

**CHIEF JUSTICE'S COURT**  
**HON'BLE THE CHIEF JUSTICE**  
**HON'BLE MR. JUSTICE SANJIV KHANNA**  
**HON'BLE MR. JUSTICE SURYA KANT**  
**HON'BLE MR. JUSTICE JB PARDIWALA**  
**HON'BLE MR. JUSTICE DIPANKAR DATTA**  
**HON'BLE MR. JUSTICE MANOJ MISRA**  
**HON'BLE MR. JUSTICE SC SHARMA**

**COURT NO.1 SECTION PIL-W**  
**SUPREME COURT OF INDIA**  
**RECORD OF PROCEEDINGS**

**Civil Appeal No. 2286/2006**

**ALIGARH MUSLIM UNIVERSITY THROUGH ITS REGISTRAR FAIZAN  
MUSTAFA**

**Petitioner(s)**

**VERSUS**

**NARESH AGARWAL & ORS**

**Respondent(s)**

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TRANSCRIPT OF HEARING

09-Jan-2024  
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10:45 AM IST

1 **COURT MASTER:** Item 701.

2

3 **TUSHAR MEHTA:** Before my learned senior starts, there is a small request, regarding the  
4 scope of the reference. As Your Lordship have, now, broadly seen the papers. The reference is  
5 whether Article 30(1), the expression used 'establish and administer' is disjunctive or  
6 otherwise, where this **Basha** will have to be addressed. But the written submissions which all  
7 of us have received from the Petitioner is as if **Azeez Basha** is being reconsidered, as if this  
8 bench is sitting as an appellant bench. I have My Lord, in my written submissions narrated,  
9 only a minute... If I may...

10

11 **RAJEEV DHAVAN:** My Lord, a capacity of a Solicitor to interrupt and take the stage is  
12 legendary. Let us begin and he will answer. And we will answer him. This is not on. This is  
13 simply not on. If he has raised certain questions, we will answer that.

14

15 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Let Dr. Dhavan open, because once in about 20  
16 minutes, we will know that the ambit of his submissions is going to be. Then we will see as a  
17 matter of progress. Let Dr. Dhavan open.

18

19 **TUSHAR MEHTA:** It is our request and we have decided to be decent. We will be.

20

21 **NEERAJ KISHAN KAUL:** [INAUDIBLE] Both individually on the issues, quite apart from  
22 being disjunctive or conjunctive, that's one part of it. But on the individual issues under Article  
23 30, whether Aligarh Muslim University was administered or- let's read and as or - or  
24 established. On both those issues, the court ruled to say that it is neither administered by  
25 minorities or established by minorities. That correctness of the finding has never been  
26 referred, has ever been referred. That's all that we wanted to point out.

27

28 **CHIEF JUSTICE D.Y. CHANDRACHUD:** That will be your submission.

29

30 **NEERAJ KISHAN KAUL:** That's all.

31

32 **RAJEEV DHAVAN:** My Lord, whether the reference is sustainable is an argument I'm going  
33 to make. What is this My Lord? I've never seen this in the Supreme Court.

34

1 **CHIEF JUSTICE D.Y. CHANDRACHUD:** We are a bench of 7, let Dr. Dhavan open his  
2 argument. As the matter progresses we'll understand what is the scope of the controversy, and  
3 then we will decide, where...

4

5 **RAJEEV DHAVAN:** This is simply unfair.

6

7 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Yes Dr. Dhavan, we will start.

8

9 **DINESH DWIVEDI:** In fact, it is fair. We know what is the scope...

10

11 **RAJEEV DHAVAN:** One person goes on air, *Basha*... the other person says the reference is  
12 not maintainable. We will address these issues. You answer, you answer, and we will answer  
13 you all. My only request, My Lord, is this, there is a certain slack we might require in Your  
14 Lordship's timing. We appreciate, My Lord, that this is the busiest Court in the world. You are  
15 overwhelmed in a way in which no Court in the world is overwhelmed. Whether it's 136 or  
16 whatever it is. The time that Your Lordship can give My Lord, is very important, and I would  
17 just say that in the light of what has been said, our reply is important. In the 370 case, our  
18 reply was curtailed My Lord. If required Your Lordship, may give us time. That's my respectful  
19 submission. My Lord, I remember J.L. Sanghi was asked to curtail his arguments. Krishna Iyer  
20 rang me up in the evening and said - your item is number 1, please continue. These are My  
21 Lord, traditions and I know that the Chief Justice, and I've commended it, is so patient in  
22 listening to arguments, it is admirable.

23

24 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Dr. Dhavan we will... thank you. Don't worry  
25 about the time. Ultimately, our conscience has to be satisfied that we have heard both sides  
26 fully.

27

28 **RAJEEV DHAVAN:** Right, right. And our reply.

29

30 **CHIEF JUSTICE D.Y. CHANDRACHUD:** The reason why we set down time limits is,  
31 because then people have a broad indication.

32

33 **RAJEEV DHAVAN:** My Lord, I understand.

34

35 **CHIEF JUSTICE D.Y. CHANDRACHUD:** There is no repetition...

36

1 **RAJEEV DHAVAN:** Your Lordships are overwhelmed. Now My Lord, let me begin by saying  
2 about the reference. I want to read the two reference orders to Your Lordships, because the  
3 significant thing in the two reference orders is this, that normally when a reference is made,  
4 the points of reference are itemized by Your Lordships. This is not been done in this case. So  
5 I've taken the liberty, My Lord, in my written submission of itemizing what draws from the  
6 two reference orders. The first in '81 and the second in 2019. So, let me take Your Lordships,  
7 straight away to those two particular orders. Because it's important, Your Lordship, should  
8 itemize what the point of reference is.

9

10 **CHIEF JUSTICE D.Y. CHANDRACHUD:** We get them in Volume 3-A, right?

11

12 **RAJEEV DHAVAN:** 3-A, absolutely. Show me both 209. I'm sorry. I'm a luddite My Lord.  
13 I'll have to use the printed text. So much better now. One day, My Lord, I will learn, that's a  
14 promise. My Lord, kindly turn to...

15

16 **CHIEF JUSTICE D.Y. CHANDRACHUD:** I thought we could have started with this  
17 matter.

18

19 **RAJEEV DHAVAN:** It should start with this matter. I'm learning, I'm learning. I am. I  
20 appreciate this My Lord. And when I interact with my colleagues, they're brilliant at this in a  
21 way in which we never were. Anyway, kindly turned to... What is it? That's the PDF? 209. Look,  
22 this was what said by a bench presided over by Justice Fazl Ali. It says - 'After hearing the  
23 parties we are clearly of this opinion that this case involves two substantial questions  
24 regarding the interpretation...

25

26 **[NO AUDIO]** (of Article 30(1), the present institution was founded in the year 1938 and  
27 registered under the Societies act. In 1940, the documents relating to the time when the  
28 institution was founded shows that while the institution was established mainly by the Muslim  
29 community, but they were members of the non-Muslim community who also participated in  
30 the establishment process. The point that arises is whether 30(1) of the Constitution envisages  
31 the institution which is established alone with the participation for the factom of  
32 establishment from any other community on this point. There is no clear decision of this call  
33 there are some observations in Azeez Basha, but these observations can be explained away.  
34 Another point that arises is whether the establishment of the institution it is registered as a  
35 society under the Slightly Registration act. Its status is a minority change) **[End of NO**  
36 **AUDIO]**

1 an institution changes in view of the broad principles laid down in **Azeez Basha**. Even several  
 2 jurists including Mr. Seervai, have expressed the correctness of the decision of this Court.  
 3 Since the point has arisen, we think that it is proper, where a larger bench can consider the  
 4 aspects fully. We therefore direct that this case may be placed before the Hon'ble Chief Justice  
 5 for being heard by a bench of at least seven judges so that **Azeez Basha** may also be  
 6 considered and the points that arise directly to the essential conditions or ingredients of the  
 7 minority institution, may also be decided once and for all.' Then a reference is made to the  
 8 various criticisms, which the court noted. 'A large number of jurists, including Mr. Seervai,  
 9 learned counsel for the Petitioner, Mr. Garg and Interveners, Dixit and Kaskar, have also  
 10 stated the this case requires reconsideration. In view of the urgency that this matter may be  
 11 decided as early as possible, we gave liberty to counsel to mention it before the Chief Justice.'  
 12 So here, My Lord, is a clear statement, of course, that reference was not made eventually. But  
 13 we have now to consider the reference that was made by My Lord, Chief Justice Gogoi. Your  
 14 Lordship may come to 216. The point I'm going to make is there are so many things mentioned  
 15 in this reference that Your Lordships will have to formulate and we will assist Your Lordship  
 16 to formulate, what the points of reference really are. Maybe all these arguments - reference is  
 17 bad etc. can be looked at after the event. Now, 216 - 'Begins with **Azeez Basha**. In our mind,  
 18 it's clear that the community will have the right to establish and administer of their choice,  
 19 meaning thereby where a religious minority establishes an educational institution, it will have  
 20 the right to administer it. An argument has been raised to the effect that even though the  
 21 religious minority may not have been established, it will still have the right to administer.'  
 22 When I get to Azeez Basha, My Lord, I'll read all of it, but kindly come to page 218. It's a very  
 23 interesting comment Your Lordships have made, which really, in a sense takes us much further  
 24 where in paragraph 2 it is said - 'The judgment of the Allahabad High Court, which is under  
 25 challenge, rejects the prayers made on account of the decision of **Azeez Basha**.' This is the  
 26 effect of a **Azeez Basha**, that after 1968, it has quelled all understandings of Article 30. Then  
 27 a mention is made of **Anjuman-E-Rahmania**, which is the 1981 case, and then Your  
 28 Lordships will see in paragraph 4, it mentions **T.M.A. Pai**. What is the effect of **T.M.A. Pai**?  
 29 It's crucial, My Lord, in our understanding of what this is. Your Lordships will then come to  
 30 page 219, where a question was raised in **T. M. A.**

31

32 **[NO AUDIO]**(Pai and the question was never answered. Now My Lord kindly turn to 220.  
 33 The said facts will show that the correctness of the question arising from the deficient of this  
 34 court in Azeez Basha has remained undetermined now, Lord, the reference is made to  
 35 **Yashpal** this is extremely important. And I will show that to your lordships. Because Azeez  
 36 Basha. Says once there is an intervention of statute then it is established through the statute,  
 37 not by you.) **[End of NO AUDIO]**

1 Now, **Yashpal** My Lord, looking at the UGC Act, which **Azeez Basha** refers to, but  
2 nevertheless... UGC Act, My Lord. Now, what do we do with **Yashpal** and then over the case  
3 221 -'Having regard to the background as stated above, when the precise question was already  
4 referred to the seven judge bench, but not answered. We are of the view that the present  
5 question set out above should be referred. Now, what is to be taken into account, My Lord?  
6 **T.M.A. Pai** is to be taken into account, **Yashpal** is to be taken in account. **Yashpal**, My  
7 Lord, says that when you want to establish a university, it has to be done by statute. This is  
8 Section 23 of the UGC act as well. Now, the point would be, it means that wherever there is the  
9 establishment, by statute, you are not entitled, to be a minority institution. This will affect a  
10 large number of institutions, My Lord, in this country. Your Lordship is a chancellor, My lord  
11 of... I want to stress that point because I don't think **Azeez Basha** has understood how  
12 universities are administered. Now, what do we do with the reference? You can pop up and  
13 say whatever you like, but, we have tried to make My Lord, some sense out of what this is. I've  
14 done it in a small paragraph, and will Your Lordships come to my written submission? My  
15 learned friend says that in 220, **Azeez Basha** has to be reconsidered as mentioned twice.  
16 This is there My Lord in the reference, but unfortunately that bench did not delineate what the  
17 questions are, which normally, My Lord, happens. Now come to my written submission.

18

19 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Of course, the order, the referring order by  
20 Chief Justice Gogoi, brother Justice Khanna and Justice Nageswara Rao, refers to the  
21 questions which were formulated in Justice Fazl Ali's original order, says as well those  
22 questions were never answered. No, there were two questions which were formulated by  
23 Justice Fazl Ali. In fact, he began by saying - Two questions arise. He didn't formulate them as  
24 one and two, but it's obvious that In the first page, the learned judge has formulated the two  
25 questions.

26

27 **RAJEEV DHAVAN:** But the very fact that it refers to **T.M.A Pai** and **Yashpal** has to be  
28 taken into account My Lord. It's as simple as that. Now My Lord, kindly...

29

30 **CHIEF JUSTICE D.Y. CHANDRACHUD:** These questions were formulated by Justice  
31 Fazl Ali referring.

32

33 **RAJEEV DHAVAN:** To some extent, to some extent. But this Court looked at the later  
34 decisions of this Court.

35

36 **CHIEF JUSTICE D.Y. CHANDRACHUD:** The later developments which have taken place  
37 as well.

1 **RAJEEV DHAVAN:** Now My Lord, kindly come to my written submissions. This is Volume  
2 1-A.

3  
4 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Because you have the 2004 Act which comes  
5 in. Then *Yashpal* is. *T.M.A Pai* tells us how do you define a minority. *T.M.A Pai* doesn't  
6 deal with 'establish and administer', it certainly has some bearing on the issue, because it does.

7  
8 **RAJEEV DHAVAN:** And its consequences. Because Your Lordships are always concerned  
9 with the consequences of an interpretation. Kindly come My Lord, to my written submission,

10  
11 **CHIEF JUSTICE D.Y. CHANDRACHUD:** That would be volume...?

12  
13 **RAJEEV DHAVAN:** 1-A. Kindly turn to page 7 where I've summarized. I'm sorry.

14  
15 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Dr. Dhavan?

16  
17 **RAJEEV DHAVAN:** Now after I... what I've read to Your Lordships. I've dealt that. Kindly  
18 come to page 8. 1.5. To my mind, My Lord, since *Yashpal* and of course, there's a National  
19 Minorities Act, My Lord, which is very important, I have My Lord, indicated what the possible  
20 reference could be, and that Your Lordships will find at the bottom of page 8. May I read it  
21 My Lord?

22  
23 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Yeah.

