IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2286 OF 2006

ALONG WITH

CIVIL APPEAL NOS. 2316, 2861, 2320, 2321, 2319, 2317 & 2318 OF 2006

IN THE MATTER OF:

Aligarh Muslim University … APPELLANT

VERSUS

Dr. Naresh Agarwal & Others … RESPONDENTS

VOLUME II-A

Written Submissions of behalf Respondents

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Nodal Counsel : Mr.Amit Sharma, Advocate

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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 2286 of 2006

Aligarh Muslim University ....PETITIONERS

VERSUS

Naresh Agarwal ....RESPONDENTS

AND OTHER CONNECTED APPEALS

WRITTEN SUBMISSIONS OF MR. GURU KRISHNA KUMAR, SR. ADV. ON BEHALF OF RESPONDENT NO. 1

I. PRESENT REFERENCE

1. The present proceedings arise out of the decision of the Aligarh Muslim University ("AMU") in 2005, to reserve for persons belonging to the Muslim community, 50% of post-graduate medical seats meant for qualified MBBS doctors in the open category. Reliance was placed on the Aligarh Muslim University (Amendment) Act, 1981 (hereinafter referred to as "Amendment of 1981"), which purportedly clarified the status of AMU as a minority educational institution.

2. This decision of the AMU as also the constitutionality of the Amendment of 1981 were challenged before the Hon'ble High Court of Allahabad. The Ld. Single Judge of the Hon'ble High Court of Allahabad, upon considering all facts and the legal position in a comprehensive manner, held that the amendments made by way of the Amendment of 1981 were unconstitutional and invalid, and overturned the decision of the AMU with regard to reservation of seats for Muslim students. The Ld. Single Judge, *inter alia,* relied upon the judgment of the Constitution Bench of this Hon'ble Court in ***Azeez Basha v. Union of India 1968 SCR 1833 : AIR 1968 SC 662*** (hereinafter referred to as "*Azeez Basha case"*). This decision of the Ld. Single Judge was

upheld and confirmed by the Ld. Division Bench of the Hon'ble High Court of Allahabad.

3. Being aggrieved, the AMU filed an SLP before this Hon'ble Court. A 3-Judge Bench of this Hon'ble Court, vide order dated 12.02.2019, referred the matter to a 7-Judge Bench[1].

II. ESTABLISHMENT OF ALIGARH MUSLIM UNIVERSITY : A PEEP INTO THE PAST

4. The AMU was established as a University by the Aligarh Muslim University Act, 1920 (hereinafter referred to as "Act of 1920"). There were negotiations between the Mohammedan Anglo-Oriental College ("MAO College"), the Muslim University Association and the Muslim University Foundation Committee (hereinafter collectively referred to as "the societies"), and the Government of British India in the process of setting up the University. The MAO College was originally started by Sir Syed Ahmad Khan as a primary school in 1872, which was upgraded to a high school and then a college, affiliated to the University of Allahabad.

5. During the negotiations, a number of issues were raised by the Government, mainly with regard to the administration and control of the proposed University and communal character of the same. The relevant facts in this regard germane to the present proceedings are adverted to in greater detail i*nfra*.

6. Simultaneously, the negotiations were on with respect to establishing the Benaras Hindu University ("BHU") which culminated in the passing of the Benaras Hindu University Act, 1915. Accordingly, the University was established in 1916.

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[1] Anjuman-e-Rahmania & Ors. v. Dist. Inspector of Schools & Ors W.P. No. 54-57 of 1981 dated 26.11.1981 *@ pg. 209-201 Volume 3-A of the Convenience Compilations*

A. Institutions of National Importance – The subject of Imperial Legislation

7. The Government of India Act, 1919 was passed, and 'Devolution Rules' under the said Act were framed. Under the said Rules, the Provincial Legislative List included Education[2], but excluded "Benaras Hindu University and such other Universities constituted after the commencement of the Rules, and declared by the Governor-General in Council to be central subjects." This was done on account of the national character of BHU and providing for the governance of BHU was placed within the ambit of the Imperial legislature. A copy of the Devolution Rules under the Government of India Act, 1919 is hereto annexed herewith as **Annexure A1** at page 30 to page 54.

8. When the Government of India Act, 1935 came to be passed, the position and status of Universities established as having national importance continued to be followed, and accordingly, the AMU and the BHU were both included within the Federal Legislative List as Entry 13 of List I[3].

9. The same position was continued at the time of making of the Draft Constitution of India. BHU and AMU were retained in the Union List in the Seventh Schedule in the Draft Constitution[4].

B. Negotiations preceding Establishment of AMU

10. Reverting to the negotiations conducted between the then Government of India and the representatives of the Muslim community and the societies, strong opposition to the affiliating power of the University as well as the denominational character of the University was raised by the government. Certain

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[2] Entry 5(a)(i) of Schedule I Part II "Provincial Subjects" of the Devolution Rules of the Government of India Act, under Rule 3.

[3] Entry 13 of List I "Federal Legislative List" of the Seventh Schedule of the Government of India Act, 1935

[4] Entry 40 of List of the Seventh Schedule of the Draft Constitution of India includes "*The institutions known on the 15th day of August, 1947 as the Benaras Hindu University and the Aligarh Muslim University*".

conditions were sought to be imposed, especially relating to the structure for working of the University and control of the Government over the functioning, as well as the necessity of keeping the University open for all.[5]

11. While considering objections to the power of affiliation of AMU across the whole Indian territory, it was pointed out on behalf of the societies and representatives of Muslim communities that the whole movement started upon the assumption that it will be an All-India movement and that affiliation will be an integral part of the scheme. It was submitted that the movement would collapse if power of affiliation was not granted. [6]

12. While considering the names of the universities at Aligarh and Benaras, an objection was taken by the government to the inclusion of "Muslim" and "Hindu" in the names of both the universities. However, it was submitted that the name "Muslim University" and "Hindu University" were specifically made since there was a "strong opinion that objection to the word Moslem is being taken by many as a part of policy of Christian nations to crush Islam."[7] Thus, it can be seen that the names were suggested in honour of local sentiment, and not to denote

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[5] "Letter No. 119 dated 31.07.1911 from Hon'ble Mr. S.H. Butler to Hon'ble Raja Sir Mohammed Ali Mohammed Khan, Khan Bahadur of Mahmudabad, K.C.I.E." : Development of University Education 1916 -1920 – Selections from Educational Records of the Government of India (Volume II), edited by Suresh Chandra Ghosh, published in 1977 by Zakir Husain Centre for Educational Studies, Jawaharlal Nehru University, New Delhi, *@ pg. 1904, Volume 4-D, Convenience Compilations*

[6] "Letter No. 258 of 1911, Govt. of India, Finance Dept., Accounts and Finance, Shimla, dated 02.11.1911" : Development of University Education 1916 -1920 – Selections from Educational Records of the Government of India (Volume II), edited by Suresh Chandra Ghosh, published in 1977 by Zakir Husain Centre for Educational Studies, Jawaharlal Nehru University, New Delhi, *@ pg. 1909, Volume 4-D, Convenience Compilations*

[7] "Letter No. 2274 dated 07.10.1912 from His Excellency the Viceroy, Shimla to the Secretary of State, London" : Development of University Education 1916 -1920 (supra) *@ pg. 1919, Volume 4-D, Convenience Compilations*

character of the University as such. Upon this clarification, the names were agreed to by the Education Department.[8]

13. In view of the strong push for affiliating powers of the AMU, the government mandated that there must be supervision and oversight of the Government and the nomination of the Chancellor should be in the hands of the Government, and not in the hands of the Muslim community.[9] It was understood that there would be full measure of Government control, which was a necessary corollary of the financial and other support which the Government was prepared to give to the scheme. It was stated that this purpose was largely achieved by the requirement of approval of the Governor-General-in-Council for alteration of statutes of the University.[10] The Muslim community agreed to this arrangement (which was on similar lines as the BHU) and gave up on the insistence that the entire administration of the AMU must be within the Muslim community.[11]

14. It may be highlighted that the MAO college was dependent largely on the patronage and grants from the local Government.[12] It was thus communicated that, in the light of

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[8] "Letter dated 29.11.1912 by India Office, London, to his Excellency the Right Hon'ble the Governor-General of India-in-Council" : Development of University Education 1916 -1920 (supra) *@pg. 1920, Volume 4-D, Convenience Compilations*

[9] "Letter dated 02.05.1914 from the hon'ble Sir James Scorgie Meston, K.C.-S.I., LL.D. to the Hon'ble Sir Harcourt Butler, K.C.S.I, C.I.E" : Development of University Education 1916 -1920 (supra) *@ pg. 1927, Volume 4-D, Convenience Compilations*

[10] No. 33, India Office, London dated 23.02.1912 to His Excellency the Right Honourable the Governor General of India in Council : Development of University Education 1916 -1920 (supra) *@ pg. 1909 – 1911, Volume 4-D, Convenience Compilations*

[11] Letter dated 19.01.1918 from the Hon'ble Sir Maclegan, K.C.I.E.,C.S.I, Secretary to the Government of India to the Chief Secretary, Government of the United Provinces, Dept. of Education" : Development of University Education 1916 -1920 (supra) *@ pg. 1933, Volume 4-D, Convenience Compilations.* Please also see : "Copy of resolutions passed at the Moslem University Committee Meeting held at Lucknow on 10.04.1916" : Development of University Education 1916 -1920 (supra) *@ pg. 1931, Volume 4-D, Convenience Compilations*

[12] "Letter dt 21.09.1918 Demi-Official Letter from Nawab Mohammed Ishak Khan to the Hon'ble Sir Edward Maclagan, K.C.I.E., C.I.E." : Development of University Education 1916 -1920 (supra) *@ pg. 1939-1941, Volume 4-D, Convenience Compilations*

BHU and other similar institutions being Central subjects under the Government of India Act, 1919, the Government of India would have to finance these universities and they were prepared to have a machinery to control them.[13]

15. Further, certain contributions were collected by the societies and representatives for the purpose of creating a corpus fund of Rs. 30 lakhs for the proposed University. Moreover, land and money contributions which were made by non-minority benefactors and Maharajas to the MAO College[14], were also transferred and vested with AMU by way of the Act of 1920.

C. *Structure of AMU – Subject to Governmental Supervision and Control*

16. After extensive negotiations, the AMU was established by statute under the Act of 1920. Provisions were made regarding the working and functioning of the AMU, and oversight of the functioning of the University was retained by the Government[15]. Extensive powers of supervision and control were given to the Lord Rector and the Visiting Board under Section 13 and 14 of the Act of 1920. The Governor-General was provided to be the Lord Rector of the University[16]. Moreover, the Officers of the University were to be appointed by the Governor General under Section 3 of the Act of 1920. There was no mandatory provision

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[13] Note by H.H. Sir Harcourt Butler on the meeting at Naini Tal of the 12th June, 1920 regarding the Aligarh Muslim University : Development of University Education 1916 -1920 (supra) @ *pg. 1944, Volume 4-D, Convenience Compilations*

[14] "An Address To His Excellency The Right Honourable Edward Robert Lytton, Bulwer Lytton, Baron Lytton of Knebworth G.M.S.I. Viceroy and Governor General of India" : Addresses and Speeches relating to the Mahomedan Anglo-Oriental College, in Aligarh by Nawab Mohsin-Ul-Mulk Trustee, printed and published at the Institute Press, Aligarh *@ pg. 34 Volume 4-D Convenience Compilation*

[15] Section 13 of the Act of 1920 provides that the Governor General shall be the Lord Rector of the University. *@pg. 78-79 Volume 4-A of Convenience Compilations*

[16] Section 13 of the Act of 1920 @ pg. 79 Volume 4-A of the Convenience Compilation

for the Officers of the University to be from within the Muslim community.

17. The Act of 1920 provided that admissions in the University would be open to all races, creeds and classes[17]. Further, the debates on the Aligarh Muslim University Bill refer to the promise of grant-in-aid from the government for the functioning of the University.[18]

18. The organisations that were functioning prior to the establishment of the AMU, i.e. the MAO College, the Muslim University Association and the Muslim University Foundation Committee ceased to exist. Their properties, liabilities and rights were vested with the AMU.

19. It becomes clear from a reading of the Statement of Objects and Reasons of the Act of 1920 that there was no intention of the government to create a denominational University under the Act. The Statement of Objects and Reasons provides that the Act was designed to incorporate a University, indicate its functions and governing bodies, and to secure assurance of a permanent endowment and to hand to the Government the necessary powers of control. The degrees would be recognised by the government and imparting of Muslim religious education was a special feature of the University.[19]

20. In fact, the debates in the Indian Legislative Council prior to the Act of 1920 acknowledge the fact that the AMU and BHU are of an all-India character, and hence, the proposed rules under the Government of India Act, 1919 include these universities as a

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[17] Section 8 of the Aligarh Muslim University Act, 1920

[18] Debates on The Aligarh Muslim University Bill : Proceedings of the Indian Legislative Council dated 09.09.1920 *@ pg. 70 Volume 4-C of the Convenience Compilation*

[19]Statement of Objects and Reasons dated 03.07.1920 of Aligarh Muslim University Act, 1920 *@pg. 87, Volume 4-A of the Convenience Compilation*

central subject with responsibility resting on the shoulders of the Government of India.[20]

III. ADOPTION OF THE INDIAN CONSTITITION: CRYSTALLISATION OF NATIONAL CHARACTER

A. Meaning of "Institution of National Importance"

21. Entry 64 List I of the Seventh Schedule of the Constitution vests with the Parliament the power to legislate in respect of "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".

22. An Institution of National Importance in India can be said to be one which acts as a pivotal player in developing highly skilled personnel. Only a chosen few institutes make it to this coveted list through an Act of the Parliament to develop centers of excellence in research, academics, etc.. In India, all of the Indian Institutes of Technology ("IITs"), National Institutes of Technology ("NITs"), All India Institute of Medical Sciences ("AIIMS"), National Institutes of Pharmaceutical Education and Research ("NIPERs") and some other institutions are recognised as Institutions of National Importance[21].

