

**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**  
**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

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10:50 AM IST

1 **KAPIL SIBAL:** Justice Surya Kant, I just want to... Your Lordship asked me that question on  
2 Section 22 of the UGC. Act. Kindly have a look at the UGC Act. Volume 4(a), PDF page 214.

3

4 **JUSTICE SURYA KANT:** Volume 4(a)? In which page number is this visible?

5

6 **KAPIL SIBAL:** Page 214, My Lords, Volume 4(a). Now, just read it. "The right of conferring  
7 or granting degrees shall be exercised only by a university established or incorporated by or  
8 under a central law, a provincial law, or a State Act or an institution deemed to be a university  
9 under Section 3, or an institution specially empowered by an act of parliament to confer or  
10 grant degrees". So as a matter of law, I can't get a degree. I can't. I can't be called a university  
11 unless I'm incorporated under the Central Act. Now, where does this provision come from?

12

13 **JUSTICE SANJIV KHANNA:** Mr. Sibal, please refer to Section 23.

14

15 **KAPIL SIBAL:** Yes.

16

17 **JUSTICE SANJIV KHANNA:** In this case, the proviso will apply.

18

19 **KAPIL SIBAL:** Yes.

20

21 **JUSTICE SANJIV KHANNA:** And 22 may not apply.

22

23 **KAPIL SIBAL:** "No institution, whether a corporate body or not, other than a university  
24 established or incorporated by or under the Central Act or a Provincial Act or the State Act  
25 shall be entitled to have the word university associated with... provided that nothing in this  
26 section shall, for a period of two years from the commencement of this Act, applied to an  
27 institution which immediately, before such commencement, had the word 'university'  
28 associated with its name".

29

30 **JUSTICE SANJIV KHANNA:** So what happens is, in this case, because it was already a  
31 university...

32

33 **KAPIL SIBAL:** Correct.

34

1 **JUSTICE SANJIV KHANNA:** ... by a Central Act, is the proviso which will come into play,  
2 and for a period of two years, there was hiatus. They could then apply and confirm, or the UGC  
3 will confirm their status as a university, and accordingly it will proceed. In this case, because  
4 it's more than that, because they were already included in the 7th Schedule in 363.

5

6 **KAPIL SIBAL:** I'm not... in that context.

7

8 **CHIEF JUSTICE D.Y. CHANDRACHUD:** 22 and 23 occupied different field. 22 deals  
9 with the right to confer a degree. 23 deals with the use of the expression, 'university' as part of  
10 your name.

11

12 **KAPIL SIBAL:** Absolutely. I pointed out 23. My Lord, pointed out 22. But My Lords, I have  
13 a different argument to make. What My Lord is saying is absolutely right. But my argument is,  
14 where does 22, 23 comes from?

15

16 **JUSTICE SANJIV KHANNA:** Just read 22(1) again.

17

18 **KAPIL SIBAL:** Very well. "The right of conferring or granting degrees shall be exercised only  
19 by university established by or incorporated by or under a Central Act, a Provincial Act, a State  
20 Act or an institution deemed to be a university under Section 3 of an institution specially  
21 empowered by an act of Parliament to confer or grant degrees". The question that Your  
22 Lordships ask... should ask yourself is, where does this come from? Where is this provision?  
23 What's the origin of this provision? And the answer is 19(6). Now, let's go to 19(6). Just go to  
24 19(6). That's to answer My Lord's question. Nothing in Clause... I'm sorry.

25

26 **CHIEF JUSTICE D.Y. CHANDRACHUD:** 23 refers to an institution which is not  
27 established or incorporated by or under a Central Act, Provincial Act or State Act. The  
28 substantive part of 23 says, you cannot use the expression, 'university' as part of your appeal.  
29 The proviso, however, contemplated that there may have been universities earlier...

30

31 **KAPIL SIBAL:** Earlier, yes.

32

33 **CHIEF JUSTICE D.Y. CHANDRACHUD:** ...which were using the expression, 'university',  
34 though they were not covered. They were not...

35

36 **KAPIL SIBAL:** You are given two years.

37

1 **CHIEF JUSTICE D.Y. CHANDRACHUD:** You are given... it's a sunset Clause.

2

3 **KAPIL SIBAL:** Absolutely right.

4

5 **CHIEF JUSTICE D.Y. CHANDRACHUD:** You're given two years to bring yourself in  
6 conformity with the UGC.

7

8 **KAPIL SIBAL:** Absolutely.

9

10 **CHIEF JUSTICE D.Y. CHANDRACHUD:** In this case, AMU is not within the proviso for  
11 this reason. AMU had already been constituted and an act of the then [UNCLEAR] legislature  
12 and which law continued in force after the Constitution under Article 372 of the Constitution.  
13 Those laws all continued post-independence. So it continued to be a statutory university. As a  
14 university governed by 23, it had the right to award degrees. That's how they acquired the  
15 right. But your argument is, without this, they wouldn't have had that opportunity to award  
16 degrees. Then, you would have had to go back to Allahabad University or some other university  
17 as it was before the...

18

19 **KAPIL SIBAL:** Absolutely. I'm deeply obliged to Your Lordships. But the point really is and  
20 this is a different point, and this really tells Your Lordships the interrelationship between 19(6)  
21 and 30. Where does this come from, regulation come from? It comes from 19(6). It comes from  
22 19(6), because education is an occupation. You cannot, in an occupation, do what you like.

23

24 **CHIEF JUSTICE D.Y. CHANDRACHUD:** But regulation may also be traceable to 30. For  
25 instance, you know, in the context of Article 301 of the Constitution, which is in part 13.

26

27 **KAPIL SIBAL:** But, that's on trade.

28

29 **CHIEF JUSTICE D.Y. CHANDRACHUD:** That's on trade. But our Court said that  
30 regulatory measures which facilitate trade are permissible under 301.

31

32 **KAPIL SIBAL:** But this was dealt with in *T.M.A. Pai*. The *T.M.A. Pai* said, 'no, it is  
33 occupation, it's not charity. It's occupation, but the surplus that you make, when you run an  
34 institution, must be ploughed back into the institution'.

