

**IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION  
CIVIL APPEAL NO. 2320 OF 2006**

**IN THE MATTER OF:**

**ALIGARH MUSLIM UNIVERSITY  
THROUGH ITS REGISTRAR**

**... PETITIONER**

**Versus**

**VIVEK KASANA & ORS.**

**... RESPONDENTS**

**WRITTEN SUBMISSIONS ON BEHALF SENIOR ADVOCATE MR. NEERAJ KISHAN  
KAUL FOR THE RESPONDENT**

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**A. THE PRESENT REFERENCE HAS A LIMITED SCOPE – WHAT IS THE *INDICIA* OF A MINORITY INSTITUTION UNDER ARTICLE 30(1) OF THE CONSTITUTION i.e., *WHETHER THE SAME IS ESTABLISHED AND ADMINISTERED BY A MINORITY READ CONJUNCTIVELY OR WHETHER 'ESTABLISH' AND 'ADMINISTER' CAN BE READ DISJUNCTIVELY***

1. The present reference incepts from the Order dated 12.02.2019 passed by this Hon'ble Court in Civil Appeal No(s). 2286/2006 in *Aligarh Muslim University v. Naresh Agarwal & Ors.* and other connected matters.

2. It is submitted that the present reference is limited to the following question which is reproduced in the above-mentioned Order dated 12.02.2019:

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

3. The above can be culled out from the following facts:

3.1. This Hon'ble Court in case of *Azeez Basha vs Union of India* [1968] 1 SCR 833 dealt with a challenge to the constitutionality of the provisions of the 1951 Amendment Act and the 1965 Amendment Act amending the Aligarh Muslim University Act, 1920.

3.1.1. Summarily put, the Appellants therein contended that the Aligarh Muslim University ("AMU") is a minority education institution under Article 30(1) of the Constitution.

3.1.2. The Appellants therein contended that in so far as the 1951 Amendment Act and 1965 Amendment Acts take away or abridge any

administrative rights from the Muslim Minority Community, the said Acts are ultra vires Article 30(1).

3.1.3. Among other findings, this Hon'ble Court held that the phrase *administer and establish* as used in Article 30(1) of the Constitution ought to be read conjunctively and not disjunctively.

3.1.4. Further, this Hon'ble Court also held that the AMU was neither established by a minority nor administered by a Minority and therefore AMU was held to not be a minority education institution.

3.1.5. **Therefore, the Hon'ble Court made three distinct findings in Azeez Basha,**

- **That 'administer and establish' has to be read conjunctively and not disjunctively. (Vol 3A @ pg. 16 – 17)**
- **AMU Act was not established by a Muslim Minority but the Central Government. (Vol 3A @ pg. 18 – 22)**
- **AMU Was Not Administered by the Muslim Minority Community (Vol 3A @ pg. 9 – 14)**

3.2. Subsequently, this Hon'ble Court in the case of *Anjuman-e-Rahmania & Ors vs Distt. Inspector of School & Ors*. Writ Petition Nos. 54-57 of 1981 passed the following Order wherein the judgement of *Azeez Basha vs Union of India* was directed to be placed before the Hon'ble Chief Justice for reference to a bench of at least 7 judges:

*"After hearing counsel for the Parties, we are clearly of the opinion that this case involves two substantial questions regarding the interpretation of Article 30(1) of the Constitution of India. The present institution was founded in the year 1938 and registered under the Societies Registration Act in the year 1940. The documents relating to the time when the institution was founded clearly shows that while the institution was established mainly by the Muslim community but there were members*

from the non-muslim community also who participated in the establishment process. **The point that arises is as to whether Act. 30(1) of the Constitution envisages an institution which is established by minorities alone without the participation for the factum of establishment from any other community. On this point, there is no clear decision of this court. There are some observations in S. Azeez Basha & ors. Vs. Union of India 1968(1) SCR 333, but these observations can be explained away: Another point that arises is whether soon after the establishment of the institution if it is registered as a Society under the Society Registration Act, its status as a minority institution changes in view of the broad principles laid down in S. Azeez Basha's case. Even as it is several jurists including Mr. Seervai have expressed about the correctness of the decision of this court in S. Azeez Basha's case.** Since the point has arisen in this case we think that this is a proper occasion when a larger bench can consider the entire aspect fully. We, therefore, direct that this case may be placed before Hon. The Chief Justice for being heard by a bench of at least 7 judges so that S. Azeez Basha's case may also be considered and the points that arise in this case directly as to the essential conditions or ingredients of the minority institution may also be decided once for all. A large number of jurists including Mr. Seervai, learned counsel for the petitioners Mr. Garg and learned counsel for respondents and interveners Mr. Dikshit and Kaskar have stated that this case requires reconsideration. In view of the urgency it is necessary that the matter should be decided as early as possible we give liberty to the counsel for parties to mention the matter before Chief Justice."

- 3.3. From a bare reading of the above Order it can be inferred that this Hon'ble Court in the above case did not refer the *lis* decided qua AMU on facts and

interpretation given to the Act of 1920 involved therein but instead referred the *Azeez Basha vs Union of India* judgement on the principles with respect to the essential conditions and ingredients of a minority institution in respect to Article 30(1).

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

3.5. In the said, this Hon'ble Court did not frame a question pertaining to the status of AMU but instead framed the following question:

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

3.6. This Hon'ble Court in the case of *TMA Pai* [supra] did not answer the above question and held that the same will be dealt with by a regular bench.

3.7. Subsequently, the group of matter in case of *Anjuman* [supra] came to be disposed of vide order dated 11.03.2003.

3.8. The Aligarh Muslim University, in an unprecedented move, effectuated the allocation of reservations for the first time through the directives articulated in the Admission Committee mandate of 10.01.2005, the Resolution Enacted by the Academy Commission on 15.01.2005, and the Resolution Passed by the Executive Council on 19.05.2005.

3.9. Specifically, a reservation quota amounting to 50 per cent of available seats was designated exclusively for the admission of Muslims of India into postgraduate programs. Subsequently, aggrieved individuals, unable to secure admissions due to the imposition of the aforementioned 50 per cent reservation, instituted writ petitions before the Hon'ble High Court of Allahabad, thereby precipitating the current legal proceedings.

3.10. The said Writ Petitions were decided by the Ld. Single Judge of the Hon'ble High Court of Judicature at Allahabad vide Judgment and Order dated 04.10.2005. The Ld. Single Judge allowed the Writ Petition and held that AMU cannot provide any reservation in respect of the students belonging to a particular religious community. The resolution of the Academic Council dated 15th January 2005, the decision of the Executive Council dated 19th February, 2005 as also the approval granted thereto under letter of the Union of India dated 25t11 February. 2005 were quashed.

3.11. The afore-mentioned judgement and order of the Ld. Single Judge of the Hon'ble High Court of Judicature dated 04.10.2005 was impugned before the Division Bench of the Hon'ble High Court by way of Special Appeal 1321 of 2005 and connected matters.

3.12. The Division Bench of the Hon'ble High Court vide Judgment and Order dated 05.01.2006 dismissed the appeals filed by the appellants therein. The Division Bench upheld the Order of the Single Judge to the extent that the Reservation Policy could not have been enacted but went further and held that the 1981 Amendment to the AMU Act is liable to be struck down.

3.13. The Division Bench went on to hold,

***We have said that in Basha the Supreme Court took a view of the 1920 situation, the view was a reasoned view, there were many factors, which persuaded their Lordships to come to a final decision that the Aligarh Muslim University was different from the MAO College and was so substantially different as to make the one a free institution notwithstanding the other being a minority one. By Section 2(l) the reasoning the and decision are directly ridden roughshod over by Parliament, it does away with the reasons by enforcing by way of declaration that the MAO College became the Aligarh Muslim University by incorporation and that the one is the other excepting for incorporation and incorporation alone, at the same time it lays down in the definition a proposition, the necessary corollary of which is a statement that the Aligarh Muslim University partakes of the same minority status as its substantially indistinguishable predecessor had, that predecessor being the MAO College The necessary corollary is a very close second step and so close as to be practically indistinguishable from the definition itself Section 2(l) therefore seeks to state practically in stark terms that Parliament has overruled the Basha decision This Parliament is not entitled to do.***

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- 3.14. The said orders are under challenge before this Hon'ble Court in C.A. No.2588 of 2006 along with other connected matters.
4. This Hon'ble Court whilst being cognizant of the above-mentioned history and the present proceedings passed the Reference Order dated 12.02.2019. In the



Reference Order this Hon'ble Court in Para 1 reproduces the following paragraph from the *Azeez Basha* [supra] judgement:

*"It is to our mind quite clear that Article 30(1) postulates that the religious community will have the right to establish and administer educational institutions of their choice meaning thereby that where a religious minority establishes an educational institution, it will have the right to administer that. An argument has been raised to the effect that even though the religious minority may not have established the educational institution, it will have the right to administer it, if by some process it been administering the same before the Constitution came into force. We are not prepared to accept this argument. The Article in our opinion clearly shows that the minority will have the right to administer educational institutions of their choice provided they have established them, but not otherwise. **The article cannot be read, to mean that even if the educational institution has been established by somebody else, any religious minority would have the right to administer it because, for some reason or other, it might have been administering it before the Constitution came into force. The words "establish and administer" in the article must be read conjunctively and so read it gives the right to the minority to administer an educational institution provided it has been established by it.** In this connection our attention was drawn to *In re; The Kerala Education Bill, 1957* [(159) SCR 995] where, it is argued, this Court had held that the minority can administer an educational institution even though it might not have established it. In that case an argument was raised that under Article 30(1) protection was given only to educational institutions established after the Constitution came into force. That argument was turned down by this Court for the obvious reason that if that interpretation was given to Article 30(1) it would be robbed of much of its content. But that case in our opinion did not lay down that the words "establish and administer" in Article 30(1) should be read disjunctively, so that though a minority might not have established an*

*educational institution it had the right to administer it. It is true that at p. 1062 the Court spoke of Article 30(1) giving two rights to a minority i.e. (i) to establish and (ii) to administer. But that was said only in the context of meeting the argument that educational institutions established by minorities before the Constitution came into force did not have the protection of Article 30(1). We are of opinion that nothing in that case justifies the contention raised of behalf of the petitioners that the minorities would have the right to administer an educational institution even though the institution may not have been established by them.*

**The two words in Article 30(1) must be read together and so read the Article gives this right to the minority to administer institutions established by it. If the educational institution has not been established by a minority it cannot claim the right to administer it under Article 30(1)."**

The paragraph reproduced above from *Azeez Basha* [supra] lays down the proposition that the phrase *establish and administer* as used in Article 30(1) has to be read conjunctively and not disjunctively. It is important to note that in the above paragraph as reproduced in the Reference Order, there is no finding made regarding the establishment and administration of AMU in particular.