B. Intent of Constituent Assembly in including AMU in the Union List of the Constitution of India

23. The original entry in the Draft Constitution relating to AMU and BHU was entry 40 of List I in the Seventh Schedule, which read as follows:

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[20] Proceedings of the Indian Legislative Council assembled under the Provisions of the Government of India Act, 1915 dated 27.08.1920 *@pg. 43 Volume 4-C of the Convenience Compilation*

[21] Section 2 of The Institutes of Technology Act, 1961 (as amended in 1963); Section 2 of National Institutes of Technology Act, 2007; Section 5 of All India Institute of Medical Sciences Act, 1956; Section 2 of the National Institute of Pharmaceutical Education and Research Act, 1998; Please also see: Section 2 of The School of Planning and Architecture Act, 2014; Section 2 of The University of Allahabad Act, 2005

> *"40. The institutions known on the 15th day of August, 1947, as the Benaras Hindu University and the Aligarh Muslim University."*

24. During the debates, an amendment was proposed to include Delhi university and any other institution declared by Parliament by law to be an institution of national importance. This amendment was moved by Dr. B.R. Ambedkar.

25. In the debates, while there was some opposition to the inclusion of other institutions declared by Parliament as institutions of national importance, there was general consensus that the AMU and BHU were both institutions of national importance right from their inception[22]. The unanimous tone of the discussion in the Constituent Assembly clearly points to the national and secular character of AMU. Some of the relevant speeches of the members of the Constituent Assembly Debates in this regard are detailed *infra.*

26. Accordingly, entry 63 List I of the Seventh Schedule was adopted to the following effect:

> *63.The institutions known at the commencement of this Constitution as the Benaras 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.*

IV. POST-CONSTITUTIONAL DEVELOPMENTS

27. Upon the adoption of the Constitution of India in 1950, amendments to the Act of 1920 were immediately made in 1951[23] and in 1965[24], effecting changes in line with the provisions of the Constitution and also in line with the character of the AMU as an "institution of national importance".

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[22] Constituent Assembly Debates dated 30.08.1949 *@ pg. 112 Volume 4-B of Convenience Compilations*

[23] The Aligarh Muslim University (Amendment) Act, 1951

[24] The Aligarh Muslim University (Amendment) Act, 1965

28. The Aligarh Muslim University (Amendment) Act, 1951 (hereinafter referred to as "the Amendment of 1951") made changes, *inter alia*, removing the mandate that the Court shall have only Muslim members, and made changes to the mandate of religious instruction for Muslim students. The Amendment also provided that no religious test could be adopted by the AMU for admission as a student, teacher or Office Bearer. The Aligarh Muslim University (Amendment) Act, 1965 (hereinafter referred to as the "Amendment of 1965") changed the functioning of the AMU and changed the role of Court to an advisory one, and also correspondingly increased the powers of the Executive Council.

29. These Amendments were challenged by students and other parties, and a Constitution Bench of this Hon'ble Court in *Azeez Basha case* conclusively held that the AMU, being an institution of national importance, was not a minority educational institution. It is to be seen that *Azeez Basha case* was principally concerned with the Amendment of 1965.[25] This Hon'ble Court also held that the words "establish and administer" occurring in Art. 30 of the Constitution must be construed conjunctively and not disjunctively. This Hon'ble Court comprehensively looked into the history of establishment of the AMU and the composition and functioning of the AMU as per the Act of 1920, and held that the tests under Art. 30 of the Constitution of India were not satisfied.

30. While so, a 2-Judge Bench of this Hon'ble Court in *Anjuman-e-Rahmania case*[26], while dealing with a different institution, *inter alia* referred to opinions of jurists doubting correctness of the law laid down in *Azeez Basha case* and referred the matter for consideration by a larger Bench of 7 Judges.

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[25] *Azeez Basha case* (supra) *@ pg. 15 Volume 3-A of the Convenience Compilation*

[26] *Anjuman-e-Rahmania case* (supra)

31. While things stood thus, in 1981, the Parliament passed the Aligarh Muslim University (Amendment) Act, 1981,(hereinafter referred to as "Amendment of 1981") as under:

    a. Amendment of the preamble of the Act of 1920, removing the words "establishment and"[27];

    b. Amendment of definition of "University"[28];

    c. Amendment of Section 5(2)(c) to include additional powers of the University[29]

    d. Amendment of Section 23 to increase powers of the Court.[30]

    The purport of the amendment was to indirectly overrule the decision in *Azeez Basha* case. Pertinently, the amendments of 1981 do not contain any validating provision.

32. Subsequently, the *Anjuman-e-Rahmania case* was tagged onto a batch of matters in *TMA Pai Foundation v State of Karnataka & Ors.*[31] (hereinafter referred to as "*TMA Pai case*") A Constitution Bench of 11 Judges in *TMA Pai, inter alia* framed the following question:

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[27] Section 2 of the Aligarh Muslim University (Amendment) Act, 1981 @ *pg. 148 Volume 4-A of Convenience Compilations*. Prior to amendment : *"A Bill to establish and incorporate a teaching and residential Muslim University at Aligarh"* Post – amendment : *"A Bill to incorporate a teaching and residential Muslim University at Aligarh".*

[28] Section 3(iii) of the Aligarh Muslim University (Amendment) Act, 1981 @ *pg. 148 Volume 4-A of Convenience Compilations*. Prior to amendment : *"2(l). "University" means the Aligarh Muslim University."* Post – amendment : *"2(l) "University" means the educational institutution of their choice established by the Muslims of India, which originated as the Mohammedan Anglo-Oriental College, Aligarh, and which was subsequently incorporated as the Aligarh Muslim University.*

[29] Section 4 of the Aligarh Muslim University (Amendment) Act, 1981 @ *pg. 148 Volume 4-A of Convenience Compilations*.

[30] Section 12 of the Aligarh Muslim University (Amendment) Act, 1981 @ *pg. 149 – 150 Volume 4-A of Convenience Compilations*.

[31] Subsequently decided as ***TMA Pai Foundation v State of Karnataka (1994) 2 SCC 195***

> *Q3(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?*

However, the same was not gone into by the Constitution Bench and was left to be dealt with by the Regular Bench. The Regular Bench disposed of the writ petitions W.P. 54-57 of 1981 vide order dated 11.03.2003.[32]

33. In 2005, for the first time, reservation of 50% for Muslim quota was approved by way of a Resolution of the Admissions Committee. No-Objection was granted vide communication of the Joint Secretary (HE), the Ministry of Human Resource Development, Union of India. Ultimately, the decision was challenged in the Hon'ble High Court, culminating in the present proceedings.

34. The National Commission for Minority Educational Institutions (NCMEI) Act, 2004 (hereinafter referred to as the "NCMEI Act") was enacted to safeguard the educational rights of the minorities enshrined in Art. 30. The NCMEI Act defines minority educational institutions in line with Art. 30 of the Constitution and initially excluded Universities from the purview of the Act. However, this clause of exclusion was deleted by way of amendment in 2010. The effect of this amendment is discussed *infra*.

V. ISSUES FOR CONSIDERATION

1. It is respectfully submitted that the following questions/ issues arise before this Hon'ble Court :

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[32] Order dated 11.03.2003 in Anjuman-e-Rahmania (Supra) *@pg. no. 211-212 in Volume 3-A of Convenience Compilation*

A. What is the true purport of the words "establish" "and" "administer" in Article 30 of the Constitution of India?

B. Whether the AMU is a minority institution for the purposes of Article 30 of the Constitution of India?

C. What is the effect of inclusion of AMU in Entry 63 of List I of Seventh Schedule of the Constitution of India and declaration of the AMU as Institution of National Importance?

D. Whether the institution established by a sovereign legislative Act can be given a status under Article 30 of the Constitution of India, of being an educational institution established and administered by a religious minority?

E. Whether the Amendment of 1981 is unsustainable for purporting to override a judicial decision without removing the basis of the decision thereof?

F. Whether the Amendment of 1981 is unsustainable for merely overriding a judicial decision by legislatively declaring facts which are demonstrably incorrect?

G. Whether the Parliament, in any event, could have made the Amendment of 1981 through a mere amendment of the Act of 1920 without effecting a Constitutional amendment?

H. Whether the National Commission for Minorities Educational Institutions Act, 2004 can have the effect of altering the status of AMU as provided under the Constitution of India?

VI. SUBMISSIONS

A. MEANING AND TRUE PURPORT OF ARTICLE 30 OF THE CONSTITUTION OF INDIA

Meaning of "Establish"

A.1. The word "establish" is defined to mean[33] as follows:

> *"(1) to settle, make or fix firmly; to enact permanently*
> *(2) To make or form; to bring about or into existence*
> *(3)…."*

A.2. This Hon'ble Court in ***State of Kerala v. Very Rev. Mother*** Provincial***, (1970) 2 SCC 417***[34], discussed the meaning of the term "establish" and held as follows:

> *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.*
>
> (emphasis added)

A.3. This Hon'ble Court in ***Dayanand Anglo Vedic (DAV) College Trust & Management Society v. State of Maharashtra, (2013) 4 SCC 14***[35]***,*** following the

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[33] Definition of "establish", BLACK'S LAW DICTIONARY, Eight Edition, published by Thomson Reuters @ pg. 586

[34] ***State of Kerala v. Very Rev. Mother Provincial, (1970) 2 SCC 417 @ para 8***

[35] ***Dayanand Anglo Vedic (DAV) College Trust & Management Society v. State of Maharashtra, (2013) 4 SCC 14*** @ para 28

judgement in ***State of Kerala v. Very Rev. Mother Provincial (supra)***, to the extent relevant, held as follows:

> *28. We have no doubt that the view taken by the High Court is justified. The rights conferred by Article 30 of the Constitution to the minority are in two parts. The first part is the right to establish the institution of minority's choice and the second part relates to the right to administration of such institution. The word "establishment" herein means bringing into being of an institution and it must be by minority community. The "administration" means management of the affairs of the institution. .....*

A.4. Similarly, in ***S.P. Mittal v. Union of India (1983) 1 SCC 51***[36], 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.

A.5. The purport of the word "establish" under Article 30 thus means to bring into existence an educational institution by a member of a religious or linguistic minority community, with the intention to establish and administer the same as a minority institution.

Construction of "and administer"

A.6. This Hon'ble Court in ***Very Rev. Mother Provincial*** (supra)[37] discussed the meaning of the term "administer" embodied in Art. 30 of the Constitution of India as follows:

> *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***

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[36] ***S.P. Mittal v. Union of India (1983) 1 SCC 51*** @ para 137

[37] ***State of Kerala v. Very Rev. Mother Provincial, (1970) 2 SCC 417*** @para 9

> ***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.*
>
> (emphasis added)

A.7. It is settled law that a minority community, having established a minority educational institution, has the right to administer the same. A question that would arise while considering Art. 30 of the Constitution of India would be the meaning to be attributed to the expression "and" occurring in Art. 30 of the Constitution of India in the context of administering and establishing the institution.

A.8. A Constitution Bench of this Hon'ble Court in ***St. Stephen's College v. University of Delhi, (1992) 1 SCC 558***[38] held as follows:

> *28. ..... **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.** ..... 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.** .....*
>
> (emphasis added)

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[38] ***St. Stephen's College v. University of Delhi, (1992) 1 SCC 558*** @ para 28

A.9. As such the expression "and" occurring in Art. 30 has to be taken to have been used conjunctively. If the expression is read disjunctively, various anomalous consequence would result. For example, an education institution being managed by members of the minority community (whether by design or coincidence), even if it is not established by a member of the minority community can claim the status of minority institution wrongly. Therefore, settled principles of interpretation would warrant consideration of the two expressions "establish and administer" to be read conjunctively.

B. WHETHER THE AMU IS A MINORITY INSTITUTION UNDER ARTICLE 30 OF THE CONSTITUTION OF INDIA

B.1. Applying the above settled principles of law the AMU, was established by the Act of 1920. The AMU was neither established nor administered by the Muslim minority community. The relevant factual aspects in this regard are highlighted as under:

- ***Establishment of AMU by the sovereign legislative body of British India***

B.2. As noted supra, during negotiations regarding the proposed University, strong opposition to the affiliating power as well as the denominational character of the University was raised by the government. Certain conditions were sought to be imposed, especially relating to the structure for working of the University and control of the Government over the functioning, as well as the necessity of keeping the University open for all, and were accepted by the representatives of the Muslim community and the societies, in exchange for recognition of degrees of the University by the Government.

B.3. Pertinently, it was open to the societies to establish their own Muslims University at the material time. This is

evident from the fact that certain factions of the Muslim community that insisted on having complete control over administration of the University without any Governmental interference and oversight, subsequently established the Jamia University in Delhi.[39] As such, there were no fetters for establishment of University. It was not as though there was a need to have a statute to establish a university.

B.4. Pertinently this Hon'ble Court noted in Azeez Basha that it would not have been possible for the Muslim minority to establish a university whose degrees were bound to be recognised by Government, and hence approached the government for setting up the university under an Act of legislature. It was also observed that some of the amendments made in the Amendment of 1951 were made to bring the law in conformity with the Constitution so that the University could continue to receive aid from the Government[40].

B.5. As such, the AMU was established by the sovereign legislature by and under an enactment. Indeed, the Statement of Objects and Reasons of the Act of 1920 reinforce this position.

B.6. It is pertinent to note that except for the name, nothing in the Statement of Objects and Reasons of Act of 1920 denotes that there was an intent of creating a University with a denominational character. The imparting of Islamic religious education was noted as the special feature but

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[39] The Aligarh Movement and the Making of the Indian Muslim Mind 1857-2002, by Tariq Hasan, Published by Rupa Publications India Pvt. Ltd. *@ Page no. 1409 and 1416 Volume 4-D of Convenience Compilation*. Please also see: History of the Aligarh Muslim University Vol. 1 (1920-1945) by Khaliq Ahmad Nizami; Published by Idrah-i-Adabiyat-i Delli 2009 *@ Pg no. 1974 of Volume 4-D of Convenience Compilation*

[40] ***Azeez Basha case*** (supra) at pg. 852-853 *@ pg. 22-23 Volume 3-A of Convenience Compilation*

that by no means could make the AMU to be an institution established by minorities.