35

36 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Actually, it may not arise here. Although, we  
37 are saying is, that the power to make regulations, though expressly referable to 19(6), is also

1 implicit in 30, because 30 our Court has said, 30 though absolute, cannot preclude the  
2 parliament or the state legislature, as the case may be, from making regulations which  
3 facilitate the character of the institution...

4

5 **KAPIL SIBAL:** That's under 19(6).

6

7 **CHIEF JUSTICE D.Y. CHANDRACHUD:** ...as an institution of excellence.

8

9 **KAPIL SIBAL:** That's under 19(6). *T.M.A. Pai* says that also. That regulation is under 19(6).  
10 That's why the absolute right is there, but the absolute right has to be regulated by standards.  
11 The absolute right is of the choice, means I can set up a school. The school will be regulated by  
12 the education.

13

14 **CHIEF JUSTICE D.Y. CHANDRACHUD:** That point you made yesterday that you can set  
15 up a primary school, a secondary school, a high school, an intermediate college, degree college  
16 or a...

17

18 **KAPIL SIBAL:** That's the choice. Now...

19

20 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Because a university is also an educational  
21 institution within the meaning of Article 30.

22

23 **KAPIL SIBAL:** So therefore, but that choice can't be so absolute that you can do what you  
24 like. So you have to be standard. You have to standardize your education in terms of the  
25 general standards set for all other educational institutions by the majority community or any  
26 other community.

27

28 **CHIEF JUSTICE D.Y. CHANDRACHUD:** And your argument really is this, which we'll  
29 hear the other side on, that if you apply, if you apply the expression 'administer' in a very strict  
30 sense, namely that there should be no outsider at all or exclude you on the ground that there  
31 are only 37 out of 180. A minority can never run a university.

32

33 **KAPIL SIBAL:** No, My Lords. In fact, it is contrary to judgments laid down by this Court,  
34 because this Court has said that you can have whatever secular education, it need not be only...  
35 St. Stephens had only 6% minority students at one point in time. Only 6%. Increased to 14%  
36 at some point in time and then this Court said, in St. Stephens... in *T.M.A. Pai* can go up to  
37 50%. It need not have said so. That's why our Kerala Education Bill is sprinkling of minorities.

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**CHIEF JUSTICE D.Y. CHANDRACHUD:** Also one very important circumstance. You can't read Article 13...

**KAPIL SIBAL:** Outsider. Outsider. No, sprinkling of outsider. Therefore, you could have outsiders, you do not destroy your minority status.

**CHIEF JUSTICE D.Y. CHANDRACHUD:** The object of Article 30, object of Article 30 is, if I may use the expression and don't take it otherwise, it's not to get over as the minorities.

**KAPIL SIBAL:** Yes.

**CHIEF JUSTICE D.Y. CHANDRACHUD:** So that, you know, you get other people also associated in the administration, it doesn't detract from your character...

**KAPIL SIBAL:** That's the point I was trying to make yesterday. Now, My Lords, in this university, just to get the facts right. This is... there are several departments that are run. For example, All India Council for Technical Education. We have to go to them for recognition.

**CHIEF JUSTICE D.Y. CHANDRACHUD:** For medical college, you go to the...

**KAPIL SIBAL:** For medical college, you go there. For the Dental Council, we go there. For pharmacy, we go there. For National Council for Teacher Education, we go there.

**CHIEF JUSTICE D.Y. CHANDRACHUD:** The law college will be governed by the Bar Council.

**KAPIL SIBAL:** Correct, Bar Council. And there are different elements of administration in that. In the Medical Council, how will we administer as a university? We would not have any expertise. So, we'll get outsiders to do it. Kindly see, the impact of administration is again my choice. I hope that I'm making myself clear. In some of these technical things, we'll have no knowledge. Especially in a medical college. So, we'll get people from outside and say, you please help us in doing this. And they may be in majority, but the choice is that I will say, "please come". That doesn't destroy the character of my institution. So, different standards will apply to different disciplines depending on the nature of the course that I am teaching. It is true of engineering as well.

1 **CHIEF JUSTICE D.Y. CHANDRACHUD:** The only difference here, we'll consider it. I  
2 mean, I'm not putting it as something against you, but a factor to be considered is that by the  
3 statute itself you have to induct into your court, a large number of people who are not  
4 minorities. This is a matter of statutory interdict.

5

6 **KAPIL SIBAL:** That's all right. I can challenge it. My Lords, let's put it this way.

7

8 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Does that alter the...

9

10 **KAPIL SIBAL:** No, I can challenge it, My Lords. Kindly... That's the point that I made  
11 yesterday. If the statute interferes to the extent that I feel that my right to administration,  
12 which is the right conferred under 30, is being impeded, I can challenge it. But I can accept it.  
13 So, the statute... and My Lords, we are not here dealing with administration, please appreciate.  
14 **Basha** never dealt with administration. **Basha** said, I have come to the conclusion that you  
15 are not established. The minority has not established this institute, and therefore, you can't  
16 administer.

17

18 **CHIEF JUSTICE D.Y. CHANDRACHUD:** **Basha** went on the establishment.

19

20 **KAPIL SIBAL:** Establishment. So, you don't have to go into that. We really don't have to  
21 deal. The problem arose that in **Basha** was, the Counsel argued that assume that I am not  
22 established as a minority institution. Because the administration is...

23

24 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Established and administered disjunctively.  
25 That was the argument.

26

27 **KAPIL SIBAL:** That was rejected in **Basha**. That was rejected in **Basha**.

28

29 **CHIEF JUSTICE D.Y. CHANDRACHUD:** There can't be any doubt that it's established  
30 and administered. You can't read that 'and' as 'or'. Therefore, you have not... Dr. Dhawan has  
31 also not argued that.

