

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 2318 OF 2006**

IN THE MATTER OF :

UNION OF INDIA

.....

PETITIONER

VERSUS

MALAY SHUKLA

.....

RESPONDENT

VOLUME 2 – B

**WRITTEN SUBMISSIONS
ON BEHALF OF SOLICITOR GENERAL OF INDIA**

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1. The Aligarh Muslim University in its written submissions dated 5.1.2024 has made an attempt to make submissions as if a 7-Judge bench is exercising appellate jurisdiction over the judgment delivered by a 5-Judge Bench in case of *Azeez Basha vs Union of India* [1968] 1 SCR 833 [hereinafter referred to as *Basha*].

2. The Aligarh Muslim University has deliberately ignored the real question which is referred for adjudication before the bench of seven Hon'ble Judges. The real question is a constitutional question as under:

"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?"

3. Any attempt of Aligarh Muslim University, which has never challenged any of the provisions of the Aligarh Muslim University Act, 1920 needs to be prevented from converting this reference into an appeal against the judgment in case of Aziz Basha. The real scope of the reference is explained hereunder.

SCOPE OF THE PRESENT REFERENCE

4. The scope of the present reference can be culled out from the following facts which are not disputed.

- (i) The Aligarh Muslim University – the Appellant herein is established by an Act of Parliament [the then British Parliament] being Aligarh Muslim University Act, 1920. The Act contains provisions which are obviously not in conformity with the Constitution of India as the Act was enacted in pre-Constitution era.

The Appellant University is given a special status by including the same in Entry 63 of List I since it was construed to be an "*institution of national*

importance". Constitution did not treat it either as minority institution or otherwise.

- (ii) The Constitution of India came into force on 26.01.1950. With a view to bring Aligarh Muslim University Act, 1920 in conformity with the constitutional provisions, the Act was amended in the year **1951** which had the effect of making the Act non-minority in character, *inter alia*, by deleting the provisions in pre-constitutional era *inter alia* [S. 23 of 1920 Act] which provided that one of the bodies of the University namely "Court" of the University will consist of only Muslims. This provision was deleted in 1951. This amendment is not challenged by anyone including the appellant.
- (iii) The second Amendment came in Aligarh Muslim University Act, 1920 in the year **1965**. This amendment came to be challenged by way of writ petitions filed under Article 32 of the Constitution of India. This Hon'ble Court in case of *Azeez Basha vs Union of India [1968] 1 SCR 833*, *inter alia*, recorded as under:

"We are in the present petition concerned only with the constitutionality of the provisions of 1965 Act. If the provisions are constitutional, they were within the legislative competence of the Parliament".

Thus, this Hon'ble Court [bench of 5-Honble Judges] was considering the amendment to the 1920 Act made in the year 1965. This Hon'ble Court, on facts and the provisions involved held that the challenge fails and the petitions were dismissed vide order dated 20.10.1967 in the judgment reported in *Azeez Basha vs Union of India [1968] 1 SCR 833*. It may be relevant to note and crucial to remember that in *Azeez Basha supra*, 5-Judges bench was considering the case of Aligarh Muslim University vis-à-vis Article 30 of the Constitution of India. The lis regarding the appellant University, thus was settled.

- (iv) In the year **1981** i.e. after 30 years from 1951 amendment in the 1920 Act and after 16 years from the amendment made in 1965 Act, an unconnected writ petition came to be filed by one "institution" registered under the Society Registration Act [and not the University like the appellant]. That institution had nothing to do with Aligarh Muslim University.

The said petition is Writ Petition No.54-51 of 1981 filed by the said Institute called *Anjuman-e-Rehmania & Ors vs Distt. Inspector of School & Ors.*

In the said petition, this Court was [Coram: Fazal Ali and B.R. Mishra, JJ] was confronted with a question which is recorded in its order dated 26.11.1981 [PDF Page 209 Vol III A]. The relevant part is reproduced hereunder: -

"The point that arises is as to whether Act. 30(1) of the Constitution envisages an institution which is established by minorities alone without the participation for the factum of establishment from any other community. On this point, there is no clear decision of this court. There are some observations in S. Azeez Basha & ors. Vs. Union of India 1968(1) SCR 333, but these observations can be explained away. Another point that arises is whether soon after the establishment of the institution if it is registered as a Society under the Society Registration Act, its status as a minority institution changes in view of the broad principles laid down in S. Azeez Basha's case."

The matter was, thus, referred to bench of seven Honble Judges

It is, thus, clear that in case of *Anjuman [supra]* this Court did not refer the *lis* decided qua the Aligarh Muslim University on facts and interpretation given to the Act of 1920 involved therein.

- (v) The said group of matters in *Anjuman [Supra]* were placed before a bench of 11 Judges and was heard along with other writ petitions which culminated into the judgment of *TMA Pai Foundation and ors. Vs State of Karnataka [2002 (8) SCC 481]*.

The 11 Judges bench, being cognizant of the fact that the *lis* decided in *Azeez Basha supra* with regard to the Aligarh Muslim University is not to be examined, and very carefully framed a question vide its order dated 26.11.1981, which reads as under:

"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?"

- (vi) The group of matter in case of *Anjuman supra* came to be disposed of vide order dated 11.03.2003 [page 211 Vol. IIIA]
- (vii) The Aligarh Muslim University, for the first time, by way of the mandate of the Admission Committee dated 10.01.2005 and the Resolution Passed by

the Academy Commission dated 15.01.2005 and the Resolution passed by the Executive Council dated 19.05.2005 had provided reservation to the extent of 50 per cent of seats to be reserved for Muslims of India for admission to post graduate programmes. The individuals who who could not get admissions due to 50 per cent reservation filed writ petitions before the Hon'ble High Court of Allahabad which have culminated in the present proceedings.

- (viii) The said writ petition came to be decided by Ld. Single judge of the Hon'ble High Court of Judicature at Allahabad vide Judgment and Order dated 04.10.2005. The said judgment was impugned before the Division Bench of the Hon'ble High Court by way of Special Appeal 1321 of 2005 and connected matters, which was finally decided by the judgment dated 05.01.2006, vide which the Hon'ble High Court dismissed the appeals filed by the appellants therein.

The said orders are under challenge before this Hon'ble Court in C.A. No.2588 of 2006 i.e. present proceedings.

- (ix) At the cost of repetition, it may be pointed out that Aligarh Muslim University has so far not challenged any of the amendments namely the first amendment in the year 1951, the second amendment in the year 1965, the third amendment in the year 1972 and the fourth amendment in the year 1981 in the Aligarh Muslim University Act, 1920.

The University can, thus, not re-agitate the factual and facts based legal controversies already decided by a five-Judge bench which is clear from the present reference made by a 3-Judge Bench of this Hon'ble Court vide order dated 12.02.2019.

In the said order of reference dated 12.02.2019, this Hon'ble Court specifically recorded as under:

"8. The said facts would show that the correctness of the question arising from the decision of this Court in S. Azeez Basha (supra) has remained undetermined."

Thus, only the question of law, as framed as Question No. 3(a) quoted in the reference order is referred to the bench of seven Hon'ble Judges.

5. The above chronology clearly suggests that throughout the *lis qua* Aligarh Muslim University [which already has the special status under the Constitution of

India] is concluded once and for all and the only question which is to be decided by this Hon'ble Court by 7-Judges bench is Question 3(a) as a proposition of law.

STAND OF THE UNION OF INDIA

6. At the outset, it is submitted that substantial paras are spent by Aligarh Muslim University in preventing the Union of India from arguing the correct constitutional position. It is the submission of the Aligarh Muslim University that –

- (i) Once having filed the SLP against the order of Allahabad, the Union of India cannot change its stand; and
- (ii) Union of India cannot support an argument against the constitutional validity of an amendment made by the Parliament in the year 1981.

7. First of all, the Union of India is fully conscious of the fact that it is not arguing an *inter se* dispute between the parties before a regular bench. Union of India is assisting the seven Hon'ble Judges of this Hon'ble Court which is constituted under Article 145 of the Constitution to lay down the correct position on the subject referred to it which is an important question of Constitutional interpretation which will have pan-India implications.

8. The first and foremost duty of Union of India before a Constitution Bench is to assist the bench with correct constitutional position and place before it the repercussions on the nation if a particular view is accepted or a particular view is not accepted.

9. The appellant very conveniently treats this reference as a mere *inter se* dispute concerning Aligarh Muslim University. However, the question of law which is referred to this Hon'ble bench [as mentioned hereinabove as question no. 3(a)] is of a wider magnitude and not reopening of *Basha supra* as attempted to be done.

10. It is submitted that it is wrong and incorrect to state that the government doubts the wisdom of Parliament in making the law. In the present case, the correct legal construction of the effect of amendment of 1981 vis-a-vis judgement passed by this Hon'ble Court in *Azeez Basha versus Union of India* reported in (1968) 1 SCR 833, has already been placed on record by way of affidavit filed by the deponent. The stand taken by the Government to withdraw the challenge to the judgment of the High Court is based upon Constitutional considerations alone and the change of Governments is inconsequential.

The stand taken earlier by the Govt. to file SLP challenging the judgment of the High Court was contrary to the original stand of the Central Govt. taken in *Azeez*

Basha case. It was also contrary to the binding judgment of this Hon'ble Court in *Azeez Basha* case. The stand taken to file SLP was also against the public policy of reservation meant for SCs/STs/OBCs/EWSs as applicable to Central Universities, therefore, against public interest. It is, therefore submitted that the prayer for withdrawal of Appeal has been made after due consideration of the legal position.

11. The request for withdrawal is based on the original stand taken by the Union of India. The respondent, unfortunately, has made an attempt to give a political hue to the matter by stating under para 14 of their affidavit that the decision taken after change of Government at the Centre is based on political consideration. It is unfortunate that a factual issue which has already been authoritatively decided by a Constitution Bench of this Hon'ble Court is being politicised and controverted on misconceived grounds. It is reiterated that the decision of the Government to withdraw the SLP is based upon the factual and constitutional considerations alone.

12. Even with regard to the Aligarh Muslim University, the Central Government has taken a conscious decision to place the true position on record in light of the implications of the stand of Aligarh Muslim University being accepted. This may be examined based upon the following facts. Aligarh Muslim University has always been an institution of national importance even in the pre-independence era. The case of Aligarh Muslim University and Banaras Hindu University is *sui generis* case since the framers of the Constitution chose to place these two Universities in List I as a part of Entry 63, though the subject of education is otherwise in the State List [at the time of Independence]. This exhibits the national character of the University and its stand.

13. Therefore, as per the submission of the Union of India, the *Aligarh Muslim University (AMU) is an Institution of a national character*. A survey of the documents surrounding the establishment of the Aligarh Muslim University and even the then existing legislative position enunciates that the AMU was always an institution having a national character. All stakeholders involved in the establishment from the Imperial Government, the local population and the partial role played by the minority leads to the irresistible conclusion that the aim, object and intent behind the University always was to establish an institution of national importance.

14. It is submitted that Aligarh Muslim University is an institution of national character and importance established before Independence. The University is ranked 9th across universities and autonomous institutions in India by the Ministry of Education's National Institutional Ranking Framework ('NIRF') – 2023. The National Assessment and Accreditation Council ('NAAC') – an autonomous body of the

University Grants Commission ('UGC') – has graded the University at 'A+' (3.35 out of 4).

15. It is submitted that the national character of both the Benares Hindu University and the Aligarh Muslim University [which was set up specifically and admittedly on the lines of Benares Hindu University] is clearly evident from the fact that despite the fact that "Education" as a legislative subject under the Government of India Act, 1935 Act [and even under the 1919 Montague Chelmsford Reforms], vested with the Provisional Legislature, the legislative entry with regard to Benares Hindu University and Aligarh Muslim University were vested with the Federal Legislature and a specific subject with regard to the same was carved out and vested with the Federal Legislature. Both the enactments were also passed by the Federal Legislature. The subject was also specifically vested under the Government of India Act 1935 as Entry 13 List I in S. 100, Government of India Act, 1935, as under:-

"13. The Benares Hindu University and the Aligarh Muslim University."

16. Following the said footsteps, the Constituent Assembly also thought it fit considering the national character of the said institutions, to create a special legislative entry regarding the same and vest it with the Parliament despite the fact that the subject of "education" at first was in the State List. The constituent assembly specifically debated the said aspect as under:-

"Constituent Assembly Debate 30.08.1949

The Honourable Dr. B. R. Ambedkar : Sir, I move:

"That for entry 40 of List I, the following entry be substituted

'40. The institutions known on the date of commencement of this Constitution as the Benares Hindu University, the Aligarh Muslim University, and the Delhi University and any other institution declared by Parliament by law to be an institution of national importance.'

I submit the word "university" is a mistake and it ought to be "institution" and I hope you will permit me to substitute it.

There is no fundamental change in this except that the latter part permits also Parliament to take over any institution which it thinks is of national importance.

Dr. P. S. Deshmukh : May I suggest that 40 A may also be taken together? It is part and parcel of the same thing.

The Honourable Dr. B. R. Ambedkar : Sir, I move:—

"That after entry 40 of List I, the following new entry be inserted:—

'40 A Institutions for scientific or technical education financed by the Government of India wholly or in part and declared by Parliament by law to be institutions of national importance.'

Mr. President : There are some amendments to entry No. 40. Item 162 stands in the name of Mr. Naziruddin Ahmad and item 1 thereof substituting "at the commencement" for "on the date of commencement" need not be moved.

Mr. Naziruddin Ahmad : Sir, I beg to move:

"That in amendment No. 15 of List I (Sixth week) in the proposed entry 40 of List I, "the words 'and the Delhi University and any other institution declared by Parliament by law to be an institution of national importance' the deleted."

I have slightly altered my amendment to suit the change introduced by Dr. Ambedkar in his own amendment. I submit that Dr. Ambedkar's amendment would unduly enlarge the jurisdiction of the Centre and many things which would be otherwise cognizable by the Provinces would now, by virtue of the words which I seek to delete, be included within the jurisdiction of the Centre. The Benares Hindu University and the Aligarh Muslim University have been regarded from their very inception as institutions of a national character and importance and therefore they have been rightly regarded so far as national institutions and they have been rightly placed under the jurisdiction of the Union. But, Sir, the wording "any other institution declared by Parliament by law to be an institution of national importance", would give undue latitude to the Centre. By virtue of these words, the Union Government will be enabled at any time to acquire jurisdiction over one institution or another of a similar kind. In fact, from a University, a College or school down to a small village school, anything may be claimed as within the jurisdiction of the Centre. While one can appreciate the desire of the Centre to express a carnivorous instinct in this respect, trying to eat everything good or bad, whether belonging to somebody else or belonging to it, I should think that the Centre is getting seriously encumbered with a large number of subjects. The effect of that would be that the Provinces or the States as they are now called will feel less and less responsibility. They will have less and less money and so they will have less and less responsibility. They will develop an irresponsibility and a sense of grievance against the Centre. The result would be that for everything, the Provinces will throw the responsibility upon the Centre.

Shri H. V. Kamath:

"...As regards the two Universities mentioned in this entry, the Benares Hindu University and the Aligarh Muslim University—of course, either, it may be true that they are of national importance or because they have the communal tag attached to them, Government to show their impartial non-communal nature might legislate in regard to these Universities. As regards Delhi too because the status of Delhi is not yet defined it is perhaps desirable that it should be within the purview of the Union. But to specify here very vaguely that any other institutions may be also taken over by the Union, legislated upon by the Union—though of course the saving proviso is there that Parliament should declare by law those institutions to be of national importance—but, Sir, in modern times Parliaments are becoming more and more very pliant tools in the hands of the Executive; and if a Government takes into its head to take over or legislate or administer any particular institution not financed by Government at all, Parliament according to the dictates of the Executive may declare that to be one of national importance, and then the Government could take it over and administer it as it likes. I have in mind certain institutions—to take only one instance—several Yogic Institutes

Union of India

in this country; one very well-known Yogic Institute is Kaivalyadhama in Lonavala, in Bombay. Some Government of the future may smell a rat where there is none. Of course our present Government is well disposed towards this, but there is no guarantee that the present Government will continue for many long years to come. Suppose a Government comes into power, and it is hostile to our ancient culture, especially Yogic and Spiritual matters, that Government may get a very obedient Parliament to declare that institution as of national importance and take it over and ultimately suppress it. The House must be well aware that Herr Hitler, soon after he became the Fuhrer and Reichskanzler of Germany, closed down certain Natur Kultur, Nature Culture institutions because....."

[pg. 768 | PDF pg. 37]

".....**Mr. President** : The question is :

"That for entry 40 of List I, the following entry be substituted:-

"40. The institutions known on the date of commencement of this Constitution as the Benares Hindu University, the Aligarh Muslim University, and the Delhi University and any other institution declared by Parliament by law to be an institution of national importance."

The amendment was adopted.

Entry 40, as amended, was added to the Union List...."

17. The said debates by the founding fathers make the non-minority character of both these institutions crystal clear. In light of the above, it is clear that a University which was and is clearly an institution of national importance, has to be a non-minority university. 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 educational "*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.

18. It is submitted that once the constitution carves out a separate legislative Entry for the Aligarh Muslim University and places it at the same level as other *institutions of national importance*.

A list of the institutions declared to be of national importance by the Parliament is annexed as **Annexure A**. It may be noted that no institute out of the said list is a minority institute.

19. It is submitted that Entry 63 List I vests the power of legislation regarding the said university solely with the Parliament, therefore, it is axiomatic that the said University was not a minority institution. No other universities are specifically named in the constitution itself thereby highlighting the national importance of the AMU and the national/non-minority character of AMU.

20. The unequivocal declaration in the Constitution has to be given full effect to and the same was the reason behind the large-scale amendments carried out in the AMU Act in 1951 in order bring it in line with the Constitution and the non-minority national character. Once the said declaration had been made in the Constitution, it is impermissible to go behind the same and seek to mutate the actual character of the institution.

21. Aligarh Muslim University is not and cannot be a University of any particular religion or religious denomination as any University which is declared by the Constitution of India to be of national importance should, by definition, cannot be a minority institution.

WIDTH AND CONTRIBUTION OF ALIGARH MUSLIM UNIVERSITY AND INEVITABLE ADVERSE IMPACT IF THE PRAYER OF ALIGARH MUSLIM UNIVERSITY SUCCEEDS IN THE PRESENT PROCEEDINGS

22. Aligarh Muslim University, unlike its name suggests, is not, in fact, a university dominantly functioning as a Muslim university as it is not established and administered by the minority. It has several faculties which are established over a period of time. The following chart depicts the number of faculties, within which the number of departments have started functioning and the year in which they were established within the University :

Total No. of Faculties/Departments/Colleges/Centres/Academies/Institutes and Schools		
S.No.	Name of Entities	Total
1.	Total Number of Faculties	13
2.	Total Number of Departments	107
3.	Total Number of Colleges	08
4.	Total Number of Centres	23
5.	Total Number of Academies	03
6.	Total Number of Institutes	02
7.	Total Number of Schools	09

Number of Faculties		
S.No.	Name of the Faculty	Year of Establishment
1.	Agricultural Science	2000
2.	Management Studies and Research	1996
3.	Arts	1944
4.	Engineering & Technology	1947
5.	Theology	1944
6.	Medicine	1962
7.	Commerce	
8.	Social Sciences	1969
9.	Life Sciences	1986
10.	Unani Medicine	1986
11.	Law	1960
12.	Science	1944
13.	International Studies	2015
	Total No. of Faculties = 13	

Number of Departments			
S.No.	Name of the Department	Related Faculty Name	Year of Establishment
1.	Post-Harvest Engineering & Technology	Agricultural Science	2000
2.	Plant Protection		2000
3.	Agricultural Eco. & Business Mngt.		2000
4.	Agricultural Microbiology		2000
5.	Home Science		2008
6.	Business Administration	Management Studies and Research	1972
7.	Arabic	Arts	1920
8.	English		1877
9.	Fine Arts		1988
10.	Hindi		1948
11.	Linguistics		1968
12.	Modern Indian Languages		1944
13.	Persian		1877
14.	Philosophy		1920
15.	Sanskrit		1920

16.	Urdu		1921
17.	Applied Physics	Engineering & Technology	1988
18.	Applied Chemistry		1988
19.	Applied Mathematics		1988
20.	Architecture		1993
21.	Chemical Engineering		1978
22.	Civil Engineering		1942
23.	Computer Engineering		1992
24.	Electrical Engineering		1935
25.	Electronics Engineering		1988
26.	Mechanical Engineering		1941
27.	Petroleum Studies		1983

28.	Shia Theology	Theology	NIL
29.	Sunni Theology		1944
30.	Anatomy		1962
31.	Anaesthesiology		1981
32.	Bio-Chemistry		1962
33.	Cardiothoracic Surgery		2012
34.	Community Medicine		1962
35.	Dermatology		1993
36.	OTO-Rhino-Laryngology (E.N.T.)		1981
37.	Forensic Medicine		1966
38.	Medicine		1963
39.	Microbiology		1962
40.	Neuro Surgery		2012
41.	Obstetrics and Gynaecology		1964
42.	Ophthalmology		1955
43.	Orthopaedic Surgery		1981
44.	Paediatrics		1964
45.	Paediatric Surgery		2012
46.	Pathology		1964

47.	Pharmacology	Medicine	1964
48.	Plastic Surgery		2005
49.	Psychiatry		1992
50.	Radio-Diagnosis		1967
51.	Radiotherapy		1993
52.	Surgery		1964
53.	T B and Chest Disease		1992
54.	Conservative Dentistry & Endodontics		1997
55.	Oral & Maxillofacial Surgery		2000
56.	Oral & Dental Pathology and Microbiology/Oral Medicine & Dental Radiology		2000
57.	Orthodontics and Dentofacial Orthopedics and Dental Anatomy		2000
58.	Periodontia & Community Dentistry		1996
59.	Paediatrics & Preventive Dentistry		2000
60.	Prosthodontics/Dental Material		
61.	Physiology	1962	
62.	Cardiology	2020	

63.	Commerce	Commerce	1946
64.	Economics	Social Sciences	1920
65.	Education		1923
66.	History		1921
67.	Islamic Studies		1954
68.	Library and Information Science		1958
69.	Mass Communication		1996
70.	Psychology		1964
71.	Physical Education		1991
72.	Political Science		1948

73.	Sociology		1967
74.	Social Work		2013
75.	Advanced Centre for Women's Studies		
76.	Bio-chemistry(Life Sciences)	Life Sciences	1986
77.	Botany		1923
78.	Museology		1988
79.	Wildlife Sciences		1986
80.	Zoology		1922
81.	Amraze Jild wa Zohrawiya	Unani Medicine	2011
82.	Amraz-e-Niswan-Wa-Atfal		2000
83.	Ilaj-Bit-Tadbeer		2011
84.	Ilmul Advia		1972
85.	Ilmul Amraz		2011
86.	Jarahat		1986
87.	Kulliyat		1986
88.	Moalejat		1986
89.	Saidla		2012
90.	Tahaffuzi-wa-Samaji-Tib		1997
91.	TashreehulBadan		2011

92.	Tashreehwa Munafeul Aza		2000
93.	Ilmul Atfal		2023
94.	Law	Law	1960
95.	Chemistry	Science	1911
96.	Computer Science		1988
97.	Geography		1924
98.	Geology		1957
99.	Mathematics		1920
100.	Physics		1912
101.	Statistics and Operations Research		1975
102.	Interdisciplinary Department of Remote Sensing and GIS Applications		2014
103.	Industrial Chemistry		2023
104.	West Asian Studies and North African Studies	International Studies	1967
105.	Strategic & Security Studies		2015
106.	Foreign Languages		2014
107.	South African & Brazilian Studies		2012
	Total No. of Departments = 107		

Number of Colleges

S.No.	Name of the College	Year of Establishment
1.	Women's College	1937
2.	Dr.Z.A. Dental College	1996
3.	Z.H. College of Engineering & Technology	1935
4.	A.K. Tibbiya College	1927
5.	J.N. Medical College	1962
6.	College of Nursing	2020
7.	Paramedical College	1920
8.	Community College	2014
	Total No. of Colleges = 08	

Number of Centres

S.No.	Name of the Centre	Year of Establishment
1.	Centre for Integrated Green and Renewable Energy	2021
2.	Centre for Promotion of Science	1985
3.	Non Resident Student Centre	1943
4.	Interdisciplinary Nano Technology Centre	2016
5.	Advanced Centre for Women's Studies	2001
6.	Centre for Promotion of Educational & Cultural Advancement of Muslims of India	1988
7.	UGC Human Resource Development Centre	1987
8.	Centre for Bio-Medical Engineering	2016
9.	APJ Abdul Kalam STEM Education and Research Centre	2017
10.	Centre for Distance and Online Education	1989
11.	Centre for Skill Development & Career Planning	1984
12.	Centre of Continuing and Adult Education & Extension	1976
13.	Cultural Education Centre	1960
14.	AMU Centre Murshidabad	2010

15.	AMU Centre Malappuram	2010
16.	Interdisciplinary Brain Research Centre	1978
17.	Centre for Quranic Studies	2007
18.	Computer Centre	1970
19.	Centre for Professional Studies	1972
20.	Innovation Council & University Incubation Centre	2013
21.	Rajiv Gandhi Centre for Diabetes and Endocrinology	2011
22.	Students Counselling Centre	2014
23.	AMU Kishanganj Centre	2012
	Total No. of Centres = 23	

Number of Academies		
S.No.	Name of the Academy	Year of Establishment
1.	Residential Coaching Academy	2009
2.	Urdu Academy	2006
3.	Sir Syed Academy	1974
	Total No. of Academies = 03	

Number of Institutes		
S.No.	Name of the Institute	Year of Establishment
1.	Institute of Agriculture	1993
2.	Institute of Persian Research	2006
	Total No. of Institutes = 02	

Number of Schools		
S.No.	Name of the Schools	Year of Establishment
1.	S.T.S	1909
2.	AMU Girls School	1906
3.	Senior Secondary School (Girls)	1987
4.	SHSS School (Boys)	1987
5.	Ahmadi School for Visually Challenged	1949
6.	Abdullah School	1958
7.	RMPS AMU City School	1919
8.	AMU City Girls High School	1992
9.	AMU ABK High School (Girls)	1946
	Total No. of Schools = 09	

23. The number of students studying in various streams of the Aligarh Muslim University as per the figures available with the Union Government in the year 2022-23, is as under:

Name of the Faculty/College/Centre	Number of Students
Faculty of Agricultural Sciences	404
Faculty of Arts	1763
Faculty of Commerce	980
Faculty of Engineering & Technology	1974
Faculty of International Studies	380

Faculty of Law	796
Faculty of Life Sciences	823
Faculty of Management Studies & Research	343
Faculty of Medicine	1290
Faculty of Science	2786
Faculty of Social Sciences	3037
Faculty of Theology	114
Faculty of Unani Medicine	343
AMU Kishanganj Centre	22
AMU Mallapuram Centre	410
AMU Murshidabad Centre	332
BE (Evening)	606
College of Nursing	52
Centre for Professional Courses	204
Paramedical College	163
Women's College	2871
Community College	312
Centre for Distance & Online Education	7614
Total	27619

This does not include the data of University Polytechnique and various diplomas offered since that can be given only by the State of U.P.

IMPACT OF DECLARATION OF ALIGARH UNIVERSITY AS A MINORITY INSTITUTION

24. The minority educational institution is not required to implement reservation policy [which is implemented throughout the country] under section 3 of the Central Educational Institution [Reservation in Admission] Act, 2006 (as amended in 2012).

In simpler terms, none of the colleges/ faculties / departments of Aligarh Muslim University there is any reservation [which is the part of the affirmative action of the State] The Aligarh Muslim University is not implementing the reservation policy under the aforesaid Act due to the status quo granted in the present group of matters particularly in C.A. No.2286 of 2006 [Aligarh Muslim University vs Naresh Agarwal].

But for the status quo the Aligarh Muslim University would have been mandated under the aforesaid Act to provide for reservation for SCs/STs/OBs/EWS.

If the arguments of the Aligarh Muslim University is accepted, while it will continue not to provide for reservation for SCs/STs/OBCs/EWS, it will provide for reservation for Muslims which can be up to 50 per cent or even more. This Muslim

reservation will apply in all the above referred faculties and streams of education referred hereinabove.

25. Secondly, there is a statutory enactment called Central Educational Institution [Reservation in Teachers Cadre] Act, 2019. The said Act provides for reservation in employment of teaching faculty in all Universities. If the unbelievable case of Aligarh Muslim University is accepted, it would not comply with the said mandate of law. Further, it will be open for Aligarh Muslim University to provide for reservation, even amongst the teachers, which may go up to 50 per cent or more.

26. As would be explained, the administrative structure of governance of the above referred faculties and departments of University of national importance will change from the current set up which provides for the supremacy of Executive Council consisting of people from various fields of life with domain expertise as well as selection of Member of Court of Aligarh Muslim University from amongst the people of eminence with domain expertise in the various fields.

Despite being an institution of national importance with other institutes of national importance, Aligarh Muslim University would have a separate admission procedure.

27. The resultant effect of the said exemption would be drastic as AMU is an extremely old and large institute with vast properties and an enormous amount of students studying in various courses. It is submitted that a large national institute like Aligarh Muslim University ought to maintain its secular origins and serve the larger interest of the nation first.

SUMMARY OF ARGUMENTS

28. The two primary arguments that arise in the present case are as under:
- a. The factum of establishment of an institution as a minority institution by a minority community at the time of its inception is a necessary precondition for exercising the concomitant right of 'administration' under Article 30.
 - b. Once the said legal position is established, the factual finding of judgement in *S. Azeez Basha & Anr. vs. Union of India, (1968) 1 SCR 833*, minority, as a minority institution does not require any reconsideration.
29. The legal issue concerning the question of establishment by the minority, as a minority institution, being a precondition for exercise of claims of administration under Article 30, can be summarised as under:
- a. The first and foremost principle being that of *stare decisis* which requires that questions that have been settled for long ought not to be reopened without adequate basis or contradictions;
 - b. The present reference to the extent it relies upon the order of reference dated 26.11.1981 is wholly bad in law as the said reference order is not legally tenable as a bench of two Hon'ble Judges [none of them being the Chief Justice of India] were bound by the five judge bench decision and could not have referred the matter to a seven judge bench directly;
 - c. As the only question which need examination is the *indicia* to decide the minority institution contemplated under Article 30(1) of the Constitution, the following shall be the mandatory criterion :
 - i. The institution/university must necessarily be established and **administered** by the minority community;
 - ii. To get protection under Article 30(1) an institution/university should be established **BY** the minority, **FOR** the minority and **AS** a minority institution.

The above referred test are the only *indicia* for article 30(1) and this is perhaps the only answer to the limited question referred for consideration.
 - d. An institution must be predominantly established by the minority, for the minority and as a minority institution for claim under Article 30(1) to be satisfied. The Court ought to apply the *test of ultimate control* in such matters;
 - e. The meaning of the word "establish" under Article 30 has indeed been understood by this Court consistently to mean to actually, tangibly bring into

existence. The factum of establishment needs to be *manifested in reality* and cannot be ascertained from claims made with regard to “wishes” or “choices” or “efforts” of some minority community;

- f. The Petitioner wrongly presumes that the judgment in *Basha supra* holds that as a matter of law, any institution which is incorporated by a statute cannot be a minority institution.

However, an analysis of legislations establishing other minority universities makes it clear that where the intention was to establish a minority university, the Legislature had included specific provisions in the establishing Act itself to give the University a character of a minority institution.

- g. The drafting history of fundamental rights under Article 29 and 30 consistently use ‘establish AND administer’ conjunctively and further express apprehensions about an over-expansive interpretation of such articles.
- h. The judgments of this Hon’ble Court, dealing with issue of identification of minority institutions in light of claims made by some institutions, expressed serious concerns and apprehensions on ‘*masked phantoms*’, only purporting to be minority institutions in order to escape stricter regulations misusing the protection of Article 30.
- i. National Commission for Minority Educational Institutions Act, 2004 and its Amendment in 2010 clearly provide that an institution needs to be established AND administered by minorities to be a minority educational institution. The said definition is not under challenge anywhere.

30. In case of *Basha supra* while analysing the facts and interpretation of the AMU Act, based on facts, a five judge bench has correctly recorded the conclusion that AMU was not established by the minority community AS a minority institution. In this regard, the following factors may be noted so as to ensure that AMU does not use a reference on a constitutional issue before a larger as an appeal against a concluded issues in *Basha supra* :

- a. It is amply clear that predominant character and the purpose behind the AMU was of establishing an institution of a national character on the lines of the Benares Hindu University;
- b. The survey of the provision of the Aligarh Muslim University at the time of the inception of the University in 1920 clearly points towards a predominantly national and non-minority character of the University;
- c. Without prejudice to the above, the totality of factors which lead to the establishment of Aligarh Muslim University in fact, at the time of its inception

and the years preceding it, clearly point towards it being primarily a non-minority institution, modelled on the lines of Benares Hindu University.

- d. The approach of five judges in *St. Stephens supra* in enquiring if St. Stephens was an institution “established” by the minority or not, if applied to AMU, clearly evinces that AMU was not established as a minority institution at the time of its inception.
- e. Contrary to the suggestion of the Petitioner, the approach adopted in *Basha supra* is not merely premised on Aligarh Muslim University being established in 1920 through an Act of federal legislature. The approach in *Basha supra* involved meticulous factual determination based on the totality of circumstances including the facts leading up to 1920, the drafting of the 1920 Act and the nature of the University that was established in 1920. As per *Basha supra*, the said factors in their holistic sense, clearly establish that the AMU was predominantly non-minority institution with a *sprinkling of minority*;
- f. As a proposition of law, once judicial determination of factual events surrounding the establishment of Aligarh Muslim University in 1920 is carried out by a Bench of 5 Judges, it is impermissible for the legislature to change those findings of fact rendered by a competent court.
- g. Once the said factual issue of “establishment” of AMU is settled by *Basha supra*, the same cannot be amended by way of Legislative Act. The finding of “establishment” is a factual finding on the history of the institution and a finding on the facts surrounding the establishment of the institution as they then were at the start of the century.
- h. The determination of fact about the establishment and minority character of an educational institution is a matter of fact which cannot be changed by a legal fiction

FACTUM OF ESTABLISHMENT - NECESSARY LEGAL PRECONDITION

STARE DECISIS AND SETTLED JURISPRUDENCE OF THIS HON'BLE COURT

31. It is submitted that as a principle of law, the issue that in order to claim protection under Article 30, an institution needs to be established **BY** the minority **FOR** the minority and **AS** a minority institution has been settled for more than six decades. It is submitted that precedents have *an intrinsic value attached to them which gives birth to the doctrine of stare decisis*. It is submitted that *stare decisis* refers to the policy of courts to stand by the precedents and not to disturb settled views and legal positions¹.

32. It is undeniable that the words 'establishment' and 'administration' connote and provide two separate fundamental rights to minorities. However, the right to administer cannot be claimed or exercised out of thin air. The right to administer is inevitably a consequential and concomitant right which arises only on the institution/university being established by the minority. The right to administer does not exist in isolation as the same would lead to an absolute incongruity that claims of administration being made without any factual basis. As stated by this Hon'ble Court there are two separate rights, *separated in point of time*, thereby meaning that the exercise of one, leads to the right to exercise another.

33. This Hon'ble Court, by way of a judgement rendered in 7 Judge Bench in *Re: Kerala Education Bill, 1957, 1959 SCR 995* for the first time discussed the pre-conditions to be satisfied prior to the exercise of Article 30. The court notes the argument for the counsel for the State which expressly puts forth that there are three conditions which must be fulfilled before the protection and privileges of Article 30(1) may be claimed:

- a. There must be a minority community;
- b. One or more members of that community, '**after the commencement of the Constitution**' must seek to exercise the right to establish the educational institution;
- c. Educational institution must be established for the members of the minority community.

¹ *Street Tramways v. London County Council*, (1898) AC 375 (378); *Radcliffe v. Ribble Motor Services*, (1939) AC 215 (245); *Waman Rao v. Union of India*, (1981) 2 SCC 362; *Admiralty Commrs. v. Valverda (Owners)* [1938 AC 173 : (1938) 1 All ER 162 (HL)], ; *Button v. Director of Public Prosecution* [1966 AC 591 : (1965) 3 All ER 587 (HL)] ; *Sakshi v. Union of India*, (2004) 5 SCC 518; *Milkfood Ltd. v. GMC Ice Cream Private Ltd.*, (2004) 7 SCC 288 ; [*In re Compensation to Civil Servants*, AIR 1929 PC 84 (87)]; *Phanindra v. The King* (1949) 4 DLR (PC) 87; *Gideon v. R.*, (1950) AC 379] ; *Narinder Singh v. State of Punjab*, (2014) 6 SCC 466 ; *Shah Faesal v. Union of India*, (2020) 4 SCC 1

34. While examining the said arguments, this Hon'ble Court rejected the proposition that the community should establish the institution only after the commencement of the Constitution and held that the institutions established prior to the commencement of the Constitution could also claim such rights. The Court further clarified that by admitting some non-minorities into the institution, a minority institution would not shed its minority character.

While discussing the same, the Court also notes that Article 30(1) gives minorities two rights, i.e., the right to establish and to administer. This discussion of the Court in no way rejects the remainder of the arguments of the said establishment to the effect that the establishing of an institution by the minority for the minority and as a minority institution is necessary to claim rights under Article 30. The relevant paragraphs of the said judgement are as under:

22. We now pass on to the main point canvassed before us, namely, what are the scope and ambit of the right conferred by Article 30(1). Before coming to grips with the main argument on this part of the case, we may deal with a minor point raised by learned counsel for the State of Kerala. **He contends that there are three conditions which must be fulfilled before the protection and privileges of Article 30(1) may be claimed, namely, (1) there must be a minority community, (2) one or more of the members of that community should, after the commencement of the Constitution, seek to exercise the right to establish an educational institution of his or their choice, and (3) the educational institution must be established for the members of his or their own community.** We have already determined, according to the test referred to above, that the Anglo-Indians, Christians and Muslims are minority communities in the State of Kerala. We do not think that the protection and privilege of Article 30(1) extend only to the educational institutions established after the date 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). The fallacy of this argument becomes discernible as soon as we direct our attention to Article 19(1)(g) which, clearly enough, applies alike to a business, occupation or profession already started and carried on as to those that may be started and carried on after the commencement of the Constitution. **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. It must not be overlooked that Article 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 just as Article 26 covers the right to maintain pre-Constitution religious institutions.** As to the third condition mentioned above, the argument carried to its logical conclusion comes to this that if a single member of any other community is admitted into a school established for the members of a particular minority community, then the educational institution ceases to be an educational institution established by the particular minority community. The argument is sought to be reinforced by a reference to Article 29(2). **It is said that an educational institution established by a minority community which does not seek any**

aid from the funds of the State need not admit a single scholar belonging to a community other than that for whose benefit it was established but that as soon as such an educational institution seeks and gets aid from the State coffer Article 29(2) will preclude it from denying admission to members of the other communities on grounds only of religion, race, caste, language or any of them and consequently it will cease to be an educational institution of the choice of the minority community which established it. This argument does not appear to us to be warranted by the language of the article itself. There is no such limitation in Article 30(1) and to accept this limitation will necessarily involve the addition of the words “for their own community” in the article which is ordinarily not permissible according to well established rules of interpretation. Nor is it reasonable to assume that the purpose of Article 29(2) was to deprive minority educational institutions of the aid they receive from the State. To say that an institution which receives aid on account of its being a minority educational institution must not refuse to admit any member of any other community only on the grounds therein mentioned and then to say that as soon as such institution admits such an outsider it will cease to be a minority institution is tantamount to saying that minority institutions will not, as minority institutions, be entitled to any aid. The real import of Article 29(2) and Article 30(1) seems to us to be that they clearly contemplate a minority institution with a sprinkling of outsiders admitted into it. By admitting a non-member into it the minority institution does not shed its character and cease to be a minority institution. Indeed the object of conservation of the distinct language, script and culture of a minority may be better served by propagating the same amongst non-members of the particular minority community. In our opinion, it is not possible to read this condition into Article 30(1) of the Constitution.”

It was in this light and rightfully so that the Bench in *Basha supra* analysed and understood the judgement in *Kerala Education Bill supra*.

35. The subsequent judgements and jurisprudence developed from the judgments of this Hon’ble Court further points towards the reinforcement of the said position of law as pronounced explicitly in *Basha supra*. The continuous acceptance of the said position led to the opinion in the case of *TMA Pai Foundation vs. State of Karnataka 2002 (8) SCC 481* which declined to answer the question 3(a) framed by the 11 Judges as the Bench felt that it was not a constitutional question that 11 Judges needed to answer because of the settled position of law and left it open for a regular Bench to answer.

36. The next judgement which is critical in analysing the content of the right under Article 30 and specifically addresses the present issue is the judgement in *State of Kerala vs. Very Rev. Mother Provincial (1970) 2 SCC 417*. The said judgement is rendered by 6 Hon’ble Judges states that the right of establishment and administration are two rights separated in point of time.

The said enunciation is the most apt and appropriate construction of understanding of Article 30 (1). It clearly provides that separation of the two rights is in respect of “*point of time*” i.e. separation of “*establishment*” and “*administration*”

is sequential, thereby meaning factum of establishment is necessary prior to claiming the right of administration. The relevant paragraphs of the said judgement are quoted as under:

“8. Article 30(1) has been construed before by this Court. Without referring to those cases it 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.

9. 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.”

Therefore, the administration right is available to the ‘Founders’ or ‘their nominees’ implying that establishing of institution is necessary.

37. The next judgement is in the case of *S.P. Mittal vs. Union of India, (1983) 1 SCC 51*. The said judgement rendered by 5 Hon’ble Judges expressly and clearly holds that establishment of an institution by a linguistic or religious minority is necessary for claiming benefit under Article 30(1). The relevant paragraph are quoted as under :

“137. The impugned Act does not seek to curtail the rights of any section of citizens to conserve its own language, script or culture conferred by Article 29. In order to claim the benefit of Article 30(1) the community must show : (a) that it is a religious or linguistic minority, (b) that the institution was established by it. Without satisfying these two conditions it cannot claim the guaranteed rights to administer it.

138. In Re Kerala Education Bill, 1957 [AIR 1958 SC 956 : 1959 SCR 995 : 1959 SCJ 321] Article 30(1) of the Constitution which deals with the right of minorities to establish and administer educational institutions, came for consideration. The Kerala Education Bill, 1957, which had been passed by the Kerala Legislative Assembly was reserved by the Governor for consideration by the President.

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142. On an analysis of the two Articles, Article 29 and Article 30 and the three cases referred to above, it is evident that the impugned Act does not seek to curtail the right of any section of citizens to conserve its own language, script or culture conferred by Article 29. The benefit of Article 30(1) can be claimed by the community only on

proving that it is a religious or linguistic minority and that the institution was established by it.

In the view that we have taken that Auroville or the Society is not a religious denomination, Articles 29 and 30 would not be attracted and, therefore, the impugned Act cannot be held to be violative of Articles 29 and 30 of the Constitution.”

38. The next judgement rendered by this Hon’ble Court was in *A.P. Christian Medical Educational Society vs. Government of Andhra Pradesh* 1986 (2) SCC 667. The said judgement is critical as it explores the *real-world application* of Article 30(1). This Hon’ble Court tested its jurisprudence and examined a situation as to how false schemes can be built up in order to claim protection under Article 30 in order to escape Government regulations.

It is submitted that the apprehensions expressed by this Hon’ble Court in the said judgement rendered almost four decades back are rather prophetic and must be read with the seriousness they deserve. The Court holds that the Government and the Court have the right to ‘pierce the veil’ [to borrow the term from the corporate law] and that there must be a ‘real positive index’ in order to claim protection under Article 30. The relevant paragraphs of the said judgement are quoted as under:

O. Chinnappa Reddy, J.— A brazen and bizarre exploitation of the naive and foolish, eager and ready-to-be-duped, aspirants for admission to professional collegiate courses, behind the smoke-screen of the right of the minorities to establish and administer educational institutions of their choice — is what this case is about. A society styling itself as the ‘Andhra Pradesh Christian Medical Educational Society’ was registered on August 31, 1984. The first of the objectives mentioned in the memorandum of association of the society was,

“to establish, manage and maintain educational and other institutions and impart education and training at all stages, primary, secondary, collegiate, post-graduate and doctoral, as a Christian Minorities’ Educational Institution”.

Another object was

“to promote, establish, manage and maintain Medical colleges, Engineering colleges. Pharmacy colleges. Commerce, Literature, Arts and Sciences and Management colleges and colleges in other subjects and to promote allied activities for diffusion of useful knowledge and training”.

Other objects were also mentioned in the memorandum of association. All that is necessary to mention here is that none of the objects, apart from the first extracted object, had anything to do with any minority. Even the first mentioned object did not specify or elucidate what was meant by the statement that education and training at all stages was proposed to be imparted in the institutions of that society “as Christian Minorities’ Educational Institution”. Apparently the words “as a Christian Minorities’ Educational Institutions” were added in order to enable the society to claim the rights guaranteed by Article 30(1) of the Constitution and for no other purpose. This will become clearer and clearer as we narrate further facts.

7. Even while narrating the facts, we think, we have said enough to justify a refusal by us to exercise our discretionary jurisdiction under Article 136 of the Constitution. We do not have any doubt that the claim of the petitioner to start a minority educational institution was no more than the merest pretence. Except the words, “as the Christian Minorities’ Educational Institutions” occurring in one of the objects of the society, as mentioned in the memorandum of association, there is nothing whatever to justify the claim of the society that the institutions proposed to be started by it were ‘minority educational institutions’. Every letter written by the society whether to the Central Government, the State Government or the University contained false and misleading statements. As we had already mentioned the petitioner had the temerity to admit or pretend to admit students in the first year MBBS course without any permission being granted by the government for the starting of the medical college and without any affiliation being granted by the University. The society did this despite the strong protest voiced by the University and the several warnings issued by the University. The society acted in defiance of the University and the government, in disregard of the provisions of the Andhra Pradesh Education Act, the Osmania University Act and the regulations of the Osmania University and with total indifference to the interest and welfare of the students. The society has played havoc with the careers of several score students and jeopardised their future irretrievably. Obviously the so-called establishment of a medical college was in the nature of a financial adventure for the so-called society and its office bearers, but an educational misadventure for the students. Many, many conditions had to be fulfilled before affiliation could be granted by the University. Yet the society launched into the venture without fulfilling a single condition beyond appointing someone as Principal. No one could have imagined that a medical college could function without a teaching hospital, without the necessary scientific equipment, without the necessary staff, without the necessary buildings and without the necessary funds. Yet that is what the society did or pretended to do. We do not have any doubt that the society and the so-called institutions were started as business ventures with a view to make money from gullible individuals anxious to obtain admission to professional colleges. It was nothing but a daring imposture and sculduggery. By no stretch of imagination, can we confer on it the status and dignity of a minority institution.

8. It was seriously contended before us that any minority, even a single individual belonging to a minority, could found a minority institution and had the right so to do under the Constitution and neither the government nor the University could deny the society’s right to establish a minority institution, at the very threshold as it were, howsoever, they may impose regulatory measures in the interests of uniformity, efficiency and excellence of education. The fallacy of the argument insofar as the instant case is concerned lies in thinking that neither the government nor the University has the right to go behind the claim that the institution is a minority institution and to investigate and satisfy itself whether the claim is well-founded or ill-founded. **The government, the University and ultimately the court have the undoubted right to pierce the ‘minority veil’ — with due apologies to the corporate lawyers — and discover whether there is lurking behind it no minority at all and in any case, no minority institution. The object of Article 30(1) is not to allow bogies to be raised by pretenders but to give the minorities ‘a sense of security and a feeling of confidence’ not merely by guaranteeing the right to profess, practise and propagate religion to religious minorities and the right to conserve their language, script and culture to linguistic minorities, but also to enable all minorities, religious or linguistic, to establish and administer educational institutions of their choice. These institutions must be**

educational institutions of the minorities in truth and reality and not mere masked phantoms. They may be institutions intended to give the children of the minorities the best general and professional education, to make them complete men and women of the country and to enable them to go out into the world fully prepared and equipped. They may be institutions where special provision is made to the advantage and for the advancement of the minority children. They may be institutions where the parents of the children of the minority community may expect that education in accordance with the basic tenets of their religion would be imparted by or under the guidance of teachers, learned and steeped in the faith. They may be institutions where the parents expect their children to grow in a pervasive atmosphere which is in harmony with their religion or conducive to the pursuit of it. What is important and what is imperative is that there must exist some real positive index to enable the institution to be identified as an educational institution of the minorities. We have already said that in the present case apart from the half a dozen words 'as a Christian minorities' institution' occurring in one of the objects recited in the memorandum of association, there is nothing whatever, in the memorandum or the articles of association or in the actions of the society to indicate that the institution was intended to be a minority educational institution. As already found by us these half a dozen words were introduced merely to found a claim on Article 30(1). They were a smoke-screen."

The said judgement is a reminder that if the right to administer is allowed in absence of the initial establishment of the institution by the minorities, serious consequences would follow. The apprehensions of the Court would come true and it would lead to a large scale 'take over' [again to borrow the term for corporate law] of institutions by purported minorities by devising innovative ways to claim protection under Article 29 and 30.

39. The next important judgement in this regard is in *St. Stephens College vs. University of Delhi, 1992 (1) SCC 558* rendered by 5 Hon'ble Judges. The said judgement in great detail points out towards what are the *real positive indicia* for any institution to claim to be an institution established by a minority. During the analysis, with regard to the specific college in question, the Court notes as under:

- a. College was founded by missionaries to impart Christian religious instruction- **Para 30**
- b. Building of the college was hired by a minority and paid for by them – **Para 31-34**
- c. College was at the time of establishment managed by a wholly Christian body – **Para 35**
- d. The Rules of the society provide that members are all to be appointed by Christian bodies – **Para 35**
- e. The management of the college is also with a wholly Christian body – **Para 36**
- f. The Supreme Council and the Governing body of the college are also not secular bodies and predominantly Christian [10 out of 13] – **Para 37 - 38**

- g. Principal is ex-officio Christian – Para 39
- h. Property of the college is vested in the church – Para 40

From the said analysis, the Court arrived at a conclusion that there was a real positive index indicating the establishment of St. Stephens College as a minority institution. The said factors are critical as they form jurisprudential basis of the factual enquiry that ought to be carried out by the Court in such matters. The Court specifically held that establishment of an institution as a minority institution is necessary and words 'established' and 'administered' are to be read *conjunctively*. The relevant paragraphs of the said judgment are as under:

"28. There is by now, fairly abundant case law on the questions as to "minority"; the minority's right to "establish", and their right to "administer" educational institutions. These questions have arisen in regard to a variety of institutions all over the country. They have arisen in regard to Christians, Muslims and in regard to certain sects of Hindus and linguistic groups. The courts in certain cases have accepted without much scrutiny the version of the claimant that the institution in question was founded by a minority community while in some cases the courts have examined very minutely the proof of the establishment of the institution. **It should be borne in mind that the words "establish" and "administer" used in Article 30(1) 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.** Prior to the commencement of the Constitution of India, there was no settled concept of Indian citizenship. This Court, however, did reiterate that the minority competent to claim the protection of Article 30(1) of the Constitution, and on that account the privilege of establishing and maintaining educational institutions of its choice, must be a minority of persons residing in India. They must have formed a well defined religious or linguistic minority. It does not envisage the rights of the foreign missionary or institution, however, laudable their objects might be. After the Constitution, the minority under Article 30 must necessarily mean those who form a distinct and identifiable group of citizens of India. Whether it is "old stuff" or "new product", the object of the institute should be genuine, and not devious or dubious. There should be nexus between the means employed and the ends desired. **As pointed out in A.P. Christian Educational Society case [(1986) 2 SCC 667 : (1986) 2 SCR 749] there must exist some positive index to enable the educational institution to be identified with religious or linguistic minorities. Article 30(1) is a protective measure only for the benefit of religious and linguistic minorities and it is essential, to make it absolutely clear that no ill-fit or camouflaged institution should get away with the constitutional protection.**

29. With these prefatory remarks, we may now examine the claim of St. Stephen's College in the light of the submissions made by the parties.

First Question

Origin and Purpose of St. Stephen's College

30. Surprisingly, the Delhi University in the pleading, has neither denied nor admitted the minority character of the College. But the counsel for the University have many things to contend which will be presently considered. Mr Gupta, counsel for the

petitioner in T.C. No. 3 of 1980 has specifically urged that the College was established not by Indian residents, but by foreign Mission from Cambridge and therefore, it is not entitled to claim the benefit of Article 30(1). From the counter-affidavit filed by Dr J.H. Hala — the Principal of the College in W.P. Nos. 13213-14 of 1984 and from the publication of “The History of the College” the following facts and circumstances could be noted: The College was founded in 1881 as a Christian Missionary College by the Cambridge Mission in Delhi in collaboration with the Society for the Propagation of the Gospel [SPG] whose members were residents in India. The College was founded in order to impart Christian religious instruction and education based on Christian values to Christian students as well as others who may opt for the said education. The Cambridge Brotherhood with plans of establishing the Christian College in Delhi sent the Cambridge Mission whose members were: Rev. J.D. Murray, Rev. E. Bickarsteth, Rev. G.A. Lefroy, Rev. H.T. Blackett, Rev. H.C. Carlyon and Rev. S.S. Allnutt. Of the said members of the Cambridge Mission, Rev. Allnutt, Rev. Blackett and Rev. Lefroy teamed up with Rev. R.R. Winter of the SPG to establish the College. It will be seen that Cambridge Mission alone did not establish the College. The Cambridge Mission with the assistance of the members of the SPG who were residents in India established the College. The contention to the contrary urged by Mr Gupta, counsel for the petitioner in T.C. No. 3 of 1980 is, therefore, incorrect. The purpose of starting the College could be seen from the Report of 1878 to the Cambridge Brotherhood and it states “the students after leaving St. Stephen's Mission School joined non-Christian Colleges and lost touch with Christian teachings ... the case would be otherwise if we were able to send them from our school to a College, where the teachings would be given by Christian professors and be permeated with Christian ideas.” (F.F. Monk in *A History of St. Stephen's College, Delhi, Calcutta*, 1935, p. 3). In October 1879 the Cambridge Committee expressed the desirability of imparting instruction also in secular subjects. “It was also felt that the influence of the missionaries would be greatly increased if they held classes in some secular subjects and did not conform their teachings to strict religious instruction”. (*ibid* p. 5)

Building

31. Originally, the College building was housed in hired premises paid for by the SPG. A new building was eventually constructed by the Society for the Propagation of the Gospel wherein the foundation stone bore the following inscription:

To the Glory of God
And the Advancement of Sound
Learning
And Religious Education

The new building of the College was eventually opened on December 8, 1881, by Rev. Allnutt. On the said building on the front of the porch, at the top of the parapet, a ‘cross’ in bas-relief was placed and immediately under the bracket the words “Ad Dei Gloriam” had been inscribed which have since been adopted as the College motto.