5. Accordingly, the interpretation of the phrase *establish and administer* is the only aspect of *Azeez Basha* that has been referred by this Hon'ble Court in the Reference Order.
6. It is further important to note that this Hon'ble Court in the Reference Order reproduced Question 3(a) as formulated in *TMA Pai* [supra]. In Para 5 of the Reference Order, it is stated that:

*"The question 3(a) which was formulated for an answer in T.M.A. Pai Foundation (supra) which coincidentally reflects the questions referred by the order of this Court dated 26th November, 1981 passed in Writ Petition (Civil) Nos. 54-57 of 1981, is as follows:*

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

7. Consequently, the inquiry before the present Hon'ble Bench pertains to whether the mere establishment of an institution by a minority or the mere administration of said institution by a minority individually suffice as definitive indicator of the institution's minority status under Article 30(1).
8. Succinctly stated, the only question of law that has been referred to the present Hon'ble Bench is whether the criteria establish and administer must be construed as conjunctively or if whether they can be read disjunctively.
9. In the event of the former, an educational institution would have to demonstrate that both its establishment and administration is by the minority community to qualify as a minority educational institution under Article 30(1). Conversely, in case of the latter, satisfaction of either indicator, be it establishment or administration, would suffice to classify an institution as a minority educational institution under the purview of Article 30(1).
10. The precedent set by this Hon'ble Court in *Azeez Basha* [supra] held that Article 30(1) mandates the application of a conjunctive test.
11. **As is clear from the Reference Order, only this finding in *Azeez Basha*, as to whether establish and administer are to be read conjunctively has been referred. Consequently, the conclusions reached in *Azeez Basha* [supra] regarding the factum of establishment of AMU by non-minority and its**

**administration not being in the control of a minority community remain unchallenged. Thus, the finding in *Azeez Basha* that AMU was not a Minority Institution under Article 30(1) has not been referred for reconsideration.**

12. More importantly, notwithstanding the *Azeez Basha* [supra] ruling prescribing a conjunctive test for establishment and administration, this Hon'ble Court, in that case, determined that AMU failed to meet either the criterion of establish or administer, thereby negating its status as a minority educational institution.
13. Therefore, irrespective of whether a conjunctive or disjunctive test is to be applied, the nature of AMU and its established non-minority status is not under challenge.
14. In fact, the Reference Order in Para 9 also mentions the judgment in *Prof. Yashpal and another vs. State of Chhattisgarh and Ors.* (2005) 5 SCC 420 and the amendment to the National Commission for Minority Educational Institutions Act, 2004 made in the year 2010 in the context of the conjunctive test as in the whether in *Yashpal* "establish or incorporate" was read as conjunctive and the 2010 Amendment to the NCMEI Act had amended Section 2(g) of the Act from using the phrase "establish or administer" to "establish and administer".
15. **The Court was again referring to *Yashpal* and NCMEI Act not for any question on the rights of minorities to set up university but to give present day context to the controversy on conjunctive or disjunctive test.**
16. The Appellant is, however, attempting to reexamine a settled proposition regarding the non-minority status of AMU under the guise of the present Reference Order.

17. Despite the matter being referred to the bench of seven Hon'ble Judges in 2019, the Appellant, in its Written Submission dated January 5, 2024, contends that the point of reference was not clearly spelt out. Thereafter, the Appellant formulates the following reference question:

*Whether the decision in Azeez Basha is internally contradictory in its reasoning on facts and in law, contrary to authoritative decisions of this Court, rendered nugatory by subsequent statutory changes, and contrary to the Constitutional dispensation of Articles 29 and 30?*

18. This question bears no connection to the 2019 reference, seeking instead to broaden the scope from the interpretation of "establish and administer" to the overall correctness of *Azeez Basha* [supra].
19. The Court is urged to censure and preclude this attempt to modify and expand the reference's scope, particularly as it endeavors to cast doubt on settled legal principles established by a Constitution Bench of this Court, the validity of which has remained unchallenged.

**B. THE QUESTION REGARDING THE MINORITY STATUS OF ALIGARH MUSLIM UNIVERSITY HAS ALREADY BEEN DETERMINED AND THE PRESENT REFERENCE DOES NOT RE-OPEN THE JUDGMENT IN AZEEZ BASHA ON THAT POINT**

20. Summarily put, this Hon'ble Court in the case *Azeez Basha* [supra] held that:

20.1. Firstly, that AMU was brought into existence by the Central Legislature and the Government of India and the conversion of the Muhammadan Anglo-Oriental College into AMU was not by the Muslim minority and that it took place by virtue of the 1920 Act which was passed by the Central legislature.

20.2. Secondly, the provisions of the 1920 Act did not also show that Muslim minority was administering AMU after it was brought into existence.

20.2.1. Firstly, Section 13(1) made the Governor General the Lord Rector of the University with powers to cause inspection of the University, its buildings, laboratories, examinations, teaching and other work conducted by the University and issue any directions that they deem fit. Thus, final control in all matters of the University was with the Lord Rector

20.2.2. Further, even in the Court of AMU fifteen members were to be elected by the Academic Council, the membership of which was not confined only to Muslims.

20.2.3. Finally, there were other bodies like the Executive Council and the Academic Council of AMU which were concerned with the

administration of the Aligarh University and which were not confined only to Muslims.

20.2.4. It will thus be seen that besides the fact that the members of the Court had to be all Muslims, there was nothing in the Act to suggest that the administration of the Aligarh University was in the Muslim minority as such.

21. **It is evident that regardless of the interpretative approach applied to the conjunctive or disjunctive test of "establish and administer" as outlined in Article 30(1), the decisive judgment in *Azeez Basha* unequivocally concluded that AMU failed to meet either the requisite of Establishment or the prerequisite of Administration.**
22. This conclusive determination, spanning almost five decades, remains unaltered and unchallenged, with no doubt cast upon it in any subsequent judgment.
23. Since the initial query raised in 1981 regarding the *Azeez Basha* judgment in the Order dated 26.11.1981 in *Anjuman-e-Rahmania* case, and then subsequently in *TMA Pai* and extending to the present reference, the sole point of contention revolves around the application of the conjunctive or disjunctive test. There has been no challenge or dispute whatsoever regarding the factual finding that AMU, since its inception in 1920, neither fulfilled the criteria of Establishment nor was administered by the Muslim Community.
24. Consequently, the Appellants must be precluded from attempting to broaden or alter the focus of the present reference by elevating the status of AMU as a minority institution to the forefront of the discussion.

**C. IN ARGUENDO EVEN IF THE CRITERIA FOR QUALIFYING AS MINORITY INSTITUTION IS CHANGED AND THE REQUIREMENT OF ESTABLISH AND ADMINISTER IS READ DISJUNCTIVELY; IN THAT CASE, THE QUESTION OF THE MINORITY STATUS FOR AMU WILL HAVE TO BE DETERMINED BY APPLICATION OF THIS NEW EVOLVED POSITION OF LAW BY A SUBSEQUENT BENCH TO THE FACTS OF THE CASE IN AMU**

25. At the outset, in furtherance of the finding in *Basha*, establish and administer must be read conjunctively.
26. The ordinary meaning ascribed to 'and' is that it connotes conjunctive whereas 'or' is disjunctive in nature. This Hon'ble Court in *Hyderabad Asbestos Cement Products v. Union of India*, (2000) 1 SCC 426 held that:

**"8. The language of the rule is plain and simple. It does not admit of any doubt in interpretation. Provisos (i) and (ii) are separated by the use of the conjunction "and". They have to be read conjointly. The requirement of both the provisos has to be satisfied to avail the benefit. Clauses (a) and (b) of proviso (ii) are separated by the use of an "or" and there the availability of one of the two alternatives would suffice. Inasmuch as cement and asbestos fibre used by the appellants in the manufacture of their finished excisable goods are liable to duty under different tariff items, the benefit of pro forma credit extended by Rule 56-A cannot be availed of by the appellants and has been rightly denied by the authorities of the Department."**

27. This Hon'ble Court in *St. Stephen's College v. University of Delhi*, (1992) 1 SCC 558 whilst interpreting Article 30(1) also found that the phrase *establish and administer* had to be read conjunctively. The Hon'ble Supreme Court held:



*"28. There is by now, fairly abundant case law on the questions as to "minority"; the minority's right to "establish", and their right to "administer" educational institutions. These questions have arisen in regard to a variety of institutions all over the country. They have arisen in regard to Christians, Muslims and in regard to certain sects of Hindus and linguistic groups. The courts in certain cases have accepted without much scrutiny the version of the claimant that the institution in question was founded by a minority community while in some cases the courts have examined very minutely the proof of the establishment of the institution. **It should be borne in mind that the words "establish" and "administer" used in Article 30(1) are to be read conjunctively. The right claimed by a minority community to administer the educational institution depends upon the proof of establishment of the institution. The proof of establishment of the institution, is thus a condition precedent for claiming the right to administer the institution.** Prior to the commencement of the Constitution of India, there was no settled concept of Indian citizenship. This Court, however, did reiterate that the minority competent to claim the protection of Article 30(1) of the Constitution, and on that account the privilege of establishing and maintaining educational institutions of its choice, must be a minority of persons residing in India. They must have formed a well defined religious or linguistic minority. It does not envisage the rights of the foreign missionary or institution, however, laudable their objects might be. After the Constitution, the minority under Article 30 must necessarily mean those who form a distinct and identifiable group of citizens of India. Whether it is "old stuff" or "new product", the object of the institute should be genuine, and not devious or dubious. There should be nexus between the means employed and the ends desired. As pointed out in A.P. Christian*

*Educational Society case [(1986) 2 SCC 667 : (1986) 2 SCR 749] there must exist some positive index to enable the educational institution to be identified with religious or linguistic minorities. Article 30(1) is a protective measure only for the benefit of religious and linguistic minorities and it is essential, to make it absolutely clear that no ill-fit or camouflaged institution should get away with the constitutional protection."*

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28. Thus, for an education institution like St. Stephens, the Hon'ble Supreme Court satisfied itself on both accounts, i.e., it was established as well as administered by a minority Christian community before holding it to be minority educational institution under Article 30(1).
29. Further, the National Commission for Minority Educational Institutions Act, 2004 ('NCMEI Act') when enacted in 2004 defined "Minority Educational Institution" in Sec. 2(g) as one that was "*established or maintained*" by a minority.
30. However, in 2010 the NCMEI Act was amended, and the definition was changed to reflect "*established and administered*" by minority.