32

33 **KAPIL SIBAL:** Therefore, overwhelming participation of others in the administration, even  
34 if they are in a majority, even if by statute, will not destroy the character of the university.  
35 Because, if I feel that my right is being impeded, I can challenge it. But I am not. And the fact  
36 of the matter is, My Lords, if Your Lordship looks at the structure and you need not in this  
37 case, because we are not dealing with that. In fact, it was overwhelmingly Muslim, despite the

1 stature *de facto*. But, we don't have to go into that, My Lords. We can't in a reference go beyond  
2 what Your Lordships are asked to decide. So, therefore I quickly... and therefore, I was trying  
3 to show that all these regulations fall under 19(6). The genesis and the conceptual  
4 constitutional genesis is, you can't have institutions in the country without standardization in  
5 the field of education. And that standardization can only be provided by law under 19, and the  
6 law will apply to majority institutions and to minority institutions, and UGC and all other  
7 statutes are consistent with 19. The right under 30 is absolute *qua* the choice, but the  
8 regulation is to be done under a law by Parliament under 19(6). That's My Lords the  
9 submission and the interplay of 19(6) with Article 30(1) of the Constitution. In the context of  
10 what My Lord has put in, My Lord, the Chief Justice, kindly note My Lord, I won't read it.  
11 Kindly note My Lord, Volume 5(a), PDF 417, paragraph 41 of **St. Stephen's**. Volume 5(a),  
12 PDF, 417 paragraph 41 of **St. Stephen's**, and I'll read that sentence to you. "The right to  
13 administer is the right to conduct and manage the affairs of the institution. This right is  
14 exercised by a body of persons in whom the founders have faith and confidence". That doesn't  
15 limit it to the minority. This is 5(a), PDF 417, paragraph 41. This sentence is between Placitum  
16 G and Placitum H.

17

18 **JUSTICE SANJIV KHANNA:** Page number?

19

20 **KAPIL SIBAL:** 417, Volume 5(a). It's between G and H, which says exactly what I am trying  
21 to say consistent with my submission before Your Lordships.

22

23 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Actually, that's why it's important to clear a  
24 cobweb, which is that Article 30 does not mandate that administration must be only by the  
25 minority itself. In a sense that, the personnel who administer are not required by Article 30 to  
26 belong to the minority itself. What Article 30 contemplates and recognizes is the right, namely  
27 the right of choice, the discretion which is given to the minority to administer in a manner  
28 which they deem appropriate. Therefore, it's not that if you don't have only people of your  
29 community, then you risk losing your minority character. Because the choice is yours. You may  
30 have persons belonging to your community, you may not have persons belonging to your  
31 community.

32

33 **KAPIL SIBAL:** Just to give an example, My Lord that I have myself experienced. I happened  
34 to be in the governing body of St. Stephen's at one point in time. Most of us were non-minority  
35 people.

36



1 **CHIEF JUSTICE D.Y. CHANDRACHUD:** The essential element of Article 30 is the  
2 conferment of choice on the mind.

3

4 **KAPIL SIBAL:** That's correct. So, we are missing the link.

5

6 **CHIEF JUSTICE D.Y. CHANDRACHUD:** It can't be read in the reverse to impose an  
7 embargo that you will not have anybody save your community.

8

9 **KAPIL SIBAL:** The minority will not have the expertise to run the institution... many of these  
10 institutions. Will not have. Per force we'll have to take people from outside. That's why St  
11 Stephen's says, have faith and founders in whom the founders have faith and confidence. I  
12 have confidence in ten people in the majority community to run my institution. I'll give it to  
13 them to run it. It doesn't make the institution a non-minority institution, because it is founded  
14 by the minority. The inspiration to set up an institution is that of the minority. The steps taken  
15 to set up the institution is of the minority. The persuasion done by the institution, to the  
16 government and the authorities is by the minority. As long as these elements are satisfied, it's  
17 founded by the minority.

18

19 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Can you come again on that? Inspiration to set  
20 up...?

21

22 **KAPIL SIBAL:** Inspiration to set up the institution is by the minority. The steps taken for  
23 persuasion are by the minority. The essential paraphernalia of initial funding by the minority.  
24 Persuading the authorities to accept that fact, by the minority. And all these elements are  
25 satisfied in this case. So, the genesis of the institution is the test. That is antecedent to  
26 recognition. All that is antecedent to recognition. And **Basha** says, because you are  
27 incorporated, you have lost the status of a minority. This is the problem, this is the problem in  
28 **Basha**. And remember My Lords, when **Basha** was decided in '68, In Re: Education Bill was  
29 already there. Not referred to in **Basha**.

30

31 **TUSHAR MEHTA:** It is referred.

32

33 **KAPIL SIBAL:** Not dealt with. **Sidhajibhai. Sidhajibhai** already there. And of course, now  
34 we have **T.M.A. Pai** and other judgments. So, the interplay of 19(6) is fundamental. Now My  
35 Lords, Council for Architecture. We have people giving degrees in architecture. We don't have  
36 Muslim community people in architecture enough. Anyway, so I'm done with this part.

37

1 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Now, what remains, Mr. Sibal?

2

3 **KAPIL SIBAL:** How the reference came is very important. I'll just give Your Lordships that.  
4 As Your Lordship knows... I'm just giving it.

5

6 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Mr. Sibal, you're quiet proficient from where  
7 you began last year, on your last...

8

9 **KAPIL SIBAL:** I am very proficient. Now I am completely... it's just, it will be quicker if she  
10 does it. Then I do it.

11

12 **RAJEEV DHAVAN:** Inspired by example.

13

14 **KAPIL SIBAL:** No, no, I'll do it.

15

16 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Dr. Dhavan, you have not made any  
17 progression at all on that. I must tell you there's a world of literature which opens up when  
18 you use your iPad.

19

20 **KAPIL SIBAL:** Absolutely. There's also a world of abuse that opens up. We have to suffer.  
21 Get enriched by one and suffer the other.

22

23 **TUSHAR MEHTA:** I am resisting myself from agreeing with Mr. Sibal.

24

25 **KAPIL SIBAL:** Now, My Lord just see. Just these, note this. 1899, the MAO College was  
26 formed.

27

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

29

30 **KAPIL SIBAL:** 1899. Sorry, MAO College Old Boys Association was formed. Who is the  
31 petitioner here, My Lord. 1899.

32

33 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Old Boys Association?