32. Today the new College building in the University campus has also a large ‘cross’ at the top of the main tower and in the front porch is inscribed the St. Stephen's motto “Ad Dei Gloriam” to perpetuate and remind the students the motive and objective of the College, namely, “The Glory of God”.

33. There is also a chapel in the College campus where religious instruction in the Christian Gospel is imparted for religious assembly in the morning.

34. It would thus appear that since its foundation in 1881, St. Stephen's College has apparently maintained its Christian character and that would be evident from its

very name, emblem, motto, the establishment of a chapel and its religious instruction in the Christian Gospel for religious assembly. These are beyond the pale of controversy.

Constitution of the College

35. It is said that during the early part of the College history, it was managed by the Mission Council — a totally Christian body. Late in 1913 it was registered as a society and a constitution was formulated on November 6, 1913 which was adopted by the SPG Standing Committee and by the Cambridge Committee. The Constitution as it stands today again maintains the essential character of the College as a Christian College without compromising the right to administer it as an educational institution of its choice. The Constitution of the College consists of Memorandum of the Society and Rules. Clause 2 of Memorandum states that “the object is to prepare students of the College for University degrees and examinations and to offer instruction in doctrines of christianity which instruction must be in accordance with the teachings of the Church of North India”. Clause 4 sets out the original members of the Society who were mostly Christians. The composition of the Society also reflects its Christian character inasmuch as the Bishop of the Diocese of Delhi is the Chairman of the Society [Rule 1(a)]. Further, two persons appointed by the Bishop of the Diocese of Delhi, one of whom shall be a senior Presbyter of the Diocese, shall be members of the Society [Rule 1(b)]. One person to be appointed by the Church of North India Synodical Board of Higher Education shall also be a member of the Society [Rule 1(g)]. Similar is the position of a person to be appointed by the Diocesan Board of Education [Rule 1(h)]. Two persons to be appointed by the Executive Committee of the Diocese, one of whom shall be a Presbyter, shall also be members of the Society [Rule 1(i)]. The composition of the Society, therefore, indicates the presence of a large number of Christian members of the Church of North India on it.

Management

36. The management of the College is being looked after by the Supreme Council and the Governing Body. The Supreme Council consists of some members of the Society, all of whom must be members of the Church of North India or some other church in communion therewith, or any other duly constituted Christian church. They are:

- (a) The Bishop of the Diocese of Delhi, who shall be the Chairman.
- (b) Two persons appointed by the Bishop of the Diocese [under Rule 1(b)].
- (c) The person appointed by the Church of North India Synodical Board of Higher Education [under Rule 1(g)].
- (d) The person appointed by the Diocese Board of Education [under Rule 1(h)].
- (e) The Principal of the College (Member-Secretary).”

37. Rule 3 of the Society provides that the Supreme Council mostly looks after the religious and moral instruction to students and matters affecting the religious character of the College. The Principal of the College is the Member-Secretary of the Supreme Council. Rule 4 provides that the Principal shall be a member of the Church of North India or of a Church that is in communion with the Church of India. The Vice-Principal shall be appointed annually by the Principal. He shall also be a member of the Church of North India or of some other church in communion therewith.

38. True, Rule 5 provides that the Supreme Council of the College has no jurisdiction over the administration of the College and it shall be looked after by the Governing Body. But the Governing Body is not a secular body as argued by learned

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counsel for the University. Rule 6 provides that the Chairman of the Society (Bishop of Diocese of Delhi) shall be the Chairman of the Governing Body. The members of the Society as set out in categories, (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l) and (m) of clause (1) shall be the members of the Governing Body. The Chairman and the Vice-Chairman of the Governing Body shall be the members of the Church of North India. Out of categories (a) and (m) in clause (1), only category (k) may be a member of the teaching staff who may not be a Christian. Two members referred under category (l) to be appointed by the Delhi University may not be Christian and likewise, under the category (n) may not be Christian. But the remaining members shall be Christians. Out of thirteen categories, only three categories might be non-Christians and therefore, it makes little difference in the Christian character of the Governing Body of the College. A comparison of Statute 30(c) of the Delhi University at pages 127-28 of Calendar Volume I will show the difference between the Governing Body of other colleges under the Statute as contrasted with St. Stephen's College.

Principal

39. It is again significant to note the difference between the method of appointment of the Principal of St. Stephen's College and all other colleges. The Principal of St. Stephen's College is appointed by the Supreme Council and he must be a Christian belonging to Church of North India (Rule 4). He will exercise control, and maintain discipline and regulation of the College. He will be in complete charge of the admissions in the College assisted by admission committee. But the Principals of other affiliated colleges under Ordinance XVIII clause 7(2) [page 335 Calendar Volume I] are to be appointed by the Governing Body of the College.

40. The immovable property of the College shall be vested in the Indian Church trustees, who shall merely act as Trustees, and shall have no power of management whatsoever. All other property connected with the College shall be vested in the Society (Rule 21)."

40. The next judgement is judgement of *Dayanand Anglo Vedic (DAV) College Trust and Management Society vs. State of Maharashtra (2013) 4 SCC 14*. In the said case, the Society in question clearly claimed to have minority status in the State of Maharashtra as it sought to encourage Hindi which is a linguistic minority in the said State. While examining the question of law, the Court clearly holds that the establishment of an institution as a minority institution is necessary to claim rights under Article 30. The relevant portion of the said judgement is quoted as under.

"29. Similarly, in *S.P. Mittal v. Union of India* [(1983) 1 SCC 51 : AIR 1983 SC 1] , this Court held that in order to claim the benefit of Article 30, the community must firstly show and prove that it is a religious or linguistic minority; and secondly, that the institution has been established by such linguistic minority.

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34. After giving our anxious consideration to the matter and in the light of the law settled by this Court, we have no hesitation in holding that in order to claim minority/linguistic status for an institution in any State, the authorities must be satisfied firstly that the institution has been established by the persons who are minority in such State; and, secondly, the right of administration of the said minority linguistic institution is also vested in those persons who are minority in such State. The right

conferred by Article 30 of the Constitution cannot be interpreted as if irrespective of the persons who established the institution in the State for the benefit of persons who are minority, any person, be it non-minority in other place, can administer and run such institution."

41. From the above stated position of law, it is clear that this Hon'ble Court has consistently adopted an approach which requires the initial establishment of an institution as a minority institution in order to claim minority status. It is submitted that the said position of law has acquired the status of *stare decisis* which is a core value of our legal system. The precedential system furthers the goals of certainty, stability and continuity in our legal system and in matters concerning the intersection of society, religion, minorities and fundamental rights, continuity and stability of law is a categorical imperative.

THE ERROR IN THE REFERENCE

42. At this juncture, it is also important to note that the reference order in Writ Petition (Civil) Nos. 54-57 of 1981 in *Anjuman-e-Rahmania & Ors. vs. Distt. Inspector of School & Ors.*, referring the judgement of 5 Hon'ble Judges in *Basha supra*, the 7 Judges vide order dated 26.11.1981 is wholly erroneous and without jurisdiction. It is submitted that a Bench of two hon'ble Judges cannot directly refer to the correctness of a decision rendered by five hon'ble Judges to 7 Judges Bench, especially without the presence of a Chief Justice. Further, a Bench of two Judges is bound by the opinion of a larger Bench (Para 12 in *Central Board of Dawoodi Bohra Community and Anr. Vs. State of Maharashtra and Anr*, (2005) 2 SCC 673.)

43. Further, it may be noted that the only reasons that the Court in *Anjuman-e-Rahmania & Ors supra* provides is that as per the judgement in *Basha supra*, if after the establishment of an institution, the institution is registered as a society, its status as a minority institution changes. This was noted despite the fact that the decision in *Basha supra* has nothing to do with a society or Societies Registration Act, nor do any of the broad principles in *Basha supra* affect the said issue. Therefore, the observation of the Hon'ble Court in the reference order is wholly without any basis.

44. The other reason the Court cites for making a reference is the purported criticism of the judgement by jurists like Mr. Seervai. With due respect to the jurists and the Ld. Bench making the reference, the same cannot be a ground for making reference to a larger bench. It is categorical to note that the reference order at no place

makes a note of a future or previous judgement of equal or larger strength from *Basha supra*, being contrary to the judgement in *Basha supra*.

45. It is submitted that the exact same position arose concerning the judgment of this Hon'ble Court in *Sardar Syedna Taher Saifuddin Saheb v. State of Bombay, 1962 Supp (2) SCR 496*. It was a five-Judge Bench of this Court which had ruled by a majority of 4:1 that the Bombay Prevention of Excommunication Act (Act 42 of 1949) was *ultra vires* the Constitution as it violated Article 26(b) of the Constitution and was not saved by Article 25(2). It is submitted that thereafter, 26-2-1986, a petition was filed seeking reconsideration, and overruling, of the decision of this Court in *Sardar Syedna Taher Saifuddin Saheb supra* and then issuing a writ of mandamus directing the State of Maharashtra to give effect to the provisions of the Bombay Prevention of Excommunication Act, 1949.

46. It is submitted that the matter came up for hearing before a two-Judge Bench of this Court which on 25-8-1986 directed "rule nisi" to be issued. On 18-3-1994 a two-Judge Bench directed the matter to be listed before a seven-Judge Bench for hearing. On 20-7-1994 the matter did come up before a seven-Judge Bench which adjourned the hearing awaiting the decision in WP No. 317 of 1993 [*T.M.A. Pai case, (2002) 8 SCC 481*]. On 26-7-2004 IA No. 4 was filed on behalf of Respondent 2 seeking a direction that the matter be listed before a Division Bench of two Judges. Implicitly, the application sought a direction for non-listing before a Bench of seven Judges and rather the matter being listed for hearing before a Bench of two or three Judges as is the normal practice of this Court. In the contents of the application reliance was placed on the Constitution Bench decisions of this Court in *Bharat Petroleum Corpn. Ltd. v. Mumbai Shramik Sangha [(2001) 4 SCC 448]* followed in four subsequent Constitution Bench decisions namely *Pradip Chandra Parija v. Pramod Chandra Patnaik [(2002) 1 SCC 1]*, *Chandra Prakash v. State of U.P. (2002) 4 SCC 234*, *Vishweshwaraiah Iron & Steel Ltd. v. Abdul Gani (2002) 10 SCC 437* and *Arya Samaj Education Trust v. Director of Education [(2004) 8 SCC 30]*.

47. The matter was ultimately placed before a bench of five Hon'ble Judges in order to decide that whether the course adopted by the two judge bench, doubting the correctness of a decision rendered by five Hon'ble Judges, was correct. While examining the issue, this Hon'ble Court highlighted two approaches of the Supreme Court in a decision reported in *Central Board of Dawoodi Bohra Community and Anr. Vs. State of Maharashtra and Anr., (2005) 2 SCC 673 [5]B-J. R.C. Lahoti* delivered in the present proceedings.

48. On the question of reference, the Court held that the first would be the strict approach as per the law laid down by the Supreme Court in a decision delivered by a Bench of larger strength is binding on any subsequent Bench of lesser or co-equal strength. A Bench of lesser quorum has two options :

- a. invite the attention of the Chief Justice and request for the matter to be placed for hearing before an appropriate bench or;
- b. place the matter before a Bench of coequal strength which pronounced the decision laying down the law the correctness of which is doubted.

The only exception to the above said rule is the discretion of the Chief Justice in whom vests the power of framing the roster.

49. Secondly, in extremely rare cases, if the matter has already come up for hearing before a Bench of larger quorum and that Bench itself feels that the view of the law taken by a Bench of lesser quorum needs correction or reconsideration, then by way of an exception and for reasons given by it, it may proceed to hear the case and examine the correctness of the previous decision in question dispensing with the need of a specific reference or the order of Chief Justice constituting the Bench and such listing. After discussing the law, this Hon'ble Court in *Central Board of Dawoodi Bohra Community and Anr. supra*, held as under :

"12. Having carefully considered the submissions made by the learned senior counsel for the parties and having examined the law laid down by the Constitution Benches in the abovesaid decisions, we would like to sum up the legal position in the following terms :-

(1) The law laid down by this Court in a decision delivered by a Bench of larger strength is binding on any subsequent Bench of lesser or co-equal strength.

(2) A Bench of lesser quorum cannot doubt the correctness of the view of the law taken by a Bench of larger quorum. In case of doubt all that the Bench of lesser quorum can do is to invite the attention of the Chief Justice and request for the matter being placed for hearing before a Bench of larger quorum than the Bench whose decision has come up for consideration. It will be open only for a Bench of coequal strength to express an opinion doubting the correctness of the view taken by the earlier Bench of coequal strength, whereupon the matter may be placed for hearing before a Bench consisting of a quorum larger than the one which pronounced the decision laying down the law the correctness of which is doubted.

(3) The above rules are subject to two exceptions :

(i) The abovesaid rules do not bind the discretion of the Chief Justice in whom vests the power of framing the roster and who can direct any particular matter to be placed for hearing before any particular Bench of any strength; and

(ii) In spite of the rules laid down hereinabove, if the matter has already come up for hearing before a Bench of larger quorum and that Bench itself feels that the view of the law taken by a Bench of lesser quorum, which view is in doubt, needs correction or reconsideration then by way of exception (and not as a rule) and for reasons given by it, it may proceed to hear the case

and examine the correctness of the previous decision in question dispensing with the need of a specific reference or the order of Chief Justice constituting the Bench and such listing. Such was the situation in Raghubir Singh and Ors. and Hansoli Devi and Ors. (supra)"

50. It is submitted that it is settled law that reference to a larger bench cannot be merely made for the asking or even because another view appears to be a possible view. It is submitted that in *Govt. of A.P. v. B. Satyanarayana Rao, (2000) 4 SCC 262*, it was held as under :

"8. Learned counsel for the respondent attempted to convince us that the decision in the case of *State of A.P. v. V. Sadanandam* [1989 Supp (1) SCC 574 : 1989 SCC (L&S) 511 : (1989) 11 ATC 391] has to be ignored on the principle of per incuriam as certain relevant provisions of the Rules were not considered in the said case, and in any case this case requires to be referred to a larger Bench of three Judges. The rule of per incuriam can be applied where a court omits to consider a binding precedent of the same court or the superior court rendered on the same issue or where a court omits to consider any statute while deciding that issue. This is not the case here. In *State of A.P. v. V. Sadanandam* [1989 Supp (1) SCC 574 : 1989 SCC (L&S) 511 : (1989) 11 ATC 391] the controversy was exactly the same as it is here and this Court after considering para 5 of the Presidential Order of 1975 held that the Government has power to fill a vacancy in a zone by transfer. We, therefore, find that the rule of per incuriam cannot be invoked in the present case. Moreover, a case cannot be referred to a larger Bench on mere asking of a party. A decision by two Judges has a binding effect on another coordinate Bench of two Judges, unless it is demonstrated that the said decision by any subsequent change in law or decision ceases to laying down a correct law. We, therefore, reject the arguments of learned counsel for the respondents"

51. In *Shrimanth Balasaheb Patil v. Karnataka Legislative Assembly (2020) 2 SCC 595*, it was held as under :

"157. There is no doubt that the requirements under Article 145(3) of the Constitution have never been dealt with extensively and, more often than not, have received mere lip service, wherein this Court has found existence of case laws which have already dealt with the proposition involved, and have rejected such references. Normatively, this trend requires consideration in appropriate cases, to ensure that unmeritorious references do not unnecessarily consume precious judicial time in the Supreme Court.

158. In any case, we feel that there is a requirement to provide a preliminary analysis with respect to the interpretation of this provision. In this context, we need to keep in mind two important phrases occurring in Article 145(3) of the Constitution, which are, "substantial question of law" and "interpretation of the Constitution". By reading the aforesaid provision, two conditions can be culled out before a reference is made:

- (i) The Court is satisfied that the case involves a substantial question of law as to the interpretation of this Constitution;
- (ii) The determination of which is necessary for the disposal of the case.

160. Any question of law of general importance arising incidentally, or any ancillary question of law having no significance to the final outcome, cannot be considered as a substantial question of law. The existence of substantial question of law does not

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weigh on the stakes involved in the case, rather, it depends on the impact the question of law will have on the final determination. If the questions having a determining effect on the final outcome have already been decided by a conclusive authority, then such questions cannot be called as "substantial questions of law". In any case, no substantial question of law exists in the present matter, which needs reference to a larger Bench. The cardinal need is to achieve a judicial balance between the crucial obligation to render justice and the compelling necessity of avoiding prolongation of any lis."

52. In *CIT v. Saheli Leasing & Industries Ltd.*, (2010) 6 SCC 384, it was held as under:

"(x) In order to enable the Court to refer any case to a larger Bench for reconsideration, it is necessary to point out that particular provision of law having a bearing over the issue involved was not taken note of or there is an error apparent on its face or that a particular earlier decision was not noticed, which has a direct bearing or has taken a contrary view. Such does not appear to be the case herein. Thus, it does not need to be referred to a larger Bench as in our considered opinion it is squarely covered by the judgment of this Court in *Gold Coin* [(2008) 9 SCC 622 : (2008) 304 ITR 308]"

53. In view of the above, it is submitted that the present reference to the extent it relies upon the order of reference dated 26.11.1981 is wholly bad in law. It may be noted that the said reference order forms a primary basis of the reference in the present case which in the opinion of the Union of India can certainly be answered by a regular Bench.

ONLY INSTITUTIONS ESTABLISHED AS MINORITY INSTITUTIONS HAVE BEEN EXTENDED PROTECTION

54. Apart from the above legal position declared by this Hon'ble Court, sitting in a combination of larger Benches consistently over the course of the past seven (7) decades, there are a large number of precedents in which this Hon'ble Court has extended the protection of Article 30 to institutions which had been expressly established as minority institutions. It is submitted that in fact in no case whatsoever, this Hon'ble Court had ever extended the protection of Article 30 to an institute which was not established as a minority institution factually at the time of its inception. To state anything contrary would be to upset the entirety of the jurisprudence on the subject.

55. Apart from the judgment in *Basha supra*, this Hon'ble Court in *Rev. Father Proost vs. State of Bihar* 1969(2) SCR 73, sitting in a combination of five Judges, extended the protection of Article 30 to an institution which was expressly founded by the Catholic minority and hence established at the inception by a minority. The relevant paragraphs of the said judgment are quoted as under:-

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"2. **St. Xavier's College was established by the Jesuits of Ranchi.** It was affiliated to Patna University in 1944. The management of the College vests in a Governing Body consisting of 11 members. They are:

"(i) The Superior Regular of Ranchi Jesuit Mission — President exofficio.

(ii-v) Four Counsellors to the Superior Regular to be nominated by the Jesuit Mission authorities.

(vi) The Principal of the College — Vice-President and Secretary ex-officio.

(vii) One representative of the teaching staff of the College elected by the members of the staff.

(viii) One representative of the Patna University.

(ix-x) Three persons to represent Hindu, Muslim and Aboriginal interests."

The terms of service of religious staff are determined by the Jesuit Mission Authorities, but those of the members of the lay staff including their appointment are determined by the Governing Body. All appointments to the teaching staff, both religious and lay are reported to the Syndicate of the Patna University. The object of founding the College inter alia is "to give Catholic youth a full course of moral and liberal education, by imparting a thorough religious instruction and by maintaining a Catholic atmosphere in the institution". The college is, however, open to all non-catholic students. All non-catholic students receive a course of moral science.

3. The College was thus founded by a Christian minority and the petitioners claim they have a right to administer it a constitutional right guaranteed to minorities by Article 30.

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12. **We are, therefore, quite clear that St. Xavier's College was founded by a Catholic Minority Community based on religion and that this educational institution has the protection of Article 30(1) the Constitution.** For the same reason it is exempted under Section 48-B of the Act. The petition will therefore be allowed with this declaration but in the circumstances of the case we make no order about costs."

56. It is submitted that this Hon'ble Court in *Rt. Rev. Bishop S.K. Patro vs. State of Bihar, 1969 (1) SCC 863*, sitting in a combination of 5 Judges held that the protection of Article 30 is available to an institution established prior to the Constitution as well. While discussing the same, the Court examined the reason why the institution in question deserves to be treated as a minority institution and specifically examined the factual question as to the establishment of the concerned institution by the minority at the time of inception. This Hon'ble Court weighed the claim of establishment as a minority institution through various indicia and evidences. It specifically treated the source of funds at the time of inception to be crucial for the claim of it being a minority institution. The relevant paragraphs are quoted as under:-

"8. It was the case of the State and the parties intervening in the writ petition before the High Court that the school was established by the Church Missionary Society, London, which they claimed was a Corporation with an alien domicile and "such a society was not a minority based on religion or language" within the meaning of Article 30 of the Constitution. On behalf of the appellants in the appeal and the petitioners in the two writ petitions filed in this Court, it is claimed that the School was

started in 1854 by the local Christian residents of Bhagalpur. They concede that the Church Missionary Society of London did extend financial aid in the establishment of the School, but they contend that on that account, the School did not cease to be an educational institution established by a religious minority in India.

9. There is on the record important evidence about establishment in 1854 of the Lower Primary School at Bhagalpur. It is unfortunate that sufficient attention was not directed to that part of the evidence in the High Court. The "Record Book" of the Church Missionary Association at Bhagalpur which is Annexure 'D' to Writ Petition No. 430 of 1968 furnishes evidence of vital importance having a bearing on the establishment of the School. It contains copies of letters written from Bhagalpur and minutes of meetings held and the resolutions passed by the Local Council of Bhagalpur. On June 1, 1948, Rev. Vaux informed the Calcutta Corresponding Committee of the Church Missionary Society by a letter that if the Calcutta Society were to establish a School at Champanagar, "local assistance shall not be wanting to the extent of 1000 or 1200 rupees a year, besides providing a school house and residence for the master", and that "At first, for breaking up the fallow ground and setting the school a going the presence of a Missionary of tact and experience may be necessary". On June 26, 1848, Rev. Vaux by another letter informed the Calcutta Corresponding Committee that a special service was held in the Church on June 22, 1848 and thereafter on Friday, June 23, 1848, a meeting was held and contributions were invited from persons present including Indian residents, that monthly subscriptions of Rs 202 for the "salary of masters" and other expenses were promised, and that an amount of Rs 1647 was donated for building the school and residence for the master; that the general impression made was so favourable to the cause that he felt justified in assuring the Calcutta Committee that the local Committee were in a position to guarantee certain requisites for making a commencement such as payment of the salary of the School Master and Mistress and the building of a house for their accommodation which may afterwards be enlarged so as to form a suitable residence for a Mission.

10. By letter, dated July 10, 1848, the Secretary, Calcutta Corresponding Committee, informed Rev. Vaux that they were looking out for a prominent person to commence missionary operations by opening a School "which is indeed a common way of beginning a Mission." In a letter, dated December 22, 1848, written from Bhagalpur it was stated:

"The Society will provide for the Missionary's salary and trust that local funds will provide a residence for him of a suitable kind. All other Mission requirements, such as school teachers etc. should be left to be provided on the spot."

11. Then there are minutes of the resolutions passed at a meeting held on October 24, 1849, by the Parent Committee and another resolution, dated October 25, 1851, of the Local Committee, to raise funds, and to determine upon disbursements with the advice of the Missionary to promote the objects of the Mission. In the minutes of the meeting, dated October 25, 1851, it is recorded that a statement of account of receipts and disbursements up to September 30, 1851, including expenses of a boys' school and salary of masters, "hire of school rooms and furniture" and expenses of a girls' school "including cost of working materials up to date" was submitted.

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15. It appears from this correspondence and the resolutions and the discussions at the meetings that a permanent home for the Boys' School was set up in 1854 on property acquired by local Christians and in buildings erected from funds collected by

them. The institution along with the land on which it was built and the balance of money from the local fund were handed over to the Church Missionary Society in 1856. It is also true that substantial assistance was obtained from the Church Missionary Society, London. But on that account, it cannot be said that the School was not established by the local Christians with their own efforts and was not an educational institution established by a minority."

57. The next judgment is in case of *D.A.V. College vs. State of Punjab, 1971 (2) SCC 269* rendered by a Bench of 5 Hon'ble Judges. It is noted in the said judgment that the institution claiming protection was expressly established by a community which was minority within the confines of the State of Punjab. The relevant paragraphs are quoted as under:-

"2. The Managing Committee of the D.A.V. College is composed of 24 members and manages a score of other D.A.V. Institutions established in the country. The D.A.V. College Trust and the Managing Society was formed to perpetuate the memory of Swami Dayanand Saraswati who was the founder of an organisation known as Arya Samaj, which organisation it is claimed has a fixed religious programme and its constitution is designed to perpetuate the religious teaching and philosophy of its founder. The Arya Samaj it is stated has its own philosophy conception of God worship, religious tenets, rituals, social work, educational work etc., as would appear from the constitution of the Arya Samaj. It is, therefore, claimed that it being a religious sect and denomination, is a minority within the meaning of Article 50(1) of the Constitution. These Schools and Colleges were established "on the lines, teachings and principles of Arya Samaj" in which "the imparting of the Vedic culture and religious instructions and worship based on the concept of Vedas, was and has its essential ingredient".

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12. For the purposes of Article 29(1) even though it may not be necessary to enquire whether all the Hindus of Punjab as also the Arya Samajis speak Hindi as a spoken language, nonetheless there can be no doubt that the script of the Arya Samaj is distinct from that of the Sikhs who form the majority. It is claimed that while the Sikhs have Gurmukhi as their script the Arya Samajis have their own script which is the Devnagri script. Their claim to be a religious minority with distinct script of their own seems to us to be justified as would appear from the following."

58. It is submitted that in the judgment *Ahmedabad St. Xavier's College Society vs State of Gujarat, 1974 (1) SCC 717*, was rendered by 9 Hon'ble Judges, with six opinions in total, with Justice Ray (with Justice Palakar), Justice Jagamohan Reddy (with Justice Alagiriswami), Justice H.R. Khanna, Justice Mathew (with Justice Y.V. Chandachud), authoring 4 majority judgments. The said judgment primarily deals with the question of the extent to which the State can regulate the administration of minority educational institution. However, Justice Khanna, in his opinion, notes that the college in question was established, at the time of its inception, by the minority. The said paragraph is quoted as under:-

“61. The first petitioner (hereinafter referred to as the petitioner) is a Society registered under the Societies Registration Act, 1860 (Act 21 of 1860) and a Trust under the Bombay Public Trusts Act, 1950 (Act 29 of 1950). The petitioner is running St. Xavier's College of Arts and Commerce in Ahmedabad. The said college was established in June 1955 by a religious denomination known as the Society of Jesus, a religious order of Catholic priests and brothers. The Petitioner society was formed with the object of taking over the abovementioned college.”

59. In *Gandhi Faiz-e-am-College v. University of Agra*, (1975) 2 SCC 283, again, the Court, while extending rights under Article 30, notes that the institution claiming protection was expressly established by the minority. The relevant paragraph is as under:

“3. The appellant is a registered society formed by the members of the Muslim community at Shahjahanpur. Indubitably, the community ranks as a minority in the country and the educational institution run by it has been found to be what may loosely be called a “minority institution”, within the constitutional compass of Article 30. The earlier history of the institution need not detain us and a rapid glance at its evolution is enough. The A.V. Middle School was the offspring of the effort of the Muslim minority resident in Shahjahanpur district. It, later became a high school and afterwards attained the status of an Intermediate college. Eventually it blossomed into a degree college affiliated to the University of Agra. In 1948, on the assassination of the Father of the Nation, this college was commemoratively renamed as Gandhi Faiz-e-am College. In August 1964, an application was made on behalf of the college management to the University for permission to start teaching in courses of study including Sociology, Sanskrit, Arabic, Military Studies, Drawing and Painting. The University entertained the thought that a new organisational discipline must be brought into the institution and insisted, as a condition of recognition of these additional subjects as course of study, on certain mutations in the administrative body of the college. The bone of contention before us, as was before the High Court, is that this prescription by the University, in tune with Statute 14A framed by it, is an invasion of the fundamental right guaranteed to the minority community under Article 30 of the Constitution of India. The High Court has negated the plea of the management and the appeal issues from that decision.”

60. In *Rt. Rev. Msgr. Mark Netto v. State of Kerala*, (1979) 1 SCC 23, a Bench of 5 Hon'ble Judges expressly notes that the institution claiming protection was expressly established by the minority. The relevant paragraph is as under:-

“2. In the year 1947 Dr. A.G. Pereira, a retired Medical Officer, opened a High School at Kaniyapuram mainly for the benefit of the students of the Christian community. The sanction of the then Government of Travancore for opening the school was accorded to him by letter dated February 21, 1947, Ext. P-1. Subsequently the school was transferred to the Trivandrum Roman Catholic Diocese. For the last more than 25 years the school was administered by this Diocese. The appellant is the corporate Manager of the Schools belonging to the Roman Catholic Diocese of Trivandrum. It is not in dispute that as a matter of fact only boy students were admitted in the school till the end of academic year 1971-72. In the year following the management built a separate building in the school compound to provide accommodation for girl students. The Manager applied to the Regional Deputy

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Director for permission to admit girl students in the school, although according to his case, it was strictly not necessary to do so in law. By letter dated June 5, 1973 Ext. P-2 the Regional Deputy Director refused to give sanction for admission of the girl students. The main ground of refusal of the sanction contained in the said letter is that St. Vincents High School, Kaniyapuram, the school in question, was not opened as a mixed school, that is to say, for imparting education both to boys and girls and that "the school had been running purely as a boys school for the last more than 25 years. There is also facility for the education of the girls of the locality in the near girls school situated within a radius of one mile". As mentioned in the letter, the Manager of Muslim High School, Kaniyapuram, which was a girls school said to be situated within a radius of one mile from the school in question seems to have objected to the grant of permission for admission of girl students in the St. Vincents High School. The girls school was established by the Muslims and was also a minority institution within the meaning of Article 30 of the Constitution. The appellant filed a revision before the State Government from the order of the Regional Deputy Director and pending revision many girl students were admitted in the school. The District Education Officer wrote the letter dated May 2, 1974, Ext. P-4 to the authorities of the St. Vincents High School that since the admission of girl pupils had been prohibited by the Regional Deputy Director no girl should be admitted in the school. The appellant, thereupon, challenged the orders of the educational authorities by filing a writ petition in the High Court."

61. In *Lily Kurian v. Lewina*, (1979) 2 SCC 124, a Bench of 5 Hon'ble Judges expressly notes that the institution claiming protection was expressly established by the minority. The relevant paragraph is as under:-

"2. Smt Lily Kurian, the appellant herein, was appointed as Principal of the St. Joseph Training College for Women, Ernakulam in the year 1957. **The College was established by the Congregation of the Mothers of Carmel, which is a religious society of Nuns belonging to the Roman Catholic Church**, and is affiliated to the University of Kerala. It is administered by a Managing Board, and the Provincial of the Congregation is its President."

62. In *Christian Medical College Hospital Employees' Union v. C.M.C. Vellore Assn.*, (1987) 4 SCC 691, a Bench of 2 Hon'ble Judges expressly notes that the institution claiming protection was expressly established by the minority. The relevant paragraph is as under:-

"2. **The first respondent — Christian Medical College Vellore Association, Vellore, is an association registered under the Societies Registration Act, 1860. The object of the association is "the establishment, maintenance and development of Christian Medical Colleges and Hospitals in India where women and men shall receive an education of the highest grade in the art and science of Medicine and Nursing or in one or other of the related professions to equip them, in the spirit of Christ, for service in the relief of suffering and the promotion of health"**. Dr Ida Scudder, a daughter of an American medical missionary in India, realising the need for more women doctors in India to give relief to the suffering women, in particular, started a one-bed clinic in 1900 at Vellore in the State of Tamil Nadu. Within two years she set up a 40-bed hospital with the assistance of a group of medical women. Since her main desire was to train women as nurses and doctors who should go out to serve suffering women

and children she started the training courses for nurses in 1906 and a medical school for women in 1918. The hospital and the medical school grew in their stature in course of time. The medical school was converted into a medical college with degree courses in 1942. In the year 1947 even men were admitted to the medical college as students. The hospital has since become an important medical institution in South India. The hospital is being used for training the students of the medical college by providing clinical facilities. The medical college and the college of nursing in Vellore are affiliated to the University of Madras and they both go by the name, the Christian Medical College. In the medical college the postgraduate degree courses have also been started. In addition thereto postgraduate diploma courses in different specialities have also been started. In the year 1982, when the common judgment of the High Court of Madras in the three writ petitions, out of which this appeal arises, was delivered, there were about 500 students including postgraduate students in the medical college, 400 in college of nursing and about 164 in para medical courses. The medical college also conducts research into the fundamental causes of diseases, their prevention and treatment. It is also claimed that the medical college is a pioneer in the development of higher specialities like Cardiology, Neuro Surgery, Psychiatry, Thoracic Surgery, Urology, Gastro-Enterology etc. The hospital in which the clinical facilities are provided to the students of the medical college is also a very big hospital which attracts large number of patients, many of whom are treated as in-patients. The college and the hospital are now being managed by Respondent 1 Association. In view of the heavy responsibilities undertaken by the college and the hospital it has become necessary to employ a large number of persons as teachers, doctors, nurses and other staff for running the college and the hospital, and also administrative staff for the purpose of managing their affairs. The employees of the college and the hospital are paid salaries and allowances and are entitled to the usual conditions of service as are applicable to such employees in other medical colleges and hospitals in India. It is natural that in a big establishment like the one under consideration between the management and its employees there would be disputes with regard to the security of employment and other conditions of service.”

63. In *Al-Karim Educational Trust v. State of Bihar*, (1996) 8 SCC 330, a Bench of 3 Hon’ble Judges expressly notes that the institution claiming protection was expressly established by the minority. The relevant paragraph is as under:-

“2. The appellants claim that the Muslim Religious Minority Community of Bihar founded the Trust, Al-Karim Educational Trust under the Societies Registration Act and established the Katihar Medical College for imparting education in the field of medical sciences to youths in particular and to render medical services to suffering humanity in the District of Katihar, which was in Purnea Division. It is further stated that 40 per cent of the population of the Purnea Division are Muslims. Temporary affiliation for three academic sessions was granted by the L.N. Mithila University by order dated 29-12-1989. When permanent affiliation was not granted, the appellants filed the writ petition in the Patna High Court, which was dismissed. This Court, while granting special leave by order dated 16-7-1992, ordered thus:

“By way of an interim order we direct that the students admitted to Katihar Medical College will be permitted to take examination but their result will be withheld till further orders by this Court. The concerned university which will take the examination is B.N. Mandal University at Madhyapur which we are

told is successor University to L.N. Mithila University. We also make it clear that the college will not grant new admissions without express permission of this Court.”

Consequently, examinations were held in December 1992.”

64. In *Yunus Ali Sha v. Mohd. Abdul Kalam*, (1999) 3 SCC 676, a Bench of 2 Hon’ble Judges expressly notes that the institution claiming protection was expressly established by the minority. The relevant paragraph is as under:-

“2. The appellant's, Madarsa Islamia Darululoom, Gope, District Puri, Orissa is a minority educational institution set up to impart education up to standard eight in the State of Orissa. It is a government-aided institution. Aid is paid by the Government in lump sum to the institution to be distributed amongst the teachers and staff. The appellant's school is under the control of the Director of Education through the Special Officer for Mohammedan Education. Respondent 1 was the Headmaster (Head Maulbi) of the appellant's School and the second respondent was the Assistant Teacher of the appellant's School at the material time.”

65. In *Society of St. Joseph's College v. Union of India*, (2002) 1 SCC 273, a Bench of 5 Hon’ble Judges expressly notes that the institution claiming protection was expressly established by the minority. The relevant paragraph is as under:-

“2. The writ petitioner is a religious minority institution founded by the members of the Society of Jesus, which is a religious congregation in the Catholic Church. The petitioner has established and is administering an educational institution called the St. Joseph's College in Tiruchirappally, Tamil Nadu. The College was established more than 150 years ago. It has been accorded autonomous status by the University of Madras in April 1978. Within the campus of the College is a building owned by the petitioner. The said building was let out in 1910 to the Post and Telegraph Department of the Government of India and has since then been used as a post office. On 26-10-1974 the petitioner wrote to the Senior Superintendent of Posts, Tiruchirappally Division, seeking an enhancement of the rent of Rs 830 per month of the said building. There was no response. On 30-10-1974, the fourth respondent, the Revenue Divisional Officer, Tiruchirappally, issued to the petitioner a notice under Section 3(1) of the Madras Requisition and Acquisition of Immovable Property Act, 1956 to commence the acquisition of the said building. On 11-12-1974 the petitioner objected to such action. Nothing happened over five years. Then, on 3-5-1979 a notification was issued under Section 4(1) of the Land Acquisition Act, 1894 in respect of the said building. On 24-2-1980, the petitioner filed objections to the proposed acquisition. On 17-2-1982 the Section 6 notification was gazetted. On 4-6-1982 the fourth respondent issued to the petitioner notices under Section 9(3) and Section 10 directing the petitioners to appear before him in regard to their claim to compensation. On 9-9-1982 the petitioner filed a writ petition in the High Court at Madras challenging the said acquisition. The writ petition was dismissed, and a writ appeal was filed by the petitioner. The writ appeal was dismissed on 18-4-1984. In the meantime, on 6-4-1984 an award of Rs 1,56,377 was made in favour of the petitioner, being the amount payable to it upon the acquisition of the said building. A special leave petition was filed against the order of the writ appeal and also this writ petition under Article 32. The writ petition seeks a declaration that the provisions of the Land Acquisition Act do not apply to and

empower the acquisition of the properties of minority educational institutions and the quashing of the notifications under Sections 4 and 6 of the Land Acquisition Act in respect of the said building.”

66. In *Secy., Malankara Syrian Catholic College v. T. Jose*, (2007) 1 SCC 386, a Bench of 2 Hon'ble Judges expressly notes that the institution claiming protection was expressly established by the minority. The relevant paragraph is as under:-

“2. The Malankara Syrian Catholic College Association of Archdiocese at Trivandrum is a society registered under the Kerala Literacy, Scientific and Charitable Societies Registration Act, 1955. It is a minority organisation and an educational agency (for short “the Society”). It has established and runs several private colleges in Kerala. The colleges are managed by a “Managing Council” (for short “the management”) appointed by the educational agency. The Society has appointed a Manager for the colleges under its management, who implements the decisions of the management. Mar Ivanios College (“the College”, for short) is one of the colleges run by the said educational agency. The said college is an aided private minority institution affiliated to Kerala University under the Kerala University Act, 1974 (“the Act”, for short). Educational instruction is provided in the college, in accordance with the provisions of the statutes, ordinances and regulations made under the Act. Each of the colleges run by the Society is headed by a Principal, who is responsible for the functional efficiency, quality of education and discipline.”

67. In *Satimbla Sharma v. St Paul's Senior Secondary School*, (2011) 13 SCC 760, a Bench of 2 Hon'ble Judges expressly notes that the institution claiming protection was expressly established by the minority. The relevant paragraph is as under:-

“2. The facts very briefly are that in 1923 Respondent 1, School (for short “the School”) was initially established as a mission school by Respondent 2. The School adopted the 10+2 system in 1993 and is presently affiliated to the Himachal Pradesh Board of School Education. Before Independence in 1947 the School was receiving grant-in-aid from the British Indian Government and thereafter from the Government of India up to 1950. From 1951 to 1966, the School received grant-in-aid from the State Government of Punjab. After the State of Himachal Pradesh was formed, the School received grant-in-aid from the Government of Himachal Pradesh during the years 1967 to 1976. From the year 1977-1978, the School has not been receiving any grant-in-aid from the Government of Himachal Pradesh and the teachers of the School are being paid less than the teachers of government schools and government-aided schools in the State of Himachal Pradesh.”

68. It is submitted that the judgment in *P.A. Inamdar vs. State of Maharashtra*, 2005 6 SCC 537, a bench of 7 Hon'ble Judges was constituted to interpret the judgment of this Hon'ble Court in *TMA Pai supra*. It is submitted that while the said examination was largely in context of the extent of regulations, the Bench affirmed the observation to the effect that the question of establishment of minority institution and its character at the time of establishment is to be judged by the standard that it

must contemplate a primarily minority institution with “sprinkling of outsider” admitted in it.

69. Therefore, the indicia required to ascertain the actual character of an institution at the time of an establishment involves that the institution must be predominantly established by the minority, for the minority and as a minority institution. The institution/university must primarily be of a minority character and must be established to preserve the minority language/culture/religion. It must be established primarily by the funds and the lands of the minority community must be managed as the ultimate authority by the minority.

In effect, having some non-minorities in administration would not be fatal if the ultimate control vests with the minority. However, having minorities in administration with the ultimate control vested in non-minority would be fatal to the claim of minority status. The Court ought to apply the *test of ultimate control* in such matters.

MEANING OF ESTABLISHMENT

70. From the above it is amply clear that the meaning of the word “establish” under Article 30 has indeed been understood by this Court consistently to mean to bring into existence. The submission of the Petitioner that the said approach in *Basha supra* is unreasoned or a “*narrow construction*” of the word “establish” is wholly unfounded. It is submitted that the meaning of “establish” in **Black’s Law Dictionary 6th Edn.** is as under:

“(1) To settle firmly, to fix unalterably ; as to establish justice, which is the avowed object of the constitution.

(2) To make or form; as to establish a uniform rule of naturalization, and uniform laws on the subject of bankruptcies, which evidently does not mean that these laws shall be unalterably established as justice.

(3) To found, to create, to regulate; as: “Congress shall have power to establish post-roads and post- offices.”

(4) To found, recognize, confirm, or admit; as: “Congress shall make no law respecting an establishment of religion.”

(5) To create, to ratify, or confirm; as: “We, the people,” etc., “do ordain and establish this constitution.”

To settle or fix firmly; place on a permanent footing; found; create; put beyond doubt or dispute; prove; convince.

To bring into being; to build; to constitute; to create; to erect; to form, to found; to found and regulate, to institute, to locate; to make; to model; to organize; to originate; to prepare; to set up.

71. The judgment in *Basha supra* correctly understands the word “establish” in the common sense it connotes. It is important to note that the rights under Articles 29 and 30 is re-instatement of the other rights already enshrined under the Constitution available to one and all. It was included in the Constitution by way of *abundant caution* in order provide surety of fair treatment of minorities in the country. It is submitted that numerous judgments have held that the rights under Article 29 and 30 do not provide some special rights over majority, rather intended for protection of minorities.

72. It may be noted that the fundamental rights of non-discrimination enshrined under Article 14, 15 and 16, the fundamental liberties enshrined under Article 19 and 21 and religious rights enshrined under Article 25 and 26, already extend a wide array of rights protecting the rights of minorities. The said rights are available to all communities and all institutions including the minorities. Therefore, in order to claim rights under Article 29 and 30, over and above the above-mentioned rights, it would be necessary to fall within the special zone that the said rights create.

73. It is submitted that therefore, keeping those aspects in mind, a minority community seeking to claim rights under Article 30, needs to necessarily prove that an institution in question was actually, tangibly and manifestly brought into being by the minority.

It may be noted that Article 30 is not the only right available to minorities which protects their rights but rather is an additional guarantee effectively flowing out of the liberties and the rights against non-arbitrariness and non-discrimination enshrined under other fundamental rights.

74. Contrary to the submissions of the Petitioner, the right under Article 30 and the factum of “establishment” is not a function of the “intent” of the minority at the said time or the “choice” of the minority at the said time. It is rather a hard question of fact.

It is submitted that it is a question of fact which cannot be satisfied by showing that an institution was established by some “effort or actions” on part of the minority rather it has to be established that the predominant character of the University and the predominant efforts in establishing the institution was of the minority only. The Constitution does not seek to extend rights under Article 30 over and above the rights available under other articles which are available to all institutions including minority institutions, where there exists a *mere involvement or some effort* by a minority community while establishing an institution.

75. It is submitted that this is not a narrow construction of the word “establish” under Article 30 rather it is a construction which is in the interest of actual genuine minorities and minority institutions. It is submitted that an extremely wide interpretation of the word “establish” under Article 30 would be counterproductive for the minorities themselves as it would lead to extreme proliferation of institutions claiming minority status. It is submitted that the said situation would seriously trench upon the rights of the existing minority communities and the existing minority institutions which have been actually originally established as minority institutions.

76. It is therefore submitted that in order to claim protection under Article 30(1), the factum of establishment needs to be *manifested in reality* and cannot be ascertained from claims made with regard to “wishes” or “choices” or “efforts” of some minority community. The factum of establishment, to put it colloquially, is one of *bricks and mortar and not one of ideas and wishes.*

PROBLEM IN APPLICATION IF THE STANDARD OF ACTUAL ESTABLISHMENT IS NOT APPLIED

77. It is submitted that most institutions today imparting education through private means are registered as societies under various Acts. This includes a large number of secular/non-minority institutions which have been established as secular/non-minority institutions.

The said institutions either aided or unaided in comparison with minority institutions either aided or unaided respectively are subjected to far greater degree of regulations by the State in all forms from curricular admission, appointment of teachers and other factors. Therefore, practically speaking, it is clearly advantageous for private parties to administer institutions which are minority institutions as far greater degree of freedoms are available to such institutions.

78. There would, therefore, be extreme eagerness on the part of the institutions otherwise non-minority to claim minority status. If minority status is held to be acquirable whereby the requirement of establishment of an institution at the time of institution is not considered to be mandatory, it would lead to large scale “take over” of all institutions which were otherwise non-minority claiming to become minority institutions.

The same could be simply effectuated by changing the rules or the Articles of Association of the Society and creating a façade of minority control over it. For example : An old reputed institution in New Delhi running a large school for the past

century is a non-minority institution. Once it is held that factum of establishment is not necessary or even the requirements of “establishment” are diluted as argued by the Petitioner, it would be wholly permissible for institution, to merely amend some of its Rules/Bye-Laws in favour of some linguistic or religious minority, and claim protection under Article 30 and exemption from wide array of regulations. It is submitted that the said device would not be in favour of the public at large and holds the potential to seriously jeopardise the education standards in the entire country.

79. This is exactly that was apprehended by Justice Chinnappa Reddy in *A.P. Christian Educational Institution Society supra*. If the requirement of initial establishment by a minority community is not considered necessary for the claim of protection under Article 30, it would lead to a large-scale “conversion” of non-minority institutions into a “*faux minority institutions*” almost amounting to a *fraud on the Constitution*.

The object of Article 30 is not to allow bogies to be raised by pretenders to the minorities a sense of security and a feeling of confidence. It is necessary to ensure that constitutional interpretation is provided in a manner that the sacred protection under Article 30 is extended only to institutions which are actual institutions of the minority, in truth and in reality, and not merely “masked phantoms”.

ERRONEOUS UNDERSTANDING OF THE JUDGMENT IN AZEEZ BASHA

80. The Petitioner presumes that the judgment in *Basha supra* holds that as a matter of law, any institution which is incorporated by a statute cannot be a minority institution. On the basis of the same the Petitioner seeks to argue that the said judgment also in effect holds that since a University is necessarily to be established by a statute, the minority community can never establish a University. The Petitioner asserts that the said alleged portion of *Basha supra* is contradictory to the effect that on one hand, it recognises the right of minorities to establish a university but on the other, since a legislation is necessary for establishment of the University as per the UGC regulations, the judgment in *Basha* implies that a minority can never set up a university.

81. It is submitted that this understanding of the judgment in *Basha supra* of the Petitioner is fundamentally flawed and is a strawman raised for misdirection. The judgment in *Basha supra* is not merely premised on the fact that the Aligarh University was established by way of a statute rather the said judgment in great detail studies the antecedent facts prior to the establishment of the university, studies nature

of the legislation establishing the university to ascertain the character of the university at the time of its initial establishment, and thereafter arrives at a factual finding.

82. At the time of establishment of the AMU, there were obviously no UGC regulations and the judgment in *Basha supra* was referring to the negotiations that took place at that time. At the said time there was no Article 30 and therefore no fundamental right to establish minority institution existed. Therefore, the judgment in *Basha supra* notes that in order to have a University in Aligarh, the minority community had to forego its demand of a minority university and accept the Imperial Government position of having a university of national character in Aligarh. The said findings of the judgment in *Basha supra* are pure findings of fact as they existed at the time of the establishment of the AMU in 1920 and do not lay down any straight jacket formulation of law. The Petitioner is trying to read into something in the judgment in *Basha supra* which the said judgment does not seek to state.

83. The assertion of the Petitioner in paragraph 3.2.2 that if the judgment in *Basha supra* is accepted as good law then minorities would not be able to establish universities owing to UGC regulations is also fundamentally flawed. It is wholly permissible for the Legislature to establish by way of a statute which is a minority university if such statutes meets the requirement of it being minority university statute. Such legislation would have to create machinery around the institute that evinces that the institution was established by the minority community and vests the administration with the minority community. This is where the judgment in *Basha supra* points that the legislation establishing the AMU in 1920 was not a legislation which sought to establish a minority institution at all rather it established an institution of national non-minority character. If the said legislation in 1920 sought to establish a minority institution, as per the judgment in *Basha supra*, the provisions in the said enactment at the said time would have to be starkly different.

INSTANCES OF CREATION OF MINORITY UNIVERSITIES BY AN ACT OF LEGISLATURE

84. At this juncture, it may also be pointed out that there are other examples of minority universities established by the legislature wherein the enactments are substantially different from the AMU Act 1920 at the time of its establishment. In fact, there are no specific provisions in the original AMU Act that would make the University a minority institution. If the intention behind the establishment of AMU was to establish it as a minority institution, nothing prevented the societies known as the Muhammadan Anglo-Oriental College, Aligarh, and the Muslim University

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Association to sponsor the establishment of the said University and request the legislature to include specific provisions in the Act itself in order to give the University a character of a minority institution. Unlike the establishing acts that are discussed below, where the character of the University is predominantly minority with only cursory presence of non-minority features, the original AMU Act provides for the establishment and administration of a predominantly non-minority institution where minority characteristics are only perfunctorily present.

85. An analysis of legislations establishing other minority universities makes it clear that where the intention was to establish a minority institution, the Legislature had included specific provisions in the establishing Act itself to give the University a character of a minority institution. Some examples of such enactments are as under :

A. The Sam Higginbottom University of Agriculture, Technology and Sciences, Uttar Pradesh Act, 2016 (hereinafter the “**Sam Higginbottom Act**”) was passed to establish and incorporate a Teaching, Research and Extension University with a view to upgrade and reconstitute the existing Sam Higginbottom Institute of Agriculture, Technology and Sciences (Deemed-to-be- University). The preamble of the Sam Higginbottom Act reads as under:

“An Act to establish and incorporate a Teaching, Research and Extension University with a view to upgrade and reconstitute the existing Sam Higginbottom Institute of Agriculture, Technology and Sciences (Deemed-to-be- University), Allahabad, **established and administered by the Ecumenical Minority Christian Society namely the Sam Higginbottom Educational and Charitable Society**, Higginbottom House, 4- Agricultural Institute, Allahabad-211007, Registered under the Society Registration Act, 1860 in the State of Uttar Pradesh, and to provide for matters connected therewith or incidental thereto,”

If the intention of the founders and people responsible for the establishment of the MAO college were to give the character of a minority institution to AMU, it would have set itself up as a sponsoring body of the AMU and would have included a Preamble drafted in a similar fashion as the Sam Higginbottom Act. Neither the preamble was framed in such a fashion nor specific provisions were included to infuse the AMU with characteristics of a minority institution. Section 4 of the Sam Higginbottom Act deals with the jurisdiction of the University and reads as follows:

“4. Jurisdiction of the University— (1) Save or otherwise provided by or under this Act, the limits of the area within which the University shall exercise its powers, shall be whole of Uttar Pradesh with its headquarters at Allahabad with **powers to associate any Christian minority Institution within its jurisdiction** with the prior approval of the State Government.

(2) No College or institution situated within the jurisdiction of the University shall be compulsorily Associated to the University, and Association shall be granted by the University only to such college or institution as it may agree by the statutes and the ordinances.

(3) The University may with the prior permission of the State Government establish its Academic Centers/Campuses,/offshore campus in order to provide relevant higher /professional education with the concurrence of the concerned Government where it is established."

Other provisions that point towards the minority character in the Sam Higginbottom Act are Sections 7 and 8. Section 7 deals with the objects of the University. One of the objects of the University is to "bring the Christian Community into the main stream and ensure overall development thereof by imparting all modern and higher, professional, theological and spiritual education." Section 8 of the Sam Higginbottom Act opens the University to all with the following proviso:

"(2) Nothing in this section shall prevent the University from making any special provision / reservations for the administration, appointments, and admission of students, or persons belonging to Christian Minority Community which can not exceed 50 per cent."

B. In a similar fashion, **The Era University, Lucknow, Uttar Pradesh Act, 2016** (hereinafter the Era Act) also contains certain provisions that may be said to be infusing characteristics of a minority institution. Relevant provisions from the 2016 Act which point towards the minority character of the institutions are as follows:

"Preamble

An Act to establish and incorporate a teaching University sponsored by Era Educational Trust duly established and administered by the members of Muslim Minority community,

—xx—xx—

2. Definitions—In this Act, unless the context otherwise requires

—xx—xx—

(t) "Trust" means the Era Educational Trust, established and administered by the members of Muslim Minority community, in the year 1995 for imparting education, having its office at 88, Victoria Street (Tulsi Das Marg), Lucknow a 'not for profit' Trust registered in the office of Sub-Registrar-I Lucknow under the Indian Trust Act, 1882.

—xx—xx—

47. Financial Condition-- The University shall not be eligible for any grants in aid or any financial assistance from the State Government or any other body or Corporation owned and controlled by the State Government."

Under Section 4 of the Era Act, the Trust has been referred to as the sponsoring body. Further, under the 2016 Act, the power to appoint the Chancellor and the

Pro-Chancellor has been given to the Management Committee of the Trust. All these specific provisions (or provisions on similar lines) were not incorporated in the original AMU Act, 1920 and have never been incorporated by any subsequent amendments.

- C. Similar provisions exist in the establishing acts of other minority institutions. The preamble of **The Teerthanker Mahaveer University Act, 2008** (hereinafter the "**Teerthanker Act**") reads as under:

"An Act to establish and incorporate a Jain Minority Teaching University sponsored by Teerthanker Mahaveer Institute of Management & Technology Society, Moradabad Uttar Pradesh and to provide for matters connected therewith or incidental thereto."