24  
25 **RAJEEV DHAVAN:** Now at the bottom of 8, I've succinctly put what the reference should  
26 be. 'Whether the decision in *Azeez Basha* is internally contradictory in its reasoning on facts  
27 and law. Contrary to the authoritative decisions of this Court, rendered nugatory by  
28 subsequent statutory changes, and contrary to the constitutional dispensation from Article 30.  
29 This covers My Lord, the later portions and the earlier portions.' Now, here, My Lord, I put  
30 the issues that arise from this. The first is, was *Azeez Basha* correctly decided and whether  
31 it suffers from internal contradiction and reasoning on facts and law? This My Lord, I will  
32 place *Azeez Basha* before Your Lordships. 'Was... did *Azeez Basha* need to be considered  
33 in the light of earlier and subsequent decisions of this Court? What is the effect of *Azeez*  
34 *Basha* in the future decisions of the Allahabad High Court, which applies *Azeez Basha*  
35 completely and strikes down the statutory amendments through the 81 Act.' My Lord, when  
36 we went to the Allahabad High Court, Chief Justice Ray simply said, this problem of Article 30  
37 and *Azeez Basha* is by a bench, authoritative bench, we have to follow it. There's nothing

1 more we can do. Of course the judgment is piquant, but we are not at present My Lord, in  
2 appeal over the **Allahabad** judgement. I appreciate that My Lord. We can certainly place it  
3 before Your Lordship, but I don't think it's necessary. Maybe, that's in the light of Your  
4 Lordships decision, maybe My Lord, that can be done by the smaller bench. Now My Lord -  
5 'What is the effect of the National Commission of Institutions Act read with the University  
6 Grants Commission. Should **Azeez Basha** be reconsidered in the light of the NCMI and read  
7 with UGC by **Yashpal**.' Then My Lord - 'Was **Azeez Basha** correct in accepting the  
8 antecedent historical data on AMU's Muslim character, but denying its Constitutional  
9 significance while deciding the issue of its minority status, which is at variance with **St.**  
10 **Stephen's, Proost** and **Patro**. My Lord, and parts of it. Then, 'Is **Azeez Basha** contrary to  
11 the Constitutional dispensation?' My Lord, that's the 6th point. These are the issues that arise,  
12 and I've dealt with them in *seriatim*. Because we have to My Lord, whether we like it or not  
13 call a reference from the two reference orders. Now, My Lord, I want to begin by saying before  
14 I go into the preliminary objections that we want to raise. My Lord, I think Your Lordship, will  
15 bear in mind that India has a diversity which is more than continents in any other country in  
16 the world. Your Lordships, have listed in that... they have listed only 22 languages, in the 8th  
17 Schedule. But in actual fact, they are much more. As you go across even my State of UP, you  
18 will see the variation as it goes, and they want to preserve that language, too loom My Lord.  
19 That is the basis of **T.M.A. Pai**. Therefore, Your Lordship, will bear in mind that this  
20 enormous task before Your Lordships, which came about squarely places in talking of  
21 secularism. And then there's this very elegant, elegant passage My Lord, at the end, very  
22 evocative My Lord, but very important. So, when Your Lordships, get into this question My  
23 Lord, Your Lordship, is deciding something that goes to the heart of Indian secularism, and to  
24 the heart of the diversity of this country, both in terms of language as well as religion. This is  
25 so crucial to our understanding of the Constitution. Of course, in 1920, there was no  
26 Constitution. But subsequent developments have taken place. In 1950, a Constitution comes,  
27 '56 the UGC Act comes, the Minority Act comes, and there's a load of decisions My Lord, which  
28 say, look at the historical antecedent. **Azeez Basha** looks at it and says, it's now irrelevant  
29 because we have decided that the Act, in fact established what happens to that rich history, My  
30 Lord. Mr. Sibal will also comment on it. What happens to that rich history? Throughout the  
31 world My Lord, there are minority state institutions. Your Lordship, went to Harvard. John  
32 Harvard came from Emmanuel College, my college. And we still exchange with Harvard. If  
33 you look at America across the board, and if you look at India today, private institutions and  
34 minority institutions are the heart and soul of Indian education. You can't deny it, My Lord.  
35 And that is why Justice Kripal says - 'So what if they have read it? They don't lose the minority  
36 character.' You can't withdraw recognition. This is one of the points that is made in **T.M.A.**  
37 **Pai**.



1 [NO AUDIO] (Now My Lord, I come to a preliminary objection. Kindly come to page 10 now  
2 this phenomenal. I'm just lagging for Your Lordships when they reply to this. We will want to  
3 elaborate in reply the question that people issue whether the Union of India, having accepted  
4 and defended the minority status of Ali Gardenu University, both as a matter of fact and law,  
5 can be allowed to take a new stand that is contrary) [End of NO AUDIO]  
6  
7 to its pleadings and affidavits in the present litigation, in the absence of any change in  
8 circumstance, annuity. The Union of India has always defended the statute. In *Azeez Basha*,  
9 they defended the 1951 and '65 Act. And when we were in Allahabad, and before this court,  
10 when Your Lordship gave a stay order, the union of India took the view that *Azeez Basha*  
11 was wrongly decided, the history should have been taken into account. And how can it change  
12 its stance? How can, because of a regime change... how can My Lord, we say, that because of  
13 the regime change, we change our stance. It can't be done. I await the Solicitor's response to  
14 all this. And when that response comes, we will reply. But just let me take you to one or two  
15 passages on page 10 onwards. What the Union of India does in 2.2 -'In view of the foregoing  
16 paras in general, and particularly in view of the judgment of the Supreme Court in *Azeez*  
17 *Basha*. The Union of India has decided to withdraw its earliest stance taken by the  
18 Government to support the minority institutions status of Aligarh Muslim University. The SLP  
19 filed in the Supreme Court in 2006, in support of the minority status of AMU may accordingly  
20 be treated as withdrawn.' Now, of course, Your Lordship has to give permission for this, that  
21 has happened. We've responded to this as well. Then Your Lordships will see, I've said the  
22 Union of India's [UNCLEAR]. We have taken, 'The petitions have been opposed by the Union  
23 of India, and its main contention is that the Aligarh University established in 1920 by the AMU  
24 Act and that this establishment was not by the Muslim minority. But the Government of India,  
25 by virtue of a statute, the '20 Act, and therefore the Muslim minority could not claim any  
26 fundamental right to administer.' So if you're not established, the question or administration  
27 doesn't apply. Sorry? Yes, My Lord, in *Azeez Basha*, they defended the statutes. Now there  
28 is a change of regime. Till 2005, they take the view that this is right. Mr. Gopal Subramaniam  
29 appeared in the Allahabad High Court, both for the Attorney General as well as the  
30 Government. He came here, My Lord, we came before Your Lordships, the stance in the stay  
31 order, at which some stage I will show Your Lordships, was, 'No, *Azeez Basha* is wrong and  
32 the judgment of the Allahabad High Court is wrong.' So Your Lordship said that as far as the  
33 reservation is concerned, stop it. And AMU agreed. But as far as the other things that you do,  
34 i.e., within 25 miles of the kilometres of the mosque, you will keep your minority institutions  
35 and Muslim institutions at that. Then over the page and this I reserve for my right to reply. I  
36 have given two decisions as to whether the stance of the government can be changed or not.  
37 And the decisions basically, say if there is a policy change, it's different. But this is more

1 fundamental, there's a constitution in place here. And My Lord. It's idle to argue that before  
2 this

3

4 **[NO AUDIO]**(reference bench, this is not a contention. Between parties as the solicitor says  
5 it is My lord to bring to Your Lordship's notice Azeez Basha. Then over the page. My lord, I've  
6 given the union of India's affidavit it says definition of university merely recognizes a new  
7 amendment of 81 that as the nucleus of the Aligarh Muslim University, which is a historical  
8 fact. But AMU and MAO are not one and the same. I'll show to you. Your Lordships. My Lord  
9 the antecedent history the detailed negotiations) **[End of NO AUDIO]**

10

11 that took place. Now, there is some discomfiture in the select committee, which Justice  
12 Wanchoo points out. But the select committee majority takes an entirely different view. So,  
13 My Lord, our view is that the Union of India stance, is a defiance of the parliament's  
14 recognition in 1981 that AMU is indeed a minority institution, is contrary to the pleadings and  
15 submissions made before the Allahabad High Court and this Hon'ble Court. Now, My Lord, I  
16 need and remind Your Lordship of *Sanjeev Coke*, which says that mere affidavits, My Lord  
17 will not solve the problem. Then My Lord, I sum up in 2.12, 'It is the duty bound to defend and  
18 follow the will of Parliament Express to the 1981.' The Union of India is not going to defend it  
19 having defended it. When My Lord, 'It failed to file a justifiable ground for reversing their  
20 consistent stance, since 1981 at the Governmental level and before the Hon'ble Court in the  
21 Allahabad High Court. In these very proceedings, its failure to state that no any new material  
22 or legal developments to justify this stance is arbitrary, reasonable and

23

24 **[NO AUDIO]**

25 (lacks bona fide. In any event the Union of India can best be a supporting Respondent in these  
26 appeals and would be a stop from adopting a stance that is contrary to its intent and purposes  
27 in the Amending act of 1972. And, of course, 19, it should say 1981. This My Lord I'm flagging  
28 for Your Lordship Census let them apply and then we will rejoin because they have raised some  
29 fundamental question so this is a preliminary question.) **[End of NO AUDIO]**

30

31 I will now go to it on merits. I'm starting with *Azeez Basha*. But before that, My Lord, may  
32 I take Your Lordship to Article 30. My Lord, the heart and soul of secularism as far as  
33 minorities is concerned. Minority protection started in 1909, when reservation was made,  
34 1919, 1935 and, of course, our Constitution. Now have a look at the importance of Article 25 to  
35 30. This is the crux of the understanding of what has to be done in this multi-diverse country,  
36 because take away the diversity, there are all kinds of assimilations that are at present taking  
37 place in our country, but take away this particular aspect and the entire colour of our

1 Constitution and Governance changes. Now My Lord kindly come to 25. Now, My Lord 25  
2 and 26 are important, and **Azeez Basha** went slightly wrong in its understanding of 26. In  
3 Justice Kripal's judgment of **T.M.A. Pai** he says, 26 will also give you a right to establish  
4 institutions. **Azeez Basha** says, since you're out in 30, how can you have a right under 26.  
5 Now, My Lord, there are two concepts of secularism, My Lord, in our Constitution. The first  
6 comes from 25(2)(a), where it says -'Regulating or restricting the economic, financial, political  
7 or other secular activity, which may be associated with ritual practice.' This is where  
8 secularism is mentioned and this is the negative view of secularism, saying that these rights  
9 will be subject to secular. This is a very narrow view. The wider view that Your Lordships, have  
10 taken on secularism My Lord, which is writ large over Your Lordships decisions, is what we  
11 understand as part of the basic structure. The narrow view My Lord, simply says you can  
12 regulate this activity. Then My Lord, if Your Lordships, I have taken you through the 26...  
13 28(3), is important, because it mentions aid and that you cannot, because of the aid that there  
14 are some limitations on what you can do. This is now fully explained in **T.M.A. Pai** and not  
15 fully explained in **Basha**. Now My Lord, kindly come to Article 30. I am not going into the  
16 controversies My Lord, of 29 and 30. That 29(1) is a limitation on 30. All that has been decided,  
17 it's not. Now come to 1(A), we needn't bother about that My Lord, but the main provision of  
18 30 - 'All minorities, whether based on religion or language' - this is the diversity provision -  
19 'shall have the right to establish.' This is important, establish what? 'And administer  
20 educational institutions.' Now, this has to be read conjunctively and no doubt about that. But  
21 one point that Your Lordship, should notice is this, what is a minority? Is something anterior  
22 to this. 'Establish and administer' are the rights that flow from the recognition of a minority.  
23 It's very important that Your Lordship should settle this. What is it that makes a minority. In  
24 my view, My Lord, there are three questions. Firstly, the question of origin. Did the origin  
25 come from and where **Mother Provincial** effectively is in contrast. **Mother Provincial**  
26 says it does not matter even if a single financier comes in para 8 which I deal with. That's  
27 enough. All this **Azeez Basha** business of not ignoring the antecedent My Lord, is wiped out.  
28 The second question, My Lord, is the question of nexus, where **Mother Provincial** and other  
29 decisions take the view, that what you have to look at is whether they found the institution or  
30 not. and thirdly, My Lord, is the numerical test in **T.M.A. Pai.**, **Kerala Education** did not  
31 answer that question. We now know that the numerical test, is in respect to the state. Of  
32 course, some of us who argued **Pai** My Lord, are not particularly happy with this. Because we  
33 support Justice Ruma Pal decision, then it depends on the nature of the statute. But in any  
34 case, the majority is in this. Then over and above that, My Lord, we have to look at the intention  
35 of the statute in question. What **Azeez Basha** does, My Lord... and I'll take Your Lordship to  
36 the statue. It ignores the purpose of the statute. The purpose of the statute is writ large that it  
37 is of a Muslim character. Whereas it goes into the question of establish and administer, it

1 ignores the purpose altogether. Now, I'll briefly indicate to Your Lordships what my broad  
2 argument on **Azeez Basha** is going to be. My Lord **Azeez Basha** is... I'm sorry. My Lord, it  
3 is always the wish of arguing counsel to know what Your Lordships were whispering about.  
4

5 **JUSTICE SANJIV KHANNA:** Nothing. It was some diversion, in a way connected with the  
6 matter.  
7

8 **RAJEEV DHAVAN:** Of course, I realize. Even more so... even more so. One thing that I  
9 didn't Lord emphasize in Article 30, is the words 'of their choice'. Now, My Lords, I'll briefly  
10 outline first what **Azeez Basha** does and then take Your Lordships through the decision.  
11

12 **CHIEF JUSTICE D.Y. CHANDRACHUD:** 'of their choice' was introduced to indicate that  
13 you can have a perfectly secular education being administered in a minority institution.  
14

15 **RAJEEV DHAVAN:** Yes, of course.  
16

17 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Therefore, we are not constrained to only  
18 propagating your religion or your language or your culture. You can have an engineering  
19 college. You can have an IT college. That was the purpose.  
20

21 **RAJEEV DHAVAN:** What Your Lordships have done, is added two caveats to this, because  
22 there was a fear that these institutions will become too insular. I think that's Your Lordship's  
23 point. We don't just talk about that. What Your Lordships have done in **Sidhajibhai** and in  
24 **T.M.A. Pai** is, Your Lordships have said that these institutions must be institutions of  
25 excellence. That's very important. And AMU and all these... Our understanding of the  
26 Constitution is, you must, whatever your minority character, must be institutions of  
27 excellence.  
28

29 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Therefore the Court has held that any  
30 regulation which promotes the character of that institution as an institution of excellence is  
31 permissible.  
32

33 **RAJEEV DHAVAN:** Of course.  
34

35 **CHIEF JUSTICE D.Y. CHANDRACHUD:** So therefore, you must pay minimum salaries  
36 to your professors. If you don't, you will not be an institution of excellence.  
37

1 **RAJEEV DHAVAN:** The other caveat...

2

3 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Frank Anthony, for instance...

4

5 **RAJEEV DHAVAN:** ... a lot of decisions is this, that where the ordinary law applies, service  
6 law, electricity law, whatever it may be...

7

8 **CHIEF JUSTICE D.Y. CHANDRACHUD:** There's no immunity from the application.