- ***Administration of AMU under the control of the Government***

B.7. A perusal of the entire scheme of the Act of 1920 shows that the overall working of the AMU (along with first statutes[41]) was extensively covered by the Act. As submitted above, overarching powers of supervision and control were given to the Lord Rector and the Visiting Board, both of which were Government officials[42]. A perusal of the provisions of the Act of 1920 shows that the appointment of the Pro-Vice Chancellor was to be approved by the Visiting Board.[43] Amendment of any statute of the AMU would not be valid unless submitted through the Visiting Board to the Governor-General-in-Council and had been approved.[44]

B.8. Moreover, Section 32 provided that admissions of students can only be done through the Admissions Committee which includes the Pro-Vice-Chancellor, whose appointment is to be approved by the Visiting Board. Provisions of the first statutes also showed the control and supervision of the government over the working of the AMU[45]. Section 8 provided that the University shall be open for all persons. These provisions categorically show that administration

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[41] Section 28 of the Aligarh Muslim University, 1920 *@ pg. 81 Volume 4-A of Convenience Compilation*

[42] Section 13 and 14 respectively of of the Aligarh Muslim University, 1920 *@ pg. 79 Volume 4-A of Convenience Compilation*

[43] Section 20 of the Aligarh Muslim University, 1920 *@ pg. 80 Volume 4-A of Convenience Compilation*

[44] Section 28 of the Aligarh Muslim University, 1920 *@ pg. 81 Volume 4-A of Convenience Compilation*

[45] First Statutes of the University under the Schedule of Aligarh Muslim University Act, 1920 *@ pg. 83 Volume 4-A of Convenience Compilation*

and management of the AMU was also not intended to be completely free from governmental control.

B.9. Throughout the Act of 1920, it is seen that there were checks and controls over the functioning of the AMU. As such, the status of the Court as that of the supreme governing body under the Act of 1920 cannot be indicative of right of administration for the purpose of Art. 30 of the Constitution but was only by way of delegation by the sovereign.

B.10. Thus, AMU was neither established nor administered *by* members of the Muslim community. As such, the AMU does not satisfy the conjunctive twin test under Art. 30 and cannot be understood to be a minority institution right from the inception.

C. EFFECT OF INCLUSION OF AMU IN THE CONSTITUTION OF INDIA IN 1950

Intent of Constituent Assembly

C.1. As has been submitted supra, the Constituent Assembly, during its debates, unanimously agreed that AMU and BHU must be placed within the ambit of Parliamentary power under List I of the Seventh Schedule. This unanimous approach of the Assembly can be seen from various speeches of the members of the Constituent Assembly, as follows[46]:

> *Mr.* ***Naziruddin Ahmad :***
> ....
> *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*

[46] Supra

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. ……..*

(emphasis added)

Shri H. V. Kamath :

I move:

"That in amendment No. 19 of List I (Sixth Week), in the proposed new entry 40A of List I, after the word 'education' the words 'and research' be inserted."

…..

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.

……

…It is a very pernicious provision, and I hope this House will not accept it, and that this House will pass the entry only with regard to these three universities, Benares, Aligarh and Delhi. I also hope that at no distant date the communal tag of the Benares and Aligarh universities will also disappear.

(emphasis added)

C.2. This unanimity makes it clear that the Constituent Assembly intended to ensure the national and secular

character of AMU. By way of inclusion of AMU within Entry 63 List I of the Seventh Schedule, the secular and national character of the institution got fully cemented and crystallised by way of Constitutional law-making. As such any vestige of representation of a particular community was completely lost.

C.3. It is also to be noted that the inclusion of AMU in Entry 63 of List I was in the face of Art. 30 which had been debated and adopted by the Constituent Assembly prior to the debate on Entry 63. Pertinently, the relevant debates nowhere refer to AMU as an Institution having minority character covered by the sweep of Art. 30. The national character of the University was retained.

C.4. In the circumstances, the intent of the constitution makers in recognizing the national and secular character of AMU cannot be tinkered with, more so in the manner as claimed by the appellant.

C.5. Assuming arguendo that AMU had trappings of a minority Institution prior to the adoption of the Constitution, the sovereign placed the institution in the character of a secular institution of national importance by including it in entry 63.

C.6. Profitable reference may be made to the decision of the Constitution Bench of this Hon'ble Court in ***M. Siddique (Ram Janambhumi Temple Reference-5J) v Suresh Das***[47] wherein it was held that the only legally enforceable rights one can have as against a new sovereign were those, and only those , which that new sovereign by agreement

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[47] ***M. Siddique (Ram Janambhumi Temple Reference-5J) v Suresh Das***[47] (2020) 1 SCC 1 @ para 984 to 987 and 989-990

expressed or implied, or by legislation, chooses to confer upon them.

The Amendments of 1951 and 1965 and the Azeez Basha case

C.7. The important amendments brought into the Act of 1920 in 1951 and 1965 also need emphasis. By the Amendment of 1951, the following changes were made:

a) Section 9 of the Act of 1920, which gave the Court of AMU the power to make statutes providing compulsory religious instruction in case of Muslim students, was deleted;

b) Section 8 of the Act of 1920 was amended to include a provision that it would not be lawful for the University to adopt or import any religious test or professional test on any person for entitlement for admission as student, teacher or Office bearer. A proviso was also included to allow religious instruction to be given to those who consent to receive it;

c) The proviso to Section 23(1), which required that all members of the Court would only be Muslims, was deleted.

C.8. It is submitted that the amendments made in the Amendment of 1951 were only to reflect the position of AMU in law as understood and cemented by the Constitution, as an institution of national importance. Further amendments were made by the Aligarh Muslim University (Amendment) Act, 1965 (hereinafter referred to as the "Amendment of 1965") changing the composition and functioning of the administration of AMU, as follows:

a) Section 23 was amended to the effect that the role of the Court was changed to an advisory role

b) The powers of the Executive Council were correspondingly increased in Sections 28, 29, 34 and 38.

c) A specific declaration was made that w.e.f. 20.05.1965, every member of the Court and the Executive Council shall cease to hold office as a member of the Court or Executive Council, as the case may be.

C.9. The validity of the amendments were considered and upheld by this hon'ble Court in the *Azeez Basha case*, *inter alia*, after considering the manner of the establishment and administration of the AMU ever since its inception. This Hon'ble Court accordingly held that Art. 30 of the Constitution of India would not apply to AMU.

Reference of Azeez Basha case to the 7-Judge Bench – Some ponderables

C.10. Pertinently, the reference of the correctness of the decision in *Azeez Basha case* was made by a Bench of 2 Judges[48] of this Hon'ble Court while dealing with a different case. The reference was not made on a consideration of the Act of 1920 itself. Indeed, the reference is on general considerations.

C.11. In fact, the observation of this Hon'ble Court in the reference order *Anjuman-e-Rahmania case* that *Azeez Basha case* declares that the status of minority educational institution would be lost upon registration of the administration as a society under the Societies Registration Act, does not appear to reflect the correct position inasmuch as no such findings or conclusions are to be found in *Azeez Basha case*.

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[48] *Anjuman-e-Rahmania case* supra

C.12. The present reference is on the footing that the *Azeez Basha case* had already been referred to a Bench of 7 Judges of this Hon'ble Court and was not decided. Pertinently, the proceedings in *Anjuman-e-Rahmania case* were closed by order of the Hon'ble Court[49].

C.13. The decision in *Azeez Basha case* is final and binding on all parties being an adjudication on merits of the case on a due consideration of the scheme of the 1920 Act and the relevant facts. Therefore, there cannot be any contentions to the contrary.

D. WHETHER THE AMENDMENT OF 1981 IS UNSUSTAINABLE?

D.1. A perusal of the Statements of Objects and Reasons[50], as well as the changes sought to be made by the amendments provided in the Amendment of 1981, shows that the purport of the Amendments was to indirectly overrule the decision in Azeez Basha case without even a validating provision. The amendment is unsustainable since it neither removes the basis nor corrects any defects. Therefore, the Amendment of 1981 was rightly struck down by the Single Judge as well as the Division Bench of the Hon'ble High Court of Allahabad.

Overriding judicial verdict without removing the basis

D.2. The principles forming the basis of enactment of a validating statute is well-settled. The legislature has ample power to retrospectively remove the basis of a decision rendered by a competent court, thereby rendering that decision ineffective. The legislature cannot merely declare a judicial decision to be not binding, without curing the

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[49] Order dated 11.03.2003 in W.P. No. 331 of 2005 @ *pg. 211 Volume 3-A of the Convenience Compilation*

[50] Statement of Objects and Reasons of Aligarh Muslim University (Amendment) Act, 1981 @ *pg. 148 Volume 4-A of Convenience Compilation*

defect leading to such a judicial decision.[51] So also, it would not be open to the legislature to merely override/overrule a judicial decision.[52] A legislature cannot legislate today with reference to a situation that obtained a long time ago and ignore the march of events and the constitutional rights accrued with passage of time[53].

D.3. Thus, what needs to be seen within the Amendment of 1981 is whether the said legislative Act has an effect of overturning the judicial verdict in *Azeez Basha case* without removing the defect or the basis of the said decision.

Amendments of 1981: Contrary to historical facts at the time of establishment

D.4. The decision of the Constitution Bench of this Hon'ble Court in *Azeez Basha case* is based on the following, which establish that AMU is of a national and secular character:

1. the facts and negotiations preceding the establishment of the AMU;

2. the supervision and control of the management of AMU provided for within the Act of 1920, which spoke to the character of AMU at the time of establishment;

3. the inclusion of the institution known at the commencement of the Constitution as AMU, within Entry 63 of List I of the Constitution, and the

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[51] ***Shri Prithvi Cotton Mills Ltd. v. Broach Borough Municipality, (1969) 2 SCC 283*** @ para 4

[52] ***Bakhtawar Trust v. M.D. Narayan, (2003) 5 SCC 298*** @ para 4. Please also see: ***State of Tamil Nadu v State of Kerala & Anr. (2014) 12 SCC 696*** @ para 157; ***Madan Mohan Pathak & Anr. v. Union of India & Ors. (1978) 2 SCC 50*** @ para 31-32

[53] ***State of Gujarat v. Raman Lal Keshav Lal Soni, (1983) 2 SCC 33*** @ para 52

recognition that AMU was an institution of national importance;

D.5. These are factual aspects where the question of removing the defects or basis of a judgment cannot arise. The Amendment of 1981 merely purports to legislatively declare that status of the AMU is of a minority character. This is clearly unsustainable, being contrary to the facts.[54] The Amendment of 1981 is no more than a legislative device purporting to legislatively declare facts, contrary to facts conclusively found in *Azeez Basha case*. It is well settled that such declaration of facts are amenable to judicial scrutiny and are liable to be set aside if found to be untenable.

D.6. In the circumstances, the Amendment of 1981 is unsustainable and have been rightly struck down by the Hon'ble High Court.

E. SUSTAINABILITY OF THE AMENDMENT OF 1981 IN THE ABSENCE OF A CONSTITUTIONAL AMENDMENT

E.1. The status of AMU was crystallised upon adoption of the Constitution of India, by its inclusion in Entry 63 List I. Thus, any change to the status of the AMU (that too in the manner effected by the Amendment of 1981) is untenable. Any change can be done, if at all, only by making appropriate amendments to the Constitution under Entry 63 List I, to reflect the changed position, by following the procedure under Art. 368. The same cannot be made by way of an amendment to the legislation simpliciter.

E.2. As such, adoption of such a legislative device by changing the definition of University, is unsustainable. Reference may be had to the Constitution Bench decision of this Hon'ble

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[54] ***Indira Sawhney v Union of India & Anr. (2000) 1 SCC 168*** @ para 28, 29, 40(e) & 42-43

Court in ***In re: Article 370 of the Constitution of India***[55] wherein this Hon'ble Cour held that while the interpretation clause can be used to define or give meaning to particular terms, it cannot be deployed to amend a provision by bypassing the specific procedure laid down for its amendment.

F. EFFECT OF THE NATIONAL COMMISSION ON MINORITY EDUCATIONAL INSTITUTIONS ACT, 2006 AS AMENDED IN 2010

F.1. On November 11, 2004, an ordinance was passed to enable the establishment of a National Commission for Minority Educational Institutions ("NCMEI") to advise the central government or any state government on any issue concerning minorities' education, as well as to establish and administer educational institutions of their choice. This was followed by The National Commission for Minority Educational Institutions (NCMEI) Act, 2004 (hereinafter referred to as the "NCMEI Act") with the object of safeguarding the educational rights of the minorities enshrined in Article 30 (1) of the Constitution of India.

F.2. Section 2(g) of the NCMEI Act defines a Minority Educational Institution as follows:

> *"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."*

F.3. Subsequently, the NCMEI Act was amended in 2010 whereby section 2(g) was amended as:

> *"Minority Educational Institution" means a college or an educational institution established and administered by a minority or minorities.*

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[55] ***In re: Article 370 of the Constitution of India (2023) SCCOnline SC 1647*** @ para 411

F.4. The effect of the Amendment of the NCMEI Act in 2010 would be to bring Universities within the purview of minority educational institutions as defined under the NCMEI Act. However, such definition can only be read in consonance with the parameters laid down under Art. 30, and cannot expand the scope of the same by way of legislative amendment.

F.5. Therefore, even going by the NCMEI the following will have to be established:

a) That the educational institution was established by member(s) of the religious minority community;

b) That the educational institution was established for the benefit of the minority community; and

c) That the educational institution is being administered by the minority community

F.6. In the present case, the above stated indicia are not satisfied to grant AMU the status of minority educational institution, even after the amendment of 2010 to the NCMEI Act, as submitted hereinabove.

VII. CONCLUSION

35. It is respectfully submitted therefore, the provision for reservation of 50% of the medical seats exclusively for the minority community is unsustainable since the AMU is not a minority institution.

36. It is prayed that the reference may be answered accordingly.

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ANNEXURE A/1

The Govt. of India Act 1919 Rules Thereunder & Govt. Reports, 1920

EDITED BY
H. N. MITRA, M.A., B.L.

Published by
N. N. MITTER
ANNUAL REGISTER OFFICE
SIBPUR, CALCUTTA,
1921

Devolution Rules

In exercise of the powers conferred by section 45 A and section 129 A of the Government of India Act, the Governor-General in Council, with the sanction of the Secretary of State in Council, is pleased to make the following rules :—

Short title and Definitions.

1. These rules may be called the Devolution Rules.

2. In these rules, unless there is anything repugnant in the subject or context—

(*a*) "all-India Revenues" means such portion of the revenues of India as is not allocated to local Governments under these rules ;

(*b*) "Schedule" means a Schedule to these rules ;

(*c*) "the Act" means the Government of India Act.

Part I.—Classification of Subjects.

3. (1) For the purpose of distinguishing the functions of local Governments and local legislatures from the functions of the Governor General in Council and the Indian legislature, subjects shall be classified in relation to the functions of Government as central and provincial subjects in accordance with the lists set out in Schedule I.