Unlike the AMU Act, 1920, the Teerthanker Act contains a specific proviso in the provision relating to keeping the University open to persons of all classes and creeds. The proviso specifically saves the power with the University to make appropriate provisions for reservation of people belonging to the minority community. Section 9 of the 2008 Act reads as under:

"9. **University open to all classes and creeds**-- The University shall be open to persons of either sex and of whatever race, creed, caste or class, and it shall not be lawful for the University to adopt or impose on any person any test whatsoever of religious belief profession in order to entitle him to be admitted therein as an officer, a teacher, staff member, student, or to hold any office therein or to graduate thereat:

Provided that nothing in this section shall be deemed to prevent the University from making appropriate provisions for reservation of persons belonging to minority Community in the posts and recruitment of the employees and reservation of seats for admission in any courses of study in the University, which cannot exceed more than fifty per cent."

Similar to the Era Act, appointment of Chancellor and Pro-Chancellor, under the Teerthanker Act, has been entrusted to the Society namely the Teerthanker Mahaveer Institute of Management & Technology Society which is also the sponsoring body of the said Jain Minority Teaching University. Further, the Teerthanker Act, under Section 46, also provides that "The University shall be a self-financed University".

- D. Similarly, **The North East Adventist University Act, 2015** (hereinafter the "**Adventist Act**"), in the Preamble, the name of the sponsoring body is specifically mentioned. The preamble of the 2015 Act reads thus:

"An Act to establish and incorporate an University in the State, with emphasis on providing high quality education, training and research in the fields of Physical Sciences, Applied Sciences, Life Sciences, Health Sciences, Social Sciences, Bio-Technology, Information Technology, Engineering, Management,

Commerce, Communication, Law, Humanities, Languages, Performing Arts and other allied areas, **sponsored by the Medical Educational Trust Association Surat of Seventh-day Adventists**, and to provide for matters connected therewith or incidental thereto.”

The “Sponsor” of the University established by the Adventist Act has been specifically defined under Section 2 (xxx) to mean “...*Medical Educational Trust Association Surat of Seventh-day Adventists*”. Similar to other acts described above, the 2015 Act, under Section 5, also provides that the North East Adventist University shall be a “self-financing and shall neither make a demand nor shall be entitled to any grant in-aid or any other financial assistance from the State Government or any other body or corporation owned or controlled by the State Government.” Further, the Adventist Act specifically provides that nothing shall prevent the University from making special provisions for the admission of Seventh-day Adventist students. Section 9 of the Adventist Act, which requires the University to be open to all classes, specifically saves the power to make minority specific reservations and reads thus:

“9. **University open to all classes, castes, creed, religion, language and gender-**
- The University shall be open to all persons irrespective of class, creed, religion, language or gender.

Provided that **nothing in this Section shall be deemed to prevent the University from making special provisions for admission to Seventh-day Adventist students** or students of the State.”

E. Similarly, **The Integral University Act, 2004** (hereinafter the “**Integral Act**”) also states, in a manner similar to the Sam Higginbottom Act, that its object is “To bring the Muslim Minorities into the main stream for overall development of India by imparting all modern and classical education for their upliftment.” Section 6 of the 2004 Act, which opens the University to all classes and creeds, also contains a proviso which grants the power to the University to make appropriate provision for reservation of minority community.

86. As is evident from the discussion above that different acts have incorporated different provisions to give the respective institute predominantly minority characteristics. Similar provisions were neither incorporated in the original AMU Act nor have they been subsequently incorporated by way of an amendment. Cosmetic changes made through the 1981 Amendment Act would not make an institution a minority institution when in-fact it was never intended to have been established as a minority institution.

87. It is submitted that nothing prevented the Muhammadan Anglo-Oriental College, Aligarh, and the Muslim University Association to be the sponsoring body for AMU and get the University established by way of an act drafted on similar lines as the acts illustrated above. The fact that this process was not undertaken makes it clear that the intention behind the establishing act was not to give AMU the character of a minority institution. The above discussion also makes it evident that a significant autonomy was retained with the sponsoring body and crucial decision-making powers were given to the body that sponsored the establishment of the universities.

88. The above analysis would make it clear that whenever Legislature has intended to establish a minority institution, it has included specific provisions in the Act itself to give the institution the character of a minority institution. Similar provisions as illustrated above were not incorporated in the original AMU Act and therefore the institution cannot be said to have been established by the minority community and therefore it will not have the right to administer it.

INDICATORS IN THE DRAFTING HISTORY OF ARTICLE 29 AND 30

89. It is submitted that as far as the issue of “establish and administer” is concerned or the indicia requiring an institution to claim minority status is concerned, drafting history of the Article 29 and 30 does not provide any direct answers. Originally, a guarantee of the protection of the cultural and educational rights of linguistic and religious minorities was contained in the drafts prepared by K.M. Munshi, K.T. Shah and Harnam Singh. When the question came up before the Sub-Committee on Fundamental Rights on March 27, 1947, it was felt that guarantees of this kind more appropriately fell within the scope of the Minorities Sub-Committee. The latter considered this matter on April 19, 1947, and vide its interim report of even date recommended the following for incorporation among the fundamental rights in the Constitution:

- (i) All citizens are entitled to use their mother tongue and the script thereof, and to adopt, study or use any other language and script of their choice.
- (ii) Minorities in every unit shall be adequately protected in respect of their language and culture, and no Government may enact any laws or regulations that may act oppressively or prejudicially in this respect.
- (iii) No minority, whether of religion, community or language, shall be deprived of its rights or discriminated against in regard to the admission into State educational institutions, nor shall any religious instruction be compulsorily imposed on them.
- (iv) All minorities, whether of religion, community or language, shall be free in any unit to establish and administer educational institutions of their choice, and they shall

be entitled to State aid in the same manner and measure as is given to similar State-aided institutions.

(v) Notwithstanding any custom, law, decree or usage, presumption or terms of dedication, no Hindu on grounds of caste, birth or denomination shall be precluded from entering in educational institutions dedicated or intended for the use of the Hindu community or any section thereof.

(vi) No disqualification shall arise on account of sex in respect of public services or professions or admission to educational institutions save and except that this shall not prevent the establishment of separate educational institutions for boys and girls.

90. Tracing the genesis of the clause guaranteeing to every citizen the right to use his mother tongue, Munshi said in the Advisory Committee on April 22, 1947, that this was based on minorities' rights contained in the Polish Treaty which later came to form part of the Constitution of Poland. It was noted that attempts had been made in Europe and elsewhere to prevent the minorities from using or studying their own language, and the right to use one's language had come to be regarded as a classical right of the minorities.

91. At this juncture, Govind Ballabh Pant suggested that the rights recommended by the sub-committee could more appropriately be incorporated as directive principles which would be kept in view by the Legislature but would not be enforceable in a court of law. This was opposed by Munshi who said that the rights would lose all their efficacy if they were made non-justiciable. Ruthnaswamy and Sardar Ujjal Singh stated definitely that Pant's proposal would not be acceptable to the minorities.

92. Rajkumari Amrit Kaur suggested that by clause (iv) above, the communal institutions would be perpetualised in the following terms:

"I raised this point in the Minorities Sub-Committee. We are perpetuating communal institutions. My belief is that the State aid should not be forthcoming to communal institutions. That way we will be perpetuating communal institutions forever."

93. Finally, clauses (ii), (iii) and (iv), as slightly modified, were adopted by the sub-committee, and clauses (i), (v) and (vi) were deleted as redundant or out of place. These recommendations were incorporated as clause 18 in its interim report:

"18. (1) Minorities in every unit shall be protected in respect of their language, script and culture, and no laws or regulations may be enacted that may operate oppressively or prejudicially in this respect.

(2) No minority whether based on religion, community or language shall be discriminated against in regard to admission into State educational institutions, nor shall any religious instruction be compulsorily imposed on them.

(3) (a) All minorities whether based on religion, community or language shall be free in any unit to **establish and administer educational institutions** of their choice.

(b) The State shall not, while providing State aid to schools, discriminate against schools under the management of minorities whether based on religion, community or language."

94. On May 1, 1947, Vallabhbhai Patel moved the clause for the acceptance of the Constituent Assembly. However, sub-clause (2) was referred back to the Advisory Committee for clarifying its scope in respect of State-aided institutions, about which no mention had been made.

95. Thereafter, Supplementary Report of the Advisory Committee on the Subject of Fundamental Rights dated 25.08.1947 on sub-clause (2) suggested one modification- to delete the words "nor shall any religious instruction be compulsorily imposed on them" for the reason that this principle had already been covered by clause 16 of the committee's interim report.

96. When on August 30, the Constituent Assembly took up for consideration the redrafted sub-clause (2), three amendments were moved. All the three amendments were rejected by the Assembly and sub-clause (2) adopted without any modification, after Vallabhbhai Patel had pointed out that this was "*a simple non-discriminatory clause against the minorities in the matter of admission to schools which are maintained by the State*" and that the question of extending the principle to State-aided institutions could be left to the future legislatures, to be adopted wherever the conditions were suitable.

97. The clause, as adopted by the Assembly, was incorporated by the Constitutional Adviser in his Draft Constitution as clause 24 with some drafting changes. Commenting on the use of the term "minorities" in the provision, he pointed out that the term had not been defined anywhere in the Constitution and that the existing position was so vague that even the declaration of a particular language as the national language could be said to prejudice the interests of the minorities whose mother tongue happened to be different. It was felt that a comprehensive definition of "minorities" was difficult to frame as they might be based on religion, community or language; but to leave a vague justiciable right to undefined minorities was also quite unsatisfactory. B. N. Rau, therefore, suggested for consideration whether the cultural and educational rights conferred by this provision should at all be made justiciable.

98. The Drafting Committee deliberated on clause 24 on November 1 and 3, 1947, and revised its text twice, the most significant change being the redrafting of *sub-clause (1) — a change which later sparked off a heated and prolonged controversy in the Assembly (to be confirmed from CADs). The Drafting Committee deleted the word*

“minority” from the sub-clause and the same was substituted by the words “any section of the citizens”. As it appeared, the Clause 18 which were transposed in Article 23 of the Draft Constitution, the text read as under:

- (1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script and culture of its own shall have the right to conserve the same.
- (2) No minority whether based on religion, community or language shall be discriminated against in regard to the admission of any person belonging to such minority into any educational institution maintained by the State.
- (3) (a) All minorities whether based on religion; community or language shall have the right **to establish and administer** educational institutions of their choice.
 (b) The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion, community or language.

99. A number of amendments and comments were received from members and others in respect of this draft article. The Drafting Committee itself suggested that in clause (1) for the words “language, script and culture” the words “language, script or culture” be substituted. The Drafting Committee expressed its acceptance of two amendments: one, suggested by itself, replacing the words “language, script and culture” by the words “language, script or culture” in clause (1) and the other, suggested by Diwakar, Krishnamoorthy Rao and Mrs. Purnima Banerji, seeking to provide that State-aided educational institutions (as well as State-owned institutions) should not discriminate against any minority in the matter of admission.

100. Draft Article 23 came up before the Constituent Assembly for consideration on December 7 and 8, 1947. Out of the forty-three amendments of which notice had been given, only about a dozen were actually moved. The amendment seeking to replace the words “language, script and culture” in clause (1) by the words “language, script or culture”, accepted by the Drafting Committee earlier, was moved on its behalf by Ambedkar, Thakurdas Bhargava moved two amendments. By his first amendment, he sought to redraft clause (2) to read :

“No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.”

101. Explaining his amendment, Bhargava pointed out that it had three aims: (i) to extend the right of admission to educational institutions to all citizens, whether they belonged to the majority or the minority, so that no unwarranted impression of the majority being discriminated against was created: (ii) to provide that not only State-maintained institutions but also those receiving aid out of State funds would be

prohibited from practising discrimination in the matter of admission; and (iii) to remove the word “community” as it had no meaning and substitute it by the words “race or caste” thereby widening the scope of the provision and ensuring that no discrimination was allowed on the score of caste, race, language or religion. By his other amendment, Bhargava sought the omission of the word "community" from clause (3) also. He explained his amendment in the following words:

“Sir, I find, there are three points of difference between this amendment and the provisions of the section which it seeks to amend. The first is to put in the words ‘no citizen’ for the words ‘no minority’. Secondly, that not only the institutions which are maintained by the State will be included in it, but also such institutions as are receiving aid out of State funds. Thirdly, we have, instead of the words ‘religion, community or language’, the words, ‘religion, race, caste, language or any of them’.

Now, Sir, it so happens that the words ‘no minority’ seek to differentiate the minority from the majority, whereas you would be pleased to see that in the chapter the words of the heading are ‘Cultural and Educational Rights’, so that the minority rights as such should not find any place under this section. Now if we read clause (2) it would appear as if the minority had been given certain definite rights in this clause, whereas the national interest requires that no majority also should be discriminated against in this matter. Unfortunately, there is in some matters a tendency that the minorities as such possess and are given certain special rights which are denied to the majority. It was the habit of our English masters that they wanted to create discriminations of this sort between the minority and the majority. Sometimes the minority said they were discriminated against and on other occasions the majority felt the same thing. The amendment brings the majority and the minority on an equal status.

In educational matters, I cannot understand, from the national point of view, how any discrimination can be justified in favour of a minority or a majority. Therefore, what this amendment seeks to do is that the majority and the minority are brought on the same level. There will be no discrimination between any member of the minority or majority insofar as admission to educational institutions are concerned. So I should say that this is a charter of the liberties for the student world of the minority and the majority communities equally.

Now, Sir, the word ‘community’ is sought to be removed from this provision because ‘community’ has no meaning. If it is a fact that the existence of a community is determined by some common characteristic and all communities are covered by the words religion or language, then ‘community’ as such has no basis. So the word ‘community’ is meaningless and the words substituted are ‘race or caste’. So this provision is so broadened that on the score of caste, race, language or religion no discrimination can be allowed.

My submission is that considering the matter from all the standpoints, this amendment is one which should be accepted unanimously by this House.”

102. A large number of other amendments, were moved however, Shri Ambedkar, in his reply to the debate, rejected all the other amendments. Shri Ambedkar accepted at the two amendments moved by Thakurdas Bhargava redrafting clause (2) and omitting the word “community” from clause (3).

103. When after Ambedkar's reply to the debate the amendments were put to vote, only the one moved by Ambedkar himself and the two moved by Bhargava and accepted by Ambedkar were adopted and all others were negated. Draft Article 23 as amended was adopted.

104. Subsequently, at the revision stage, the Drafting Committee divided the article into two separate articles article 29 comprising the first two clauses and Article 30 the third clause:

29. (1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.

(2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

30. (1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.

(2) The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.

105. In this manner, the present Article 29 and 30 came in to being. From the start, it can be seen that the intention of the draftsmen was to use the word "establish" and "administer" conjunctively. The drafting history also establishes that the protection that was sought to be extended through the said articles was over and over the other non-discrimination and liberties-based provisions in the fundamental rights chapter of the Constitution and therefore, the class of institutions eligible for the same had to be neatly defined. It is submitted that in this context, the meaning of the word "establish" has to be the actual, tangible and manifestation of the institution brought into being **BY the minority, FOR the minority and AS a minority institution.**

INDICATORS IN THE NCMEI ACT

106. It is submitted that subsequent to the judgment in *TMA Pai supra*, the National Commission for Minority Educational Institutions Act 2004 was enacted. The said Act, at the time of its inception, defined the word "minority educational institution" as under-

"(g) "Minority Educational Institution" means a college or institution (other than a University) established or maintained by a person or group of persons from amongst the minorities;"

107. It is critical to note that the use of the word “or” between the words “established and maintained”. However, in 2010, correctly noting the constitutional position, the Parliament amended the definition which now reads as under:-

“(g) “Minority Educational Institution” means a college or an educational institution **established AND administered** by a minority or minorities;”

108. Therefore, even as a matter of legislation it is now clear that the Central Act which applies to the entire country also requires an institution to be established and administered (conjunctively) by a minority to claim the status as a minority educational institution.

109. The debates in the Parliament and especially the statement of the Hon’ble Minister as to the reasons behind the amendment clearly indicate that amendment was made to bring the said Act in conformity with the judgment in *Basha supra* and further to ensure that non-minorities are not able to advertise institutions as minority institutions. The relevant portion is quoted as under :

“24.02.2009

THE MINISTER OF STATE IN THE MINISTRY OF HUMAN RESOURCE DEVELOPMENT (SHRI M.A.A. FATMI):...In Section 2 of the Bill, two amendments are proposed in clause (g). First is to do away with the exclusion of Universities in the definition of "Minority Educational Institutions". The second proposal is to substitute the words "or maintained by" with the words "and administered by". **The existing exclusion of a University from the definition of a minority educational institution runs counter to the law laid down by the Supreme Court of India vide Azeez Basha V. Union of India (A.I.R. 1968) substitution of words "or maintained by" with the words "and administered by" Several complaints were received to the effect that non-minorities were advertising the institutes as established by the minorities. Through this amendment this defect is sought to be removed by providing that the institutions should be both established and administered by a person or group of persons belonging to the same minorities. This will also conform to the language used in Article 30 of the Constitution."**

110. In light of the above, it is clear that even post the erroneous 1981 amendments in the Aligarh Muslim University Act, the Parliament has taken out amendments in the primary legislation of the NCMEI Act to bring the same in conformity with *Basha supra*.

BASHA AND THE CHARACTER OF ALIGARH MUSLIM UNIVERSITY

HISTORY OF AMU AND CONTROL OF IMPERIAL GOVERNMENT

111. This list of dates is put with a specific objection that the facts concerning establishment and administration of Aligarh Muslim University ["AMU"] and the Mohammedan Anglo Oriental College ["MAO College"] and the law emerging from AMU act, 1920 is already adjudicated and therefore, the present proceedings are not treated by AMU as appellate proceedings reopening settled questions of fact and law [arising from facts themselves].

The following list of dates is submitted only because the AMU is trying to re-argue the case as if the present proceedings are appellate proceedings.

112. The following facts are given as the AMU has failed to discharge its duty to place true facts and with a reiterated caveat that these facts are completely alien to the question of law referred to this Hon'ble Bench.

113. It is submitted that the following list of dates seeks to put the question of actual establishment of Aligarh Muslim University ["AMU"] and the Mohammedan Anglo Oriental College ["MAO College"] in the correct perspective. It is submitted that the Petitioner are merely highlighted some aspects of the historical process and ignored certain major historical factors at play at the said time. The same is depicted as under:

DATE	PARTICULARS
26.12.1870	A private committee was set up by the name of <i>Committee for the Better Diffusion and Advancement of Learning among the Muhammadans of India</i> .
15.04.1872	The Committee submitted its report. The Report suggested and outlined the structure of a <i>Muhammadan Oriental College</i> . The idea behind the same was to bring the Muslims on par with the current developments in the world. It emerges that one of the <u>principal aims of the Committee</u> was the promotion of Western Arts and Sciences and not just religious study. [Letter of the Private Secretary to the Viceroy dt. 10.07.1872, Vol. 3C; PDF Pg. 56]
1873	A Scheme was proposed for the Muhammadan Oriental College. Sir Syed Ahmad Khan proposed that the word "college" in the name of the MAO college be substituted with "university".

DATE	PARTICULARS
	When the proposal is sent to the government, it replied that if a "Mohammedan University" is sought to be established, then no grants in aid would be receivable from the Government. [Vol. 3C; PDF Pg. 77-94]
24.05.1875	<p>Opening ceremony of the MAO College is held in Aligarh.</p> <p>It may be noted that as per some records, the then Viceroy and Governor General of India, Thomas Baring gave a donation of ₹10,000, the Lt. Governor of the North Western Provinces contributed ₹1,000, Maharao Raja Mahamdar Singh Mahamder Bahadur of Patiala contributed ₹58,000, Raja Shambhu Narayan of Benaras donated ₹60,000, and the Maharaja of Vizianagaram also made certain donations².</p> <p>Further, land of 74 acres, on which the entirety of MAO College was set up, was given by Lt. Governor Sir John Strachey in the cantonment area of Aligarh³. Relevant portion of the said book is annexed as Annexure B.</p> <p>Note : This shows the national character of the MAO college itself and also shows how persons from all walks of life contributed to the proposed institution.</p> <p>Note 2 : This further shows that the MAO college itself was wholly established on Government land and not land acquired by minority community.</p>
24.10.1876	A letter from the Secretary of the MAO college notes that the MAO college is an institution dependent on Government funds. [Vol. 3C; PDF Pg 233 and 292].
08.01.1877	The foundation of the MAO college was laid by Sir Syed on the land of the British Government in the Aligarh Cantonment.
28.12.1889	The Rules and Regulations for the Appointment of the Trustees of the MAO College were passed.

² Cementing Ethics with Modernism: An Appraisal of Sir Sayyed Ahmed Khan's Writings. Gyan Publishing House. 2010; "AMU Celebrates Its Links With BHU on Sir Syed's Bi-centenary". www.news18.com. 16 October 2017; "History of Aligarh Muslim University". Frontline. 27 April 2016.

³ Two nations: The philosophy of Muslim nationalism, Pg 97

DATE	PARTICULARS
	<p>Interestingly these Rules describe the object of MAO College was “<i>primarily the education of Mahomedans and, so far as may be consistent therewith, of Hindus and other persons.</i>” [Vol. 3C; PDF Pg. 117]</p>
26.11.1897	<p>Address by Sir Mahmood to Lord Elgin, Viceroy and Governor General of India. In his address, Sir Syed spoke of the achievements that the MAO College had made in the field of education, but lamented that the ultimate goal before it, “<i>the attainment of University for the Mahomedans of India, similar to the great English Universities of Oxford and Cambridge</i>” had not been attained. [Vol. 3C; PDF Pg. 342]</p> <p>Note : This clearly shows that the actual aim was an open, secular, scientific institution for public good and not merely a minority institution. The minority element was a small portion of the larger idea of Sir Syed.</p>
1898-1903	<p>Several prominent individuals associated with the MAO College propounded various differing ideas for a University. These included:</p> <ul style="list-style-type: none"> • Prof. Dr. Zia-ud-din: In 1898 suggested patterning the University at Aligarh on that of the European Universities. He wanted to foster a sense of Western Education along the lines of Oxford and Cambridge. [Vol. 3C; PDF Pg 357] • Justice S. Amir Ali: In 1898 also made suggestions for the setting up of a residential university. [Vol. 3C; PDF Pg. 357-58] • Theodore Morison: Proposed the idea of Muslim University in 1898 and 1903, as a development of the MAO College. Here religious instruction would be an essential part of the curriculum there would be 3 faculties; 1) Faculty of Western Learning, 2) Faculty of Oriental Learning, and 3) Faculty of Science. As per him “the residential University would be purely Muslim in character. The rules and regulations will be the same which will be in conformity with the religious principles of Islam.” [Vol. 3C; PDF Pg. 354-55] • Theodore Beck: In 1898 and Lahore Session of the Muhammadan Educational Conference, the proposal of a Muslim University as an urgent necessity for the development of the Muslim community was raised by him. He wanted English, Arabic, history and maths to

DATE	PARTICULARS
	<p>receive special attention in Aligarh. In fact he wanted the University to diversify its teaching into Science, Engineering and Agriculture.</p> <ul style="list-style-type: none"> • Maulvi Rafi-u'd-din: In 1898 suggested the setting up of a University as an echo of Pan-Islamic ideas in. the sphere of education. [Vol. 3C PDF Pg. 360] <p>Note : Though it was suggested that it must be a predominantly minority University, the demands were not accepted in the future.</p>
23.04.1901	<p>A letter by the Trustees of the university to Viceroy Curzon notes that the College was in significant debt around the time of Sir Syed's death and was aided by an increase in the grant from provincial revenues. [See Vol. 3C; PDF Pg 365].</p>
May 1911	<p>Some representative seeking the University met Harcourt Butler, Member of the Governor-General's Council for the setting up of a Muslim University.</p>
03.06.1911	<p>JP Hewitt, Lieutenant Governor of the United Provinces, writes to Harcourt stating that the University at Aligarh is not to be denominational and "<u>the control of government over the university should be evident and effective</u>" [Volume 4D, PDF Pg 1906].</p> <p>Note : This shows that from the very inception, the Imperial Government was clear on its stance that the demand for establishing a University by way of an enactment would only be accepted only if the control substantially vests with secular/non-minority authorities.</p>
18.07.1911	<p>The Secretary of State writes to the Viceroy on the need for governmental control over the AMU. He states: "<i>Your telegram of the 10th June. I approve in principle of the establishment of a University at Ailgarh <u>subject to reservation of adequate control</u> and provision of adequate funds and, provided that my freedom of action is reserved, I sanction negotiations.</i>" [Volume 4D at PDF Pg 1907]</p>
18.07.1911	<p>The Secretary of State writes to the Viceroy on the need for governmental control over the AMU. He states: "<i>Your telegram of the</i></p>

DATE	PARTICULARS
	<p>10th June. I approve in principle of the establishment of a University at Ailgarh subject to reservation of adequate control and provision of adequate funds and, provided that my freedom of action is reserved, I sanction negotiations." [Volume 4D at PDF Pg 1907]</p>
31.07.1911	<p>The Secretary of State communicated the readiness to sanction the creation of a University subject to condition that its constitution was acceptable to the Government of India. [Vol. 3C; PDF Pg 412] Note : This again emphatically suggests that the government was never accepting an institute formed by a particular religion.</p>
09.08.1912	<p>Letter by Sir Harcourt Butler to the Raja Sir Muhammed Khan conveying the decisions of the Secretary of the State regarding the Muslim University at Aligarh. In the letter Sir Harcourt Butler points out "<u>the Secretary of State had decided after mature consideration that the proposed university shall not have powers of affiliation outside the locality in which it may be established.</u>" [Vol. 3C, PDF Pg 412] He also conveyed that the Chancellor could be elected and that the powers which it was proposed to vest in the Chancellor should be exercised by the Governor General in Council with one exception namely that <u>the professors should not be appointed without previous approval of the Governor General in Council.</u> [Vol. 3C, PDF Pg 413]</p>
07.10.1912	<p>The Raja of Mahmudabad writes to Sir Harcourt Butler and states as follows: There is undoubtedly very strong opinion that objection to word Moslem is being taken by many as port of the policy of Christian nations to crush Islam. We suggest Aligarh Moslem University, and should Hindu University materialise, we suggest for that Benares Hindu University. These names naturally grow out of existing names of Muhammadan Anglo' Oriental College and Central Hindu College, and unless there are objection of overwhelming weight, we think it a concession that might well be made to local sentiment. [Volume 4D, PDF Page 1923] Note : This would indicate that the names were chosen out of respect for local sentiment and not as a description of the character of the School. The Governor General accepted this by letter dated 29.11.1912.</p>

DATE	PARTICULARS
28-30.12.1912	<p><i>Twenty-Sixth Mohammadan Educational Conference at Lucknow:</i> President Major Syed Hasan Bilgrami - In his address to the Conference, observed that the decision of the Secretary of State in transferring powers from the Chancellor to the Government of India resulted in <u>“practically making the University a government institution instead of a communal one.”</u> [Vol. 3D; PDF Pg 170]</p> <p>In the Resolution passed the following was observed:</p> <p>“This meeting views the decision of His Majesty’s Secretary of State as contained in the letter of the Hon’ble Sir Harcourt Butler, dated Simla 9th August, with profound disappointment and regret. Having regard to the views express-ed by the Constitution Committee and in this meeting in the course of discussion among others (i) that the name of the University should be “the Moslem University”; (ii) that with regard to the control, the powers proposed to be vested in the Chancellor should not be vested in the Governor-General in Council (iii) that the powers mentioned in Clause V of Chapter III of the statutes should be the same as conferred on the Patron under section 41 of the Rules and Regulations of the Trustees of Aligarh College; (iv) that with regard to affiliation the Statutes should remain as proposed; and (v) that provisions in the Constitution relating to the powers of the Court, the Council and the Senate should not be modified; and further having regard to the momentous issues involved therein this meeting appoints a committee of the following gentlemen with full powers and authority to act and finally settle all matters relating to Moslem University in such manner as may seem proper to them in the best interests of the community and to wait in deputation on His Excellency the Viceroy to make all necessary representation in this behalf.” [Vol. 3D; PDF Pg 182]</p> <p>Note : The said claims did not find acceptance in the future.</p>
06.08.1913	<p>The Muslim Gazette which recorded the Meeting of the Foundation Committee at Aligarh indicated that a group within the Committee was willing to accept <u>“unhesitatingly whatever form of University that the Government was willing to offer”</u>. [Vol. 4D; PDF Pg 1062].</p>
17.09.1915	<p>Demi-official letter from Mr. H. Sharp to Sir Harcourt Butler indicated that while the proposed University would be called the Aligarh Moslem University, <u>its set-up as regard control would be along the lines of the Benares Hindu University</u> [Vol. 4D; PDF Pg 1066].</p>

DATE	PARTICULARS
24.09.1915	Demi-official letter by Sir Harcourt Butler to Raja Sir Muhammad Ali Muhammad Khan Bahadur. In this letter Sir Butler indicates that the acceptance of the government's proposal as regards the " <u>questions of principle such as control, etc. over which there has been prolonged discussion in with connection with the Hindu University, is an absolute condition precedent for further action</u> " [Vol. 4D; PDF Pg 1066].
October 1915	At a meeting of the Muslim University Association, the organisation votes <u>to accept the proposal of the government for a university on the same lines as the Benares Hindu University</u> [Vol 4D, PDF Page 1396]
10.04.1916	Resolution of the Moslem University Committee. The following has been observed; <u>"Having regard to the refusal of the Government to grant to the Muhammedans a university on any principle other than those granted to the Hindus, this meeting of the Muslim University Foundation Committee has no other alternative at present, but to accept the principles of the Hindu University Act..."</u> [Vol. 4D; PDF Pg 1935].
27.08.1917	In a meeting between the Aligarh Muslim University Regulations Committee and Education member Mr Sankaran Nair, it was stated by Mr Nair that <u>if the government was to recognise the degrees of the college, it would also want control over standard-setting in examinations. This was accepted by the Regulations Committee without objection. Members of the Regulation Committee themselves agreed to the appointment of the University Vice Chancellor being subject to veto of the Government of India.</u> They stated that the reason for this was that the University was meant to be all India in character [Volume 4D, PDF Pg 1939 and 1941]. It was stated as under: <u>"The reason assigned for this preference both here and in other places was that the Government of India would be freer from local prejudice and that the University will be an All India institution.</u> Sir Sankaran Nair said that the Governor-General in council would act only on the advice of the local Government that it would actually be to the advantage of the University to place these powers in the hands of the Lieutenant Governor, to whom they could have access, and whom they would more easily be able to persuade, as indeed the Benares University had just persuaded the Lieutenant-Governor to reverse the course of action decided upon by himself and the Government of

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	<p>India. He also said that things were tending towards local autonomy. The members of the Committee said that they would prefer to wait until that time arrived."</p>
10.10.1917	<p>Notes of H. Sharp [Secretary, Department of Education, Government of India] while discussing the then draft Constitution of the proposed university [PDF Pg 1082 - 1085] notes as under :</p> <p>"3. General principles which should regulate the organization of the University. –</p> <p>I suggest two, which should be kept in mind during further negotiations.</p> <p>(i) <u>The Benares precedent should be followed, save where the promoters desire a change which is unessential or an actual improvement. Such changes are the omission of the Syndicate and the uni-collegiate character of the University.</u></p> <p><u>(ii) Adherence to the constitution of the Mahomedan Anglo-Oriental College should not be permitted as an argument in support of the mischievous departure from the Benares model or relaxation of essential conditions. The argument was actually used by members – e.g. in the matter of dismissing staff. But such an argument entirely overlooks the facts that a college is not a University and that a certain amount of wholesome control has hitherto been exercised over the Mahomedan Anglo-Oriental College by the University of Allahabad. Similarly, as a minor consideration, the argument put forward that Allahabad is a Government University should not be permitted to weigh in. The statement is incorrect and the implication is misleading.</u></p> <p>4. Main political considerations. – <u>The promoters undoubtedly have political as well as educational aims :-</u></p> <p>(i) <u>They would like to spread a network of Islamic colleges over India, affiliated to Aligarh. But they know this will not be allowed and have wisely chosen a uni-collegiate form of University.</u></p> <p>(ii) <u>They will possibly attempt to make Aligarh a centre for Muslim political movements – perhaps a Pan-Islamic movement. This can be guarded against by insisting in a reasonable composition in the governing bodies, proper conditions for admission and a wide framing of clause 6, in view of the possible political activities.</u></p> <p>(iii) <u>They have all along desired network of Islamic schools recognized by the University. They have now wisely abandoned the claim to recognition – proceedings, paragraphs 11 and 33.</u></p> <p>(iv) <u>They want to be free of all control by the Lieutenant-Governor – partly as a matter of izzat, partly because they anticipate greater leniency from the Government of India. See proceedings, paragraphs 4, 7, 17, 19, 20 and 21. It would seem from paragraph 7 that they were willing to give way on this point. Afterwards they took counsel together and stiffened. But I think they will give way, if pressed. The plea of an all-India institution can be countered by the Benares analogy.</u></p> <p>(v) <u>They want to introduce a strongly political element into the Court by means of representation of the Old Boy's Association. This Association may</u></p>

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	<p><u>have done much by canvassing and subscriptions to further the scheme; but I was warned at Aligarh that it is entirely political, and, under the influence of Muhammad Ali and Shaukat Ali, it has done much harm.</u></p> <p><u>(vi) They would like to confer cheap degrees in order to increase the number of Muslim graduates. This has been a general criticism of the scheme since its initiation. It was obvious from the objection raised to external examination. The members, however withdrew this objection, proceedings, paragraph 15.</u></p> <p>(vii) The will probably want to eliminate the European element on the staff. The original scheme submitted to us contemplates six European professors – see the original Draft States approved by the Constitution Committee in 1911, Chapter VIII. I showed at the time this was too small a number. Probably the promoters will still declare for a European staff. But it is clear from Chapter Xi, B, 4, of the draft by-laws, that everything is to be done to make appointments of a European staff difficult – see my notes on the by-laws, page 17. That rule would condemn a man who had taken a first class degree at an English or foreign University to an initial pay of Rs. 150 or 300 and a maximum pay of Rs. 550, unless he had done advanced work – a condition which, notwithstanding rule C, one of the same chapter, does not seem necessarily to be required in a graduate of an Indian University. The most useful men for running an institution are by no means always those who have done advanced work.</p> <p>(viii) By limiting the powers of the Senate and increasing that of the Court and the Council, it is sought to make political considerations at any moment paramount in the Councils of the University.</p> <p>xxx</p> <p>5. The Bill, "The educations aspects of the case can best be dealt with during the consideration of the documents. The notes and proceedings touch all the important points. I comment below on the proceedings:</p> <p><u>(i) Powers of the Governor-General in Council.-Proceedings, paragraph 17. The proposed clause 6 is insufficient. Clause 19 of the Benares Bill should he reproduced.</u></p> <p><u>(ii) Powers of the Visitor.—I do not see how the wishes of the pro noters, not to have a Visitor stall, can be met. There would immediately be in outcry from the Hindus. The Lieutenant-Governor should be Visitor and should have the powers given in section 6 of the Berates Act. The Visitor should also have the power of sanctioning Statutes and regulations, as in sections 17 (5) and 18 (5) of the Benares Act-see proceedings, paragraphs 8 and 10.</u></p> <p><u>(iii) Powers of the Court.-The following powers of the Court are excessive and should be disallowed -the power of interpretation (clause 9), the sanctioning of regulations (clause 17 (3)).</u></p> <p><u>(iv) Senate and Syndicate.-There will be no Syndicate. This is not necessary, provided a sub-committee can be appointed-proceedings, paragraph 29. It the powers of the Court are properly curtailed, those of the Senate appear sufficient (clause 11 (1)), but should perhaps be made subject to the Act, etc.</u></p> <p>(v) Reserve.-It is a question whether we should call for an estimate of cost. The estimates made in 1911 are probably rather out of date. I see from the last report that just over 30 lakhs have been collected. The Secretary of State doubted the sufficiency of this sum-see paragraph 16 of his dispatch no. 33, dated the 23rd February 1912. We should also have an account of the college</p>

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	<p>income; some subscriptions have recently been discontinued. Fellowships should be added as an object on which expenditure from the income of the reserve is not allowed -proceedings paragraph 40.</p> <p>(vi) Recognition of schools (clause 14).-This has been dropped and will appear in regulations as a power of local Governments and Darbars.</p> <p>(vii) Teaching of theology (clause 4(1) and proceedings, paragraph 12).-I was absent at another meeting when the third meeting was held; but it appears no decisions was come to. The provision should be as in the Benares Act, otherwise there may be great opposition in Council.</p> <p>(viii) Preservation of privileges.-I do not see how clause 19(8) can stand. It might raise very serious difficulties hereafter.</p> <p>The other points are of less importance and can easily be settled when a decision has been reached on these main issues and when the memorandum for the Legislative Department is drafted.</p> <p>6. The Statutes.</p> <p>(i) <u>Vice-Chancellor.-The members agreed that the appointment should be subject to the veto of the Government of India-proceedings</u>, paragraph 19. Perhaps we might if the Lieutenant-Governor agrees, <u>allow this divergence from the Benares Act where the veto rests with the Visitor. I do not think Statute 7(5) can stand. The medium of communication should be the visitor.</u></p> <p>(ii) Pro-Vice-Chancellor.-The same remarks apply about veto-proceedings, paragraph 20.</p> <p>(iii) The Court.-(a) Provided the powers of the Court are not excessive, we need not too closely scrutinize its composition. But the representation of registered graduates, which must be 50 and maybe 60 out of 200, is too large, and representation of the Old Boy's Association is objectionable. The other categories are reasonable. But the gradual elimination of the Trustees is likely to change the body entirely; and the better Trustees may find their influence swamped by young men long before the ten years are up-proceedings, paragraph 23. (b) the members agreed that the first nominations under clause 11(2) (x) (see also clause 11(11)) should be subject to the sanction of the Governor-General in Council-proceedings, paragraph 25. (c) In clause 11(12), ex-officio members should be added-proceedings, paragraph 26. (d) Provision should be made for a minimum number of meetings.</p> <p>(iv) Senate.-I think we should have it clearly expressed that the conveners of the Board of Studies shall be the principal University Professors. This is vitally important. The provisions of Statute 16(2)(c) is probably sufficient.</p> <p>(v) Faculties and Board of Studies.-(a) The idea is to have no Faculties. But I had some talks with some of the members, and I think they would really prefer to have small Faculties composed of the conveners of the various Boards of Studies. (b) Statute 16(1) should set a limit to the expansion of Boards Studies as in 23(1) of the Benares Statutes-proceedings, paragraph 30.</p>

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	(vi) Change in Statutes and regulations.-Proposed chapter XIX of the by-laws should figure in the Statutes-proceedings, paragraph 39."
19.01.1918	<p>Letter by Sir E.D. Maclagan, Secretary to the Government of India to the Chief Secretary to the Government of United Provinces. It is noted in this letter:</p> <p>"As His Honour the Lieutenant-Governor is aware the Government of India wore during the year 1911-12 in correspondence with the Secretary of State regarding the proposal to establish a Muslim University at Aligarh, and the Secretary of State communicated his approval of the institution of the proposed university subject to certain remarks and criticisms put forward by then under discussion. <u>The principles then indicated by the Secretary of State have formed the basis of the Benares Hindu University Act of 1915 and it is now presumed that any legislation for the establishment of a Muslim University at Aligarh must conform in all matters of substance with the provisions of the legislation already passed for the Hindu University at Benares. At a meeting of the Muslim University Foundation Committee, held at Aligarh, on the 8th April 1917, it was resolved that the Committee was "prepared to accept the best University on the lines of the Hindu University" and authority was given to the Regulation Committee of the proposed Muslim University to take the necessary steps for the introduction of a Muslim University Bill in the Imperial Legislative Council.</u></p> <p style="text-align: center;">xxx</p> <p>3. In respect of the draft Bill, I am to say that in the opinion of the Government of India is at present advised it would seem advisable to introduce the bill in the Imperial Legislative Council as a Government Bill as was done in the case of the Benares Act but they would be glad to learn the opinion of the Lieutenant-Governor on this point. The draft now forwarded is in the form presented by the Regulation Committee and has not yet been examined by the Legislative Department of this Government but the Government of India would wish to ascertain the general views of the Lieutenant-Governor on the proposals embodied in the draft as now presented. It will be observed that the proposed University will differ in two important respects from the Benares Hindu University inasmuch as (i) there will be no Syndicate and (ii) the university will be uni-collegiate, but in neither of these two points do the Government of India consider the modification to be other than an improvement always assuming that suitable sub-committees or a standing committee to the Senate can be constituted. In the consideration of the draft i am to draw attention to the following matters.</p> <p><u>(i) It is for consideration whether the provision of clause 4 (i) of the draft bill which makes theology compulsory for Muslim student should not be abandoned in favour of a provision corresponding with that of section 17 (i) of the Benares Act which merely allows the statutes to provide for the instruction of Hindus in the Hindu religion,</u></p> <p><u>(ii) It will be observed that section 6 of the Benares Act which establishes the Lieutenant-Governor as visitor is not reproduced in the draft bill and it is for consideration whether it is necessary to introduce a clause to establish a</u></p>

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	<p><u>visitor, together with provisions on the line of section 17 (5) and 18 (5) of the Benares Act to give him control over the Statutes and Regulations.</u></p> <p><u>(iii) The Government of India is inclined to think that the proposal in clause 9 to give the Court their power of interpreting the meaning of the Act. Statutes, etc. is unsuitable as the Court is not a proper body for the decision of such questions, It is a question whether a similar objection should be raised to the proposed clause 7 (3) which gives the Court control over the Regulations and whether if a power of veto over the regulations is granted to the Court a similar power should he concurrently conferred on the Lieutenant-Governor.</u></p> <p>(iv) It will be seen from paragraph II of the proceedings that in view of the importance attached by the Government of India to the provisions of the Benares Act on the subject of the recognition of school, the Regulation Committee were prepared to forego the proposals incorporated in their draft upon the point.</p> <p>4. I am similarly to ask for any general remarks which the Lieutenant-Governor may wish to make in respect of the proposed Statutes and to note the following points for consideration:</p> <p>(i) As will be seen from paragraphs 19 and 20 of the proceedings the appointment of the Vice-Chancellor and Pro-Vice-Chancellor will be subject to the veto of the Government of India.</p> <p>(ii) It will be observed from paragraphs 25 and 26 of the proceedings that the first nomination to the Court under clause II (2) (x) of the Statutes' will be subject to the sanction of the Governor-General in Council and that in clause 11(2) ex-officio members will be added. It is for consideration whether the proposed constitution of the Court is in other respects such as may be accepted as suitable.</p> <p>(iii) As will be observed from paragraph 39 of the proceedings, Chapter XIX of the proposed bye-law. will appear as part of the Statutes.</p> <p>5. Lastly, <u>as regards the proposed regulation and bye-laws it will be seen from paragraph 39 of the proceedings that the latter will not be scheduled but it is for consideration whether the former also should not be exempted from forming part of a schedule under the bill. It would be possible as in the case of the Benares, legislation to frame the regulations in the rough before the passing of the bill and to issue them after the bill is passed.</u> [Vol. 4D; PDF Pg 1089]</p>
19.12.1918	<p>Demi-official letter from Mr. Keane, ICS to Mr. H Sharp notes that:</p> <p>"Presumably the Government of India in accordance with the announce then made will give a liberal annual grant to the University which on the analogy of the grant made to the Benares Hindu University would not be less than one lakh of rupees" [Vol. 4D; PDF Pg 1106].</p>
27.12.1919	<p>Letter from the Government of the United Provinces furnishing its view on the draft constitution for the proposed Muslim University at Aligarh.</p>

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	<p>The letter contains the views of the Lieutenant-Governor on the scheme of the draft constitution. On the interpretation of the Act and the appointment of the Vice-Chancellor and the Pro-Vice-Chancellor. Concerning the first that the <i>interpretation of the Act</i> the LG considers that it should be reserved to their office. On appointments, the LG considers that such appointments should be subject to the LG's approval [Vol. 4D; PDF Pg 1111].</p> <p>On the point of interpretation, the Governor-General and the Government of India concurred that "to give the power to the Court (of the University) of interpreting the Act, statutes, etc. is unsuitable." [Vol. 4D; PDF Pg 1113]</p> <p>*Mr. Shafi however, disagrees with the power of interpretation being vested in the LG as impractical. In his opinion the power should be vested with the Court but with the power of veto being given to the LG [Vol. 4D; PDF Pg 1113]. He also notes that the power given to the Court would be curtailed in light of the veto to the LG and the enhanced powers given to the Governor-General [Vol. 4D; PDF Pg 1114].</p>
27.12.1919	<p>Kunwar Singh, the Secretary of Education of the United Provinces writes to the Secretary of Education in the Government of India and states that the Court of the university should not have the power to interpret the university statutes or the Act itself. He notes that removing this power of interpretation along with the provision for a Visiting Body and the enhanced powers given to the Governor General, would materially curtail the powers of the Court [Volume 4D at PDF Pg 1946-47]. It was stated:</p> <p style="padding-left: 40px;">"...I am to say that the powers of the Court are large but the omission of the power of interpretation together with the insertion of a Visiting body and the enhanced powers proposed for the Governor General in Council will materially curtail them"</p> <p>Therefore, it was ensured that powers of the Court were limited and major powers of making statutes was subject to clearance of the Governor General.</p>
12.03.1920	Demi-official letter from Mr. H. Sharp to Kunwar Maharaj Singh:

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	<p>Notes that the Aligarh Draft Bill "<u>presented by the promoters would permit the Governor General in Council to give instruction and to compel the University to follow them in reference to matters touching the standard of University Examinations</u>" [Vol. 4D; PDF Pg 1117].</p>
08.05.1920	<p><i>Telegram from the Secretary to the Government of the United Provinces, Judicial Department to Secretary to the Government of India, Department of Education:</i></p> <p>The telegram compares the BHU Act and the Draft Bill for the AMU. On a comparison it notes the following;</p> <p>"A comparison of the Muslim University draft Bill with the Benares Hindu University Act shows that –</p> <ol style="list-style-type: none"> (i) While in the former the accounts of the University, when audited, have to be published in the Gazette of India and the a copy of the accounts together with the Auditor's report has to be submitted to the Governor General (clause 15), in the case of the latter the said accounts are likewise to be published in the Gazette of India but a copy is to be submitted to the Visitor, (ii) <u>Alterations, additions, amendments or repeal of (a) statutes and (b) ordinances in the case of Muslim University Bill [clause 19(5)], subject to the veto of the Governor General in Council, while in the case of the Benares Hindu University they require the previous approval of the Visitor, [clause 17(5)]</u> [Vol. 4D; PDF Pg 1123-24]. <p>It is also noted that:</p> <p>"Certain powers vested under the Benares Hindu University Act in the Visitor have, according to the draft Muslim University Bill, been transferred to the Governor-General in Council. In other words, while official control in these respects is in no way affected, only the agency exercising that control is changed from the local to the Imperial Government. <u>Now, bearing in mind the fact that Aligarh and the Benares Universities are all-India and nor merely provincial institutions and that in future as a result of the scheme of constitutional reforms introduced under the Government of India Act of 1919, these two Universities will be not provincial but central subjects, it necessarily follows that the proposed modifications are not only in no way opposed to principle but are in the highest degree desirable.</u>"</p> <p>"It follows, therefore, that unless the modifications proposed in the draft Muslim University Bill are retained, the Government of India <u>control over these two Universities will really be nominal</u> and as a result, the very object for which the Aligarh and the Benares Universities are constituted as central subject will be defeated. What in fact, the proposed draft does bring about is that, while leaving <u>sufficient measure of control in the hands of the local Government in so far as it is at all necessary, it tightens the control of the Governor General in Council over these all-India Universities.</u>"</p>

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	<p>“The accounts of the University will include expenditure of the Imperial recurring grant: these must, therefore, be submitted to the Government of India. New statutes and ordinances will be framed by virtue of the power given by an Imperial Act to a University, constituting a central subject, which will, under the Reforms Scheme, be under the control of the Government of India and not under the Provincial Government: these must, <u>therefore, be subject to the veto of the Governor General in Council and not of the local Government. To enact otherwise would result not only in the abdication by the Imperial Government of its own powers as well as responsibilities but may also lead to undesirable results.</u>” [Vol. 4D; PDF Pg 1124]</p> <p>Note : Therefore the Imperial Government roundly rejected the suggestion of nominal control over the institution and wanted real, tangible and actual control of the University as a bargain to bring in the legislation.</p>
12-13.06.1920	<p><i>Meeting at Naini Tal regarding Aligarh Muslim University;</i></p> <p>Note prepared on the meeting by Sir Harcourt Butler lists as follows:</p> <p>3. The procedure followed in case of Aligarh has been inconvenient. One committee member came to me and I agreed to the substitution of the Visiting Body instead of a Visitor (On the understanding that the Hindus would be offered the same if they wanted it). I made this concession to their wishes because they were prepared to accept the full control of the Government of India and were ready to agree to certain other provisions. Later on another deputation went to the member in charge of Education and they produced the bill in its present form which overrides the decision reached in Lucknow</p> <p>“4. In the case of Aligarh the Lieutenant Governor has been Patron from the beginning. The College is dependent very largely on the patronage and grants from the local Government. Sir Syed Ahmed relied considerably on the support of the Lieutenant-Governor. The connection of the Lieutenant-Governor Aligarh is therefore peculiar and must closer historically than his connection with Benares. Aligarh and Benares are two important pollical centres in the province and trouble had at times broken out in both. It was essential that there should be some connection and contact between the loal Government and the two new Universities.</p> <p>5. Mr. Shafi said that a question of principle was involved. Under the (Government of India) Act the Hindu University and similar universities were central subjects. There is no getting away from it. The Government of India would have to finance these Universities and they were prepared to have a machinery to control them. The Mussalmans were keen on the constitution that they have now put forward, that it was desirable politically to carry the Mussalmans with us at the present time. The Governor would of course in practice be consulted on all important matters by the Government of India. It might be accepted that the Hindus would be treated in the same way as the Mussallmans, the necessary legislation being undertaken. In reply to me Mr.</p>

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	<p>Shafi said that Intermediate Colleges at Aligarh and Benares would of course remain under the local Government" [Vol. 4D; PDF Pg 1131-32]</p> <p>Certain amendments were suggested by Mr. Shafi and were accepted by Sir Butler. The relevant extract is below:</p> <p>"Clause 15(iii) of the Bill. – the accounts when audited shall be published in the Gazette of India and in the local Gazette and a copy of these, with the auditor's report, shall be submitted through the Visiting Board to the Lord Rector.</p> <p>Clause 19(5), proviso of the Bill. – No addition, alteration, amendment or repeal of Statutes shall come into effect until it has been submitted through the Visiting Board with their opinion to <u>the Governor General in Council, and has obtained the previous approval of the latter, who may sanction, disallow or remit for further consideration</u>; provided that no Statute made regarding the instruction of Muslim students in the Muslim religion shall require such previous approval.</p> <p>Clause 20(2) of the Bill. – The Executive Council or, in academic matters, the Academic Council may from time to time make Ordinances. No such Ordinance, nor any amendment or repeal of such Ordinances, shall come into effect until it has been submitted through the Court and the Visiting Board, with the opinion of both those bodies, to the Governor General in Council, and has obtained the previous approval of the latter, who may sanction ,disallow or remit for further consideration.</p> <p>The proviso will stand as it is.</p> <p>Clause 7(1) of the Statutes. – This should remain as it is, the appointment of each successor to the first Vice-Chancellor being approved by the Governor General in Council.</p> <p>Clause 9(1) of the Statute. – The Pro-Vice-Chancellor shall be appointed by the Court subject to the approval of the Visiting Board". [Vol. 4D; PDF Pg 1132]</p>
	<p><i>Appendix to Notes:</i> Mr H. Sharp has observed as follows:</p> <p>"As stated in my note of the 16th January 1918, it was clearly stated that in regard to their relations to Government the proposed Hindu and Mohemmadan Universities should be on the same footing." [Vol 4D; PDF Pg 1145]</p>
27.08.1920	<p style="text-align: center;">DISCUSSION ON THE AMU BILL, 1920</p> <p>Mr. Shafi introduced the Bill for the establishment of a University and moved to refer the Bill to a Select Committee. The relevant extracts of his speech are as follows:</p> <p>"The Secretary of State, on the 18th July, approved the principle of the establishment of such a University, subject to reservation of adequate control and provision of adequate funds; and while reserving his own freedom of action, sanctioned the proposed negotiations with the Association."</p>

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	<p>“Meanwhile, the Hindu leaders, who too had, in their turn, approached the Government of India with a scheme the establishment of a Hindu University at Benares, guided by that practical spirit (which is one of their characteristics), accepted the conditions laid down by the secretary of State, with the result that a Bill for the establishment of the Benares University was prepared and, after having passed through the Imperial Legislative Council, received the assent of the Governor General on the 1st of October 1915. An undertaking was at that time given by Government to the Hindu leaders that the University to be granted to the Muslim Community would also be on the lines of the Hindu University Act. This position as clearly explained to the Muslim leaders, and the Government of India have all along been ready and willing to act up to that undertaking and the Government.”</p> <p>“Hon'ble Members are aware that Education, including University Education, has, in the past, been a provincial subject. Legislation regarding the Benares University was framed in consonance with that state of things and all official control, in consequence, reserved to the Provincial Government. recognizing the all-India character of the Benares and Aligarh Universities, the Rules framed under the new Government of India Act have now proposed that these two Universities should be a central subject and <u>the responsibility in connection therewith will, henceforward, rest on the shoulders of the Government of India.</u>”</p> <p>“As a necessary consequence of this constitutional development and of change of policy, various modified provisions have been introduced in this Bill which, I venture to think, constitute what will be recognized Hon'ble Members as distinct improvements. In forming their own judgment regarding this claim, I would ask Hon'ble Members to bear three fundamental and in my humble judgment, indisputable principles in mind. In the first place, no Government, be it purely British, exclusively Indian or a combination of both—can reasonably be expected to deprive itself absolutely of all control over education. The real test of the liberal character of a measure like this lies in the nature of agency and extent of control proposed to be exercised. In the second place, in the new conditions upon which India is now entering, official control no longer means what it did in the year 1915. With the introduction of a popular Indian element in the Provincial as well as Imperial Government, official control will, in the future, have an entirely different meaning: in the third place, the substitution of control by a constitutional authority consisting of a number of persons for individual authority is, on the face of it, a step in the right direction.”</p> <p>“A glance at Sections 6 (2), 17 (5), 18 (5) and Statutes 6 (1), 10 (1) and 19 (1) of the Benares Hindu University Act will make it clear to Hon'ble Members that the Visitor, i.e., the Lieutenant-Governor of the United Provinces is the main agency of control in the case of the Benares University. In the present Bill, in consonance with the central nature of the subject, much of that control is transferred to the Governor General in Council – an authority which under the Government of India Act, will, henceforward, include three Indian Members. Under the Benares Hindu University Act, all new Statutes or</p>

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	<p>additions or amendments or repeals to Statutes other than those providing for the instruction of Hindu students in Hindu religion, require the previous approval of the Lieutenant-Governor who may sanction, disallow, or remit for further consideration., except Statutes affecting the constitution of the University authorities which require the previous sanction of the Governor General in Council in this Bill, that power is proposed to be vested in the Governor General in Council. Moreover, the Governor General in Council will when exercising the power so vested in him, have before him the opinion of the Visiting Board which will include the Ministers, one of whom will himself be in charge of education so that the Government of India will be in possession of the view of this popular authority when exercising their own powers in this connection."</p> <p>In his concluding remarks, Mr Shafi requested that the Bill be referred to the Select Committee for consideration and requested that <u>"the Government of India...give substantial financial assistance to the proposed Muslim University in order to mark their own good will towards an institution which they earnestly hope will be a source of immense benefit to the Indian Mussalmans."</u></p> <p>Saiyid Mahomed Ali:</p> <p><u>"A University, they pointed out, must be a national organisation calculated to subserve the various and varying needs of the different communities, their cultural genius and their industries and their trades which are to be served by it."</u></p> <p><u>"About the former the Muslim Community has felt compelled to accept the later academic opinion there is no room in future for an affiliating type of a University and that the best interest of educating will be served by a local University. Regarding the latter, the community has reluctantly accepted the limitation of the control imposed by the Government."</u></p> <p>"I should like to draw attention to another important point. The Muhammadans have always felt the need of secular education being supplemented by religious instruction. They have always felt that nothing can be more deplorable, more subversive of discipline, more detrimental to the development of tire manhood and character than to train and educate the youth of the country in Godless education. It is therefore a matter of satisfaction that the promoters of the scheme have made religious and moral instruction the bed-rock of education. The Bill provides that students of all classes and creeds would be admitted to the University and it is hoped that the University will be a means of better mutual understanding between the various communities of the country."</p>

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	<p>He also expresses the need for the select committee to take a look at the draft and send it back.</p>
08.09.1920	<p>REPORT OF THE SELECT COMMITTEE: [VOL IVA – PDF PG 73-76]</p> <p>The Committee inserted a provision in Clause 30 which provides that the first ordinances shall be framed in accordance with the directions of the Governor General in Council. Further, changes are quoted as under:</p> <p><u>“13. In clause 30, we have inserted a provision as to the first Ordinances which shall be framed in accordance with the directions given by the Governor-General in Council.</u></p> <p>We have also substituted the Lord Rector as the authority who shall nominate a High Court Judge on the Board to settle disputes between the Executive and Academic Councils as to the power of making Ordinances. This we have done so as to have wider field of selection than would have been possible if the authority has been one having no power of selection outside the United Provinces.</p> <p>xxx</p> <p>16. In clause 35 we have substituted the Visiting Board for the Court as the authority to appoint the Auditor. We feel that it is desirable that the appointment of the Auditor should be made by an authority outside the University and that he should not have to look for his appointment to the votes of an electorate of about 200 persons.</p> <p>xxx</p> <p>23. In Statute 15 we have enlarged the Executive Council from 18 to 30 members and in consequence have enlarged the quorum to eleven and made other consequential alterations in the section. We have also added a clause, following the precedent of the Benares Hindu University Act, to provide the seven members of the Executive Council shall not be residents of the province. The Executive Council is also given power to make rules for elections to its body.</p> <p>xxx</p> <p>28. In Statute 20 we have made amendment in order to make it clear that the Executive Council shall not appoint to the teaching staff persons who are not recommended by the Committee of Appointment while at the same time leaving to Executive Council a discretion to appoint any person who is on a list of persons recommended by it.”</p>
09.09.1920	<p>PROCEEDINGS OF THE INDIAN LEGISLATIVE COUNCIL:</p> <p>Mr. Shafi moved the report of the Select Committee on the Bill to establish AMU.</p> <p>Khan Bahadur Ebrahim Haroon Jaffer proposed an amendment that the first Chancellor, Vice-Chancellor and Pro- Chancellor shall hold office for such period as the Court may determine.</p>

DATE	PARTICULARS
	<p>Mr. S. Mahomed Ali responded as follows:</p> <p><u>"My Lord, the amendment, if carried, would result in creating an anomalous position, both as regards the highest officers of the University, and as regards the Governor General in Council.</u> It would be ridiculous if the Court, immediately after the appointment by the Governor-General in Council of the first Chancellor, the Pro- Chancellor and Vice-Chancellor, sets aside these appointments and makes fresh appointments is hardly conceivable that any person would consent to accept any of these honorary offices under the University under those conditions."</p> <p>Similarly, Mr Shafi raised objections to these amendments as follows:</p> <p>"My Lord, I am afraid I am unable accept this amendment. Hon'ble friend will turn to clause 17, sub-clause (2), of the Bill, he will find that according to the law as we propose it, the Chancellor shall hold office for three years. Similarly, the other office bearers are also to hold office for three years. My Hon'ble friend wishes that while His Excellency the Governor General may have the power to appoint these officers in the first instance, they are to hold office at the will and pleasure of the Court. I am afraid such a position is one which the Government of India are unable to accept; but I may, with Your Excellency's permission, assure my Hon'ble friend that in making those first appointments the Governor General in Council will keep the wishes of the community in view."</p> <p>Another amendment which was suggested by Khan Bahadur Ebrahim Haroon Jaffer was:</p> <p>"That for sub-clause (2) of clause 30 substitute the following:— "The Executive Council or, in academic matters, the Academic Council, may from time to time make new or additional Ordinances. But all such Ordinances, or additions to the Ordinances or amendments repeals to Ordinances, shall be made subject to sanction of the Court, which may sanction disallow or refer them back to the Executive or Academic Council, as the case may be, for further consideration. The Ordinances shall be subject to the vote of the Governor General in Council or Visiting Board."</p> <p>It was opposed by Mr. Shafi as follows:</p> <p>"My Lord, a careful examination of clause 30 as it stands in the Bill will show to Hon'ble Members that the acceptance of my Hon'ble friend's amendment will result, firstly, in the deletion of sub-clause (2) which has been added in the Select Committee at the express request of the representatives of the Muslim Association, and secondly, in very material modifications of sub-clause (3) which I am afraid am unable to accept. My Hon'ble friend has in the speech which he has just delivered referred to the complicated nature of the machinery proposed in the Bill. I thought I had made it clear in my opening address that this so-called complicated machinery really is in the nature of a measure which liberalises the present enactment as compared with the Benares Act; and I do not, at this stage, intend to repeat what I said in my</p>

DATE	PARTICULARS
	<p>operating address. <u>In the third place, my Hon'ble friend would like the word 'veto' being substituted for what in effect is precious approval of the Governor-General in Council. Here against the Government of India are unable to accept the change proposed by my Hon'ble friend. It will be noticed that previous sanction in the expression used in the Benares Act, and we have in fulfilment of the pledge given to Hindu leaders at the time, in this respect adhered to the phraseology adopted in the case of the Benares Act. The Government of India are not prepared to depart from the decision then arrived at."</u></p> <p>The motion was put and negatived."</p>
1920	The Aligarh Muslim University Act, 1920 was passed.