9

10 **RAJEEV DHAVAN:** There's no immunity from that, and I make it absolutely clear that AMU  
11 and the other institutions must be institutes of excellence. It goes to the core of raising the  
12 level of minority institutions. And Your Lordships have done this consistently on these two  
13 points, institutions of excellence and ordinary law will apply to. But the moment you say,  
14 recognition will not be given to you *T.M.A. Pai* says this is not all. Funding, affiliation, My  
15 Lord, all that will be impediments. I must say My Lord, that in accreditation AMU has been  
16 given A+ in its excellence. Now my first point about *Azeez Basha* is this, *Azeez Basha* says  
17 universities can be a minority. This is at page 848. I'll take Your Lordships through it. Now  
18 universities can be a minority, and you say that if they are established by statute, they have no  
19 protection, this is a contradiction. Because now My Lord, as ever, universities can be  
20 established in only two ways. Royal Charter, which doesn't apply, applies to high courts, but  
21 nobody else and statute. Section 23 of the UGC Act, which is noted by *Azeez Basha* says it  
22 must be by statute. At the same time, it takes the view that if you are statutorily established,  
23 then you are established by the statute and not your antecedents. The second is *Azeez Basha*  
24 recognizes the background and antecedents role that the MAO College made in building this  
25 institution. This does at page 849. I'll show to Your Lordships.. And it is said, it is clearly  
26 Muslim. The third point that I want to raise before Your Lordships, because I want to take  
27 Your Lordships to the act of 1920 and of course, the Act of '81. It ignores completely the  
28 purposes of the act. So all the provisions that actually deal with its Muslim character are totally  
29 and completely ignored. Now My Lords, there is one thing, and Your Lordships will appreciate  
30 that, *Azeez Basha* does not wholly understand how universities are run. It mentions the  
31 Governor General, it mentions a Rector. Universities My Lord have a dual system. Firstly, and  
32 Your Lordships will appreciate this as Chancellor, and just that you will supervise if necessary,  
33 you will inquire all that is written My Lord. For example, in Section 7 of the Bangalore, it's  
34 there in NUJS, it is there in Sanchi. So one of aspect My Lord is the external institutions, that  
35 are kind of *suo moto ombudsman*. The second part is the statute itself in the institutions of  
36 the minority. The emphasis in *Azeez Basha* that the Rector has this enormous power, is  
37 unfounded. In all universities, Rector later became the visitor. In all universities the

1 Chancellor, the Rector or the Visitor has this supervisory power, and that will not My Lord  
2 interfere at all with the minority status. My next point is that **Azeez Basha** ignored the  
3 alternative meanings to establish. This is relevant for our understanding of **Mother**  
4 **Provincial**. It also understands but misunderstands the importance of recognition. It says  
5 recognition, why is that? That takes everything away, and you become really nothing more  
6 than an institution of Government. These are the broad arguments My Lord. Because **Azeez**  
7 **Basha** takes a very narrow view of Article 30. Now, My Lord, may I take Your Lordship, to  
8 **Azeez Basha**. Volume My Lord, 3-A. Your Lordships, turn to 3-A. We feel My Lord, it was so  
9 much better to handover the books...

10

11 **CHIEF JUSTICE D.Y. CHANDRACHUD**: So much better this way.

12

13 **RAJEEV DHAVAN**: I don't know.

14

15 **CHIEF JUSTICE D.Y. CHANDRACHUD**: There's no time spent in handing over books.

16

17 **RAJEEV DHAVAN**: No, but the point is, one went straight to the point, and then the books  
18 came out... So there was a continuity that we had, which is somewhat broken but that doesn't  
19 matter My Lord. I told Your Lordships, I'm a luddite and I'm amazed that Your Lordships'  
20 dexterity. Now My Lords, page 3 of 3-A, is where the Headnote is. From the Headnote itself,  
21 which I won't read out because I'll read from the judgment. It goes into the antecedent history  
22 and says it's very important and then ignores it because the 1920 Act is there. But let me take  
23 Your Lordships, to the judgment itself. Now My Lords, page 7. The Union of India's stance,  
24 My Lord, was that it's not a minority institution but also it defended the statutes of 1951 and  
25 '65, which were before the court. Now My Lord, there have been further developments. We  
26 have the 1981 Act. How can you now say, the 1981 Act. I mean, I can understand that the  
27 Allahabad High Court knocked down three provisions of the AMU Act because they said it was  
28 a huge separation of judicial power. Now, My Lord, the Chief Justice has dealt with this in  
29 **Pavitra II**. I won't go into greater detail about it. Did '81 Act change the basis or was it huge  
30 separation of judicial power. In knocking down the preamble in two sections which I'll show  
31 to Your Lordships. In actual fact, they said it's a huge separation of judicial power and it's now  
32 next. Now My Lord, kindly come to page 8. Here is the history of the establishment and it says,  
33 it's necessary to understand it. I'll give Your Lordships of fuller account. I won't take Your  
34 Lordships through it. 1970 Syed Ahmad Khan says - the Muslim community is neglected. Then  
35 My Lord, there's a whole list of negotiations which I'll show to Your Lordships. He wanted  
36 liberal education to Muslims. Then he says, in 1872, the MAO was established and then My  
37 Lord, in sequence of activities, a school was opened then Lord Lytton laid the foundation

1 stone. The MAO College was established thereafter, and it is a flourishing institution by the  
2 time of Syed Ahmed Khan. Then, My Lord, at the bottom of that page and Your Lordship, has  
3 to see that, long negotiations took place that's the last three lines on that page, between the  
4 association and the Government of India, which eventually resulted in the establishment of  
5 the Aligarh. Now, that is the antecedent history, we have to view it in the light of **St.**  
6 **Stephen's**, the antecedent history is important because Your Lordships, will see that even St.  
7 Stephen's was in fact a constituent college under a statute, all our deemed universities are  
8 actually, as Mr. Dwivedi pointed out to the court in **Yashpal**, by or under a statute. If **Azeez**  
9 **Basha** is taken at its limits, it could destroy the entire system. Now -'Resultant, it is  
10 mentioned that before a large sum of money was collected by the university, as the  
11 Government of India made it a condition that Rs. 30 lakhs must be collected for the university  
12 before it could be established. Further seems that the existent MAO college was made the basis  
13 of the 1920 Act for the administration of the university. Along with the properties and funds  
14 attached to the college, the major part of which was contributed by Muslims.' This is the  
15 antecedent history and Justice Wanchoo recognizes this. But he says, "I am sorry, the 1920  
16 Act will go by the establishment and that's the end of it." Then My Lord, "The preamble says it  
17 is expedient to establish and incorporate a teaching and residential Muslim university and to  
18 dissolve the societies under the Society Registration Act, which are known as MAO. Aligarh  
19 and Muslim University transferred to vest in the university, all the properties and rights of the  
20 societies and the Muslim universities foundation. But this is important because a continuity  
21 was established between the pre 1920 Act and the 1920 Act. This continuity is fundamental to  
22 our understanding. Justice Wanchoo realizes this but then ignores it. Now, My Lord, kindly  
23 come to Section 3. It also mentions My Lord, opposite place H that Section 4 dissolved the  
24 MAO College and Muslim University Association and all the property movable, immovable  
25 and all rights and powers of the privileged were... the funds were transferred through Aligarh.  
26 This is the continuity in Section 4. How can you ignore it? MAO is now being transformed by  
27 Section 4. Of course, earlier, because of Section 23 of the Act, the court, which was big body,  
28 had all Muslims only. That was amended in 1951. Now, My Lord, go over the page. Kindly come  
29 to place C. These provisions will show that the three previous bodies legally came to an end  
30 and everything that they progressed off was vested in the University by the 1920 Act. Of course  
31 it was. But the continuity and nowhere you will see in the Act, as I'll show to Your Lordships,  
32 the Muslim character. Section 6 is important because Justice Wanchoo finds fault with the fact  
33 that the degrees, etc., will be recognized by the government. This is precisely what Your  
34 Lordships have said in **Kerala Education and others**. Recognition must be given. Then  
35 Your Lordships will see 13. 13 as I pointed out is a misunderstanding of university education  
36 because university education is based on two templates. The external template which is  
37 Chancellors, Visitors, Visiting Board and then it is provided that the Governor General will be

1 Lord Rector, this becomes Visitor later on. And then it mentions at the bottom of the page that  
2 the Lord Rector shall give notice to the university of its intention to cause an enquiry.

3

4 **CHIEF JUSTICE D.Y. CHANDRACHUD:** You said university education is based on two  
5 templates. One was the external...

6

7 **RAJEEV DHAVAN:** And the internal.

8

9 **CHIEF JUSTICE D.Y. CHANDRACHUD:** And the internal would be the internal  
10 management of the university. How would you define?

11

12 **RAJEEV DHAVAN:** It would be how the university runs. This template is important and I  
13 might mention, since Your Lordship is a Chancellor of these universities. Look at Section 7 of  
14 the Bangalore Act and the Calcutta Act. Then My Lord, Your Lordships will see Section 14,  
15 which is now no longer there. But the important point, My Lord, is at E. I'm sorry, My Lord,  
16 my learned friends want me to read C. The provisions clearly are putting out the final control.  
17 It's not a final control. In the template, it is a supervisory control. May I sit down for two  
18 minutes My Lord?

19

20 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Mr. Dhavan. There's no difficulty. You don't  
21 have to stand and argue.

22

23 **RAJEEV DHAVAN:** I noticed that Mr. Parashar and Your Lordship said he could sit down.

24

25 **KAPIL SIBAL:** I know. I remember that.

26

27 **RAJEEV DHAVAN:** And he said - No. So I must resist My Lord and survive this time up to  
28 lunch.

29

30 **KAPIL SIBAL:** You can sit down. Doesn't matter.

31

32 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Dr. Dhavan, this is because of you are lower  
33 back issue, please sit down and please sit and argue. It's perfectly fine.

34

35 **TUSHAR MEHTA:** It might aggravate. Out of concern I am saying.

36



1 **CHIEF JUSTICE D.Y. CHANDRACHUD:** And you can move the podium aside. You can  
2 move the podium aside and you can have a seat and you can come on the side.

3

4 **RAJEEV DHAVAN:** Thank you.

5

6 **CHIEF JUSTICE D.Y. CHANDRACHUD:** In fact if you have a special chair in your office.  
7 I didn't know that this is an issue with your back. You could have brought the chair here and  
8 sat in the chair and argued. It's so much more comfortable.

9

10 **RAJEEV DHAVAN:** No, it's very kind of Your Lordships. One must suffer in the traditions  
11 of this court. May I just sit down and place this My Lord?

12

13 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Yes.

14

15 **KAPIL SIBAL:** He has a lot of courage. He's been very unwell.

16

17 **RAJEEV DHAVAN:** Anyway. Those things should not be told to the Court. Now My Lords,  
18 kindly come to Section 23(2). The Supreme Court, the supreme governing body would exercise  
19 all the powers provided by the 1920 Act, that's page 12, Placitum C. This is the distinction  
20 between external and internal. It's a misunderstanding of how universities are run. Sir  
21 Ashutosh was Chancellor, My Lord, of Calcutta and he took a very prominent view in  
22 developing Calcutta's institutions at Calcutta University. Now, I come to Section 23. Your  
23 Lordships will say see that in the 1920 Act only in Muslims were members of the Court. The  
24 Court is the supreme body. Now My Lord, I've already dealt with section 24, 25. What is said  
25 My Lord, between place F and G is a little sentence- 'This provision clearly shows that the final  
26 power rested with the Governor General.' Now, My Lord, that's the Chancellor and of course  
27 his role completely went, My Lord, because he appointed only the first Vice Chancellor, et  
28 cetera. But somebody had to do it. Now My Lord, the whole import of this is at the page 13, at  
29 the bottom. 'If anything, some of the important provisions to which we have already referred  
30 shows that the final power in almost every matter of importance was in the Lord Rector and  
31 the Governor General and Council.' Now this is misunderstanding the template. The Rector  
32 disappeared and became the Visitor. Do visitors have that kind of right to supervise? Very  
33 importantly so, My Lord. Then My Lord if Your Lordships will come to place C My Lord. So  
34 My Lord the internal part is mentioned in 14, but I come to place C. The Annexure to the 1920  
35 Act gave the names of foundation members of the court numbering 120, who were all Muslims  
36 and who were to hold office for five years. Then Section 9 was deleted. Now come My Lord to  
37 page 50. The next substantial change was made with the proviso of 23(1). This is done in 1951

1 My Lord, where, while the court becomes the supreme body, it need not be all Muslims. Now  
2 My Lord, there is a decision of this Court in **Gandhi Faiz-E-Aam**. Krishna Iyer, My Lord,  
3 was a dissent. That the fact that you place other people on your board doesn't mean that you  
4 lose your minority character. Just as Justice Das says, sprinkling of [INAUDIBLE] in **T.M.A.**  
5 **Pai**. I'll show My Lord those judgments as far as required. Then My Lord if Your Lordships  
6 will come at 16, place F. But I must say I'm more relaxed My Lord. I'm very grateful for Your  
7 Lordships. Sorry. I apologize. Now My Lords, kindly come to F. 'We shall proceed' - that's the  
8 third line, just opposite L - 'on the assumption that the present petitions that Muslims are a  
9 minority based on religion.' Had he looked at the entire act My Lord he would have realized  
10 what the purpose of the Act was. Now My Lord, if Your Lordships will come over the page, we  
11 come... So My Lord there is really no dispute that they're a minority and **Azeez Basha** says  
12 so in so many words. We accept that it's a minority. We accept a connection with MAO. MAO,  
13 My Lord, was just the... AMU was just the alter ego, My Lord. It is continuity of the MAO Act.  
14 Now My Lord kindly come to page 18.

15

16 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Page 16 and 17, they say that words 'establish  
17 and administer' must be read conjunctively.

18

19 **RAJEEV DHAVAN:** I'm coming to that. Of course My Lord. But as I said, these are the  
20 rights that flow from Article 30. The indicia of what is a minority. Numerically, historical  
21 circumstances, the nexus which St Stephen's and others see, that is the important aspect of  
22 establishment, which goes to recognizing a minority institution. Establish and administer on  
23 the rights that follow. So now My Lord, 17. Your Lordships will see it at A - 'The words 'establish  
24 and administer' must be read conjunctively. It reads, to give the minority to administer an  
25 institution provided as it has been established by, provided it has been established by it.' So  
26 the more important point is establishment and the right to administer will flow from it. That's  
27 important, My Lord, because Justice Wanchoo recognizes. But where does AMU, where does  
28 it get knocked out. On the first stage. You were established by statute. So he says, where is your  
29 right to administer? It's not there at all. Then My Lord there is... now this My Lord is all  
30 conjunctive and this I won't go into that. Now, My Lord the three questions on the top of 18.  
31 'In **Azeez Basha** was whether it was established by the minority, first question. Whether it  
32 was a right to administer ever vested in the minority, and even if the right to administer  
33 properties came to be to university, the minority before the establishment of Aligarh  
34 University, whether it had surrendered, it has been surrendered when the Aligarh University  
35 came to be established.' Now, there's a very interesting at C, just top of C, that paragraph.  
36 'Before we do so we would like to say educational institutions are of a very wide import and  
37 would include university.' Now, this is a contradiction. On the one hand, you say if it's

1 established by statute, then you have not established it, and this is a far reaching consequences  
2 and then UGC Act specifically says, you must do it by statute and by no other method. And  
3 then My Lord, 'This was not disputed on behalf of the Union of India, and therefore it  
4 establishes, it may be accepted that a religious minority had...' So, My Lord, I'm sorry. Now,  
5 I was at 18. That there are very and would include university. Now, this is fundamentally  
6 important for the future and what **Azeez Basha** lays down. If universities can only be  
7 established by statute, then the first part of **Azeez Basha** says-' You have not established it.'  
8 On the other hand, universities are part of the minority character. And the Union of India  
9 accepted that a religious minority has the right to establish a university. Fundamentally, My  
10 Lord. Now, we come to the famous **St. David's College**, when I show Seervai to Your  
11 Lordships, he says, one line seems to have been relied upon. Now we have looked at it carefully,  
12 the reason why **David's College** was decided in this way was, that although it had the right  
13 to confer degrees, it was not recognized by royal charter. So this is My Lords the support from  
14 **St. David**, which I'll show to Your Lordships, if required. And this has been a stinging  
15 controversy raised by various jurists. Then My Lord, kindly come to the important part of the  
16 University Grants Commission at the bottom of that page. It says at H, My Lord -'The  
17 importance of recognition depended on the will of the Government cannot be minimized.'  
18 Now, all the decisions on Article 30 say that you cannot hold back recognition. So, Section 6 is  
19 right. Now at the bottom of that page - 'It was only in 1956 that Section 22 of the UGC lays  
20 down - The right of conferring Degrees shall be exercised by a university established or  
21 incorporated by or under a Central Act.' When we were arguing **Yashpal**, Mr. Dwivedi made  
22 the very important point that this must be read conjunctively i.e. established and incorporated.  
23 Then, kindly come to B. 'It was only thereafter that no private individual or body could grant  
24 a degree in India. Therefore, it was possible for the Muslim minority to establish a university  
25 before the Constitution came in force, though the degrees would not be recognized.' Now, My  
26 Lords, where are we now? Because we have to take into account the UGC. What is **Azeez**  
27 **Basha's** implications? On the one hand, you said, 'universities can be minority.' On the other  
28 hand, you say if it's established, I'm sorry you have not done it. Then My Lord, kindly come  
29 next paragraph. There was nothing in the 1920 Act to prevent the Muslim minority if it shows  
30 to establish a university. This is wholly incorrect. It couldn't have. Could only happen by  
31 Charter or statute and this is true, My Lord, of many acts that we see in that area. The 1922  
32 Delhi Act which makes, for example say, St. Stephen's of the constituent college. 'But if it did  
33 so, the degree was not bound to be recognized by the Government.' Well, this is now history.  
34 You have to recognize it. Recognition cannot stand in the way of a minority character. Then  
35 My Lord it says -'In the absence of recognition of the degree, it may not have attracted  
36 students. And that is why we find the Constitution came into force. Most of the universities  
37 were established by Legislation.' Incorrect, all the universities were established by Legislation.