2004 Act	After the 2010 Amending Act
<p><a href="#">2. Definitions.</a>—In this Act, unless the context otherwise requires,—</p> <p>.....</p> <p>(g) "Minority Educational Institution" means a college or institution (other than a University) established or maintained by a person or group of persons amongst minorities;</p>	<p><a href="#">2. Definitions.</a>—In this Act, unless the context otherwise requires,—</p> <p>.....</p> <p>(g) Minority Educational Institution" means a college or an educational institution established and administered by a minority or minorities;]</p>

31. Thus, even the Parliament, recognizing the consistent view of the Hon'ble Supreme Court and the language in Art. 30(1) amended the NCMEI Act by replacing "or" with "and".
32. **Regardless, employing a disjunctive test poses inherent challenges, primarily because it would eliminate any foreseeability in determining the character of a university. In the event that a university is initially established by a minority group, and its charter remains silent on matters of administration or governance, it could, under a disjunctive test, be deemed a minority institution in perpetuity even if it is never contemplated to be administered by minorities.**
33. **This holds true even if its governing documents fail to explicitly grant authority to the minority community to administer it. In such a scenario, the mere fact of establishment by a minority group would suffice to bring it within the ambit of Article 30(1).**
34. Similarly, if a university, not initially established by a minority, inadvertently comes under the control of a minority group, then the character of the University would be subject to change into a minority institution through amendments to its governing laws. This would introduce an unwarranted element of unpredictability into the character of any institution.
35. The inclusion of religious instructions and the allocation of authoritative positions to minorities should not be contingent upon the discretionary decisions of a governing body; instead, these aspects must be integral to the institutional DNA since its inception for it to be classified as a minority institution.

36. Failure to adhere to this principle may not only be unjust to current and prospective students but also subject the character of institutions to an ephemeral nature, dependent on frequent changes in governance and administration. Such an outcome would render the application of Article 30(1) unworkable.
  
37. Finally, even if *Azeez Basha* [supra] were to be overturned on the issue of conjunctive test, this would not automatically impugn the findings that AMU is not a minority institution.

**D. AMU WAS NOT ESTABLISHED BY A MINORITY COMMUNITY, BUT BY THE THEN BRITISH GOVERNMENT THROUGH A CENTRAL LEGISLATION**

**D.1. Antecedent History: Pre-1920, the 1920 Act And Its Impact**

38. It is submitted that an exhaustive exposition of the historical narrative spanning the period from 1870 to 1920, encompassing the establishment of the Committee for the Better Diffusion and Advancement of Learning among the Muhammadans of India, the inception of the Muhammadan Oriental College, the correspondences exchanged between the representatives of the British Government and members of the Muslim community, the convening of meetings and the subsequent resolutions adopted by the Muslim University Association and Moslem University Committee, as well as legislative debates preceding the AMU Bill of 1920 have been undertaken by other respondents. For the sake brevity, the same are not reproduced below.
39. Briefly captured, the following relevant events occurred prior to the passing of the Aligarh Muslim University Act 1920:
- 39.1. In 1870, Sir Syed Khan started the process for the creation of a Muslim institution to reduce the backwardness of the Muslim community by imparting liberal education in literature and science along with instructions in Muslim religion.
- 39.2. Between 1872-1873 - Muhammadan Anglo-Oriental College Fund Committee opened a school, converting into a High School in 1876 and in 1877 the foundation stone was laid for the establishment of a College.
- 39.3. The Muhammadan Anglo-Oriental College was established and thereafter affiliated with the Allahabad University.
- 39.4. Between 1870 – 1911 a Muslim University Association was established for the purpose of establishing a teaching University at Aligarh.

- 39.5. After lengthy negotiations during the period from 1911 to 1920 between the Association and the Government of India the Muslim community agreed to the establishment of the Aligarh University in 1920 by the Legislative Act of the then Imperial Government through the 1920 Act.
- 39.6. It is important to note that in 1920 it was perfectly permissible for the Muslim Minority to establish a Private Minority University on its own without any legislative enactment, albeit without their degrees being recognised but this path was not taken.
40. That accordingly, the Aligarh Muslim University Act, 1920 was passed and the Aligarh Muslim University was established.
41. Importantly, prior to 1950 i.e., before the coming into force of the Constitution of India, no legislation in India prohibited private individuals or entities from establishing a University, thereby affording private bodies, such as the Muslim Community, the opportunity to establish a private university.
42. However, the establishment of a university by a private individual or entity did not automatically lead to governmental recognition of the degrees awarded by the University.
43. In contrast to pursuing this avenue, the Muslim University Association opted to petition the government for the establishment of a new university, formalized as AMU, through the enactment of the AMU Act, 1920.
44. The preamble of the 1920 Act as it then stood stated that:
- An Act to establish and incorporate a teaching and residential Muslim University at Aligarh.***

***WHEREAS it is expedient to establish and incorporate a teaching and residential Muslim University at Aligarh, and to dissolve the Societies registered under the Societies Registration Act, 1860 (21 of 1860), which are respectively known as the Muhammadan Anglo-Oriental College, Aligarh, and the Muslim University Association, and to transfer to and vest in the said University all properties and rights of the said Societies and of the Muslim University Foundation Committee***

45. **It is evident that in 1920, the government acknowledged and endorsed the establishment of a new Aligarh Muslim University at Aligarh, distinct from the mere incorporation or recognition of an existing Muslim minority institution.**
46. The dissolution of the previously existing societies is further reiterated in Section 4 of the 1920 Act which states that:

***4. From the commencement of this Act-***

***(i) The Societies known as the Muhammadan Anglo- Oriental College, Aligarh, and the Muslim University- Association shall be dissolved, and all property, moveable and immoveable, and all rights powers and privileges of the said Societies and all property, moveable and immoveable, and all rights, powers and privileges of the Muslim University Foundation Committee shall be transferred to and vest in the University and shall be applied to the objects and purposes for which the University is incorporated;***

*(ii). All debts, liabilities and obligations of the said Societies and Committees shall be transferred to the University and shall thereafter be discharged and satisfied by it;*

*(iii) all references in any enactment to either of the said Societies and Committee shall be construed as references to the University;*

*(iv) any will, deed or other document, whether made or executed before or after the commencement of this Act, which contains any bequest, gift or trust in favour either of the said Societies or of the said committee shall, on the commencement of this Act, be construed as if the University was therein named instead of such Society or Committee; (v) subject to any order which the Court may make, the buildings which belonged to the Muhammadan Anglo Oriental College, Aligarh, shall continue to be known and designated immediately before the commencement of this Act;*

*(vi) Subject to the provision of this Act, every person employed immediately before the commencement of this Act in the Muhammadan Anglo-Oriental College, Aligarh, shall hold employment in the University by the same tenure and upon the same terms and conditions and with the same rights and privileges as to pension and gratuity as he would have held the same under the Muhammadan Anglo-Oriental College, Aligarh, if this Act had not been passed;*

47. The specific reference to dissolution of the previously registered Societies in both the Preamble and Section 4 of the Act clearly indicates that the then British-India Government whilst enacting the AMU 1920 Act made a conscious decision to break away from the antecedent history and establish and found a new distinct University by way of Statutory enactment.

48. **Given its establishment by the then British-India Government, it is irrefutable that AMU was not established by the Muslim minority.**

49. It is further important to note that Section 6 of the 1920 Act states that degrees conferred by AMU shall be recognized by the government. Section 6 of the Act reads:



*6. Recognition of degrees.—The degrees, diplomas and other academic distinctions granted or conferred to or on persons by the University shall be recognised by 27[the Central and State Governments] as are the corresponding degrees, diplomas and other academic distinctions granted by any other University incorporated under any enactment.*

50. The significance of Section 6 lies in the fact that, in 1920, only universities established by the government could have their degrees officially recognized.
51. **Therefore, vide the 1920 Act a University was brought into existence that could not be established by any private individual or community, but exclusively established by the government.**
52. The inclusion of Section 6 in the 1920 Act serves as a pivotal circumstance indicating that, at the time of its establishment, AMU was not established by the Muslim minority, as the latter could not obtain governmental recognition for its degrees.
53. Consequently, in 1920, a new university emerged, at best propelled by the efforts of the Muslim Community to lobby the government for the establishment of a Muslim University, but distinctly not established by the Muslim Minority Community.

#### ***D.2. Post 1950 Coming into Force of the Indian Constitution***

54. The Constitution of India came into force on 26<sup>th</sup> January 1950. Entry 63 of List 1 of the 7<sup>th</sup> Schedule stated that:

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

55. Entry 63 within List I of the 7th Schedule of the Constitution of India designates Aligarh Muslim University (AMU), Banaras Hindu University (BHU) as institutes of national importance.

56. **The acknowledgment of AMU as an institute of national importance, devoid of any explicit reference to its purported minority character, underscores the recognition of AMU as an educational institution of national significance, rather than being solely associated with a specific community.**

57. It is also important to note the observation made by Mr. HV Kamath during the Constitutional Assembly Debates, wherein he remarked:

*"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."*

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58. Hence, the consensus among the members of the Constituent Assembly suggests that AMU was accorded the status of an institute of national importance primarily due to its overarching national relevance transcending communal boundaries. This designation aimed to dispel any semblance of it being perceived as a denominational institution.