(2) Any matter which is included in the list of provincial subjects set out in Part II of Schedule I shall, to the extent of such inclusion, be excluded from any central subject of which, but for such inclusion, it would form part.

Settlement of doubts.

4. Where any doubt arises as to whether a particular matter does or does not relate to a provincial subject the Governor-General in Council shall decide whether the matter does or does not so relate, and his decision shall be final.

Duty of local Government to supply information.

5. The local Government of a province shall furnish to the Governor General in Council from time to time such returns and information on matters relating to the administration of provincial subjects as the Governor General in Council may require and in such form as he may direct.

Transfer of subjects and revocation or suspension of transfer.

6. The provincial subjects specified in the first column of Schedule II shall, in the provinces shown against each subject in the

second column of the said Schedule, be transferred subjects provided that the Governor General in Council may, by notification in the Gazette of India, with the previous sanction of the Secretary of State in Council, revoke or suspend for such period as he may consider necessary the transfer of any provincial subject in any province, and upon such revocation or during such suspension the subject shall not be a transferred subject.

7. If any doubt arises as to whether any matter relates to a reserved or to a transferred subject, the Governor shall decide the question, and his decision shall be final.

8. Where an Act of the Legislative Council of a Governor's province confers on local authorities powers of the management of matters relating to reserved subjects, those matters shall, to the extent of the powers conferred by such legislation, be deemed in that province to form part of the transferred subject of local self-government.

9. (1) When a matter appears to the Governor to affect substantially the administration both of a reserved and of a transferred subject, and there is disagreement between the Executive Council and the minister concerned as to the action to be taken, it shall be the duty of the Governor, after due consideration of the advice tendered to him, to direct in which department the decision as to such action shall be given : provided that, in so far as circumstances admit, important matters on which there is such a difference of opinion shall, before the giving of such direction, be considered by the Governor with his Executive Council and his ministers together.

(2) In giving such a direction as is referred to in sub-rule (1), the Governor may, if he thinks fit, indicate the nature of the action which should in his judgment be taken, but the decision shall thereafter be arrived at by the Governor in Council or by the Governor and minister according as the department to which it has been committed is a department dealing with reserved or a department dealing with transferred subjects.

10. The authority vested in the local Government over officers of the public services employed in a province shall be exercised in the case of officers serving in a department dealing with reserved subjects by the Governor in Council and in the case of officers serving in a department dealing with transferred subjects by the Governor acting with the minister in charge of the department : provided that—

(a) no order affecting emoluments or pensions, no order of formal censure, and no order on a memorial shall be passed to the disadvantage of an officer of an All-India or provincial service with-

(b) no order for the posting of an officer of an all-India service shall be made without the personal concurrence of the Governor.

11. An officer shall be deemed to be serving in that department which controls the budget-head to which his pay is debited. If he performs duties both in a department dealing with reserved and in a department dealing with transferred subjects, the Governor shall decide to which budget-head his pay shall be debited.

Devolution.

12. Subject to the provisions of these rules, provincial subjects shall be administered by the local Government. But, save in the case of transferred subjects, nothing in these rules shall derogate from the power of superintendence, direction and control conferred on the Governor General in Council by the Act.

Part II.—Financial arrangements.—Allocation of revenue.

13. The following sources of revenue shall be allocated to local Governments as sources of provincial revenue, namely :—

(*a*) balances standing at the credit of the province at the time when the Act comes into force ;

(*b*) receipts accruing in respect of provincial subjects ;

(*c*) General stamps ;

(*d*) recoveries of loans and advances given by the local Government and of interest paid on such loans ;

(*e*) Payments made to the local Government by the Governor General in Council or by other local Governments, either for services rendered or otherwise ;

(*f*) the proceeds of any taxes which may be lawfully imposed for provincial purposes ;

(*d*) the proceeds of any loans which may be lawfully raised for provincial purposes ; and

(*h*) any other sources which the Governor General in Council may by order declare to be sources of provincial revenue.

Payment of Government revenues into the public account.

14. All moneys derived from sources of provincial revenue shall be paid into the public account, of which the Governor General in Council is custodian, and credited to the Government of the province ; and no moneys so credited shall be withdrawn from the public account save in accordance with the provisions of a law passed by the Indian Legislature.

Provincial Contributions.

15. In the financial year 1921-22 contributions shall be paid to the Governor General in Council by the local Governments mentioned below according to the following scale :—

Name of Province.	Contribution (In lakhs of rupees.)
Madras	348
Bombay	56
Bengal	63
United Provinces	240
Punjab	175
Burma	64
Central Provinces and Berar	22
Assam	15

16. From the Financial year 1922-23 onwards a total contribution of 983 lakhs, or such smaller sum as may be determined by the Governor General in Council, shall be paid to the Governor General in Council by the local Governments mentioned below. The percentage of this total amount to be paid in each year by each local Government shall be according to the following scale :—

Name of Province.	1922-23.	1923-24.	1924-25.	1925-26.	1926-27.	1927-28 and thereafter.
Madras	32·5	29·5	26·5	23	20	17
Bombay	7	8	9·5	10·5	12	13
Bengal	8·5	10·5	12·5	15	17	19
United Province ...	23·5	22·5	21	20	19	18
Punjab	16·5	15	13·5	12	10·5	9
Burma	6·5	6·5	6·5	6·5	6·5	6·5
Bihar and Orissa ...	1·5	3	5	7	8·5	10
Central Provinces and Berar	2·5	3	3·5	4	4·5	5
Assam	1·5	2	2	2	2	2·5

17. In cases of emergency the local Government of any province may be required by the Governor General in Council, with the sanction of, and subject to conditions approved by, the Secretary of State, to pay to the Governor General in Council a contribution for any financial year in excess of the amount required by the preceding rules in the case of that year.

18. The contributions fixed under the preceding rules shall be a first charge on the allocated revenues and moneys of the local Governments concerned, and shall be paid in such instalments, in such manner, and on such dates, as the Governor General in Council may prescribe.

19. At any time when he considers this course to be essential in order to preserve the financial stability of India, the Governor General in Council shall have power to require a local Government so to regulate its programme of expenditure as not to reduce the balance at its credit in the public account on a specified date below a stated figure. Subject to this power, local Governments shall be

at liberty to draw on their balances, provided that notice of the amount which they propose to draw during the ensuing financial year is given to the Governor General in Council before such date in each year as the Governor General in Council may by order fix.

20. Whenever the Governor General in Council has, on receipt of due notice of the intention of the local Government to draw on its balances, required it to reduce the extent of the proposed draft, he shall, at the end of the financial year in which the local Government is debarred from drawing, credit the local Government with interest on the amount which it was not permitted to draw. Such interest shall be a charge on the revenues of India and shall be calculated at the average rate at which the Governor General in Council has borrowed money in the open market during the year by the issue of treasury bills.

21. Any moneys which, on the Ist day of April 1921 are owed to the Governor General in council on account of advances made from the provincial loan account of any province, shall be treated as an advance to the local Government from the revenues of India, and shall carry interest at a rate calculated on the average rate carried by the total amount owed to the Governor General in Council on this account on the 31st March 1921. The interest shall be payable upon such dates as the Governor General in Council may fix. In addition, the local Government shall pay to the Governor General in Council in each year an instalment in repayment of the principal amount of the advance, and this instalment shall be so fixed that the total advance shall, except where for special reasons the Governor-General in Council may otherwise direct, be repaid before the expiry of twelve years. It shall be open to any local Government to repay in any year an amount in excess to the fixed instalment.

22. (*1*) The capital sums spent by the Governor General in Council upon the construction in the various provinces of productive and protective irregation works and such other works financed from loan funds as may from time to time be handed over to the management of local Governments shall be treated as advances made to the local Governments from the revenues of India. Such advances shall carry interest at the following rates, namely :—

(*a*) in the case of outlay up to the end of the financial year 1916-17, at the rate of 3·3252 *per centum* ;

(*b*) in the case of outlay incurred after the financial year 1916-17, at the average rate of interest payed by the Governor General in Council on loans raised in the open market since the end of that year.

(*2*) The interest shall be payable upon such dates as the Governor General in Council may fix.

23. The Governor General in Council may at any time make to a local Government an advance from the revenues of India on such terms as to interest and repayment as he may think fit.

24. The payment of interest on loans and advances made under the three preceding rules and the repayment of the principal of an advance under rule 21, shall be a charge on the annual allocated revenues of the local Government, and shall have priority over all other charges, save only contributions payable to the Governor General in Council.

25. (*1*) Subject to the rules contained in Schedule III, the local Government shall have full power to sanction expenditure on provincial subjects—

(*a*) in the case of grants voted by the Lgislative Council to the full extent of such grant, and

(*b*) In the case of the heads of expenditure enumerated in section 72D (*3*) of the Act, to any extent.

(*2*) Sanctions once given under clause (*a*) of sub-rule (*1*) shall remain valid for the specified period for which they are given, subject to the voting of grants in each year.

Delegation of powers of sanction.

26. Any powers conferred by rule 25 upon the Governor in Council or the Governor acting with ministers may, after previous consultation with the Finance Department hereinafter referred to, be delegated, with or without conditions, to any officer subordinate to the local Government. Such officer may not in his turn delegate such powers to any officer subordinate to him.

Famine Insurance Fund.

27. Each local Government shall establish and maintain out of provincial revenues a famine insurance fund in accordance with the provision of Schedule IV, and such fund shall be controlled and administered as required by those provisions.

Taxation and borrowing.

28. All proposals for raising taxation or for the borrowing of money on the revenues of a province shall be considered by the Governor with his Executive Council and ministers sitting together, but the decision shall thereafter be arrived at by the Governor in Council, or by the Governor and minister or ministers concerned, according as the proposal relates to a reserved or to a transferred subject.

Allocation of revenues for the administration of transferred subjects.

29. Expenditure for the purpose of the administration of transferred subjects shall, in the first instance, be a charge on the general revenues and balances of each province, and the framing

of proposals for expenditure in regard to transferred and reserved subjects will be a matter for agreement between that part of the government which is responsible for the administration of transferred subjects and that part of the government which is responsible for the administration of reserved subjects.

Procedure in event of failure to agree.

30. If the Governor is at any time statisfied that there is no hope of an agreement being arrived at within a reasonable time as to the framing of proposals in regard to expenditure for reserved and transferred subjects respectively, he may by order in writing allocate the revenue and balances of the province between reserved and transferred subjects by specifying the fractional proportions of the revenues and balances which shall be assigned to each class of subject.

Period of order of allocation.

31. Every such order shall specify the period for which the allocation will remain in force. Such period shall be either the period of the office of the then existing Legislative Council or such longer period terminating at a date not later than one year after the expiration thereof as the Governor may determine. The Governor may, if he thinks fit, before making an order of allocation, refer the question of the allocation of the revenues and balances of the province for the report of such authority as the Governor General may appoint in this behalf, and the Governor, if he so refers the matter, shall make his order in accordance with the terms of the report.

Condition of order of allocation.

32. Every order of allocation made under these rules shall provide that, if any increase of revenue accrues during the period of the order on account of the imposition of fresh taxation, that increase unless the legislature otherwise directs, shall be allocated in aid of that part of the Government by which the taxation is initiated.

Preparation of budget in default of agreement or order of allocation.

33. If at the time of the preparation of any budget no agreement or allocation such as is contemplated by these rules has been arrived at, the budget shall be prepared on the basis of the aggregate grants respectively provided for the reserved and transferred subjects in the budget of the year about to expire.

Part III.—Finance Department.

34. (*1*) There shall be in each Governor's province a Finance Department, which shall be controlled by a member of the Executive Council.

(2) Immediately subordinate to the member there shall be a financial secretary, with whom shall be associated, if the ministers so desire, a joint secretary appointed by the Governor after consultation with the ministers.

(3) The joint secretary shall be specially charged with the duty of examining and dealing with financial questions arising in relation to transferred subjects and with proposals for taxation or borrowing put forward by any minister.

Function of Finance Department.

35. The Finance Department shall perform the following functions, namely :—

(a) it shall be in charge of the account relating to loans granted by the local Government, and shall advise on the financial aspect of all transactions relating to such loans ;

(b) it shall be responsible for the safety and proper employment of the famine insurence fund ;

(c) it shall examine and report on all proposals for the increase or reduction of taxation ;

(d) it shall examine and report on all proposals for borrowing by the local Government : shall take all steps necessary for the purpose of raising such loans as have been duly authorised : and shall be in charge of all matters relating to the service of loans :

(e) it shall be responsible for seeing that proper financial rules are framed for the guidance of other departments and that suitable accounts are maintained by other departments and establishments subordinate to them ;

(f) it shall prepare an estimate of the total receipts and disbursements of the province in each year and shall be responsible during the year for watching the state of the local Government's balances ;

(g) in connection with the budget and with supplementary estimates—

(i) it shall prepare the statement of estimated revenue and expenditure which is laid before the Legislative Council in each year and any supplementary estimates or demands for excess grants which may be submitted to the vote of the Council ;

(ii) for the purposes of such preparation, it shall obtain from the departments concerned material on which to base its estimates, and it shall be responsible for the correctness of the estimates framed on the material so supplied ;

(iii) it shall examine and advise on all schemes of new expenditure for which it is proposed to make provision in the estimates,

and shall decline to provide in the estimates for any scheme which has not been so examined ;

(*h*) on receipt of a report from an audit officer to the effect that expenditure for which there is no sufficient sanction is being incurred, it shall require steps to be taken to obtaim sanction or that the expenditure shall immediately cease ;

(*i*) it shall lay the audit and appropriation reports before the committee on public accounts, and shall bring to the notice of the committee all expenditure which has not been duly authorised and any financial irregularities ;

(*j*) it shall advise departments responsible for the collection of rvenue regarding the progress of collection and the methods of collection employed.

Powers of Finance Department.

36. (*1*) After grants have been voted by the Legislative Council, the Finance Department shall have power to sanction—

(*i*) any reappropriation within a grant from one major or minor head to another,

(*ii*) any reappropriation between heads subordinate to a minor head which involves the undertaking of a recurring liability, and

(*iii*) any delegation by a member or minister in charge of a department to any officer or class of officers of power to make reappropriation between heads subordinate to a minor head, and the conditions of such delegation,

and no such reappropriation or delegation shall be made without such sanction.

(*2*) Copies of orders sanctioning any reappropriation which does not require the sanction of the Finance Department shall be communicated to that department as soon as such orders are passed.