114. From the above, it is amply clear that predominant character and the purpose behind the AMU was of establishing an institution of a national character on the lines of the Benares Hindu University. It is further clear that the without the involvement of the Government and the clear unequivocal intent of the Government of making a non-minority institution, the AMU could not have been established. It is further clear that the minority element in the AMU was a minor part of a larger non-minority institution which was modelled as a residential university.

115. *Erroneous presumption of "CONVERSION" of MAO College to Aligarh Muslim University* – The Petitioner at numerous places in the written submissions appears to presume that because the properties of the MAO College were vested with the AMU at the time of its inception, the AMU came into being as a mere successor the body from the "nuclei" of MAO College.

It is submitted that while the MAO College and its properties may have stood vested in the AMU at the time of its establishment, the said fact does not mean that the AMU came into being merely as a converted entity from the MAO College. The AMU was a university and was fundamentally different in all aspects in terms of its powers, education, admission process, administrative bodies, source of funds, appointment of other authorities etc. from the MAO College.

116. The creation of a university with the absorption of one college is not a mere process of conversion or incorporation of MAO College into the AMU as appears to be suggested by the Petitioner. The MAO College in fact was a college affiliated to the Allahabad University which was at the time of establishment of a separate standalone and national university of AMU absorbed as a small unit from the MAO College within the far larger and fundamentally different educational unit of AMU.

117. The following chart puts to rest the claims made by the Petitioner :

CLAIM	RESPONSE
<p>The Preamble states the Act is to establish and incorporate “a teaching and residential Muslim University, and to dissolve ... the Muhammadan Anglo Oriental College, Aligarh and the Muslim University Association, and to transfer to and vest in the said University all properties and rights of the said Societies and of the Muslim University Foundation Committee:”</p>	<p>With the dissolution of the MAO college Society and the University Association, the existence of the MAO College came to an end. The AMU was a newly created institution which emerged out of an Act of the Legislature. The act of dissolving the MAO college in fact shows the severance of continuity between it and the AMU. This dissolution is a legislative acknowledgement of the fact that the AMU is being brought into existence through the agency of the State, unlike the MAO college.</p>
<p>All assets (movable and immovable), rights, powers, and privileges of MAO College and its affiliate bodies in their entirety were transferred and vested in the name of AMU;</p>	<p>The MAO College may or may not have been the “nucleus” of the AMU, however, the AMU’s assets, powers and privileges are markedly different from the MAO College. It is moreover not correct to say that the powers and privileges of the MAO college were transferred as is to the AMU. AMU’s powers in terms of administration are curtailed by the overriding authority given to the Governor General and the Visiting Board under Sections 13 and 14 of the Act of 1920 and the extent of government control over the AMU was far greater than over the MAO college. It may be noted that the MAO college was spread over an area of approximately 74 acres whereas the AMU has land of over 1100 acres, much of which has been donated by either the government or Non-Muslim donors.</p>
<p>All references to MAO College or its affiliate bodies in any enactment or document prior to the 1920 Act are deemed to be a reference to AMU</p>	<p>This change in fact shows that the MAO college was legislatively substituted by a distinct separate entity called the Aligarh Muslim University.</p>
<p>All employees and other staff of MAO College are deemed to be the</p>	<p>Where a legislative substitution of one institution with another occurs, the staff of the</p>

CLAIM	RESPONSE
employees of AMU and with tenure and other terms, rights, and privileges as it existed prior	institution so replaced would be retained as a matter of administrative convenience. Merely because they are continued in service under the new institution, it would not mean that the identity of the new institution is affected thereby.
All donations received from the Muslim community [i.e., the sum of thirty lakh rupees (Rs. 30,00,000)] was kept as the Reserve Fund to be invested in a trust by AMU;	The sum of Rs 30 lakh has no connection whatsoever with the MAO College. This sum was collected because the government made it a condition precedent that had to be fulfilled before THE GOVERNMENT could approve the establishment of the AMU. The sum therefore was really collected at the instance of the government and specifically for the AMU.
All students of MAO College on the date of commencement became the responsibility of AMU, including provision of instruction as per the prospectus of Allahabad University.	This change was made as a matter of necessity because starting of fresh admissions process or removal of existing students would have caused academic disruption in the Institution.
In the First Statutes, the Register of registered graduates was to contain the names of graduates of other Universities who had been educated for at least two years at MAO College.	This is only a deeming provision to ensure that students of the former MAO College could benefit from the conversion of the college into the AMU.

118. The Petitioner appears to suggest that the MAO College and the AMU at the time of establishment are *interchangeable entities*. If the said suggestion is true, then it is not understandable as to why there was a demand for the AMU itself at the said time. Clearly the said demand was made because a University differs greatly from a College and there was vast advantages of having a University in Aligarh.

It was in that context that the judgment in *Basha supra* correctly notes that while the MAO College may have stood absorbed in the AMU, the community which may have “demanded”, “wanted” and “sought to exercise its choice” to have a minority university, had to ultimately negotiate and settle the matter with the

Imperial Government and accept a university on the lines of the Benares Hindu University.

Both the Universities from their inception were primarily of a national character with certain elements of limited religious instruction in them. The assertion of the Petitioner that because there was some role played by the minority community and there was a demand by the minority community for a University, would be enough to satisfy the factual question of establishment by the minority community, is flawed as mere demand is not enough and actual tangible manifestation of the institution is necessary to prove the question of fact of establishment.

THE AMU ACT AS IT STOOD IN 1920

119. The survey of the provision of the Aligarh Muslim University at the time of the inception of the University in 1920 clearly points towards a predominantly national and non-minority character of the University. In fact, the minority element was only present as an exception or a carve out as opposed to the omnipresent non-minority character. A copy of the Aligarh Muslim University Act, 1920 is annexed as **Annexure C**.

120. At the time of its inception, Section 3 provided that the first Chancellor, Pro-Chancellor and Vice-Chancellor were to be appointed by the Governor General-in-Council by way of a notification in the Gazette of India. The Governor General-in-Council being the appointing authority at the time of inception for the high positions of Chancellor, Pro-Chancellor, and Vice-Chancellor to be reflected through a notification in the Gazette of India is asymptotic of a national character. Section 30 is quoted as under:-

“Section 3 – Incorporation –

The First Chancellor, Pro-Chancellor and Vice-Chancellor who shall be the persons appointed in this behalf by a notification of the Governor General in Council in the Gazette of India, and the persons specified in the Schedule as the first members of the Court and all persons, who may hereafter become, or be appointed as, such officers or members, so long as they continue to hold such office or membership, are hereby constituted a body corporate by the name of the Aligarh Muslim University, and shall have perpetual succession and a Common Seal and shall sue and be sued by that name.”

121. Section 5 which provided for the powers of the University had 12 sub-clauses, out of which 10 were clearly non-minority - one provided for promotion of Oriental and Islamic Studies and giving instruction in Muslim theology and religion and to impart moral and physical training and another provided for teaching and examining

body to cultivate and promote Arts, Science and other branches of learning including professional studies and technology primarily along with the Islamic learning and Muslim theology. The said provision is also overwhelmingly secular and non-minority in its character with merely a minuscule aspect of it referring to minority education merely allowing it in a small aspect of the institution. The relevant provision is quoted as under :

“Section 5 - Powers of the University — The University shall have the following power, namely:-

(1) To provide for instruction in such branches of learning as the University may think fit and to make provision for **research and for the advancement** and dissemination of knowledge;

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

(3) To hold examinations and to grant and confer degrees and other academic distinctions to and on persons who-

(a) shall have pursued a course of study in the University, or

(b) are teachers in educational institutions, or

under conditions laid down in the Statutes and Ordinances, and shall have passed the examinations of the University, under like conditions,

(4) To confer honorary degrees or other distinctions on approved persons in the manner laid down in the Statutes;

(5) To grant such diplomas to and to provide such lectures and instruction for persons, not being members of the University, as the University may determine;

(6) To co-operate with other Universities and authorities in such manner and for such purposes as the University may determine;

(7) To institute Professorships, Readerships, Lectureships and any other teaching posts required by the University, and to appoint persons to such Professorships, Readerships, Lectureships and posts;

(8) To institute and award Fellowships (including Travelling Fellowships), Scholarships, Exhibitions and Prizes in accordance with the Statutes and the Ordinances;

(9) To institute and maintain Halls for the residence of students of the University;

(10) To demand and receive such fees as may be prescribed by the Ordinances;

(11) To supervise and control the residence and discipline of students of the University and to make arrangements for promoting their health; and

(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 and **to cultivate and promote arts, science and other branches of learning, including professional studies, technology, Islamic learning and Muslim theology.**”

122. With regard to the admissions in the University at the time of inception again it can be noticed that the same were purely on non-minority lines as Section 8 provided that subject to the Ordinances, admission would be opened to persons of other sex and of whatever race, creed or class. Further, as per conjoint reading of Section 30 and Section 32, the First Ordinances were framed by the Governor General-

in-Counsel which was the non-minority authority, and the admissions were to be made on the basis of such Ordinances framed by the Governor General-in-Counsel. Further, even the future Ordinances or amendments or repeals of any such ordinance were subject to the approval of the Governor General-in-Counsel. The relevant provisions are quoted as under:

“8. University open to all races, creeds and classes— The University shall, subject to the provision of this Act and the Ordinances, be open to all persons of either sex and of whatever race, creed or class:

Provided that special provision may be made by the Ordinances exempting women from attending at public lectures and tutorial classes and prescribing for them special courses of study.

— xx — xx —

30. Ordinances –

(1) The Executive Council or, in academic Ordinances matters, the Academic Council may make Ordinances.

(2) The first Ordinances shall be framed as directed by the Governor General in Council, and shall receive such previous approval as he may direct.

(3) No new Ordinance, or amendment or repeal of an existing Ordinance shall have any validity until it has been submitted through the Court and the Visiting Board (which may record its opinion thereon) to the Governor General in Council, and has obtained the approval of the latter, who may sanction, disallow or remit it for further consideration.

(4) If any question arises between the Executive and the Academic Council as to which has the power to make an Ordinance, either Council may represent the matter to the Visiting Board who shall refer the same to a tribunal consisting of three members, one of whom shall be nominated by the Executive Council, one by the Academic Council, and one shall be a Judge of a High Court nominated by the Lord Rector.

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32. Admission to University -

(1) Admission of students to the University shall be made by an Admission Committee consisting of the Pro-Vice-Chancellor, the Principal of an Intermediate College who shall be selected by the Vice-Chancellor and such other persons as may be appointed by the Academic Council.

(2) Students shall not be eligible for admission to a course of study for a degree unless they have passed the Intermediate Examination of an Indian University incorporated by any law for the time being in force, or an examination recognised in accordance with the provisions of this section as equivalent to the Intermediate Examination, and possess such further qualifications as may be prescribed by the Ordinances.

(3) The conditions under which students may be admitted to the diploma courses of the University shall be prescribed by the Ordinances.

(4) The University shall not, save with the previous sanction of the Governor General in Council, recognise (for the purpose of admission to a course of study for a degree) as equivalent to its own degrees, any degree conferred by any other University or as equivalent to the Intermediate Examination of an Indian University, any examination conducted by any other authority.

(5) Notwithstanding anything contained in this Act or the Ordinances, any student of the Muhammadan Anglo-Oriental College, Aligarh, who immediately before the commencement of this Act was studying for any examination of the Allahabad

University higher than the Intermediate Examination shall be permitted to complete his course in preparation thereof. The University shall provide for such students instruction in accordance with the prospectus of studies of the Allahabad University and, notwithstanding anything contained in the Indian University Act, 1904, any such students may be admitted to the examinations of that University during a period not exceeding four years from the commencement of this Act.”

123. Section 9 on which considerable reliance has been placed also merely creates an island of minority education by giving the power to the Court to make statutes making institution in Muslim religion compulsory only for Muslim students and not otherwise. This provision does not define the predominant character of the institution at the time of its inception.

124. The provision concerning teaching of the University at the time of its inception also overwhelmingly includes only secular education which is evident from the fact that it is to include lecturing, laboratory work, tutorial etc. Section 11 is quoted as under:-

“11. **Teaching of the University** - (1) All recognised teaching in connection with the University courses shall be conducted by and in the name of the University and shall include lecturing, laboratory work and other teaching con- ducted in the University by the teachers thereof in accordance with any syllabus prescribed by Regulations.

(2) Recognised teaching shall also include tutorial instruction given in the University or, under the control of the University, in Halls: provided that every student not residing in a Hall shall be attached to a Hall for such tutorial instruction and disciplinary supervision and for such other purposes as may be prescribed by the Ordinances.

(3) The authorities responsible for organising such teaching shall be prescribed by the Statutes.

(4) The courses shall be prescribed by the Ordinances.”

125. As per Section 27, the statutes could provide for conferment of honorary degrees, appointment of Rectors institutions of fellowship, scholarship, the conditions of appointment of officers of the University etc. but the First Statutes of the University were framed not by the court but by the Legislature as set out in the schedule to the original Act in terms of Section 28. Therefore, the First Statutes at the time of inception which could have provided for wide array of powers and functions and administration within the University were not framed by the minority but by the Federal Legislature itself. Further, as per Section 28, the said First Statutes framed by the Federal Legislature could be amended, repealed or added by the court only after it had been approved by the Governor General-in-Counsel who also had the power to disallow proposals for amendment of such statutes. The only carve out from this power of the Governor General-in-Counsel was that statute dealing with instruction of Muslim student in Muslim theology were not required to be submitted for

approval. Therefore, while the statutes and the power to control the statutes predominantly vested in a non-minority authority only a small portion as a “sprinkling of minority” were provided. Section 27 and Section 28 are quoted as under:-

“27. Power to make Statutes

Subject to the provisions of this Act, the Statutes may provide for all or any of the following matters, namely:-

- (a) the conferment of honorary degrees and the appointment of Rectors;
- (b) the institution of Fellowships, Scholarships, Exhibitions, Medals and Prizes;
- (c) the terms of office, and the method and conditions of appointment of the officers of the University;
- (d) the designations and powers of officers of the University;
- (e) the constitution, powers and duties of the authorities of the University;
- (f) the classification and mode of appointment of teachers of the University;
- (g) the institution and maintenance of Halls;
- (h) the constitution of provident and pension funds for the benefit of the officers, teachers and servants of the University;
- (i) the maintenance of a register of registered graduates;
- (j) the instruction of Muslim students in the Muslim religion and theology;
- (k) the establishment of Intermediate colleges and schools; and
- (l) all matters which by this Act are to be or may be prescribed by Statutes.

28. Statutes

(1) The first Statutes are those set out in the Schedule.

(2) The first Statutes may be amended, repealed or added to by Statutes made by the Court in the following manner:-

- (a) The Executive Council may propose to the Court the draft of any Statute to be passed by the Court. Such draft shall be considered by the Court at its next meeting. The Court may approve such draft and pass the Statute, or may reject it or return it to the Executive Council for re-consideration, either in whole or in part. together with any amendments which the Court may suggest.
- (b) The Executive Council shall not propose the draft of any Statute affecting the status, powers or constitution of any existing authority of the University until such authority has been given an opportunity of expressing an opinion upon the proposal. Any opinion so expressed shall be in writing and shall be considered by the Court.

(c) No new Statute or amendment or repeal of an existing Statute shall have any validity until it has been submitted through the Visiting Board (which may record its opinion thereon) to the Governor General in Council, and has been approved by the latter, who may sanction, disallow or remit it for further consideration:

Provided that no Statute dealing with the instruction of Muslim students in the Muslim religion and theology shall require to be so submitted or approved.”

126. Similarly, the Ordinances could have provided for a wide array of regulations within the University including the courses of studies, conditions of award of fellowships, scholarships etc., conditions under which students may be admitted to

degree or diploma courses, examinations of the University, maintenance of discipline etc. The First Ordinances of the University at the time of inception were also not framed by the minority rather were framed by the non-minority authority of the Governor General-in-Counsel. On similar lines as the First Statutes, the First Ordinances also could be among the only with the approval of the Governor General-in-Counsel who also had the power to disallow any such proposal. Section 29 and 30 are quoted as under:-

“29. Power to make Ordinances

Subject to the provisions of this Act and the Statutes, the Ordinances may provide for all of the following matters, namely:-

- (a) the courses of study to be laid down for all degrees and diplomas of the University;
- (b) the conditions of the award of Fellowships, Scholarships, Exhibitions, Medals and Prizes;
- (c) the conditions under which students may be admitted to the degree or diploma courses and to the examinations of the University, and shall be eligible for degrees and diplomas;
- (d) the admission of students to the University;
- (e) the terms of office and terms and manner of appointment and the duties of Examining Bodies, Examiners, and Moderators and the conduct of examinations;
- (f) The conditions of residence of students of the University, and the levying of fees for residence in Halls and of other charges;
- (g) the conditions under which women may be exempted from attendance at lectures and tutorial classes, and the prescription for them of special courses of study;
- (h) the fees to be charged for courses of study in the University and for admission to the examinations, degrees and diplomas of the University;
- (i) the maintenance of discipline among the students of the University;
- (j) the management of any Intermediate colleges or schools maintained by the University and the supervision of any Intermediate colleges and schools admitted to privileges under section 12; and
- (k) all matters which by this Act or the Statutes are to be or may be provided for by Ordinances.

30. Ordinances

(1) The Executive Council or, in academic Ordinances matters, the Academic Council may make Ordinances.

(2) The first Ordinances shall be framed as directed by the Governor General in Council, and shall receive such previous approval as he may direct.

(3) No new Ordinance, or amendment or repeal of an existing Ordinance shall have any validity until it has been submitted through the Court and the Visiting Board (which may record its opinion thereon) to the Governor General in Council, and has obtained the approval of the latter, who may sanction, disallow or remit it for further consideration.

(4) If any question arises between the Executive and the Academic Council as to which has the power to make an Ordinance, either Council may represent the matter to the

Visiting Board who shall refer the same to a tribunal consisting of three members, one of whom shall be nominated by the Executive Council, one by the Academic Council, and one shall be a Judge of a High Court nominated by the Lord Rector.”

127. Section 12 also merely provided *an option* to instructions in Muslim religion theology in any school or college under the University. The power to establish and maintain colleges and school was subject to statute which were made by the Legislature and could be changed only with clearance of Governor General. Further, the power of the University to admit colleges and schools in the Aligarh District was only available with the sanction of the Governor General-in-Counsel which was a non-minority authority thereby meaning that the most important function of the University of maintaining or providing recognition to schools and colleges, was dependent upon on the sanction of a non-minority authority. Section 12 is quoted as under:

“12. Power to recognise Intermediate colleges and schools –

(1) The University shall, subject to the Statutes, have power to establish and maintain Intermediate colleges and schools, within such limits in the Aligarh District as may be laid down in the Ordinances, for the purpose of preparing students for admission to the University, and may provide for instruction in the Muslim religion and theology in any such colleges and schools.

(2) With the approval of the Academic Council and the sanction of the Governor General in Council on the recommendation of the Visiting Board, and subject to such conditions as may be prescribed by the Statutes and the Ordinances, the University may admit Intermediate colleges and schools in the Aligarh District to such privileges of the University as it thinks fit.”

128. As per Section 13, the Governor General was Lord Rector of the University with whom the ultimate power, control and superintendence over the University vested. The Lord Rector had wide ranging powers of conducting any inspection and enquiry pursuant to which the Lord Rector could issue directions to the court which was to comply with the same. In effect, the court was an authority clearly subservient to the Lord Rector. Section 13 is quoted as under:-

“13. The Lord Rector

(1) The Governor General shall be The Lord Rector of the University.

(2) The Lord Rector shall have, the right to cause an inspection to be made by such person or persons as he may direct, of the University, its buildings, laboratories, and equipment, and of any institution maintained by the University, and also of the examinations, teaching and other work conducted or done by the University, and to cause an inquiry to be made in like manner in respect of any matter connected with the University. The Lord Rector shall in every case give notice to the University of his intention to cause an inspection or inquiry to be made, and the University shall be entitled to be represented thereat.

(3) The Lord Rector may address the Vice-Chancellor with reference to the result of such inspection and inquiry, and the Vice-Chancellor shall communicate to the Court the views of the Lord Rector with such advice as the Lord Rector may be pleased to offer upon the action to be taken thereon.

(4) The Court shall communicate through the Vice-Chancellor to the Lord Rector such action, if any, as it is proposed to take or has been taken upon the result of such inspection or inquiry.

(5) Where the Court does not, within reasonable time, take action to the satisfaction of the Lord Rector, the Lord Rector may, after considering any explanation furnished or representation made by the Court issue such directions as he may think fit, and the Court shall comply with such directions.”

129. At the time of the inception of the University, as per Section 14, the Lt. Governor of the United Provinces of Agra and Oudh was to discharge and perform the duties of the visiting Board.

130. With regard to the financial position of the University, the audit of the University was to be carried out by the auditors appointed by the visiting Board, who at the time of the inception of the University was the Lt. Governor of United Provinces of Agra and Oudh (an obviously non-minority authority). Further, clearly highlighting the national character of the University, the audited accounts were to be published in the Gazette of India and in the local official Gazette and further the copy of the accounts along with the Auditors' Report was to be submitted to the Lord Rector. Section 35 is quoted as under:

“35. Annual Accounts

(1) The annual accounts and balance-sheet of Annual the University shall be prepared under the direction of the Executive Council, and shall once at least every year and at intervals of not more than fifteen months be audited by auditors appointed by the Visiting Board.

(2) The annual accounts when audited shall be published in the Gazette of India and in the local official Gazette, and a copy of the accounts, together with the auditor's report, shall be submitted through the Visiting Board to the Lord Rector.

(3) The annual accounts and the financial estimates shall be considered by the Court at its annual meeting, and the Court may pass resolutions thereon and communicate the same to the Executive Council which shall take such action thereon as it thinks fit.”

131. The power to remove difficulty with respect to the establishment of the University or any authority of the University vested with the Governor General-in-Counsel, which even had the authority to make an order modifying the provisions of the Act. Section 40 is quoted as under:

“40. Power to remove difficulties

(1) If any difficulty arises with respect to the establishment of the University or any authority of the University or in connection with the first meeting of any authority of

Union of India

the University, the Governor General in Council may by order make any appointment or do anything which appears to him necessary or expedient for the proper establishment of the University or any authority thereof or for the first meeting of any authority of the University.

(2) Any such order may modify the provisions of this Act and the Statutes so far as may appear to the Governor General in Council to be necessary or expedient for carrying the order into effect."

132. In view of the above, while as per Section 23, the Court consisted of persons professing the Muslim religion, the actual de-facto powers of the Court, on a holistic reading of the 1920 Act, were all dependent on the acceptance or rejection of the Lord Rector, who was the Governor General and a non-minority authority. The Court was the "supreme" in name only and was wholly subservient and dependent on the powers of the Lord Rector.

133. Despite the above, the Petitioner further suggests that the features highlighted in the judgment in *Basha supra* highlighting its national character were merely regulatory and cannot take away the minority character of the institution/university. It is submitted that the same is a complete misreading of the statute as it existed in 1920 as the provisions can in no manner be said to be regulatory rather expressly establish the national and non-minority credentials of the institution and reaffirm the predominantly non-minority character of the institution. The Petitioner has misunderstood the meaning of the word "regulation". The word regulation can never mean control. "Regulation" normally connotes - the providing of *minimum standards of governance or administration* or connotes the providing of basic procedures and mechanisms in an otherwise independent institution. Examples of regulatory authorities are SEBI, IRDAI, IBBI, etc. The provisions highlighted while analysing the Act of 1920 clearly show that such provisions are in no way "regulatory" as sought to be suggested by the Petitioner.

134. The Petitioner further seeks to suggest a mere presence of some outsiders in the university at the time of inception in 1920 would not hamper the character of the university as a minority institution. The said claim again, is a result of the erroneous understanding of the enactment at the inception of AMU. The enactment clearly shows that it was not a question of "some outsiders" in the AMU at the inception rather it connotes a situation which was reverse – one where there was some minority element while the predominant character was wholly *non-minority and national*.

135. The following is a short response to the claims made by the Petitioner with regard to the interpretation of the AMU Act, as it stood in 1920 :

APPELLANT'S ARGUMENTS	REPLY OF THE UNION
Promotion of Oriental and Islamic studies; [Section 5(2), Vol. IV-A @ 78]	It is important to read the entire section to understand how the Appellant has adopted the method of pick and choose in order to establish a non-existent intention of the legislature. The intention of the legislature at the time when the original AMU Act was passed was to have a predominantly non-minority institution with cursory presence of minority features. It is clearly evident from a comprehensive reading of Section 5 that except for the three features (from two sub-sections) highlighted by the Appellant, the entirety of the Section 5 gives powers to the University that are akin to institutions of non-minority nature.
Instruction in Muslim theology and religion; [Section 5(2), Vol. IV-A @ 78]	
Furtherance of arts, science, and other branches of learning, including professional studies, technology, Islamic learning and Muslim theology; [Section 5(12), Vol. IV-A @ 78]	
Exempting women from attending public lectures and tutorial classes to observe purdah; [Section 8 proviso, Vol. IV-A @ 79]	<p>Section 8 opens the University to persons of all races, creeds and classes. If the University is open to all, it would be wrong to say that the proviso is specifically for the benefit of the Muslim community. The classification has been made on the basis of sex and not on the basis of religion.</p> <p>Irrespective of the above, the said proviso was substituted with the following proviso by the AMU Amendment Act, 1951:</p> <p style="padding-left: 40px;">“Provided that nothing in this section shall be deemed to prevent religious instruction being given in the manner prescribed by the Ordinances to those who have consented to receive it.”</p> <p>The above-quoted proviso made a non-minority beneficial proviso non-discriminatory and incorporated the concept of consent, which made the said section even more secular.</p>
Compulsory instruction in Muslim religion for Muslim students; [Section 9, Vol. IV-A @ 79]	This provision is only for a sub-set of the entire populace at the University. The Benares Hindu University Act, 1915 also has a similar provision. Providing for compulsory instructions to a particular sub-set from a larger group would not change the character of a non-minority institute.

<p>Establish intermediate college and schools within the vicinity of MAO College and provide “instruction in the Muslim religion and theology.” [Section 12, Vol. IV-A @ 79]</p>	<p>Granting a power to the University to establish and maintain intermediate colleges and schools in itself would not change the character of an institute that has already been established as a non-minority institute. Moreover, the word ‘<i>may</i>’ has been used in Section 12 before the words “provide for instruction in the Muslim religion and theology.”</p>
<p>The Act specifically allowed for Statutes to be framed for “instruction of Muslim students in the Muslim religion and theology” [Section 27(j), Vol. IV-A @ 81]</p>	<p>Apart from the said matter, Section 27 states that the Statutes may provide for the following:</p> <ul style="list-style-type: none"> (a) the conferment of honorary degrees and the appointment of Rectors; (b) the institution of Fellowships, Scholarships, Exhibitions, Medals and Prizes; (c) the terms of office, and the method and conditions of appointment of the officers of the University; (d) the designations and powers of officers of the University; (e) the constitution, powers and duties of the authorities of the University; (f) the classification and mode of appointment of teachers of the University; (g) the institution and maintenance of Halls; (h) the constitution of provident and pension funds for the benefit of the officers, teachers and servants of the University; (i) the maintenance of a register of registered graduates; (j) the instruction of Muslim students in the Muslim religion and theology; (k) the establishment of Intermediate colleges and schools; and (l) all matters which by this Act are to be or may be prescribed by Statutes. <p>As has been pointed out before, the Appellant has cherry picked various provisions to show the character of the University entirely contradictory to what is evident from the entire scheme of the original AMU Act. Merely because some provisions for the benefit of the Muslim community have been</p>

	<p>incorporated in the Section, it would not change the predominant character of a non-minority institute of national importance.</p>
<p>Any Statutes dealing with instruction of Muslim students in the Muslim religion and theology did not require submission and approval that was ordinarily applicable under Section 28 [Section 28 Proviso, Vol. IV-A @ 81]</p>	<p>The pick and choose method of the Appellant goes on to show that they have been trying to carve out little islands of control from the general superintendence exercised by the government. The primary and predominant nature of the University was intended to be, and remains non-minority.</p>
<p>There were separate Departments of Studies for Sunni Theology, Shia Theology, Islamic Studies, Arabic language and literature, Persian and Urdu [Statute 19(1), Schedule: First Statutes of the University, Vol. IV-A @ 86]</p>	<p>Apart from the limited departments highlighted by the Appellant, the University had separate departments for the following branches of knowledge:</p> <ul style="list-style-type: none"> (i) English language and literature, (ii) History and Political Science, (iii) Economics, (iv) Philosophy and Psychology, (v) Physics, (vi) Chemistry, (vii) Mathematics and Astronomy, (viii) Geography, (ix) Sunni Theology, (x) Shia Theology, (xi) Islamic Studies, (xii) Arabic language and literature, (xiii) Persian, (xiv) Urdu, (xv) Law. <p>Merely because certain departments were set up at the University, it would be wrong to say that the institution would attain the same character as that of the departments. If this line of argument is adopted, then setting up a humanities department at a technological institute would change the character of the institute. Merely because certain</p>

	beneficial provisions have been sprinkled under various provisions of the Act, the institution would not attain the character of those minimally sprinkled provisions.
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THE JUDGMENT IN ST. STEPHENS ACTUALLY FAVOURS THE STAND OF THE UNION

136. It is submitted that in order to present the claim of establishment of AMU as a minority institution, the Petitioner has sought to rely on the approach adopted by this Hon'ble Court in *St. Stephens supra*. It is submitted that the said claim of the Petitioner is self-defeating as the approach of five judges in *St. Stephens supra* in enquiring if St. Stephens was an institution "established" by the minority or not, if applied to AMU, clearly evinces that AMU was not established as a minority institution at the time of its inception. The following table is illustrative in that regard :

CRITERIA	APPLICABILITY TO ST STEPHENS	APPLICABILITY TO AMU
Founding of College	The College was founded in 1881 as a Christian Missionary College by the Cambridge Mission in Delhi in collaboration with the Society for the Propagation of the Gospel [SPG] whose members were residents in India. There was no Government involvement.	AMU was created by an Act of Parliament, namely the Aligarh Muslim University Act 1920. There was considerable Government involvement apart from the fact that there was a statute that established it.
College Infrastructure	Originally, the College building was housed in hired premises paid for by the SPG. A new building was eventually constructed by the Society for the Propagation of the Gospel wherein the foundation stone bore the following inscription To the Glory of God And the Advancement of Sound Learning And Religious Education.	The AMU from the outset has been in receipt of government grants. The entirety of MAO college was established on 74 acres of Government land which earlier formed part of the Aligarh Cantonment. Without the land, there could not have been any MAO College.

<p>College Administration</p>	<p>It is said that during the early part of the College history, it was managed by the Mission Council - a totally Christian body.</p> <p>Clause 2 of Memorandum states that "<i>the object is to prepare students of the College for University degrees and examinations and to offer instruction in doctrines of Christianity which instruction must be in accordance with the teachings of the Church of North India</i>"</p> <p>Clause 4 sets out the original members of the Society who were mostly Christians. The composition of the Society also reflects its Christian character inasmuch as the Bishop of the Diocese of Delhi is the Chairman of the Society [Rule 1(a)]. Further, two persons appointed by the Bishop of the Diocese of Delhi, one of whom shall be a senior Presbyter of the Diocese, shall be members of the Society [Rule 1(b)]. One person to be appointed by the Church of North India Synodical Board of Higher Education shall also be a member of the Society [Rule 1(g)]. Similar is the position of a person to be appointed by the Diocesan Board of education [Rule 1(h)]. Two persons to be appointed by the Executive Committee of the Diocese, one of whom shall be a Presbyter, shall also be members of the Society [Rule 1(i)]. The composition of the Society, therefore, indicates the presence of a large number of Christian</p>	<p>Though in terms of the 1920 Act, the Court of the University consisted of only Muslims, the administrative powers were not truly with the court- rather they vested with the Governor General in Council.</p> <p>The first Chancellor, Pro Chancellor and Vice Chancellor were all appointed by the Governor General in Council. The Governor General was also the Lord Rector. The selection of all subsequent Vice Chancellors was subject to the approval of the Governor General. (Section 18). The first ordinances of the University were required to be framed as directed by the Governor General in Council. New ordinances and repeals of existing ordinances could be done only with the approval of the Governor General in Council (Section 30).</p> <p>The Executive Council was to include the Pro Chancellor and the Vice Chancellor. The Vice Chancellor's appointment was subject to the Governor General's approval. Furthermore, the Visiting Board under Section 12 was to include the Lieutenant Governor and the Ministers of the province of</p>
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	<p>members of the Church of North India on it</p> <p>The management of the College is being looked after by the Supreme Council and the Governing Body. The Supreme Council consists of some members of the Society, all of whom must be members of the Church of North India or some other church in communion therewith, or any other duly constituted Christian church. They are :</p> <p>(a) The Bishop of the Diocese of Delhi, who shall be the Chairman</p> <p>(b) Two persons appointed by the Bishop of the Diocese [under Rule 1(b)]</p> <p>(c) The person appointed by the Church of North India Synodical Board of Higher Education [under Rule 1(g)]</p> <p>(d) The person appointed by the Diocese Board of Education [under Rule 1(h)]</p> <p>(e) The Principal of the College (Member - Secretary)</p> <p>Rule 3 of the Society provides that the Supreme Council mostly looks after the religious and moral instruction to students and matters affecting the religious character of the College. The Principal of the College is the Member - Secretary of the Supreme Council. Rule 4 provides that the Principal shall be a member of the Church of North India or of a Church that is in communion with the Church of India. The Vice Principal shall be appointed annually by the</p>	<p>Agra and Oudh, members of the Executive Council and a nominee of the Minister for Education. It had power to annul any proceeding of the university. It may be noted that the Academic Council of the University included the Chancellor and Pro Vice chancellor, both nominees of the Governor General as well as two persons nominated by the Visiting Board</p> <p>It may also be noted that the Court itself was required to consist of only Muslims but the electorate for electing persons to the Court was not limited to Muslims.</p> <p>The Vice Chancellor of the AMU was to be approved by the Governor General.</p> <p>Heads of Local Governments were to be Rectors of the University, along with rulers appointed by the Governor General (Schedule I)</p>
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Principal. He shall also be a member of the Church of North India or of some other church in communion therewith

The Governing Body is not a secular body. Rule 6 provides that the Chairman of the Society (Bishop of Diocese of Delhi) shall be the Chairman of the Governing Body. The members of the Society as set out in categories, (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l) and (m) of clause (1) shall be the members of the Governing Body. The Chairman and the Vice-Chairman of the Governing Body shall be the members of the Church of North India. Out of categories (a) and (m) in clause (1), only category (k) may be a member of the teaching staff who may not be a Christian. Two members referred under category (l) to be appointed by the Delhi University may not be Christian and likewise, under the category (n) may not be Christian. But the remaining members shall be Christians. Out of thirteen categories, only three categories might be non-Christians and therefore, it makes little difference in the Christian character of the Governing Body of the College.

The Principal of St. Stephen's College is appointed by the Supreme Council and he must be a Christian belonging to Church of North India (Rule 4). He will exercise control, and maintain

	discipline and regulation of the College. He will be in complete charge of the admissions in the College assisted by admission committee.	
Academic Regulation	<p>There was no provision in the Delhi University Act with overriding powers precluding the management of the College from exercising its right to administer the College as a minority institution.</p> <p>Stephens had reserved its rights to accept only such directions which are not contrary to its constitution, and which it has found suitable for the better management of the College and improvements of academic standards. The College has been constituted as a self-contained and autonomous institution. It has preserved the right to choose its own Governing Body, and select and appoint its own Principal both of which have a great contributing factor to maintain the minority character of the institution.</p>	<p>The AMU could admit intermediate colleges to the University's privileges only upon recommendation of the Visiting Board and after obtaining the sanction of the Governor General [Section 12(2)]</p> <p>Disputes between the Executive and Academic Councils were to be represented to the visiting board which would refer the matter to a committee whose members included a nominee of the Lord Rector [Section 30(4)]</p> <p>The University required the sanction of the Governor General to recognise equivalent degrees of other universities [Section 32(4)]</p> <p>No such power was reserved in case of the AMU Act, 1920</p> <p>As noted above, the appointment of the Vice Chancellor of the AMU was subject to the approval of the Governor General [Section 19(1)]</p>

137. Therefore, even as per the test is *St. Stephens supra*, it cannot be said that the predominant character of the AMU at the time of its inception was of a minority institution.

BASHA ADOPTS A CORRECT AND SUSTAINABLE APPROACH

138. Without prejudice to the contention that the present proceedings are not an appeal against the judgment in *Basha supra*, it is submitted that the assertion that *S. Azeez Basha v. Union of India, (1968) 1 SCR 833*, needs to be overruled has no merit whatsoever. It is submitted that the law laid down by the *Basha supra* has not been doubted or distinguished by any of the subsequent constitution benches of the Hon'ble Supreme Court. It is stated that the methodology adopted by the bench in *Basha supra*, as discussed hereinabove, revolves around analysing the factual situation surrounding the establishment of the Aligarh Muslim University. It is submitted that *Basha supra* analysed the following aspects in order to render the factual finding of the character of the Aligarh Muslim University ("AMU") not being a minority institution :

- i. It analysed the facts before the establishment and leading to the establishment of the AMU.
- ii. Thereafter, it analyses the unamended/original Act of 1920, which brought the University in to being. From the analysis of the unamended/original Act of 1920, it concludes as a finding of fact that at the time of establishment of the University, the administration cannot be said to be vested in the Muslim community.
- iii. Thereafter, it analyses the subsequent amendments to the Act of 1920 in 1951. In 1951, the amendments were made in Section 9, Section 8 and Section 23 to remove provision for compulsory religious education; to provide for the University to be open to students off all caste, creed, sex, etc; remove the requirement of all the members of the Court (administrative body of the University) to be Muslims. The said amendments, the Court holds, were made to bring the Act in conformity with the newly adopted Constitution of India, 1950.
- iv. Thereafter, the Court notes the amendments made in 1965 which prompted the constitutionality challenge. The amendments in 1965 made changes to the administrative structure of the University taking away the powers of the Court and vesting the same in the Executive Council. This was done in line with the

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same changes made in other public universities of making the Court a supervisory/advisory body rather than an administrative body. It was the said changes which were challenged and the Supreme Court on the ground that the AMU was *established and administered* by the Muslims of India. The Court therefore, had to decide “*whether the Aligarh University was established by the Muslim minority; and if it was so established the minority would certainly have the right to administer it*”.

- v. Thereafter, the Court relies on *Durgah Committee Ajmer v. Syed Hussain Ali, (1962) 1 SCR 383*, to note that the right to “administer” an institution can be surrendered or lost by virtue of action/inactions even if the institution was “established” by a minority.
- vi. The Court thereafter, notes the factual situation governing the establishment of University in undivided British India and considered the importance of recognition of degrees by the Government of India at the contemporaneous point of time.
- vii. Thereafter, the Court notes a *factum* regarding a *positive indica*, pertaining to the establishment of the AMU that there was a conscious decision on part of the Central Legislature and the persons in control of previous institutions to establish an institution whose degrees would have the recognition by the Government of India. The Court notes that nothing stopped the university from establishing a University without a legislative act and the fact that the legislative mechanism was resorted to, means that there was clear intent to establish a public institution.
- viii. Thereafter, considering the totality of facts as mentioned hereinabove, the Court held that it cannot be said that AMU is an institution which was “established” or “administered” by the minority so as to challenge the validity of the 1965 amendments on the ground of Article 30(1).

139. Therefore, it is clear that the methodology adopted and the law laid down by the Hon’ble Supreme Court in *Basha supra* was based on finding of fact and settled constitutional principles which have found affirmation by this Hon’ble Court in subsequent judgments.

140. It is submitted that it is clear that the methodology adopted and the law laid down by the Hon’ble Supreme Court in *Basha supra* was based on finding of fact and settled constitutional principles which have found affirmation by this Hon’ble Court in subsequent judgments. It is submitted that the reliance of the Petitioners on

judgments subsequent to *Basha supra* is order to allege that the said case requires reconsideration is misconceived.

LEGISLATIVE LIMITATIONS AFTER JUDICIAL DETERMINATION OF FACT

141. It is submitted that once the said factual issue of “establishment” of AMU is settled by *Basha supra*, the same cannot be amended by way of Legislative Act. It is submitted that the finding of “establishment” is a factual finding on the history of the institution and a finding on the facts surrounding the establishment of the institution as they then were at the start of the century.

142. This Hon’ble Court in *Basha supra* has held that it was the central legislature by enacting the 1920 Act that established the AMU and that it was not established by the Muslim minority. Further, from a detailed analysis of antecedent fact surrounding the parleys between the Government and the persons wanting the University, the judgment in *Basha supra* holds that the AMU was not established as a minority institution. Further, from an analysis of the provisions of the AMU Act, it was held that the institution was not established as a minority institution largely for the benefit of the minority only. It is submitted that the net result is that the findings of fact in *Basha supra* are still holding the field. The judgment still holds good notwithstanding removal of the word ‘establish’ from the preamble of the Act and notwithstanding the amended definition of University under section 2(l).

143. It is submitted that, in crude terms, the legislature cannot, and does not, invent a time machine and travel back in time to change the facts which would be relevant for rendering a finding of the establishment of the AMU by a minority. Before advertent to the case law on the subject, at this juncture, it would be appropriate to analyse the various amendments made to the AMU Act over the years. A table of the said amendments is annexed as **Annexure D**.

144. From the said table it is clear that the 1981 amendments attempt to carry out changes in the AMU Act to state that the university was established by the minority and not by the Legislature. The following amendment were made:

- a. The word **establish** was deleted from the preamble;
- b. A new definition of **university** was inserted to proclaim that the university was an education institution established by the Muslims of India, which originated as the Muhammadan Anglo-Oriental College, Aligarh, and which was subsequently incorporated as the Aligarh Muslim University;

As opposed to the above, the two points on which the judgment in *Basha supra* was based were :

- a. The constitutional position under Article 30(1) and the requirement of establishment as a minority institution for the minority community;
- b. The factual position surrounding the establishment of the AMU.

In light of the above, it is submitted neither of the above “basis” of *Basha supra*, one being the constitutional position and the other a question of fact, can ever be taken away by way of a legislative device.

145. It is submitted that in light of the above, the mere omission of the word ‘establish’ from the preamble of the Act by the amendment in 1981 cannot disturb this finding of fact by the Court.

146. Further, the amended provision under section 2(1) of the AMU Act merely attempts to overrule and reverse the aforesaid findings of this Hon’ble Court without removing the foundation and the basis of the constitution bench judgment of this Hon’ble Court delivered in *Basha supra*. A constitution bench judgment in *Shri Prithvi Cotton Mills Ltd. v. Broach Borough Municipality (1969) 2 SCC 283* has held that a court’s decision must always bind unless the conditions on which it is based are so fundamentally altered that the decision could not have been given in the altered circumstances. In the present case the circumstances were unalterable as the finding of fact cannot be disturbed and neither can the constitutional position be changed by way of an enactment of the Parliament.

147. It is submitted that the finding of fact of establishment of AMU not by the minority community is settled by this Hon’ble Court, sitting in a Constitution Bench, it is not open to the Legislature to change the said finding of fact. It is submitted that a Constitution bench of this Hon’ble Court in *State of T.N. v. State of Kerala, (2014) 12 SCC 696*, held as under :

“.....The constitutional principle that the legislature can render judicial decision ineffective by enacting validating law within its legislative field fundamentally altering or changing its character retrospectively has no application where a judicial decision has been rendered by recording a finding of fact. Under the pretence of power, the legislature, cannot neutralise the effect of the judgment given after ascertainment of fact by means of evidence/materials placed by the parties to the dispute. A decision which disposes of the matter by giving findings upon the facts is not open to change by legislature.”

148. In *Janapada Sabha Chhindwara v. Central Provinces Syndicate Ltd., (1970) 1 SCC 509 [5 Judges]*, it has been held as under :

10. The nature of the amendment made in Act 4 of 1920 has not been indicated. Nor is there anything which enacts that the notifications issued without the sanction of the

State Government must be deemed to have been issued validly under Section 51(2) without the sanction of the Local Government. On the words used in the Act, it is plain that the Legislature attempted to overrule or set aside the decision of this Court. That, in our judgment, is not open to the Legislature to do under our constitutional scheme. It is open to the Legislature within certain limits to amend the provisions of an Act retrospectively and to declare what the law shall be deemed to have been, but it is not open to the Legislature to say that a judgment of a Court properly constituted and rendered in exercise of its powers in a matter brought before it shall be deemed to be ineffective and the interpretation of the law shall be otherwise than as declared by the Court.

149. In *Misrilal Jain v. State of Orissa*, (1977) 3 SCC 212 : 1977 SCC (Tax) 439 [7 Judges] it has been held as under :

6. As regards the alleged encroachment by the legislature on fields judicial, the argument overlooks that the Act of 1968 does not, like the Act under consideration in *Jawaharmal*, declare that an invalid Act shall be deemed to be valid. It cures the constitutional vice from which the Act of 1959 suffered by obtaining the requisite sanction of the President and thus armed, it imposes a new tax, though with retrospective effect. Imposition of taxes or validation of action taken under void laws is not the function of the judiciary and therefore, by taking these steps the legislature cannot be accused of trespassing, on the preserve of the judiciary. Courts have to be vigilant to ensure that the nice balance of power so thoughtfully conceived by our Constitution is not allowed to be upset but the concern for safeguarding the judicial power does not justify conjuring up trespasses for invalidating laws. There is a large volume of authority showing that if the vice from which an enactment suffers is cured by due compliance with the legal or constitutional requirements, the legislature has the competence to validate the enactment and such validation does not constitute an encroachment on the functions of the judiciary. The validity of a validating taxing law depends upon whether the legislature possesses the competence over the subject-matter of the law, whether in making the validation it has removed the defect from which the earlier enactment suffered and whether it has made due and adequate provision in the validating law for a valid imposition of the tax. (See, for example, *Prithvi Cotton Mills v. Broach Borough Municipality* [(1969) 2 SCC 283 : (1970) 1 SCR 388] ; *Tirath Ram Rajindra Nath v. State of U.P.* [(1973) 3 SCC 585 : 1973 SCC (Tax) 300] ; *Government of Andhra Pradesh v. Hindustan Machine Tools Ltd.* [(1975) 2 SCC 274 : 1975 Supp SCR 394]). The passage from Cooley's "Constitutional Limitations" (Edn. 1927, Vol. I, p. 183) that a legislative act is a "pre-determination of what the law shall be for the regulation of all future cases falling under its provisions" does not bear upon the power of the Legislature to pass laws which are exclusively retrospective. Mr Gobind Das's reliance on that passage cannot therefore further his contention.

150. In *Tirath Ram Rajendra Nath v. State of U.P.*, (1973) 3 SCC 585 : 1973 SCC (Tax) 300 [3 Judges], it has been held as under :

4. Dr L.M. Singhvi, the learned counsel for the appellants sought to assail the decision of the High Court on three grounds i.e. (1) in any event the purported validation does not cure the vice noticed by the High Court in the previous decision. Unless the vice is cured, there can be no validation; (2) Section 3-AB, which seeks to validate the notifications, has merely removed the vice of excessive delegation but has not cured

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the judicially declared infirmity in respect of want of power; and (3) the liability to be taxed arises only under the charging section; Section 3-A is only prospective and not retrospective. Section 3-AB is not a charging section though it is both prospective and retrospective. It can assist the charging section only in its prospective operation.