59. Against the backdrop of AMU's classification under the constitutional framework, pivotal amendments were made to the AMU Act of 1951, notably:

59.1. Section 9 was amended to abolish compulsory religious education for Muslim students.

59.2. Further, Section 23(1) was amended to remove the requirement that only Muslims could be part of the Court.

***D.3. Azeez Basha has already appreciated the history leading to the creation of the AMU and only thereafter denied that it was established by the Muslim community.***

60. The significance and relevance of the Mohammedan Anglo-Oriental (MAO) College were discussed at length upon by this Hon'ble Court in *Azeez Basha*.

61. In fact, this Hon'ble Court in *Azeez Basha* stated that the nucleus of Aligarh University traces back to the foundational establishment of the M.A.O. College.

62. **Nevertheless, this Hon'ble Court in *Azeez Basha* then held that the transformation of the MAO College from a mere educational institution into a full-fledged University did not occur at the behest of the Muslim minority; rather, it transpired through the enactment of the 1920 Act by the Central legislature.**

63. Thus, it is imperative to recognize that the establishment of the Aligarh University was effectuated by the 1920 Act, thereby its establishment/founding is owed to the Central Legislature.

64. The following excerpts from the judgement in *Azeez Basha* not only demonstrate that the antecedent history was considered but the same was not sole reason for establishment of AMU:

*It is necessary to refer to the history previous to the establishment of the Aligarh University in 1920 in order to understand the contentions raised on either side. It appears that as far back as 1870, Sir Syed Ahmad Khan thought that the backwardness of the Muslim community was due to their neglect of modern education. He therefore conceived the idea of imparting liberal education to Muslims in literature and science while at the same time instruction was to be given in Muslim religion and traditions also. With this object in mind, he organised a Committee to devise ways and means for educational regeneration of Muslims and in May 1872 a society called the Muhammadan Anglo-Oriental College Fund Committee was started for collecting subscriptions to realise the goal that Sir Syed Ahmad Khan had conceived. In consequence of the activities of the committee, a school was opened in May 1873. In 1876, the school became a High School and in 1877 Lord Lytton, the then Viceroy of India, laid the foundation stone for the establishment of a college. The Muhammadan Anglo Oriental College, Aligarh (hereinafter referred to as "the M.A.O. College") was established thereafter and was, it is said, a flourishing institution by the time Sir Syed Ahmad Khan died in 1898.*

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*It is said that thereafter the idea of establishing a Muslim University gathered strength from year to year at the turn of the century and by 1911 some funds were collected and a Muslim University Association was established for the purpose of establishing a teaching University at Aligarh. Long negotiations took place between the Association and the Government of India, which eventually resulted in the establishment of the Aligarh University in 1920 by the 1920 Act. It may be mentioned that before that a large sum of money was collected by the Association for the University as the Government of India had made it a condition that rupees thirty lakhs must be collected for the University before it could be established. Further, it seems that the existing M.A.O. College was made the basis of the University and was made over to the authorities established by the 1920. Act for the administration of the University along with the properties and funds attached to the college, the major part of which had been contributed by Muslims though some contributions were made by other communities as well.*

(@8 – 9, Vol 3A)

.....

**There was nothing in 1920 to prevent the Muslim minority, if it so chose, to establish a university; but if it did so the degrees of such a university were not bound to be recognised by Government. It may be that in the absence of recognition of the degrees granted by a university, it may not have attracted many students, and that is why we find that before the Constitution came into force, most of the universities in India were established by legislation. The Aligarh University was also in the same way established by legislation and it provided under Section 6 of the 1920 Act that "the degrees, diplomas and other academic distinctions granted or conferred to or on persons by the University shall be recognised by the Government as are the corresponding degrees, diplomas and other academic distinctions granted by any other university incorporated under any enactment". It is clear therefore that even though the Muslim minority could have established at Aligarh in 1920 a university, it could not insist that degrees granted by such a university should be recognised by Government. Therefore when the Aligarh University was established in 1920 and by Section 6 its degrees were recognised by Government, an institution was brought into existence which could not be brought into existence by any private individual or body for such individual or body could not insist upon the recognition of the degrees conferred by any university established by it. The enactment of Section 6 in the 1920. Act is a very important circumstance which shows that the Aligarh University when it came to be established in 1920 was not established by the Muslim minority, for the minority could not insist on the recognition by Government of the degrees conferred by any university established by it.**

**23. It is true, as is clear from the 1920 Act, that the nucleus of the Aligarh University was the M.A.O. College, which was till then a teaching institution under the Allahabad University. The conversion of that college (if we may use that expression) into a university was however not by the Muslim minority; it took place by virtue of the 1920 Act which was passed by the Central legislature. There was no Aligarh University existing till the 1920 Act was passed. It was brought into being by the 1920 Act and must therefore be held to have been established by the Central Legislature which by passing the 1920 Act incorporated it. The fact that it was based on the M.A.O. College, would make no difference to the question as to who established the Aligarh University. The answer to our mind as to who**

**established the Aligarh University is clear and that is that it was the Central Legislature by enacting the 1920 Act that established the said University. As we have said already, the Muslim minority could not establish a university whose degrees were bound to be recognised by Government as provided by Section 6 of 1920 Act : that one circumstance along with the fact that without the 1920 Act the University in the form that it had, could not come into existence shows clearly that the Aligarh University when it came into existence in 1920 was established by the Central Legislature by the 1920 Act. It may be that the 1920 Act was passed as a result of the efforts of the Muslim minority. But that does not mean that the Aligarh University when it came into being under the 1920 Act was established by the Muslim minority.**

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.....

**26. From the history we have set out above, it will be clear that those who were in-charge of the M.A.O. College, the Muslim University Association and the Muslim University Foundation Committee were keen to bring into existence a university at Aligarh. There was nothing in law then to prevent them from doing so, if they so desired without asking Government to help them in the matter. But if they had brought into existence a university on their own, the degrees of that university were not bound to be recognised by Government. It seems to us that it must have been felt by the persons concerned that it would be no use bringing into existence a university, if the degrees conferred by the said university were not to be recognised by Government. That appears to be the reason why they approached the Government for bringing into existence a university at Aligarh, whose degrees would be recognised by Government and that is why we find Section 6 of the 1920 Act laying down that "the degrees, diplomas, and other academic distinctions granted or conferred to or on persons by the university shall be recognised by the Government ..." It may be accepted for present purposes that the M.A.O. College and the Muslim University Association and the Muslim University Foundation Committee were institutions established by the Muslim minority and two of them were administered by Societies registered under the Societies Registration Act 21 of 1860). But if the M.A.O. College was to be converted into a university of the kind whose degrees were bound to be recognised by Government, it would not be possible for those who were in-charge of the M.A.O. College to do so. That is why the three institutions to which we have already**

**referred approached the Government to bring into existence a university whose degrees would be recognised by Government. The 1920 Act was then passed by the Central Legislature and the university of the type that was established thereunder, namely, one whose degrees would be recognised by Government, came to be established. It was clearly brought into existence by the 1920 Act for it could not have been brought into existence otherwise. It was thus the Central Legislature which brought into existence the Aligarh University and must be held to have established it. It would not be possible for the Muslim minority to establish a university of the kind whose degrees were bound to be recognised by Government and therefore it must be held that the Aligarh University was brought into existence by the Central Legislature and the Government of India. If that is so, the Muslim minority cannot claim to administer it, for it was not brought into existence by it. Article 30(1), which protects educational institutions brought into existence and administered by a minority, cannot help the petitioners and any amendment of the 1920 Act would not be ultra vires Article 30(1) of the Constitution. The Aligarh University not having been established by the Muslim minority, any amendment of the 1920 Act by which it was established, would be within the legislative power of Parliament subject of course to the provisions of the Constitution. The Aligarh University not having been established by the Muslim minority, no amendment of the Act can be struck down as unconstitutional under Article 30(1).**

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## **E. ADMINISTRATION OF ALIGARH MUSLIM UNIVERSITY**

65. From the very establishment of AMU in 1920, the ultimate administrative control of the University has been with the Central Government.
66. The control exercised by the Central Government is not merely regulatory in nature to maintain excellence or to avoid maladministration but is substantive in nature with both, the day-to-day functioning of the University and the apex decision making, *de jure* vesting in non-minorities.
67. The Hon'ble Supreme Court in Azeez Basha held that the administration of AMU never vested in the Muslim community.
68. This Hon'ble Court in *TMA Pai* [supra] whilst analysing the right to establish and administer, observed that the following five parameters are relevant to analyse administrative control. In Para 50 of *TMA Pai* this Hon'ble Court held:
- 50. The right to establish and administer broadly comprises the following rights:*
- (a) to admit students;*
  - (b) to set up a reasonable fee structure;*
  - (c) to constitute a governing body;*
  - (d) to appoint staff (teaching and non-teaching); and*
  - (e) to take action if there is dereliction of duty on the part of any employees.*
69. The administrative functions of AMU are primarily carried out by four bodies: (i) the Visitor, (ii) Visiting Board, (iii) the Executive Council, (iv) Academic Council and (v) the Court of AMU.



70. The following provisions will demonstrate that the key administrative functions, as identified in *TMA Pai* to determine the locus of administrative control, are executed either by the Executive or the Academic Council in conjunction with the Visitor, and the Court is not, in fact, the supreme governing body.