37. No expenditure on any of the heads detailed in section 72D. (3) of the Act, which is in excess of the estimate for that head shown in the budget of the year, shall be incurred without previous consultation with the Finance Department.

38. No office may be added to, or withdrawn from, the public service in the province, and the emoluments of no post may be varied, except after consultation with the Finance Department; and. when it is proposed to add a permanent or temporary post to the public service, the Finance Department shall decide to what cadre the proposed post will form an addition.

39. No duty allowance, local allowance or travelling allowance and no personal pay shall be sanctioned for any post or class of posts without previous consultation with the Finance Department.

40. No grant of land or assignment of land revenue, except when the grant is made under the ordinary revenue rules of the pro-

vince, shall be given without previous consultation with the Finance Department, and no concession, grant or lease of mineral or forest rights, of right to water power or of right-of-way or other easement, and no privilege in respect of such rights shall be given without such previous consultation.

Abandonment of revenue, ect.

41. No proposal involving an abandonment of revenue for which credit has been taken in the budget, or involving expenditure for which no provision has been made in the budget, shall be submitted for the consideration of the local Government or the Legislative Council, nor shall any orders giving effect to such proposals issue, without a previous reference to the Finance Department.

Disposal of reports by Finance Department.

42. Every report made by the Finance Department on any matter on which it is required to advice or report under these rules shall be forwarded to the department concerned and shall, if the Finance Department so require, be submitted by the department concerned to the Governor. The Governor may, if he thinks fit, direct that any such report shall be laid before the committee on public accounts.

Presumption of assent of Finance Department.

43. Wherever previous consultation with the Finance Department is required by these rules, it shall be open to that Department to prescribe, by general or special order, cases in which its assent may be presumed to have been given.

Agency Employment of Local Governments.

44. The Governor General in Council may employ the agency of the Governor in Council of any province in the administration of central subjects in so far as such agency may be found convenient.

Cost of agency establishment.

45. The cost of an establishment exclusively employed on the business of agecy shall be a charge against all-India revenues.

Distribution of cost of joint establishment.

46. If a joint establishment is employed upon the administration of central and provincial subjects, the cost of such establishment may be distributed in such manner as the Governor General in Council and the Governor in Council of the province concerned may agree.

Part IV.—Limitation of control by Governor General in Council over transferred subjects.

47. The powers of superintendence, direction and control over the local Government vested in the Governor General in Council

under the Act shall, in relation to transferred subjects, be exercised only for the following purposes, namely :—

(1) to safeguard the administration of central subjects ; and

(2) to decide questions arising between two provinces, in cases where the provinces concerned fail to arrive at an agreement.

SCHEDULE I.

SEE RULE 3 ABOVE

PART I.—CENTRAL SUBJECTS.

1. (*a*) Defence of India, and all matters connected with His Majesty's Naval, Military and Air Forces in India, or with His Majesty's Indian Marine Service or with any other Force raised in India other than military and armed police wholly maintained by local Governments.

(*b*) Naval and military works and cantonments.

2. External relations, including naturalisation and aliens, and pilgrimages beyond India.

3. Relations with States in India.

4. Political charges.

5. Communications to the extent described under the following heads, namely :—

(*a*) Railways and extra-municipal tramways, in so far as they are not classified as provincial subjects under entry 6 (*d*) of Part II of this Schedule;

(*b*) aircraft and all matters connected therewith;

(*c*) inland waterways, to an extent to be declared by rule made by the Governor General in Council or by or under legislation by the Indian lagislature.

6. Shipping and Navigation, including shipping and navigation on inland waterways in so far as declared to be a central subject in accordance with entry 5. (*c*).

7. Light-houses (including their approaches), beacons, lightships and buoys.

8. Port quarantine, and marine hospitals.

9. Ports declared to be major ports by rule made by the Governor General in Council or by or under legislation by the Indian legislature.

10. Ports, telegraphs and telephones, including wireless installations.

11. Customs, cotton excise duties, income-tax, salt, and other sources of all-India revenues.

12. Currency and coinage.

13. Public debt of India.

14. Savings Banks.
15. Department of the Comptroller and Auditor General.
16. Civil law, including laws regarding status, property, civil rights and liabilities and civil procedure.
17. Commerce, including banking and insurance.
18. Trading companies and other associations.
19. Control of production, supply and distribution of any articles in respect of which control by a central authority is declared by rule made by the Governor General in council or by or under legislation by the Indian legislature to be essential in the public interest.
20. Development of industries, in cases where such development by a central authority is declared by order of the Governor General in Council expedient in the public interest.
21. Control of cultivation and manufacture of opium, and sale of opium for export.
22. Stores and Stationery.
23. Control of petroleum and explosives.
24. Geological survey.
25. Control of mineral development in so far as such control is reserved to the Governor General in Council under rule made or sanctioned by the Secretary of State, and regulation of mines.
26. Botanical survey.
27. Inventions and designs.
28. Copyright.
29. Emigration from, and immigration into, British India and inter-provincial migration.
30. Criminal Law, including criminal procedure.
31. Central police organisation.
32. Control of arms and ammunition.
33. Central agencies and institutions for research (including observatories) and for professional or technical training or promotion of special studies.
34. Ecclesiastical administration, including European cemeteries.
35. Survey of India.
36. Archæology.
37. Zoological survey.
38. Meteorology.
39. Census and Statistics.
40. All-India Services.
41. Legislation in regard to any provincial subject, in so far as such such subject is in Part II of this Schedule stated to be subject to legislation by the Indian legislature, and any powers relating

to such subject reserved by legislation to the Governor General in Council.

42. Territorial changes, other than intra-provincial, and declaration of laws in connection therewith.

43. Regulation of ceremonial titles, orders, precedence and civil uniform.

44. Immoveable property acquired by, or maintained at, the cost of the Governor General in Council.

45. All matters expressly excepted by the provisions of Part II of this Schedule from inclusion among provincial subjects.

46. All other matters not included among provincial subjects under Part II of this Schedule.

PART II.—PROVINCIAL SUBJECTS.

1. Local self-government, that is to say, matters relating to the constitution and powers of municipal corporations, improvement trusts, district boards, mining boards of health and other local authorities established in a province for the purpose of local self-government, exclusive of matters arising under the Cantonments Act 1910 ; subject to legislation by the Indian legislature as regards—

(*a*) the powers of such authorities to borrow otherwise than from a provincial government, and

(*b*) the levying by such authorities of taxation not included in Schedule II to the Scheduled Taxes Rules.

2. Medical administration, including hospitals, dispensaries and asylums and provision for medical education.

3. Public health and sanitation and vital statistics ; subject to legislation by the Indian legislature in respect to infectious and contagious diseases to such extent as may be declared by any Act of the Indian legislature.

4. Pilgrimages within British India.

5. Education : provided that—

(*a*) the following subjects shall be excluded, namely :—

(*i*) the Benares Hindu University, and such other Universities constituted after the commencement of these rules, as may be declared by the Governor General in Council to be central subjects, and

(*ii*) Chiefs' Colleges and any institution maintained by the Governor General in Council for the benefit of members of His Majesty's Forces or of other public servants or of the children of such members or servants ; and

(*b*) the following subjects shall be subject to legislation by the Indian legislature, namely :—

(*i*) the control of the establishments, and the regulation of

the constitutions and functions, of Universities constituted after the commencement of these rules, and

(*ii*) the definition of the jurisdiction of any University outside the province in which it is situated, and

(*iii*) for a period of five years from the date of the commencement of these rules, the Calcutta University and the control and organisation of secondary education in the presidency of Bengal.

6. Public works included under the following heads, namely :—

(*a*) construction and maintenance of provincial buildings used or intended for any purpose in connection with the administration of the province ; and care of historical monuments, with the exception of ancient monument as defined in section 2 (*1*) of the Ancient Monuments Preservation Act, 1904, which are for the time being declared to be protected monuments under section 3 (*1*) of that Act: provided that the Governor General in Council may, by notification in the Gazette of India, remove any such monument from the operation of this exception ;

(*b*) roads, bridges, ferries, tunnels, ropeways and causeways and other means of communication ;—subject to such conditions as regards control over construction and maintenance of means of communication declared by the Governor General in Council to be of military importance, and as regards incidence of special expenditure connected therewith, as the Governor General in Council may prescribe ;

(*c*) tramways within municipal areas ; and

(*d*) light and feeder railways in so far as provision for their construction and management is made by provincial legislation ;—subject to legislation by the Indian legislature in the case of any such railway or tramway which is in physical connection with a main line or is built on the same gauge as an adjacent main line.

7. Water supplies, irrigation and canals, drainage and embankments, water storage and water power ;—subject to legislation by the Indian legislature with regard to matters of inter-provincial concern or affecting the relations of a Province with any other territory.

8. Land Revenue administration, as described under the following heads, namely :—

(*a*) assessment and collection of land revenue ;

(*b*) maintenance of land records, survey for revenue purposes, records of rights ;

(*c*) laws regarding land tenures, relations of landlords and and tenants, collection of rents ;

(*d*) Courts of Wards, incumbered and attached estates ;

(*e*) land improvement and agricultural loans ;

(*f*) colonisation and disposal of Crown lands and alienation of land revenue ; and

(*g*) management of Government estates.

9. Famine relief.

10. Agriculture, including research institutes, experimental and demonstration farms, introduction of Improved methods, provision for agricultural education, protection against destructive insects and pests and prevention of plant diseases ;—subject to legislation by the Indian legislature in respect to destructive insects and pests, and plant diseases, to such extent as may be declared by any Act of the Indian legislature.

11. Civil Veterinary Department, including provision for veterinary training, improvement of stock, and prevention of animal diseases ;—subject to legislation by the Indian legislature in respect to animal diseases to such extent as may be declared by any Act of the Indian legislature.

12. Fisheries.

13. Co-operative Societies.

14. Forests, including preservation of game therein ;—subject to legislation by the Indian legislature as regards disforestation of reserved forests.

15. Land acquisition ; subject to legislation by the Indian legislature.

16. Excise, that is to say, the control of production, manufacture, possession, transport, purchase and sale of alcoholic liquor and intoxicating drugs, and the levying of excise duties and licence fees on or in relation to such articles, but excluding, in the case of opium, control of cultivation, manufacture and sale for export.

17. Administration of justice, including constitution, powers, maintenance and organisation of Courts of civil and criminal jurisdiction whithin the province ;—subject to legislation by the Indian legislature as regards High Courts, Chief Courts, and Courts of Judicial Commissioners, and any Courts of criminal jurisdiction.

18. Provincial law reports.

19. Administrators General and Official Trustees ;—subject to legislation by the Indian legislature.

20. Non-judicial stamps ;—subject to legislation by the Indian legislature, and judicial stamps, subject to legislation by the Indian legislature as regards amount of Court-fees levied in relation to suits and proceedings in the High Courts under their original jurisdiction.

21. Registration of deeds and documents ;—subject to legislation by the Indian legislature.

22. Registration of births, deaths and marriages ; subject to legislation by the Indian legislature for such classes as the Indian legislature may determine.

23. Religious and charitable endowments.

24. Development of mineral resources which are Government property ;—subject to rules made or sanctioned by the Secretary of State, but not including the regulation of mines.

25. Development of Industries, including industrial research and technical education.

26. Industrial matters included under the following heads, namely :—

(*a*) factories ;
(*b*) settlement of labour disputes ;
(*c*) electricity ;
(*d*) boilers ;
(*e*) gas ;
(*f*) smoke nuisances ; and
(*g*) welfare of labour including provident funds, industrial insurance (general, health and accident) and housing ;—

subject as to heads (*a*), (*b*), (*c*), (*d*) and (*g*) to legislation by the Indian legislature.

27. Adulteration of foodstuffs and other articles ; subject to legislation by the Indian legislature as regards import and export trade.

28. Weights and measures ; subject to legislation by the Indian legislature as regards standards.

29. Ports, except such ports as may be declared by rule made by the Governor General in Council or by or under Indian legislation to be major ports.

30. Inland waterways including shipping and navigation thereon so far as not declared by the Governor General in Council to be central subjects, but subject as regards inland steam-vessels to legislation by the Indian legislature.

31. Police, including railway police ; subject in the case of railway police to such conditions as regards limits of jurisdiction and railway contributions to cost of maintenance as the Governor General in Council may determine.

32. The following miscellaneous matters, namely :—

(*a*) regulation of betting and gambling ;
(*b*) prevention of cruelty to animals ;
(*c*) protection of wild birds and animals ;
(*d*) control of poisons ;—subject to legislation by the Indian legislature ;

(*e*) control of motor vehicles,—subject to legislation by the Indian legislature as regards licences valid throughout British India ; and

(*f*) control of dramatic performances and cinematographs, subject to legislation by the Indian legislature in regard to sanction of films for exhibition.

33. Control of newspapers, books and printing presses ; subject to legislation by the Indian legislature.

34. Coroners.

35. Excluded Areas.

36. Criminal tribes ; subject to legislation by the Indian legislature.

37. European vagrancy ; subject to legislation by the Indian legislature.

38. Prisons, prisoners (except State prisoners) and reformatories ; subject to legislation by the Indian legislature.

39. Pounds and prevention of cattle trespass.

40. Treasure trove.

41. Libraries (except the Imperial Library) and museums (except the Indian Museum, the Imperial War Museum and the Victoria Memoral, Calcutta) and Zoological Gardens.

42. Provincial Government Presses.

43. Elections for Indian and provincial legislature, subject to rules framed under sections 64 (*1*) and 72A (*4*) of the Act.

44. Regulation of medical and other professional qualifications and standards ; subject to legislation by the Indian legislature.

45. Local Fund Audit, that is to say, the audit by Government agency of income and expenditure controlled by local bodies.

46. Control, as defined by rule 10, of members of all-India and provincial services serving within the province, and control, subject to legislation by the Indian legislature, of other public services within the province.

47. Sources of provincial revenue, not included under previous heads, weather—

(*a*) taxes included in the Schedules to the Scheduled Taxes Rules, or

(*b*) taxes, not included in those Schedules, which are imposed by or under provincial legislation which has received the previous sanction of the Governor General.

48. Borrowing of money on the sole credit of the province, subject to the provsions of the Local Government (Borrowing) Rules.

49. Imposition by legislation of punishments by fine, penalty or imprisonment, for enforcing any law of the province relating to any provincial subject ; subject to legislation by the Indian legis-

lature in the case of any subject in respect of which such a limitation is imposed under these rules.