1 Now, My Lord. Then - 'Aligarh University were also in the same way established by Legislation  
2 provided the Section 6 the degrees, diplomas and other distinctions granted or conferred by  
3 person deemed university shall be recognized as are the corresponding degrees, diplomas and  
4 other academic institutions. Then My Lord, 'It is clear that even though the Muslim minority  
5 could have established at Aligarh in 1920 University, it could not insist that degrees granted  
6 by such university should be recognized.' This is only at variance with the jurisprudence of  
7 your Court. Recognition and affiliation, *T.M.A. Pai* says, 'cannot stand in the way of the  
8 minority character.' Then he says at G - 'The enactment of Section 6 therefore, when the  
9 Aligarh University was established by Section 6, it's degrees were recognized and the  
10 institution was brought into existence, which could not have been brought to existence by  
11 private individual body or individual could not insist upon recognition. But the more  
12 important part is the enactment of Section 6 is a very important circumstance which shows  
13 that the Aligarh University, when it came to be established was not established by the Muslim  
14 minorities. For the Muslim minority could not insist on the recognition.' This is all *passe*'. Your  
15 Lordships have said otherwise. Recognition is fundamental. When Your Lordships look, My  
16 Lord, at the colleges and the schools, when they were denying recognition, Your Lordship said,  
17 no, no, your recognition cannot stand in the way. Then My Lord very important is H. 'It is true,  
18 as it is clear from the 1920 Act that the nucleus of the Allahabad University was the MAO  
19 College which was till then a teaching institution under the Allahabad University. The  
20 conversion of that college, if we may use the expression in the university, was not by the  
21 Muslim minority. It took place by virtue of the 1920 Act.' This, My Lord, is the crucial finding.  
22 I take Your Lordships now to D, My Lord. Now My Lord at D - 'It may be that the 1920 Act  
23 was passed as a result of the efforts of the Muslim minority. But that does not mean that  
24 Aligarh University came into being under the 1920 Act and was established by the Muslim  
25 minority.' This is the error. All along you are saying universities can be minority institutions  
26 and at the same time you are saying the intervention of a statute will deny you that status.  
27 Then My Lord, I come to this... No, no, it says My Lord, that *fundacio incipience* and *fundacio*  
28 *proficiencie*. My Lord this means the *incipience* means at the process of granting recognition.  
29 And My Lord the *proficiencie* means My Lord perfecting it. In actual fact, it's wrong to rely on  
30 only the latter. Because AMU was there at the beginning, that is at its inception and also My  
31 Lord, later on when it was established. Now, My Lord, we come to a very interesting area at  
32 the bottom of page 20. What does the word 'established' used in Article 30 mean? If Your  
33 Lordships will go over the page. It gives the different meanings of the US to settle firmly, to fix  
34 unalterably, to establish justice, to make or form as to establish a uniform rule of  
35 nationalization. To found or create, to regulate, as Congress shall have the power to establish...  
36 to found, recognize, confirm or admit.' Now My Lord, it mentions the Oxford Dictionary and  
37 it says establishment has a number of meanings to ratify, confirm, to settle, to found, to create.

1 The big criticism of Mr. Seervai and others is there was a plethora of meanings that you could  
2 establish, use, but you didn't. You picked up one which is there My Lord. 'We are of the opinion  
3 that the purpose of Article 30(1) means to bring into existence so that the rights given to the  
4 minorities is to bring into existence as education, and if they do so, to administer it. We have  
5 therefore to see what happened in 1920 and who brought the university into existence.' Now,  
6 My Lord, ***Mother Provincial***, which is a six judgment, bench judgment, confirmed by ***T. M.***  
7 ***A. Pai*** uses the word 'found' which I showed to Your Lordship. It's fundamentally different.  
8 My Lord.

9  
10 **CHIEF JUSTICE D.Y. CHANDRACHUD:** What is the distinction between 'found' and  
11 'bring into existence'?

12  
13 **RAJEEV DHAVAN:** My Lord, bring into existence according to, according to the judgment  
14 is to incorporate. Whether by charter or otherwise. 'Found' means you take into the antecedent  
15 circumstances and ***Mother Provincial*** at para 8 says that even if a single individual,  
16 philanthropic does this, it will be found. We're not in the process of just a legal interpretation  
17 of 30. We're in the process of looking at the entire process, and he's absolutely right in looking  
18 at those Latin terms, at the instance of preparation and at the instance of founding. Now My  
19 Lord, kindly come to the history again at Placitum F. 'From the history we have set out above,  
20 it is clear that those in charge of MAO College, the Muslim University Association and the  
21 Muslim University Foundation Committee were keen to bring into existence a university at  
22 Aligarh. There was nothing in the law to prevent them.' But that's all true. But if we, say,  
23 'found', the connection can be seen between the past and the present. Then comes a very  
24 important part at H. It may be accepted for the present purposes that MAO College in the  
25 Muslim University Education Association and the Muslim University Foundation, were  
26 institutions established by the Muslim minority. Then over the page, it says it was under then...  
27 'But if the MAO college was to be converted into a university whose degrees were bound to be  
28 recognized by Government, it would not be possible for those who were in charge of MAO  
29 college to do so.' We come to the same conundrum, that to establish means to establish by  
30 statute. You accept everything about the minority background. Then, My Lord, if Your  
31 Lordships will come to Placitum F. So Their Lordships did not examine the 51 and 65 Act  
32 properly. Now, come to F, 'Nor do we think the provisions of this Act can bear out the  
33 contention, that it was the Muslim minority which was administering Aligarh University, after  
34 it was brought to in existence. It is true that the proviso to 23(1) says, no person other Muslims  
35 shall be a member of the court which was declared to be the supreme body and was to exercise  
36 all powers. We have already referred to the fact that the select committee was not happy about  
37 this provision and only permitted it in the Act out of different issues of prepondering Muslim

1 opinion.' Also, the select committee if the majority is there, how does the minority  
 2 discomfiture. The important point here is if you prove you established, then only you'll  
 3 administer. It is not necessary, that the governing body must necessarily have Muslims,  
 4 **Gandhi Faiz-E-Aam**. Nor is it necessary that all the students should be Muslims, **Kerala**  
 5 **Education Bill** and **T.M.A Pai**. Then, if Your Lordships, after noting that the members of  
 6 the court, the supreme body, shall all be Muslims, this is what is said at place C on page 23. 'It  
 7 will then be seen that besides the fact that the members of the court had to be Muslims, there  
 8 was nothing in the Act to suggest that the administration was in the Muslim minority aspect.'  
 9 We have to see the Act, My Lord. The two templates that I have given to Your Lordships, the  
 10 external template and the internal template. Then if Your Lordships will skip all this about  
 11 Article 26 and come to one part 24 (F), 'But the right under 26 will only arise by the institution  
 12 is established by religious domination. It is in this event it can claim to maintain it.' Now,  
 13 **T.M.A. Pai** specifically says, '26 is right.' And you say 'you can't prove establishment,  
 14 therefore your right disappear.' Then, My Lord. I won't trouble Your Lordships with... 27, My  
 15 Lord is important. My Lord, this was an argument based on Article 19. But what is important  
 16 if we see the Act, My Lord, there is a transition in Section 4 from MAO College surrendering  
 17 it's rights. So My Lord, we have MAO College, all its property goes. The old students who are  
 18 there, have to sit the exam. This continuity, according to this judgment is broken by the 1920  
 19 Act, and therefore we come to place C. 'Therefore, when the Constitution came into force, there  
 20 was no property which was held by the Muslim minority. As such, for the property vested in  
 21 the corporate body, the Aligarh University. Even assuming that before 1920 the property was  
 22 surrendered, which was the property of the Muslim minority, 1920 Act put an end to their  
 23 rights.' My Lord, transitions take place. You have college. It gives all its property. It gives  
 24 everything, and that is the continuity, which is broken now because of the view of the 1920  
 25 Act. It is now established that you don't surrender your minority status. So these are the  
 26 contradictions in **T.M.A. Pai**. It was a Muslim minority, Muslims... in **Basha**. I'm going to  
 27 go to the Act now.

28  
 29 **[NO AUDIO]** (These are the contradictions) **[End of NO AUDIO]** in **Azeez Basha**. On  
 30 the one hand it says a university can be a minority. On the other hand, it says if it's established  
 31 by statute it can't. It says the nucleus comes from MAO, but we can ignore it. Now this My  
 32 Lord, is simply unacceptable in the light of **St. Stephen's and others**. The antecedent  
 33 history is important. And this.....sorry. There are films on lip reading. Now My Lord, kindly  
 34 bear in mind that if **Azeez Basha** is right, no university can be a minority. It's contrary to  
 35 Legislative practice, but My Lord no institution... and a deemed university, which has been  
 36 recognized as a minority was established in the words of Mr. Dwivedi, before **Yashpal**. By or  
 37 under the statute all deemed universities acquire a statutory character. Now you say, it's

1 established, a deemed university is established by or under, this implication My Lord is of  
2 importance, significance. Now let me take Your Lordship to the '20 Act. Volume 3-G My Lord.  
3 PDF 5. I've learned a new phrase, My Lord, PDF. Is Your Lordship, there My Lord? First read  
4 the preamble. 'In the 1920 Act, as it was' There have been changes in 81. 'Whereas it is  
5 expedient to establish an incorporated teaching in residential university at Aligarh, Muslim  
6 University at Aligarh and to dissolve the society's registered under Society's Registration Act,  
7 which are respectively known as the Muhammadan Anglo-Oriental College and the Muslim  
8 University Association, and to transfer and to vest in the university, all properties of the said  
9 societies and of the Muslim Foundation Committee.' This is the continuity that is there. Now,  
10 My Lords, just have a look at 2-H which says - 'University shall mean Aligarh Muslim  
11 University.' Then, if you come to 3, I've already explained this Governor General power is part  
12 of the first template, not the second. Now the continuity, Your Lordships will see in Section 4.  
13 Here, the societies known as so and so, so and so shall be dissolved and all properties of the  
14 movable and immovable and all rights and powers, the privileges of those societies and all  
15 properties movable and immovable and all rights and privileges of the Muslim University  
16 Foundation shall be transferred and vested in the University.' This is the continuity recognized  
17 by this Act. There would have been no Act, My Lord, but for the Foundation coming here.  
18 Then, My Lord, 'All debt, liabilities and obligations shall be transferred to the University,  
19 which is 2. All references in any activity, in any enactment to either of the said societies, shall  
20 be construed as references to the university. Any will, deed or other document ' - I won't read  
21 all of it - 'shall be construed as if the university was therein named instead of the society or  
22 committee.' Then, My Lord, 'Subject to any order of the court, the court may make the  
23 buildings belonging to the MAO shall continue to be known and designated immediately  
24 before the commencement of this Act.' And finally, My Lord, 'Subject to the provisions of this  
25 Act, every person employed immediately on the commencement of this Act in MAO, shall hold  
26 employment under the University by the same tenure, same terms.' - and then My Lord  
27 [UNCLEAR] - 'as if the Act had not been passed.' Now, what is Section 4? How do we interpret  
28 it? **Azeez Basha** interprets it negatively. Our interpretation, taking into mind the antecedent  
29 history which Your Lordships now accepts, has to be taken into account. **St. Stephen's** has a  
30 huge para on this. It says, even the motives, if you see it's in **Stephen's**, even the motives show  
31 its character. Now when Siddharth Shankar Ray was arguing for the Allahabad High Court, he  
32 gave three volumes on the motives. I'm not going to trouble Your Lordships with that one. But  
33 clearly there was an institution, which in continuity became a university. Then 5, come to 2,  
34 My Lord. All this is ignored. The Muslim character is ignored. 5, Sub-Clause 2, at the bottom  
35 of page 6. This is the purpose that has been ignored by **Azeez Basha**, which I mentioned in  
36 the, when I basically My Lord, summarized what was wrong. And Your Lordships will see some  
37 of the points in the written submission, my page 14 to 25. I'll quickly go through that when the

1 time comes. Now My Lord, what does 2 say? 'To promote Oriental and Islamic studies and  
2 give instructions in Muslim Theology and Religion and to impart moral and physical training.'  
3 This is completely ignored. Then My Lord, if you come on page 7 to 5(12) after it says to do all  
4 other things. At the bottom of that page it says 'Islamic Learning and Muslim Theology to  
5 promote the interest of the students.' This is the purpose of the Act. 7, if Your Lordship comes  
6 to page 7... 12. At the bottom of 12. I don't want to read the whole of it. It's irrelevant. What is  
7 relevant is Islamic Learning and Muslim Theology. Now we come to Section 6. One is the  
8 power to grant degrees and that 6(A) shall be recognized by the Government. This is  
9 absolutely correct, My Lord, interpretation of Article 30. Of course, it must be recognized by  
10 the Government, as all the decisions say, otherwise it will be valueless. Then, My Lord, 7  
11 mentions how the Government said 30 lakhs should be given by as an endowment. The nexus,  
12 My Lord, is there because it is these institutions that have to provide the 30 lakhs. Now over  
13 the page, there is an interesting provision which, of course, would not stand in our feminist  
14 jurisprudence, My Lord. I didn't want to disturb Your Lordship's thinking. Now come to 8, My  
15 Lord. This won't stand, but it says something about the women are exempted. Now, this will  
16 not stand, My Lord, but the understanding at that time was this was linked with Muslim  
17 jurisprudence and now it is deleted. Then My Lord, 9 - 'Shall have the power to make provided  
18 that instruction in Muslim religion shall be compulsory in the case of Muslim students.' This  
19 is consistent, My Lord, with Article 28. And then what happened is this was deleted, and a  
20 choice was given. I remember when I went to school, whether I should attend church or not.  
21 They had to get my father's permission, and I'm very grateful I did. I wasn't in the Choir, but  
22 like Your Lordships, I could sing Christmas carols. Now, My Lord...

23

24 **CHIEF JUSTICE D.Y. CHANDRACHUD:** We also had to give a letter.