<b><u>ADMINISTRATIVE CONTROL</u></b>	<b>PARTICULARS</b>
<b><u>Admission of Students &amp; Fee Structure</u></b>	<p><b><i>Relevant Provisions: Sections 29, 30, 32</i></b></p> <p>a. Sections 29, 30 and 32 of the 1920 Act deal with student admissions. @12 – 15, Vol 3G</p> <p>b. Section 29 lays down on what all subjects Ordinances could be passed.</p> <p>c. Section 29(c) and 29(d) specifically includes the subject of admission of students.</p> <p>d. Section 29(h) specifically deals with the subject of fees to be charged by the University.</p> <p>e. Section 30(1) states that the power to make the Ordinances regarding the subjects mentioned in Section 29 lies with the Executive Council or the Academic Council.</p> <p>f. Section 30(3) states that no new ordinance shall have any validity until it has been approved by the Governor General in Council (Lord Rector).</p> <p>g. Therefore, the Lord Rector has the final authority regarding all subjects including admission of students and fee structures with the Executive or Academic Council making the initial decision.</p>

	<p>h. Section 32(1) provides that admission of students to the University shall be made by admission committee consisting of Pro-Vice-Chancellor, Principal of Intermediate College selected by Vice-Chancellor and such other persons as may be appointed by the Academic Council.</p> <p>i. Again, power of admission is not vested in the minority nor even in the Court but the Academic Council.</p> <p>j. Thus, the factor regarding admission of students is not present and militates against the claim of AMU of its minority character.</p>
<p><b>Constitute</b></p> <hr/> <p><b><u>Governing Body</u></b></p>	<p><b>a</b> <i><b>Relevant Provisions: Section 13, 14, 23, 24</b></i></p> <p>a. As per section 23, the supreme governing body of AMU is to be the Court. Prior to 1951 only Muslims could be part of the AMU Court.</p> <p>b. However, at the outset, the Court is the supreme governing body only for residuary matters not contemplated in the Act and the Ordinances and Statutes.</p> <p>c. Further, apart from the Court, the right of administration under the 1920 Act is vested in other authorities like the Executive Council, Academic Council.</p> <p>d. Under Section 24 the executive council of the University has the right of administration in several respects and is styled as principle executive body of AMU not subjected to any supervision of the Court.</p> <p>e. Under Section 25, the Academic Council (subject to the Act, Statues and Ordinances) have control and general</p>

	<p>regulation of maintenance of standards of instruction, and for the education, examination, discipline and health of students, and for the conferment of degrees.</p> <p>f. Under Section 13, the Lord Rector (now the Visitor) has overriding power over even the Court. Particularly, under Sec. 13(5), the Lord Rector had the power to make binding directions to the AMU Court thus making Lord Rector not just the nominal head but the actual supervisory head of AMU.</p> <p>g. Under Section 14, The Visiting Board has the right to annul any proceeding of the University.</p> <p>h. From the above scheme, it is clear that the administration was not vested in the Court, but in administrative authorities of the University including the Executive Council, Academic Council, the President and the Vice Chancellor on whom the minority community cannot claim to have any control.</p> <p>i. Therefore, the Academic Council and the Executive Council manage the day-to-day administrative activities of AMU whilst the larger administrative policy decisions are taken by the Visitor/Lord Rector.</p> <p>j. The Court neither is involved with the day-today nor has the final say in the larger policy decisions.</p>
<p><b><u>Appointment of Staff (Teaching and non-teaching)</u></b></p>	<p><b><i>Relevant Provisions: Statute 20</i></b></p> <p>a. Statute 20 states that the power to appoint all teaching staff vests with the Executive Council.</p> <p>b. Further, Statute 20 also states that <i>other appointments unless otherwise provided for, shall be made by the Executive Council</i>. Therefore, even with respect to other</p>

	<p><u>non-teaching staff the Executive Council exercises control.</u></p> <p>c. Though the Statute states that the power to appoint vests with the Executive Council, the same is <i>subject to the general control of the Court</i>. But this must also be seen in light of the fact that the Court is in turn under the control of the Visitor. This shows that the Court is a ceremonial body approving certain decisions but finally falling under the final oversight of the Visitor.</p>
<p><b><u>Taking Action If there is Dereliction of Duty</u></b></p>	<p><b><i>Relevant Provisions: Section 36</i></b></p> <p>a. Section 36(2) provides that any dispute arising out of a contract between the University and teacher is referred to a tribunal/arbitration consisting of one member appointed by the Executive Council, one member nominated by the disputing teacher concerned and an umpire appointed by the Visiting Board.</p> <p>b. Even in resolving the disputes pertaining to any staff of the college the Court which is claimed to be the supreme governing body has no role.</p>
<p><b><u>VISITOR'S POWERS</u></b></p> <p>Overarching Powers of the Lord Rector (now Visitor)</p> <p><i>This is not one of the tests mentioned in TMA Pai but</i></p>	<p><b><i>Relevant Provisions: Sections 13, 14, 29, 30</i></b></p> <p>a. <u>Section 13(1) states that the Governor General was the Lord Rector of the University.</u></p> <p>b. Section 13(2) stated that the Lord Rector/Visitor shall have right cause an inspection to be made of the University, its buildings, laboratories, examinations, teaching and other work conducted by the University.</p>

<p><i>demonstrates control of the Central Government, nonetheless.</i></p>	<p>c. Section 13(5) states that when the Court of AMU does not within reasonable time take action to the satisfaction of the Lord Rector then the Lord Rector can issue any directions that they deem fit.</p> <p>d. <u>Thus, as can be seen from above Section 13 gives the Lord Rector extremely broad powers and grants the power to the Lord Rector/Visitor who is the head of the Central Government to inspect and subsequently pass directions any work that is being done by the University.</u></p> <p>□ Section 14 of 1920 Act provided for Visiting Board of the University consisting of Governor, the members of the Executive Council the Ministers, one member nominated by the Governor and one member nominated by the Minister in charge of Education.</p> <p>□ <u>The Visiting Board had the power to inspect the University.</u></p> <p>□ <u>This provision, though not so all pervasive as the provision in Section 13 of the 1920-Act, shows that the Visiting Board had also certain over-riding powers in case the University Authorities acted against the Act, Statutes and Ordinances There is no condition that the Lord Rector and the members of the Visiting Board must belong to Muslim community.</u></p> <p>e. <u>Thus, final control in the matters was with the Lord Rector and the Visiting Board.</u></p> <p>f. Section 29 lays down on what all subjects Ordinances could be passed including issues of admission, fees, conditions of residence of students, the courses of study to be laid down for all degrees and diplomas.</p>
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	<p>g. Section 30 states no ordinances could be made by the University without the approval of the Governor-General-in-Council i.e., the Lord Rector.</p> <p>h. A reading of Section 29 and 30 would show that the final power over the administration of the University rested with the Governor-General-in-Council and not the AMU Court.</p>
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**F. THE IMPUGNED ORDER CORRECTLY STRUCK DOWN THE 1981 AMENDMENT IN LIGHT OF THE FACT THAT THE AMENDMENT DID NOT REMOVE THE BASIS OF AZEEZ BASHA JUDGMENT.**

71. The Parliament enacted the Aligarh Muslim University (Amendment) Act, 1981 [Act No. 62 of 1981] on 31.12.1981. Among other aspects, the Parliament made the following changes:

<b><u>Prior to the 1981 Amendment</u></b>	<b><u>Post the 1981 Amendment</u></b>
<p>The long title and preamble read: <i>A bill to <u>establish</u> and incorporate a teaching and residential Muslim University at Aligarh.</i></p> <p><i>Whereas it is expedient to <u>establish</u> and incorporate a teaching and residential Muslima University at Aligarh.....</i></p>	<p><u>The 1981 Amendment omitted the word 'establish' from the long title and preamble.</u></p> <p><i>A bill to incorporate a teaching and residential Muslim University at Aligarh.</i></p> <p><i>Whereas it is expedient to incorporate a teaching and residential Muslim University at Aligarh.....</i></p>
<p>Definition 2(h)</p> <p><i>"University" means the Aligarh Muslim University.</i></p>	<p>Section 2(l) reads:</p> <p><i>"University" means the educational institution of their choice established by the Muslims of India, which originated as the Muhammadan Anglo-Oriental College, Aligarh, and which was</i></p>

	<i>subsequently incorporated as the Aligarh Muslim University.</i>
-	Section 5(2)(c) inserted:  <i>(c) to promote especially the educational and cultural advancement of the Muslims of India;</i>

72. One of the contentions raised by the Petitioner before the Ld. Single Judge and the Division Bench of the Hon'ble High Court of Judicature at Allahabad was that the 1981 Amendment Act removed the basis of *Azeez Basha* because the word *establish* was removed from the long title and the preamble.
73. **It is submitted that the above contention cannot be accepted because the 1920 Act (as enacted in 1920) and the subsequent judgement in *Azeez Basha* recognised a historical fact. Both clearly stated that AMU was established by coming into force of the 1920 Act and therefore, the act of establishment was done by the then Central Legislature.**
74. *Azeez Basha* was thus based not merely on the reading of the 1920 Act but also on the undeniable fact that AMU was established by the British-India Government.
75. Change to the 1920 Act by the amendment in 1981 to change this legislative history is not possible as a historical fact cannot be revised/alterd through a legal fiction or parliamentary fiat.



76. This Hon'ble Court in *Indra Sawhney (2) v. Union of India*, (2000) 1 SCC 168 affirmatively observed the following phrase from *A Note on Dogmas* by Aldous Huxley. In Para 39, the Court held:

*But Aldous Huxley said:*

**"Facts do not cease to exist because they are ignored..."**

*(A Note on Dogmas)*

*The words in clause (a) of Section 3 are obviously drawn from the judgment of Sawant, J. in Indra Sawhney [1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1 : (1992) 22 ATC 385] which refers to "capacity to compete with forward classes.*

77. **AMU came into existence only by an Act of the legislature and by merely changing the definition of Section 2(1) by amending the preamble and long title the fact that the University came into being by an Act of legislature cannot be forgotten.**
78. **Secondly, and more importantly, as far as administration is concerned, the 1981 Amendment has not altered the 1920 Act. Thus, the findings of *Azeez Basha* on administration of AMU not being with Muslim Community continue to hold the field.**
79. The 1981 Act having not changed the administrative structure of AMU, it cannot be said to take away the basis of reasoning by the Constitution Bench of this Hon'ble Court in *Azeez Basha*. In the absence of administrative control vesting with the Muslim Community, there is no way to characterize AMU as a Minority Institution.