34

35 **KAPIL SIBAL:** Old Boys Association was formed. Who is the petitioner... I mean, I'm the  
36 petitioner here. In 1920, the Aligarh AMU Act was passed. And in fact, just as just a matter of

1 interest, the ordinary members of the court were to be appointed by the Old Boys Association,  
2 from its own members. That was the, as per the statute.

3

4 **CHIEF JUSTICE D.Y. CHANDRACHUD:** The ordinary members of the court?

5

6 **KAPIL SIBAL:** ... were to be appointed by the Old Boys Association as per the statute. That  
7 was the extent to which the Old Boys Association was associated. Then Your Lordship knows,  
8 and I will not trouble Your Lordship because Dr. Dhavan has dealt with it. The 51 Act came,  
9 which amended. The Act was amended by the '51.

10

11 **TUSHAR MEHTA:** Mr. Sibal, [UNCLEAR] means prior to 2020.

12

13 **KAPIL SIBAL:** In the 2020 Act. If you restart on the typed version, it is there in the original  
14 version.

15

16 **CHIEF JUSTICE D.Y. CHANDRACHUD:** What is your next date, where you are saying...  
17 what is your next date? I missed that. What is your next date?

18

19 **KAPIL SIBAL:** Then 1965, it was further amended. Your Lordship knows.

20

21 **CHIEF JUSTICE D.Y. CHANDRACHUD:** The first amendment was in 19...?

22

23 **KAPIL SIBAL:** '51.

24

25 **CHIEF JUSTICE D.Y. CHANDRACHUD:** 1951.

26

27 **KAPIL SIBAL:** My Lords, really the essential element was that Section 9, which earlier said  
28 instructions in Muslim religion would be compulsory to Muslim students, that was omitted.  
29 That's all that happened. So *Basha...*

30

31 **CHIEF JUSTICE D.Y. CHANDRACHUD:** In 1951?

32

33 **KAPIL SIBAL:** Yes, in 1951.

34

35 **CHIEF JUSTICE D.Y. CHANDRACHUD:** What happens, just tell us.

36

1 **KAPIL SIBAL:** The instructions in Muslim religion would be compulsory to Muslim  
2 students. That was omitted. So *Basha* says, nothing much happened. No real amendment. It  
3 became optional, it became optional. So, it had no impact on the decision in *Basha*. And then  
4 the proviso to 23 was also omitted, that only a Muslim can be a member of the Court. That also  
5 was omitted. Just these two things happened. So therefore... but factually, only Muslims  
6 continued, but there was a 23. That's what happened under the '51 Act. In the '65 Act, which  
7 also has been dealt with, but I just tell Your Lordships. In a second as to what happened. All  
8 powers of the Court were given to the Executive Council.

9

10 **JUSTICE SANJIV KHANNA:** Mr. Sibal, we have the reasons why the 51 Amendment was  
11 moved? Reasons, objects and purpose of that?

12

13 **KAPIL SIBAL:** I've not investigated it. I'll find out.

14

15 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Then just tell us the 51 Amendment page. Your  
16 junior can just tell, which is...

17

18 **KAPIL SIBAL:** Yes page... Page 99 is the first paragraph 2(b), page 99.

19

20 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Of Volume?

21

22 **KAPIL SIBAL:** Can I just upload it? This we've given a chart... it's better.

23

24 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Sure, but 1951...

25

26 **KAPIL SIBAL:** Volume 4(a) at page 99 is the... Your Lordship wants the '51 Act or the '65  
27 Act?

28

29 **CHIEF JUSTICE D.Y. CHANDRACHUD:** '51 Act.

30

31 **KAPIL SIBAL:** '51 Act, first amendment is Section 9, amendment is Volume 4(a) at 90,  
32 paragraph 2. At page 90, paragraph 2, which omitted Section 9. The second amendment of  
33 proviso to Section 23 is 4(a) again, page 93, paragraph 17. 4(a) again, page 93, paragraph 17.  
34 So, those are the two amendments in the '51 Act. The religious instruction was made optional  
35 for Muslims and... Can I just Airdrop it, My Lords? It's just a note. You just do it now so that  
36 it's easier. We've done it. Now My Lords, I'll just point out. So, this was on the '51 Act. Then,

1 in the '65 Act, what did they do? In Volume 4(a), page 99, para 2(b). The powers of the Court  
2 were given to the Executive Council. This is Volume 4(a).

3

4 **JUSTICE SURYA KANT:** This is also Volume 4(a)?

5

6 **KAPIL SIBAL:** 4(a). All is in 4(a), page 99.

7

8 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Powers of?

9

10 **KAPIL SIBAL:** Power of the Court. Erstwhile powers of the Court were given to the Executive  
11 Council. That's at page 99 of Volume 4(a), paragraph 2(b). And then, Statute 8 i.e. Members  
12 of the Court, was amended.

13

14 **JUSTICE SURYA KANT:** Statute?

15

16 **KAPIL SIBAL:** 8, which is Members of the Court, was amended. That's in 4(a) at 102. Page  
17 102. And then, the other was, "All existing members of the Court and Executive Council was  
18 ceased to hold their office". That's at page 105, Volume 4(a) again, paragraph 10. Right. This  
19 was an emergent situation, and this then in '65 was challenged, not by AMU, not by anybody  
20 else, challenged in a PIL petition, which resulted in *Basha* in 1968. The Old Boys Association  
21 were not parties. AMU was not party.

22

23 **JUSTICE SURYA KANT:** This challenge, I think include 1951 Amendment also?

24

25 **KAPIL SIBAL:** Yes, yes. But *Basha* said '51 really is not too relevant. '65. Both were under  
26 challenge. What happened thereafter, and this is very interesting My Lords. During the court...  
27 when this challenge... this came up in Parliament, and at that time, Mr. Chagla made a  
28 statement, which I'll give it to Your Lordships. That's in volume 4(c), 1325. That's important,  
29 My Lords.

30

31 **CHIEF JUSTICE D.Y. CHANDRACHUD:** 4(c). Page 13...?

32

33 **KAPIL SIBAL:** 25.

34

35 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Mr. Chagla is the Minister of Education?