25

26 **RAJEEV DHAVAN:** [NO AUDIO](The reason for showing) [End of NO AUDIO] this,  
27 My Lord, is what was the purpose of the Act. Now, all these provisions My Lord show what the  
28 purpose of the Act was. Grant education to Muslims. Even forcing Muslims My Lord to attend.  
29 Now that, of course was deleted. Then My Lord kindly come to 12, which is very important, on  
30 page 8. 'The university shall, subject to the statute's power to maintain and establish  
31 intermediate colleges and schools, within such limits of the Aligarh District, as may be laid  
32 down in the ordinances, for the purpose of preparing students for the university and may  
33 provide instructions in the Muslim Religion and Theology.' Its purpose, My Lord, Your  
34 Lordship is very right, My Lord, in saying that we can't have these minority institutions with  
35 ghettos. Agreed My Lord. They must be instruments... institutions of excellence. They must  
36 conform to the general law. And nothing in this Act takes that away. Then if Your Lordships  
37 will come to 13, kindly just....'The Governor General shall be Rector.' This is therefore, the



1 Rector who becomes analogist to the Visitor. And that is where my template comes in. The  
2 external authorities and the internal authorities. And My Lord, I am informed by my  
3 colleagues that this is verbatim in all the other Acts, that is Section 13(2) 'for the Rector, read  
4 Visitor.' We've given some examples in Volume 4, that I will take Your Lordships. So, 13 and  
5 14 are taken care of and Your Lordship wanted to know what the internal aspects were. Kindly  
6 come to page 10. It says -'The following shall be officers.' So the Rector as the visiting part are  
7 not officers. That's the external part in my template. Then My Lord, 'The successors to the first  
8 Chancellor shall be elected by the court.' The court, My Lord, under Section 23 was solely  
9 consisted of Muslims. Then Your Lordships will see 18, 'Pro Vice Chancellor shall be elected  
10 by the court.' 19, 'The successor shall be elected by the court.' 20, 'The pro Vice Chancellor  
11 shall be appointed by the court.' And now we come to the most important section, Section 23.  
12 22, also My Lord, you will see that the Visitor is not an authority of the court in 22. Now 23, is  
13 very significant and although noticed, the implications have not been worked through. 23  
14 reads the proviso. As far as the proviso later went, but as far as the '20 Act is concerned, My  
15 Lord, and the purposes of the Act are concerned, it says, 'provided that no person other than  
16 a Muslim shall be a member thereof.' And this continued till 1951. Now this is very important  
17 when you come to administer, the court was hands on, My Lord, in the administration of the  
18 university, as is clear from Sub-Section 2. 'The Court shall be the supreme governing body of  
19 the university and shall exercise all the powers of the university nor otherwise provided for in  
20 the statutes.' So all this My Lord is there with the supreme body which consists of Muslims.  
21 Today there are non-Muslims, My Lord. But the point is, this was the tenor of the 1920 Act.  
22 And then Your Lordships will see in 2. We're only concerned with the recommendations.  
23 That's the end of 2, My Lord, of The Lord Rector. Now, Your Lordships have personal  
24 experience what it is to be a Chancellor, what is a Visitor, etc. Your Lordships may be non-  
25 interfering, different from Chancellors today. One day that issue will come before your court  
26 also.

27

28 **KAPIL SIBAL:** It's already.

29

30 **RAJEEV DHAVAN:** Already, I'm sorry.

31

32 **KAPIL SIBAL:** We know that.

33

34 **RAJEEV DHAVAN:** Now look at 3, 'Subject to the provisions of this Act, the court shall  
35 exercise the following powers and perform the following duties.' This is the supreme body  
36 consisting of Muslims. 'making statutes and/or amending or repealing the same, of  
37 considering ordinances, of considering and passing resolutions on the annual reports, of

1 electing such persons to serve on authorities of the university, such as prescribed by exercising  
2 such other powers and performing such other duties as may be confirmed or imposed by this  
3 act of statutes.' The purpose of this is, administration will stay with the supreme body. Things  
4 have changed a little bit, My Lord, but the supreme body part remains the same. Then, My  
5 Lord, I want to take Your Lordships to the Statutes and Ordinances. Kindly come to page 12.  
6 Look at J on page 12. 'The instruction of Muslim students in the Muslim Religion and  
7 Theology.' The next is important, My Lord, 'The establishment of intermediate colleges and  
8 schools and all other matters by this Act, which by this Act are to be or may be prescribed.'  
9 Now, this is referring to Section 12 that within a radius of the mosque, you should establish  
10 these institute. Then My Lord kindly come to 28. Come to the proviso at the bottom. 'Provided  
11 that no Statute dealing with the instruction of Muslim students in the Muslim Religion and  
12 Theology shall require to be submitted or approved for approving.' Now, My Lord. Page 14,  
13 My Lord. As an argument in Sub-Section 5, the continuity is established, those students who  
14 were in MAO college may continue with their degrees. Now, kindly see the first Statutes which  
15 are important. The first Statutes are there in page 16. Now this is in Statute number 8, 'The  
16 Court shall subject to the provisions hereinafter contained consists of the following members.'  
17 Kindly come to Clause 2. 'The persons named in the Annexure shall be foundation members.'  
18 The Annexure which I'll show to your Lordship, was completely Muslim. On page 24, I'll come  
19 to that. I don't want to get into all this. So, the continuity is again established on page 19 at the  
20 top of Sub-Clause 3. The graduates are there and who have been educated in the  
21 Muhammadan Anglo-Oriental College and are members of the Association recognized for this  
22 purpose by the Act. Now My Lord, '20 persons elected by the Central Standing Committee of  
23 the All India Muhammadan Educational Conference.' So, My Lord, the link, My Lord, with the  
24 foundation is here. Then My Lord, kindly come to Subsection 6. It's very important My Lord,  
25 that this Statute has to be read in a way in which **Azeez Basha** did not read it. And **Basha**  
26 did not even look at this one and **Basha** ignored the purpose, which is writ large over the....  
27 Now My Lord, kindly come - '30 persons, Sub-Clause 6, 33, 9 persons to represent Islamia  
28 colleges and other Muslim educations not under the control of the University.' And then My  
29 Lord, '15 persons learned, then 9 persons learned in the Muslim Religion and Oriental Studies.'  
30 Then My Lord, kindly come to 50. 'The Executive Council shall have 30 members.' And 3 is  
31 important - '6 are the members to be elected by the academic council and 20 shall be elected  
32 by the court.' Now, remember the court My Lord, is all Muslim at that point in time. We see  
33 in 23 proviso My Lord. Then My Lord, kindly come to 22. Top of the page, 'two persons elected  
34 by the court.' Just mark these My Lord. It's just, the purpose is self-evident and control is self-  
35 evident. This is the Academic Council. Now My Lord, come to 19. This was there in the original  
36 Act, My Lord and the original statutes. I won't read all of 19, My Lord, but kindly come to Sub-  
37 Clause 9, 10, 11. Up to 11 My Lord, all the way down. What does it say? What shall the

1 departments be? 'Sunni Theology, Shia Theology, Islamic Studies, Arabic language and  
2 literature, Persian, Urdu law.' These are the few institutions in India that protect Urdu, which  
3 as Your Lordship knows in the 8th Schedule symbol. When I went to Pakistan My Lord, they  
4 have protected Urdu in a way in which we haven't. Of course I have a quarrel with the 8th  
5 Schedule node. English is now an Indian language whether we like it or not, it is. You look at  
6 the literature, you look at the poetry, you look at everything My Lord, all the proceedings of  
7 this court. There's no point taking this anticolonial view that, English is as much in Indian  
8 language and developed as an Indian language. My friends in England, My Lord, used to say,  
9 you have twisted the English language and adopted it as your own. Which is true My Lord.  
10 And as Mr. Sibal points out, we do it better than them. But anyway My Lord, that's not the  
11 point. Then, My Lord, 21, at Sub-Clause 2 on page 23, graduates of other universities who have  
12 been educated for the last two years at the Muhammadan Anglo-Oriental College, link again.  
13 Then My Lord, kindly come over the page and we see the foundation members who are part,  
14 My Lord, of the court. I won't read out the names, My Lord, Your Lordship will just note them.  
15 My Lord... giving degrees through first Calcutta and then Allahabad.

16

17 **KAPIL SIBAL:** Was affiliated to Calcutta.

18

19 **RAJEEV DHAVAN:** Affiliated and also...

20

21 **KAPIL SIBAL:** Later on with Allahabad

22

23 **RAJEEV DHAVAN:** Allahabad, that's right.

24

25 **CHIEF JUSTICE D.Y. CHANDRACHUD:** From Surat also. There's somebody from Surat.

26

27 **RAJEEV DHAVAN:** So My Lord.... I'm sorry.

28

29 **KAPIL SIBAL:** Minority college, it can get affiliated to a university and get a degree from  
30 there. But in the case of a university, that cannot happen. So if you want.. and without a  
31 university degree, you can't get employment. So the real problem is if you say that, I should  
32 have continued as an minority institution, nobody would have been employed. Because you  
33 have to get a degree, and that degree has to be recognized. So if you are a university, it's the  
34 Act itself that must confer that this is the issue, at the heart of the problem.

35

36 **RAJEEV DHAVAN:** Section 6.

37

1 **TUSHAR MEHTA:** But it was affiliated with...

2

3 **KAPIL SIBAL:** Correct. I am saying that as a college, but once you create a university, once  
4 you create a university, it can only be done by statute. There is no other way to do it. **Basha**  
5 says, you can have a university, but that degree will not be recognized. But that's not the answer  
6 to the question, because if that is not recognized, why would you have a university.

7

8 **RAJEEV DHAVAN:** The importance of **Azeez Basha** is saying that universities are a part  
9 of Article 30. It says so in so many words and that they have a right to be recognized by a  
10 minority. If that is so, we can't say tertiary education is beyond the scope of 30. Now, the fact  
11 that there were degrees through affiliation is really a relevant topic because of the negotiations  
12 that took place. You take my property, you take my people, you take the students, you take  
13 everything and the staff, because it was essential. Of course, there was no Article 30, but apply  
14 Article 30 to **Azeez Basha** under the '20 Act. The whole point is the purpose of the Act was  
15 Muslim in character and the purpose was nowhere to be found in **Azeez Basha**. Now, My  
16 Lords, just note the pages. I just want to take Your Lordship to my submission at page 61.

17

18 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Page?

19

20 **RAJEEV DHAVAN:** Volume 1-A.

21

22 **CHIEF JUSTICE D.Y. CHANDRACHUD:** What page Mr. Dhavan?

23

24 **RAJEEV DHAVAN:** 61. Sorry, 60. Shall I continue after lunch?

25

26 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Yes. We can resume after lunch.

27

28 **KAPIL SIBAL:** My Lord, I want to upload my submissions.

29

30 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Certainly, give them to the Nodal Counsel and  
31 make them a part of the compilation.

32

33 **CHIEF JUSTICE D.Y. CHANDRACHUD:** I'm sorry to keep all of you waiting. Actually,  
34 both Justice Khanna and I were in a meeting with the members of the Bar. Senior advocates  
35 designation. So, this is something very important to the Bar. Just the preliminary groundwork  
36 which has to be done.

37

1 **RAJEEV DHAVAN:** This point one must ask for a trade-off, as I mentioned earlier. But I'm  
2 very fearful of that. Because, when we were arguing 370, they gave me water and I said  
3 "whiskey", and I got calls from Singapore and all over India, was there whiskey in the glass or  
4 not. Now, I want to take Your Lordships to the Statement of Objects and Reasons. I'm still on  
5 the purpose point, which is in Volume 4(a).

6  
7 **CHIEF JUSTICE D.Y. CHANDRACHUD:** So, submission we'll look at. Please have a seat.  
8 Please have a seat Dr. Dhavan. Look at the, look at the antecedent history of the institution,  
9 one, the purpose of this statute and place the provisions of the statute in the backdrop of the  
10 antecedent history and its purpose, and the mere fact that the statutory provision somehow  
11 restricts what a minority institution could otherwise do in the absence of the statute, would  
12 not be a ground to deny its status as an Article 30 institution.

13  
14 **RAJEEV DHAVAN:** And that's the point about recognition also.

15  
16 **CHIEF JUSTICE D.Y. CHANDRACHUD:** And recognition and affiliation, you have to  
17 apply according to you for recognition. Otherwise, your degrees will never be recognised.

18  
19 **RAJEEV DHAVAN:** Even for schools, where they depend on aid.

20 **CHIEF JUSTICE D.Y. CHANDRACHUD:** That's the submission, really.

21  
22 **RAJEEV DHAVAN:** Even there, My Lord.

23  
24 **KAPIL SIBAL:** Colleges too.

25  
26 **RAJEEV DHAVAN:** Colleges. In fact, the whole part of *Inamdar* relates to aided and  
27 unaided. But provided, aided don't lose their minority character. May I sit down? I am very  
28 sorry.

29  
30 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Yes, Dr. Dhavan. Please have a seat.

31  
32 **RAJEEV DHAVAN:** Volume 4(a), page 88.

33  
34 **CHIEF JUSTICE D.Y. CHANDRACHUD:** You were reading actually, Volume 1(a), page  
35 60, I think.

36  
37 **RAJEEV DHAVAN:** I'll come back to that.

1 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Okay. So, we look at Volume?

2

3 **RAJEEV DHAVAN:** 4(a) at page 88. Your Lordships have it?

4

5 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Yes.

6

7 **RAJEEV DHAVAN:** This is the Statement of Objects and Reasons to the 1920 Act. 4(a).

8 My Lords, the printed version is on 87. This is easier to read, because it shows the nexus that  
9 I was talking about. The Muslim University Association, having requested the foundation of a  
10 University and certain funds and properties being available to the said, it was proposed to  
11 dissolve the Association and the Muhammadan Anglo-Oriental College, Aligarh and to  
12 transfer the property of those societies to a new body called the Aligarh Muslim University.  
13 The present bill is designed to incorporate this University to indicate its functions, to create  
14 its bodies and to define its function... It also secures the university the assurance of a  
15 permanent endowment to the Government.

16

17 **CHIEF JUSTICE D.Y. CHANDRACHUD:** And the necessary part of control.

18

19 **RAJEEV DHAVAN:** And the necessary part of control. The University and the teaching  
20 residential type in accordance with the recommendations of the Calcutta University  
21 Commission, the University will not include intermediate classes, but the University will have  
22 the power to maintain intermediate...to establish and maintain intermediate colleges and  
23 schools at Aligarh. They're almost there My Lord. The degrees conferred will be recognized by  
24 the Government. Special features of the University will be imparting for Muslim religious  
25 education to Muslims and the inclusion of the Department of Islamic studies. The Bill provides  
26 for the making 3, the general terms My Lords on page 89 of the Bill and Statutes have at  
27 various times been discussed with the representatives or the Muslim University Association.  
28 That's the purpose. Now My Lords I'll come to my written submissions.  
29 I have My Lord, in my summary, what the reference is really about, I've given a short  
30 paragraph. And then...

31

32 **JUSTICE SANJIV KHANNA:** This is 60 of your written submissions?

33

34 **RAJEEV DHAVAN:** This is my written submission.

35

36 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Also, when we use the expression, Article 30  
37 uses the expression "establish and administer."

1 **RAJEEV DHAVAN:** Yes.

2

3 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Now, there is no absolute standard of  
4 administration, that you must administer 100%. And even that 100% will be an elusive  
5 standard. So, to make Article 30 effective, we do not have to postulate that the administration  
6 by the minority has to be an absolute administration. In that sense today, in a regulated  
7 society, in a regulated state, nothing is absolute. Every aspect of... virtually every aspect of life  
8 is regulated in some way or the other. So, merely because the right to administer is regulated  
9 by a statute and to a certain extent is not untrammelled, does not detract from the minority  
10 character of the institution.

11

12 **RAJEEV DHAVAN:** That's the point we were making, I am grateful. That is the essential  
13 point. And then you add "of their choice."