80. Finally, relying on Entry 63 the non-minority status of AMU flows from the Constitution itself which recognizes it as an institution of national importance and not a minority or denominational institution.
  
81. Thus, any change in the nature of AMU is not possible through an Amendment to the AMU Act and first requires a constitutional amendment to remove AMU from Entry 63.

**G. PRECEDENTS RELIED UPON BY THE APPELLANT AND OUR RESPONSE**

<b><u>JUDGEMENT CITED AND CONTENTION</u></b>	<b><u>RESPONSE</u></b>
<p data-bbox="193 387 906 499"><i>In Re. Kerala Education Bill (1959) SCR 995; 1958 INSC 64 (5-Judge Bench)</i></p> <p data-bbox="193 521 906 566"><b><u>FINDINGS:</u></b></p> <ol data-bbox="193 589 906 2051" style="list-style-type: none"> <li data-bbox="193 589 906 1328">1. A Bench of Seven Judges of this Hon'ble Court in <i>In Re Kerala Education Bill, 1957, (1959) SCR 995</i>, while examining a reference on certain aspects relating to the Kerala Education Bill (1957) opined that <u>the provisions such as minimum salaries and qualifications for appointment of teachers sought to be imposed on minority-run schools as a condition to receive aid were regulatory in nature and that it would not offend the right of minorities to administer under Article 30(1).</u></li> <li data-bbox="193 1417 906 1843">2. <u>The Hon'ble Court held that the benefit/protection of Article 30(1) would be available not only to educational institutions established after the commencement of the Constitution but also to educational institutions established prior to the commencement of the Constitution.</u> <div style="text-align: right; margin-right: 50px;">Vol 5-A @ pg. 60</div></li> <li data-bbox="193 1910 906 2051">3. The Hon'ble Court also held that merely because a minority institution admits</li> </ol>	<ol data-bbox="906 387 1401 2051" style="list-style-type: none"> <li data-bbox="906 387 1401 633">1. Firstly, the propositions laid down by the Hon'ble Court in <i>Kerala Education</i> are not being challenged by us.</li> <li data-bbox="906 656 1401 1126">2. The judgement in <i>Azeez Basha</i> also does not deny that minority institutions could have been set up prior to the coming into force of the Constitution and would still receive protection under Article 30(1).</li> <li data-bbox="906 1149 1401 1709">3. The Hon'ble Court in <i>Azeez Basha</i> firstly analyses the antecedent history of AMU and the subsequent enactment of the AMU Act, 1920 to conclude that the very establishment of the AMU was not by a minority institution in the first place.</li> <li data-bbox="906 1731 1401 2051">4. Further, the administration of the University (as mandated in the 1920 Act) lies with the Central Government with</li> </ol>

individuals from communities other than the minority, the same will not result in the minority institution shedding its character as a minority institution.

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4. The Hon'ble Court further held that merely because a minority institution received State Aid (either in terms of aid or recognition) and in exchange for the State Aid, the State imposed some reasonable regulations, the granting of aid and imposition of reasonable regulations will not take away the fundamental right of the minority community under Article 30(1).

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#### APPELLANT'S CONTENTION

Relying upon the above findings in *Kerala Education* the Appellants contend that:

1. *Azeez Basha* failed to consider the key principles laid down in *Kerala Education Bill* and erred in concluding that:
  - a. The regulatory features of the 1920 Act meant to ensure proper safeguards and promote 'excellence' has been misconstrued as a waiver by the Muslim community over the affairs of the AMU;
  - b. The Muslim community surrendered their rights to the Central Legislature by

final decision making retained by the Lord Rector.

5. Such control was not merely regulatory to prevent maladministration but substantive in nature.

6. The above finding is also made by the Hon'ble Court in *Azeez Basha* after an analysis of the various provisions of the 1920 Act.

7. In fact, a perusal of the provisions of the AMU Act demonstrate that the five key administrative functions viz. (a) *Admissions*, (b) *levy of Fees*, (c) *Governing Council*, (d) *Appointment of Staff*, and (e) *Disciplinary Powers* - as identified by this Hon'ble Court in *TMA Pai*, to determine the locus of administrative control, are executed primarily by the Executive/Academic Council in conjunction with the Visitor (earlier Lord Rector).

See Vol 5-A, TMA Pai Para 60 @

pg. 613

<p>seeking the Government to incorporate MAO College as a university, although it was their <i>choice</i> to obtain statutory approval in order for degrees to be recognised.</p>	<p>8. <u>Therefore, the administration of the University by the State cannot be simply viewed as reasonable regulations imposed in exchange for State Aid.</u></p> <p>9. <u>The administration of the University by non-minority is substantive in nature because AMU is a Central University and not a minority university receiving State Aid.</u></p>
<p><i>Rev. Sidhrajibhai Sabhai v. State of Bombay, (1963)</i> 3 SCR 837 : 1962 INSC 247 (6-Judge Bench)</p> <p><u>FINDINGS:</u></p> <ol style="list-style-type: none"> <li>1. In this case, the SC was laid down a dual test for deciding whether a Regulation imposed by the State as a condition for receiving State Aid is valid or not.</li> <li>2. The Court stated that such regulations should satisfy: <ol style="list-style-type: none"> <li>a. the test of reasonableness,</li> <li>b. the test that it is regulative of the educational character of the institution and is conducive to making the institution an effective vehicle of education for the minority community or other persons who resort to it.</li> </ol> </li> </ol>	<ol style="list-style-type: none"> <li>1. Firstly, the present case regarding the status of AMU is not a case involving mere regulations being imposed by the Centre for State Aid being given to AMU.</li> <li>2. AMU stands on a different footing because the same was established by the then Imperial Legislature through an Act of the then British Government.</li> <li>3. Therefore, the administrative and regulatory provisions therein reflect the fact that the establishment of the University was by the Central</li> </ol>

<p style="text-align: right;">Vol 5-A @ pg. 113-114</p> <p><u>Appellant's Contention</u></p> <p>1. The Appellants rely on this case to contend that <i>Azeez Basha</i> failed to consider the distinction between regulatory features of the 1920 Act that are intended to preserve excellence and enable AMU as an "effective vehicle of education for the minority community" on the one hand, and the rights of minorities to exercise choice in day-to-day management.</p>	<p>Government and not by a Muslim minority.</p> <p>4. Finally, as submitted supra, the provisions of the 1920 Act are not merely regulatory but confer substantive control over the administration and management of the AMU upon non-minority bodies, including the Visitor, the Executive Council, and the Academic Council.</p>
<p><i>State of Kerala vs Very Rev. Mother Provincial, (1970) 2 SCC 417 : 1970 INSC 150 (6-Judge Bench)</i></p> <p><u>FINDINGS:</u></p> <p>1. The Hon'ble Court in this case was concerned with the challenge to the Kerala University Act, 1969. Some of the provisions of this Act affected private colleges, particularly those founded by minority communities in the State. The basis of the challenge was Article 30(1) of the Constitution.</p> <p>2. Whilst interpreting Article 30(1), the Hon'ble Court held that under Article 30(1) there are two distinct rights:</p> <p style="padding-left: 20px;">a. The first right is the initial right to establish institutions of the minority's</p>	<p>1. Firstly, the Hon'ble Court in <i>Mother Provincial</i> does not state that they are rejecting the view taken by <i>Azeez Basha</i>.</p> <p>2. Secondly, the interpretation of the two rights (to establish and to administer) is consistent with how <i>Azeez Basha</i> interprets Article 30(1).</p> <p>3. In <i>State of Kerala vs Very Rev. Mother Provincial</i>, this Hon'ble Court merely held that non-minorities can also contribute to the establishment of a Minority Institution.</p>

choice. Establishment here means the bringing into being of an institution and it must be by a minority community. The intention must be to found an institution for the benefit of a minority community by a member of that community.

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- b. The second right relates to the administration of such institutions. Administration means "management of the affairs" of the institution. This management must be free of control so that the founders or their nominees can mould the institution as they think fit, and in accordance with their ideas of how the interests of the community in general and the institution in particular will be best served.

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#### Appellant's Contention

1. The Appellants are relying on this case to contend that this judgment effectively rejected the narrow view of *Azeez Basha* on both establishment of a minority institution and on administration of a minority institution.

4. However, *Azeez Basha* also does not deny such interpretation but merely holds that in the facts of AMU, the establishment of the University was by a Statute and not by any minority community.

5. Thus, the Hon'ble Court in *Azeez Basha* after highlighting the role that is required of the minority in the process of establishment of an institution, concludes that in the facts of the AMU case the criteria is not met.

6. With respect to establishment, in *State of Kerala vs Very Rev. Mother Provinciali*, this Hon'ble Court held that administrative powers or 'management of the affairs' of a Minority Institution cannot be taken away.