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7. Now coming to the second contention of Dr Singhvi, we fail to see how the question of lack of power now arises in view of Section 3-AB. While developing his Contention 2, Dr Singhvi urged that the Legislature has unauthorisedly encroached on the judicial power. The amended Section 3-AB merely intradicts the decision rendered by the High Court and has not removed the want of power noticed by the High Court. We are unable to accede to this contention. The Legislature has not purported either directly or by necessary implication to overrule the decision of the Allahabad High Court in Krishna Brick Field case. On the other hand it has accepted the decision as correct but has sought to remove the basis of the decision by retrospectively changing the law. **This court has pointed out in several cases the distinction between encroachment on the judicial power and the nullification of the effect of a judicial decision by changing the law retrospectively. The former is outside the competence of the Legislature but the latter is within its permissible limits.** In the instant case what the Legislature has done is to amend the law retrospectively and thereby remove the basis of the decision rendered by the High Court. Such a course cannot be considered as an encroachment on the judicial power.

151. In *Govt. of A.P. v. Hindustan Machine Tools Ltd.*, (1975) 2 SCC 274 [3 Judges], it has been held as under :

11. **The State Legislature, it is significant, has not overruled or set aside the judgment of the High Court. It has amended the definition of "house" by the substitution of a new Section 2(15) for the old section and it has provided that the new definition shall have retrospective effect, notwithstanding anything contained in any judgment, decree or order of any court or other authority. In other words, it has removed the basis of the decision rendered by the High Court so that the decision could not have been given in the altered circumstances.** If the old Section 2(15) were to define "house" in the manner that the amended Section 2(15) does, there is no doubt that the decision of the High Court would have been otherwise. In fact, it was not disputed before us that the buildings constructed by the respondent meet fully the requirements of Section 2(15) as amended by the Act of 1974.

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14. In the instant case, the Amending Act of 1974 cures the old definition contained in Section 2(15) of the vice from which it suffered. The amendment has been given retrospective effect and as stated earlier the Legislature has the power to make the laws passed by it retroactive. **As the amending Act does not ask the instrumentalities of the State to disobey or disregard the decision given by the High Court but removes the basis of its decision, the challenge made by the respondent to the amending Act must fail.** The levy of the house tax must therefore be upheld.

152. In *I.N. Saksena v. State of M.P.*, (1976) 4 SCC 750 : 1977 SCC (L&S) 36 [4 Judges], it has been held as under :

21. The distinction between a "legislative" act and a "judicial" act is well known, though in some specific instances the line which separates one category from the other may

not be easily discernible. Adjudication of the rights of the parties according to law enacted by the legislature is a judicial function. In the performance of this function, the court interprets and gives effect to the intent and mandate of the legislature as embodied in the statute. On the other hand, it is for the legislature to lay down the law, prescribing norms of conduct which will govern parties and transactions and to require the court to give effect to that law.

22. While, in view of this distinction between legislative and judicial functions, the legislature cannot by a bare declaration, without more, directly overrule, reverse or override a judicial decision, it may, at any time in exercise of the plenary powers conferred on it by Articles 245 and 246 of the Constitution render a judicial decision ineffective by enacting a valid law on a topic within its legislative field fundamentally altering or changing with retrospective, curative or neutralising effect the conditions on which such decision is based. As pointed out by Ray, C.J. in *Indira Nehru Gandhi v. Raj Narain* [1975 Supp SCC 1] the rendering ineffective of judgments or orders of competent courts and Tribunals by changing their basis by legislative enactment is a well-known pattern of all validating Acts. Such validating legislation which removes the causes for ineffectiveness or invalidity of actions or proceedings is not an encroachment on judicial power.

153. It is submitted that specifically on the issue of legislative determination of fact and the limitation therein, the judgment in *Indira Nehru Gandhi v. Raj Narain*, 1975 Supp SCC 1 [5 Judges] is illustrative. It was held by Mathew J. in his concurring opinion, in the context of the case therein, that the amending body (i.e., the Parliament) could not have declared the election of the appellant therein, which was set aside by the high court, as valid without ascertaining the *adjudicative facts* by a *judicial process* and applying the relevant law to the case. It was stated by Mathew J. that “adjudicative facts” are roughly the kind of facts that go to a Jury in a case. Further, it was stated that Legislative facts do not usually concern the immediate parties but are general facts which help the tribunal decide questions of law, policy and discretion It has been held as under :

“267. Be that as it may, I feel no doubt that the amending body, when it declared the election of the appellant to be valid, had to ascertain the adjudicative facts [“Adjudicative facts are facts about the parties or their activities, businesses and properties usually answering the questions of who did what, where, when, how, why, with what motive or intent; adjudicative facts arc roughly the kind of facts that go to a Jury in a case. Legislative facts do not usually concern the immediate parties but are general facts which help the tribunal decide questions of law, policy and discretion. Facts pertaining to the parties and their activities, that is, adjudicative facts, are intrinsically the kind of facts that ordinarily ought not to be determined without giving the parties a chance to know and to meet any evidence that may be unfavourable to them, that is, without providing the parties an opportunity for trial.” (See K. C. Davis: “The Requirements of a Trial-type Hearing”, 70 Harv L Rev 193, 199.)] and apply the relevant norm for adjudging its validity. If, however, the amending body did not ascertain the facts relating to the election and apply the relevant norm, the declaration of the validity of the election was a fiat of a sui generis character of the amending body.

327. The result of the discussion can be summed up as follows: Our Constitution, by Article 329(b) visualises the resolution of an election dispute on the basis of a petition presented to such authority and in such manner as the appropriate legislature may, by law, provide. The nature of the dispute raised in an election petition is such that it cannot be resolved except by judicial process, namely, by ascertaining the facts relating to the election and applying the pre-existing law; when the amending body held that the election of the appellant was valid, it could not have done so except by ascertaining the facts by judicial process and by applying the law. The result of this process would not be the enactment of constitutional law but the passing of a judgment or sentence. The amending body, though possessed of judicial power, had no competence to exercise it, unless it passed a constitutional law enabling it to do so. If, however, the decision of the amending body to hold the election of the appellant valid was the result of the exercise of an "irresponsible despotic discretion" governed solely by what it deemed political necessity or expediency, then, like a bill of attainder, it was a legislative judgment disposing of a particular election dispute and not the enactment of a law resulting in an amendment of the Constitution. And, even if the latter process (the exercise of despotic discretion) could be regarded as an amendment of the Constitution, the amendment would damage or destroy an essential feature of democracy as established by the Constitution, namely, the resolution of election dispute by an authority by the exercise of judicial power by ascertaining the adjudicative facts and applying the relevant law for determining the real representative of the people. The decision of the amending body cannot be regarded as an exercise in constituent legislative validation of an election for these reasons: firstly, there can be no legislative validation of an election when there is dispute between the parties as regards the adjudicative facts; the amending body cannot gather these facts by employing legislative process; they can be gathered only by judicial process. Secondly, the amending body must change the law retrospectively so as to make the election valid, if the election was rendered invalid by virtue of any provision of the law actually existing at the time of election; Article 368 does not confer on the amending body the competence to pass any ordinary law whether with or without retrospective effect. Clause (4) expressly excluded the operation of all laws relating to election petition to the election in question. Therefore, the election was held to be valid not by changing the law which rendered it invalid. Thirdly, the cases cited for the appellant are cases relating to legislative validation of invalid elections or removal of disqualification with retrospective effect. Being cases of legislative validation, or removal of disqualifications by legislature, they are not liable to be tested on the basis of the theory of basic structure, which, I think, is applicable only to constitutional amendments. Fourthly, there was no controversy in those cases with regard to adjudicative facts: if there was controversy with regard to these facts, it is very doubtful whether there could be legislative validation of an election by changing the law alone without ascertaining the adjudicative facts by judicial process."

154. Therefore, it is clear that once a finding of fact has been rendered by a Court, it is not possible for the Legislature to alter the same. The reason for the same is rather simple : while a finding of law can be altered by fundamentally changing the basis on which such legal finding was rendered, in case of a finding of fact, the Legislature cannot change events that have already taken place.

155. It is submitted that the constitution bench judgment of this Hon'ble Court in *Basha supra* concludes the factual issue regarding establishment of the Aligarh University and the Petitioner is only trying to revisit the said judgment. It is respectfully submitted that such a course is impermissible in law. It is clear that the 1981 amendment does not take away the sub-stratum of the factual declaration made by this Hon'ble Court in Azeez Basha case. The change of definition of 'University' in the 1920 Act will not change the factual findings regarding establishment of the Aligarh University recorded by this Hon'ble Court. The determination of fact about the establishment and minority character of an educational institution is a matter of fact which cannot be changed by a legal fiction.

156. It is submitted that a historical fact finally determined by this Hon'ble Court cannot be overridden merely with the change of definition of "University" and by dropping the word "established" from the preamble of the Act. The facts remain that the Aligarh University was established and incorporated by a Central Act before the Constitution came into force and this Court has authoritatively ruled that Aligarh University was not established by the minority.

157. Further, it is incorrect to state that doubts arose with respect to the minority character of the Aligarh Muslim University which came to be resolved by bringing the Act in line with the true and correct factual foundation. It is submitted that in fact, throughout the process of amendments being carried out in the AMU act, the understanding of the character of AMU being national and non-minority has been clear. The following is a short table highlighting the same :

DATE	PARTICULAR
23.05.1951	The AMU (Amendment) Bill, 1951 was introduced by Rafi Ahmed Kidwai. The Statement of Objects and Reasons stated as follows: (i) religious instruction is to be given only to those who wish to receive it, as required by Article 28(3); (ii) membership of the Court is to be thrown open to all persons irrespective of religion or caste; <u>(iii) the President of India is to be the Visitor of the University and he shall exercise the same powers as he does now as Lord Rector of the University;</u> <u>(iv) the Governor of Uttar Pradesh will be the Chief Rector of the University and provision is also made for the appointment of other persons as Rectors."</u>
25.08.1951	Parliamentary Debates: Speech of Sri S.N. Das – <u>"Sir, the main purpose of the two Bills just moved in the Parliament is to change the provisions that sustain the existence of communal sentiments and communal education in both these Universities...</u> As is apparent from these Bills, no discrimination would now be made on the grounds of caste, creed, or religion in

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	<p>the matter of administration and education in the two Universities. Previously, that was not so. Then such discrimination existed there; but the Bills before us show that no discrimination would be observed in these Universities now. They also lay down that religious instruction would not be made obligatory on the students of these Universities. <u>It would be given only to those who wish to receive it...In educational institutions there is no place for communal sentiments that are born of these names.</u> "</p>
26.09.1951	<p>Speech of Maulana Azad (Education Minister) –</p> <p>"As far as our Constitution is concerned the Hon. Members are aware that Article 28(3) lays down that religious instruction cannot be made compulsory in any Government institution. This necessitated a reconsideration of the question as far as these two universities are concerned. In both the universities – the Hindu University and the Muslim University, religious instruction is compulsory. This was against Article 28 of the Constitution and necessitated the making of certain changes. So the first change that is made is that religious instruction be made optional. Instead of its being compulsory, religious instruction will be given to only those students who themselves would ask for it. The hon. Members are aware that a majority of students, who get themselves admitted to these Universities, are such as want religious instruction being given to them... Another change has been made on the basis of a recommendation of the Universities Commission. The Commission recommended that in future the President of the Indian Union should be the Visitor of all the central Universities. Having those powers which the Lord Rector and the Chancellor enjoy....It is against the spirit of our Constitution that the character of an educational institution be allowed to remain communal. All the institutions in the country should be Indian from all points of view and not Hindu Muslim, Sikh, or Christian. Naturally the question that arose before the government was asked to what attitude they should adopt regarding the names of these 2 universities. The hon. Members may be aware that about 2 years back, in 1949, the government intended to introduce a bill consisting of only 2 clauses, one stating that the names of these two Universities be changed from Benares Hindu University and Aligarh Muslim University to Benares University and Aligarh University respectively and the other making it clear that non-Hindus and non-Muslims can also become members of their courts...<u>Nevertheless, the Government prepared the draft Bill and elicited the opinion of both the universities regarding that. The Muslim University was of the opinion that having been assured that the general policy of the Government was to change the communal character of the University, it would have no objection if the word Muslim was deleted out from its name and it be called 'Aligarh University' instead of Muslim University.</u>"</p>
02.09.1965	<p>The AMU (Amendment) Bill, 1965</p> <p>Speech by Justice (Retd.) M.C. Chagla (then Education Minister) –</p> <p><u>"My submission to this House is that Aligarh University has neither been established nor is being administered by the Muslim Community. It is not a minority institution in the sense in which Mr. Anthony suggests. I will give him the reasons. You had first the Muslim college which was founded by Sir Syed Ahmed. Sir Syed Ahmed has asked the British Government of those days to</u></p>

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	<p><u>establish a university and the British Government established the University. Therefore, the establishment of the institution was by the legislature and not by the community...Now I cannot understand how it can be said that the administration is in the hands of the minorities. The administration of the University depends upon the law. During the British times it depended upon this Act. After independence it depends upon the Act, as had been amended by the Parliament. Does Mr. Anthony suggest that it is open to the Aligarh University or the Muslim community to change the administration of the university even to the slightest degree and go contrary to what the Parliament has laid down? If the minority had the right to administer the Aligarh University, then it can have any administration it liked; it can change the administration and it close down the University; it can change the constitution of the court or the Executive Council. Can it do so? Even the constitution of the court, of the executive council and of the academic council is regulated and not by the minority committee but by the Parliament. There is another aspect of the matter which Mr. Anthony has completely forgotten. He has attached great importance to the fact that under the Act of 1920, the British Government, as a concession, said that the court shall consist wholly of Muslims. Now everybody know that the University is administered by the executive council and not by the court. The court of course is the supreme authority and it is like a show-piece. It meets once a year; lots of people come there and make speeches and pass resolutions. But the day-to day administration, selection, appointments, and so on are carried on by the executive council and it is significant that even in the British days it was not provided that the executive council shall consist only of Muslims. That clearly shows that the British Government did not concede the argument. Although there is no Constitution then the arguments is now advanced by Mr. Anthony that the minority has a right to administer a particular institution. I say that this institution was not established by the minority; nor is it being administered by the minority community. That is the legal position as far as Article 30 is concerned."</u></p>
30.04.1979	<p>The AMU (Amendment) Bill, 1979 Shri Dhirendranath Basu (In the Chair) –</p> <p>"Then, even with regard to management, although it was provided that no person other than a Muslim shall be a Member of the Court, there were other bodies in the University, viz. the Executive Council and the Academic Council, where non-Muslims also could be members but apart from the fact that the court was to consist of Muslim only <u>there were a great deal of restriction on the powers of the Court.</u> Several restrictions have been set out in the original act. I will give you only a few instances – not too many, just to save time. The Governonr-General was the Lord Rector of the University; and Law Director was given the power under Section 13 to cause inspection to be made by such person as he might direct of the university, its building, laboratory, and other works. And if the Court would not take action to the satisfaction of the Lord Rector, he could, after considering any explanation furnished, or a representation made by the Court, issue such direction as he might think fit. The Court should comply with such direction. <u>So the Court which consisted of Muslims only was not enjoying the absolute power but its power was circumscribed of the Lord Rector, the</u></p>

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	<p><u>Governor,-General who was obviously an Englishman. Similarly, there was a Visiting Board and this Visiting Board also was armed with some power, and this Board, by an order in writing, could annul the proceedings not in conformity with acts, statutes and ordinances. And this Visiting Board again consisted of persons who could be non-Muslims. In this way, there are many other provisions which will go to show that the Act was called Aligarh Muslim University Act, the entire power of administering the University was not vested in the Muslim only."</u></p>
22.12.1981	<p>A leading member of Parliament, on the proposed amendment in 1981, observed as under :</p> <p>"SOMNATH CHATTERJEE: Kindly see what this Bills says. It seeks to restore the minority character of the University and that is also in the statement of the hon. Minister. So far as the bringing into effect of this University is concerned, it was done under a statute. Everybody knows that. The statute has been construed by the Supreme Court in the background of Article 30 of the Constitution of India. It appears that the Supreme Court is thinking to have it considered by a larger bench, but the fact that the r University was brought into existence by an Act of Parliament is a historical fact which cannot be ignored by anybody. This Bill wants to restore the minority character of the University. Undoubtedly, we appreciate the great efforts made by some of the leading Muslims, intellectuals and educationists in this country and we greatly appreciate the efforts made by them, how can you by a legislation change the history? We do not know. What I am apprehending is that by this, you are <u>also opening the flood-gates of litigation, which we do not want. If an institution has been established in a particular manner, by retrospective legislation you cannot change its manner.</u> The Supreme Court had held that it was set up by a statutory enactment, and that it was not established by a particular community. The word 'establishment*' is now being brought in, only with a view to attract Article 30 of the Constitution, because the language used there is 'establish</p> <p>SHRI SOMNATH CHATTERJEE: May be; but the Minister herself has said that. What is being done is that the word 'establish' is being deleted from the present Act, to show that it was not established by the Statute. Can what was done in 1920 be undone in 1981 by a legislation like this? The fact cannot be altered by a legislation like this, which is supposed to have retrospective effect. What is the position! By omitting the word 'establish*' from the existing Statute, they want to contend so. As I said, we appreciate the sentiments. But the question is, can it be achieved? "It has been established by a particular community. Therefore, Article 30 can be attracted*—that is the argument. The Minister herself has apprehended it—and she has been advised, I take it—i.e. that it seeks the restoration of minority character. So, mv Question is whether you can restore a character which was not there at the beginning, because we have to consider the stautory enactment which brought it into existence. Maybe this is done with a view to persuading the Supreme Court to come to a decision. We cannot visualize what the Supreme Court will do. But the statutory provision is being changed, in order to pave the way for the Supreme Court to come to a decision. There is also a change in the definition. The definition of the word 'university' is now being changed. How can a fact be altered by a change in the definition? According to the proposed amendment. "University" means an educational</p>

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	institution of their choice, established by the Muslims of India which originated as the Muhammadan Anglo-Oriental College Aligarh and which was subsequently incorporated as the Aligarh Muslim University.* Therefore, they now, by an amendment, want to make the University of a different origin from what was done when the law was enacted. Whether it will serve the purpose or not, we have grave doubts subject to what we have said about the consequence of it."

158. Therefore, the mere omission of the word "establish" from the preamble and addition of "established by the Muslims of India" in definition of University section 2(1) of the Aligarh Muslim Act cannot change the historical fact that the Aligarh Muslim University was established by efforts of a large number of people including the State which had no religion and by an Act of the Indian Legislative Council, which did not provide for a predominant minority character to the University.

LIST OF INSTITUTES OF NATIONAL IMPORTANCE

S. No.	Name of the Institute	City	State/UT	Name of the Act	Administrative Ministry/Department
1	Aligarh Muslim University	Aligarh	Uttar Pradesh	Entry No. 63, Union list - The 7th schedule under Article 246 of the Constitution of India	Ministry of Education
2	Banaras Hindu University	Varanasi	Uttar Pradesh		
3	University of Delhi	Delhi	Delhi		
4	Atal Bihari Vajpayee Indian Institute of Information Technology and Management, Gwalior	Gwalior	Madhya Pradesh	The Indian Institutes of Information Technology Act, 2014 and their subsequent amendments	
5	Indian Institute of Information Technology, Allahabad	Allahabad	Uttar Pradesh		
6	Pandit Dwarka Prasad Mishra Indian Institute of Information Technology, Design and Manufacturing, Jabalpur	Jabalpur	Madhya Pradesh		
7	Indian Institute of Information Technology, Design and Manufacturing, Kancheepuram	Kancheepuram	Tamil Nadu		
8	Indian Institute of Information Technology, Design and Manufacturing, Kurnool	Kurnool	Andhra Pradesh		

9	Indian Institute of Information Technology, Dharwad	Dharwad	Karnataka	The Indian Institutes of Information Technology (Public-Private Partnership) Act, 2017
10	Indian Institute of Information Technology, Guwahati	Guwahati	Assam	
11	Indian Institute of Information Technology, Kalyani	Kalyani	West Bengal	
12	Indian Institute of Information Technology, Kota	Kota	Rajasthan	
13	Indian Institute of Information Technology, Kottayam	Kottayam	Kerala	
14	Indian Institute of Information Technology, Lucknow	Lucknow	Uttar Pradesh	
15	Indian Institute of Information Technology, Senapati	Senapati	Manipur	
16	Indian Institute of Information Technology, Nagpur	Nagpur	Maharashtra	
17	Indian Institute of Information Technology, Pune	Pune	Maharashtra	
18	Indian Institute of Information Technology, Ranchi	Ranchi	Jharkhand	
19	Indian Institute of Information Technology, Sonapat	Sonepat	Haryana	

20	Indian Institute of Information Technology, Sri City	Sri City	Andhra Pradesh		
21	Indian Institute of Information Technology, Tiruchirappalli	Tiruchirappalli	Tamil Nadu		
22	Indian Institute of Information Technology, Una	Una	Himachal Pradesh		
23	Indian Institute of Information Technology, Vadodara	Vadodara	Gujarat		
24	Indian Institute of Information Technology, Agartala	Agartala	Tripura		
25	Indian Institute of Information Technology, Bhagalpur	Bhagalpur	Bihar		
26	Indian Institute of Information Technology, Bhopal	Bhopal	Madhya Pradesh		
27	Indian Institute of Information Technology, Raichur	Raichur	Karnataka		
28	Indian Institute of Information Technology, Surat	Surat	Gujarat		
29	Indian Institute of Management Ahmedabad	Ahmedabad	Gujarat			Indian Institutes of Management Act, 2017
30	Indian Institute of Management Amritsar	Amritsar	Punjab		

31	Indian Institute of Management Bangalore	Bangalore	Karnataka		
32	Indian Institute of Management Bodh Gaya	Bodh Gaya	Bihar		
33	Indian Institute of Management Calcutta	Kolkata	West Bengal		
34	Indian Institute of Management Indore	Indore	Madhya Pradesh		
35	Indian Institute of Management Jammu	Jammu	Jammu and Kashmir		
36	Indian Institute of Management Kashipur	Kashipur	Uttarakhand		
37	Indian Institute of Management Kozhikode	Kozhikode	Kerala		
38	Indian Institute of Management Lucknow	Lucknow	Uttar Pradesh		
39	Indian Institute of Management Nagpur	Nagpur	Maharashtra		
40	Indian Institute of Management Raipur	Raipur	Chhattisgarh		
41	Indian Institute of Management Ranchi	Ranchi	Jharkhand		

42	Indian Institute of Management Rohtak	Rohtak	Haryana		
43	Indian Institute of Management Sambalpur	Sambalpur	Odisha		
44	Indian Institute of Management Shillong	Shillong	Meghalaya		
45	Indian Institute of Management Sirmour	Paonta Sahib	Himachal Pradesh		
46	Indian Institute of Management Tiruchirappalli	Tiruchirappalli	Tamil Nadu		
47	Indian Institute of Management Udaipur	Udaipur	Rajasthan		
48	Indian Institute of Management Visakhapatnam	Visakhapatnam	Andhra Pradesh		
49	Indian Institute of Science Education and Research, Berhampur	Berhampur	Odisha	National Institutes of Technology, Science Education and Research Act, 2007 and its subsequent amendments	
50	Indian Institute of Science Education and Research, Bhopal	Bhopal	Madhya Pradesh		

51	Indian Institute of Science Education and Research, Kolkata	Kolkata	West Bengal		
52	Indian Institute of Science Education and Research, Mohali	Mohali	Punjab		
53	Indian Institute of Science Education and Research, Pune	Pune	Maharashtra		
54	Indian Institute of Science Education and Research, Thiruvananthapuram	Thiruvananthapuram	Kerala		
55	Indian Institute of Science Education and Research, Tirupati	Tirupati	Andhra Pradesh		
56	Indian Institute of Engineering Science and Technology, Shibpur	Shibpur	West Bengal		
57	Motilal Nehru National Institute of Technology, Allahabad	Allahabad	Uttar Pradesh	National Institutes of Technology, Science Education and Research Act,	

58	Maulana Azad National Institute of Technology, Bhopal	Bhopal	Madhya Pradesh	2007 and its subsequent amendments
59	National Institute of Technology, Calicut	Kozhikode	Kerala	
60	National Institute of Technology, Durgapur	Durgapur	West Bengal	
61	National Institute of Technology, Hamirpur	Hamirpur	Himachal Pradesh	
62	Malaviya National Institute of Technology, Jaipur	Jaipur	Rajasthan	
63	Dr. B. R. Ambedkar National Institute of Technology, Jalandhar	Jalandhar	Punjab	
64	National Institute of Technology, Jamshedpur	Jamshedpur	Jharkhand	
65	National Institute of Technology, Kurukshetra	Kurukshetra	Haryana	
66	Visvesvaraya National Institute of Technology, Nagpur	Nagpur	Maharashtra	

67	National Institute of Technology, Patna	Patna	Bihar		
68	National Institute of Technology, Rourkela	Rourkela	Odisha		
69	National Institute of Technology, Silchar	Silchar	Assam		
70	National Institute of Technology, Srinagar	Srinagar	Jammu and Kashmir		
71	National Institute of Technology, Uttarakhand	Srinagar	Uttarakhand		
72	Sardar Vallabhbhai National Institute of Technology, Surat	Surat	Gujarat		
73	National Institute of Technology, Karnataka	Surathkal	Karnataka		
74	National Institute of Technology, Tiruchirappalli	Tiruchirappalli	Tamil Nadu		
75	National Institute of Technology, Warangal	Warangal	Telangana		
76	National Institute of Technology, Raipur	Raipur	Chhattisgarh		
77	National Institute of Technology, Agartala	Agartala	Tripura		

78	National Institute of Technology, Goa	Farmagudi	Goa		
79	National Institute of Technology, Puducherry	Karaikal	Puducherry		
80	National Institute of Technology, Delhi	New Delhi	Delhi		
81	National Institute of Technology, Meghalaya	Shillong	Meghalaya		
82	National Institute of Technology, Mizoram	Aizawl	Mizoram		
83	National Institute of Technology, Manipur	Imphal	Manipur		
84	National Institute of Technology, Nagaland	Dimapur	Nagaland		
85	National Institute of Technology, Sikkim	Ravangla	Sikkim		
86	National Institute of Technology, Andhra Pradesh	Tadepalligudem	Andhra Pradesh		
87	National Institute of Technology, Arunachal Pradesh	Yupia	Arunachal Pradesh		

88	Indian Institute of Technology (BHU) Varanasi	Varanasi	Uttar Pradesh	Institutes of Technology Act, 1961 and its subsequent amendments
89	Indian Institute of Technology (Indian School of Mines) Dhanbad	Dhanbad	Jharkhand	
90	Indian Institute of Technology Bhilai	Bhilai	Chhattisgarh	
91	Indian Institute of Technology Bhubaneswar	Bhubaneswar	Odisha	
92	Indian Institute of Technology Bombay	Mumbai	Maharashtra	
93	Indian Institute of Technology Delhi	New Delhi	Delhi	
94	Indian Institute of Technology Dharwad	Dharwad	Karnataka	
95	Indian Institute of Technology Gandhinagar	Gandhinagar	Gujarat	
96	Indian Institute of Technology Goa	Farmagudi	Goa	
97	Indian Institute of Technology Guwahati	Guwahati	Assam	

98	Indian Institute of Technology Hyderabad	Hyderabad	Telangana		
99	Indian Institute of Technology Indore	Indore	Madhya Pradesh		
100	Indian Institute of Technology Jammu	Jammu	Jammu and Kashmir		
101	Indian Institute of Technology Jodhpur	Jodhpur	Rajasthan		
102	Indian Institute of Technology Kanpur	Kanpur	Uttar Pradesh		
103	Indian Institute of Technology Kharagpur	Kharagpur	West Bengal		
104	Indian Institute of Technology Madras	Chennai	Tamil Nadu		
105	Indian Institute of Technology Mandi	Mandi	Himachal Pradesh		
106	Indian Institute of Technology Palakkad	Palakkad	Kerala		
107	Indian Institute of Technology Patna	Patna	Bihar		
108	Indian Institute of Technology Roorkee	Roorkee	Uttarakhand		

109	Indian Institute of Technology Ropar	Ropar	Punjab		
110	Indian Institute of Technology Tirupati	Tirupati	Andhra Pradesh		
111	School of Planning and Architecture, Bhopal	Bhopal	Madhya Pradesh	School of Planning and Architecture Act, 2014	
112	School of Planning and Architecture, Delhi	New Delhi	Delhi		
113	School of Planning and Architecture, Vijayawada	Vijayawada	Andhra Pradesh		
114	University of Allahabad	Allahabad	Uttar Pradesh	University of Allahabad Act, 2005	
115	Visva-Bharati University	Santiniketan	West Bengal	Visva-Bharti Act, 1951	
116	Dakshina Bharat Hindi Prachar Sabha	Chennai	Tamil Nadu	Dakshina Bharat Hindi Prachar Sabha Act, 1964	
117	Academy Scientific and Innovative Research, Ghaziabad	Ghaziabad	Uttar Pradesh	Academy Scientific and Innovative Research Act, 2011 subsequent amendments	
118	All India Institute of Medical Sciences, Bathinda	Bathinda	Punjab		Ministry of Health & Family Welfare

119	All India Institute of Medical Sciences, Bhopal	Bhopal	Madhya Pradesh	All India Institute of Medical Sciences Act, 1956' and its subsequent amendments
120	All India Institute of Medical Sciences, Bhubaneswar	Bhubaneswar	Odisha	
121	All India Institute of Medical Sciences, Bibinagar	Bibinagar	Telangana	
122	All India Institute of Medical Sciences, Deoghar	Deoghar	Jharkhand	
123	All India Institute of Medical Sciences, Gorakhpur	Gorakhpur	Uttar Pradesh	
124	All India Institute of Medical Sciences, Jodhpur	Jodhpur	Rajasthan	
125	All India Institute of Medical Sciences, Mangalagiri	Mangalagiri	Andhra Pradesh	
126	All India Institute of Medical Sciences, Nagpur	Nagpur	Maharashtra	
127	All India Institute of Medical Sciences, Kalyani	Kalyani	West Bengal	
128	All India Institute of Medical Sciences, New Delhi	New Delhi	Delhi	
129	All India Institute of Medical Sciences, Patna	Patna	Bihar	

130	All India Institute of Medical Sciences, Raebareli	Raebareli	Uttar Pradesh		
131	All India Institute of Medical Sciences, Raipur	Raipur	Chhattisgarh		
132	All India Institute of Medical Sciences, Rishikesh	Rishikesh	Uttarakhand		
133	Jawaharlal Institute of Postgraduate Medical Education and Research	Pondicherry	Puducherry	Jawaharlal Institute of Post-Graduate Medical Education and Research Act, 2008	
134	National Institute of Mental Health and Neurosciences	Bangalore	Karnataka	National Institute of Mental Health and Neuro-Sciences, Bangalore Act, 2012	
135	Postgraduate Institute of Medical Education and Research	Chandigarh	Chandigarh	Post-Graduate Institute of Medical Education and Research, Chandigarh, Act 1966	
136	National Institute of Pharmaceutical Education and Research, Ahmedabad	Ahmedabad	Gujarat	National Institute of Pharmaceutical Education and Research Act.	Department of Pharmaceuticals, Ministry of

137	National Institute of Pharmaceutical Education and Research, Guwahati	Guwahati	Assam	1998 and subsequent amendment	Chemicals & Fertilizers
138	National Institute of Pharmaceutical Education and Research, Hajipur	Hajipur	Bihar		
139	National Institute of Pharmaceutical Education and Research, Hyderabad	Hyderabad	Telangana		
140	National Institute of Pharmaceutical Education and Research, Kolkata	Kolkata	West Bengal		
141	National Institute of Pharmaceutical Education and Research, Mohali	Mohali	Punjab		
142	National Institute of Pharmaceutical Education and	Raebareli	Uttar Pradesh		

	Research, Raebareli				
143	Footwear Design and Development Institute	Multiple Campus		Footwear Design and Development Institute Act, 2017	Ministry of Commerce and Industry
144	National Institute of Design, Ahmedabad	Ahmedabad	Gujarat	National Institute of Design Act, 2014 and subsequent amendment	
145	National Institute of Design, Madhya Pradesh	Bhopal	Madhya Pradesh		
146	National Institute of Design, Assam	Jorhat	Assam		
147	National Institute of Design, Haryana	Kurukshetra	Haryana		
148	National Institute of Design, Andhra Pradesh	Vijayawada	Andhra Pradesh		
149	Rani Lakshmi Bai Central Agricultural University	Jhansi	Uttar Pradesh	Rani Lakshmi Bai Central Agricultural University Act, 2014	Ministry of Agriculture & Farmers' Welfare
150	Rajendra Central Agricultural University	Samastipur	Bihar	Dr. Rajendra Prasad Central Agricultural University Act, 2016	

151	National Forensic Sciences University	Gandhinagar	Gujarat	National Forensic Sciences University Act, 2020	Ministry of Home Affairs
152	Rashtriya Raksha University	Gandhinagar	Gujarat	Rashtriya Raksha University Act, 2020	
153	Indian Institute of Petroleum & Energy	Visakhapatnam	Andhra Pradesh	Indian Institute of Petroleum & Energy Act, 2017	Ministry of Petroleum & Natural Gas
154	Rajiv Gandhi Institute of Petroleum Technology Jais	Raebareli	Uttar Pradesh	Rajiv Gandhi Institute of Petroleum Technology Act, 2007	
155	Kalakshetra Foundation	Chennai	Tamil Nadu	Kalakshetra Foundation Act, 1993	Ministry of Culture
156	National Library	Kolkata	West Bengal	Entry 62, List I of Seventh Schedule of the Constitution of India	
157	National Institute of Food Technology, Entrepreneurship and Management, Thanjavur	Thanjavur	Tamil Nadu	National Institute of Food Technology, Entrepreneurship and Management Act, 2021	Ministry of Food Processing Industries
158	National Institute of Food Technology Entrepreneurship	Sonepat	Haryana		

	and Management, Kundli				
159	Sree Chitra Tirunal Institute for Medical Sciences and Technology	Thiruvananthapuram	Kerala	Sree Chitra Tirunal Institute for Medical Sciences and Technology, Trivandrum, Act, 1980	Ministry of Science & Technology
160	Regional Centre for Biotechnology	Faridabad	Haryana	Regional Centre for Biotechnology Act, 2016	
161	Institute of Teaching and Research in Ayurveda	Jamnagar	Gujarat	Institute of Teaching and Research in Ayurveda Act, 2020	Ministry of Ayush
162	New Delhi International Arbitration Centre	New Delhi	Delhi	New Delhi International Arbitration Centre Act, 2019	Department of Legal Affairs, Ministry of Law & Justice
163	Rajiv Gandhi National Institute of Youth Development	Kanchipuram	Tamil Nadu	Rajiv Gandhi National Institute of Youth Development Act, 2012	Ministry of Youth Affairs & Sports
164	Indian Statistical Institute	Kolkata	West Bengal	India Statistical Institute Act, 1959	Ministry of Statistics & Program Implementation
165	Nalanda University	Rajgir	Bihar	Nalanda University Act, 2010	Ministry of External Affairs

TWO NATIONS

The Philosophy of Muslim Nationalism

A.C. BANERJEE



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sources : to their political traditions, social customs, religious beliefs, and poverty'. It was no easy task, he added, for any Muslim to impress on his co-religionists 'the advantages accruing from English education, and to prove by argument and reason that such education was in no way inconsistent with the tenets of their religion, and that the fanciful theories of Arabised Greek science and philosophy which the advance of modern science and enlightenment tended to subvert, had no connection with the doctrines of Islam'.

Speaking at the Eighth Muhammadan Educational Conference in Bombay in 1893, Mahdi Ali, a leading official of the Nizam's Government, observed that, while the Hindus 'endeavoured to acquire those accomplishments which are appreciated and thus gained honour and reputation', the Muslims 'gave no heed to the new wants and the requirements of the time'.

Intoxicated with pride and prejudiced vanity, they looked down upon every new thing with supreme contempt, a royal disdain, and found a fallacious excuse for their want of every accomplishment by an affectation of piety and a parade of religion.³²

This was the atmosphere in which Syed's educational enterprise was launched. Undaunted by opposition, undismayed by *fatwas* condemning him as a *kafir*, he continued his work. The responsibility of implementing the scheme of founding a College was entrusted to 'The Mohammedan Anglo-Oriental College Fund Committee' (1872) with Syed as 'Life Honorary Secretary'. It was decided to establish the proposed College at Aligarh. The 'School connected with the College for Elementary Education' was established at Aligarh on 23 May 1875 ; it actually started functioning on 1 June 1875. It was affiliated to the University of Calcutta for the Matriculation Examination, and its first batch of four candidates appeared at that examination in 1877. Meanwhile, the Government of the North-Western Provinces, with Sir John Strachey as Lieutenant-Governor, granted 74 acres of land in the cantonment area at Aligarh to the College Fund Committee in February 1875.

Syed retired from the Government's Judicial Service in July 1876. Funds were collected for the proposed College in India as also in England ; and among the leading non-Muslim contributors

THE ALIGARH MUSLIM UNIVERSITY ACT, 1920
(XL OF 1920)

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FOUNDATION MEMBERS OF THE FIRST COURT.

ACT NO. XL OF 1920.

[PASSED BY THE INDIAN LEGISLATIVE COUNCIL.]

(Received the assent of the Governor General on
the 14th September, 1920.)

An Act to establish and incorporate a teaching and residential Muslim University at Aligarh.

XXI of 1860. **WHEREAS** it is expedient to establish and incorporate a teaching and residential Muslim University at Aligarh, and to dissolve the Societies registered under the Societies' Registration Act, 1860, which are respectively known as the Muhammadan Anglo-Oriental College, Aligarh, and the Muslim University Association, and to transfer to and vest in the said University all properties and rights of the said Societies and of the Muslim University Foundation Committee;

It is hereby enacted as follows:—

1. (1) This Act may be called the Aligarh Muslim University Act, 1920. Short title and commencement.

(2) It shall come into force on such date as the Governor General in Council may, by notification in the Gazette of India, appoint.

2. In this Act, and in all Statutes made hereunder, unless there is anything repugnant in the subject or context,— Definitions.

(a) "Academic Council" means the Academic Council of the University;

(b) "Court" means the Court of the University;

(c) "Executive Council" means the Executive Council of the University;

(d) "Hall"

- (d) "Hall" means a unit of residence for students of the University, provided or maintained by the University;
- (e) "registered graduates" means graduates registered under the provisions of this Act;
- (f) "Statutes," "Ordinances" and "Regulations" mean, respectively, the Statutes, Ordinances and Regulations of the University for the time being in force;
- (g) "teachers" means Professors, Readers, Lecturers, Demonstrators and such other persons as may be appointed for imparting instruction in the University or a Hall; and
- (h) "University" means the Aligarh Muslim University.

The University.

Incorporation.

3. The First Chancellor, Pro-Chancellor and Vice-Chancellor who shall be the persons appointed in this behalf by a notification of the Governor General in Council in the Gazette of India, and the persons specified in the Schedule as the first members of the Court and all persons, who may hereafter become, or be appointed as, such officers or members, so long as they continue to hold such office or membership, are hereby constituted a body corporate by the name of the Aligarh Muslim University, and shall have perpetual succession and a Common Seal and shall sue and be sued by that name.

Dissolution of the Muhammadan Anglo-Oriental College, Aligarh and the Muslim University Association, and transfer of all property to the University.

4. From the commencement of this Act—

- (i) The Societies known as the Muhammadan Anglo-Oriental College, Aligarh, and the Muslim University Association shall be dissolved, and all property, moveable and immovable, and all rights, powers and privileges of the said Societies and all property, moveable and immovable, and all

all rights, powers and privileges of the Muslim University Foundation Committee shall be transferred to and vest in the University and shall be applied to the objects and purposes for which the University is incorporated;

- (ii) all debts, liabilities and obligations of the said Societies and Committee shall be transferred to the University and shall thereafter be discharged and satisfied by it;
- (iii) all references in any enactment to either of the said Societies or to the said Committee shall be construed as references to the University;
- (iv) any will, deed or other document, whether made or executed before or after the commencement of this Act, which contains any bequest, gift or trust in favour either of the said Societies or of the said Committee shall, on the commencement of this Act, be construed as if the University was therein named instead of such Society or Committee;
- (v) subject to any orders which the Court may make, the buildings which belonged to the Muhammadan Anglo-Oriental College, Aligarh, shall continue to be known and designated by the names and styles by which they were known and designated immediately before the commencement of this Act;
- (vi) subject to the provisions of this Act, every person employed immediately before the commencement of this Act in the Muhammadan Anglo-Oriental College, Aligarh, shall hold employment in the University by the same tenure and upon the same terms and conditions and with the same rights and privileges as to pension and gratuity as he would have held the same

under

under the Muhammadan Anglo-Oriental College, Aligarh, if this Act had not been passed.

Powers of the University.

5. The University shall have the following powers, namely :—

(1) to provide for instruction in such branches of learning as the University may think fit, and to make provision for research and for the advancement and dissemination of knowledge;

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

(3) to hold examinations and to grant and confer degrees and other academic distinctions to and on persons who—

(a) shall have pursued a course of study in the University, or

(b) are teachers in educational institutions,

under conditions laid down in the Statutes and Ordinances, and shall have passed the examinations of the University, under like conditions,

(4) to confer honorary degrees or other distinctions on approved persons in the manner laid down in the Statutes;

(5) to grant such diplomas to and to provide such lectures and instruction for persons, not being members of the University, as the University may determine,

(6) to co-operate with other Universities and authorities in such manner and for such purposes as the University may determine;

(7) to institute Professorships, Readerships, Lectureships and any other teaching posts required by the University, and to appoint persons to such Professorships, Readerships, Lectureships and posts;

(8) to institute and award Fellowships (including Travelling Fellowships), Scholarships, Exhibitions

of 1920.] *Aligarh Muslim University.*

tions and Prizes in accordance with the Statutes and the Ordinances;

(9) to institute and maintain Halls for the residence of students of the University;

(10) to demand and receive such fees and other charges as may be prescribed by the Ordinances,

(11) to supervise and control the residence and discipline of students of the University, and to make arrangements for promoting their health, and

(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 arts, science and other branches of learning, including professional studies, technology, Islamic learning and Muslim theology, and to promote the interests of its students.

6. The degrees, diplomas and other academic distinctions granted or conferred to or on persons by the University shall be recognised by the Government as are the corresponding degrees, diplomas and other academic distinctions granted by any other University incorporated under any enactment. Recognition of degrees.

7. The University shall invest and keep invested in securities in which trust funds may be invested in accordance with the law for the time being in force relating to trusts in British India a sum of thirty lakhs of rupees as a permanent endowment to meet the recurring charges of the University other than charges in respect of Fellowships, Scholarships, Prizes and rewards : Reserve funds.

Provided that—

X of 1920. (1) any Government securities as defined in the Indian Securities Act, 1920, which may be held by the University shall, for the purposes of this section, be reckoned at their face value; and

(2) the aforesaid sum of thirty lakhs shall be reduced by such sums as, at the commencement of this

this Act, the Governor General in Council shall, by order in writing, declare to be the total capitalised value, for the purpose of this section—

- (a) of all permanent recurring grants of money which have been made either to the Muhammadan Anglo-Oriental College, Aligarh, the Muslim University Association or the Muslim University Foundation Committee, by any Ruler of a State in India; and
- (b) of the total income accruing from immovable property (not being land or buildings, in the occupation and use of the said College) which by the operation of this Act has been transferred to the University.

University open to all races, creeds and classes

8. The University shall, subject to the provisions of this Act and the Ordinances, be open to all persons of either sex and of whatever race, creed or class :

Provided that special provision may be made by the Ordinances exempting women from attending at public lectures and tutorial classes and prescribing for them special courses of study.

Religious instruction.

9. The Court shall have power to make Statutes providing that instruction in the Muslim religion shall be compulsory in the case of Muslim students.

Residence of students.

10. Every student of the University shall reside either in a Hall or under such conditions as may be prescribed by the Ordinances.

Teaching of the University.

11. (1) All recognised teaching in connection with the University courses shall be conducted by and in the name of the University and shall include lecturing, laboratory work and other teaching conducted in the University by the teachers thereof in accordance with any syllabus prescribed by Regulations.

(2) Recognised teaching shall also include tutorial instruction given in the University or, under the

the control of the University, in Halls: provided that every student not residing in a Hall shall be attached to a Hall for such tutorial instruction and disciplinary supervision and for such other purposes as may be prescribed by the Ordinances.

(3) The authorities responsible for organising such teaching shall be prescribed by the Statutes.

(4) The courses shall be prescribed by the Ordinances.

12. (1) The University shall, subject to the Statutes, have power to establish and maintain Intermediate colleges and schools, within such limits in the Aligarh District as may be laid down in the Ordinances, for the purpose of preparing students for admission to the University, and may provide for instruction in the Muslim religion and theology in any such colleges and schools.

Power to provide and recognise Intermediate colleges and schools.

(2) With the approval of the Academic Council and the sanction of the Governor General in Council on the recommendation of the Visiting Board, and subject to such conditions as may be prescribed by the Statutes and the Ordinances, the University may admit Intermediate colleges and schools in the Aligarh District to such privileges of the University as it thinks fit.

The Lord Rector.

13. (1) The Governor General shall be the Lord Rector of the University.

The Lord Rector.

(2) The Lord Rector shall have the right to cause an inspection to be made by such person or persons as he may direct, of the University, its buildings, laboratories, and equipment, and of any institution maintained by the University, and also of the examinations, teaching and other work conducted or done by the University, and to cause an inquiry to be made in like manner in respect of any matter connected with the University. The Lord Rector shall in every case give notice to the Univer-

sity

sity of his intention to cause an inspection or inquiry to be made, and the University shall be entitled to be represented thereat.

(3) The Lord Rector may address the Vice-Chancellor with reference to the result of such inspection and inquiry, and the Vice-Chancellor shall communicate to the Court the views of the Lord Rector with such advice as the Lord Rector may be pleased to offer upon the action to be taken thereon.

(4) The Court shall communicate through the Vice-Chancellor to the Lord Rector such action, if any, as it is proposed to take or has been taken upon the result of such inspection or inquiry.

(5) Where the Court does not, within reasonable time, take action to the satisfaction of the Lord Rector, the Lord Rector may, after considering any explanation furnished or representation made by the Court issue such directions as he may think fit, and the Court shall comply with such directions.

The Visiting Board.

The Visiting Board.

14. (1) The Visiting Board of the University, if and when the United Provinces of Agra and Oudh become a Governor's Province within the meaning of the Government of India Act, shall consist of the Governor thereof, the members of the Executive Council, the Ministers, one member nominated by the Governor and one member nominated by the Minister in charge of Education :

Provided that until a Governor's Province is so constituted, the Lieutenant-Governor of the said Provinces shall discharge and perform the duties of the Visiting Board.

(2) The Visiting Board shall have the right through any of its members to inspect the University and to satisfy itself that the proceedings of the University are in conformity with the Act, Statutes and Ordinances. The Visiting Board shall in every case give notice to the University of its intention to inspect,

inspect, and the University shall be entitled to be represented at such inspection.

(3) The Visiting Board may, by order in writing, annul any proceedings not in conformity with the Act, Statutes and Ordinances, provided that before making any such order the Board shall call upon the University to show cause why such order should not be made, and if any cause is shown within reasonable time, shall consider the same.

Rectors.

15. The persons specified in the Statutes shall be Rectors. the Rectors of the University.

Officers of the University.

16. The following shall be officers of the Uni- Officers of the University. versity—

- (1) The Chancellor,
- (2) The Pro-Chancellor,
- (3) The Vice-Chancellor,
- (4) The Pro-Vice-Chancellor, and
- (5) Such other officers as may be declared by the Statutes to be officers of the University.

17. (1) The successors to the first Chancellor The Chancellor. shall be elected by the Court.

(2) The Chancellor shall hold office for three years.

(3) The Chancellor shall, by virtue of his office, be the head of the University.

(4) The Chancellor shall, if present, preside at Convocations of the University held for conferring degrees and at meetings of the Court.

(5) Every proposal for the conferment of an honorary degree shall be subject to the confirmation of the Chancellor.

18. (1) The successors to the first Pro-Chancellor The Pro-Chancellor. shall be elected by the Court.

(2) The

(2) The Pro-Chancellor shall hold office for three years.

(3) Casual vacancies in the office of the Pro-Chancellor shall be filled by the Chancellor on the recommendation of the Executive Council. The person so appointed shall hold office till the next annual meeting of the Court.

(4) The Pro-Chancellor shall, in the absence of the Chancellor, exercise the functions of the Chancellor.

The Vice-Chancellor.

19. (1) The successors to the first Vice-Chancellor shall be elected by the Court from among its members. Every such election shall be subject to the approval of the Governor General in Council.

(2) The Vice-Chancellor shall exercise such powers and perform such functions as may be prescribed by the Statutes.

The Pro-Vice-Chancellor.

20. (1) The Pro-Vice-Chancellor shall be appointed by the Court.

(2) He shall hold office for such term and with such powers and subject to such conditions as may be prescribed by the Statutes.

Other officers.

21. The powers of officers of the University other than the Chancellor, the Pro-Chancellor, the Vice-Chancellor and the Pro-Vice-Chancellor shall be prescribed by the Statutes and the Ordinances.

Authorities of the University.

Authorities of the University.

22. The following shall be the authorities of the University :—

- (1) The Court,
- (2) The Executive Council,
- (3) The Academic Council, and
- (4) Such other authorities as may be declared by the Statutes to be authorities of the University.

The Court.

23. (1) The Court shall consist of the Chancellor, the Pro-Chancellor and the Vice-Chancellor for the time

time being, and such other persons as may be specified in the Statutes :

Provided that no person other than a Muslim shall be a member thereof.

(2) 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, the Statutes, the Ordinances and the Regulations. It shall have power to review the acts of the Executive and the Academic Councils (save where such Councils have acted in accordance with powers conferred on them under this Act, the Statutes or the Ordinances) and direct that necessary action be taken by the Executive or the Academic Council, as the case may be, on any recommendations of the Lord Rector.

(3) Subject to the provisions of this Act, the Court shall exercise the following powers and perform the following duties, namely :—

- (a) of making Statutes and of amending or repealing the same;
- (b) of considering Ordinances;
- (c) of considering and passing resolutions on the annual report, the annual accounts and the financial estimates;
- (d) of electing such persons to serve on authorities of the University and of appointing such officers as may be prescribed by this Act or the Statutes; and
- (e) of exercising such other powers and performing such other duties as may be conferred or imposed upon it by this Act or the Statutes.

24. (1) The Executive Council shall be the executive body of the University. Its constitution and the term of office of its members and its powers and duties shall be prescribed by the Statutes. The Executive Council.

25. (1) The Academic Council shall be the academic body of the University and shall, subject to the provisions of this Act, the Statutes and the Ordinances, The Academic Council.

nances, have the control and general regulation of, and be responsible for the maintenance of standards of instruction, and for the education, examination, discipline and health of students, and for the conferment of degrees (other than honorary).

(2) The constitution of the Academic Council and the term of office of its members and its powers and duties shall be prescribed by the Statutes.

Other authorities of the University.

26. The constitution, powers and duties of such other authorities as may be declared by the Statutes to be authorities of the University, shall be prescribed by the Statutes.

Statutes, Ordinances and Regulations.

Power to make Statutes.

27. Subject to the provisions of this Act, the Statutes may provide for all or any of the following matters, namely :—

- (a) the conferment of honorary degrees and the appointment of Rectors;
- (b) the institution of Fellowships, Scholarships, Exhibitions, Medals and Prizes;
- (c) the terms of office, and the method and conditions of appointment of the officers of the University;
- (d) the designations and powers of officers of the University;
- (e) the constitution, powers and duties of the authorities of the University;
- (f) the classification and mode of appointment of teachers of the University;
- (g) the institution and maintenance of Halls;
- (h) the constitution of provident and pension funds for the benefit of the officers, teachers and servants of the University;
- (i) the maintenance of a register of registered graduates;
- (j) the instruction of Muslim students in the Muslim religion and theology;
- (k) the

(k) the establishment of Intermediate colleges and schools; and

(l) all matters which by this Act are to be or may be prescribed by Statutes.

28. (1) The first Statutes are those set out in the ^{Statutes.} Schedule.

(2) The first Statutes may be amended, repealed or added to by Statutes made by the Court in the following manner :—

(a) The Executive Council may propose to the Court the draft of any Statute to be passed by the Court. Such draft shall be considered by the Court at its next meeting. The Court may approve such draft and pass the Statute, or may reject it or return it to the Executive Council for re-consideration, either in whole or in part, together with any amendments which the Court may suggest.

(b) The Executive Council shall not propose the draft of any Statute affecting the status, powers or constitution of any existing authority of the University until such authority has been given an opportunity of expressing an opinion upon the proposal. Any opinion so expressed shall be in writing and shall be considered by the Court.

(c) No new Statute or amendment or repeal of an existing Statute shall have any validity until it has been submitted through the Visiting Board (which may record its opinion thereon) to the Governor General in Council, and has been approved by the latter, who may sanction, disallow or remit it for further consideration :

Provided that no Statute dealing with the instruction of Muslim students in the Muslim religion and theology shall require to be so submitted or approved.

Power to
make Ordina-
nces.

29. Subject to the provisions of this Act and the Statutes, the Ordinances may provide for all or any of the following matters, namely :—

- (a) the courses of study to be laid down for all degrees and diplomas of the University;
- (b) the conditions of the award of Fellowships, Scholarships, Exhibitions, Medals and Prizes;
- (c) the conditions under which students may be admitted to the degree or diploma courses and to the examinations of the University, and shall be eligible for degrees and diplomas;
- (d) the admission of students to the University;
- (e) the terms of office and terms and manner of appointment and the duties of Examining Bodies, Examiners, and Moderators and the conduct of examinations;
- (f) the conditions of residence of students of the University, and the levying of fees for residence in Halls and of other charges;
- (g) the conditions under which women may be exempted from attendance at lectures and tutorial classes, and the prescription for them of special courses of study;
- (h) the fees to be charged for courses of study in the University and for admission to the examinations, degrees and diplomas of the University;
- (i) the maintenance of discipline among the students of the University;
- (j) the management of any Intermediate colleges or schools maintained by the University and the supervision of any Intermediate colleges and schools admitted to privileges under section 12; and
- (k) all matters which by this Act or the Statutes are to be or may be provided for by Ordinances.

30. (1) The

30. (1) The Executive Council or, in academic Ordinances. matters, the Academic Council may make Ordinances.

(2) The first Ordinances shall be framed as directed by the Governor General in Council, and shall receive such previous approval as he may direct.

(3) No new Ordinance, or amendment or repeal of an existing Ordinance shall have any validity until it has been submitted through the Court and the Visiting Board (which may record its opinion thereon) to the Governor General in Council, and has obtained the approval of the latter, who may sanction, disallow or remit it for further consideration.

(4) If any question arises between the Executive and the Academic Council as to which has the power to make an Ordinance, either Council may represent the matter to the Visiting Board who shall refer the same to a tribunal consisting of three members, one of whom shall be nominated by the Executive Council, one by the Academic Council, and one shall be a Judge of a High Court nominated by the Lord Rector.