14

15 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Of their choice. And it's establish, "establish"  
16 means, you must have founded it, as you said.

17

18 **RAJEEV DHAVAN:** Right.

19

20 **CHIEF JUSTICE D.Y. CHANDRACHUD:** And that is a little more objective, but  
21 administration, I mean administration in that sense there's no statutory definition or  
22 constitutional definition of the expression "administer."

23

24 **KAPIL SIBAL:** The Courts have held what it means.

25

26 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Yes, the Courts have held what administration  
27 means. But if that right of administration is regulated itself by statute...

28

29 **RAJEEV DHAVAN:** My Lord, it can't be that it'll all be Muslim, Muslim, Muslim. It just  
30 simply cannot be, because after the Constitution, all the Universities have a liberal element in  
31 them. Please give representation to students, representation to teachers. All that is there, My  
32 Lords, in our university statutes.

33

34 **CHIEF JUSTICE D.Y. CHANDRACHUD:** These things are very clear. You don't have to  
35 be administering only religious courses. You can be administering a purely secular educational  
36 institution.

37

1 **RAJEEV DHAVAN:** That's right.

2

3 **CHIEF JUSTICE D.Y. CHANDRACHUD:** That's one. Second, the law is not that you have  
4 to admit only students of your community. You can admit students of all communities, without  
5 forsaking, because it's the light of establishment and administration. So, that's the second  
6 important ingredient. And therefore, a minority institution does not lose that character  
7 according to your submission, merely because various aspects of its existence are regulated by  
8 statute, including aspects relating to the administration of the institution. The state, in public  
9 interest is entitled to regulate, or the state Legislature or Parliament, as the case may be, is  
10 entitled to regulate administration in public interest to ensure that the conditions of service of  
11 the teachers are fair, that the staff of the institution is not maltreated or not deprived of basic  
12 conditions of service. There will be a variety of administrative requirements which the state  
13 can impose or the minimum requirements for the allotment for the conferment of degrees,  
14 standards of examination, standards of syllabus, the curriculum, that's all regulated by the  
15 state, but that does not detract from the... because that's applies across the board, irrespective  
16 of whether you are a minority or a non-minority institute.

17 **RAJEEV DHAVAN:** That's right. And that's why I said, in the beginning, we accept that it  
18 must be institutions of excellence and all the other regulatory features statute must apply.  
19 With one caveat My Lord, which is repeated again and again, that the right to administer does  
20 not mean the right to mal-administer. That's very important. It comes in *Kerala Education*  
21 and then of course, My Lord in *T.M.A. Pai*. Just to get this purpose, et cetera, point dealt  
22 with, page 60, because in our respectful view, the reference has to be culled out by Your  
23 Lordships, because it mentions the Minority Act, it mentions the University Act indirectly. So  
24 all that has to be culled out, we've said, was *Azeez Basha* right in accepting the antecedent  
25 historical data on AMU's Muslim character, but denying its constitutional significance while  
26 deciding the issue, of its minority status, which is at variance with *St. Stephens, Proost* and  
27 *Patro*. Because they recognize antecedent history and just give it the go-by. That point about  
28 Nexus and continuity... origins. What is the origin? In *St. Stephen's*, they go right through  
29 the origins, and they even say, you look at the buildings and they are quite clearly, Christian  
30 in character. Now, My Lord...

31

32 **JUSTICE SANJIV KHANNA:** Mr. Dhavan, just one thing. This you are raising it in the  
33 context of Aligarh Muslim University. What will be the position post the enactment and  
34 enforcement of the Constitution?

35

36 **RAJEEV DHAVAN:** Yes, of course.

37



1 **JUSTICE SANJIV KHANNA:** With regard to universities which are established or founded  
2 thereafter?

3

4 **RAJEEV DHAVAN:** What we have seen is that a large number of deemed Universities under  
5 the UGC Act and the other statutes, they've been declared to be minority institutions, despite  
6 **Azeez Basha**. And therefore, My Lord, we have to look at this now also, as I will point,  
7 through the constitutional lens, which is the question Your Lordship put to me, on Article 30.  
8 And, liberal education has to be combined with the religious education. May I proceed?

9

10 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Yes.

11

12 **RAJEEV DHAVAN:** 60, My Lord. I have dealt with this, but just as a preface to the next  
13 argument. "The Muhammadan Anglo-Oriental College was the nucleus of the appellant  
14 University". This is what **Basha** says. The founders had from the very beginning desired to  
15 incorporate MAO Colleges as a University and grant degrees that are recognized by the  
16 Government. The Muslim community largely contributed the funds necessary to incorp MAO  
17 into a University. The founders had long negotiations with the Government to introduce a  
18 legislation and establish the incorporate... the MAO College. Nonetheless, both Courts have  
19 held now in Allahabad that the appellant University was not a Muslim university. The word  
20 "establishment", is followed almost mechanically. Now, come to the antecedent history. I'll  
21 run through it very, very fast. I realise time is of the essence. Now My Lord, come to 61. We  
22 have divided the antecedent history into three phases. From '70 to '77, where the earlier idea  
23 of such setting up a University for the Muslim community for the betterment and advancement  
24 took place, and when MAO College was established. From '77 to 1910, the Muslim community  
25 rallied to convert MAO University, and due to their efforts, the Government, in principle,  
26 agreed to convert the college. And from 1910 to 1920, where the founders from the Muslim  
27 University actively engaged with the Government and succeeded in their desire to convert and  
28 incorporate the MAO college. The vision, My Lord, in the first phase... I'll just quickly run  
29 through it. Your Lordships may read it through because I don't want to go too much. In the  
30 first phase, in 1870, Sir Syed established the Committee for the better diffusion and  
31 advancement of learning amongst Muhammadans. The Committee sought the views of the  
32 Muslim community as to why the Muslims were not availing western education, and it was  
33 found that this was due *inter alia*, lack of religious education, non-consultation with minority  
34 Muslim. Thus, the idea of an educational institution managed by Muslims for the benefit of  
35 Muslims with religious instruction received support. Then 1871, the MAO College is  
36 established. Over the page in 62, when the Committee says, "the object of the Committee shall  
37 be to collect funds towards the establishment of the college, particularly one for the education

1 of the Muhammadans, as suggested by the Central Committee for better diffusion and  
2 advancement of learning amongst Muhammadans". Now, the Committee resolved to establish  
3 the Madrasa Uloom, Madrasa being a term for education, at Aligarh, which was subsequently  
4 inaugurated. This was the first step realizing the vision of a university. Then My Lord, the  
5 Madrasa established the MAO college. And then, I'll just say what the Governor General says.  
6 From the seed which we sow today may spring a mighty decree whose branches like the banyan  
7 of the soil, shall in their turn strike firm roots into the earth and send forth the new vigorous  
8 sapling. That is, the college may expand into a university. So this is the other element My Lord.  
9 As Your Lordship pointed out, it's not just Muslim education it has to be more than that. And  
10 after the Constitution, certainly so. Then, Rules and Regulations of MAO say object of the  
11 college shall be primarily the education of Muhammadans. Then first, only the Muslim  
12 community was involved in the administration and I mentioned the select committee and the  
13 rules for guidance of the MAO College. Over the page My Lord. The second phase, consists of  
14 the Syed, 7.6.1, seeking the Government support for the Muslim community and looking upon  
15 a degree as a means to success and Government jobs as recorded by Altaf Hussein Hali in his  
16 biography of Sir Syed. In further of the written address was presented to the College Fund  
17 Committee to the Viceroy, by far the greater portion of your funds and endowments naturally  
18 derived from members of your race and creed, someday, when our endowments are richer and  
19 our schemes are completed, we hope to ask to confer upon us the legal status of an independent  
20 University. The funds, come from. Then My Lords, that's recorded in this book, in 1898, a  
21 memorial fund was created to raise funds for incorporating MAO College, and this proved to  
22 be a success. 1,27,000, was an enormous amount in those days. I remember My Lord, the  
23 amount we used to get in my school, was only Rs. 2 per week. It was huge. So we have got to  
24 inflation prove this. Now, at the bottom of that page, those and other affairs by the Muslim  
25 community resulted in substantial funds collected for the establishment of the University.  
26 Then there was an address that was given when they met the Viceroy. His ideals and those of  
27 Sir Syed with regard to the expansion of the colleges are [UNCLEAR], the view is the ultimate  
28 development for the formation of a Muhammadan University of which the idea was strongly  
29 supported by the late Justice Mahmood, son of Sir Syed and by Morison, our last Principal.  
30 The former indeed...the former may be indeed to have said, to have formulated, if not fathered  
31 the University scheme while the latter developed it in numerous writings. Now this is the great  
32 Justice Mahmood My Lord, as Your Lordships knows. The privy council saw his judgments  
33 and said, you please become High Court judge. After that, he delivered I think eight significant  
34 judgments, and then he resigned, to get himself involved in this process. Now, My Lord, we  
35 come to the third phase, which is important. In 1911, the [UNCLEAR] Muhammadan  
36 University Foundation Committee, now this is important, was constituted for converting MAO  
37 College into a Muslim University with the Raja Saab of Mahmoodabad as the President. On

1 the recommendation of Government of India dated 1911, the Secretary of State approved in  
2 principle, the establishment of a University at Aligarh, subject to provisions of adequate funds  
3 and control. 1911 again, the Government of India specified that a university could be  
4 established only through a Bill in the Legislative Council. Over the page My Lord.

5

6 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Yes.

7

8 **RAJEEV DHAVAN:** Then, My Lord in 1911, page 65 or rather PDF 65, where an institution  
9 styled as Muhammadan Oriental College was founded by Aligarh in 1875 under the leadership  
10 of Sir Syed Ahmed Khan Bahadur with the special object of promoting the diffusion of western  
11 science and literature and are training the character of students by a scheme adapted to meet  
12 the special requirements of the Muslim community. Both My Lord, a liberal education as well  
13 as the demands of the Muslim community. And whereas from the beginning the object of the  
14 founder and the Muslim community was to raise such college to the status of a university,  
15 whereas a memorial had been presented to the Government by the trustees of the said college  
16 and other representatives of the Muslim community praying for the erection of a Muslim  
17 University and inviting advantages, inviting attention to the advantages the University would  
18 have, which would confer, would confer on their community to the inadequate representation  
19 of which their community had an existing to the enthusiasm which their own University would  
20 create amongst the Muslims. And then My Lord, and to the need for religious teaching and  
21 protection. So, the fact as we had pointed out in an interruption, that MAO College could still  
22 get degrees, that's not the only point My Lord. The point is of substance, a liberal education,  
23 along with the concerns of the Muslim community. Then 1911, the Secretary of State says,  
24 sanctioning a University at Aligarh will be a source of enlightenment and prosperity of the  
25 Muslim community and will crown and continue the hopes of Sir Syed Ahmed Khan. The  
26 negotiations continued, My Lord. And then Your Lordships will see, that five lines from the  
27 bottom on 65, in an intervening letter dated 09-10-1912, the education members specifically  
28 mentioned that the movement was started without reference to Government and that the hope  
29 of Sir Syed to convert Aligarh into a teaching and residential University, and his hope had been  
30 repeatedly expressed since the leading Muhammadans and others are connected with the  
31 college. Also note that the draft Constitution stated from the beginning the object of the  
32 founder and the Muslim community, was to raise the college to the status of a university. 1915  
33 My Lord, practical shape was given to this and the MAO Annual Report, I won't read it My  
34 Lord, and it says the conversion should be there. Then My Lord, 8 is important on page 66.  
35 The Muslim community raised 30 lakhs for the University as required by the Government. So,  
36 this is the interaction, the money was raised by the Muslim community, and this My Lord, you  
37 find reference in the statute and in Section 7. Now after extended negotiations, the Muslim

1 University Bill was prepared in 1990, referred to the Select Committee. The Select Committee  
2 submitted its report to 02-9-19 at the 2nd of September, the Muslim community's  
3 predominant role in the University administration is clear from the debates. In reference to  
4 the constitution of the Court, we have retained the provision that no person other than  
5 Muslims shall be members. We have done this because we understand such a provision is in  
6 accordance with the preponderance of Muslim feeling. Then My Lord, the matter comes to the  
7 Legislative Council. Before putting the question, I would like to add congratulations to the  
8 Muslim community on the passage of the Bill. I have come, especially this morning, to preside  
9 that I may add good wishes, et cetera. Then, the University Act of 1920, was a Statement of  
10 Objects and Reasons which I've read to Your Lordships. It is just not the degree as they said,  
11 you could do it before 1920, it's a wholesome University with liberal education and the  
12 concerns of Muslim theology, et cetera. Now all this, what **Azeez Basha** does, it says that in  
13 the Select Committee, there was some disagreement on this. That's not how to read a Select  
14 Committee. I pointed that out to Your Lordships. Now, My Lord, I have 7.8, is just important  
15 because, Your Lordship doesn't look just at the *de jure* situation. Also, the *de facto*, and this  
16 we have pointed out, that the members of the first court were Muslim. 8 to 12 members were  
17 Muslim. Every Chancellor to date had been Muslim. 34 out of 37 Vice Chancellors have been  
18 Muslim. The vast majority of the members of the Court, Executive Council, Academic Council  
19 and Executive Council, have all been throughout, Muslims. Now you want to take all that  
20 away? Because when appointments were made by the Government, they made sure that the  
21 appointments conform to the Muslim character. Then My Lord, I have already read, because,  
22 **St. Stephens** looks at the emblems My Lords. I just want to do 7.9. When this was argued in  
23 Allahabad, Siddhartha Shankar Ray gave three Volumes. And the court said, yes, of course, it  
24 is Muslim in appearance. But we are bound by **Azeez Basha**. Now, the history background  
25 is... architecture of the building, such as a deep green colour, Quranic inscription clearly show  
26 the Islamic character. Photos were shown to evidence to the division bench. The emblem of  
27 AMU contains a Quranic verse. The university has a university mosque. After the amendment  
28 was allowed to establish halls, hostels, special centres, specialized laboratories only within 25  
29 kms of the university mosque. The university employs Muezzins. At its inception, the MAU  
30 had departments of study, Sunni theology, Islamic studies, Persian and Urdu, studies for  
31 Islamic medicine, all that I've read to Your Lordships. I don't need to read it further. Now, all  
32 these documents are in there. I don't want to take Your Lordships through them. I've just  
33 summarized them and to answer the argument sort of raised, it's just degrees. You could have  
34 done it before. No. You wanted a university, and you wanted a liberal education. Your  
35 Lordships point it can't be full and complete control. It can't My Lord, especially after the  
36 Constitution. And administer, My Lord, has to be considered. Now, My Lord, I'll read some  
37 judgments, including **T.M.A Pai** and **Mother Provincial**. This Your Lordships will find in