7. Even with respect to administration, the Hon'ble Court in *Azeez Basha* undertakes a detailed

	<p>analysis of the 1920 Act and after assessing the same concludes that the <i>"management of the affairs" of the institution did not lie with the minority institution and was with the Central Government.</i></p> <p>8. Therefore, in <i>Azeez Basha</i> this Hon'ble Court not only laid down the broad principles of Article 30(1) but also undertook a factual analysis of the 1920 Act to hold that the administration of AMU was never envisaged to be in the hands of the Minority Community.</p> <p>9. No subsequent decision has held that the factual analysis undertaken by <i>Azeez Basha</i> requires reconsideration.</p>
<p><u><i>St. Stephen's College vs University of Delhi, (1992) 1 SCC 558; 1991 INSC 323 (5-Judge Bench)</i></u></p> <p>FINDINGS:</p> <p>1. This case was regarding whether St Stephens College could have an admission process that</p>	<p>1. The Hon'ble Court in <i>St Stephen's</i> case discusses the ratio of <i>Azeez Basha</i> and then proceeds to rely upon the decision in a different case (<i>SK Patro vs State of Bihar</i>) because <i>SK Patro</i> was found</p>



<p>was different from the admission process as prescribed by the University of Delhi.</p> <ol style="list-style-type: none"> <li>2. Specifically, the Delhi University Circular stated that the last date of for submission of application would be 30.06.1980 and that admission would be based on the percentage of marks secured by students. St Stephens College issued an Admission Prospectus wherein the last date for submission of Applications would be 20.06.1980 and that there would be an interview prior to final selection for admission to the College.</li> <li>3. The issue before the Hon'ble Supreme Court was whether the College was bound to follow the University policies regarding admission.</li> <li>4. Basis the above one of the questions formulated was whether St Stephens College is a minority-run institution or not.</li> <li>5. Firstly, the SC held that the words "establish" and "administer" used in Art. 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 by a minority is thus a condition precedent for a minority claiming the right to administer such an institution.</li> </ol> <p style="text-align: right;">Vol 5-A Para 28 @ pg. 412 – 413</p>	<p>to be <i>in close parallel with the case on hand</i>.</p> <p>Vol 5-C Para 24, 25 @ pg. 410</p> <ol style="list-style-type: none"> <li>2. Therefore, the Hon'ble Court in <i>St Stephens</i> was conscious of the <i>Azeez Basha</i> judgement but did not make any finding that the finding or decision in <i>Azeez Basha</i> required any reconsideration.</li> <li>3. Further, with respect to the importance of historical antecedents, the importance and relevance of MAO College was already considered by this Hon'ble Court in <i>Azeez Basha</i> and only thereafter the Hon'ble Court made a finding that the establishment of AMU by the then Legislature was the founding of a new University and the absolute dissolution of the MAO College.</li> <li>4. In fact, the Hon'ble Court notes that the nucleus of the Aligarh University was the M.A.O. College.</li> </ol>
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6. Further, the Court inferred the Christian character of the college from:

a. The history of St Stephen's College rooted in the Christian community.

b. Its *"name, emblem, motto, the establishment of a chapel and its religious instruction in the Christian Gospel for religious assembly"*

[Pr. 34, @415]

c. *"The composition of the Society, therefore, indicates the presence of a larger number of Christian members of the Church of North India on it."*

@PARA 35, @415

7. The Hon'ble Court whilst interpreting Article 30(1) and the right of administration by minorities held that:

*In the first place, it may be stated that the State or any instrumentality of the State cannot deprive the character of the institution, founded by a minority community by compulsory affiliation since Article 30(1) is a special right to minorities to establish educational institutions of their choice. The minority institution has a distinct identity and the right to administer with continuance of such identity cannot be denied by coercive action. Any such coercive action would be void being*

5. Thus, the Hon'ble Court concludes that the conversion of MAO College from a college/institution into a University was, however, not by the Muslim minority; it took place by virtue of the 1920 Act which was passed by the Central legislature.

6. At the same time, it is also important to note that in fact the Hon'ble Court in St Stephens approves the conjunctive test laid down by *Azeez Basha* and holds that a minority institution must be established and also be administered by a Minority Community.

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*contrary to the constitutional guarantee. The right to administer is the right to conduct and manage the affairs of the institution. This right is exercised by a body of persons in whom the founders have faith and confidence. Such a management body of the institution cannot be displaced or reorganised if the right is to be recognised and maintained. Reasonable regulations however, are permissible but regulations should be of regulatory nature and not of abridgment of the right guaranteed under Article 30(1).*

8. Further, with respect to Regulations that can be imposed by the State the Hon'ble Court reiterated the principles laid down in *Mother Provincial*.

#### Appellant's Contention

1. The Appellants are also relying upon the St Stephens case to argue that historical antecedents are a necessary consideration whilst determining whether a minority established an institute or not.
2. The Appellants contend that the view taken in this case is at odds with the conclusion in *Azeez Basha*, which inferred that any statutory intervention would

<p>denude the minority character of MAO College that later became AMU by virtue of 1920 Act.</p>	
<p><u><i>TMA Pai Foundation vs State of Karnataka, (2002) 8 SCC 481; : 2002 INSC 454</i></u></p> <p>FINDINGS:</p> <ol style="list-style-type: none"> <li>1. The findings in <i>TMA Pai</i> reiterate the tests and findings made in the above extracted judgements.</li> <li>2. The Hon'ble Court in <i>TMA Pai</i> holds that: <ol style="list-style-type: none"> <li>a. It approved <i>Kerala Education Bill</i> on the proposition that admission of nonminority students would not affect the minority character of an educational institution.</li> <li>b. It approved the dual test laid down for deciding whether a Regulation imposed by the State as a condition for receiving State Aid is valid or not.</li> <li>c. It approved the interpretation of Article 30(1) as laid down in <i>Mother Provincial</i>.</li> </ol> </li> </ol> <p>Appellant's Contention</p> <ol style="list-style-type: none"> <li>1. The Appellants relied on <i>TMA Pai</i> to show and reiterate the findings in the judgments cited above.</li> </ol>	<ol style="list-style-type: none"> <li>1. It is submitted that the issue in <i>Azeez Basha</i> was not regarding whether admission of <u>non-minority students would not affect the minority character of an educational institution.</u></li> <li>2. <u>This Hon'ble Court in <i>Azeez Basha</i> does not hold that minorities do not have a right to establish and subsequently administer religious institutions. It merely holds that in the specific case of AMU neither establishment nor administration lay with the minority community.</u></li> <li>3. In fact, in <i>TMA Pai</i>, this Hon'ble Court laid down the indicia of Administrative Control which was then relied upon by the Hon'ble High Court of Judicature at Allahabad to analyse and hold that none of the indicia of administrative control in the</li> </ol>

	<p>case of AMU lay with the Minority Community.</p> <p>4. Accordingly, the Hon'ble Allahabad High Court, thereafter found that the 1920 Act never envisaged administration of AMU by a Minority.</p>
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Drawn by:

Sanyat Lodha, Adv

Dhruv Sharma, Adv

Raghav Agrawal, Adv

Settled by:

Neeraj Kishan Kaul, Sr. Adv.

Filed by:

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION  
CIVIL APPEAL NO. 2320/2006

IN THE MATTER OF:

Aligarh Muslim University

... Petitioner

Versus

Vivek Kasana And Ors.

...Respondents

PRECEDENTS RELIED UPON BY THE APPELLANT AND OUR RESPONSE

**PRECEDENTS RELIED UPON BY THE APPELLANT AND OUR RESPONSE**

<u>JUDGEMENT CITED AND CONTENTION</u>	<u>RESPONSE</u>
<p><i>In Re. Kerala Education Bill (1959) SCR 995; 1958 INSC 64 (5-Judge Bench)</i></p> <p><b><u>FINDINGS:</u></b></p> <p>1. A Bench of Seven Judges of this Hon'ble Court in <i>In Re Kerala Education Bill, 1957, (1959) SCR 995</i>, while examining a reference on certain aspects relating to the Kerala Education Bill (1957) opined that the <u>provisions such as minimum salaries and qualifications for appointment of teachers sought to be imposed on minority-run schools as a condition to receive aid were regulatory in nature and that it would not offend the right of minorities to administer under Article 30(1).</u></p> <p>2. <u>The Hon'ble Court held that the benefit/protection of Article 30(1) would be available not only to educational institutions established after the commencement of the Constitution but also to educational institutions established prior to the commencement of the Constitution.</u>  <span style="float: right;">Vol 5-A @ pg. 60</span></p> <p>3. The Hon'ble Court also held that merely because a minority institution admits individuals from communities other than the minority, the same will not result in the minority institution shedding its character as a minority institution.  <span style="float: right;">Vol 5-A @ pg. 61</span></p> <p>4. The Hon'ble Court further held that merely because a minority institution received State Aid (either in terms of aid or recognition) and</p>	<p>1. Firstly, the propositions laid down by the Hon'ble Court in <i>Kerala Education</i> are not being challenged by us.</p> <p>2. The judgement in <i>Azeez Basha</i> also does not deny that minority institutions could have been set up prior to the coming into force of the Constitution and would still receive protection under Article 30(1).</p> <p>3. The Hon'ble Court in <i>Azeez Basha</i> firstly analyses the antecedent history of AMU and the subsequent enactment of the AMU Act, 1920 to conclude that the very establishment of the AMU was not by a minority institution in the first place.</p> <p>4. Further, the administration of the University (as mandated in the 1920 Act) lies with the Central Government with final decision making retained by the Lord Rector.</p> <p>5. Such control was not merely regulatory to prevent maladministration but substantive in nature.</p> <p>6. The above finding is also made by the Hon'ble Court</p>

in exchange for the State Aid, the State imposed some reasonable regulations, the granting of aid and imposition of reasonable regulations will not take away the fundamental right of the minority community under Article 30(1).

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#### APPELLANT'S CONTENTION

Relying upon the above findings in *Kerala Education* the Appellants contend that:

1. *Azeez Basha* failed to consider the key principles laid down in *Kerala Education Bill* and erred in concluding that:
  - a. The regulatory features of the 1920 Act meant to ensure proper safeguards and promote 'excellence' has been misconstrued as a waiver by the Muslim community over the affairs of the Aligarh Muslim University;
  - b. The Muslim community surrendered their rights to the Central Legislature by seeking the Government to incorporate MAO College as a university, although it was their *choice* to obtain statutory approval in order for degrees to be recognised.

in *Azeez Basha* after an analysis of the various provisions of the 1920 Act.

7. In fact, a perusal of the provisions of the AMU Act demonstrate that the five key administrative functions viz. (a) Admissions, (b) levy of Fees, (c) Governing Council, (d) Appointment of Staff, and (e) Disciplinary Powers - as identified by this Hon'ble Court in *TMA Pai*, to determine the locus of administrative control, are executed primarily by the Executive/Academic Council in conjunction with the Visitor (earlier Lord Rector).

See Vol 5-A, TMA Pai Para 60 @ pg. 613

8. Therefore, the administration of the University by the State cannot be simply viewed as reasonable regulations imposed in exchange for State Aid.
9. The administration of the University by non-minority is substantive in nature because AMU is a Central University and not a minority university receiving State Aid.

