1869	Sir Syed Ahmad Khan visited England where he made a visit to Oxford and Cambridge Universities in the hopes of establishing in India for Muslims.	Union of India Affidavit Vol 3C @pg85
2.	02.10.1870	<b>Sir Syed established “The Committee for the Better Diffusion and Advancement of Learning among Mohammedans of India”</b> at Benaras was established with a view to ascertain why the Mohammedans of India of the government system of education and to suggest means for removal of obstacles and also to find out why the studies of western sciences gain favour with them.	Union of India Affidavit Vol 3C @pg86
3.	1871	<b>A society called the Mohammedan Anglo-Oriental (“MAO”, for short) College Fund Committee was created for collecting funds.</b>  (Extracted from the Written Address to His Excellency the Hon'ble George Frederick Samuel Robinson, Marquis of Ripon, Viceroy and Governor General of India, by Mr. Mohd. Lutf Ali Khan, President, College Fund Committee and other Officials on 18.11.1884)  31.07.1871 A select committee was formed with Sir Syed Ahmed Khan as the chair to consider and	Extract of Mohd. Lutf Ali khan Written address to GGI (President College fund Committee) Vol 3C @pg302

report upon the best means for education  
Mohammedan's Vol. 3C @Pg41

4. 15.04.1872 In furtherance of the issue mentioned the committee invited essays on the issue stated above as an incentive, the top 3 essays were to be given prizes of Rs 500 , 300 , 150 each. 25 essays were received by the committee and read over to a select committee for examination and preparation of a report. the special committee submitted their report suggesting two distinct modes for secular and spiritual education of Mohammedans which is one in which English is the principal medium of instruction and Latin, Greek, Arabic, Persian and Urdu would be taught as second language and the other in which Urdu would be the medium of study. English, Arabic and Persian would be second language. Select committee in its report contemplated rules to be framed for Mohammedan education. The committee contemplated the establishment of MAO college and **Madarsatul Uloom** for Muslims of India at Aligarh Vol. 3C @ Pg 9-53  
Relevant @Pg 43
5. 14.06.1872 Sir Syed wrote a letter to C.A. Elliott, Secretary to the Government, informing him about the committee and its report and requested for any assistance from the government to accomplish the task at hand. Vol. 3C @ Pg 62-65  
Relevant @Pg 64-65
- 10.07.1872 A Letter was written by Evelyn Barring Capt. Pvt. Secretary to the viceroy to Sir Syed Vol. 3C @Pg 56-57

Ahmed Khan stating that the viceroy would not be giving any personal pecuniary assistance to the religious teaching. However he would contribute to the study of western arts and sciences if the institution shows a reasonable prospect of divisibility and general success.

In 1872 The MAO college fund committee was established to collect funds particularly for the education of the Mohammedans as suggested by the Committee.

Vol. 3C @pg 71-76

6. 20.07.1872 Sir Syed wrote to Muhammadan Chiefs of Native States of India requesting to help the committee in furtherance of their objective Vol. 3C @ Pg 66-67
7. 08.11.1872 **The Committee resolved to establish a Madarsatul Uloom** for Muslims of India at Aligarh. Vol. 3C @ Pg 77-94 Relevant @79
8. 10.02.1873 A Scheme for MAO College was proposed by Justice Mahmood (the son of Sir Syed and a Judge of High Court of Allahabad), Vol. 3C @pg 79-94
9. 24.05.1875 **The Madarsatul Uloom was inaugurated at Aligarh.**

10. 08.01.1877 Lord Lytton, the then Viceroy of India, laid the foundation stone for the establishment of MAO College. Vol. 3C @ Pg 246-257
11. 24.08.1883 The Rules for the guidance and management of Mohammedan Anglo Oriental College Fund Committee were approved.
12. 18.11.1884 I Written Address to His Excellency the Hon'ble George Frederick Samuel Robinson, Marquis of Ripon, Viceroy and Governor General of India, by Mr. Mohd. Lutf Ali Khan, President, College Fund Committee and other officials on 18.11.1884, it was stated: Vol 3C @Pg 307  
Relevant @Pg 308
- “It has been our aim to render the College, as far as possible, similar in principle to the system on which the public schools of England, and the Colleges at the Universities of Cambridge and Oxford are based”
- “Someday when our endowments are richer and our schemes are completed, we hope to be in a position to ask the great Representative in India of Her Majesty the Queen Empress **to confer upon us the legal status of an Independent University.**”
13. 1886 Sir Syed Ahmad Khan convened the Muslim Educational Conference with the avowed aim of promoting western education amongst Indian Muslims.
14. 18.05.1889 The Rules and Regulations for the appointment of the Trustees of the MAO College were framed. Vol. 3C @Pg110-228  
Relevant @pg 112