31. (1) The authorities of the University may Regulations. make Regulations consistent with this Act, the Statutes and the Ordinances—

- (a) laying down the procedure to be observed at their meetings and the number of members required to form a quorum;
- (b) providing for all matters which by this Act, the Statutes or the Ordinances, are to be prescribed by Regulations; and
- (c) providing for all other matters solely concerning such authorities or committees appointed by them not provided for by this Act, the Statutes and the Ordinances.

(2) Every authority of the University shall make Regulations providing for the giving of notice to the members of such authority of the dates of meetings
and

and of the business to be considered at meetings and for the keeping of a record of the proceedings of meetings.

Admission and Examinations.

Admission to
the Univer-
sity.

32. (1) Admission of students to the University shall be made by an Admission Committee consisting of the Pro-Vice-Chancellor, the Principal of an Intermediate College who shall be selected by the Vice-Chancellor and such other persons as may be appointed by the Academic Council.

(2) Students shall not be eligible for admission to a course of study for a degree unless they have passed the Intermediate Examination of an Indian University incorporated by any law for the time being in force, or an examination recognised in accordance with the provisions of this section as equivalent to the Intermediate Examination, and possess such further qualifications as may be prescribed by the Ordinances.

(3) The conditions under which students may be admitted to the diploma courses of the University shall be prescribed by the Ordinances.

(4) The University shall not, save with the previous sanction of the Governor General in Council, recognise (for the purpose of admission to a course of study for a degree) as equivalent to its own degrees, any degree conferred by any other University or as equivalent to the Intermediate Examination of an Indian University, any examination conducted by any other authority.

(5) Notwithstanding anything contained in this Act or the Ordinances, any student of the Muhammadan Anglo-Oriental College, Aligarh, who immediately before the commencement of this Act was studying for any examination of the Allahabad University higher than the Intermediate Examination shall be permitted to complete his course in preparation thereof. The University shall provide for such students instruction in accordance with the prospectus of studies of the Allahabad University
and,

and, notwithstanding anything contained in the Indian University Act, 1904, any such students may be admitted to the examinations of that University during a period not exceeding four years from the commencement of this Act.

33. (1) All arrangements for the conduct of examinations shall be made, and all examiners shall be appointed by the Academic Council in such manner as may be prescribed by the Ordinances. Examina-
tions.

(2) At least one examiner who is not a member or a teacher of the University shall be appointed for each subject in a Department of Studies forming part of the course which is required for a University degree.

(3) The Academic Council shall appoint examination committees, consisting of members of its own body or of other persons or of both, as it thinks fit, to moderate examination questions, to prepare the results of the examinations and to report such results to the Executive Council for publication.

Annual Report and Accounts.

34. The annual report of the University shall be prepared under the direction of the Executive Council, and shall be submitted to the Court on or before such date as may be prescribed by the Statutes, and shall be considered by the Court at its annual meeting. The Court may pass resolutions thereon and communicate the same to the Executive Council which shall take such action thereon as it thinks fit. Annual,
Report.

35. (1) The annual accounts and balance-sheet of the University shall be prepared under the direction of the Executive Council, and shall once at least every year and at intervals of not more than fifteen months be audited by auditors appointed by the Visiting Board. Annual
accounts.

(2) The annual accounts when audited shall be published in the Gazette of India and in the local official Gazette, and a copy of the accounts, together with the auditor's report, shall be submitted through the Visiting Board to the Lord Rector.

(3) The

(3) The annual accounts and the financial estimates shall be considered by the Court at its annual meeting, and the Court may pass resolutions thereon and communicate the same to the Executive Council which shall take such action thereon as it thinks fit.

Supplementary Provisions.

Conditions of service of officers and teachers.

36. (1) Every salaried officer and teacher of the University shall be appointed on a written contract, which shall be lodged with the University and a copy of which shall be furnished to the officer or teacher concerned.

(2) Any dispute arising out of a contract between the University and any of its officers or teachers shall, at the request of the officer or teacher concerned, be referred to a tribunal of arbitration consisting of one member appointed by the Executive Council, one member nominated by the officer or teacher concerned and an umpire appointed by the Visiting Board. The decision of the tribunal shall be final, and no suit shall lie in any Civil Court in respect of the matters decided by the tribunal. Every such request shall be deemed to be a submission to arbitration upon the terms of this section within the meaning of the Indian Arbitration Act, 1899, and all the provisions of that Act, with the exception of section 2 thereof, shall apply accordingly.

Provident and pension funds.

37. (1) The University shall constitute for the benefit of its officers, teachers and servants such provident and pension funds as it may deem fit in such manner and subject to such conditions as may be prescribed by the Statutes.

(2) Where such provident or pension fund has been so constituted, the Governor General in Council may declare that the provisions of the Provident Funds Act, 1897, shall apply to such fund, as if it were a Government provident fund.

Filling of casual vacancies.

38. (1) Subject to any provision in this Act and in the Statutes, the Executive Council shall appoint persons to fill casual vacancies in the offices of Vice-Chancellor and Pro-Vice-Chancellor. Persons so appointed

appointed shall hold office till the next meeting of the Court.

(2) Subject to the provisions of sub-section (3) of section 18, other casual vacancies in any office of any authority shall be filled up by the authority which has power to appoint to the office or authority; provided that when the Court is the appointing authority the casual vacancy shall be filled by the Executive Council, and the person so appointed shall hold office till the next meeting of the Court.

39. No act or proceeding of any authority of the University shall be invalidated merely by reason of the existence of a vacancy or vacancies among its members.

Proceedings of University authorities not invalidated by vacancies.

40. (1) If any difficulty arises with respect to the establishment of the University or any authority of the University or in connection with the first meeting of any authority of the University, the Governor General in Council may by order make any appointment or do anything which appears to him necessary or expedient for the proper establishment of the University or any authority thereof or for the first meeting of any authority of the University.

Power to remove difficulties.

(2) Any such order may modify the provisions of this Act and the Statutes so far as may appear to the Governor General in Council to be necessary or expedient for carrying the order into effect.

THE SCHEDULE.

FIRST STATUTES OF THE UNIVERSITY.

(See section 28.)

1. (1) The following persons shall be Rectors of the University, namely:—

- (i) all Heads of Local Governments;
- (ii) such Rulers of States in India, Princes, and other persons as the Lord Rector may, of his own motion or on the recommendation of the Court, appoint.

(2) The

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(*The Schedule.*)

(2) The Chancellor may also, on the recommendation of the Academic Council, appoint persons of eminent position or attainments to be Rectors.

The Vice-Chancellor.

2. The Vice-Chancellor shall hold office for three years and shall be eligible for re-election.

Powers of the Vice-Chancellor.

3. (1) The Vice-Chancellor shall take rank in the University next to the Chancellor and the Pro-Chancellor, and shall be *ex-officio* Chairman of the Executive Council and the Academic Council and, in the absence of the Chancellor and the Pro-Chancellor, shall preside at Convocations of the University held for conferring degrees and at meetings of the Court.

(2) It shall be the duty of the Vice-Chancellor to see that the Act, the Statutes, the Ordinances and the Regulations are duly observed, and he shall have all powers necessary for that purpose.

(3) He shall have the power of convening meetings of the Court and the Executive Council and shall perform all such acts as may be necessary to carry out or further the provisions of the Act, the Statutes and the Ordinances.

(4) If any emergency arises in which in his opinion immediate action should be taken, he shall take such action as he deems necessary and report the fact to the authority which in the ordinary course would have dealt with the matter.

(5) He shall be the sole medium of communication between the University and the following authorities, namely, the Governor-General in Council, the Lord Rector and the Visiting Board.

The Pro-Vice-Chancellor.

4. (1) The Pro-Vice-Chancellor shall be the principal academic officer of the University and shall be a whole-time salaried officer thereof.

(2) He shall be an *ex-officio* member of the Executive Council and the Academic Council and, in the absence of the Vice-Chancellor, shall preside at meetings of the Academic Council. He shall also have power to convene meetings of the Academic Council.

(3) He shall hold office for five years and be eligible for re-appointment.

The Treasurer.

5. (1) The Treasurer shall be appointed by the Court on such conditions and for such period as the Court may think fit.

(2) He shall exercise general supervision over the funds of the University and advise in regard to its financial policy.

(3) He

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(3) He shall be an *ex-officio* member of the Executive Council and shall, subject to the control of the Executive Council, manage the property and investments of the University. He shall be responsible for the presentation of the annual estimates and accounts.

(4) Subject to the powers of the Executive Council, he shall be responsible for seeing that all moneys are expended on the purposes for which they are granted or allotted.

(5) He shall exercise such other powers as may be prescribed by the Ordinances.

6. (1) The Registrar shall be a whole-time paid officer of the University appointed by the Court. The Registrar.

(2) He shall hold office for five years and shall be eligible for re-appointment.

(3) The Registrar shall—

(a) be the custodian of the records, the seal and such other property of the University as is committed to his charge;

(b) keep and maintain the register of registered graduates;

(c) attend and act as Secretary at meetings of the Executive and Academic Council and, if deemed necessary, of the Departments of Studies and any committees appointed by such bodies, and to keep the minutes thereof;

(d) under the superintendence of the Academic Council and the examination committees arrange for and superintend the examinations of the University; and

(e) perform such other duties as may from time to time be prescribed by the Ordinances and Regulations.

7. (1) The following officers shall be appointed by the Executive Council on the recommendation of the Academic Council:— The Proctor and Librarian.

(i) A Proctor for the maintenance of the discipline of the students of the University;

(ii) A Librarian for the University Library.

(2) The Academic Council may delegate to the Proctor such of its powers as regards discipline as it thinks fit.

8. The

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The Court. 8. The Court shall, subject to provisions hereinafter contained, consist of the following members:—

Class I.—Ex-Officio members.

The Chancellor, the Pro-Chancellor and the Vice-Chancellor for the time being shall be *Ex-Officio* Members.

Class II.—Foundation Members.

The persons named in the Annexure to this Schedule shall be Foundation Members.

Class III.—Life Members.

Every person who has contributed to the Muhammadan Anglo-Oriental College, Aligarh, the Muslim University Association or the Muslim University Foundation Committee a donation of one lakh of rupees or upwards or has transferred property of like value to any of the said institutions and all persons who shall hereafter make such a donation or transfer shall be a Life Member.

Class IV.—Ordinary Members.

Ordinary Members shall be persons elected or appointed as follows:—

- (1) Ten persons to represent such States in India as have contributed or shall contribute one lakh of rupees and upwards, together with a permanent recurring grant, to or for the purposes of the University, who shall be nominated by such States.
- (2) Sixty persons to be elected by persons who have made or shall make donations of five hundred rupees and upwards to or for the purposes of the University.
- (3) Forty persons to be elected by the registered graduates of the University, of whom not less than twenty shall for the first fifteen years after the commencement of this Act be persons who have been educated at the Muhammadan Anglo-Oriental College, Aligarh, and are members of an Association recognised for that purpose by the Court.

Persons to be eligible for election under this provision must be registered graduates of not less than ten years' standing.

(4) Twenty

(*The Schedule.*)

- (4) Twenty persons to be elected by the Central Standing Committee of the All-India Muhammadan Educational Conference from among its own members, not less than ten of whom shall be persons who have been engaged for at least five years in teaching :

Provided that no person shall be qualified to vote in more than one electorate under any of the three last preceding clauses.

- (5) Ten persons to be nominated by the Chancellor.

- (6) Thirty-three persons to be elected by the Court, namely,—

(*v*) nine persons to represent Islamia Colleges and other Muslim educational institutions not under the control of the University ;

(*u*) fifteen persons engaged in the learned professions ; and

(*ur*) nine persons learned in the Muslim religion and Oriental studies ; and

- (7) Fifteen persons to be elected by the Academic Council from among its own members.

9. (*1*) The members provided for in Classes I, II, III and clause (1) of Class IV shall be the members of the first Court. The First Court.

(2) At the first meeting of the Court, which shall be held as soon as may be after the commencement of this Act, the thirty-three persons specified in clause (6) of class IV shall be elected.

(3) The Academic Council shall elect its representatives at its first meeting.

(4) Any member of the Court may be removed by a resolution, passed by a majority consisting of not less than two-thirds of the members of the Courts to the effect that—

(*i*) he has become incapable of performing his duties,
or

(*ii*) he has acted against the interests of the University,
or

(*iii*) he has been convicted by a Court of law of what, in the opinion of the Court, is a serious offence.

10. (*1*) Every Foundation Member of the Court shall, unless his office is previously vacated, hold office for five years from the commencement of this Act. Retirement of Foundation Members.

(2) At

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(The Schedule.)

(2) At the end of the fifth, sixth, seventh and eighth years after the commencement of this Act, as nearly as may be, one-fifth in number of the total number of the Foundation Members remaining at the end of the fifth year, shall in each of these years resign, and at the end of the ninth year all the Foundation Members then remaining shall resign.

(3) The order in which the Foundation Members shall resign shall be the reverse order to which their names appear in the Annexure to this Schedule.

(4) A Foundation Member who is required to retire under the provisions of this clause shall be eligible for election as an Ordinary Member in a vacancy occurring after his retirement.

Election of
ordinary members.

11. (1) After the fifth and subsequent annual meetings up to the ninth, there shall be annually appointed in accordance with the provisions of clauses (2) to (5) of Class IV the following number of Ordinary Members, namely:—

In clause (2)	.	.	.	.	.	12
In clause (3)	.	.	.	.	.	8
In clause (4)	.	.	.	.	.	4
In clause (5)	.	.	.	.	.	2

(2) When an electoral body entitled to elect a member or members fails to do so within the time prescribed, the Court may elect any qualified person or persons of the class from which such electoral body was entitled to elect to be an Ordinary Member.

General provisions as to Members of the Court.

12. (1) All Ordinary Members shall hold office for five years from the date of their election.

(2) Any casual vacancies among the nominated or elected members shall be filled, as soon as conveniently may be, by the person or body who nominated or elected the member whose place has become vacant, and the person nominated or elected to such vacancy shall be a member for the residue of the term for which the person in whose place he is nominated or elected was a member.

(3) The Executive Council may, subject to the provisions of these Statutes, make rules prescribing the qualifications of the electors, the mode of election and other conditions to which the electors and the elected members shall be subject.

Meetings of the Court.

13. (1) The Court shall, on a date to be fixed by the Vice-Chancellor, meet once a year at a meeting to be called the annual meeting of the Court.

(2) The

(*The Schedule.*)

(2) The Vice-Chancellor may, whenever he thinks fit, and shall upon requisition in writing signed by not less than thirty members of the Court, convene a special meeting of the Court.

(3) Twenty-five members shall form a quorum.

14. (1) The Court may, by resolutions passed by a majority of not less than two-thirds of the members present and voting,—

Powers in respect to granting and withdrawing degrees.

- (a) on the recommendation of the Academic Council through the Executive Council, make proposals to the Chancellor for the conferment of honorary degrees;
- (b) on the recommendation of the Executive Council, withdraw any ordinary degree or diploma conferred by the University; and
- (c) with the sanction of the Chancellor, withdraw any honorary degree.

(2) In cases of urgency the Chancellor may, on the recommendation of the Executive Council alone, confer an honorary degree.

15. (1) The Executive Council shall consist of not more than thirty members.

The Executive Council.

(2) The Vice-Chancellor, the Pro-Vice-Chancellor, the Principal of an Intermediate College maintained by the University, who shall be selected by the Vice-Chancellor and the Treasurer, shall be *ex-officio* members of the Executive Council.

(3) Six other members shall be elected by the Academic Council and twenty shall be elected by the Court, of whom not less than seven shall be residents of places outside the United Provinces of Agra and Oudh.

(4) Elected members shall hold office for three years, provided that at the second annual meeting of the Court and at the third annual meeting of the Court six of the first members elected by it shall retire by ballot.

(5) Eleven members of the Council shall form a quorum.

(6) The Executive Council may make rules prescribing the mode of election and the conditions to which the elected members shall be subject.

16. (1) The Executive Council shall, subject to the control of the Court and to the Act, the Statutes and the Ordinances, administer the revenue and property of the University, regulate the finances, accounts and investments and perform

Powers of the Executive Council.

(The Schedule.)

perform all such duties and such acts as may be necessary for the business of the University.

(2) (a) In particular the Executive Council shall have power to make and vary investments, purchase, accept and sell moveable or immoveable property, enter into and carry out or cancel contracts and appoint persons to execute and register the same;

(b) It shall maintain the buildings, premises, furniture and apparatus needed for the work of the University;

(c) It shall grant leave to officers, teachers and servants in accordance with the Ordinances and Regulations and, subject to the provisions of section 36 of the Act, deal with any grievances of any such officers, teachers or servants;

(d) It shall maintain a register of donors of the University;

(e) It shall maintain the University press;

(f) It shall on the recommendation of the Academic Council prescribe the fees and charges payable by students;

(g) It shall fix the fees and allowances of examiners, moderators and other persons engaged in the University examinations; and

(h) It shall be the managing body of any intermediate college or school maintained by the University, and shall supervise any Intermediate colleges and schools admitted to privileges by the University.

The Academic Council,

17. (1) The Academic Council shall consist of the following persons, namely:—

(i) The Vice-Chancellor and Pro-Vice-Chancellor;

(ii) The Chairman of the Departments of Studies;

(iii) The Librarian and the Proctor;

(iv) Two persons elected by the Court;

(v) Two persons nominated by the Visiting Board; and

(vi) Five persons co-opted by the other members of the Council, two of whom at least shall be Heads of Halls, two Professors or Readers, and one a person not engaged in teaching in the University.

(2) Eleven members of the Academic Council shall form a quorum.

(3) Members other than *ex-officio* members shall hold office for three years.

Powers of the Academic Council.

18. (1) The Academic Council shall—

(i) arrange and supervise the work of education in the University;

(ii) recommend

(*The Schedule.*)

- (ii) recommend to the Executive Council the creation and abolition of posts in the educational and tutorial staff;
- (iii) subject to conditions imposed by any trust, fix the time, mode and terms of competition for Fellowships, Scholarships, Studentships, Medals and Prizes and award the same;
- (iv) conduct the examinations and publish the results thereof in the University Gazette;
- (v) have entire charge of the discipline of the students in the University;
- (vi) publish and revise lists of prescribed and recommended books, if any, and prescribe syllabuses in consultation with the Departments of Studies;
- (vii) appoint a library committee with such powers as may be prescribed in the Ordinances; and
- (viii) publish the University Gazette.

(2) All decisions of the Academic Council as regards matters of discipline of students, syllabuses of studies and the conduct of examinations shall be final, with the exception of those which relate to the Departments of Theology whose proceedings shall be subject to the approval of the Executive Council.

19. (1) There shall be Departments of Studies in the following branches of knowledge, namely:—

Departments
of Studies.

- (i) English language and literature,
- (ii) History and Political Science,
- (iii) Economics,
- (iv) Philosophy and Psychology,
- (v) Physics,
- (vi) Chemistry,
- (vii) Mathematics and Astronomy,
- (viii) Geography,
- (ix) Sunni Theology,
- (x) Shia Theology,
- (xi) Islamic Studies,
- (xii) Arabic language and literature,
- (xiii) Persian,
- (xiv) Urdu,
- (xv) Law.

(2) As soon as circumstances permit, there shall also be Departments of Studies in the following branches of knowledge, namely:—

- (i) Education,
- (ii) Botany,

(iii) Zoology,

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(*The Schedule.*)

- (iii) Zoology,
- (iv) Agriculture,
- (v) Medicine,
- (vi) Commerce,
- (vii) Technology, and
- (viii) such other departments as the Court, on the recommendation of the Academic Council made through the Executive Council, may institute.

(3) Each Department of Studies shall—

- (a) consist of the teachers in the subject with which the Department is concerned: provided that the Pro-Vice-Chancellor shall be an *ex-officio* member of each Department;
- (b) have power to co-opt specialists not exceeding two in number, except in the case of the Department of Law, which shall co-opt four members, two of whom shall be Judges of a High Court;
- (c) elect from among the Professors and Readers of the department its own Chairman who shall hold office for three years, but must resign if at any time he ceases to be a Professor or Reader;
- (d) recommend to the Academic Council courses and syllabuses of studies and text-books for its subjects, and
- (e) make recommendations to the Academic Council in respect of Fellowships, Scholarships and Studentships, Medals and Prizes in the subject with which it is concerned.

(4) The Academic Council may assign teachers of cognate subjects to a Department of Study.

Appoint-
ments.

20. Subject to the general control of the Court, all appointments on the teaching staff shall be made by the Executive Council from a list of persons recommended as suitable therefor by a Committee of Appointment consisting of the Pro-Vice-Chancellor, the Chairman of the Department of Studies concerned and three other persons appointed by the Academic Council. Other appointments, unless otherwise provided for, shall be made by the Executive Council.

Register of
graduates.

21. The register of registered graduates shall, subject to conditions prescribed by the Ordinances, contain the names of—

- (1) the graduates of the University; and

(2) graduates

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(*The Schedule; the Annexure.*)

(2) graduates of other Universities who have been educated for at least two years at the Muhammadan Anglo-Oriental College, Aligarh, separately entered therein.

22. Convocations of the University for the conferring **Convocation.** of degrees or for other purposes shall be held in such manner as may be prescribed by the Ordinances.

23. Any authority of the University may appoint such **Committees.** and so many standing or special committees as to it may seem fit, and may appoint to them persons who are not members of such authority. Such committees may deal with any subject delegated to them, subject to subsequent confirmation by the authority appointing them.

24. Where no provision is made for a president or **Acting Pre-** chairman to preside over a meeting, authority or committee **sident of** or when the president or chairman so provided for is **meetings.** absent, the members present shall elect one of their number to preside at the meeting.

25. Any member of the Court, the Executive Council, **Resigna-** the Academic Council or any other University authority or **tions.** committee may resign by letter addressed to the Vice-Chancellor.

26. Every officer of the University and every member **Re-election.** of any authority whose term of office or membership has expired shall be eligible for re-appointment or re-election, as the case may be.

THE ANNEXURE.

(*See section 8 of the First Statutes.*)

FOUNDATION MEMBERS OF THE FIRST COURT.

1. The Hon'ble Nawab Mumtaz-ud-daula Sir Muhammad Faiyaz Ali Khan, K.C.I.E., K.C.V.O., C.S.I., C.B.E., of Pahasu, Bulandshahr.
2. Saiyid Muhammad Mir, Esq., Pleader, Delhi.
3. The Hon'ble Nawab Muhammad Muzammil-ullah Khan, Khan Bahadur, O.B.E., of Bhikampur, Aligarh.
4. The Hon'ble Nawab Muhammad Abdul Majid, C.I.E., Barrister-at-Law, Allahabad.

5. The

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(*The Annexure.*)

5. The Hon'ble Saiyid Mahomed Ali, Retired District and Sessions Judge, Aligarh.
6. Shams-ul-ulama Saiyid Amjad Ali, M.A., Sadiqpur, Patna.
7. Nawab Imadul-Mulk Bahadur, Saiyid Husain Bilgrami, B.A., C.S.I., Retired Director of Public Instruction, His Exalted Highness the Nizam's Government, Hyderabad State.
8. Maulvi Nizam-ud-din Hasan, B.A., B.L., Advocate, Lucknow.
9. Haji Muhammad Moosa Khan, Dataoli, Aligarh.
10. Sahibzada Aftab Ahmad Khan, Barrister-at-Law, India Office, London.
11. Muhammad Alaul Hasan, Esq., B.A., Deputy Collector, Bijnor.
12. Khwaja Sajjad Husain, Esq., B.A., Panipat, Karnal.
13. Nawabzada Saiyid Ashraf-ud-din Ahmad, Khan Bahadur, Barh, Patna.
14. Sahibzada Sultan Ahmad Khan, M.A., LL.M., Barrister-at-Law, Appeals Member, Gwalior State.
15. The Hon'ble Khwaja Yusuf Shah, Khan Bahadur, C.I.E., Amritsar.
16. Nasrullah Khan, Esq., Barrister at-Law, Surat.
17. Saiyid Zain ud-din, Khan Bahadur, M.A., Officiating Collector, Mainpuri.
18. Khan Muhammad Aslam Hayat Khan, Esq., Extra Assistant Commissioner, Punjab.
19. Munshi Niaz Muhammad Khan, B.A., Pleader, Jullundur.
20. Maulvi Nazir Ahmad, B.A., LL.B., Jammu.
21. The Hon'ble Mr. Justice Muhammad Rafiq, Barrister-at-Law, High Court, Allahabad.
22. Maulvi Muhammad Badrul Hasan, LL.B., Retired Sub-Judge, Aligarh.
23. Maulvi Muhammad Habibur-Rahman Khan Sharwani, Hyderabad State.
24. Nawab Fateh Ali Khan Qizilbash, Khan Bahadur, C.I.E., Lahore.
25. Saiyid Ahmed Ali, Esq., M.A., Kamthana, Ujjain.
26. Saiyid Muhammad Baqar Rizvi, Rampur State.
27. Muhammad Abdus Salam Khan, Esq., Rampur State.
28. Hakim Hafiz Muhammad Ajmal Khan, Delhi.
29. Qazi Aziz-ud-din Ahmad, Khan Bahadur, O.B.E., I.S.O., Judicial Secretary, Dholpore State.
30. Shaikh

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30. Shaikh Abdul Qadir, Khan Bahadur, B.A., Barrister-at-Law, Lyallpur.
31. Shaikh Abdullah, Esq., B.A., LL.B., Vakil, Aligarh.
32. The Hon'ble Raja Sir Muhammad Tassaduq Rasulkhan, K.C.S.I., of Jahangirabad, Bara-Banki.
33. The Hon'ble Raja Sir Muhammad Ali Muhammad, Khan Bahadur, K.C.I.E., of Mahmudabad, Lucknow.
34. Mirza Shujaat Ali Beg, Khan Bahadur, Calcutta.
35. Ghulam Muhammad Munshi, Esq., Barrister-at-Law, Rajkote.
36. Shaikh Wahid-ud-din, Khan Bahadur, Meerut.
37. Maulvi Abdulla Jan, Ludhiana.
38. The Hon'ble Mian Muhammad Shafi, Khan Bahadur, C.I.E., Member of the Governor General's Executive Council, Simla.
39. Saiyid Tufail Ahmad, Sub-Registrar, Aligarh.
40. Saiyid Nabi-ullah, Esq., Barrister-at-Law, Lucknow.
41. Saiyid Jafar Husain, Khan Bahadur, Lucknow.
42. Nawab Bahadur, Nawab Muhammad Abdus Samad, Khan Bahadur, of Talibnagar and Chhitari, Aligarh.
43. Maulvi Sir Rahim Bakhsh, K.C.I.E., President, Council of Regency, Bhawalpur State.
44. The Hon'ble Nawab Saiyid Nawab Ali Chaudhri, Khan Bahadur, C.I.E., Calcutta.
45. Muhammad Akbar Nazar Ali Hydari, Esq., B.A., Secretary to H. E. H. the Nizam's Government in the Judicial, Police and General Departments, Hyderabad State.
46. The Hon'ble Mr. Justice Saiyid Muhammad Abdul Raof, Khan Bahadur, Barrister-at-Law, High Court, Lahore.
47. Razaq Bakhsh Qadri, Esq., Barrister-at-Law, Aligarh.
48. Shaikh Ghulam Sadik, Khan Bahadur, Amritsar.
49. Yaqub Hasan, Esq., Madras.
50. Maulvi Naseer Husain Khan "Khayal," Calcutta.
51. Malik Badr-ud-din Ghulam Husain, Khan Bahadur, Nagpur.
52. Saiyid Muhammad Sharf-ud-din, Esq., Barrister-at-Law, Patna.
53. Saiyid Ali Hasan Khan, Lucknow.
54. The Hon'ble Sir Abdul Karim Abdul Shakur Jamal, Kt., C.I.E., Merchant, Burma.

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55. Maulvi Muhammad Habib-ullah Khan, B.A., Deput Collector, Aligarh.
56. Munshi Sarfaraz Khan, Sub-Registrar, Muzaffarnagar.
57. Major Nawabzada Haji Hafiz Muhammad Obeidull Khan, C.S.I., Commander-in-Chief, Bhopal State Forces, and Honorary A.-D.-C. to H. E. the Viceroy.
58. The Hon'ble Sir Fazulbhoy Currimbhoy Ebrahim Kt., C.B.E., Bombay.
59. Nawab Muhammad Ahmad Said Khan, M.B.E., C. Chhitari, Bulandshahr.
60. Amir Mustafa Khan, Esq., Aligarh.
61. The Hon'ble Sir Ibrahim Rahimtoola, Kt., C.I.E. Member of the Governor's Executive Council Bombay.
62. Saiyid Hasan Imam, Esq., Barrister-at-Law, Patna.
63. Nawab Sarbuland Jang Bahadur Muhammad Hameed-ullah Khan, Barrister-at-Law, (Retired Chief Justice, Hyderabad State), Allahabad.
64. Ghulam Ahmad Khan Kalami, Esq., Coromandel Kolar Gold Fields.
65. Munshi Muhammad Israr Hasan Khan, Khan Bahadur, C.I.E., Judicial Minister, Bhopal State.
66. Honorary Captain Nawab Malik Muhammad Mubariz Khan Tiwana, C.B.E., of Shahpur.
67. Abdul Majid Khwaja, Esq., Barrister-at-Law Patna.
68. Kasim Ali Jirajbhai, Esq., Poona.
69. Haji Muhammad Swaleh Khan of Bhikampur Aligarh.
70. Saiyid Ross Masood, Esq., B.A., Director of Public Instruction, Hyderabad State.
71. Ibni Ahmad, Esq., Barrister-at-Law, Allahabad.
72. Maulvi Mohammad Ibrahim, Wazir, Khairpur State.
73. Maulvi Siraj Ahmad, M.A., Extra Assistant Commissioner, Saugor.
74. The Hon'ble Justice Sir Abd-ur-rahim, Kt., M.A., Barrister-at-Law, High Court, Madras.
75. Saiyid Wazir Hasan, B.A., LL.B., Officiating Additional Judicial Commissioner, Lucknow.
76. Shaukat Ali, Esq., Rampur State.
77. Maulvi Muhammad Yakoob, Pleader, Moradabad.
78. Ashanul Haq, Esq., Barrister-at-Law, Sialkot.
79. The Hon'ble Nawab Justice Sir Saiyid Shamsul Huda, K.C.I.E., High Court, Calcutta.
80. Mukhtar

(*The Annexure.*)

80. Mukhtar Ahmad Ansari, Esq., M.D., M.S.,
M.R.C.S., Delhi.
81. Muhammad Ali Jinnah, Esq., Barrister-at-Law,
Bombay.
82. Mazhar-ul-Huq, Esq., Barrister-at-Law, Patna.
83. Maulvi Muhammad Bashir-ud-din, Khan Bahadur,
Etawah.
84. The Hon'ble Saiyid Riza Ali, B.A., LL.B., Alla-
habad.
85. Nazir-ud-din Hasan, Esq., M.A., LL.D., Sessions
Judge, Aurangabad, Hyderabad State.
86. Munshi Nisar Husain, Deputy Magistrate, Irriga-
tion Department, Aligarh.
87. Shaikh Muhammad Wajih, Deputy Collector,
Bulandshahr.
88. Zahoor Ahmad, Esq., Barrister-at-Law, Allahabad.
89. Raja Saiyid Abu Jafar, C.I.E., of Pirpur, Fyzabad.
90. Sir Saiyid Ali Imam, K.C.S.I., Hyderabad State.
91. The Hon'ble Khan Sir Zulfikar Ali, Khan, Kt.,
C.S.I., of Maler Kotla, Lahore.
92. Dr. Saud-uz-Zafar Khan, M.B., Ch.B., D.T.M.,
Professor, King George's Medical College,
Lucknow.
93. Munshi Muhammad Akram Khan, B.A., Deputy
Superintendent of Police, Gorakhpur.
94. Maulvi Abdul Ahad, Khan Bahadur, Delhi.
95. Hafiz Muhammad Haleem, Khan Bahadur, Cawn-
pore.
96. Shah Munir Alam, B.A., LL.B., Sub-Judge.
Gorakhpur.
97. Mumtaz Husain, Esq., Barrister-at-Law, Lucknow.
98. Shamshad Ahmad Khan, Esq., Barrister-at-Law,
Aligarh.
99. Shaikh Muhammad Musanna, Khan Sahib, B.A.,
Deputy Collector, Benares.
100. Qazi Makhdum Husain, Retired Deputy Collector,
Saharanpur.
101. Muhammad Ismail Khan, Esq., Barrister-at-Law,
Meerut.
102. The Hon'ble Saiyid Al-i-Nabi, Khan Bahadur, B.A.,
LL.B., Agra.
103. Tassaduq Ahmad Khan, Sharwani, Esq., Barrister-
at-Law, Aligarh.
104. Abul Hasan, Esq., B.A., Inspector of Schools,
Jhansi.

105. Nawabzada

Aligarh Muslim University. [ACT XL OF 1920.]
(*The Annexure.*)

105. Nawabzada Haji Muhammad Hamidullah Khan, B.A., Chief Secretary to H. H. the Ruler of Bhopal.
106. Munshi Abdul Hamid Khan, Khan Bahadur, Deputy Collector, Bara-Banki.
107. Sir Sahibzada Nawab Abdul Qaiyum, Khan Bahadur, K.C.I.E., Peshawar.
108. Nawab Nazir Jang Bahadur Mirza Nazir Beg, Military Secretary, H. E. H. the Nizam's Government, Hyderabad State.
109. Maulvi Zafar Umar, B.A., Deputy Superintendent of Police, Agra.
110. The Hon'ble Mian Fazl-i-Hussain, Khan Bahadur, M.A., Barrister-at-Law, Lahore.
111. Saiyid Sajjad Haidar, B.A., Deputy Collector, Sultanpur.
112. Mirza Zulqadr Jang Bahadur, M.A., (Cantab.), Barrister-at-Law, Lucknow.
113. Dr. Saiyid Mahmud, Barrister-at-Law, Patna.
114. The Hon'ble Maulvi Abul Kasim Fazl-ul-Haq, M.A., B.L., Vakil, Calcutta.
115. Maulvi Abdul Haq, B.A., Aurangabad.
116. Qassim Hussain, Esq., 2nd Tallaqdar, Division Bedar, Hyderabad State.
117. Mauzzam Ali Khan, Esq., Barrister-at-Law, Moradabad.
118. Agha Muhammad Safdar, B.A., LL.B., Vakil, Sialkot.
119. Mian Haq Nawaz, B.A., LL.B., Lahore.
120. Chaudhri Khushi Muhammad Khan, Revenue Member, Kashmere State.
121. Babu Nizam-ud-din, Amritsar.
122. Said Muhammad Khan, Esq., Khurja, Bulandshahr.
123. Munshi Muhammad Wajid Ali Khan, Khan Sahib, Judicial Secretary, Bhopal State.
124. Mahomed Ali, Esq., Rampur State.

DEVELOPMENT OF THE ALIGARH MUSLIM UNIVERSITY ACT

Annexure D

LEGEND

BLACK is the original Act

RED is 1951 amendment

ORANGE is 1965 amendment

GOLD is 1972 amendment

GREEN is 1981 amendment

PREAMBLE

Original Act	AMU (A), 1951	AMU (A), 1965	AMU (A), 1972	AMU (A), 1981
An Act to establish and incorporate a teaching and residential Muslim University at Aligarh. WHEREAS it is expedient to establish and incorporate a teaching and residential Muslim University at Aligarh, and to dissolve the Societies registered under the Societies Registration Act, 1860 (21 of 1860), which are respectively known as the Muhammadan Anglo-Oriental College, Aligarh, and the Muslim University Association, and to transfer to and vest in the said University all properties and rights of the said Societies and of the Muslim University Foundation Committee;	No Change	No Change	No Change	An Act to establish and incorporate a teaching and residential Muslim University at Aligarh. WHEREAS it is expedient to establish and incorporate a teaching and residential Muslim University at Aligarh, and to dissolve the Societies registered under the Societies Registration Act, 1860 (21 of 1860), which are respectively known as the Muhammadan Anglo-Oriental College, Aligarh, and the Muslim University Association, and to transfer to and vest in the said University all properties and rights of the said Societies and of the Muslim University Foundation Committee;

SECTION 2

Original Act	AMU (A), 1951	AMU (A), 1965	AMU (A), 1972	AMU (A), 1981
2. Definitions — In this Act, and in all Statutes made hereunder, unless there is anything repugnant in the subject or context:— (a) “Academic Council” means the Academic Council of the University; (b) “Court” means the Court of the University; (c) “Executive Council” means the Executive Council of the University; (d) “Hall” means a unit of residence for students of the University, provided or maintained by the University;	2. Definitions — In this Act, and in all Statutes made hereunder, unless there is anything repugnant in the subject or context:— (a) “Academic Council” means the Academic Council of the University; (b) “Court” means the Court of the University; (c) “Executive Council” means the Executive Council of the University; (d) “Hall” means a unit of residence for students of the University, provided or maintained maintained or recognised by the University;	No Change	2. Definitions. In this Act and in all Statutes made hereunder, unless the context otherwise requires:- (a) ‘Academic Council’ means the Academic Council of the University; (b) ‘Board of Studies’ means the Board of Studies of the University; (c) ‘Chancellor’, ‘Pro-Chancellor’ and ‘Vice-Chancellor’, mean respectively, the Chancellor, Pro-Chancellor and Vice-Chancellor of the University; (b) (d) ‘Court’ means the Court of the University;	2. Definitions. In this Act and in all Statutes made hereunder, unless the context otherwise requires:- (a) ‘Academic Council’ means the Academic Council of the University; (b) ‘Board of Studies’ means the Board of Studies of the University; (c) ‘Chancellor’, ‘Pro-Chancellor’ and ‘Vice-Chancellor’, mean respectively, the Chancellor, Pro-Chancellor and Vice-Chancellor of the University; (d) ‘Court’ means the Court of the University;

<p>(e) "registered graduates" means graduates registered under the provisions of this Act;</p> <p>(f) "Statutes", "Ordinances" and "Regulations" mean, respectively, the Statutes, Ordinances and Regulations of the University for the time being in force;</p> <p>(g) "teachers" includes Professors, Reader and Lecturers and Assistant Professor, Readers and Lecturers and Demonstrators; and</p> <p>(h) "University" means the Aligarh Muslim University.</p>	<p>(e) "registered graduates" means graduates registered under the provisions of this Act;</p> <p>(f) "Statutes", "Ordinances" and "Regulations" mean, respectively, the Statutes, Ordinances and Regulations of the University for the time being in force;</p> <p>(g) "teachers" includes Professors, Reader and Lecturers and Assistant Professor, Readers and Lecturers and Demonstrators; and</p> <p>(h) "University" means the Aligarh Muslim University.</p>		<p>(e) 'Department' means a Department of Studies and includes a Centre of Studies established by the Ordinances;</p> <p>(e) (f) 'Executive Council' means the Executive Council of the University;</p> <p>(g) 'Faculty' means a Faculty of the University;</p> <p>(d) (h) 'hall' means a unit of residence for students of the University, provided maintained or recognised by the University or of corporate life maintained by the University for its students;</p> <p>(f) (i) 'Statutes', 'Ordinances' and 'Regulations' mean respectively, the Statutes, Ordinances and Regulations of the University for the time being in force;</p> <p>(j) 'Students' Council' means the Students' Council of the University;</p> <p>(k) 'teachers' includes Professors, Reader and Lecturers and Assistant Professor, Readers and Lecturers and Demonstrators—means professors, readers, lecturers and such other persons as may be appointed for imparting instruction in the University or a hall and are designated as teachers by the Ordinances;</p> <p>(h) (l) 'University' means the Aligarh Muslim University.</p>	<p>(e) 'Department' means a Department of Studies and includes a Centre of Studies established by the Ordinances;</p> <p>(f) 'Executive Council' means the Executive Council of the University;</p> <p>(g) 'Faculty' means a Faculty of the University;</p> <p>(h) 'hall' means a unit of residence or of corporate life maintained by the University for its students;</p> <p>(hh) "non-teaching staff" means employees of the University other than teachers;</p> <p>(i) 'Statutes', 'Ordinances' and 'Regulations' mean respectively, the Statutes, Ordinances and Regulations of the University for the time being in force;</p> <p>(j) 'Students' Council' means the Students' Council of the University;</p> <p>(k) 'teachers' means professors, readers, lecturers and such other persons as may be appointed for imparting instruction in the University or a hall and are designated as teachers by the Ordinances;</p> <p>(l) "University" means the Aligarh Muslim University. the educational institution of their choice established by the Muslims of India, which originated as the Muhammadan Anglo-Oriental College, Aligarh, and which was subsequently incorporated as the Aligarh Muslim University.</p>
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SECTION 3

Original Act	AMU (A), 1951	AMU (A), 1965	AMU (A), 1972	AMU (A), 1981
3. Incorporation— The First Chancellor, Pro-Chancellor and Vice Chancellor who shall be the persons appointed in this behalf by a notification of the Governor General in Council in the Gazette of	No Change	No Change	3. Incorporation-- The Chancellor, the Pro-Chancellor and the Vice-Chancellor and the members of the Court, the Executive Council and the Academic Council, for the time being, shall be a body corporate	No Change

<p>India, and the persons specified in the Schedule as the first members of the Court and all persons, who may hereafter become, or be appointed as, such officers or members, so long as they continue to hold such office or membership, are hereby constituted a body corporate by the name of the Aligarh Muslim University, and shall have perpetual succession and a Common Seal and shall sue and be sued by that name.</p>			<p>by the name of the Aligarh Muslim University and shall have perpetual succession and a common seal and shall sue and be sued by that name.</p>	
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SECTION 5

Original Act	AMU (A), 1951	AMU (A), 1965	AMU (A), 1972	AMU (A), 1981
<p>5. Powers of the University— The University shall have the following power, namely:- (1) To provide for instruction in such branches of learning as the University may think fit and to make provision for research and for the advancement and dissemination of knowledge; (2) To promote Oriental and Islamic studies and give instruction in Muslim theology and religion and to impart moral and physical training; (3) To hold examinations and to grant and confer degrees and other academic distinctions to and on persons who- (a) shall have pursued a course of study in the University, or (b) are teachers in educational institutions, or under conditions laid down in the Statutes and Ordinances, and shall have passed the examinations of the University, under like conditions, (4) To confer honorary degrees or other distinctions on approved persons in the manner laid down in the Statutes;</p>	<p>5. Powers of the University-- The University shall have the following power, namely:- (1) To provide for instruction in such branches of learning as the University may think fit and to make provision for research and for the advancement and dissemination of knowledge; (2) To promote Oriental and Islamic studies and give instruction in Muslim theology and religion and to impart moral and physical training; (3) To hold examinations and to grant and confer degrees and other academic distinctions to and on persons who- (a) shall have pursued a course of study in the University, or (b) are teachers in educational institutions; or (c) being women, shall have pursued a course of private study, under conditions laid down in the Statutes and Ordinances, and shall have passed the examinations of the University, under like conditions,</p>	<p>No Change</p>	<p>5. Powers of the University-- The University shall have the following power, namely:- (1) To provide for instruction in such branches of learning as the University may think fit and to make provision for research and for the advancement and dissemination of knowledge; (2) (a) To promote Oriental and Islamic studies and give instruction in Muslim theology and religion and to impart moral and physical training; (b) to promote the study of religion, civilisation and culture of India. (3) To hold examinations and to grant and confer degrees and other academic distinctions to and on persons who- (a) shall have pursued a course of study in the University, or (b) are teachers in educational institutions or, (c) being women, shall have pursued a course of private study, under conditions laid down in the Ordinances and shall have passed the</p>	<p>5. Powers of the University— The University shall have the following power, namely:- (1) To provide for instruction in such branches of learning as the University may think fit and to make provision for research and for the advancement and dissemination of knowledge; (2) (a) To promote Oriental and Islamic studies and give instruction in Muslim theology and religion and to impart moral and physical training; (b) to promote the study of religion, civilisation and culture of India. (c) to promote especially the educational and cultural advancement of the Muslims of India; (3) to hold examinations and to grant diplomas or certificates to, and confer degrees and other academic distinctions on, persons subject to such conditions as the University may determine and to withdraw any such diplomas, certificates, degrees or other academic distinctions for good and sufficient cause;</p>

<p>(5) To grant such diplomas to and to provide such lectures and instruction for persons, not being members of the University, as the University may determine;</p> <p>(6) To co-operate with other Universities and authorities in such manner and for such purposes as the University may determine;</p> <p>(7) To institute Professorships, Readerships, Lectureships and any other teaching posts required by the University, and to appoint persons to such Professorships, Readerships, Lectureships and posts;</p> <p>(8) To institute and award Fellowships (including Travelling Fellowships), Scholarships, Exhibitions and Prizes in accordance with the Statutes and the Ordinances;</p> <p>(9) To institute and maintain Halls for the residence of students of the University;</p> <p>(10) To demand and receive such fees as may be prescribed by the Ordinances;</p> <p>(11) To supervise and control the residence and discipline of students of the University and to make arrangements for promoting their health; and</p> <p>(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 and to cultivate and promote arts, science and other branches of learning, including professional studies, technology, Islamic learning and Muslim theology.</p>	<p>(4) To confer honorary degrees or other distinctions on approved persons in the manner laid down in the Statutes;</p> <p>(5) To grant such diplomas and certificates to and to provide such lectures and instruction for persons, not being members of the University, as the University may determine;</p> <p>(6) To co-operate with other Universities and authorities in such manner and for such purposes as the University may determine;</p> <p>(7) To institute Professorships, Readerships, Lectureships and any other teaching posts required by the University, and to appoint persons to such Professorships, Readerships, Lectureships and posts and other posts;</p> <p>(8) To institute and award Fellowships (including Travelling Fellowships), Scholarships, Studentship, Exhibitions and Prizes in accordance with the Statutes and the Ordinances;</p> <p>(9) To institute and maintain Halls for the residence of and Hostels and to recognise places of residence for the students of the University;</p> <p>(10) To demand and receive such fees as may be prescribed by the Ordinances;</p> <p>(11) To supervise and control the residence and to regulate the discipline of students of the University and to make arrangements for promoting their health; and</p> <p>(11A) to make special arrangements in respect of the residence, discipline and teaching of women students;</p> <p>(11B) to create administrative, ministerial and other necessary posts and to make appointments thereto; and</p>		<p>examinations of the University under like conditions;</p> <p>(3) to hold examinations and to grant diplomas or certificates to, and confer degrees and other academic distinctions on, persons subject to such conditions as the University may determine and to withdraw any such diplomas, certificates, degrees or other academic distinctions for good and sufficient cause;</p> <p>(4) To confer honorary degrees or other distinctions in the manner laid down in the Statutes;</p> <p>(5) To grant such diplomas and certificates to and to provide such lectures and instruction for persons, not being members of the University, as the University may determine;</p> <p>(5) to provide instruction for such persons who are not members of the University, as the University may determine;</p> <p>(6) To co-operate or collaborate with other Universities and authorities in such manner and for such purposes as the University may determine;</p> <p>(7) To institute Professorships, Readerships, Lectureships and other teaching posts required by the University, and to appoint persons to such Professorships, Readerships, Lectureships and other posts;</p> <p>(7A) to appoint persons working in any other University, institution or organisation as teachers of the University for a specified period;</p> <p>(8) To institute and award Fellowships (including Travelling Fellowships), Scholarships, Studentship, Exhibitions and Prizes in accordance with the Statutes and the Ordinances;</p> <p>(9) to institute and maintain, within a radius of twenty-five kilometres of the University Mosque, halls and hostels and to recognise places of residence for the students of the University within the said limits and to withdraw such recognition accorded to any such place of residence;</p> <p>(9) to institute and maintain Halls for the students of the University;</p> <p>(9A) to establish within a radius of twenty-five kilometres of the University Mosque such Special Centres, Specialised Laboratories or</p>	<p>(4) To confer honorary degrees or other distinctions in the manner laid down in the Statutes;</p> <p>(5) to provide instruction for such persons who are not members of the University, as the University may determine;</p> <p>(6) To co-operate or collaborate with other Universities and authorities in such manner and for such purposes as the University may determine;</p> <p>(7) To institute Professorships, Readerships, Lectureships and other teaching or academic posts required by the University, and to appoint persons to such Professorships, Readerships, Lectureships and other posts and determine their conditions of service in accordance with the Statutes;</p> <p>(7A) to appoint persons working in any other University, institution or organisation as teachers of the University for a specified period;</p> <p>(8) To institute and award Fellowships (including Travelling Fellowships), Scholarships, Studentship, Exhibitions and Prizes in accordance with the Statutes and the Ordinances;</p> <p>(9) to institute and maintain, within a radius of twenty-five kilometres of the University Mosque, halls and hostels and to recognise places of residence for the students of the University within the said limits and to withdraw such recognition accorded to any such place of residence;</p> <p>(9) to institute and maintain Halls for the students of the University;</p> <p>(9A) to establish within a radius of twenty-five kilometres of the University Mosque such Special Centres, Specialised Laboratories or</p>
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	<p>(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 and to cultivate and promote arts, science and other branches of learning, including professional studies, technology, Islamic learning and Muslim theology.</p>	<p>and Prizes in accordance with the Statutes and the Ordinances; (9) To institute and maintain Halls for the residence of and Hostels and to recognise places of residence for the students of the University; (9) to institute and maintain, within a radius of twenty- five kilometres of the University Mosque, halls and hostels and to recognise places of residence for the students of the University within the said limits and to withdraw such recognition accorded to any such place of residence; (9A) to establish within a radius of twenty-five kilometres of the University Mosque such Special Centres, Specialised Laboratories or other units for research and instruction as are, in the opinion of the University, necessary for the furtherance of its objects; (10) To demand and receive such fees as may be prescribed by the Ordinances; (11) To supervise and control the residence and to regulate the discipline of students of the University and to make arrangements for promoting their health; (11A) to make special arrangements in respect of the residence, discipline and teaching of women students; (11B) to create administrative, ministerial and other necessary posts and to make appointments thereto; and (11C) to regulate and enforce discipline among the employees of the University and to take such disciplinary measures as may be deemed necessary; (11D) to acquire, hold, manage and dispose of property, movable or</p>	<p>other units for research and instruction as are, in the opinion of the University, necessary for the furtherance of its objects; (10) To demand and receive such fees as may be prescribed by the Ordinances; (11) To supervise and control the residence and to regulate the discipline of students of the University and to make arrangements for promoting their health; (11A) to make special arrangements in respect of the residence, discipline and teaching of women students; (11B) to create administrative, ministerial and other posts and to make appointments thereto and determine their conditions of service in accordance with the Statute; (11C) to regulate and enforce discipline among the employees of the University and to take such disciplinary measures as may be deemed necessary; (11D) to acquire, hold, manage and dispose of property, movable or immovable, including trust or endowed property for the purposes of the University; (11E) to borrow, with the approval of the Central Government, on the security of the property of the University, money for the purposes of the University; (11F) to declare a Department of Studies to be an autonomous Department; and (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.</p>
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			<p>immovable, including trust or endowed property for the purposes of the University;</p> <p>(11E) to borrow, with the approval of the Central Government, on the security of the property of the University, money for the purposes of the University;</p> <p>(11-F) to declare a Department of Studies to be an autonomous Department; and</p> <p>(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.</p>	
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SECTION 8

Original Act	AMU (A), 1951	AMU (A), 1965	AMU (A), 1972	AMU (A), 1981
<p>8. University open to all races, creeds and classes— The University shall, subject to the provision of this Act and the Ordinances, be open to all persons of either sex and of whatever race, creed or class:</p> <p>Provided that special provision may be made by the Ordinances exempting women from attending at public lectures and tutorial classes and prescribing for them special courses of study.</p>	<p>8. University open to all classes, castes and creeds— The University shall, subject to the provision of this Act and the Ordinances, be open to all persons of either sex and of whatever race, creed, caste, or class, and it shall not be lawful for the University to adopt or impose on any person, any test whatsoever of religious belief or profession in order to entitle him to be admitted therein, as a teacher or student, or to hold any office therein, or to graduate thereat, or to enjoy or exercise any privilege thereof, except in respect of any particular benefaction accepted by the University, where such test is made a condition thereof by any testamentary or other instrument creating such benefaction:</p>	No change	<p>8. University open to all classes, castes and creeds— The University shall be open to persons of either sex and of whatever race, creed, caste, or class, and it shall not be lawful for the University to adopt or impose on any person, any test whatsoever of religious belief or profession in order to entitle him to be admitted therein, as a teacher or student, or to hold any office therein, or to graduate thereat, or to enjoy or exercise any privilege thereof, except in respect of any particular benefaction accepted by the University before the commencement of the Aligarh Muslim University (Amendment) Act, 1972, where such test is made a condition thereof by any testamentary or other instrument creating such benefaction:</p>	<p>8. University open to all class-castes and creeds persons— The University shall be open to all persons (including the teachers and taught) of either sex and of whatever race, religion, creed, caste or class: and it shall not be lawful for the University to adopt or impose on any person, any test whatsoever of religious belief or profession in order to entitle him to be admitted therein, as a teacher or student, or to hold any office therein, or to graduate thereat, or to enjoy or exercise any privilege thereof, except in respect of any particular benefaction accepted by the University before the commencement of the Aligarh Muslim University (Amendment) Act, 1972, where such test is made a condition thereof by any</p>

	<p>Provided that nothing in this section shall be deemed to prevent religious instruction being given in the manner prescribed by the Ordinances to those who have consented to receive it.</p> <p>Provided that special provision may be made by the Ordinances exempting women from attending at public lectures and tutorial classes and prescribing for them special courses of study.</p>		<p>Provided that nothing in this section shall be deemed to prevent religious instruction being given in the manner prescribed by the Ordinances to those who have consented to receive it.</p>	<p>testamentary or other instrument creating such benefaction</p> <p>Provided that nothing in this section shall be deemed to prevent religious instruction being given in the manner prescribed by the Ordinances to those who have consented to receive it</p>
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SECTION 9

Original Act	AMU (A), 1951	AMU (A), 1965	AMU (A), 1972	AMU (A), 1981
<p>9. Religious instructions— The Court shall have power to make Statutes providing that instruction in the Muslim religion shall be compulsory in the case of Muslim students.</p>	<p>9. Religious instructions—The Court shall have power to make Statutes providing that instruction in the Muslim religion shall be compulsory in the case of Muslim students.</p>	No Change	No Change	No Change

SECTION 15

Original Act	AMU (A), 1951	AMU (A), 1965	AMU (A), 1972	AMU (A), 1981
<p>15. Rectors— The persons specified in the Statutes shall be the Rectors of the University.</p>	<p>15. Chief Rector and Rectors-- (1) The Governor of the State of Uttar Pradesh shall be the Chief Rector of the University.</p> <p>(2) Such persons as may be appointed in this behalf in accordance with the Statutes shall be the Rectors of the University.</p>	No Change	<p>15. Chief Rector and Rectors— The Governor of the State of Uttar Pradesh shall be Chief Rector of the University.</p> <p>(2) Such persons as may be appointed in this behalf in accordance with the Statutes shall be the Rectors of the University.</p>	No Change

SECTION 17

Original Act	AMU (A), 1951	AMU (A), 1965	AMU (A), 1972	AMU (A), 1981
<p>17. Chancellor— (1) The successors to the first Chancellor shall be elected by the Court.</p>	No Change	No Change	<p>17. Chancellor— (1) The successors to the first The Chancellor shall be elected by the</p>	<p>17. The Chancellor— (1) The Chancellor of the University shall be appointed by the</p>

<p>(2) The Chancellor shall hold office for three years.</p> <p>(3) The Chancellor shall, by virtue of his office, be the head of the University.</p> <p>(4) The Chancellor shall, if present, preside at Convocations of the University held for conferring degrees and at meetings of the Court.</p> <p>(5) Every proposal for the conferment of an honorary degree shall be subject to the confirmation of the Chancellor.</p>			<p>Court appointed by the Visitor in such manner as may be prescribed by the Statutes.</p> <p>(2) The Chancellor shall hold office for three years.</p> <p>(3) (2) The Chancellor shall, by virtue of his office, be the head of the University.</p> <p>(4) (3) The Chancellor shall, if present, preside at Convocations of the University held for conferring degrees. and at meetings of the Court.</p> <p>(5) Every proposal for the conferment of an honorary degree shall be subject to the confirmation of the chancellor.</p>	<p>Visitor in such manner elected by the Court in such manner and for such term as may be prescribed by the Statutes.</p> <p>(2) The Chancellor shall, by virtue of his office, be the Head of the University.</p> <p>(3) The Chancellor shall, if present, preside at the convocations of the University held for conferring degrees.</p>
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NOTE: SIMILAR CHANGES AS MADE IN SECTION 17 BY AMU (A), 1981 WERE ALSO MADE IN SECTION 18 BY THE AMU (A), 1981.