*Rev. Sidhrajibhai Sabhai v. State of Bombay,*

1. Firstly, the present case



**(1963) 3 SCR 837 : 1962 INSC 247 (6-Judge Bench)**

**FINDINGS:**

1. In this case, the SC was laid down a dual test for deciding whether a Regulation imposed by the State as a condition for receiving State Aid is valid or not.
2. The Court stated that such regulations should satisfy:
  - a. the test of reasonableness,
  - b. the test that it is regulative of the educational character of the institution and is conducive to making the institution an effective vehicle of education for the minority community or other persons who resort to it.

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**Appellant's Contention**

1. The Appellants rely on this case to contend that *Azeez Basha* failed to consider the distinction between regulatory features of the 1920 Act that are intended to preserve excellence and enable AMU as an "effective vehicle of education for the minority community" on the one hand, and the rights of minorities to exercise choice in day-to-day management.

**State of Kerala vs Very Rev. Mother Provincial, (1970) 2 SCC 417 : 1970 INSC 150 (6-Judge Bench)**

**FINDINGS:**

1. The Hon'ble Court in this case was concerned with the challenge to the Kerala University Act,

regarding the status of AMU is not a case involving mere regulations being imposed by the Centre for State Aid being given to AMU.

2. AMU stands on a different footing because the same was established by the then Imperial Legislature through an Act of the then British Government.
3. Therefore, the administrative and regulatory provisions therein reflect the fact that the establishment of the University was by the Central Government and not by a Muslim minority.
4. Finally, as submitted supra, the provisions of the 1920 Act are not merely regulatory but confer substantive control over the administration and management of the AMU upon non-minority bodies, including the Visitor, the Executive Council, and the Academic Council.

1. Firstly, the Hon'ble Court in *Mother Provincial* does not state that they are rejecting the view taken by *Azeez Basha*.

2. Secondly, the interpretation of the two rights (to establish

1969. Some of the provisions of this Act affected private colleges, particularly those founded by minority communities in the State. The basis of the challenge was Article 30(1) of the Constitution.

2. Whilst interpreting Article 30(1), the Hon'ble Court held that under Article 30(1) there are two distinct rights:

a. 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. The intention must be to found an institution for the benefit of a minority community by a member of that community.

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b. The second right relates to the administration of such institutions. Administration means "management of the affairs" of the institution. This management must be free of control so that the founders or their nominees can mould the institution as they think fit, and in accordance with their ideas of how the interests of the community in general and the institution in particular will be best served.

**Vol 5-A @ Para 9 @ pg. 167**

### **Appellant's Contention**

1. The Appellants are relying on this case to contend that this judgment effectively rejected the narrow view of *Azeez Basha* on both establishment of a minority institution and on administration of a minority

and to administer) is consistent with how *Azeez Basha* interprets Article 30(1).

3. In *State of Kerala vs Very Rev. Mother Provincial*, this Hon'ble Court merely held that non-minorities can also contribute to the establishment of a Minority Institution.

4. However, *Azeez Basha* also does not deny such interpretation but merely holds that in the facts of AMU, the establishment of the University was by a Statute and not by any minority community.

5. Thus, the Hon'ble Court in *Azeez Basha* after highlighting the role that is required of the minority in the process of establishment of an institution, concludes that in the facts of the AMU case the criteria is not met.

6. With respect to establishment, in *State of Kerala vs Very Rev. Mother Provinciali*, this Hon'ble Court held that administrative powers or 'management of the affairs' of a Minority Institution cannot be taken away.

7. Even with respect to

<p>institution.</p>	<p>administration, the Hon'ble Court in <i>Azeez Basha</i> undertakes a detailed analysis of the 1920 Act and after assessing the same concludes that the "<i>management of the affairs</i>" of the institution did not lie with the minority institution and was with the Central Government.</p> <p>8. Therefore, in <i>Azeez Basha</i> this Hon'ble Court not only laid down the broad principles of Article 30(1) but also undertook a factual analysis of the 1920 Act to hold that the administration of AMU was never envisaged to be in the hands of the Minority Community.</p> <p>9. No subsequent decision has held that the factual analysis undertaken by <i>Azeez Basha</i> requires reconsideration.</p>
<p><u><i>St. Stephen's College vs University of Delhi, (1992) 1 SCC 558; 1991 INSC 323 (5-Judge Bench)</i></u></p> <p>FINDINGS:</p> <ol style="list-style-type: none"> <li>1. This case was regarding whether St Stephens College could have an admission process that was different from the admission process as prescribed by the University of Delhi.</li> <li>2. Specifically, the Delhi University Circular stated that the last date of for submission of application would be 30.06.1980 and that admission would be based on the percentage</li> </ol>	<ol style="list-style-type: none"> <li>1. The Hon'ble Court in <i>St Stephen's</i> case discusses the ratio of <i>Azeez Basha</i> and then proceeds to rely upon the decision in a different case (<i>SK Patro vs State of Bihar</i>) because <i>SK Patro</i> was found to be <i>in close parallel with the case on hand</i>.</li> </ol> <p style="text-align: right;">Vol 5-C Para 24, 25 @ pg. 410</p> <ol style="list-style-type: none"> <li>2. Therefore, the Hon'ble Court</li> </ol>

of marks secured by students. St Stephens College issued an Admission Prospectus wherein the last date for submission of Applications would be 20.06.1980 and that there would be an interview prior to final selection for admission to the College.

3. The issue before the Hon'ble Supreme Court was whether the College was bound to follow the University policies regarding admission.
4. Basis the above one of the questions formulated was whether St Stephens College is a minority-run institution or not.
5. Firstly, the SC held that the words "establish" and "administer" used in Art. 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 by a minority is thus a condition precedent for a minority claiming the right to administer such an institution.

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6. Further, the Court inferred the Christian character of the college from:
  - a. The history of St Stephen's College rooted in the Christian community.
  - b. Its "*name, emblem, motto, the establishment of a chapel and its religious instruction in the Christian Gospel for religious assembly*"  
[Pr. 34, @415]
  - c. "*The composition of the Society, therefore, indicates the presence of a larger number of Christian members of the Church of North India on it.*"

in *St Stephens* was conscious of the *Azeez Basha* judgement but did not make any finding that the finding or decision in *Azeez Basha* required any reconsideration.

3. Further, with respect to the importance of historical antecedents, the importance and relevance of MAO College was already considered by this Hon'ble Court in *Azeez Basha* and only thereafter the Hon'ble Court made a finding that the establishment of AMU by the then Legislature was the founding of a new University and the absolute dissolution of the MAO College.
4. In fact, the Hon'ble Court notes that the nucleus of the Aligarh University was the M.A.O. College.
5. Thus, the Hon'ble Court concludes that the conversion of MAO College from a college/institution into a University was, however, not by the Muslim minority; it took place by virtue of the 1920 Act which was passed by the Central legislature.
6. At the same time, it is also important to note that in fact

7. The Hon'ble Court whilst interpreting Article 30(1) and the right of administration by minorities held that:

*In the first place, it may be stated that the State or any instrumentality of the State cannot deprive the character of the institution, founded by a minority community by compulsory affiliation since Article 30(1) is a special right to minorities to establish educational institutions of their choice. The minority institution has a distinct identity and the right to administer with continuance of such identity cannot be denied by coercive action. Any such coercive action would be void being contrary to the constitutional guarantee. The right to administer is the right to conduct and manage the affairs of the institution. This right is exercised by a body of persons in whom the founders have faith and confidence. Such a management body of the institution cannot be displaced or reorganised if the right is to be recognised and maintained. Reasonable regulations however, are permissible but regulations should be of regulatory nature and not of abridgment of the right guaranteed under Article 30(1).*

8. Further, with respect to Regulations that can be imposed by the State the Hon'ble Court reiterated the principles laid down in *Mother Provincial*.

#### Appellant's Contention

1. The Appellants are also relying upon the St Stephens case to argue that historical antecedents are a necessary consideration whilst determining whether a minority established an

the Hon'ble Court in St Stephens approves the conjunctive test laid down by *Azeez Basha* and holds that a minority institution must be established and also be administered by a Minority Community.

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<p>institute or not.</p> <p>2. The Appellants contend that the view taken in this case is at odds with the conclusion in <i>Azeez Basha</i>, which inferred that any statutory intervention would denude the minority character of MAO College that later became AMU by virtue of 1920 Act.</p>	
<p><u><i>TMA Pai Foundation vs State of Karnataka, (2002) 8 SCC 481; : 2002 INSC 454</i></u></p> <p>FINDINGS:</p> <ol style="list-style-type: none"> <li>1. The findings in <i>TMA Pai</i> reiterate the tests and findings made in the above extracted judgements.</li> <li>2. The Hon'ble Court in <i>TMA Pai</i> holds that: <ol style="list-style-type: none"> <li>a. It approved <i>Kerala Education Bill</i> on the proposition that admission of nonminority students would not affect the minority character of an educational institution.</li> <li>b. It approved the dual test laid down for deciding whether a Regulation imposed by the State as a condition for receiving State Aid is valid or not.</li> <li>c. It approved the interpretation of Article 30(1) as laid down in <i>Mother Provincial</i>.</li> </ol> </li> </ol> <p>Appellant's Contention</p> <ol style="list-style-type: none"> <li>1. The Appellants relied on <i>TMA Pai</i> to show and reiterate the findings in the judgments cited above.</li> </ol>	<ol style="list-style-type: none"> <li>1. It is submitted that the issue in <i>Azeez Basha</i> was not regarding whether admission <u>of non-minority students would not affect the minority character of an educational institution.</u></li> <li>2. <u>This Hon'ble Court in <i>Azeez Basha</i> does not hold that minorities do not have a right to establish and subsequently administer religious institutions. It merely holds that in the specific case of AMU neither establishment nor administration lay with the minority community.</u></li> <li>3. In fact, in <i>TMA Pai</i>, this Hon'ble Court laid down the indicia of Administrative Control which was then relied upon by the Hon'ble High Court of Judicature at Allahabad to analyse and hold that none of the indicia of administrative control in the case of AMU lay with the</li> </ol>

	<p>Minority Community.</p> <p>4. Accordingly, the Hon'ble Allahabad High Court, thereafter found that the 1920 Act never envisaged administration of AMU by a Minority.</p>
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