36

1 **KAPIL SIBAL:** Yes, correct My Lords. At 1325, Volume 4(c). Ali Yavar Jung was then the  
2 Vice Chancellor but there was an agitation because the institution... remember, My Lords  
3 there's a school there. There's also institutional reservations that was reduced from 75% to  
4 50%. There was a huge agitation all over the country and Ali Yavar Jung was injured in the  
5 process and he was manhandled. So therefore, as a temporary measure, they sort of said, we  
6 must stop this mal administration. That was the reason for this. But kindly see My Lords, this  
7 Volume 4(c), page 1325. What Chagla says in Parliament. My Lords, have it?  
8

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

11 **KAPIL SIBAL:** Now kindly see. "Mr. Speaker on the right hand side. As we all know, we are  
12 facing a very serious crisis just now. There is aggression, there is undeclared war. We should  
13 do everything in our power to maintain communal peace and harmony. We should not say a  
14 word which will interfere with the harmony which exists and which should continue to exist.  
15 Today we should think of ourselves not as Hindus or Muslims But as Indians, one and all". I  
16 wish this reverberates in India as we stand here. "Now, I am a great deal in agreement with  
17 what Mr. Mukherjee said. I have said this before and I repeat it, I repeat it with all the emphasis  
18 I possess that this bill will not in any way affect what Shri Mukherjee chooses to call the special  
19 character of the university. The Academic Council has not been interfered with. This bill does  
20 not touch the academic studies in the university. The academic studies will go on as they are.  
21 I also reiterate what I said before, that this is a temporary measure". Kindly note that. "An  
22 emergency measure and a permanent bill will be introduced as soon as possible, if possible, in  
23 the next session". Then next he says, "it should be a symbol...". Sorry. "It should be a symbol  
24 of Muslim culture in the context of secular India. It should be an example, to the rest of the  
25 world how different communities can preserve the glory of Aligarh. I know it may, it has made  
26 a great contribution to our academic life, our scholarship and our nationalism. I want to assure  
27 this House, that I have brought in this ordinance, and the bill as a temporary measure, in order  
28 that Aligarh should be strengthened, and should become a modern, progressive university,  
29 that it should be a shining light not only in India, but abroad or great composite culture".  
30

31 **CHIEF JUSTICE D.Y. CHANDRACHUD:** What is Mr. Shyama... that is Mr. Shyama  
32 Prasad Mukherjee's objection to this?  
33

34 **JUSTICE DIPANKAR DATTA:** When he said Mr. Mukherjee, that is....  
35

36 **KAPIL SIBAL:** Some other Mukherjee, not Shyama Prasad.  
37

1 **CHIEF JUSTICE D.Y. CHANDRACHUD:** What was the objection?

2

3 **KAPIL SIBAL:** 311.

4

5 **CHIEF JUSTICE D.Y. CHANDRACHUD:** 300 and?

6

7 **KAPIL SIBAL:** 11. 1311, not...

8

9 **CHIEF JUSTICE D.Y. CHANDRACHUD:** What is the objection, actually?

10

11 **KAPIL SIBAL:** Yeah. 'There is a misgiving in many Muslim minds, whether rightly or not is  
12 a different matter, that the special character of Aligarh is likely to be violated.' That's the  
13 objection. 311.

14

15 **JUSTICE DIPANKAR DATTA:** Which is Hirendranath Mukherjee.

16

17 **KAPIL SIBAL:** 1311. What happened was, the election... the Executive Council was backed  
18 by the nominee, backed by the nominees of government. Would have been backed by, because  
19 that's what '65 allowed that to happen because everything was abolished. So there was a  
20 misgiving, that if you back the Executive Council with nominees of the government, what  
21 happens to the character of the university. "So in this context, there is a misgiving in many  
22 Muslim minds, whether rightly or not, is a different matter, the special character of Aligarh is  
23 likely to be violated, under the due arrangement. Shri Chagla has been a judge and you Sir,  
24 also have been in that elevated position. And you know of the judicial maxim. The justice  
25 should not only be done, but it must also appear that it is being done. It is the government's  
26 responsibility to show a Muslim opinion all over the country, that this apprehension is wrong.  
27 I know that Shri Chagla is right in so far as he is trying to put a real secular democratic  
28 complexion to Aligarh university. But if this misapprehension has arisen in the minds of many  
29 people about all of whom we cannot be sure, that they are reactionaries."

30

31 **JUSTICE DIPANKAR DATTA:** It was in support of Justice Chagla.

32

33 **KAPIL SIBAL:** Community.

34

35 **TUSHAR MEHTA:** When Your Lordships are on that page, if Your Lordships can see, the  
36 initial part of Mr. H.N. Mukherjee's at page 1312. One page possibly is missing. We'll place it  
37 when our turn comes.

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**KAPIL SIBAL:** 1312. Yes, it is there.

**TUSHAR MEHTA:** One further page. Anyway, I'll point out.

**CHIEF JUSTICE D.Y. CHANDRACHUD:** Just since we are here on this. We are reading at 1312. Which part do you want us to read, Solicitor?

**TUSHAR MEHTA:** The initial debate, initial speech or initial address is there of Sri H.N. Mukherjee.

**CHIEF JUSTICE D.Y. CHANDRACHUD:** 1311?

**TUSHAR MEHTA:** Yes.

**KAPIL SIBAL:** 1311 is also there.

**TUSHAR MEHTA:** And, Raja Mahendra Pratap Singh have all been brought up in Aligarh. Besides, Aligarh is not merely a foundation set up by the minority community. It is a foundation which the whole country has taken to its heart. And that is why today we find so and so non-Muslim students, and so and so foreign students in Aligarh. The reputation of Aligarh is not merely the responsibility of Muslim community, the reputation of Aligarh is something which the entire country has got to look after. This is precursor to Entry 63. But there is one more passage. We'll place...

**KAPIL SIBAL:** That's not god.

**TUSHAR MEHTA:** ... when our turn comes.

**JUSTICE SANJIV KHANNA:** Read that portion, the last portion at 313.

**KAPIL SIBAL:** 1313?

**JUSTICE SANJIV KHANNA:** 1313. For that purpose.

**KAPIL SIBAL:** "We have in regard to small matters", that's the one?



1 **JUSTICE SANJIV KHANNA:** Yes.