SECTION 19

Original Act	AMU (A), 1951	AMU (A), 1965	AMU (A), 1972	AMU (A), 1981
<p>19. The Vice-Chancellor— (1) The successors to the first Vice -Chancellor shall be elected by the Court from among its members. Such appointment shall be subject to the approval of the Governor General in Council.</p> <p>(2) The Vice-Chancellor shall exercise such powers and perform such functions as may be prescribed by the Statutes.</p>	<p>19. The Vice-Chancellor— (1) The successors to the first Vice-Chancellor shall be elected by the Court from among its members. Such appointment shall be subject to the approval of the Governor General in Council.</p> <p>(1) The successors to the Vice-Chancellor holding office at the commencement of the Aligarh Muslim University (Amendment) Act 1951, shall be appointed in the manner provided in the Statutes.</p> <p>(2) The Vice-Chancellor shall exercise such powers and perform such functions as may be prescribed by the Statutes.</p>	<p>No Change</p>	<p>19. The Vice-Chancellor— (1) The successors to the The Vice-Chancellor holding office at the commencement of the Aligarh Muslim University (Amendment) Act 1951, shall be appointed by the Visitor in such manner as may be prescribed by the Statutes.</p> <p>(2) The Vice-Chancellor shall be the principal executive and academic officer of the University, and shall exercise general supervision and control over the affairs of the University and give effect to the decisions of all the authorities of the University.</p> <p>(3) The Vice-Chancellor may, if he is of opinion that immediate action is necessary on any matter, exercise any power conferred on any authority of the University by or under this Act and shall report to such authority the action taken by him on such matter:</p> <p style="padding-left: 40px;">Provided that if the authority concerned is of opinion that such action ought not to have been taken, it may refer the</p>	<p>No Change</p>

			<p>matter to the Visitor whose decision thereon shall be final:</p> <p>Provided further that any person in the service of the University who is aggrieved by the action taken by the Vice-Chancellor under this sub-section shall have the right to appeal against such action to the Executive Council within three months from the date on which decision on such action is communicated to him and thereupon the Executive Council may confirm, modify or reverse the action taken by the Vice-Chancellor.</p> <p>(2) (4) The Vice-Chancellor shall exercise such other powers and perform such other functions as may be prescribed by the Statutes or Ordinances.</p>	
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SECTION 23

Original Act	AMU (A), 1951	AMU (A), 1965	AMU (A), 1972	AMU (A), 1981
<p>23. The Court— (1) The Court shall consist of the Chancellor, the Pro-Chancellor and the Vice Chancellor for the time being, and such other persons as may specified in the Statutes:</p> <p>Provided that no person other than a Muslim shall be a member thereof.</p> <p>(2) 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, the Statutes, the Ordinances and the Regulations. It shall have power to review the acts of the Executive and the Academic Councils (save where such Councils have acted in accordance with powers conferred</p>	<p>23. The Court— (1) The Court shall consist of the Chancellor, the Pro-Chancellor and the Vice-Chancellor and the Pro-Vice-Chancellor (if any) for the time being, and such other persons as may specified in the Statutes:</p> <p>Provided that no person other than a Muslim shall be a member thereof.</p> <p>(2) 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, the Statutes, the Ordinances and the Regulations. It shall have power to review the acts of the Executive and the Academic Councils (save where such Councils have acted in</p>	<p>23. The Court— (1) The Court shall consist of the Chancellor, the Pro-Chancellor and the Vice-Chancellor and the Pro-Vice-Chancellor (if any) for the time being, and such other persons as may specified in the Statutes:</p> <p>(2) The Court shall be the supreme governing body of the University and shall have power to review the acts of the Executive and the Academic Councils (save where such Councils have acted in accordance with powers conferred on them under this Act, the Statutes or the Ordinances) and shall exercise all the powers of the University not otherwise provided for by this Act, the Statutes and the Ordinances and the Regulations.</p>	<p>23. The Court— (1) The constitution of the Court and the term of office of its members shall be such as may be prescribed by the Statutes.</p> <p>(2) Subject to the provisions of this Act, the Court shall have the following powers and functions, namely-</p> <p>(a) to review from time to time, the broad, policies and programmes of the University and to suggest measures for the improvement and development of the University;</p> <p>(b) to consider and pass resolutions on the annual report, annual accounts of</p>	<p>23. The Court— (1) The Court shall consist of the Chancellor, the Pro-Chancellor, the Vice-Chancellor and the Pro-Vice-Chancellor (if any) for the time being, and such other persons as may be specified in the Statutes. <i>[Note : This is in Red as the formulation is the same as 1951 amendment]</i></p> <p>(2) 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, the Statutes, the Ordinances and the Regulations and it shall have power to review the acts of the Executive and the Academic Councils (save where such Councils have acted in accordance with powers conferred</p>

<p>on them under this Act, the Statutes or the Ordinances) and direct that necessary action be taken by the Executive or the Academic Council, as the case may be, on any recommendations of the Lord Rector.</p> <p>(3) Subject to the provisions of this Act, the Court shall exercise the following powers and perform the following duties, namely:-</p> <p>(a) of making Statutes and of amending or repealing the same;</p> <p>(b) of considering Ordinances;</p> <p>(c) of considering and passing resolutions on the annual report the annual accounts and the financial estimates;</p> <p>(d) of electing such persons to serve on authorities of the University and of appointing such officers as may be prescribed by this Act or the Statutes, and</p> <p>(e) of exercising such other powers and performing such other duties as may be conferred or imposed upon it by this Act or the Statutes.</p>	<p>accordance with powers conferred on them under this Act, the Statutes or the Ordinances) and direct that necessary action be taken by the Executive or the Academic Council, as the case may be, on any recommendations of the Lord Rector.</p> <p>(3) Subject to the provisions of this Act, the Court shall exercise the following powers and perform the following duties, namely:-</p> <p>(a) of making Statutes and of amending or repealing the same;</p> <p>(b) of considering Ordinances;</p> <p>(c) of considering and passing resolutions on the annual report the annual accounts and the financial estimates;</p> <p>(d) of electing such persons to serve on authorities of the University and of appointing such officers as may be prescribed by this Act or the Statutes, and</p> <p>(e) of exercising such other powers and performing such other duties as may be conferred or imposed upon it by this Act or the Statutes.</p>	<p>(3) Subject to the provisions of this Act, the Court shall exercise the following powers and perform the following duties, namely:-</p> <p>(a) of making Statutes and of amending or repealing the same;</p> <p>(b) of considering Ordinances;</p> <p>(c) of considering and passing resolutions on the annual report the annual accounts and the financial estimates;</p> <p>(d) of electing such persons to serve on authorities of the University and of appointing such officers as may be prescribed by this Act or the Statutes, and</p> <p>(e) of exercising such other powers and performing such other duties as may be conferred or imposed upon it by this Act or the Statutes.</p> <p>(2) The functions of the Court shall be-</p> <p>(a) to advise the Visitor in respect of any matter which may be referred to the Court for advice;</p> <p>(b) to advise any other authority of the University in respect of any matter, which may be referred to the Court for advice; and</p> <p>(c) to perform such other duties and exercise such other powers as may be assigned to it by the Visitor or under this Act."</p>	<p>the University and the audit report thereon;</p> <p>(c) to advise the Visitor in respect of any matter which may be referred to the Court it for advice; and</p> <p>(d) to perform such other duties and exercise such other powers as may be assigned to it by the Visitor or under this Act functions as may be prescribed by the Statutes.</p>	<p>on them under this Act, the Statutes or the Ordinances). <i>[Note : This formulation is largely the same as original Act]</i></p> <p>(3) Subject to the provisions of this Act, the Court shall exercise the following powers and perform the following duties, namely:-</p> <p>(a) to make Statutes and to amend or repeal the same;</p> <p>(b) to consider Ordinances;</p> <p>(c) to consider and pass resolutions on the annual report, the annual accounts and the financial estimates;</p> <p>(d) to elect such persons to serve on the authorities of the University and to appoint such officers as may be prescribed by this Act or the Statutes; and</p> <p>(e) to exercise such other powers and perform such other duties as may be conferred or imposed upon it by this Act or the Statutes.</p> <p><i>[Note : This formulation is largely the same as original Act]</i></p>
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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 2318 OF 2006

IN THE MATTER OF :

UNION OF INDIA

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PETITIONER

VERSUS

MALAY SHUKLA

.....

RESPONDENT

SUBMISSIONS – PART II
ON BEHALF OF SOLICITOR GENERAL OF INDIA

UNIVERSITIES AND INSTITUTIONS IN THE PRE-CONSTITUTION ERA

Initial phase

1. During the British colonial era in India, the regulation of higher education underwent various phases and changes. The governance and oversight of educational institutions were primarily carried out by the British colonial administration. Higher education was under British control, with the Governor General directly overseeing universities.

2. The judgment in *Azeez Basha vs Union of India* [1968] 1 SCR 833 [hereinafter referred to as *Basha*] merely deals with the sui generis case of Aligarh Muslim University and take in to consideration the statutory and other position existing before and in in 1920. *Basha* [supra] merely concludes the position about Aligarh Muslim University and does not lay down any law of wider interpretation.

The judgment in *Basha* [supra] can never be appreciated in absence of the historical perspective and the position of various educational institutions existing in and before 1920.

3. The brief historical facts regarding regulation of universities by the British Government in the pre-constitution era, which ultimately led to the formation of University Grants Commission in 1956 in the post constitution era are as follows:

DATE	PARTICULARS
1813	The Charter Act of 1813 of the British Crown allocated funds for education in British India, leading to the establishment of institutions like the Hindu College in Calcutta in 1817. The Charter of 1813, read as under : "XLII. Colleges and Seminaries Abroad to be subject to the Control of the Board

DATE	PARTICULARS
	<p>And be it further enacted, That the said Board of Commissioners Colleges and for the Affairs of India, by force and virtue of this Act, shall have and be Seminaries Abroad to be invested with full Power and Authority to superintend, direct, and control subject to the all Orders and Instructions whatsoever, which in anyway relate to or concern any Rules, Regulations, or Establishments whatsoever of the several Colleges Colleges established by the said Company at Calcutta or Fort Saint George, or of any Seminaries which may be established under the Authority of any of the Governments of the said Company, in the fame Manner, to all Intents and Purposes, and under and subject to all such and the like Regulations and Provisions, as if such Orders and Instructions immediately related to and concerned the Government and Revenues of the said Territorial Acquisitions in the East Indies.</p> <p>XLIII. Provision for Schools , Public Lectures or other Literary Institutions, for the Benefit of the Natives to be regulated by the Governor General in Council, subject to Control of the Board ; but appointments to Offices therein to the made by the Local Government</p> <p>And be it further enacted, That it shall be lawful for the Governor General in Council to direct, that out of any Surplus which may remain of the Rents, Revenues and Profits, arising from the said Territorial Acquisitions, after defraying the Expences of the Military, Civil, and Commercial Establishments, and paying the Interest of the Debt, in Manner herein-after provided , a Sum of not less than One Lack of Rupees in each Year shall be set apart and applied to the Revival and Improvement of Literature and the Encouragement of the learned Natives of India, and for the Introduction and Promotion of a Knowledge of the Sciences among the Inhabitants of the British Territories in India ; and that any Schools, Public Lectures or other Institutions, for the Purposes aforesaid, which shall be founded at the Prefidencies of Fort William, Fort Saint George, or Bombay, or in any other Parts of the British Territories in India, in virtue of this Act, shall be governed by such Regulations as may from Time to Time be made by the said Governor General in Council; subject nevertheless to such Powers as are herein vested in the said Board of Commissioners for the Affairs of India, respecting Colleges and Seminaries: Provided always, that all Appointments to Offices in such Schools, Lectureships and other Institutions, shall be made by or under the Authority of the Governments within which the fame shall be situated."</p>
1817-1818	The Hindu College is established in Calcutta in 1817 and the Serampore College is established in 1818 by William Carey, Joshua Marshman, and William Ward.
1854	An education policy of the British for British India came in the form of the Wood's Dispatch of 1854 officially known as the "Despatch on Indian Education". It was a seminal educational policy document issued in 1854 by Sir Charles Wood, the President of the Board of Control for India. It marked a significant step in the development of the modern education

DATE	PARTICULARS
	<p>system in India. The Dispatch advocated for the establishment of universities in major cities and improvements in schools. It specifically provided as under :</p> <p><u>"22. We now proceed to sketch out the general scheme of the measures which we propose to adopt. We have endeavoured to avail ourselves of the knowledge which has been gained from the various experiments which have been made in different parts of India for the encouragement of education; and we hope, by the more general adoption of those plans which have been carried into successful execution in particular districts, as well as by the introduction of other measures which appear to be wanting, to establish such a system as will prove generally applicable throughout India, and thus to impart to the educational efforts of our different Presidencies a greater degree of uniformity and method than at present exists.</u></p> <p>24. Some years ago, we declined to accede to a proposal made by the Council of Education, and transmitted to us, with the recommendation of your Government, for the institution of an university in Calcutta. The rapid spread of a liberal education among the natives of India since that time, the high attainments shown by the native candidates for Government scholarships, and by native students in private institutions, the success of the medical colleges, <u>and the requirements of an increasing European and AngloIndian population, have led us to the conclusion that the time has now arrived for the establishment of universities in India, which may encourage a regular and liberal course of education, by conferring academical degrees as evidences of attainment in the different branches of art and science, and by adding marks of honour for those who may desire to compete for honorary distinction.</u></p> <p>27. <u>The function of the universities will be to confer degrees upon such persons as, having been entered as candidates according to the rules which may be fixed in this respect, and having produced, from any of the " affiliated institutions," which will be enumerated on the foundation of the universities, or be from time to time added to them by Government, certificates of conduct, and of having pursued a regular course of study for a given time, shall have also passed at the universities such an examination as may be required of them. It may be advisable to dispense with the attendance required at the London University for the matriculation examination, and to substitute some mode of entrance examination which may secure a certain amount of knowledge in the candidates for degrees, without making their attendance at the universities necessary, previous to the final examination.</u></p> <p>28. <u>The examinations for degrees will not include any subjects connected with religious belief; and the affiliated institutions will be under the management of persons of every variety of religious persuasion.</u> As in England, various institutions in immediate connection • with the Church of England, the Presbyterian College at Caermarthon, the Roman Catholic College at Oscott, the Wesleyan College at Sheffield, the Baptist College at Bristol, and the Countess of Huntingdon's College at Cheshunt, are among the institutions from which the</p>

DATE	PARTICULARS
	<p>London University is empowered to receive certificates for degress, so in India, institutions conducted by all denominations of Christians, Hindoos, Mahomedans, Parsees, Sikhs, Bhuddiste, Jains, or any other religious persuasions, may be affiliated to the universities, if they are found to afford the requisite course of study, and can be depended upon for the certificates of conduct which will be required.</p> <p>32. <u>Other branches of Useful learning may suggest themselves to you, in which it might be advisable that lectures should be read, and special degrees given; and it would greatly encourage the cultivation of the vernacular languages of India that professorships should be founded for those languages, and, perhaps, also for Sanskrit, Arabic, and Persian. A knowledge of the Sanskrit language, the root of the vernaculars of the greater part of India, is more especially necessary to those who are engaged in the work of composition in those languages; while Arabic, through Persian, is one of the component parts of the Urdu language, which extends over so large a part of Hindostan, and is, we are informed, capable of considerable development. The grammar of these languages, and their application to the improvement of the spoken languages of the country, are the points to which the attention of these professors should be mainly directed; and there will be an ample field for their labours unconnected with any instruction in the tenets of the Hindoo or Mahomedan religions. We should refuse to sanction any such teaching, as directly opposed to the principle of religious neutrality to which we have always adhered.</u></p> <p>37. <u>The candidates for university degrees will, as we have already explained, be supplied by colleges affiliated to the universities. These will comprise all such institutions as are capable of supplying a sufficiently high order of instruction in the different branches of art and science, in which university degrees will be accorded. The Hindoo, Hooghly, Dacca, Kishuagr.r, and Berhamporo Government Anglo-vernacular Colleges, the Sanskrit College, the Mahomedan Madrissas, and the Medical College, in Bengal; the Elpliinstone Institution, the Poonah College, and the Grant Medical College, in Bombay; the Delhi, Agra, Benares, Bareilly, and Thomason Colleges, in the North-western Provinces; seminaries, such as the Oriental Seminary in Calcutta, which have been established by highly educated natives, a class of places of instruction which we are glad to learn is daily increasing in numbers and efficiency; those which, like the Parental Academy, are conducted by East Indians; Bishop's College, the General Assembly's Institution, Dr. Duff's College, the Baptist College at Serampore, and other institutions under the superintendence of different religious bodies and missionary societies; will, at once, supply a considerable number of educational establishments, worthy of being affiliated to the universities, and of occupying the highest place in the scale of general instruction."</u></p>
1856-57	Towards the end of 1856, the British Government in India passed draft Bills for the establishment of the first three Universities in India, namely Universities of Calcutta, Bombay and Madras. These Acts [i.e. Act II, XXII, XXVII of 1857] were passed in early 1857 by the Imperial Legislative

DATE	PARTICULARS
	<p>Council [a representative body empowered by the British Parliament to make laws for British India which continued till 1947]. Accordingly, the Universities at Bombay, Calcutta and Madras came to be established.</p>
06.10.1860	<p>Act XLVII of 1860, passed by the Imperial Legislative Council, expanded the powers of the abovesaid three Universities to grant degrees:</p> <p style="padding-left: 40px;">"An Act for giving to the Universities of Calcutta, Madras, and Bombay the power of conferring Degrees in addition to those mentioned in Acts II, XXII, and XXVII of 1857. WHEREAS it is expedient to give to the Universities of Calcutta, Madras, and Bombay, established under Acts II, XXII, and XXVII of 1857, the power of conferring Degrees other than the Degrees in that Act expressly provided for; It is enacted as follows :</p> <p style="padding-left: 40px;">I. It shall be competent to the Chancellor, Vice Chancellor, and Fellows of the Universities of Calcutta, Madras, or Bombay to confer degrees respectively to confer such Degrees and to grant such Diplomas or Licenses in respect of Degrees as the said Chancellor, Vice Chancellor, and Fellows of any such University shall have appointed or shall appoint by any Bye-laws or Regulations made and passed or to be made or passed by them in the manner provided in the said Acts, and submitted to and approved by the Governor-General in Council as far as regards the University of Calcutta, or by the Governor in Council of Madras or Bombay as regards the Universities of Madras and Bombay respectively."</p>
1882	Panjab University was established by the Panjab University Act, 1882.
1887	Allahabad University was established by The Allahabad University Act, 1887.
1902	<p>The Report of the Indian Universities Commission was published. The said report, with regard to MAO, specifically noted as under :</p> <p style="padding-left: 40px;"><u>"32. In connection with the Muhammadan Anglo-Oriental College at Aligarh, proposals have been put forward from time to time for the creation of a Muhammadan University. It does not appear that these proposals have received the support which would be necessary to give the scheme a practical character. And even if resources, adequate to the formation of a complete University, were forthcoming, it is for Government to decide as to the expediency of creating a denominational University. In the present circumstances of India, we hold that while no obstacle should be placed in the way of denominational colleges, it is important to maintain the undenominational character of the Universities."</u></p>
24.03.1904	The Indian Universities Act (VIII of 1904) was passed.

DATE	PARTICULARS
	This was an umbrella Act which repealed the other Acts and brought within its purview the abovesaid five Universities. It also reconstituted the Governing Bodies of the universities and gave statutory recognition to the Syndicates.
01.10.1915	The Benaras Hindu University Act is passed by the Imperial Legislative Council leading to the establishment of the BHU.

Universities established through British Legislative actions

4. The above history clearly depicts that the British Parliamentary policy was to confer the status of University only when –

- i. The nature of the University is non-denominational;
- ii. Provides for prominent Governmental control;

This was an era in which establishment of any University [which had advantages in the form of funds, values of degrees, possibility of employment with Imperial Government by its alumni, etc.] needed a legislative enactment by the British Legislature fulfilling the above referred two criteria.

In all cases where Universities were established by way of an Act of Imperial Legislature, it ensured both the above referred two criteria are met. The presence of both above criteria obviously changed and resulted in alteration of character of any institution even if such institution was [before the enactment by Imperial Legislature making it an University] of a denominational or religious character.

Such Universities which were established by an Act of Imperial Legislature, were national, open and secular centres of learning.

The following is the list of Universities established by the Imperial Legislature, before the Constitution of India came in to force :

S.NO.	NAME OF THE UNIVERSITY	DATE OF ESTABLISHMENT	NAME OF THE ACT
1.	University of Calcutta	1857	Act No. II of 1857 passed by the Legislative Council of India. Received the assent of the Governor General on 24 th January 1857.
2.	University of Bombay	1857	Act No. XXII of 1857 passed by the Legislative Council of India.

S.NO.	NAME OF THE UNIVERSITY	DATE OF ESTABLISHMENT	NAME OF THE ACT
	(now known as University of Mumbai)		Received the assent of the Governor General on 18 th July 1857.
3.	University of Madras	1857	Act No. XXVII of 1857 passed by the Legislative Council of India. Received the assent of the Governor General on 05 th September 1857.
4.	Panjab University (Established as University College, Lahore. Later, raised to a level of University.)	1882	The Panjab University Act, 1882 (Act XIX of 1882) Received the assent of Governor General on 5 th October 1882. Since after independence, the Indian part of Punjab was without a university, East Panjab University Ordinance, 1947 was promulgated by the Government of East Punjab to set up the present Panjab University, which was ultimately replaced by Panjab University Act, 1947.
5.	University of Allahabad	1887	The Allahabad University Act XVIII of 1887 Received the assent of the Governor General on 23 rd September 1887.
6.	University of Mysore	1916	Regulation No. V of 1916 Received the assent of His Highness the Maharaja on 22 nd July 1916.
7.	Banaras Hindu University	1916	The Banaras Hindu University Act, 1915.
8.	Patna University	1916	The Patna University Act, 1917.
9.	Aligarh Muslim University	1920	The Aligarh Muslim University Act, 1920.
10.	University of Lucknow	1921	The Lucknow University Act, No. V of 1920.
11.	University of Dhaka	1921	Dacca University Act 1920
12.	Delhi University	1922	The Delhi University Act, 1922.
13.	Nagpur University	1923	The Nagpur University Act, 1923

S.NO.	NAME OF THE UNIVERSITY	DATE OF ESTABLISHMENT	NAME OF THE ACT
14.	Andhra University	1926	The Madras University Act of 1926.
15.	Agra University (now known as Dr. Bhimrao Ambedkar University, Agra)	1926	The Agra University Act, 1926.
16.	Annamalai University	1929	The Annamalai University Act, 1928.
17.	University of Travancore	1937	Promulgation of Maharajah of Travancore, Sri Chithira Thirunal Balarama Varma who was also the first Chancellor of the University.
18.	Utkal University	1943	The Utkal University Act, 1943
19.	University of Saugor (now known as Doctor Harisingh Gour Vishwavidyalaya Sagar)	1946	University of Saugar Act, 1946.
20.	University of Rajputana [Now University of Rajasthan]	1946	University of Rajputana (Second Amendment) Act, 1950
21.	Gauhati University, Guwahati	1948	The Gauhati University Act, 1947
22.	University of Kashmir	1948	Originally established by the University of Kashmir Act, 1948. It is currently governed by the Kashmir and Jammu Universities Act, 1969.
23.	Karnataka University, Dharwad	1949	Karnatak University Act 1949.
24.	Maharaja Sayajirao University of Baroda, Vadodara	1949	Maharaja Sayajirao University of Baroda Act, 1949

S.NO.	NAME OF THE UNIVERSITY	DATE OF ESTABLISHMENT	NAME OF THE ACT
25.	Savitribai Phule Pune University, Pune (formerly known as University of Poona)	1949	Poona University Act, 1948.
26.	Gujarat University, Ahmedabad	1950	The Gujarat University Act, 1949

The Universities established by Indian efforts without succumbing to British conditions and retaining its independence

5. It is submitted that prior to the UGC, in the absence of any prohibitive framework estopping someone from establishing Universities without a legislative act, it was wholly permissible for any group of person to establish an institution and label it a “university” or a “vidyapeeth” or “jamia” and claim to be a University capable to granting degree.

6. At this juncture, *it is necessary to demarcate the distinction between a pre-constitution University established and recognised by the Legislature as opposed to a pre-constitution University NOT established and NOT recognised by the British Government.*

It is submitted that at the relevant time, it was wholly permissible for the MAO college to establish a University by the same name or any other name if it so wished [without any enactment]– with the only drawback that such University would not have been recognised by the British Government. **It is relevant to note that there was no Article 30 and no concept of minority at the said time.**

There is nothing that stopped the said institution from doing so which would have maintained its independence and perhaps, its minority character. A large number of pre-independence Universities existed, whose degrees were not recognised by the British Government for appointment in services under the Crown but nonetheless went on to become leading national institutions. A list of such pre-independence Universities which were established without a Federal or State Legislature statute is as under :

SR. NO.	NAME OF THE UNIVERSITY	YEAR OF ESTABLISHMENT	POST-INDEPENDENCE STATUTORY RECOGNITION/ENACTMENT
1.	Osmania University	1917	Established by Firman of Nawab Osman Ali Khan, the 7th Nizam of Hyderabad. It was recognised by the Osmania University Act, 1959. The Act of 1959 was repealed by the Telangana Universities Act, 1991. However, the Osmania University still enjoys the status of a state university. ¹
2.	Gujarat Vidyapith	1920	Gujarat Vidyapith was established as a national university by Mahatma Gandhi without a government charter. ² The Government of India, in July 1963, under the University Grants Commission (UGC) Act, 1956, under its section 3 recognised Gujarat Vidyapith as “deemed to be University” and started providing grants in aid to Gujarat Vidyapith.
3.	Bihar Vidyapeeth	1921	Mahatma Gandhi had decided to develop a Vidyapeeth in Bihar, that is, an institution functioning as a university, which could give affiliation to other institutions, conduct examinations and offer degrees. ³ Presently, the institution is affiliated to Aryabhatt Knowledge University, Patna.
4.	Kashi Vidyapeeth (Now known as Mahatma Gandhi Kashi Vidyapith)	1921	Babu Shiv Prasad Gupt and Bhagwan Das established the university in Varanasi, on 10 February 1921, during the non-cooperation movement of the freedom struggle. ⁴ The Uttar Pradesh State Universities Act, 1973 (Act No. of 1973) was enacted which recognised it as a University defined under the UGC Act.
5.	Jamia Milia Islamia	1920	In case of MAO college, there were two groups completely hostile to each other on the question of further course of action. One group led by Mr. Shafi wanted an Act of British Legislature surrendering the rights of functioning as denominational institute. And the second group, led by the Ali Brothers [who supported Khilafat movement when Ottoman Caliph was deposed by the British as an anti-Islam act of the

¹ <https://www.osmania.ac.in/aboutus-originandhistory.php>

² <https://www.gujaratvidyapith.org/history.htm>

³ <https://drpspm.biharvidyapeeth.edu.in/about-us/>

⁴ <https://mgkvp.ac.in/TheUniversity/AboutUs>

SR. NO.	NAME OF THE UNIVERSITY	YEAR OF ESTABLISHMENT	POST-INDEPENDENCE STATUTORY RECOGNITION/ENACTMENT
			<p>British]. The second group, strongly objected for any British enactment and insisted by an indigenous University retaining denominational character.</p> <p>Upon passing of Aligarh Muslim University Act, 1920 on 14.09.1920, there was an uproar amongst the opposing group led by the Ali Brothers who wanted to retain the minority character of MAO. This group therefore declared establishment of Jamia Milia Islamia from the campus of Aligarh Muslim University itself on 29.10.1920.</p> <p>Jamia means a university. Milia means national and Islamia means Islamic. This translates to Islamic National University.</p>

Therefore, the British legislative mechanism was not the only mechanism through which one could establish a university.

Pre-constitution Institutions which retained its character and may be affiliated to Universities established by Act of Imperial Legislature

7. During the said period, it may be noted that a large number of colleges, schools, etc. were established in the country, even by the “minorities” which did not seek to become Universities and were satisfied by being affiliated colleges. It is submitted that the said option was open for the MAO College during the said time and it could have continued as an institution and maintained its minority character by continuing to award degree of the affiliating University.

A similar course was followed by the Stephens College in New Delhi. An illustrative list of such institutions which were established prior to Independence but did not require British legislative intervention like AMU is as under :

SR. NO.	NAME OF THE UNIVERSITY	YEAR OF ESTABLISHMENT	POST-INDEPENDENCE STATUTORY RECOGNITION/ENACTMENT
1.	Delhi College (now known as <i>Zakir Hussain Delhi College</i>)	1792	College got affiliated to University of Delhi in the year 1925.

SR. NO.	NAME OF THE UNIVERSITY	YEAR OF ESTABLISHMENT	POST-INDEPENDENCE STATUTORY RECOGNITION/ENACTMENT
2.	CMS College, Kottayam, Kerala	1817	Presently an autonomous college.
3.	Hindoo College (now Presidency University)	1817	Later, transformed into the Presidency College of Bengal in 1855. The college got established as Presidency University in the year 2010 by the Legislature of West Bengal.
4.	Serampore College	1818	Established in the year 1818, the college is presently a Christian <i>minority college</i> and is on the verge of completing 200 years. The college is presently affiliated to University of Calcutta.
5.	L'Ecole de Médecine de Pondichéry (now known as Jawaharlal Institute of Postgraduate Medical Education and Research)	1823	The erstwhile French India established the L'Ecole de Médecine de Pondichéry to train French citizens in Pondichéry. Following the de jure transfer of Puducherry to India in 1956, the Government of India took over the college and renamed it as Medical College, Pondicherry. The institute was given its present name in the year 1964. <i>In 2008, the institute was upgraded as an Institution of National Importance by an act of Indian Parliament, prior to which it was affiliated to Pondicherry University.</i>
6.	Scottish Church College, Kolkata, West Bengal	1830	Presently, a <i>minority college</i> affiliated to University of Calcutta, Scottish Church College was established in the year 1830 by Reverend Alexander Duff as General Assembly's Institution.
7.	St. Joseph's College, Tiruchirappalli, Tamil Nadu	1844	Presently an autonomous institution, the college was established in 1844 by the Fathers of Society of Jesus (The Jesuits). It was affiliated to the then Madras University in 1866. <i>The college was granted minority status in the year 2008.</i>

SR. NO.	NAME OF THE UNIVERSITY	YEAR OF ESTABLISHMENT	POST-INDEPENDENCE STATUTORY RECOGNITION/ENACTMENT
8.	University Mahara ja College, Jaipur, Rajasthan	1844	<p>University Maharaja College was established in 1844 by Sawai Ram Singh as "Maharaja School", and it was located at Manak Chowk, close to Hawamahal.</p> <p>The college is presently affiliated to University of Rajasthan since 1962.</p>
9.	Roorkee College of Engineering (now known as ' <i>Indian Institute of Technology, Roorkee</i> '))	1847	<p>Government of North Western Province establishing college of Engineering at Roorkee in the year 1847.</p> <p>In 1853, College was renamed as Thomason College of Civil Engineering, which got affiliated to Calcutta University in the year 1864 and later to Allahabad University in 1894.</p> <p>The college was incorporated into Roorkee university vide Roorkee University Act, 1948 passed by provincial legislature.</p> <p>In the year 2002, the University was incorporated as <i>Indian Institute of Technology, Roorkee and was declared as Institute of national importance.</i></p>
10.	Bangalore Lunatic Asylum (now known as ' <i>National Institute of Mental Health and Neurosciences, Bangalore</i> '))	1847	<p>Bangalore Lunatic Asylum was established in 1847, which was later renamed as Government Mental College, Mysore in the year 1925.</p> <p>The present institute was the result of the amalgamation of the erstwhile State Mental Hospital and the All India Institute of Mental Health (AIIMH) established by the Government of India in 1954.</p> <p><i>The institution has been declared as an institution of National Importance by an Act of Parliament in the year 2012.</i></p>
11.	Presidency College, Chennai	1855	<p>Madras Preparatory School and Madras High School, established by Lord Elphinstone in the years 1840-41, grew into and were established as Presidency College in the year 1855.</p> <p>When the University of Madras was founded in 1857, Presidency College became affiliated with it.</p>

SR. NO.	NAME OF THE UNIVERSITY	YEAR OF ESTABLISHMENT	POST-INDEPENDENCE STATUTORY RECOGNITION/ENACTMENT
			In 1989, the college was granted autonomous status, however, the Degrees continue to be awarded by the University of Madras.
12.	Civil Engineering College, Calcutta (now known as ' <i>Indian Institute of Engineering Science and Technology, Shibpur</i> ')	1856	Civil Engineering College got affiliated to University of Calcutta in the year 1857, when it was established. The college was converted into a full-fledged university by an act in the West Bengal Assembly and renamed as Bengal Engineering and Science University in the year 2004. In March 2014, Bengal Engineering and Science University, Shibpur was taken over by the Government of India and it was <i>converted into an Institute of National Importance through an act of parliament</i> and was renamed as Indian Institute of Engineering Science and Technology, Shibpur.
13.	Madras Christian College, Chennai, Tamil Nadu	1865	Madras Christian College traces its origin to the General Assembly School, founded in 1837, which got upgraded to college in the year 1865. Presently, an autonomous institution.
14.	St. Paul's Cathedral Mission College	1865	The college got affiliated to University of Calcutta in the year of its establishment and continues to remain as such.
15.	St Aloysius College, Mangalore, Karnataka	1880	Established in 1880, the college got affiliated to Mysore University in the year 1956. The college got <i>minority status in the year 2007</i> .
16.	St Stephen's College	1881	The college was founded on 1 st February 1881 by Cambridge Mission in Delhi in conjunction with Society for the Propagation for Gospel. The College became one of the three original constituent colleges University of Delhi when it was established in the year 1922.
17.	The American College,	1881	It was one of the first set of seven colleges to be made autonomous by the UGC in 1978-1979.

SR. NO.	NAME OF THE UNIVERSITY	YEAR OF ESTABLISHMENT	POST-INDEPENDENCE STATUTORY RECOGNITION/ENACTMENT
	Tallakulam, Madurai, Tamil Nadu		
18.	St. Joseph's College, Bengaluru	1882	Presently an autonomous institution, which got <i>minority status in the year 2006</i> .
19.	St Joseph's College, Darjeeling, West Bengal	1888	Initially, started as a school, St. Joseph's College got established and affiliated to University of Calcutta in the year 1927. Presently, the college is affiliated to University of North Bengal and was granted <i>minority status in the year 2007</i> .
20.	Scott Christian College, Nagercoil	1893	Founded as a school in 1809 by Rev Ringeltaube. Got affiliated to the University of Travancore in 1938.
21.	Voorhees College, Vellore, Tamil Nadu	1898	Founded as Arcot Mission College. Under the management of Vellore diocese of Church of South India
22.	Hindu College	1899	The college was founded in the year 1899. Later on, the college became part of the University of Delhi as one of the original colleges thereof.
23.	Maharaja's college, Mysore, Karnataka	1899	Originated as English school established by the Maharaja of Mysore. Given over to government in 1868. Affiliated to the University of Madras in 1879
24.	Bihar College of Engineering (now known as 'National Institute of Technology, Patna')	1900	Initially established as a Bihar School of Engineering, it was upgraded as a college in the year 1900, getting renamed as Bihar College of Engineering. In 2004 the government of India upgraded the college to National Institute of Technology (NIT) status.

SR. NO.	NAME OF THE UNIVERSITY	YEAR OF ESTABLISHMENT	POST-INDEPENDENCE STATUTORY RECOGNITION/ENACTMENT
			<i>In 2007, it was granted Institute of National Importance status in accordance with the National Institutes of Technology Act, 2007.</i>
25.	Gurukula Kangri [now known as Gurukul Kangri (Deemed to be University), Haridwar]	1902	Gurukula Kangri (Deemed to be University) was founded on March 4, 1902 by Swami Shraddhanandaji, became Deemed University after enactment of UGC Act in the year 1962.
26.	Agricultural Research Institute and College, Pusa (now known as Dr. Rajendra Prasad Central Agricultural University, Pusa)	1905	The history of the place dates back to year 1905, when Agricultural Research Institute and College, Pusa was first established by the British Government in light of the recurring food scarcity in the country. <i>Dr. Rajendra Prasad Central Agricultural University, Pusa came into existence on 7th October 2016 vide Dr. Rajendra Prasad Central Agricultural University Act, 2016 (which also declared it as an institution of national importance) after the conversion of Rajendra Agricultural University, Pusa, a state agricultural university, which was established in 1970 by Govt. of Bihar a historical place where the idea of agricultural research and education first took shape.</i>
27.	National Council of Education, Bengal (now known as Jadavpur University)	1906	Founding members of National Council of Bengal was established in 1906. NCE henceforth looked after the College of Engineering and Technology, Bengal which by 1940 was virtually functioning as a university. After Independence, the Government of West Bengal, with the concurrence of the Govt. of India, enacted the Jadavpur University Act, 1955 to establish Jadavpur University on the 24th of December 1955.

SR. NO.	NAME OF THE UNIVERSITY	YEAR OF ESTABLISHMENT	POST-INDEPENDENCE STATUTORY RECOGNITION/ENACTMENT
28.	Indian Institute of Science	1909	IISc came into existence on 27 May 1909 in Bangalore following a vesting order and resolution passed by the government of India to establish the Institute at the instance of Jamsetji Nusserwanji Tata.
29.	Ramjas College	1917	The college, which was established in the year 1917 by Rai Kedar Nath, was the third founding college of the University of Delhi.
30.	Dakshina Bharat Hindi Prachar Sabha	1918	Dakshina Bharat Hindi Prachar Sabha was established by Mahatma Gandhi with the sole aim of propagating Hindi in southern states. <i>The institute got the status of being an institute of national importance in 1964 by Dakshina Bharat Hindi Prachar Sabha Act, 1964</i>
31.	Banaras Engineering College (now known as Indian Institute of Technology (BHU) Varanasi)	1919	Three engineering colleges of BHU namely Banaras Engineering College (BENCO) [being first among the three, which got established in 1919], College of Technology (TECHNO) and College of Mining & Metallurgy (MINMET), got merged to form the Institute of Technology (IT-BHU) in 1968. IT-BHU further got established as IIT (BHU) Varanasi in 2012 and was <i>declared an institute of National Importance in the year 2012.</i>
32.	Commercial College (now known as Shri Ram College of Commerce, Delhi)	1920	It got affiliated to the University of Delhi in 1926. Rechristened itself as SRCC in the year 1951.
33.	Visva-Bharati	1921	Rabindranath Tagore (Thakur) established an institute known as Visva Bharati at Shanti Niketan, later established as a University and recognised as an institute of national importance vide Visva Bharati Act, 1951.

SR. NO.	NAME OF THE UNIVERSITY	YEAR OF ESTABLISHMENT	POST-INDEPENDENCE STATUTORY RECOGNITION/ENACTMENT
34.	Union Christian College, Aluva, Kerala	1921	It is an ecumenical, Indian Christian initiative in the field of higher education in Kerala. It is managed by an association of members drawn from the Malankara Orthodox Syrian Church, the Jacobite Syrian Orthodox Church, the Malankara Mar Thoma Syrian Church and the Church of South India, and the Inter Church Fellowship (ICF) of the college. It is affiliated to Mahatma Gandhi University, Kottayam.
35.	Government Science College, Bangalore, Karnataka	1921	It is an autonomous institute. It is affiliated to the Bengaluru City University.
36.	St Berchmans College, Changanassery, Kerala	1922	It is an autonomous institution. It is the first higher education institution of the Archdiocese of Changanacherry. It is affiliated to Mahatma Gandhi University, Kottayam.
37.	St. Xavier's College, Palayamkottai, Tamil Nadu	1923	It is an autonomous college. The College is an affiliated First Grade College of the Manonmaniam Sundaranar University.
38.	St. Edmund's College, Shillong, Meghalaya	1924	It is an educational institute of the Congregation of Christian Brothers. It is currently affiliated to North Eastern Hill University.
39.	Loyola College, Chennai, Tamil Nadu	1925	It is an autonomous Jesuit college affiliated to the University of Madras.
40.	Indian School of Mines & Applied Geology'	1926	'Indian School of Mines & Applied Geology' at Dhanbad was established by the then Viceroy Lord Irwin on 9th December 1926. In 1957, its name was changed to 'Indian School of Mines (ISM)'.

SR. NO.	NAME OF THE UNIVERSITY	YEAR OF ESTABLISHMENT	POST-INDEPENDENCE STATUTORY RECOGNITION/ENACTMENT
	(Indian Institute of Technology (Indian School of Mines) Dhanbad)		<i>ISM was established as IIT in 2016 and was declared as an institute of national importance.</i>
41.	Banasthali Vidyapith	1927	Initially established as Shri Shantabai Shiksha Kutir in October 1935. The name 'Banasthali Vidyapith' was adopted only in 1943. The institution was granted the status of a deemed university in 1983 by the UGC.
42.	BITS Pilani	1929	Initially, established as Birla High School, Intermediate College. It was converted into a Degree College in the year 1943. The College was later declared as 'Deemed to be a University' in the year 1964.
43.	Indian Statistical Institute	1931	The Indian Statistical Institute was established by Professor P.C. Mahalanobis in Kolkata on 17th December, 1931. The same got recognised as <i>Institution of National Importance</i> vide India Statistical Institute Act, 1959.
44.	Kalakshetra (now known as 'Kalakshetra Foundation')	1936	Kalakshetra, later known as the Kalakshetra Foundation, was established by Rukmini Devi Arundale in 1936. In 1944, the University of Madras granted its affiliation for conducting diploma courses in Music, Dance and Painting & Crafts. <i>The institute, which is an arts and cultural academy dedicated to the preservation of traditional values in Indian art and crafts, got the status of institute of national importance in the year 1994 by an Act of the Parliament.</i>
45.	Bhartiya Vidya Bhawan	1938	Founded by K M Munshi in the year 1938. Presently, running various other schools and colleges including Bharitya Vidya Bhawan Mehta Vidyalaya.

SR. NO.	NAME OF THE UNIVERSITY	YEAR OF ESTABLISHMENT	POST-INDEPENDENCE STATUTORY RECOGNITION/ENACTMENT
46.	College of Engineering, Thiruvananthapuram, Kerala	1939	It started as a constituent College of Travancore University. It has been affiliated to the APJ Abdul Kalam Technological University since 2015.
47.	Department of Architecture of Delhi Polytechnic (now known as 'School of Planning and Architecture')	1941	The Department was initially affiliated to the University of Delhi. After its integration with the School of Town and Country Planning, the School was renamed as School of Planning and Architecture in 1959, which got the status of "Deemed to be a University" in 1979. <i>Thereafter, the School was recognized as "An Institute of National Importance under an Act of Parliament" in 2015.</i>
48.	St Xaviers College Ranchi	1944	The University Grants Commission conferred autonomous status in the year 2000.
49.	Government College for Women	1944	Established as Maharani Mahila College in 1944. On 25 th November, 1953 the college was taken over by the government of Jammu & Kashmir and renamed as Government College for Women, Parade Ground, Jammu. The College has been affiliated with the University of Jammu since 1954.
50.	BMS College of Engineering (BMSCE), Bangalore, Karnataka	1946	A private engineering college established by Bhusanayana Mukundadas Sreenivasaiah in the year 1946. Presently, the institute is affiliated to Visvesvaraya Technological University, which is a public State University.
51.	National Institute of Engineering, Mysore, Karnataka	1946	A private engineering college established in the year 1946, which is also presently affiliated to Visvesvaraya Technological University.

SR. NO.	NAME OF THE UNIVERSITY	YEAR OF ESTABLISHMENT	POST-INDEPENDENCE STATUTORY RECOGNITION/ENACTMENT
52.	B.V. Bhoomareedi College of Engineering and Tehnology	1947	Originally established by the Karnatak Lingayat Education Society. It was subsequently affiliated to the Visvehswariya Technological University. In 2015 Karnatak Lingayat Education Society acquired B.V Bhoomaraddi to form KLE Technological University.
53.	Gobardanga Hindu College	1947	Established on November 27, 1947. Land for the college was donated by the Mukherjee Landlords of Gobardanga.
54.	N.S.S Hindu College, Changanacherry	1947	Established by the Nair Service Society. Earlier affiliated to the Travancore University, then to the University of Kerala, and in 1983 it got affiliated was to the Mahatma Gandhi University, Kerala.
55.	Hans Raj College, Delhi	1948	The college was founded by the D.A.V. College Managing Committee on 26th July, 1948 in the sacred memories of Maharshi Dayanand Saraswati and Mahatma Hansraj. The College is affiliated to the University of Delhi.
56.	Miranda House, Delhi	1948	The college is affiliated to the University of Delhi.
57.	Field Marshal K M Cariappa College, Madikeri	1949	It was first affiliated to the Madras University. It was renamed as FMKMC college in 1994 after Mangalore University took over the college as its constituent in 1993.
58.	N. S. S. College, Pandalam	1949	It is affiliated to University of Kerala.
59.	Vivekananda College, Kolkata	1950	It was founded as Barisha College. Currently it is affiliated to the University of Calcutta.

8. It is submitted that it was wholly open for the MAO College to continue as college, avoid control by the British, and remain as a minority institution. However, the said course was not adopted.

9. At this stage, it may be noted that the Petitioner is making an attempt to apply the law laid down in *Basha [supra]* for pre-independence/pre-Constitution/pre-UGC institution, to institutions which may have been established after the Constitution came in to force and after the Government could not seek to rob an institution of its character and identity in the name of providing recognition. While the said proposition of law is correct for post-independence institutions, it is submitted that the same cannot be applied to events that unfolded between 1916-1920.

10. It is submitted that in absence of Article 30 and constitutional rights, it was wholly open for the British Government to ask the MAO College to shed its character and identity as a minority institution in the name of providing recognition. The Act of 1920, bringing in the statute in the manner it did, as analysed by *Basha [supra]*, which indeed effected this compromise on part of the MAO College leaders. For that matter, even in 1920, it was open for the British Government/Legislature, to bring in a statute which preserved the supposedly minority character of AMU [as the Indian Legislature has done in various other cases in the future], however the same was not done.

The birth of Jamia and AMU – the backdrop of Aligarh Split

11. At the time in history, from 1915-1920, interesting nationalistic development were taking place. As far as MAO College is concerned, it was during the said period that the “*Aligarh Split*” occurred. The Aligarh Split was the division between the two factions at MAO College and the Committees demanding the University. The two factions were the “loyalists” of the time as against the “nationalists” of the said time. The “loyalist” faction, led by Mr. Shafi and Raja of Mahmudabad, believed in co-operating with the British for the establishment of the University as against the “nationalist” faction, led by the Ali Brothers [who were themselves Alumni of the MAO College], who believed against co-operating with the British and wanted to maintain the Islamic character of the institution and keep governmental intervention at bay.

12. As history is witness, it was the loyalist who succeeded at Aligarh and Ali brothers were banished, and established Jamia Milia Islamia in 1920. These were times of “non-co-operation movement” which was started as a pact between Mahatma Gandhi and the Ali Brothers [who were backing the Khilafat movement due to the deposing of the

Ottoman Caliph by the British in Turkey]. While at one end between 1920-1921, Aligarh Muslim University was established by the British, the “nationalists” Ali Brothers established Jamia Milia Islamia and Mahatma Gandhi established Universities in Gujarat and Bihar as Gujarat Vidyapeeth and Bihar Vidyapeeth. Similarly, as a result of “non-cooperation” movement against the British, Kashi Vidyapeeth was also established in 1921. Therefore, clearly AMU was a University established and controlled by the British and cannot be said to been established predominantly by the minority community. A detailed history is as under :

- a. It must be noted that the original vision of the AMU as envisaged by Sir Syed was based strongly on loyalism to the British⁵. The split in the Aligarh movement began after the government refused to grant it the power to affiliate colleges outside Aligarh (**Nationalism and Communal Politics in India, PDF 71**). Even prior to this, the Ali brothers had made attempts to rid the college administration of pro-government influences. (**Nationalism and Communal Politics in India, PDF 74**).
- b. The divide had become worse when two camps formed over the government refusal to allow affiliating powers to the MAO College. This rejection along with events such as the annulment of the partition of Bengal was seen by Mahomed Ali as a betrayal of the Muslims (**Nationalism and Communal Politics in India, PDF 96**). Those willing to accept the Government’s proposals were headed by Maulana Aftab Ahmed Khan (The loyalists) and later Mohd. Shafi.
- c. As a follower of what he called the Anglo-Mohammedan school of politics, Mr. Shafi regarded his community’s interests to be identical with those of the government and refused to take part in anything calculated, in the slightest degree, to injure British interests and to weaken the stability and permanence of the British rule in India. [**Nationalism and Communal Politics in India, Pg 92-93**]
- d. Those opposed were led by Ali Brothers and Hasrat Mohani who wanted both Muslim control of the university and the power of affiliation (**Vol 4D, PDF [Tariq Hasan] 1396, 1571**). The Ali brothers and their followers were also sympathetic to Turkey and opposed to British actions against during the First World War (**Vol 4D, PDF 1575**). Furthermore, Mahomed Ali’s influence over the Aligarh student body was noted to cause great difficulties for MAO college principal Dr Ziauddin (**Nationalism and Communal Politics in India, PDF 116**).
- e. After the BHU Act was passed, those in favour of accepting the government proposal began to mount pressure, stating that this made clear that any Muslim

⁵ Abbas, A. H. (2014). The solidarity agenda: Aligarh students and the demand for Pakistan. South Asian History and Culture, 5(2), 147-162.

University would have to be on the same lines as BHU. At a vote held on the question by the Muslim University Association on the question of accepting the government's terms, the loyalists won (**Vol 4D, PDF 1576**). This caused a formal split in the movement.

- f. In April 1917, the University Foundation Committee decided to accept the government's proposals without conditions though Mahomed Ali remained opposed to the same. (**Vol 4D, PDF 1579**).
- g. In 1920, it was agreed between the Government and the Aligarh group to bring the University Bill in the Legislature. At around the same time, Gandhi came into contact with Maulana Mohammed Ali and Hasrat Mohani and began promoting the Khilafat movement (**(Nationalism and Communal Politics in India, PDF 125, Vol 4D, PDF Page 1397-1398 – 1403, 1406)**).
- h. The rapid introduction of the AMU bill was seen to be an attempt to bring the Muslims to the government's side in the face of anti-government sentiment among them during the Non-cooperation movement (**Vol 4D PDF 1583**)
- i. Subsequently, the pro-Khilafat group wrote a letter to University authorities asking them to stop receiving government aid (**Nationalism and Communal Politics in India, PDF 194, Vol 4D, PDF 1399**). Maulana Mahomed Ali called on the Aligarh trustees to participate in the Non-cooperation movement (**Vol 4D, PDF 1400**). *On October 12, 1920, the Ali brothers and Mahatama Gandhi visited the college and asked it to stop accepting government aid. (Vol 4D, PDF 1401, 1540, 1583-84). At this meeting even certain of the Aligarh trustees resolved that if the college did not break ties with the government, parents should be asked to withdraw their children from the college (Vol 4D, PDF 1403)*
- j. During the said time, the Aligarh students also began to participate actively in the non-cooperation movement and passed a resolution on October 13 asking the university authorities to disaffiliate the college failing which the students would "employ all means" to turn the college into a national organisation under the control of the Central Khilafat Committee (**Vol 4D, PDF 1405**). The British and the Aligarh authorities asked alumni associations to persuade students to give up their demands and the Saharanpur MAO Old Boys Association passed a resolution condemning the same (**Vol 4D, PDF 1406**).
- k. The Leaders supporting the Non-cooperation movement assured Aligarh students that MAO college would be turned into a National University and asked them to enrol in this new university (**PDF 1407**). The Deoband Theological School issued a

fatwa asking students to leave the MAO college and enrol in the proposed new National University.

1. *On October 27, the Aligarh Board of Trustees voted to direct Maulana Mohammed Ali and his supporters to vacate the hostels of MAO college and closed the college for a month* (Vol 4D, PDF 1409, 1580). *Finally, Maulana Mohammed Ali and his followers vacated the college on October 29, 1920 and announced the setting up of the Jamia Milia Islamia* (Vol 4D, PDF 1412, 1413, 1540, 1584). *The intent of the new college was declared to be the purification of the MAO college and it was intended to counter the government influenced university at Aligarh* (Vol 4D, PDF 1585).
- m. Therefore, when the endeavour of Ali Brothers did not succeed, they broke away to establish the Jamia Milia Islamia as a 'National Muslim University'⁶. The Jamia Milia Islamia was created expressly to be an independent institution which was not dependent on government grants or otherwise subject to government control as opposed to the full government support enjoyed by the AMU⁷. [Read letter of Ali Brothers to Raja of Mahmudabad – Pg 1593] [Read Nationalism and Communal Politics in India, Pg 194-196]

13. In fact, new institutions such as the Jamia and the Kashi Vidyapith were established specifically to provide education on nationalist lines, in contrast to AMU's loyalist approach⁸. In a speech, Gandhi himself noted the government controlled character of the university as follows:

"I have myself appealed to thousands of parents at s which hardly a parent has objected to the proposition of leaving government controlled schools I therefore take leave to think the parents of the Aligarh boys are not less convinced than the others of the necessity of withdrawing their children from the schools and controlled by the government that has participated in betraying the Musalmans in India and has wantonly humiliated the Nation through its barbarous treatment of the Punjab . Shall we not free them (boys) from the curse of slavery which has made us crawl on our bellies.... Surely they would not need government University degrees. ..our existing religious and charitable Hindu and Muslim funds can support our education without even a week of self denial"

Therefore, even contemporary material clearly suggests that AMU was a product of British co-operation and intervention and not established as a minority institution.