50. Any matter which though falling within a central subject is declared by the Governor General in Council to be of a merely local or private nature within the province.

SCHEDULE II.

SEE RULE 6 ABOVE.

LIST OF PROVINCIAL SUBJECTS FOR TRANSFER.

Column I.	Column II.
1. Local self-Government, that is to say, matters relating to the constitution and powers of municipal corporations, improvement trusts, district boards, mining boards of health and other local authorities established in the province for purposes of local self-Government, exclusive of matters arising under the cantonments Act, 1910; subject to legislation by the Indian legislature as regards (a) the powers of such authorities to borrow otherwise than from a provincial Government, and (b) the levying by such authorities of taxation not included in Schedule II to the Scheduled Taxes Rules.	All Governors' Provinces.
2. Medical administration, including hospitals, dispensaries and asylums, and provision for medical education.	Ditto.
3. Public health and sanitation and vital statistics; subject to legislation by the Indian legislature in respect to infectious and contagious diseases to such extent as may be declared by any Act of the Indian legislature.	Ditto.
4. Pilgrimages within British India	Ditto.
5. Education, other than European and Anglo-Indian education; provided that—	All Governors' Provinces.
(a) the following subjects shall be excluded namely :—	
(i) the Benares Hindu University and such other Universities, constituted after the commencement of these rules, as may be declared by the Governor General in Council to be central subjects, and	
(ii) Chiefs' Colleges and any institution maintained by the Governor General in Council for the benefit of members of His Majesty's Forces or of other public servants or of the children of such members or servants; and	

6. Public Works included under the following heads, namely :— All Governors' provinces, except Assam.

(b) the following subjects shall be subject to legislation by the Indian legislature, namely —

(i) the control of the establishment, and regulation of the constitutions and functions, of Universities constituted after the commencement of these rules, and

(ii) the definition of the jurisdiction of any University outside the province in which it is situated, and

(iii) for a period of five years from the date of the commencement of these rules, the Calcutta University and the control and organization of secondary education in the presidency of Bengal.

(a) construction and maintenance of provincial buildings, other than residences of Governors of provinces, used or intended for any purpose in connection with the administration of the province on behalf of the departments of Government concerned, save in so far as the Governor may assign such work to the departments using or requiring such buildings ; and care of historical monuments, with the exception of ancient monuments as defined in section 2 (1) of the ancient Monuments Preservation Act, 1904, which are for the time being declared to be protected monuments under section 3 (1) of that Act ; provided that the Governor General in Council may, by notification in the Gazette of India, remove any such monument from the operation of this exception ;

(b) roads, bridges, ferries, tunnels, ropeways and causeways, and other means of communication, subject to such condition, as regards control over construction and maintenance of means of communication declared by the Governor General in council to be of military importance, and as regards incidence of special expenditure connected therewith, as the Governor General in Council may prescribe ;

(c) tramways within municipal areas ; and

(d) light and feeder railways and extra municipal tramways in so far as provision for their construction and management is made by provincial legislation ; subject to legislation by the Indian legislature in the case of any such railway or tramway which is in physical connection with a main line or is built on the same gauge as an adjacent main line. All Governors' provinces, except Assam.

7. Agriculture, including research institutes, experimental and demonstration farms, introduction of improved methods, provision for agricultural education, protection against destructive insects and pests and prevention of plant diseases; subject to legislation by the Indian legislature in respect to destructive insects and pests and plant diseases to such extent as may be declared by any Act of the Indian legislature.	All Governors' provinces.
8. Civil Veterinary Department, including provision for veterinary training, improvement of stock, and prevention of animal diseases; subject to legislation by the Indian legislature in respect to animal diseases to such extent as may be declared by any Act of the Indian legislature.	Ditto.
9. Fisheries	All Governors' provinces, except Assam.
10. Co-operative societies	All Governors' provinces.
11. Forests, including preservation of game therein; subject to legislation by the Indian legislature as regards disforestation of reserved forests.	Bombay.
12. Excise, that is to say, the control of production, manufacture, possession, transport, purchase, and sale of alcoholic liquor and intoxicating drugs, and the levying of excise duties and licence fees on or in relation to such articles, but excluding, in the case of opium, control of cultivation, manufacture and sale for export.	All Governors' provinces, except Assam.
13. Registration of deeds and documents; subject to legislation by the Indian legislature.	All Governors' provinces.
14. Registration of births, deaths and marriages; subject to legislation by the Indian legislature for such classes as the Indian Legislature may determine.	Ditto.
15. Religious and charitable endowment	Ditto.
16. Development of industries, including industrial research and technical education.	Ditto.
17. Adulteration of food-stuffs and other articles; subject to legislation by the Indian legislature as regards import and export trade.	Ditto.
18. Weights and measures; subject to legislation by the Indian legislature as regards standards.	Ditto.
19. Museums (except Indian Museum, Imperial War Museum, and the Victoria Memorial, Calcutta) and Zoological Gardens.	Ditto.

SCHEDULE III.

(SEE RULE 25.)

1. The following general rules shall be observed by every authority which sanctions expenditure from Government revenues :—

(1) Every public officer should exercise the same vigilance in respect of expenditure incurred from Government revenues as a person of ordinary prudence would exercise in respect of the expenditure of his own money.

Moneys borrowed on the security of allocated revenues should be expended on those objects only for which, as provided by rules made under the Act, moneys may be so borowed.

Except where such order is of general application, no authority should exercise its powers of sanctioning expenditure to pass an order which will be, directly, to its own pecuniary advantage.

(4) Unless the amount of the expenditure is insignificant, Government revenues should not be utilised for the benefit of a particular person or section of the community except when—

(*i*) a claim for the amount could be enforced in a court of law ;

(*ii*) the expenditure is in pursuance of a recognised policy or custom ; or

(*iii*) the object is such that the expenditure thereon may be deemed to be of a charitiable nature.

(5) No authority should sanction any expenditure which is likely to involve at a latter date expenditure beyond its own powers of sanction.

(6) The amount of allowances, such as local or travelling allowances, granted to meet special expenditure of a particular type should be so regulated that the allowances are not on the whole sources of profit to the recipient.

2. The previous sanction of the Secretary of State in council is necessary :—

(*i*) (*a*) to the creation of a permanent appointment which would necessitate an increase in the cadre of an all-India Service ;

(*b*) to the abolition of any appointment in the cadre of an all-India Service ;

(*c*) to any increase or reduction of the pay of any appointment in the cadre of an all-India Service ;

(*ii*) to the creation of any temporary appointment the maximum pay of which exceeds Rs. 1,000 a month and which lasts or is expected to last for more than two years, or, if the appointment be for settlement work, for more than five years ;

(*iii*) to the grant to any officer of an allowance which is not admissible under rules made under section 96 B. of the Act, or, in cases in which those rules do not apply, under the terms of any authorised Code issued or maintained under the authority of the said rules ;

(*iv*) to the grant to any retiring officer of a pension or gratuity which is not admissible under the rules for the time being in force under section 96B. of the Act ;

(*v*) to the grant of pensions or gratuities to non-officials, except in the case of—

(*a*) compassionate gratuities to the families of Government servants left in indigent circumstances,

(*b*) pensions or gratuities to the families of officers dying while employed in Government service granted in accordance with such rules as may be made in this behalf by the Secretary of State in Council,

(*c*) pensions or gratuities to non-officials injured or the families of non-officials killed during services rendered to the State, and

(*d*) pensions or gratuities to non-officials who have rendered exceptional services to Government ;

(*vi*) to any increase of the contract, sumptuary or furniture grant of the Governor ;

(*vii*) to any expenditure upon the purchase of stores, either in the United Kingdom or in India, otherwise than in accordance with such rules as may be made in this behalf by the Secretary of State in Council ; and

(*viii*) to any expenditure upon railway carriages or water-borne vessels specially reserved for the use of high officials, otherwise than in connection with the maintenance of the railway carriages already set apart with the sanction of the Secretary of State in Council for the exclusive use of the Governor.

Note.—Gratuities sanctioned under sub-clause (*v*) (*a*) of this paragraph should be subject as to total to such annual limit as the Secretary of State in Council may prescribe.

3. The previous sanction of the Governor General in Council is necessary—

(*i*) Subject to the provisions of paragraph 2 (*i*) of this Schedule—

(*a*) to the creation of a permanent appointment on a maximum rate of pay higher than Rs. 1,000 a month ;

(*b*) to the increase of the maximum pay of a sanctioned permanent appointment to an amount in excess of Rs. 1,000 a month ;

(*ii*) to expenditure on a residence of the Governor in excess of Rs. 75,000 in any year ;

(*iii*) to expenditure upon irrigation and navigation works, including docks and harbours, and upon projects for drainage, embankment and water-storage and the utilisation of water-power, in any of the following cases, namely :—

(*a*) where the project concerned materially affects the interests of more than one local Government ;

(*b*) where the original estimate exceeds 50 lakhs of Rupees ;

(*c*) where a revised estimate exceeds by 25 *per centum* or 50 lakhs of rupees, whichever is less, an original estimate sanctioned by the Governor General in Council.

(*d*) where a further revised estimate is proposed, after one revised estimate has already been sanctioned by the Governor General in Council ; and

(*iv*) to revisions, involving additional expenditure exceeding Rs. 15 lakhs a year, of permanent establishments serving in departments dealing with reserved subjects.

4. Apart from the restrictions imposed by paragraphs 1, 2, and 3 of the Schedule the power of sanctioning expenditure conferred upon the local Government by rule 25 shall be unlimited.

SCHEDULE IV.

SEE RULE 27.

1. The local Governments mentioned below shall, save as hereinafter provided, make in every year provision in their budgets for expenditure upon relief of, and insurance against, famine of such amounts respectively (hereinafter referred to as the annual assignments) as are stated against each:—

	Rs.
Madras	6,61,000
Bombay	63,60,000
Bengal	2,00,000
United Provinces	39,60,000
Punjab	3,81,000

	Rs.
Burma	67,000
Bihar and Orissa	11,62,000
Central Provinces	47,26,000
Assam	10,000

2. The provision shall be made in the shape of a demand for a grant, and the estimates shall show, under the major heads concerned, the method in which it is proposed to utilise the grant.

3. The grant shall not be expended save upon the relief of famine or upon the construction of protective irrigation works or other works for the prevention of famine. Any portion of the grant which is not so spent shall be transferred to the famine insurance fund of the province.

4. The famine insurance fund shall consist of the unexpended balances of the annual assignments for each year, transferred to the fund under paragraph 3 of this Schedule, together with any interest which may accrue on these balances.

5. The local Government may, in any year when the accumulated total of the famine insurance fund of the province is not less than six times the amount of the annual assignment, suspend temporarily the provision of the annual assignment.

6. The famine insurance fund shall form part of the general balances of the Governor General in Council, who shall pay at the end of each year interest on the average of the balances held in the fund on the last day of each quarter. The interest shall be calculated at the average rate at which the Governor General in Council has during the year borrowed money by the issue of treasury bills. Such interest shall be credited to the fund.

7. The local Government may at any time expend the balance at its credit in the famine insurance fund for any of the purposes specified in paragraph 3 of this Schedule.

8. Such balances may further be utilised in the grant of loans to cultivators, either under the Agriculturists, Loans Act, 1884, or for relief purposes. When such loans have been granted, payments of interest on loans and repayments of principal shall be credited to the fund as they occur, and irrecoverable loans written off shall form a final charge against the fund.

9. In case of doubt whether the purpose for which it is proposed to spend any portion of the annual assignment or the famine insurance fund is one of the purposes specified in paragraph 3 of this Schedule, the decision of the Governor shall be final.

10. The annual accounts of the annual assignments and of the fund shall be maintained in the forms annexed to this Schedule.

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 2320 of 2006

IN THE MATTER OF:

ALIGARH MUSLIM UNIVERSITY .... APPELLANT

VERSUS

VIVEK KASANA AND ORS .... RESPONDENTS

VOLUME _____

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ADVOCATE FOR THE RESPONDENT: ARCHANA PATHAK DAVE

WRITTEN SUBMISSION ON BEHALF OF RESPONDENT BY VINAY NAVARE SENIOR ADVOCATE

I. BACKGROUND

The present proceedings arise out of the decision of the Aligarh Muslim University ("AMU"), to reserve 50% seats of post-graduate course meant for qualified MBBS doctors, as a Muslim quota, in 2005. The basis of this decision was cited to be the Aligarh Muslim University (Amendment) Act, 1981 (hereinafter referred to as "Amendment of 1981"), which purportedly clarified the status of AMU as a Minority Educational Institution. In opposition to the AMU's decision to reserve fifty percent of its seats for Muslims, numerous Writ Petitions were filed in the Allahabad High Court. The Hon'ble High Court held that AMU was not a Minority Institution and thus not entitled to the protection of Article 30(1) and that the amendments made by way of the Amendment of 1981 were unconstitutional and invalid.

LIST OF IMPORTANT DATES AND EVENTS

1920 The Aligarh Muslim University Act, 1920 established the AMU as a university. In the process of establishing the University, negotiations took place between the

Mohammedan Anglo-Oriental College, the Muslim University Association, and the Muslim University Foundation Committee, and the Government of British India. Sir Syed Ahmad Khan founded the MAO College in 1872 as a primary school, which was then expanded to a high school and eventually a college associated with the University of Allahabad.

1947 India gained independence, and the Constituent Assembly formally began work on the construction of the Indian Constitution.

1950 When the Indian Constitution went into effect, Aligarh Muslim University and Banaras Hindu University were both designated as Institutions of national importance under Entry 63 List I (Union List) of the Seventh Schedule.

Entry 63: *"The Institutions known at the commencement of this Constitution as the Benares Hindu University, the Aligarh Muslim University and the 1[Delhi University; the University established in pursuance of article 371E;] any other Institution*

declared by Parliament by law to be an Institution of national importance"

1951 **Amendment-I:** Considering the university's secular nature and its status as a central university, the AMU Act of 1920 was changed to abolish the university's compulsory religion education for Muslim students. Furthermore, the amendment repealed the requirement that provided that only Muslim representation in the University Court.

1965 **Amendment-II:** The Aligarh Muslim University (Amendment) Act of 1965 was passed. The Court was no longer the AMU's supreme governing body as a result of this amendment. It evolved into a body whose members were chosen by the Visitor (the President of India). To democratize management, powers were divided among various University entities such as the Executive Council.