1 Volume 5(a). This will answer My Lord Justice Khanna's question to some extent. Pre-  
2 constitution, post-Constitution, the change and the requirements. Now, **Kerala Education**  
3 **Bill**, I'll be, in 5(a). I'll be very fast My Lord. Starts at page 4, but I'll go straight to 71. I'm sorry.  
4 I missed out on page 60. That is somewhere halfway down. "There is no reason why the benefit  
5 of Article 30(1) should be limited only to educational institutions established after the  
6 commencement of the Constitution". The language employed in 31 is wide enough to cover  
7 both pre-Constitution and post-Constitution institutions. Then, My Lord, 61 is very important.  
8 This is about 15 lines from the top. The sentence beginning, to say that an institution which  
9 receives aid, on account of its being a minority educational institution must not refuse to admit  
10 any members of the other community only on the grounds therein mentioned. And then to say  
11 that as soon as such an institution admits such an outsider, it will cease to be a minority  
12 institution. It is tantamount to saying that minority institutions will not, as minority  
13 institutions, be entitled to aid. Now comes the important part. The real import of Article 29(ii)  
14 and 30(1) seems to be that it clearly contemplates a minority institution with a sprinkling of  
15 outsiders. Let me pause here and get into it. My Lords that sprinkling now, after **St. Stephen**  
16 has gone up to 40%. **St. Stephen's** says you can go to that extent. And of course, My Lords,  
17 this is modified by **T.M.A. Pai** says it may not be 50%. It will depend on the needs of the  
18 institution. Then, by admitting a non-member into the minority institution does not shed its  
19 character and cease to be a minority institution, indeed, the object of the conservation of  
20 distinct language, script, culture of a minority may be better served by propagating the same  
21 amongst non-members of the particular community. In our opinion, it is not possible to read  
22 this condition into Article 30, subclause 1. Then My Lords, page 62 comes the important  
23 pronouncement of the words "of their choice." This is just below halfway. I will go just halfway  
24 down. The key to the understanding of the true meaning and implication of the Article under  
25 consideration are the words...has Your Lordship got it? ..."of their choice." It is said that the  
26 dominant word is "choice" and the content of that article is as wide as the choice of the  
27 particular minority may make it. The ambit of the rights conferred by Article 30(1) therefore,  
28 have to be determined. It should be referred... to be determined on...misprint My Lord by  
29 Article 30(1) and therefore to be determined... therefore to be determined on a consideration  
30 of the matter from the point of view of the educational institution. Now all this somehow,  
31 **Kerala Education Bill** was before **Basha**. The foundation had been laid here and the  
32 analysis of Article 30(1) is missing in **Azeez Basha**. It just goes by "established" or  
33 "administered", doesn't look at the question of choice. Now **Kerala** is a seven-judge decision  
34 binding on **TMA Pai** for the interpretation of 30. Now My Lords, 71. This is halfway down  
35 because now, where it begins, we have already observed that Article 30(1) gives two rights to  
36 the minorities to establish and to administer educational institutions of their choice. The right  
37 to administer cannot obviously include the right to mal-administer. The minority cannot

1 surely ask for aid or recognition for an educational institution run by them in unhealthy  
2 surroundings without any competent teachers possessing any semblance of qualification and  
3 which does not maintain even a fair standard of teaching, and with teaching matters  
4 subversive of the welfare of the scholars. It stands to reason that the constitutional right to  
5 administer an educational institution of their choice doesn't necessarily militate against the  
6 claim of the State to insist that in order to get grant, the State may prescribe reasonable  
7 regulations to ensure the excellence of the institution to be aided. Learned Attorney General  
8 conceded that reasonable regulation may certainly be imposed. So, both aspects My Lords,  
9 excellence... These are not ghettos. Excellence and application of the General Law. Then, if  
10 Your Lordships will come to 72. It says at the top of 72, what the State says, I have money and  
11 I shall distribute it, but I shall not give you any of the unless you surrender to me your right to  
12 administration. Then the State must not grant aid in such manner, as will take away the  
13 fundamental right of the minority community under Article 30. Then about one-third from  
14 the bottom, no educational institution can, in actual practice, be carried out without aid from  
15 the State and if they will not get it unless they surrender their, if they will not get unless they  
16 surrender their rights, they will by compulsion of financial necessity, they will be, ...They will  
17 be compelled to give up their rights. So, My Lords, this whole question of recognition, aid, you  
18 don't surrender rights. 76, My Lords. This comes to the question of recognition, My Lords.  
19 **Azeez Basha** says, look, it's a Section 6. they're saying recognition that's by the State. Now  
20 My Lord, about just half, last one-third... Then, about, just below halfway, without recognition,  
21 **Azeez Basha** says you got recognition from the State, therefore you surrendered your rights.  
22 In a sense, it's implying that, without recognition, therefore, the educational minorities  
23 established or to be established by the minority communities cannot fulfil the real objects of  
24 their choice, and the rights under Article 30, cannot be effectively exercised. The right to  
25 establish national educational institutions of their choice must mean the right to education, to  
26 its right to establish real institutions, which will effectively serve the needs of their community  
27 and the scholars who resort to their institution. There is no doubt that there is no such thing  
28 as a fundamental right to recognition by the State, but to deny recognition to educational  
29 institutions, except upon terms tantamount to the surrender of their constitutional right of  
30 administration and their constitutional... of their constitutional right of administration... of  
31 the educational institutions of their choice, and in effect, to deprive them of their rights under  
32 Article 30. So, recognition in the 1920 Act, can't be read as something that the Government  
33 gave you. But it is your right. It can't take it away, and it's quite clear here. We repeat that the  
34 legislative power is subject to fundamental rights, and the Legislature indirectly take away and  
35 abridge the rights, which it could not do directly and yet will be the result of the said Bill  
36 containing any offending clause becomes law. Now My Lords, this is the foundation of the  
37 interpretation of Article 30, totally ignored by **Azeez Basha**. This is a seven-judge bench, My

1 Lord. There is something in the *Kaveri* reference, where Your Lordship said, is it binding on  
2 us or is it not, My Lord. I think the wisdom now is that even the reference puts points of law.  
3 Now My Lord, 94, I come to *Sidhajibhai*.

4

5 **JUSTICE SANJIV KHANNA:** Mr. Dhavan, my question was slightly different. My question  
6 was...

7

8 **RAJEEV DHAVAN:** Your Lordship's voice is so soft.

9

10 **JUSTICE SANJIV KHANNA:** Okay. Now, is it clear? Probably...

11

12 **RAJEEV DHAVAN:** Yes, much better.

13

14 **JUSTICE SANJIV KHANNA:** Yes. Okay. My question was slightly different. It arose from  
15 your argument that now, for a university, a statute is required. Now, the establishment, post  
16 the independence, after the 1956 UGC Act [UNCLEAR] will be under a statute. Now, when  
17 that is so, will this argument still hold good, what your argument is, you're raising today?  
18 Because, there, it's a Legislature there who's creating or enacting the statute. Then will you say  
19 the foundation is not by the statute? Yes, there could be cases of colleges, because colleges can  
20 be established by minorities. There's no difficulty on that. But your argument with regard to  
21 university, because it's to be established by the statute, then what will be the position?

22

23 **RAJEEV DHAVAN:** I had indicated to Your Lordships that, 'establish' cannot be given the  
24 narrow meaning, that it's established by statute. I indicated that you had to look at origins.  
25 You had to look at nexus. You had to look at numerical. This is the criteria. Now, if you take it  
26 all into account, the question is, will the UGC Act override Article 30? No. The fact that there  
27 is a requirement of statute will not offend Article 30. And then, as I indicated, Mr. Dwivedi  
28 was Amicus in the *Yashpal* order, where he said, you interpret the UGC Act as "by and under"  
29 for every statutory authorities, deemed universities are covered. They are under, by or under.  
30 Therefore, you cannot have a university, you cannot have a university without degrees, without  
31 it and therefore, My Lord, you can't read down, with the UGC Act, you can't read down Article  
32 30. And then Your Lordships have seen in the reference in 2019, the National Minority  
33 Education Act, says you have a right to a minority institution. So, Your Lordship's question  
34 may lead to an extrusion of tertiary education. Then the question of "of their choice" comes  
35 up. I don't know if I've fully answered it. And My Lord, the private universities have come up,  
36 all under statute.

37

1 **JUSTICE SANJIV KHANNA:** As long as the statutes permit them, they will fall  
2 in...[INAUDIBLE]. But now, if this university is set up under the statute, if the statute itself  
3 says it's a minority university... then obviously, because the funding is done by the, or the  
4 establishment is done by the minority community and minority is a much wider term. Not  
5 restricted only to religious minority.

6  
7 **RAJEEV DHAVAN:** The statute will never say.

8  
9 **JUSTICE SANJIV KHANNA:** That's where the problem will come up.

10  
11 **RAJEEV DHAVAN:** No, it doesn't come up. Because in *St. David's*, it is certainly true of  
12 England, that you have the right to grant degrees, but you don't have a... it doesn't come in the  
13 Royal Charter. Your Lordships will take the statute as it is and then analyse whether it's a  
14 minority institution. That is antecedent to establish and administer.

15  
16 **KAPIL SIBAL:** If I may say so, that the establishment, if it is correlated to the statutes, is the  
17 wrong way to look at it. What the statute does is recognize, not establish.

18  
19 **JUSTICE SANJIV KHANNA:** I'm talking about the initial establishment.

20  
21 **KAPIL SIBAL:** Establishment is not establishment through an Act. My Lords, you establish  
22 something, it is recognized by the Act.

23  
24 **JUSTICE SANJIV KHANNA:** You're saying that statute itself is a recognition of what you  
25 have...

26  
27 **KAPIL SIBAL:** Yes, it's the recognition. The establishment happens. How does it get  
28 recognized? Because the statute says, you'll get a degree. That's the act of recognition. Without  
29 that, you won't get a degree. That's the answer.

30  
31 **RAJEEV DHAVAN:** Establishment of the fact that if the statute does establish or in fact,  
32 brings into being, which is, *Mother Provincial*, the fact that it brings into being will not  
33 militate under the minority right under 30. We can't whittle down Article 30, just because a  
34 statute exists. And that is a defect in *Azeez Basha*, followed by the *Allahabad High Court*.  
35 Now if I'm right, the learned Chief Justice does not want me to go into the *Allahabad*  
36 decision which is under appeal before Your Lordships. That would take a very long time. It's a



1 wonderful decision which says that dinner jackets have been exchanged for a *Sherwani*. Great  
2 fun to read, Chief Justice Roy. Is it saffron or is it green? That's what he asks.

3  
4 **[NO AUDIO]** (He may be confused mostly constitutional act if it is by legislation and  
5 university commission to exist won that being established. And then we give the parliament to  
6 the legislature does not describe it as a minority, then so be it 's not a minority which the  
7 answer is yes, he comes into existence by rendering of a statute he respects the UDS here. Then  
8 you have to read the statement. Objects of reasons of that. Particular statute as to why that  
9 statute of brought into existence either the community approaches the government can the  
10 community approach the government, like in this case, committee approaches the  
11 government. Government then accepts the representation leaks. The statute saying it is settled  
12 in today. In today's world, the persons have to approach a particular state concentrate on  
13 Saddaj vinyl. I think we did such an statue of Integral University which states that there will  
14 be provision for minority and there is integral universities established by Muslims and it is  
15 established through legislation Article 30 allows you to set up the universal it allows you to set  
16 up universities implement that allow me to do all that we discuss in the evening you read them  
17 better than I do absolute Gandhia the right of establishes fundamental rights is clearly  
18 declared in their terms absolute right the only thing is, it's been watered down national interest  
19 now in terms of regulation, not in terms of establishment, right? That's the difference and even  
20 so, that's not technical because the court says it regulating, you can have certain restrictions  
21 on that, on the regulatory pack, that is the whole regulation is section balance the question  
22 that) **[End of NO AUDIO]**

23  
24 **RAJEEV DHAVAN:** ...arises from Your Lordship's queries, is 30, establishment, the term  
25 establishment to be read in a narrow sense, so that it can be taken away by statute or in a wider  
26 sense, to define what a minority institution is. The subsequent decisions of the court My Lord,  
27 say read it in the wider sense. You go back to the history; you try and figure out what the nexus  
28 is. So ultimately, if Your Lordships are going to give Article 30 a narrow meaning by back to  
29 **Azeez Basha**. And everything goes My Lord. All tertiary education cannot be minority.

30  
31 **CHIEF JUSTICE D.Y. CHANDRACHUD:** At a certain level what happens when a statute  
32 takes over an erstwhile institution, whether it's a school, a college, and gives it a statutory form,  
33 this statute really converts it into a body corporate. Because what was erstwhile maybe just a  
34 society, governed by the society's Registration Act, is now given the statutory character of a  
35 body corporate with a permanent seal and permanent succession. Does that conversion of a  
36 society into a body corporate, so to speak under the provisions of the Act, deprive it of its  
37 minority character or is that merely only a matter of form, to convert the form, which was a

1 society into a body corporate? Or does that change in form completely destroy the minority  
2 character of the institution?

3

4 **RAJEEV DHAVAN:** Our respectful submission is, it is a mandatory form My Lord, that is...

5

6 **[NO AUDIO]**

7

8 **TUSHAR MEHTA:** [INAUDIBLE]

9

10 **CHIEF JUSTICE D.Y. CHANDRACHUD:** [UNCLEAR]

11

12 **RAJEEV DHAVAN:** Now My Lords, this is a fundamental question that Your Lordship has  
13 to resolve. **Azeez Basha** says, universities can be minority institutions. It also says, they must  
14 be done by statute. And if by statute, they go. This is the unresolved question, which Your  
15 Lordship has to examine. And along with something, which says at the end of Article 30, "of  
16 their choice." Therefore, you have to read establishment as not the be-all and the end-all of  
17 Article 30. It has to be read as a whole, where it says, "of their choice." And **Azeez Basha**  
18 says, your choice can be a university. And both in those days and now, if there is a statute, so,  
19 will it all disappear, My Lord? The entire tertiary education will disappear. Minority  
20 institutions. And therefore, My Lord, read the whole of Article 30, which is, I've already said,  
21 the words in **Kerala University**, because the narrow, everything turns on establishment.  
22 That is why **Mother Provincial** says it should be to found. You take all the factors as to what  
23 is founded by the minority. It may not be in the statute. In the **Delhi University** case, two  
24 cases were before the court, the **Allahabad Agricultural University** and **St. Stephens**  
25 and you don't find that in the statute necessarily, but you have to see who founded it. And Your  
26 Lordship as soon in **Patro**... as soon as you say, Christian. They said it's good enough to found.  
27 So don't..., in my respectful submission use established, because, as Your Lordship puts it, it's  
28 not a matter of form alone. It's a matter of enabling form. That enabling has to be there to  
29 come under 30. Then, My Lord, we get to the questions of substance and that is the argument  
30 we are advancing. My Lords let me take Your Lords to page 94, **Sidhajbhai**.

31

32 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Yes.

33

34 **RAJEEV DHAVAN:** I'm sorry. I'm going as fast as I can. Super speed. Now, page 113. It's a  
35 six-judge bench, just as **Kerala** was a seven-judge bench. My Lord, at end of the first para,  
36 **Kerala education** case, therefore, is not an authority for the proposition submitted by the  
37 Additional Solicitor General that all regulated measures which are not destructive or

1 annihilating of the character of the institution established by the minority, provided the  
2 regulations are in the national or public interest are valid. This argument is rejected, but you  
3 go to the extreme of saying was it annihilated? That's the wrong question. Then My Lord, the  
4 next para. The right established by Article 30(1) is the fundamental right in terms, absent.  
5 Now, My Lord, this was tweaked by **TMA Pai** to say national interest must come in. But as  
6 far as **Azeez Basha** is concerned, this was binding. Now, I come to the, it is intended to be a  
7 real right for the protection of the minorities in the matter of setting up of an educational  
8 institution of their choice. The right is intended to be effective and is not to be whittled down  
9 by the so-called regulatory measures conceived in the interest of, not a minority, but of the  
10 public and nation as a whole. Now, this was before the court. Now I come to the next question,  
11 which, My Lord the Chief Justice has put, that what are the implications of the actual  
12 substance of these institutions? The implications are, it must be an institution of excellence  
13 and this Your Lordship will find on page 114. This is the famous dual test, which is adopted by  
14 **TMA Pai** as well. Such regulation must satisfy a dual test. The test of reasonableness and the  
15 test that it is regulative of the educational character of the institution and is conducive to  
16 making the institution an effective vehicle of education for the minority community or other  
17 persons who resort to it. Now My Lord, I come to **Mother Provincial**, which has  
18 emphatically been accepted by **TMA Pai**. Now, this is on page 163, and the relevant paras  
19 which have been affirmed in **TMA Pai** are 8 and 9. I'll take Your Lordship straight away to  
20 that. Page 166. This is actually a spy master. It's spying on what we say to each other. Now, My  
21 Lord, kindly come to 8, it is very important.