⁶ Gautier L, A Laboratory for a Composite India? Jamia Millia Islamia around the time of partition. Cambridge University Press, Retrieved from: <https://sci-hub.se/https://www.cambridge.org/core/journals/modern-asian-studies/article/abs/laboratory-for-a-composite-india-jamia-millia-islamia-around-the-time-of-partition/24BFB3822F6EA7E90C4EAEBEED287E3>

⁷ Ahmad, A, Aligarh Muslim University, An Educational and Political History 1920-47

⁸ India's Freedom Struggle 1857-1947 A Short History

14. It is submitted that the said facts were fully known to the Ld. Judges in *Basha [supra]* and such understanding forms the basis of the judgment. The recognition of the University and its degrees, in the British times, came at a cost which often included shedding the trappings and previous character of the institution in order to metamorphize in to a University, which was of the stature that could get recognition by the British Government. There was nothing that stopped MAO College from establishing a University of its own without recognition by the British Government and without intervention of a statute. However, the people at the MAO College thought otherwise and caved in to the British pressure especially post the establishment of the Benares Hindu University.

15. In light of the above facts, which were well-known to the judges in *Basha [supra]*, the said judgement highlights the importance of British recognition in the said time. The said judgment does not, as a simplicitor matter of law, hold that whenever there is a statute establishing a University, the same cannot be a minority institution. The judgment, in light of facts and legal position pre-independence and pre-Constitution, holds that AMU [as a standalone *sui-generis* case] cannot be said to be an University established by the minority. The judgment in *Basha [supra]* is not merely premised on the fact that the Aligarh University was established by way of a statute rather the said judgment in great detail studies the antecedent facts prior to the establishment of the university, studies nature of the legislation establishing the university and other factors, to ascertain the character of the university at the time of its initial establishment, and thereafter arrives at a factual finding.

16. At this juncture, it would be relevant to read the history from the communications between various stakeholders [the British Indian Government and the “loyalists”] prior to the establishment of the AMU which is at **Pg 62 – 82** of Part I of the Submissions [**Volume 2B**].

Post AMU developments in the field of Universities

17. It is submitted that post the establishment of the AMU, the education system in the country developed in the following manner :

DATE	PARTICULARS
14.09.1920	The Aligarh Muslim University Act is passed by the Imperial Legislative Council, establishing AMU.

DATE	PARTICULARS
1924	Conference of Vice-Chancellors of the existing Universities to establish an Inter-University Board was held in Shimla.
23.03.1925	<p>The Inter-University Board was established with the following objectives:</p> <ul style="list-style-type: none"> (a) to act as an Inter-University organisation and bureau of information (b) to facilitate the exchange of professors (c) to serve as an authorised channel of communication and facilitate the coordination of university work (d) to assist Indian Universities to get recognition for their degrees and diplomas in other countries (e) to appoint a common representative (or representatives) of India at Imperial or International Conferences on Indian education. <p>This Board, however, could not interfere with the autonomy of the Universities.</p>
1935	Government of India Act, 1935 included provisions related to the regulation of higher education. It divided legislative powers between the central government and provincial governments. In matters related to higher education, both the central and provincial legislatures had the authority to make laws. These provisions were more or less retained in the Constitution of India.
1944	The Central Advisory Board of Education made the first attempt to formulate a national system of education in India. It submitted the Sargeant Report which recommended the formation of a University Grants Committee to coordinated Higher Education in India.
1945	Department of Education, Health and Lands vide resolution dated June 4, 1945 established the <i>University Grants Committee</i> to advise the government on the grants to be given to the Central Universities [Delhi, Benares and Aligarh].
1947	The constitution of the Committee was amended and its scope enlarged by the Department of Education Resolution dated July 27, 1946, and the Ministry of Education Resolution dated December 16, 1947, to empower the Committee to deal with all Universities in India.
1948	Post-Independence, the University Education Commission was set up under the Chairmanship of S. Radhakrishnan “to report on Indian university

DATE	PARTICULARS
	<p><i>education and suggest improvements and extensions that might be desirable to suit the present and future needs and aspirations of the country".</i></p> <p>The Commission submitted its Report, whereby it was recommended to reconstitute the University Grants Committee, to expand its membership, include experts on the panel, give powers of visitation, distribution of grant-in aid.</p>
28.12.1952	<p>Government of India set up an 'interim' University Grants Commission (hereinafter referred to as '<i>UGC</i>') by resolution to advise it on the allocation of grants-in-aid from public funds.</p> <p>The same began to function on 28.12.1953.</p>
03.03.1956	<p>University Grants Commission Act, 1956 was enacted thereby giving statutory recognition to the UGC.</p>

THE SURRENDERING OF "RIGHTS" PRIOR TO THE CONSTITUTION COMING IN TO FORCE

18. It is submitted that right of administration, if any, at the stage of incorporation and establishment of the AMU was surrendered by the "loyalists" who advocated for an Imperial legislative enactment at the time. It is submitted that the said surrender cannot be resurrected after the Constitution came in to being as it is complete at a time when the fundamental rights were not in operation.

19. Therefore, as far as MAO/AMU is concerned, even if the right to administer some properties that came to the University vested in the "minority" [Muslim community] before the establishment of the Aligarh University, it had been surrendered when the Aligarh University came to be established through the enactment vesting control with the British Government. It is submitted that it is settled law that fundamental rights do not have retrospective operation and actions which were complete prior to the coming in to force of the Constitution cannot be re-opened. It is submitted that the following observations of Das, J., as he then was, in *Keshavan Madhava Menon v. State of Bombay*, (1951) SCR 228, at p. 235 of that case, may be appropriately referred to in this context:

"As already explained, Article 13(1) only has the effect of nullifying or rendering all inconsistent existing laws ineffectual or nugatory and devoid of any legal force or binding effect only with respect to the exercise of fundamental rights on and after the date of the commencement of the Constitution. **It has no retrospective effect and if, therefore, an act was done before the commencement of the Constitution in**

contravention of any law which, after the Constitution, becomes void with respect to the exercise of any of the fundamental rights, the inconsistent law is not wiped out so far as the past act is concerned, for, to say that it is, will be to give the law retrospective effect.... So far as the past acts are concerned the law exists, notwithstanding that it does not exist with respect to the future exercise of fundamental rights."

20. Similarly in *Pannalal Binjraj v. Union of India* [1957 SCR 233] Bhagwati, J., speaking for the Court says:

"It is settled that Article 13 of the Constitution has no retrospective effect and if, therefore, any action was taken before the commencement of the provisions of any law which was a valid law at the time when such action was taken, such action cannot be challenged and the law under which such action was taken cannot be questioned as unconstitutional and void on the score of its infringing the fundamental rights enshrined in Part III of the Constitution"

21. Similarly in *Durgah Committee, Ajmer v. Syed Hussain Ali* [(1962) 1 SCR 383], while dealing with Article 26(a) and (d) of the Constitution, this Hon'ble Court had observed that even if it be assumed that a certain religious institution was established by a minority community it may lose the right to administer if the same was taken away by the State even through an enactment prior to the coming in to force of the Constitution of India. The following paragraphs may be noted:

19. At this stage it would be material to narrate very briefly the relevant history of legislation in regard to the administration of religious endowments which followed the assumption of political power by the British Government. The first Act to which reference must be made is Act 20 of 1863. This Act was passed to enable the Government to divest itself of the management of religious endowments which had till then vested in the Revenue Boards. Section 3 of the Act provided, inter alia, that in the case of every mosque to which the earlier regulations applied Government shall as soon as possible after the passing of the Act make special provision for the administration of such mosques as specified in the Act by subsequent sections. Under Section 4 the transfer of the administration of the said mosque and other institutions to trustees is provided with the consequence that the administration by Revenue Boards had to come to an end. Section 6 deals with the rights of the trustees to whom the property is transferred under Section 4; and it also contemplates the appointment of committees which may exercise powers as therein specified. With the rest of the provisions of this Act we are not concerned. The effect of this Act was that the management of religious endowments which had been taken over by the Government and which vested in the Revenue Boards was entrusted to the trustees as prescribed by Section 4. In accordance with the provisions of Section 6 a committee was appointed to look after the management of the Durgah with which we are concerned and that committee continued to be in such management until 1936.

20. In 1936 Act 23 of 1936 was passed specifically with the object of making better provision for the administration of the Durgah and the Endowment of the Durgah of Khawaja Moin-ud-din Chishti known as the Durgah Khwaja Saheb, Ajmer. This Act consisted of twenty sections and in a sense it provided a self-contained code for the administration of the Durgah and its endowments. Section 2(4) defines a Durgah

Endowment as including (a) the Durgah Khwaja Saheb, Ajmer, (b) all buildings and movable property within the boundaries of the Durgah Shariff, (c) Durgah Jagir including all land, houses and shops and all landed property wheresoever situated belonging to the Durgah Shariff, (d) all other property and all income derived from any source whatsoever, dedicated to the Durgah or placed for any religious, pious or charitable purposes under the Durgah Administration, and (e) only such offerings as are intended explicitly for the use of the Durgah. It would be noticed that the material provisions of the Act which dealt with the management and administration of the Durgah were intended to operate in regard to the Durgah Endowment thus comprehensively defined. Under Section 4 the administration and control of this endowment had to vest in a committee constituted in the manner prescribed. The powers and duties of this committee are prescribed by Section 11; whereas Section 16 provides for arbitration of disputes that may arise between the committee on the one hand and the Sajjadanashin, the Mutawalli and the Khadim or any of them on the other. With the rest of the provisions of the Act we are not concerned. In pursuance of the material provisions of this Act a Durgah Committee was appointed and it has been in management of the Durgah Endowment ever since.

37. However, we have allowed Mr Pathak to argue this part of the respondents' case on the broad and general ground that the Chishtia Soofies constitute either a denomination or a section of a denomination and as such they are entitled to administer and manage all the properties of the Durgah including the offerings to which specific reference has been made in the petition by the respondents. The challenge thus presented to the vires of Section 5 and other subsidiary sections dealing with the powers of the Committee cannot succeed for the simple and obvious reason that the denomination never had the right to administer the said property in question. We have already seen how the history of the administration of the Durgah Endowment from the time the first endowment was made down to the date of the Act clearly shows that the endowments have always been made on such terms as did not confer on the denomination the right to manage the properties endowed. The management of the properties endowed was always in the hands of officers appointed by the State who were answerable to the State and who were removable by the State at the State's pleasure. We have already seen that until Akbar made his endowment in favour of the Durgah the position of the Durgah and its properties was very modest and there was hardly any property to manage or administer. Ever since the first endowment was made and subsequent additions by similar endowments followed the administration and management of the property has been consistent with the same pattern and the said pattern excludes any claim that the administration of the property in question was ever in the hands of the said denomination. It is obvious that Article 26(c) and (d) do not create rights in any denomination or its section which it never had; they merely safeguard and guarantee the continuance of rights which such denomination or its section had. In other words, if the denomination never had the right to manage the properties endowed in favour of a denominational institution as for instance by reason of the terms on which the endowment was created it cannot be heard to say that it has acquired the said rights as a result of Article 26(c) and (d), and that the practice and custom prevailing in that behalf which obviously is consistent with the terms of the endowment should be ignored or treated as invalid and the administration and management should now be given to the denomination. Such a claim is plainly inconsistent with the provisions of Article 26. If the right to administer the properties never vested in the denomination or had been validly surrendered by it or has otherwise been effectively and irretrievably lost to it Article 26 cannot be successfully invoked.

The history of the administration of the property endowed to the tomb in the present case which is spread over nearly four centuries is sufficient to raise a legitimate inference about the origin of the terms on which the endowments were founded, an origin which is inconsistent with any rights subsisting in the denominations to administer the properties belonging to the institution. It was because the respondents were fully conscious of this difficulty that they did not adopt this broad basis of challenge in their writ petition. In considering this question it is essential to remember that the pilgrims to the tomb have at no time been confined to Chishtia Soofies nor to Muslims but that in fact a large number of Hindus, Khoja Memons and Parsis visit the tomb out of devotion for the memory of the departed saint and it is this large cosmopolitan circle of pilgrims which should in law be held to be the circle of beneficiaries of the endowment made to the tomb. This fact inevitably puts a different complexion on the whole problem. We must, therefore, hold that the challenge to the vires of Section 5 and the subsidiary sections which deal with the powers of the Committee on the ground that the said provisions violate the fundamental right guaranteed to the denomination represented by the respondents under Article 26(c) and (d) fails.

22. In *Sri Jagadguru Kari Basava Rajendraswami of Govimutt v. Commr. of Hindu Religious and Charitable Endowments*, (1964) 8 SCR 252, in a similar context, it was held as under :

“P.B. GAJENDRAGADKAR, C.J.— The appellant Sri Jagadguru Kari Besava Rajendraswami of Gavi Mutt is the Matadhipati of Sri Gavi Mutt which is a religious institution dedicated to the propagation and promotion of the tenets of the Veara Saiva cult of Hinduism. This Mutt is situated at Uravakonda in the District of Anantapur. It appears that on 6th September, 1939, the Board of Hindu Religious Endowments constituted under the Madras Act II of 1927 (hereinafter called “the earlier Act”.) framed a scheme under Section 63 of the said Act for the proper administration of the said Mutt and its endowments. The predecessor-in-office of the appellant then filed Suit No. 21 of 1939 on the file of the District Judge, Anantapur for getting the said scheme set aside. His suit substantially failed, because the District Court was persuaded to make only a few minor modifications in the scheme subject to which the scheme was confirmed. That decision was taken in appeal by the predecessor of the appellant to the High Court of Madras (A.S. No. 269 of 1945). During the pendency of the said appeal, the appellant's predecessor died, and the appellant than brought himself on the record as the legal representative of his deceased predecessor. Ultimately, the appeal was withdrawn and, therefore, dismissed.

2. Though a scheme had been formulated by the Board under Section 63 of the said Act, apparently no effective step was taken to take over the actual management of the Mutt and its endowments. The said management continued as before and the fact that an Executive Officer had been appointed under the scheme made no difference to the actual administration of the Mutt. It was on 5th April, 1952, that the appellant was served with a memorandum asking him to hand over the charge of all the properties of the Mutt to the Executive Officer. A notice issued by the Executive Officer followed on 16th April, 1952 by which the appellant was informed that the Executive Officer would take over possession. Meanwhile, what is known as the Sirur Mutt case was decided by the Madras High Court and the appellant felt justified in refusing to hand over possession to the Executive Officer on the ground that the scheme under which

possession was sought to be taken over from him was invalid inasmuch as it contravened the appellant's fundamental rights guaranteed by the Constitution which had come into force from 26th January, 1950.

3. In 1951, the Madras Hindu Religious and Charitable Endowments Act 19 of 1951 (hereinafter called, "the latter Act") repealed and replaced the earlier Act. The appellant moved the Madras High Court on 28th April, 1952 by his writ petition and prayed for an appropriate writ quashing the notice served on him by the Executive Officer threatening to take over the administration of the Mutt and its properties under the scheme. This petition was heard by a Single Judge of the said High Court and was allowed. The learned Judge took the view that some provisions of the scheme contravened the appellant's fundamental rights under Article 19(1)(f), and so, it could not be enforced. It was no doubt urged before the learned Judge that the appellant's writ petition should not be entertained because he had a definite adequate alternative remedy under the latter Act, but this plea was rejected by the learned Judge with the observation that where the fundamental right is clearly infringed, it is the duty of the court to interfere in favour of the citizen, unless there are reasons of policy which make it inexpedient to do so. Accordingly, the learned Judge directed that the scheme should be quashed. He, however, took the precaution to make the observation that his order did not mean that the Government was not free to make a scheme in consonance with the Constitutional rights of the Matadhipati.

4. The respondent, the Commissioner of Hindu Religious and Charitable Endowments, who had been impleaded by the appellant to the writ petition along with the Executive Officer, challenged the correctness of the decision rendered by the learned Judge in the writ petition filed by the appellant. This appeal succeeded and the Division Bench which heard the said appeal, held that the scheme having been framed as early as 1939 under the relevant provisions of the earlier Act which was valid when it was enacted, could not be challenged on the ground that some of its provisions contravened the fundamental rights guaranteed to the citizens of this country under Article 19. Certain other contentions were raised before the Appellate Bench by the appellant and they were rejected. It is however, not necessary to refer to the said contentions, because they have not been argued before us. Having taken the view that the scheme it was framed was valid, the Appellate Bench reversed the decision of the Single Judge, allowed the respondent's appeal and directed that the writ petition filed by the appellant should be dismissed. It is against this decision of the Division Bench that the appellant has come to this Court with a certificate granted by the said High Court.

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11. There is one more point to which reference must be made before we part with this appeal. Mr Sastri contended that though the scheme may have been valid when it was framed, since it was not actually enforced before 26th January, 1950, it is open to the appellant to challenge the validity of the scheme on the ground that it deprives him of his fundamental right under Article 19(1)(f) and as such, is invalid. Mr Sastri concedes, that the fundamental rights guaranteed by the Constitution are not retrospective in operation; but that, he says, is no answer to his plea, because the deprivation of his property rights is taking place for the first time in 1952 and as such, it is open to the challenge that it is invalid on the ground that it contravenes his fundamental right under Article 19(1)(f).

13. In appreciating the effect of this decision, it is necessary to bear in mind one crucial fact on which there was no dispute between the parties in that case, and that fact was that both the impugned orders did not come within the purview of, and were

not warranted by, the provisions of the relevant Acts, under which they were purported to have been issued. In other words, it was conceded by the Government that the impugned orders were invalid in law. Even so, it was urged that though the orders may be invalid, they cannot be challenged under Article 32 inasmuch as the first invasion of the petitioner's right was made in 1949 when the constitutional guarantee was not available to him. In repelling this contention, Mukherjee, J. observed that the order against which the petition was primarily directed was the order of the Central Government passed in October, 1952, and that was a complete and clear answer to the contention raised by the learned Attorney-General. Even so, the learned Judge proceeded to observe that assuming that the deprivation took place in 1949 and at a time when the Constitution had not come into force, the order effecting the deprivation which continued from day to day must be held to have come into conflict with the fundamental rights of the petitioner as soon as the Constitution came into force and became void on and from that date under Article 13(1) of the Constitution. It is on these observations that Mr Sastri's argument is founded. **With respect, we are not prepared to hold that these observations were intended to lay down an unqualified proposition of law that even if a citizen was deprived of his fundamental rights by a valid scheme framed under a valid law at a time when the Constitution was not in force, the mere fact that such a scheme would continue to operate even after 26th January, 1950, would expose it to the risk of having to face a challenge under Article 19. If the broad and unqualified proposition for which Mr Sastri contends is accepted as true, then it would virtually make the material provisions of the Constitution in respect of fundamental rights retrospective in operation. In the present case, the scheme was framed and the Executive Officer was appointed as early as 1939. If the Executive Officer could not take over the actual administration of the Mutt and its properties, it was partly because the appellant has continuously challenged the implementation of the scheme by legal proceedings and partly because he has otherwise obstructed the said implementation. But it is clear that when the scheme was framed and a challenge made by the appellant to its validity failed in courts of law, his property rights had been taken away. The fact that the order was not implemented does not make any difference to this legal position. If Mr Sastri's argument were right, all such schemes, though implemented and enforced, may still be open to challenge on the ground that they contravened the Matadhipati's fundamental rights under Article 19. Such a plea does not appear to have ever been raised and, in our opinion, cannot be validity raised for the simple reason that the fundamental rights are not retrospective in their operation. The observations on which Mr Sastri relies must be read in the light of the relevant fact to which we have just referred. The deprivation of the petitioner's property rights was brought about by invalid orders and it was in respect of such invalid orders that the Court held that the petitioner was entitled to seek the protection of Article 19 and invoke the jurisdiction of this Court under Article 32. In our opinion, therefore, there is no substance in the contention that since in the present case, the scheme has not been completely implemented till 1952, we must examine its validity in the light of the fundamental rights guaranteed to the appellant under Article 19 of the Constitution.**

23. Similarly in *Rabindranath Bose v. Union of India*, (1970) 1 SCC 84, it was held as under :

"30. It seems to us that the petitioners cannot complain of the breach of Articles 14 and 16 of the Constitution in respect of acts done before the Constitution came into

force. These acts in this case were: (1) appointments of the respondents to Income Tax Officers Class I, Grade II Service; (2) Seniority List as existing on January 1, 1950; and (3) the Seniority Rules of 1949 and 1950, insofar as they had effect up to January 26, 1950. **It will be recalled that the first seniority list was prepared as on January 1, 1950 and even if the seniority list was finally settled after the Constitution came into force, the Rules to be applied were the Seniority Rules of 1949 and 1950. In other words, if the list had been finally settled on January 1, 1950, it is clear that no appeal could be made to Articles 14 and 16 of the Constitution. The fact that the List was prepared after the Constitution came into force would not enable the petitioners to appeal to Articles 14 and 16.** The position is, however, different insofar as changes were made in the Seniority List as a result of change in the 1952 Seniority Rules. These changes were post-Constitution and if they are hit by Article 14 and Article 16 of the Constitution, the petitioners would have the right to complain of the breach of their fundamental rights under these Articles."

24. In *Guru Datta Sharma v. State of Bihar*, (1962) 2 SCR 292, it was held as under :

"31. There remains for consideration the third point urged that even if the Bihar Private Forests Acts, 1946 and 1948 were valid when enacted, the relevant provisions cannot be enforced against the appellant on the ground that the enforcement would violate the fundamental rights granted to the appellant by Articles 19 and 31 of the Constitution. The argument was this : The lease in favour of the appellant was for terms of 8 or 9 years and would have continued, if nothing else had happened, till certain dates in 1954 and 1955. He has, however, been deprived of the benefit of the lease by the operation of the impugned legislation and the appellant's rights which he could have otherwise enjoyed beyond January 26, 1950 have been denied to him, and this is tantamount to the impugned enactments operating beyond January 26, 1950. In support of this submission learned counsel invited our attention to a passage in the judgment of this Court in *Shanti Sarup v. Union of India* [AIR (1955) SC 624 at p 628] . That case was concerned primarily with the constitutionality of an order dated October 21, 1952 passed by the Central Government under Section 3(4) of the Essential Supplies (Temporary Powers) Act, 1946, by which the petitioner Firm was dispossessed of a textile-mill which they owned and managed. There had been an earlier order of the State Government dated July 21, 1949 also which was similarly impugned. B.K. Mukherjea, J., as he then was, who spoke for the Court, after pointing out that the order of the Central Government was not supportable under the terms of the enactment under which it was made and therefore had deprived the petitioner of his property under Article 31 of the Constitution proceeded to add:

"But even assuming that the deprivation took place earlier and at a time when the Constitution had not come into force, the order effecting the deprivation which continued from day to day must be held to have come into conflict with the fundamental rights of the petitioner as soon as the Constitution came into force and become void on and from that date under Article 13(1) of the Constitution."

We are unable to construe these observations as affording any assistance to the appellant. The lease or licence which the appellant had obtained by contract from the landholder was put an end to, once and for all by virtue of the provisions contained in Section 22 of the impugned enactment which made provision for compensation for the extinguishment of those rights. That took place long before the Constitution, in 1946. We have held that the legislation under which the appellant's rights were extinguished, subject to his claim for compensation, was a valid law. It would therefore follow that the appellant

could have no rights which could survive the Constitution so as to enable him to invoke the protection of Part III thereof. On this point also we must hold against the appellant."

25. It is clear from the facts that the governmental "takeover" of the institution was complete in 1920. It is submitted that at the time of establishment of the AMU, there were obviously no UGC regulations and the judgment in *Basha [supra]* was referring to the negotiations that took place at that time. At the said time there was no Article 30 and therefore no fundamental right to establish minority institution existed. Therefore, the judgment in *Basha [supra]* notes that in order to have a University in Aligarh, the minority community had to forego its demand of a minority university and accept the Imperial Government position of having a university of national character in Aligarh. The said findings of the judgment in *Basha [supra]* are *pure findings of fact as they existed at the time of the establishment of the AMU in 1920 and do not lay down any straight-jacket formulation of law*. The Petitioner is trying to read into something in the judgment in *Basha [supra]* which the said judgment does not seek to state.

MEANING OF 'ESTABLISHED BY AND UNDER THE ACT'

26. It is submitted that there is a stark difference between a body which is created by the statute and a body which having been come into existence is governed in accordance with the provisions of the statute. In *Dalco Engg. (P) Ltd. v. Satish Prabhakar Padhye, (2010) 4 SCC 378*, a Bench of 3 Hon'ble Judges expressly note that the term '*established*' in the phrase '*established by or under an Act*' means coming into existence by virtue of a statutory enactment. The relevant paragraphs are as under:-

21. Where the definition of "establishment" uses the term "a corporation established by or under an Act", the emphasis should be on the word "established" in addition to the words "by or under". **The word "established" refers to coming into existence by virtue of an enactment. It does not refer to a company, which, when it comes into existence, is governed in accordance with the provisions of the Companies Act.** But then, what is the difference between "established by a Central Act" and "established under a Central Act"?

22. The difference is best explained by some illustrations. A corporation is established by an Act, where the Act itself establishes the corporation. For example, Section 3 of the State Bank of India Act, 1955 provides that a bank to be called State Bank of India shall be constituted to carry on the business of banking. Section 3 of the Life Insurance Corporation Act, 1956 provides that

3. Establishment and incorporation of Life Insurance Corporation of India.—(1) With effect from such date as the Central Government may, by notification in the

Official Gazette, appoint, there shall be established a Corporation called the Life Insurance Corporation of India.”

State Bank of India and Life Insurance Corporation of India are two examples of corporations established by “a Central Act”.

23. We may next refer to the State Financial Corporations Act, 1951 which provides for establishment of various financial corporations under that Act. Section 3 of that Act relates to establishment of State Financial Corporations and provides that “the State Government may, by notification in the Official Gazette, establish a financial corporation for the State under such name as may be specified in the notification” and such financial corporation shall be a body corporate by the name notified. **Thus, a State Financial Corporation is established under a Central Act. Therefore, when the words “by and under an Act” are preceded by the words “established”, it is clear that the reference is to a corporation established, that it is brought into existence, by an Act or under an Act.** In short, the term refers to a statutory corporation as contrasted from a non-statutory corporation incorporated or registered under the Companies Act.

27. The decision of the Hon’ble Supreme Court in *Sukhdev Singh v. Bhagatram Sardar Singh Raghuvanshi*, (1975) 1 SCC 421, may be appropriately referred to in this context:

25. The Additional Solicitor-General submitted that regulations could not have the force of law because these regulations are similar to regulations framed by a company incorporated under the Companies Act. **The fallacy lies in equating rules and regulations of a company with rules and regulations framed by a statutory body. A company makes rules and regulations in accordance with the provisions of the Companies Act. A statutory body on the other hand makes rules and regulations by and under the powers conferred by the statutes creating such bodies.** Regulations in Table-A of the Companies Act are to be adopted by a company. Such adoption is a statutory requirement. A company cannot come into existence unless it is incorporated in accordance with the provisions of the Companies Act. A company cannot exercise powers unless the company follows the statutory provisions. The provision in the Registration Act requires registration of instruments. The provisions in the Stamp Act contain provisions for stamping of documents. The non-compliance with statutory provisions will render a document to be of no effect. **The source of the power for making rules and regulations in the case of corporation created by a statute is the statute itself.** A company incorporated under the Companies Act is not created by the Companies Act but comes into existence in accordance with the provisions of the Act. It is not a statutory body because it is not created by the statute. It is a body created in accordance with the provisions of the statute.

28. In *Executive Committee of Vaish Degree College v. Lakshmi Narain*, (1976) 2 SCC 58, in a similar context, the Hon’ble Supreme Court held as under:-

10. We would first deal with the important question, which has been the sheet-anchor of the arguments of the learned Counsel for the respondent as also the main basis of the judgment of the Full Bench of the Allahabad High Court, as to whether or not the

appellant Executive Committee can be said to be a statutory body in the circumstances of the present case. **It seems to us that before an institution can be a statutory body it must be created by or under the statute and owe its existence to a statute. This must be the primary thing which has got to be established. Here a distinction must be made between an institution which is not created by or under a statute but is governed by certain statutory provisions for the proper maintenance and administration of the institution.** There have been a number of institutions which though not created by or under any statute have adopted certain statutory provisions, but that by itself is not, in our opinion, sufficient to clothe the institution with a statutory character. In *Sukhdev Singh v. Bhagatram Sardar Singh Raghuvanshi* [(1975) 1 SCC 421 : 1975 SCC (L&S) 101 : AIR 1975 SC 1331, 1339] this Court clearly pointed out as to what constitutes a statutory body. In this connection my Lord A.N. Ray, C.J., observed as follows : [SCC p. 435 : SCC (L&S) p. 115, para 25]

“A company incorporated under the Companies Act is not created by the Companies Act but comes into existence in accordance with the provisions of the Act. It is not a statutory body because it is not created by the statute. It is a body created in accordance with the provisions of the statute.”

It is, therefore, clear that there is a well marked distinction between a body which is created by the statute and a body which after having come into existence is governed in accordance with the provisions of the statute. In other words the position seems to be that the institution concerned must owe its very existence to a statute which would be the fountainhead of its powers. The question in such cases to be asked is, if there is no statute would the institution have any legal existence. If the answer is in the negative, then undoubtedly it is a statutory body, but if the institution has a separate existence of its own without any reference to the statute concerned but is merely governed by the statutory provisions it cannot be said to be a statutory body.

29. The Hon'ble Supreme Court in *S.S. Dhanoa v. MCD, (1981) 3 SCC 431*, has held as under:

10. There is a distinction between a corporation established by or under an Act and a body incorporated under an Act. The distinction was brought out by this Court in *Sukhdev Singh v. Bhagatram Sardar Singh Raghuvanshi* [(1975) 1 SCC 421 : 1975 SCC (L&S) 101 : (1975) 3 SCR 619] . It was observed: [SCC p. 435: SCC (L&S) p. 115, para 25]

“A company incorporated under the Companies Act is not created by the Companies Act but comes into existence in accordance with the provisions of the Act.”

There is thus a well-marked distinction between a body created by a statute and a body which, after coming into existence, is governed in accordance with the provisions of a statute. In *Sabhajit Ternary v. Union of India* [(1975) 1 SCC 485; 1975 SCC (L&S) 99 : (1975) 3 SCR 616] the question arose whether the Council of Scientific and Industrial Research which was a society registered under the Societies Registration Act, was a statutory body. It was urged that because the Council of Scientific and Industrial Research had Government nominees as the President of the body and derived guidance and financial aid from the government, it was a statutory body. Repelling the contention, the court observed: [SCC pp. 486, 487: SCC (L&S) p. 100, para 4]

“The society does not have a statutory character like the Oil and Natural Gas Commission, or the Life Insurance Corporation or Industrial Finance Corporation. It is a society incorporated in accordance with the provisions of the Societies

Registration Act. The fact that the Prime Minister is the President or that the Government appoints nominees to the governing body or that the government may terminate the membership will not establish anything more than the fact that the government takes special care that the promotion, guidance and cooperation of scientific and industrial research, the institution and financing of specific researches, establishment or development and assistance to special institutions or departments of the existing institutions for scientific study of problems affecting particular industry in a trade, the utilisation of the result of the researches conducted under the auspices of the Council towards the development of industries in the country are carried out in a responsible manner.”

Whatever has been said with regard to the Council of Scientific and Industrial Research, which was a society registered under the Societies Registration Act, equally applies to the Cooperative Store Limited, which is a society registered under the Bombay Cooperative Societies Act, 1925. It is not a statutory body because it is not created by a statute. It is a body created by an act of a group of individuals in accordance with the provisions of a statute.

30. In *CIT v. Canara Bank*, (2018) 9 SCC 322, the Hon’ble Supreme Court has held the following:

26. This Court further elaborating the expression held that when the expression used is “established by or under the Act”, the emphasis should be on the word “established” in addition to the words “by or under”. It is useful to refer to what has been said in paras 21 and 22 of the judgment, which is to the following effect: (*Satish Prabhakar case [Dalco Engg. (P) Ltd. v. Satish Prabhakar Padhye*, (2010) 4 SCC 378 : (2010) 1 SCC (L&S) 1052 : 3 SCEC 684] , SCC pp. 387-88)

“21. Where the definition of “establishment” uses the term “a corporation established by or under an Act”, the emphasis should be on the word “established” in addition to the words “by or under”. The word “established” refers to coming into existence by virtue of an enactment. It does not refer to a company, which, when it comes into existence, is governed in accordance with the provisions of the Companies Act. But then, what is the difference between “established by a Central Act” and “established under a Central Act”?

22. The difference is best explained by some illustrations. A corporation is established by an Act, where the Act itself establishes the corporation. For example, Section 3 of the State Bank of India Act, 1955 provides that a bank to be called State Bank of India shall be constituted to carry on the business of banking. Section 3 of the Life Insurance Corporation Act, 1956 provides that:

‘3. Establishment and incorporation of Life Insurance Corporation of India.—(1) With effect from such date as the Central Government may, by notification in the Official Gazette, appoint, there shall be established a Corporation called the Life Insurance Corporation of India.’

State Bank of India and Life Insurance Corporation of India are two examples of corporations established by “a Central Act”.”

33. This Court having already laid down in *Dalco Engg. [Dalco Engg. (P) Ltd. v. Satish Prabhakar Padhye, (2010) 4 SCC 378 : (2010) 1 SCC (L&S) 1052 : 3 SCEC 684]* that establishment of various financial corporations under the State Financial Corporation Act, 1951 is establishment of a corporation by an Act or under an Act. We are of the view that the above ratio fully covers the present case and we have no doubt that the Authority has been established by the 1976 Act and it is clearly covered by the Notification dated 22-10-1970. It is further relevant to note that composition of the Authority is statutorily provided by Section 3 of the 1976 Act itself, hence, there is no denying that the Authority has been constituted by the Act itself.

31. It is pertinent to note that the Act of 1920 provides that it was '*An Act to establish and incorporate a teaching and residential Muslim University at Aligarh*'. The Act of 1920 was passed by the Indian Legislative Council and it received the assent of the Governor General. A reading of *Dalco supra*, makes it crystal clear that AMU owed its very existence to a statute i.e., Act of 1920 which was the fountainhead of its powers. Therefore, the argument of the Petitioner that the Act of 1920 was merely a vehicle for recognition of the educational institution has no legs to stand.

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 2318 OF 2006**

IN THE MATTER OF :

UNION OF INDIA

.....

PETITIONER

VERSUS

MALAY SHUKLA

.....

RESPONDENT

**SUBMISSIONS – PART III
ON BEHALF OF SOLICITOR GENERAL OF INDIA**

ADMINISTRATION OF AMU IN 1920

1. It is clear that AMU is not established by the minority. The following aspects may be noted in this regard:

- a. As the Act stood in the year 1920, it was not administered by minority. Section 13 provides for 'Lord Rector' who was Governor General and not a muslim.
- b. Section 14 provided for the Visiting Board which also do not consist of muslims. Visiting Board is the supreme body having an overall power of administration which is clear from section 14(1) and (3) which reads as under:-

(1) The Visiting Board of the University, if and when the United Provinces of Agra and Oudh become a Governor's province within the meaning of the Government of India Act, shall consist of the Governor thereof, the members of the Executive Council, the Ministers, one member nominated by the Governor and one member nominated by the Minister in charge of Education

Provided that until a Governor's Province is so constituted, the Lieutenant Governor of the said Provinces shall discharge and perform the duties of the Visiting Board.

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(3) the Visiting Board may, by order in writing, annul any proceedings not in conformity with the Act, Statutes and ordinances, provided that before making any such order the Board shall call upon the University to show cause why such order should not be made, and if any cause is shown within reasonable time, shall consider the same.

- c. Officers of the University are provided for under section 16 which also do not mandate to be belonging to muslim religion.
- d. There are three authorities of the University under section 22 :
 - (a) The Court
 - (b) The Executive Council
 - (c) The Academic Council
- e. Though section 23(1) proviso provides that no person other than a muslim shall be a Member thereof, the Court was never conceived to be body having power of administration but was given only residuary power under section 23(2) [Vol. IIB page 149]

“Provided that no person other than a Muslim shall be a member thereof.

(2) 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, the Statutes, the Ordinances and the Regulations. It shall have power to review the acts of the Executive and the Academic Councils (save where such Councils have acted in accordance with powers conferred on them under this Act, the Statutes or the Ordinances) and direct that necessary action be taken by the Executive or the Academic Council, as the case may be, on any recommendations of the Lord Rector.”

- f. As per Section 13, the Governor General was Lord Rector of the University with whom the ultimate power, control and superintendence over the University vested. The Lord Rector had wide ranging powers of conducting any inspection and enquiry pursuant to which the Lord Rector could issue directions to the court which was to comply with the same. In effect, the court was an authority clearly subservient to the Lord Rector. Section 13 is quoted as under:-

“13. The Lord Rector

(1) The Governor General shall be The Lord Rector of the University.

(2) The Lord Rector shall have, the right to cause an inspection to be made by such person or persons as he may direct, of the University, its buildings, laboratories, and equipment, and of any institution maintained by the University, and also of the examinations, teaching and other work conducted or done by the University, and to cause an inquiry to be made in like manner in respect of any matter connected with the University. The Lord Rector shall in every case give notice to the University of his intention to cause an

inspection or inquiry to be made, and the University shall be entitled to be represented thereat.

(3) The Lord Rector may address the Vice-Chancellor with reference to the result of such inspection and inquiry, and the Vice-Chancellor shall communicate to the Court the views of the Lord Rector with such advice as the Lord Rector may be pleased to offer upon the action to be taken thereon.

(4) The Court shall communicate through the Vice-Chancellor to the Lord Rector such action, if any, as it is proposed to take or has been taken upon the result of such inspection or inquiry.

(5) Where the Court does not, within reasonable time, take action to the satisfaction of the Lord Rector, the Lord Rector may, after considering any explanation furnished or representation made by the Court issue such directions as he may think fit, and the Court shall comply with such directions."

- g. The power to establish and maintain colleges and school was subject to statute which were made by the Legislature and could be changed only with clearance of Governor General. Further, the power of the University to admit colleges and schools in the Aligarh District was only available with the sanction of the Governor General-in-Counsel which was a non-minority authority thereby meaning that the most important function of the University of maintaining or providing recognition to schools and colleges, was dependent upon on the sanction of a non-minority authority. Section 12 is quoted as under:

"12. Power to recognise Intermediate colleges and schools –

(1) The University shall, **subject to the Statutes**, have power to establish and maintain Intermediate colleges and schools, within such limits in the Aligarh District as may be laid down in the Ordinances, for the purpose of preparing students for admission to the University, and may provide for instruction in the Muslim religion and theology in any such colleges and schools.

(2) With the approval of the Academic Council **and the sanction of the Governor General in Council on the recommendation of the Visiting Board**, and subject to such conditions as may be prescribed by the Statutes and the Ordinances, the University may admit Intermediate colleges and schools in the Aligarh District to such privileges of the University as it thinks fit."

- h. The Statutes and the Ordinances were the governance documents of the University. The First Statutes were framed by the Imperial Legislature as per Section 28(1) which reads as under :

"28. Statutes

(1) The first Statutes are those set out in the Schedule.”

- i. The first Ordinance were framed by the Governor General in Council as per Section 30(2) which is quoted as under :

“30. Ordinances –

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(2) The first Ordinances shall be framed as directed by the Governor General in Council, and shall receive such previous approval as he may direct. ”

- j. Both the Ordinances and the Statutes could not have been amended without the approval of the Governor General in Council. The power in this regard was so wide that the Governor General in Council could reject the amendments proposed by the authorities of the University. The relevant provisions are Section 28(2)(c) and Section 30(3) which is as under :

“28. Statutes

(c) No new Statute or amendment or repeal of an existing Statute shall have any validity until it has been submitted through the Visiting Board (which may record its opinion thereon) to the Governor General in Council, and has been approved by the latter, who may sanction, disallow or remit it for further consideration:

Provided that no Statute dealing with the instruction of Muslim students in the Muslim religion and theology shall require to be so submitted or approved.”

30. Ordinances –

(3) No new Ordinance, or amendment or repeal of an existing Ordinance shall have any validity until it has been submitted through the Court and the Visiting Board (which may record its opinion thereon) to the Governor General in Council, and has obtained the approval of the latter, who may sanction, disallow or remit it for further consideration.”

2. Thus, it is clear that there is no power of administration vested in minority as the Act stood in the year 1920

Annexure – A – Table showing the present composition of the Court

Annexure – B – Table comparing the BHU Act, 1915 and AMU Act, 1920

ANNEXURE A

COMPOSITION OF THE COURT

(AS PER CLAUSE 14 OF THE STATUTES AS OF DATE)

Members that may probably be Muslim, by law, have been highlighted with green.

PARTICULAR	NUMBER OF MEMBERS	TYPE
EX-OFFICIO MEMBERS	35	Need Not Be Muslim
• Chancellor	1	Need Not Be Muslim
• Pro-Chancellor	1	Need Not Be Muslim
• Vice-Chancellor	1	Need Not Be Muslim
• Pro-Vice-Chancellor	1	Need Not Be Muslim
• Honorary Treasurer	1	Need Not Be Muslim
• All Ex-Vice-Chancellors	5	Need Not Be Muslim
• All Deans of Faculties	13	Need Not Be Muslim
• Directors of all Centres	3	Need Not Be Muslim
• Dean of Student's Welfare	1	Need Not Be Muslim
• Librarian	1	Need Not Be Muslim
• Registrar	1	Need Not Be Muslim
• Five Provosts by rotation according to seniority	5	Need Not Be Muslim
• Proctor	1	Need Not Be Muslim
REPRESENTATIVES OF THE DEPARTMENTS AND COLLEGES	28	Need Not Be Muslim
• Twenty Chairmen of Departments, by rotation according to seniority	20	Need Not Be Muslim
• One Coordinator from amongst the Coordinators of the Units of	1	Need Not Be Muslim

each Centre, by rotation according to seniority.		
<ul style="list-style-type: none"> Principals of Colleges 	7	Need Not Be Muslim
REPRESENTATIVES OF TEACHERS OTHER THAN CHAIRMEN OF DEPARTMENTS AND PRINCIPALS OF COLLEGES	10	Need Not Be Muslim
<ul style="list-style-type: none"> Two Professors, who are not Chairmen of Departments, to be elected from amongst themselves. 	2	Need Not Be Muslim
<ul style="list-style-type: none"> Three Readers to be elected from amongst themselves. 	3	Need Not Be Muslim
<ul style="list-style-type: none"> Five Lecturers to be elected from amongst themselves. 	5	Need Not Be Muslim
REPRESENTATIVES OF SCHOOLS MAINTAINED BY THE UNIVERSITY.	2	Need Not Be Muslim
<ul style="list-style-type: none"> Two Principals of Schools maintained by the University by rotation according to seniority. 	2	Need Not Be Muslim
REPRESENTATIVES OF NON-TEACHING STAFF	5	Need Not Be Muslim
<ul style="list-style-type: none"> Five representatives of non-teaching staff to be elected from amongst themselves. 	5	Need Not Be Muslim
REPRESENTATIVES OF EX-STUDENTS	25	Need Not Be Muslim
<ul style="list-style-type: none"> Twenty five representatives of ex-students to be elected by the 	25	Need Not Be Muslim

Alumni (Old Boys) Association.		
REPRESENTATIVES OF DONORS	10	Need Not Be Muslim
<ul style="list-style-type: none"> Ten representatives of donors who have donated at least a sum of Rs. 1,00,000/-** or transferred property of the value of the said among to the University, to be elected from amongst themselves. 	10	Need Not Be Muslim
REPRESENTATIVES OF LEARNED PROFESSIONS, INDUSTRY AND COMMERCE	10	Need Not Be Muslim
<ul style="list-style-type: none"> Ten persons representing the learned professions, industry and commerce, to be elected by the Court. 	10	Need Not Be Muslim
REPRESENTATIVES OF ALL INDIA MUSLIM EDUCATION CONFERENCE	5	May Be Muslim
<ul style="list-style-type: none"> Five representatives of the All-India Muslim Education Conference. 	5	May Be Muslim
REPRESENTATIVES OF PARLIAMENT	10	Need Not Be Muslim
<ul style="list-style-type: none"> Ten members of Parliament, six to be elected by the House of the People (Lok Sabha) from amongst its members and four to be elected by the Council of States (Rajya Sabha) from amongst its members. 	10	Need Not Be Muslim

REPRESENTATIVES OF MUSLIM CULTURE AND LEARNING	32	May Be Muslim
<ul style="list-style-type: none"> • Fifteen persons representing Muslim Culture and Learning to be elected by the Court, of whom ten shall be persons residing outside the State of Uttar Pradesh. 	15	May Be Muslim
<ul style="list-style-type: none"> • Six persons representing Muslim Colleges of Oriental learning in India, to be elected by the Court. 	6	May Be Muslim
<ul style="list-style-type: none"> • Four persons from amongst the Chairmen (including Presidents) of the Wakf Boards constituted under the Wakf Act, 1954 (29 of 1954), or under any other law in force in a State, to be elected by the Court. 	4	May Be Muslim
<ul style="list-style-type: none"> • Two persons representing Urdu Language and Literature, to be elected by the Court. 	2	May Be Muslim
<ul style="list-style-type: none"> • Five persons representing Muslim Educational and Cultural Societies situated outside the State of Uttar Pradesh, to be elected by the Court. 	5	May Be Muslim
REPRESENTATIVES OF STUDENTS	15	Need Not Be Muslim
<ul style="list-style-type: none"> • President, Vice-President, Secretary and one nominee of 	4	Need Not Be Muslim

the Executive Council of the Students Union Ex- Officio;		
<ul style="list-style-type: none"> Eleven students to be elected by a simple majority by students of the various faculties classified into groups in the manner prescribed by the Ordinances. 	11	Need Not Be Muslim
NOMINATED PERSONS	7	Need Not Be Muslim
<ul style="list-style-type: none"> Five persons to be nominated by the Visitor. 	5	Need Not Be Muslim
<ul style="list-style-type: none"> One person to be nominated by the Chief Rector. 	1	Need Not Be Muslim
<ul style="list-style-type: none"> One person to be nominated by the Chancellor. 	1	Need Not Be Muslim
TOTAL	189	
	<i>Members that may probably be Muslim, by law, are 37.</i>	

ANNEXURE B

Sr No.	Provision under Original Benares Hindu University Act, 1915	Corresponding Provision in Original AMU Act, 1920
1.	<p>Preamble of the Act: WHEREAS <i>it is expedient to establish and incorporate a teaching and residential Hindu University at Banaras, and to dissolve the Hindu University Society, a Society registered under the Societies Registration Act, 1860, and to transfer to and vest in, the said University all property and rights now vested in the said Society; it is hereby enacted as follows;</i></p> <p>NOTE – As similar to MAO College and Muslim University Association in the AMU Act, Hindu University Society (which took over Central Hindu College in the year 1914) was dissolved by a Central Enactment.</p>	<p>Preamble of the Act: WHEREAS <i>it is expedient to establish and incorporate a teaching and residential Muslim University at Aligarh, and to dissolve the Societies registered under the Societies' Registration Act, 1860, which are respectively known as the Muhammadan Anglo-Oriental College, Aligarh, and the Muslim University Association, and to transfer to and rest in the said University all properties and rights of the said Societies and of the Muslim University Foundation Committee;</i></p>
2.	<p>Section 2. Definitions (h) "University" means the Banaras Hindu University.</p>	<p>Section 2 (h) "University" means the Aligarh Muslim University</p>
3.	<p>Section 3. Incorporation (1) The First Chancellor, Pro-Chancellor and Vice-Chancellor who shall be the persons specified in this behalf by a notification of the Governor General in Council in the Gazette of India, and the persons, indicated in Schedule I as members of the Court and the Senate, and all persons who may hereafter become, or be appointed as, such officers or members, so long as they continue to hold such office or membership,</p>	<p>Section 3. Incorporation <i>The First Chancellor Pro-Chancellor and Vice-Chancellor who shall be the persons appointed in this behalf by a notification of the Governor General in Council in the Gazette of India and the persons specified in the Schedule as the first members of the Court and all persons, who may hereafter become, or be appointed as, such officers or members, so long as they continue to hold such office or membership, are hereby constituted a body corporate by</i></p>

	shall be constituted a body corporate by the name of the Benares Hindu University.	the name of the Aligarh Muslim University and shall have perpetual succession and a Common Seal and shall sue and be sued by that name. NOTE- The Governor General in Council appointed the first establishment.
4.	<p>Section 4. University open to all classes, castes and creeds save as regards religious instruction.</p> <p><i>(1) The University shall, Subject to the Regulations, be open to persons of all classes, castes and creeds but provision shall be made for religious instruction and examination in Hindu religion only.</i></p> <p><i>(2) The Court shall have power to make Statutes providing that instruction in Hindu religion shall be compulsory in the case of Hindu students, and shall also have power to make special arrangements for the religious instruction of Jain or Sikh students from funds provided for this purpose.</i></p>	<p>Section 8. University open to all races, creeds and classes.</p> <p><i>The University shall, subject to the provisions of this Act and Ordinances, be open to all persons of either sex and of whatever race, creed or class:</i></p> <p>Provided that special provision may be made by the Ordinances exempting women from attending at public lectures and tutorial classes and prescribing for them special courses of study.</p> <p>Section 9. Religious Instruction</p> <p><i>The course shall have power to make Statutes providing that instruction in the Muslim religion shall be compulsory in the case of Muslim students.</i></p>
5.	<p>Section 9. The Court</p> <p><i>(2) Save in the case of the first Court, no person not being a Hindu shall become, or be appointed, a member of the Court.</i></p>	<p>Section 23. The Court</p> <p>(1) ****</p> <p>Provided that <i>no person other than a Muslim shall be a member thereof.</i></p>
6.	<p>Section 10. The Council</p> <p><i>(1) The Council shall be the executive body of the Court, and shall, in addition to ex-officio members, consist of not more than thirty elected members:</i></p>	<p>Section 24. The Executive Council</p> <p><i>(1) The Executive Council shall be the executive body of the University. Its constitution and the term of office of its members and its powers and duties shall be prescribed by the Statutes.</i></p>

	<p>NOTE- It may be noted here that as per Section 17(1)(ii) of the Schedule annexed to the original Act, twenty-five, out of the abovesaid thirty members, were members of the Court, elected by the Court.</p>	<p>NOTE- Section 15 of the Statutes annexed to the Act states that there shall not be more than thirty members in the Executive Council, twenty out of which shall be elected by the Court</p>
7.	<p>Provisions for making, amending or repealing the Statutes:</p>	
	<p>Section 17. Statutes (1) Subject to the provisions of this Act, the Statutes may provide for all or any of the following matters, namely : (d) for the instruction of Hindu students in Hindu religion; and (2) <i>The first statutes shall be those set out in Schedule I.</i> (3) <i>The Court may, from time to time, make new or additional Statutes, or may amend or repeal the Statutes.</i> (4) The Council shall have power to draft and propose to the Court Statutes to be made by the Court, and it shall be the duty of the Court to consider the same. (5) <i>All new Statutes or additions to the Statutes or amendments or repeals to Statutes other than Statutes providing for the instruction of Hindu students in Hindu religion, shall require the previous approval of the visitor, who may sanction, disallow, or remit for further consideration:</i> Provided that no Statute making a change in the constitution of the Court, the Council, the Senate or the Syndicate, as provided for in the first Statutes, shall be made without the</p>	<p>Section 27. Power to make Statutes Subject to the provisions of this Act, the Statutes may provide for all or any of the following matters, namely:- (j) the instruction of Muslim students in the Muslim religion and theology;</p> <p>Section 28. Statutes (1) <i>The first Statutes are those set out in the Schedule.</i> (2) The first Statutes may be amended, repealed or added to by Statutes made by the Court in the following manner:- (a) The Executive Council may propose to the Court the draft of any Statute to be passed by the Court. Such draft shall be considered by the Court at its next meeting. The Court may approve such draft and pass the Statute, or may reject it or return it to the Executive Council for reconsideration, either in whole or in part, together with any amendments which the Court may suggest.</p> <p style="text-align: center;">***</p> <p>(c) <i>No new Statute or amendment or repeal of an existing Statute shall have any validity until it has been submitted through the Visiting Board (which may record its</i></p>

<p>previous sanction of the Governor General in Council.</p> <p>NOTE – Section 17(2) of the BHU Act and Section 28(1) of the BHU Act signify that the First Statutes were made by the Imperial Legislative Council and not by the so called ‘minority’.</p> <p>NOTE – The above clauses, as also the similar clauses in the AMU Act, 1920, show that the power to make Statutes was ultimately with the Court, which consisted of Hindu or Muslim members only, as the case may be.</p>	<p><i>opinion thereon) to the Governor General in Council, and has been approved by the latter, who may sanction, disallow or remit it for further consideration:</i></p> <p><u><i>Provided that no Statute dealing with instruction of Muslim students in the Muslim religion and theology shall require be submitting or approving.</i></u></p>
<p>Section 20. Dissolution and transfer of property of Benares Hindu Society.</p> <p>(1) From the commencement of this Act, the Hindu University Society shall be dissolved, and property, moveable and immoveable, and all rights, powers and privileges of the Hindu University Society which, immediately before the commencement of this Act, belonged to, or were vested in, the said Society, shall vest in the University, and shall be applied to the objects and purposes for which the University is incorporated.</p>	<p>4. Dissolution of Muhammadan Anglo Oriental College, Aligarh and the Muslim University Association, and transfer of all property to the University.</p> <p>From the commencement of this Act-</p> <p>(i) The Societies known as the Muhammadan Anglo Oriental College, Aligarh, and the Muslim University Association shall be dissolved, and all property, moveable and immoveable, and all rights powers and privileges of the said Societies and all property, moveable and immoveable, and all rights, powers and privileges of the Muslim University Foundation Committee shall be transferred to and vest in the University and shall be applied to the objects and purposes for which the University is incorporated;</p>