2

3 **KAPIL SIBAL:** “We have, in regard to small matters here and there, let us forget what  
4 particular things we can bring up against government on particular issues...”

5

6 **JUSTICE SANJIV KHANNA:** “For that purpose, I want to...”

7

8 **KAPIL SIBAL:** “For that purpose”. On the right side.

9

10 **JUSTICE SANJIV KHANNA:** Or, you can start from little above also. That will...

11

12 **KAPIL SIBAL:** 1313. Yes, I'm reading that. “For that purpose, I want Mr. Chagla to reiterate  
13 more emphatically, some of the assurance he has given, and to seek to remove persistently by  
14 repeated effort the misgiving which continue in the minds of many Muslims in our country,  
15 all of whom I'm not ready to brand as reactionary that this legislation is going to hurt the  
16 Aligarh institution, and to hurt the interests of the country”. And My Lords, there is no doubt,  
17 that this institution is not just for minorities. It is founded by minorities. It's for India. It's all  
18 encompassing. We are at the moment... whether it was founded by the minority or not, that's  
19 the question. In fact, if Your Lordship looks at this page. Kindly see 1311. Kindly see the last  
20 two paragraphs, “We have swallowed a bitter pill. The principle of nomination.” Because  
21 government could have nominated. And all that kind of thing, the exclusion of representative  
22 of teachers in the Court and the Executive Council and so many other items into which I need  
23 not go. But, “We have swallowed a bitter pill only for the time being, so the regular medicine  
24 follows a little later. I wish also to say that it is time when we discuss a matter of this sort, that  
25 Muslims and Hindus and all, we remind ourselves of the role of Aligarh Muslim University in  
26 the context of the composite culture of our country. Aligarh has been a symbol cherished by  
27 Muslims, no doubt, more than any other people in India, but it is cherished also by the rest of  
28 the Indian people. In the traditions of Aligarh, there have been many bad things, no doubt  
29 about it. Good and bad are mixed together as far as the traditions of Aligarh are concerned”.  
30 So My Lords, it represents composite culture. It is founded by the minority. It's an institution  
31 of excellence, there's no doubt about it. But *Basha* says...

32

33 **TUSHAR MEHTA:** Only one interjection. Only one. Something is missing, therefore. You  
34 have placed on record the proceedings of the Parliament, Lok Sabha dated 3rd September '65,  
35 and 6th. There is one proceeding before that, that is, 2nd September, the day prior, which I  
36 have quoted in my written submissions verbatim, at page 111.

37

1 **KAPIL SIBAL:** Okay. But read that so that I'm also sort of educated.

2

3 **TUSHAR MEHTA:** I'll read it. It's in 111 of my written submissions.

4

5 **KAPIL SIBAL:** Yes please. If you read it...

6

7 **TUSHAR MEHTA:** Which, I believe, should have been placed. Your Lordship gets my  
8 written submissions, page 111?

9

10 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Volume 2(b)?

11

12 **TUSHAR MEHTA:** Volume 2(b). I'm sorry. Volume 2(b), page 111.

13

14 **JUSTICE SANJIV KHANNA:** You're referring to which date, Mr. Mehta?

15

16 **TUSHAR MEHTA:** 2nd September '65. What is placed is from 3rd September.

17

18 **KAPIL SIBAL:** No, we'll see 111. I've got it.

19

20 **TUSHAR MEHTA:** But there is one which is missing My Lord. I am sure, inadvertently. But  
21 this is what...

22

23 **KAPIL SIBAL:** Have you placed the 3rd September inadvertently? Not placed it?

24

25 **TUSHAR MEHTA:** 2nd September.

26

27 **KAPIL SIBAL:** Have you placed. 3rd September, inadvertently?

28

29 **TUSHAR MEHTA:** Yes, we have placed it. Speech by Justice (Retd) M.C. Chagla, then  
30 Education Minister. Your Lordship gets?

31

32 **KAPIL SIBAL:** Page 111?

33

34 **TUSHAR MEHTA:** 111 at the foot.

35

36 **KAPIL SIBAL:** I'll just see it.

37

1 **TUSHAR MEHTA:** I'm sorry. I'll wait till Mr. Sibal finds it.

2

3 **KAPIL SIBAL:** No issue at all. Yes, now page...

4

5 **TUSHAR MEHTA:** Speech by Justice (Retd) M.C. Chagla, then Education Minister. "My  
6 submission to this House is that Aligarh University has neither been established nor is being  
7 administered by the Muslim community. It is not a minority institution in the sense in which  
8 Mr. Anthony suggests, that is a Frank Anthony. I will give him the reasons. You had, first, the  
9 Muslim college which was founded by Sir Syed Ahmed. Sir Syed Ahmed has asked the British  
10 government..."

11

12 **KAPIL SIBAL:** This is entirely contrary to what he shares on the 3rd of September.

13

14 **TUSHAR MEHTA:** You can't contradict what he said then.

15

16 **KAPIL SIBAL:** One second. One second.

17

18 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Do we have the entirety of the discussion of the  
19 2nd of September? Where is that?

20

21 **TUSHAR MEHTA:** We will place it. We have quoted it, but we'll place.

22

23 **KAPIL SIBAL:** Have you quoted the 3rd September? And 6th September?

24

25 **TUSHAR MEHTA:** It's on record.

26

27 **KAPIL SIBAL:** Maybe inadvertent...

28

29 **TUSHAR MEHTA:** No, it's on record, therefore, not quoted. This was not on record.  
30 Therefore, it is quoted. But I'll place it on record.

31

32 **KAPIL SIBAL:** If it's on record then it's on record. 2nd September is also on record. Anyway,  
33 we are not concerned with this.

34

35 **TUSHAR MEHTA:** It's a small issue, but if we look at it, that way. But 2nd September,  
36 according to me, is an important piece of parliamentary debate, which is not on record. I'm  
37 not imputing any motives, that's all.

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**KAPIL SIBAL:** Your Lordship notices Chagla says quite the opposite on the 3rd September and he is the mover of the bill also. So, how does it take the matter further? I was only indicating how the reference came about My Lords. So I'm just only for that purpose. And, what...