22

23 **CHIEF JUSTICE D.Y. CHANDRACHUD:** You have to switch off the mic, or tell us to  
24 switch off your mic. We have...

25

26 **RAJEEV DHAVAN:** Your Lordship is right. Now, My Lord, kindly come to 8 at page 66.  
27 Article 30, what it means. Article 30(1) has been construed by this court without reference to  
28 those cases, it is sufficient to say that the clause contemplates two rights, which are separated  
29 in point of time. This is important. The first right is the initial right, to bring into being of an  
30 institution...

31

32 **CHIEF JUSTICE D.Y. CHANDRACHUD:** ...bringing into being of an institution.

33

34 **RAJEEV DHAVAN:** Sorry. The first right is the initial right to establish institutions of the  
35 minority choice. Now, when we read Article 30, we don't go straight to establishment. That's  
36 a consequence, it's my right. We first examine whether it was a minority institution or not.  
37 Then, establishment here means, the bringing into being of an institution, and it must be by

1 the minority community. The next sentence, important. It matters not, if a single  
2 philanthropic individual, with his own means, founds the institution if the community at large  
3 contributes to the funds. The position in law is the same and the intention in either case must  
4 be to found an institution for the benefit of the minority, by a member of that community. It  
5 is equally irrelevant that, in addition to the minority community, other minority... other  
6 minority or even from the majority community can take advantage of the institutions. Such  
7 other communities bring in income and they do not have to be turned away. Now come to 9.  
8 This now, I'm dealing with, after the **Azeez Basha**, I've dealt with before **Azeez Basha**,  
9 **Sidhajibhai and Kerala Education**. Now My Lord, 9. The next part of the right relates to  
10 the administration of institutions. Administration means, management of affairs at the  
11 institution. The management must be free of control so that the founders or their nominees  
12 can mould the institution as they think fit and in accordance with their ideas. I'm sorry, my  
13 spectacles are not working. And this idea of how the interests of the community in general and  
14 the institution in particular will be best served. No part of this management can be taken away  
15 and vested in another body without an encroachment upon the guaranteed right. Now in para  
16 109 of **TMA Pai**, this is affirmed. And it's a sea change My Lord, from the establishment  
17 version in **Azeez Basha**. You first look at, is it a minority institution, then you go further.  
18 Now, sorry, now, if Your Lordships will come to 10, this is where it says such regulations do  
19 not bear directly upon management, as although they may indirectly fail, yet the right of the  
20 State to regulate minority institutions, education, education standards and allied matters  
21 cannot be denied. The minority institutions cannot be allowed to fall below the standards of  
22 excellence expected of educational institutions or under the guise of the exclusive right of  
23 management to decline to follow the general patterns. And this applies also to management.  
24 A university doesn't become insular. That's very important that Your Lordships have  
25 mentioned, and nobody is arguing it should be insular. Then, I'll take Your Lordships straight  
26 away to **St. Stephens** and then **TMA Pai**, and I'm done with this part. Page 384.  
27 [INAUDIBLE] found, how do we approach it? It is there in **Proost** to some extent and **Patro**,  
28 but I'm coming straight to **St. Stephens**. Now, kindly come to page 4... No, please come to  
29 413. Para 29. There's a subheading, 'Origins and Purpose of St. Stephen's College'. I'm sorry if  
30 my reading is somewhat erratic. I'll try and be more careful. Now, Delhi University in this  
31 pleading has neither denied nor admitted the minorities of the college. Then My Lord, it says  
32 that, they argued that it was done by a foreign mission from Cambridge, and therefore, it was  
33 not entitled to the benefit of 30(1). 413, page 29, para 29. Then My Lord, it goes through, and  
34 I'm not going to read it, because, these are the factors that you take into account. The '81, a  
35 Christian Missionary College came. Members were in residence. The Cambridge Brotherhood  
36 wanted to establish a Christian college. Then all that is mentioned and the condition to the  
37 contrary is therefore, not correct. 'The purpose of starting the college...' this is halfway down

1 of this para... 'could be seen from the report of 1878 to Cambridge Brotherhood', and it states  
2 that the students after leaving St. Stephen's Mission College joined non-Christian colleges and  
3 lose touch with Christian teachings. The case would be otherwise, if we were to send them from  
4 our school to a college where the teachings would be given by Christians. That's at, Placitum  
5 (e). Now come to 30(1), which is important. Because, these are factors, there are  
6 environmental factors but they are important. And in Aligarh, it is writ large that this is an  
7 Islamic institution. 30(1) says, originally the college building was housed in hired premises  
8 paid by the SPG. A new building was eventually constructed by the Society for the Propagation  
9 of the Gospel, wherein the foundation stone bore the following inscription, "to the glory of God  
10 and the advancement of sound learning and religious education." The new building was then  
11 started in December 1881 and on the front of the porch at the top of the parapet, a cross in bas  
12 relief was displayed, and under the brackets, 'Ad Dei Gloriam', which has been inscribed since,  
13 and since adopted by the college. Today, the new college building campus has also a large cross  
14 on top of the main tower and, "to perpetuate and remind the students the motive and objective  
15 of the college, the Glory of God." This all emanates from "found." The primary right is "found."  
16 The consequential rights are "establish" and "administer." Now, 34, sums it up. 'It would thus  
17 appear that since its foundation in 1881, St. Stephen's College has apparently maintained its  
18 Christian character and would be evident from its very name, emblem, motto, establishment  
19 of a Chapel and its religious instructions in the Christian chapel for religious ceremony. This  
20 is the scope of inquiry. Now, My Lord, come to 417, para 41. It was contended that St. Stephen's  
21 College, after being affiliated to the Delhi University, had lost its minority character. In other  
22 words, when you come under statute under the Delhi Act of 1922, do you lose your character?  
23 So that's the statutory provision. Then it says the argument was based on some provisions of  
24 the Delhi University Act and the ordinance made there under. It was said that the students are  
25 admitted to the university and not to the college as such, but we find no substance in this  
26 contention. In the first place, it may be stated that the state or any instrumentality of the state  
27 cannot deprive the character of institution founded by a minority community by compulsory  
28 affiliation. Since Article 30(1) is a special right of minorities to establish educational  
29 institutions of their choice. The minority institution has a distinct identity and the right to  
30 administer with continuance of this identity cannot be denied by coercive action. Any such  
31 coercive action would be void, being contrary to the constitutional guarantee. The right to  
32 administer is the right to conduct and manage the affairs of the institution. This right is  
33 exercised by a body of person in whom the founders have faith and confidence. Such a  
34 management body cannot be displaced or reorganized if the right to be recognized, is to be  
35 recognized and maintained. So, recognition doesn't stand a, reasonable restrictions are  
36 permissible, but regulations should be of a regulatory character and not abridge the right  
37 under 30(1). So, here we see the intervention of statute. As a constituent college, it was

1 by/under the Act of 1922. Then, My Lord, if I may come to page 422? Para 54. I'm sorry. I  
2 didn't realize, Your Lordship was conferring. The minorities, whether based on religion or  
3 language have the right to establish and administer educational institutions of their choice.  
4 The administration of educational institutions of their choice under Article 30 means  
5 management of the affairs of the institution. This management must be free from control so  
6 that the founders and other nominees can mould the institution as they think fit and in  
7 accordance with their ideas how the interests of the rest of the community and the institution  
8 in particular will be served. Then My Lord, I would like to come... sorry, the next line. I'm  
9 sorry. The standards of education are not a part of management as such. The standard  
10 concerns of the body politic is governed by considerations of the advancement of the country  
11 and its people. Such regulations that do not bear directly on the management or they may  
12 indirectly affect it. The State, therefore has a right to regulate the standard of education and  
13 allied matters. Minority institutions cannot be permitted to fall below the standards of  
14 excellence expected of educational institutions. Now, they cite the cases, which I needn't cite,  
15 because they say this is now confirmed by a string of decisions.

16

17 **CHIEF JUSTICE D.Y. CHANDRACHUD:** This is in line with both the decision of Justice  
18 Hidayatullah and *Mother Provincial* and the judgment of Justice Jagannath Shetty in *St.*  
19 *Stephen's*. They don't refer to...they don't cite the judgment in *Basha*, they refer to all the  
20 other, because perhaps *Basha* in *that sense* is a little out of alignment with what was laid  
21 down in the other decisions. As you will see that Justice Hidayatullah, that passage you read  
22 out and actually, para 54 is a restatement of Justice Hidayatullah said in para 9 and 10.

23

24 **RAJEEV DHAVAN:** Absolutely.

25

26 **CHIEF JUSTICE D.Y. CHANDRACHUD:** But Justice Hidayatullah refers to all the earlier  
27 cases, but doesn't refer to *Basha*..

28

29 **RAJEEV DHAVAN:** My Lords *Basha* is referred to in *St. Stephen's* but it doesn't do  
30 anything.

31

32 **CHIEF JUSTICE D.Y. CHANDRACHUD:** *Stephen's* refers to *Sidhajibhai, Bombay*  
33 *Education*...

34

35 **RAJEEV DHAVAN:** At para 24 page...

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37 **TUSHAR MEHTA:** *Basha* is on a fact situation.

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**CHIEF JUSTICE D.Y. CHANDRACHUD:** Yes.

**RAJEEV DHAVAN:** I think my learned friend is arguing his case already. Now My Lords **Basha**... Now My Lords Kindly just turned to 410. [INAUDIBLE]... on page 410. It mentions it in para 24. And para 25 says it's been superseded by **Patro**. My Lord para 24 on page 410. I won't read all of it because this we've done. Then, My Lord, 25. A couple of years after **Azeez Basha**, this court had another occasion to determine the nature of an ancient institution claiming to be minority. The decision, as per reported in **S K Patro** since it appears to be in close parallel with the case at hand, it would be useful to drive the contentions. Then My Lord, the contentions are there. And then what happened, in para 27. On appeal the judgment of the High Court was reversed by this court mainly on two grounds, that's at page 411. The High Court did not pay sufficient attention to that part of the evidence supplied by the petitioners, which was sufficient to justify the claim that local citizens had participated in the establishment and the school in question. Indian citizenship not being a condition of the application of Article 30, the protection there under could not be denied on this basis. So, My Lord, here we have a clear statement that if you take **Patro** into account, you have to look at the evidence and this court reversed it on that basis. Now, back to... May I continue?

**CHIEF JUSTICE D.Y. CHANDRACHUD:** Yes.

**RAJEEV DHAVAN:** Page 424. The bottom of the page, para 59. Lays the foundation for **TMA Pai**. The need for a detailed study on this aspect is not necessary. The right of minorities, whether religious or linguistic, to administer educational institutions and the power of the State to regulate academic matters and the management is now fairly settled. So, that regulation to bring it up to an excellent institution, is there, the right to administer does not include the right to mal-administer. The State being the controlling authority has the right to regulate all academic matters. Regulations which will serve the interest of students and teachers and to preserve the uniformity in standards of education among the affiliated institutions could be made. The minority institution cannot claim immunity against the general pattern or standards or general laws, such as the laws relating to law and order, health, hygiene, labour relations, social welfare, contract, tort, which are applicable to all communities. So long as the basic right to management is not taken away, the State is competent to make regulatory legislation. Regulations shall not have the effect of depriving the right of minorities, to educate their children in their own institution. That is a privilege which is implied by the right conferred in Article 30. 433. Now 433, para 80.

1 [NO AUDIO]

2

3 **CHIEF JUSTICE D.Y. CHANDRACHUD:** ... that you're not admitting only students from  
4 your...

5

6 **RAJEEV DHAVAN:** And those others who resort to it.

7

8 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Others who resort to it.

9

10 **RAJEEV DHAVAN:** That's the important part My Lord, *Kerala*. And now here. Otherwise,  
11 what will happen, it will become a communal institution, we don't want that. It's a kind of  
12 protection, and I've said in *St. Xavier's*, it is needed there, to avoid discrimination against  
13 the minorities. I won't go through, *St. Xavier's*. It's a very long decision. Now, kindly come  
14 to 80. Broadly speaking, 80 says reiterates *Kerala Education Bill* and therefore, now come  
15 to 88. I have just two more quotations from *St Stephen's*, which I feel that Your Lordship  
16 will indulge me. We are nearly at 4 o'clock. I will read and do *TMA Pai* tomorrow.

17

18 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Yes.

19

20 **RAJEEV DHAVAN:** Now My Lords, 88, since the receipts of a State at 435 does not impair  
21 the rights of Article 30(1), the State can lay down reasonable conditions for obtaining grant  
22 and aid for its proper utilization. The State has no power to compel minority institutions to  
23 give up their rights under Article 30. And then My Lords *Sidhajbai*. Then the regulation  
24 cannot change the character of the institution. Such regulations must satisfy that dual test My  
25 Lords, of reasonableness and excellence, reiterated here again. Now, kindly come to page 439.  
26 At the bottom of the page, para 102. Lord, may I just read it?

27

28 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Yes.

29

30 **RAJEEV DHAVAN:** Your time controllers are here, My Lord. 'In the light of all these  
31 principles and factors, and in view of the importance the Constitution attaches to protective  
32 measures to minorities under Article 30(1), the minority aided institutions are entitled to  
33 prefer their community candidates, to maintain the minority character of the institution,  
34 subject, of course, to conformity with the university standards. The State may regulate the  
35 intake... in this category and due regard to the need of the community in the area which the  
36 institution is intended to serve. But in no case shall an institution exceed 50%. The minority



1 institution shall make available at least 50%'. Now My Lord, from trickling, we have now  
2 recognized 50%. Of course, **TMA Pai** says, it's in the nature of the institution.

3

4 **JUSTICE SANJIV KHANNA:** Just read the last but one sentence, once again.

5

6 **RAJEEV DHAVAN:** Sorry, My Lord?

7

8 **JUSTICE SANJIV KHANNA:** Just read that last but one sentence, paragraph 102. The  
9 state...

10

11 **RAJEEV DHAVAN:** 'The minority institution shall make available', that one?

12

13 **JUSTICE SANJIV KHANNA:** Yes.

14

15 **RAJEEV DHAVAN:** At least 50% of the annual admissions to members of communities  
16 other than the minority community, the admission of such minority candidates shall be done  
17 perfectly on the basis of merit. Of course, in **St. Stephen's** they said, you can do an interview,  
18 which was crucial. Delhi University said, you can't do an interview. And although it was a...

19

20 **KAPIL SIBAL:** [INAUDIBLE]

21

22 **JUSTICE SC SHARMA:** So, please don't comment upon it.

23

24 **RAJEEV DHAVAN:** So, My Lords, I will stop here, if I may, and thank Your Lordships for  
25 your gracious acceptance of my taking the chair.

26

27 **CHIEF JUSTICE D.Y. CHANDRACHUD:** We'll re-assemble tomorrow morning.

28

29

30

***END OF DAY'S PROCEEDINGS***