20.10.1967 In **S. Azeez Basha v. Union of India (1968) 1 SCR 833,** a 5-Judge Bench of this Hon'ble Court rendered its judgement in proceedings challenging the 1951 Act as well as the 1965 Amendment Act. The Hon'ble

Court while upholding the 1951 and 1965 Acts' legality and competence, it particularly dismissed the appeal to the challenged Acts under Articles 14,19,25,26,29,30(1), and 31. AMU was also ruled not to be a Minority Institution. The Bench reasoned that AMU was not founded nor run by the Muslim minority. Noting that the Act was enacted through Central Legislation, the Court observed, "It is possible that the 1920-Act was passed as a result of the Muslim minority's efforts." However, this does not imply that the Aligarh Muslim University was founded by the Muslim Minority under the 1920 Act." They said that the Act's provisions "clearly show" that governance of AMU was not "vested in the Muslim Minority."

26.11.1981 The issues raised in Azeez Basha were referred to a 7-Judge Bench in 1981 in W.P (C) No. 54-57 titled Anjuman-e-Rahmania v. Dist Inspector of School.

1981 **Amendment-IV:** In response to the Azeez Basha decision, the Parliament passed the Aligarh Muslim University (Amendment) Act, 1981 [Act No. 62 of

1981], amending the definition of university in Sections 2 (l) and 5 (2) (c), proviso to Section 5(2) (C). The amendment primarily modified the definition of university and attempted to undermine AMU's constitutionally recognized position through the AMU Act, 1920. This change was in direct violation of the Constitutional recognition and has an impact on the Constitutional framework that recognizes AMU as a Central University.

Jan 2005 The AMU Admissions Committee introduced a new Admission Policy for postgraduate medical studies at AMU. Through this resolution, they allocated 50% of the seats in the Medical College for Muslim students. It was approved by AMU's Academic Council and Executive Council on January 15, 2005 and January 19, 2005, respectively.

25.02.2005 A "No Objection Letter" was issued by the Union of India (HRD), through an officer of the Human Resource Development Ministry, to Aligarh Muslim University. In response, the university allocated fifty percent of its medical college seats for Muslim

students and granted approval for AMU's admission plan.

2005 In opposition to the AMU's decision to reserve fifty percent of its seats for Muslims, a number of Writ Petitions were subsequently filed in the Allahabad High Court.

04.10.2005 The Allahabad High Court's Learned Single Judge held that Parliament lacked the authority to amend and declare the 1951 and 1965 amendments to be null and void. Since AMU was not a Minority Institution and so could not qualify for Article 30 protection, Azeez Basha remained a good law.

16.11.2005 SLP was filed by the petitioner in opposition to the learned single judge's judgement.

16.11. 2005 The petitioner appealed the Learned Single Judge's decision with SLP.

25.11.2005 The Petitioner opted to withdraw the Petition during the hearing, with the leave to address the Division Bench of the High Court.

05.01.2006 The Petitioner's appeal was denied by the Division Bench of the Allahabad High Court, which also affirmed the judgement of the Single Judge. The Petitioners were aggrieved by the impugned judgement; hence they filed this SLP.

12.02.2019 A three-judge bench of this Hon'ble court referred to a seven-judge bench the correctness of the verdict in Azeez Basha and the formulation of question 3(a) in T.M.A Pai. [Reference Order]

12.10.2023 A seven-judge bench of this Hon'ble Court ordered that the issues be listed before an appropriate bench on January 9, 2024.

II. IN THIS REFERENCE, ONLY SCRUTINY PERMISSIBLE IS EFFECT OF AMENDMENTS TO 1920 ACT POST-AZEEZ BASHA JUDGMENT

1. Judgment in the case of S. Azeez Basha & Anr. Vs. Union of India[1] is conclusive and final and the same has attained finality. It is not under challenge before this Hon'ble Court,

[1] S. Azeez Basha & Anr. Vs. Union of India, 1968 SCR (1) 833

in any form either by way of a review petition or by way of a curative petition. The finality of the said judgment is a concluded fact. The said judgment can be revisited only for understanding and examining the effect of the amendments introduced to the Act in 1972 and in 1981 after the judgment in S. Azeez Basha & Anr. V. Union of India.

III. THE SCOPE OF THE REFERENCE ALSO LIMITED TO EXAMINING WHETHER THE PRINCIPLE OF LAW LAID DOWN THEREIN IS VALID OR NOT

2. The conclusions reached by the 5-judges bench which respect to the question of fact and the law applied thereto in S. Azeez Basha & Anr. V. Union of India therefore cannot be reopened. The scope of the reference to the Hon'ble 7 judge bench is limited to examining whether the principle of law laid down therein is valid or not. Whatever the outcome of the Reference, it cannot alter the conclusions reached by the 5-judge bench in S. Azeez Basha vis-à-vis Aligarh Muslim University 'AMU'.

IV. DANGERS IN ACCEPTING THE INDEPENDENT STATUS OF THE AMU AS A MINORITY INSTITUTION

3. If the independent status of AMU as a Minority Institution is accepted following consequences will follow:

3.1. Such a view will undermine the authority of the Parliament as a law-making body as it will be robbed of the powers conferred upon it by the founding fathers under Entry 63 of List-I Schedule 7. In any event, while interpreting a provision of a statute, the court should always be careful that the legislative power of the Parliament under 63 of List-I is not diluted.

3.2. As a matter of principle, well recognized by the judgments of the courts, the Parliament cannot abdicate its role & responsibilities as the law-making body. If AMU is accepted as a Minority Institution it will mean some other body/ entity, other than the Parliament, can control and regulate the AMU which will be inconsistent with Entry 63 of List-I. The powers in relation to AMU is exclusively

with the Parliament by virtue of Entry 63 under List-I. Therefore, even the Union of India cannot argue today that the Amendment of 1981 has the effect of altering the status of AMU. It will be going against the intentions of the founding fathers who had consciously selected AMU as an Institute of National Importance with exclusive powers conferred upon the Parliament vide Entry 63 under List-I.

3.3. Since the AMU was established by the special law, it falls within the definition of the 'State' under Article 12 of the Constitution of India. As a 'State', the AMU cannot do what a Minority Institution may be permitted to do under the law.

3.4. In this regard, it is pertinent to point out, this Hon'ble Court has recognized the right of the Minority Institutions to appoint the Principal or the Head of the Institutions without being controlled by the Statute. Even disciplinary action against its employees cannot be controlled by the statute. It is free to appoint candidates of its choice. As a 'State',

a body created by a special law cannot be permitted to do so. The 'State' has its own limitations and it cannot run a Minority Institution. The manner in which a Minority may be permitted to run a Minority Institution with special provisions being available under the law are neither available to the state nor permissible for the state to run the Institution in such manner. For instance, Section 3 (2) of MEPS ACT[2], UP Intermediate Education Act 1921[3], Kerala Education Act[4], and Andhra Pradesh Education Act 1952[5].

4. In the case of **Sukhdev Singh v. Bhagatram Sardar Singh Raghuvanshi,[6]** the Hon'ble Supreme Court affirmatively stated that the corporations set up under statutes to carry on business of public importance or which is fundamental to the life of the people can be considered as "State" within the meaning of Article 12. As AMU is also an Institution

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[2] The Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977
[3] UP Intermediate Education Act 1921
[4] Kerala Education Act 1958
[5] Andhra Pradesh Education Act 1952
[6] Sukhdev Singh v. Bhagatram Sardar Singh Raghuvanshi, (1975) 1 SCC 421

incorporated by a Statute carrying on function of imparting education to the masses which is fundamental to the life of people and created by Act, it is 'State' within the meaning of Article 12.

V. UNDER THE GUISE OF AMENDMENT TO THE ACT THE PARLIAMENT CANNOT REWRITE THE HISTORY

5. It is said that the Parliament in the United Kingdom is supreme and the British Parliament can do anything except make a man a woman and a woman a man. Under our constitutional jurisprudence such supremacy is not attributed to the Indian Parliament. Under the guise of making the law or amending the law the Parliament cannot rewrite the historical facts. The fact that the AMU was created by the 1920 Act and that the predecessor societies/ bodies were dissolved. This fact which has occurred as a consequence of the 1920 Act cannot be altered through the device of the amendment of the law or the amendment to the definition of the university. The fact of the creation of AMU and dissolution of earlier bodies already occurred and that historical fact cannot change. To that effect

there is a finding recorded by 5-judge bench which has attained finality.

VI. BASIC DIFFERENCE BETWEEN AN ENTITY CREATED 'UNDER THE STATUTE' AND THE ONE CREATED 'BY THE STATUTE'

6. There is a fundamental difference between an entity created 'by the Statute' and one created 'under the Statute'. AMU was established and incorporated by Act, No. 21 of 1920. Most of the arguments raised on behalf of the Appellants are based on the assumption that the AMU was created under the Statute. The case law cited by them also deals with the Institutions that are created under the statute and not by way of a special Statute. Not even a single judgment has been cited where the AMU-like situation exists.

7. In **CIT v. Canara Bank, (2018) 9 SCC 322**[7]**,** there is a clear distinction between a body that is created by the Statute and a body that, having come into existence, is governed in accordance with the provisions of the statute. In these situations, the question that needs to be posed is

[7] CIT v. Canara Bank, (2018) 9 SCC 322

whether the Institution would have any legal existence at all if there was no statute. If the response is negative, then the Institution is definitely a statutory body; however, if the Institution is only governed by the statutory provisions and has its own independent existence without making any reference to the relevant statute, it cannot be considered a statutory body.

8. Another judgment that had the occasion to consider the expression established by or under the Act is a judgment of this Court in **Dalco Engineering Private Limited vs. Satish Prabhakar Padhye and Others (2010) 4 SCC 378**[8]**.** Paragraph 20 of the judgment states that the phrase established by or under the Act is a standard term used in several enactments to denote a statutory corporation established or brought into existence by or under the statute. On Company, it was held that the company is not established under the Companies Act and an incorporated company does not "owe" its existence to the Companies Act.

[8] Dalco Engineering Private Limited vs. Satish Prabhakar Padhye and Others (2010) 4 SCC 378

9. Para 21 states that 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. The court then goes on to explain the difference between "established by a Central Act" and "established under a Central Act", using a few illustrations.

10. In the case of Aligarh Muslim University Act of 1920, the preamble at the time of enactment stated "whereas it is expedient to establish and incorporate a teaching and residential Muslim University at Aligarh and dissolve the societies registered under the societies registration act, 1860 which are respectively known as Mohammedan Anglo- Oriental, Aligarh and the Muslim University Association, and to transfer and vest in the said university all properties and rights of the said societies and of the Muslim University Foundation Committee", it is clear that the Reference is to a corporation or body established, that

it is brought into existence, by an Act and not under an Act. In short, the term refers to a statutory corporation as contrasted from a non-statutory corporation incorporated or registered under any other parliamentary enactment.

11. In the case of **Thalappalam Service Coop. Bank Ltd. v. State of Kerala, (2013) 16 SCC 82**[9] In para 17 and 18, the court said that we can draw a clear distinction between a body which is created by a Statute and a body which, after having come into existence, is governed in accordance with the provisions of a Statute.

12. In **Sabhajit Tewary v. Union of India, (1975) 1 SCC 485**[10] 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, which was denied by the court stating that a statutory body can only be established by a Statute.

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[9] Thalappalam Service Coop. Bank Ltd. v. State of Kerala, (2013) 16 SCC 82
[10] Sabhajit Tewary v. Union of India, (1975) 1 SCC 485

VII. ALL ASPECTS OF ADMINISTRATION OF THE AMU ARE CONTROLLED BY THE ACT OF 1920 AND NO INDEPENDENT SCOPE FOR ANY OTHER ENTITY TO ADMINISTER.

13. The effect of the AMU being created by the Special Act is that it can be administered only as provided by that Act. Even if, for the sake of argument, it is assumed that it is administered by the Minority community it can do so only in accordance with the provisions of the AMU Act, 1920 and not in any other way. The courses to be conducted, manner of examination, powers with respect to appointment of its employees etc. etc. are all governed by the said Act and the Statutes and Ordinance framed thereunder.

VIII. IN VIEW OF POINT (6) ABOVE, "OF THEIR CHOICE" IN ARTICLE 30(1) INAPPLICABLE

14. The above aspect also goes to show that AMU created by the 1920 Act, is not an Institution "of their choice" it is the Parliament whose wisdom, discretion and decision which matters and therefore AMU cannot be said to be an educational Institution 'of their choice'

IX. TWIN PURPOSE OF THE 1920 ACT ACHIEVED ONCE AND FOR ALL

15. The 1920 Act has served twin proposes:

(1) Dissolution of the societies such as Muhammaden Anglo-Oriental College, Aligarh and the Muslim University Association and Muslim University foundation Committee; and

(2) Creation of a new entity namely Aligarh Muslim University.

As a result of achieving the aforesaid twin purpose in 1920 by the said Act, the starting point for going into and examining the whole controversy is the enactment of 1920.

X. EFFECT OF ENTRY 63 LIST-I ON THE WHOLE CONTROVERSY

16. The Entry 63 of the list treats BHU and AMU at par as Institutions of national importance. The same were to be treated by the Parliament through its legislative powers without any qualification/ limitation. Thus, the Entry 63 in

List-I shows that the founding fathers never intended the AMU to be treated differently from BHU in so far as the Minority status attributed to it by the appellants in the present petition is concerned.

XI. DEBATE IN THE CONSTITUENT ASSEMBLY ON ENTRY 63 LIST-I

17. The founding father of the Constitution of India willfully choose the Banaras Hindu University and the Aligarh Muslim University to be of national importance and kept it in Union List to ensure the government legislate in regard to these Universities, to ensure impartial non-communal nature of these Universities. It will be going against the intentions of the founding fathers who had consciously selected AMU as an Institute of national importance with exclusive powers to parliament alone.