**CHIEF JUSTICE D.Y. CHANDRACHUD:** When did the Indo-Pak war breakouts in 1965?

**COUNSEL:** September '65.

**TUSHAR MEHTA:** We will check up, My Lord. It may not be an accurate statement. Both of us will check up and say.

**CHIEF JUSTICE D.Y. CHANDRACHUD:** Mr. Chagla says in the 3rd September that we are in a situation of an undeclared war. That part 2...

**TUSHAR MEHTA:** Undeclared War has continued from beginning till date, My Lord. But I'll check up on what is the context in which he says.

**CHIEF JUSTICE D.Y. CHANDRACHUD:** Because that sheds some light in the purpose of the amendment then.

**TUSHAR MEHTA:** Correct. In what context it was said. And this amendment...

**JUSTICE DIPANKAR DATTA:** '65 was between August and September. I just checked.

**TUSHAR MEHTA:** We will check up, My Lord and we will correctly assist you.

**KAPIL SIBAL:** In fact the Council, the Executive Council was 100% non-Muslim. Almost 100%. That was the fear that you are changing the whole character. They were then reduced later to only three to five.

**TUSHAR MEHTA:** We have placed on record the entire debate with our documents. That is 2(f).

**KAPIL SIBAL:** It's okay.

1 **TUSHAR MEHTA:** It's not okay. You can't miss one important page. My Lord, it is page 224  
2 to 365.

3

4 **KAPIL SIBAL:** We shouldn't get into all this. The Court has to decide whether it was founded.

5

6 **TUSHAR MEHTA:** Only saying, you can't selectively place the Parliament debate.

7

8 **KAPIL SIBAL:** Have you quoted the September 03 in your note? You haven't. What's the  
9 point of all this?

10

11 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Mr. Sibal, at the end, Mr. Chagla says, "I say  
12 this... I say that this institution was not established by the minority nor is it being administered  
13 by the minority community. That is the legal position as far as Article 30 is concerned." So, it  
14 appears the position of the then the Minister for Education was that this was not an Article 30  
15 institutional...

16

17 **KAPIL SIBAL:** Correct. And the government defended that position in *Basha*. The  
18 government defended that position in *Basha*. Correct, My Lords? Then came the '81 Act and  
19 the government is not defending that position. If there's a Parliamentary... that's why I made  
20 that comment yesterday. If there's a Parliamentary Act, government has to defend it. You can't  
21 say, no. We're also defending the Act in '65. Once you make the Act, My Lords, you change it,  
22 you will have to say. What choice do you have? Even the minister has to say. If we move a bill,  
23 My Lord, as a minister, we'll have to defend it, no? And we are moving the bill saying that the  
24 Executive Council can be nominees of the government. And if they are nominees of the  
25 government, then the whole character of the Muslim... of the institution goes. So, the minister  
26 has to say this. So, that doesn't answer the question. The parameter... the why and how it is a  
27 minority institution has to be judged on the parameters of the law laid down by this Court.

28

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

30

31 **KAPIL SIBAL:** When opinions of Court can be wrong, certainly opinions of ministers moving  
32 a bill can be wrong, My Lords. There's no sanctity to that. The sanctity is to the law, and to the  
33 Constitution. That is why My Lords, because of these provisions, it was challenged, the '65 Act  
34 was challenged and upheld. And Mr. Daphtary argued for the government, saying that this is  
35 his right. So really My Lord, the ministers contradictory opinions can't be the basis of a  
36 judgment of a court. That certainly is settled law now.

37

1 **TUSHAR MEHTA:** You can't quote one part and not...

2

3 **KAPIL SIBAL:** No, you're right, I'm not disputing that. I'm not disputing what you're saying.  
4 You will read the other part and I will read this part, right? It is already on record.

5

6 **TUSHAR MEHTA:** It is not on record. We have placed the entire thing on record.

7

8 **KAPIL SIBAL:** I see, but you haven't quoted it. Send it as you haven't given it to us.

9

10 **TUSHAR MEHTA:** No, it's there in volume 4(f).

11

12 **KAPIL SIBAL:** We don't have it.

13

14 **TUSHAR MEHTA:** 4(f).

15

16 **KAPIL SIBAL:** We don't have it. It's not uploaded.

17

18 **TUSHAR MEHTA:** It's there in the common file. Your nodal Counsel has it. 4(f). Let him  
19 say it's not there. They have it since then. Since long.

20

21 **KAPIL SIBAL:** Now, My Lords, kindly let's move on with the bill.

22

23 **TUSHAR MEHTA:** Yes, that's a better way... better way.

24

25 **KAPIL SIBAL:** Debate is not in question. I'm just trying to give the... Let's go back to what I  
26 was saying, My Lords.

27

28 **CHIEF JUSTICE D.Y. CHANDRACHUD:** '71... Sorry, '72 Amendment, that brings out  
29 what exactly happened. It appears that there were student unrest on the campus.

30

31 **KAPIL SIBAL:** Yes.

32

33 **CHIEF JUSTICE D.Y. CHANDRACHUD:** At that point they brought in a temporary  
34 measure. The idea was to bring both Aligarh Muslim University and Banaras Hindu University  
35 at par, in terms of the statutory provisions.

36

37 **KAPIL SIBAL:** Right.

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**CHIEF JUSTICE D.Y. CHANDRACHUD:** Government appointed... UGC appointed a commission chaired by Dr. P.B. Gajendragadkar, former Chief Justice of India, to go into the functioning of AMU, that Dr. Gajendragadkar submitted his report. He may have some... we may want to look at the report, which is submitted by Dr. Gajendragadkar on what did the report really indicate.

**KAPIL SIBAL:** Right.

**CHIEF JUSTICE D.Y. CHANDRACHUD:** Following which, the 1965 Amendment was always intended to be a sort of a *pro tem* amendment, until long ranging amendments were brought into the provisions of the statute.

**KAPIL SIBAL:** So then, between '65 and '81, I go back to my list of dates. The point which is that Volume 4. So, we come to 1965 and a decision in 1968. Then between '68 and '81, there was a movement to protect the rights of Aligarh Muslim University as a minority institution. And then the 1981 Act came. So, you have a hiatus between '65 and '91, My Lords. '68 and '91.