15. 27.03.1898 Sir Syed Ahmad Khan passed away. A memorial fund in his honour was created to raise a sum of Rs. 1,00,000/- to enable the MAO College to be converted into a Muslim University. Vol. 3B @Pg88 (Affidavit UOI)
16. 1898 12<sup>th</sup> Mohammedan Educational Conference held at Lahore. Vol. 3C @Pg354-360  
Relevant @Pg355  
At the Conference, the then Principal Theodore Morrison stated:  
  
**“This residential university would be purely Muslim character.** The rules and regulations will be the same which will be in conformity with the religious principles of Islam.”
- Justice S. Amir Ali emphasized that the proposed University should be authorized by the Government to grant degrees which should be treated on par with the degrees of other Universities so far as employment was considered. Vol. 3C @Pg358
17. 1903 Muslim Education Conference passed another Resolution that Islamic University should be established at Aligarh.
18. 1910 The efforts of the Muslim Community led to the British Government of India agreeing in principle to convert the MAO College into a Mohammedan University. Vol. 3B @pg 89 (extracted from Affidavit of Union of India)

19. 1911 Muslim Education Conference directed Waqar al-Mulk to issue an appeal for a fund of twenty lakhs of rupees, which he did in January 1911.
20. 1911 **Kameti Takmili Mohammadan University (Foundation Committee) was constituted for converting MAO College into a Muslim University.** Vol. 3B @Pg89 UOI Affidavit Before High Court
- The proposed Constitution of the University was accordingly drafted by the Constitution Committee and submitted to the Government in 1911. The Foundation Committee was subsequently dissolved by the 1920 Act.
21. 10.06.1911 The Government of India communicated to the Secretary of State the desire of the Muslim community and recommended that sanction might be given to the establishment of a Teaching University at Aligarh. Vol. 4C @Pg42
- (Extracted from the Debates in the Central Council on the Introduction of the Aligarh Muslim University Bill 1920)
22. 18.07.1911 **The Secretary of State approved in principle the establishment of such a university at Aligarh subject to provision of adequate funds and adequate control.** The Secretary of State also approved proposed negotiations between the Association. The Press communiqué announcing this decision was issued on 02.08.1911. Vol. 4C @Pg42

(Extracted from the Debates in the Central Council on the Introduction of the Aligarh Muslim University Bill 1920)

23. 09.08.1912 Sir Harcourt Butler to Raja Mahmoodabad, who was the President of University Foundation Committee, about the alterations which are to be made in the draft Constitution of the proposed university presented by the Muslim community to the Government. Vol. 3C @ Pg 411-413

**The Education Member specifically mentioned that the hope of Sir Syed Ahmad Khan was to convert MAO College into a teaching and residential university.** He also quoted from the preamble of the draft constitution (1911) prepared by the Muslim community that **from the beginning the object of the founder and the Muslim community was to raise such a college to the status of a University.**

24. 1915 **In 1915, a Muslim University Association was also founded.** This Association worked to give practical shape to the conversion of MAO College into a Mohammedan University. It was resolved that the Association would be dissolved only after management of the University was taken over by the University Court. Vol. 3B @Pg89

25. 1920 The Aligarh Muslim University Act was enacted in 1920. Vol. 3G @Pg2-29
- The Muslim Community collected the sum of Rs 30 lakhs for creation of a Muslim University.**
26. 26.01.1950 The Constitution of India came into force.
27. 1951 In the year 1951, the Aligarh Muslim University (Amendment) Act 1951 was passed. Vol. 4A @Pg 90-98
- In terms of the mandate of Article 28(3) of the Constitution, compulsory instruction in Muslim Theology for the Muslim students was dispensed with. By virtue of the amendment, membership in the Court of AMU was also made open to non-Muslims.
28. 1965 The Aligarh Muslim University (Amendment) Act, 1965 was passed, *inter alia*, introducing radical changes in the set-up of AMU. The Court of AMU as well as the Executive Council were packed with the nominees of the Visitor and the Court was reduced from the supreme governing body to merely an advisory body. Vol. 4A @Pg 99-106
29. 20.10.1967 This Hon'ble court delivered its judgment in the case of **S. Azeez Basha v. Union of India** reported at [1968] 1 SCR 833 Vol. 3A @Pg 3-28