18. The relevant portion debate on 30th August, 1949, during Constituent Assembly debates are extracted below for convince:

A. Mr. Naziruddin Ahmad participated in the debates and argued about the Constitutional status of Aligarh Muslim University and Benaras Hindu University and

the express recognition of the university as an *Institution of national importance presently under* Entry 63 of List I of the Seventh Schedule. He stated that:

[CAD, 30TH AUG. 1949, VOL 4B, P-112]

> *"…The Banaras 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…*[11]"

B. Shri H.V. Kamath took part in the debates on August 30, 1949, during the Constituent Assembly Debates. He argued on the constitutional status of Benaras Hindu University and Aligarh Muslim University, as well as the express recognition of the university as a

[11] Constituent Assembly Debates, 30TH AUG. 1949

national Institution under Entry 63 of List-I of the Seventh Schedule. He stated that:

[CAD, 30TH AUG. 1949, VOL 4B, P-115]

> *"....As regards the two Universities mentioned in this Entry, the Banaras 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."*[12]

C. On August 27, 1920, Mr. Mohammad Shafi presented the Aligarh Muslim University Bill in the Indian Legislative Assembly. He advocated the establishment of a distinguished Institution of national character that would nurture education and uphold the values of inclusivity, fostering a legacy of academic excellence and cultural diversity in India. It is submitted that Mr. Mohammad Shafi, while representing the

[12] Constituent Assembly Debates, dated 30TH AUG. 1949

Aligarh Muslim University Bill in "Indian Legislative Assembly" clearly outlined three important aspects on 27-08-1920:

[ILA, 27th August, 1920, VOL 4C, P 4-35]

i) Keeping in mind the pan-India characteristic of the Banaras University and Aligarh University; ii) it has been proposed under the rules of the new Act that both of the universities shall be subject matter of the Central Government and; iii) their responsibility should be on the shoulders of the Government of India.

XII. NCMEI ACT, 2004 OF NO CONSEQUENCE ON THE INSTANT ISSUE

19. The Petitioners are placing reliance upon the National Commission for Minority Educational Institution Act, 2004. However, none of the provisions of this act have any relevance or legal implication on the judgments of S. Azeez Basha & Anr. V. Union of India and the judgments passed by the Allahabad

High Court. The validity of the said judgements cannot be tested on the basis of the said Acts at all.

XIII. OBSERVATIONS OF LORD DENNING ON THE POWER TO DEFINE

20. Although by introducing the amendment of 1981 the word to established has been removed from the preamble the Act that it was established by that act cannot be disputed. Such exercise will only be misconceived and of no legal consequence. That the University was established only as a result of the Act of 1920 is unalterable fact. Either by altering the definition of the university by or by any declaratory provision the effect that has taken place by the 1920 Act cannot be altered.

21. Lord denning's observation in Hotel and Catering Industry Training Board V. Automobile Propriety Ltd. are in this regard as follows: -

> *"It is true that 'the industry' is defined; but a definition is not to be read in isolation. It must be read in the context of the phrase which is defines,*

realizing that the function of the definition is to give precision and certainty to the word or phrase which would otherwise be vague and uncertain- but not to contradict it or supplant it altogether."[13]

XIV. MINORITY STATUS IS ONLY VIS-À-VIS STATE

22. The Recognition of the Minority Institution, religious or linguistic, is only vis-à-vis a 'State'. It is incomprehensible as to how the University created by the Central Act can be recognized as a Minority Institution which can have presence all over including Kashmir.

XV. CAN PARLIAMENT CREATE A MINORITY INSTITUTION

23. Establishment of any educational Institution by the Act of legislature cannot be read to be as an establishment by a person(s) belonging to a religious or linguistic Minority community or its being administered by a person(s) belonging to a religious or linguistic Minority community.

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[13] National Insurance Co. Ltd. v. Kirpal Singh, (2014) 5 SCC 189

This fact is duly recognized by the Constitution Assembly by incorporating Entry 63 in List-I.

XVI. CONCLUSION

24. Therefore, no case is made out in favor of AMU, and it cannot be considered as a Minority Institution in light of the recognition of AMU as an Institution of national importance under the constitutional scheme and being governed through a Central Act. Moreover, the 1981 Amendment is invalid and the subsequent action of reserving 50% seats for a Minority community is invalid.

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2321 of 2006

IN THE MATTER OF:

ALIGARH MUSLIM UNIVERSITY ...PETITIONER

VERSUS

ANUJ GUPTA & ORS. ..RESPONDENTS

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DATED:

NEW DELHI **FILED BY**

MS. SHUCHI SINGH

ADVOCATE-ON-RECORD FOR THE RESPONDENT NO.1

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2321/2006

IN THE MATTER OF:

ALIGARH MUSLIM UNIVERSITY

...PETITIONER

VERSUS

ANUJ GUPTA & ORS. . RESPONDENTS

WRITTEN SUBMISSIONS ON BEHALF OF MR. SRIDHAR POTARAJU,

ADVOCATE FOR RESPONDENT NO.1

A. Factual findings of fact which have attained finality in S. Azeez Basha v. Union of India[1]:

- The Muslim minority community did not establish the Aligarh Muslim University, it was established by an Act of the Central Legislature.
- The ownership rights of any individual donors/contributors also stood extinguished in 1920 by an act of the legislature that brought into existence the AMU vide Act No. 21 of 1920.
- The Muslim minority community has no rights in the moveable and immovable assets of the AMU at any point in time.

[1] (1968) 1 SCR 833 (5J).

- The right to administer or manage or maintain the AMU is exclusively vested in the authorities empowered to do so under the 1920 Act under which it has been created.

B. "Stream cannot be higher than Source" - The Appeal at the behest of the Registrar of AMU is not maintainable as the University itself is the creation of the statute and it cannot be permitted to raise a challenge to its Secular character under the Constitution.

1.1. It is a settled position of law that an authority created by statute cannot question the vires of the statute or any of its provisions thereof whereunder it functions.[2] The said proposition has been referred with approval in Mafatlal Industries Limited & Ors. V. UOI & Ors.[3].

1.2. The Aligarh Muslim University was established and administered under the Aligarh Muslim University Act, 1920. On coming into force of the Indian Constitution the said University was classified in Entry 63 of the List I to the Seventh Schedule of the Constitution as an Institution of National Importance.

1.3. The AMU Act, 1920 under Article 372 continues to operate with the same force of law as it was prior thereto. The said Act had to adhere to the mandate of Part III of the Constitution. To save the said enactment of being violative of Article 14, 15, 16 and 28, the provisions of the 1920 Act were amended in 1951 to ensure the secular character of the institution as it was characterized as being of

[2] K.S. Venkatraman & Co. V. State of Madras, (1966) 2 SCR 229 (5J) at Pg. 252 (Placitum C).
[3] (1997) 5 SCC 536 (9J) at Pg. 588, Para 43.

national importance by the framers of the Constitution. The contemporaneous amendments of 1951 made immediately after the Constitution was brought into force, leave no doubt as to the intent of the Legislature as to secular character of the Institution. Hence, it is impermissible for a statutory body acting under the provisions of an enactment to question the constitutional determination of its secular character.

1.4. The University, which is a creation of the AMU Act, 1920, cannot be countenanced to raise a challenge as to its secular character contrary to the statutory scheme under which it was created. The framers of the Constitution had elevated the status of AMU to that of an Institution of National Importance leaving no iota of doubt as to its secular character.

1.5. The present Appeal at the behest of the Registrar of AMU challenging the Secular character of AMU and seeking a declaration that it be declared as a Muslim minority institution is not maintainable in law. The determination of its secular character is by virtue of the declaration in Entry 63 in List I.

1.6. In any event, arguendo, the Registrar, AMU chose not to file a review against the Constitution Bench judgment in Azeez Basha pronounced on 20th October 1967, for nearly 5 decades and the same has attained finality qua AMU.

C. An Institution of National Importance, so classified by the framers of the Constitution and characterized as such in the Constitution adopted in the 1950 cannot be declared as a minority Muslim institution in 2024, which would be against the secular ethos of our Constitution.

2.1. The framers of our Constitution have given us a constitution which is secular providing equal opportunity to all citizens in accessing public institutions for higher education funded by the taxpayers.

2.2. Secularism is recognised as a basic feature of our Constitution by a catena of judgments of this Hon'ble Court. The AMU, established by law and having their existence borne out of legislative enactment with the Governor as its Chief Rector under Section 15 of the AMU Act, 1920 is a Secular institution and cannot be declared to be a minority institution.

2.3. Section 9 of the unamended 1920 Act gave power to the Court to make statutes providing for compulsory religious instruction in the case of Muslim students and Section 8 of the unamended Act provided that special provisions may be made through ordinances to exempt women from attending public lectures and tutorial classes.

2.4. The Amendment Act of 1951, ensured the provisions of the AMU Act, 1920 were saved from being declared unconstitutional. This Amendment was considered by the Constitution Bench in Azeez Basha while holding that AMU is a secular institution not falling within the purview of Article 26 or Article 30. (Kindly see: S. Azeez Basha v. Union of India, (1968) 1 SCR 833 (5J) Vol. 3A, Pg. 14 (Placitum D-F))

2.5. The Amendments to the AMU Act, 1920 made in 1951 and 1965 unequivocally demonstrate the legislative intent of treating it as a secular institution of national importance.

2.6. In this regard, reliance is placed on the observations of Ahmadi J. in S.R. Bommai V. Union of India[4] wherein he observed that state revenue cannot be utilized for promotion and maintenance of any religious group. In the same judgment, K. Ramaswamy J. in his opinion highlights the importance of increasing the secularization of society and culture and holds secularism to be the bridge to cross-over from tradition to modernity[5].

D. The Amendment Act No. 62 of 1981[6] in effect sought to undo the declaration of the Secular character of AMU by the constitution bench in S. Azeez Basha's case which is impermissible in law.

3.1. It is settled law that the judgment of a competent court can only be challenged or undone by recourse to the procedure recognized therefor. The legislative intervention that seeks to alter the outcome of the judicial pronouncement is not permissible under our constitution as the role of adjudication is exclusively with the judiciary.

3.2. In this regard reliance is placed on the judgment of this Hon'ble Court in Madan Mohan Pathak and Others v. UOI & Ors.[7], wherein this Hon'ble Court held that so long as the judgment stands, it cannot be disregarded or ignored and it must be obeyed[8]. In the very same judgment in a concurring opinion Beg J. held that

[4] S.R. Bommai V. Union of India, (1994) 3 SCC 1 at Pg. 168 (Placitum C).
[5] *Ibid* at Pg. 186, Para 182.
[6] Convenience Compilation 4A at Pg. 147 at 148.
[7] (1978) 2 SCC 50 (7J).
[8] *Ibid* at Pg. 67.

where the rights of the citizen against the state are concerned, we should adopt an interpretation which upholds those rights.[9]

3.3. The 1981 Amendment does not refer to the judgment of S. Azeez Basha in the Statement of Objects and Reasons nor provides any non-obstante clause referring to the judgment of this Hon'ble Court is to be found therein. It appears that the attention of the Parliament was not drawn to the declaration of the character of AMU by a CB of this Hon'ble Court, while enacting the 1981 Amendment to the AMU Act, 1920.

3.4. The Parliament by amending the AMU Act, 1920 by the amendment in 1981 in terms of the statements of objects and reasons to the Amendment Act No. 62 of 1981, *has sought to assuage the minds of the Muslim community regarding the character of Muslim universities*, which is not permissible in a secular democracy, especially when the highest Constitutional Court has declared it to be a secular institution.

3.5. The said Amendment Act does not refer to the judgment of this Hon'ble Court declaring the character of AMU as a secular institution established under a central enactment.

3.6. The Amendment Act of 1981 does not seek to alter the basis on which the judgment was pronounced by the constitution bench of this Hon'ble Court in S. Azeez Basha. In effect what was sought to be done by the Parliament is to overrule the binding judgment of this Hon'ble Court, which has attained finality

[9] *Ibid* at Pg. 86, Para 32.

and has not been called into question by any party to date either by filing a review petition.

3.7. The declaration by the CB was *in rem* after exhaustively considering the provisions of the AMU Act, 1920 as well as the history preceding the enactment.

3.8. This Hon'ble Court in its judgment has returned factual findings as to how the three legal entities which took the initiative leading to the enactment of the AMU Act, 1920 stood dissolved, and all their assets and liabilities were vested in the newly established AMU.

3.9. The Parliament cannot undo a judgment of this Hon'ble Court in the manner in which it appears to have been done through the 1981 Amendment Act, thereby, depriving the citizen of this Country of availing higher education in an Institution of National Importance i.e. AMU, violating Article 14, 15 and 16.

E. Stare Decisis - Judgment in S. Azeez Basha has stood the scrutiny of time for more than 50 years upholding the status of AMU as a secular institution and does not warrant any interference of this Hon'ble Court.

4.1. The law on the subject is settled by this Hon'ble Court in The Keshav Mills Co. Ltd. v. Commissioner of Income Tax[10], wherein this Hon'ble Court set out the broad parameters for exercising its power to revise or review its previous judgment. In the case on hand, the judgment in S. Azeez Basha is a unanimous judgment of five Hon'ble Judges.

[10] 1965 (2) SCR 908 (7J).

4.2. It is submitted that the view taken by this Hon'ble Court in Azeez Basha upholds the secular ethos of the Constitution and also elaborately considered the contentions on all aspects which are now being raised herein again. The said judgment pronounced on 20.07.1967 has withstood the scrutiny of time.

4.3. With utmost respect, it is submitted that there are no compelling and substantial considerations of law that would warrant a different view from the one taken in the S. Azeez Basha case, with no change in circumstance nor new material coming to light post the judgment which was not known or available to the parties.

4.4. The interpretation proposed by the Appellant to declare AMU as a minority institution would make such an interpretation unconstitutional. As Constitution itself has elevated AMU as an Institution of National Importance under Entry 63 of List I of the Seventh Schedule to the Constitution. It would be downgrading an educational institution of National Importance to that for a religious minority.

4.5. The framers of the Constitution have conceived a secular nation and accordingly enlisted AMU as an Institution of National Importance while framing the Constitution itself. The Constituent Assembly was conscious of the circumstances under which the AMU Act, 1920 was enacted and to encourage the secular spirit in the nation chose to make it an Institution of National Importance.

4.6. The Amendment of 1951 secularised the AMU Act, 1920 and further amended the same in 1965 which occasioned the judgment under reference in S. Azeez Basha.

4.7. In any event, it would be in consonance with the constitutional ethos as laid down by this Hon'ble Court in Abhiram Singh v. C.D. Commachen[11], that the interpretation which furthers secularism ought to be preferred, as the same would make the legislation under consideration consistent with the Constitutional goals[12].

F. CONCLUSION

5.1 The interpretation of the Constitution has to be such that the Secular character of our Institutions of National Importance, especially in the field of education are accessible to all the citizen equally without any discrimination based on their faith. The reference may be answered affirming the view expressed in S. Azeez Basha.

[11] (2017) 2 SCC 629 (3J).
[12] *Ibid* at Pg. 684, Para 74-77,79.