**CHIEF JUSTICE D.Y. CHANDRACHUD:** Just give us the page number of the 1981 Act, so that we'll have it all in one place now. Volume 4(a)?

**KAPIL SIBAL:** Volume 4(a).

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

**KAPIL SIBAL:** Page 147. And My Lords, in that context, if Your Lordships don't mind, though, that judgment is not on record. There's a judgement of this Court in **1988, 6 Supreme Court Cases. 1998, 6 SCC 674**. This Court, which is on Your Lordship's screen **1998, 6 Supreme Court Cases**, page 674. Kindly come to 679. This was in the context of a minority school. Minority school in paragraph 11, Your Lordships will see, is defined in 2(5) of the Act. "Minority school means school of their choice, established and administered or administered by such minorities, as have the right to do so under Clause 1 of 30. Counsel for both sides conceded that there is no provision in the Act which enables the government to declare a school as a minority school. If so, a school, which is otherwise a minority school, should continue to be so, whether the government declared it as such or not. Declaration by the government is at best only a recognition of an existing fact". This is very important. "Article 30(1) of the Constitution reads as such". I won't read it. "When the government declared the

1 school as a minority school, it had recognized a factual position, that the school was  
2 established and is being administered by a minority community. The declaration is only an  
3 open acceptance of a legal character, which should necessarily have existed antecedent to such  
4 declarations. Therefore, we are unable to agree with the contention of the school, that the  
5 school can claim protection only after the government declared it as the minority". We are not  
6 dependent on the declaration, My Lords. It's what happened antecedent to the declaration,  
7 that will determine whether it's a minority institution or not. So, whether the minister says it  
8 or the statute says it, none of that is relevant. What is relevant is the factual position existing  
9 antecedent. We come to the '91 Act, My Lords. Your Lordship is aware of that Act. Then comes  
10 My Lords on 26th of November 1981. There's an order passed in *Anjuman-E-Rahmania*  
11 which is writ petition 547, 554 to 57 of '81, which is referring *Basha's* judgment to a seven  
12 judge bench. That's on November 26. This is important. That is November 26, 1981. The 1981  
13 Act was on December.

14

15 **JUSTICE SANJIV KHANNA:** What's the date of it?

16

17 **KAPIL SIBAL:** 22nd December 1981, just one month after this. Yes, was 22nd December.  
18 Now, My Lords, kindly look at that order of Justice Fazl Ali. Volume 3(a), page 209.

19

20 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Fazl Ali, J was in a bench of two or a bench of  
21 three?

22

23 **KAPIL SIBAL:** 2

24

25 **CHIEF JUSTICE D.Y. CHANDRACHUD:** 2, referred a matter to 7?

26

27 **KAPIL SIBAL:** Yes.

28

29 **TUSHAR MEHTA:** That is one of my contention also.

30

31 **KAPIL SIBAL:** That's all right. You can... Yes, 3(a), page 209. 209, My Lords, Volume 3(a).  
32 Kindly have a look at that. Kindly note, it's writ petition 54 to 57. It will have some bearing.  
33 This writ petition 54-57 has some bearing, so kindly note that. Kindly, if I can read that order.  
34 "After hearing, Counsel for parties were clearly of the opinion that this case involves two  
35 substantial questions regarding the interpretation of 30 as the Constitution. The present  
36 institution was founded in the year 1938. That's the other institution and registered under the  
37 Society's Registration Act in '40. The documents relating to the time when the institution was



1 founded clearly shows that when the institution was established mainly by the Muslim  
2 community, but there were members from the non-Muslim community who also participated  
3 in the establishment process. The point that arises is whether is to whether Act 30..." Article  
4 30 it should be, not Act. "Sub-Article 1 of the Constitution envisages an institution which is  
5 established by minorities alone, without the participation for the factum of establishment from  
6 any other community. On this point, there is no clear decision of this Court. There are some  
7 observations in *Basha*, but these observations can be explained away. Another point that  
8 arises is whether soon after the establishment of the institution, if it's a registered society  
9 under the Society's Registration Act, its status as a minority institution changes in view of the  
10 what principles laid down in *Basha*." Because it then gets merged, incorporated. :Even as it  
11 is, several jurists, including Seervai, have expressed about the correctness of the decision of  
12 this court in *Basha*. Since the point has arisen in this case, we think that it is proper. It is a  
13 proper occasion when a larger bench can be considered the entire aspect fully. We therefore,  
14 direct that this case may be placed before the Hon'ble Chief justice for being heard by a bench  
15 of at least seven judges so that *Basha's* case may also be considered. And the points that arise  
16 in this case directly as to the essential conditions or ingredients of the minority institution may  
17 also be decided once for all. Large number of jurists, including Mr. Seervai, learned Counsel,  
18 Mr. Garg, learned Counsel of the Respondents and interveners have stated that this case  
19 requires reconsideration. So therefore, liberty was granted." So this happened in November  
20 '81. The Act comes on December 22nd, '81. In the meantime, on the ground, nothing has  
21 changed. When Chagla made that speech in Parliament, he didn't implement the '65 Act as  
22 that was sought to be done. He didn't do it. Instead of all it being backed, only three four  
23 members remain of the non-Muslim, of nominees of the government.

24

25 Then, My Lords, we, i.e., the Old Boys Association, which was set up in 1899, sorry. Started a  
26 whole movement that, "look, this is all wrong. This is all wrong. You must have an Act." That's  
27 how the Act came into being and My Lords, I mean, I don't want to digress into any other issue.  
28 But the fact is that this is a pre-constitution Act. It's a 1920 Act. Without going into usurpation  
29 of judicial power, that's all a, according to me, an irrelevant issue. Under 372, an Act can be  
30 repealed, altered.

31

32 **CHIEF JUSTICE D.Y. CHANDRACHUD:** One Act.

33

34 **KAPIL SIBAL:** Yes.

35

36 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Did that have the effect of therefore, then  
37 nullifying the '65 Amendments?

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**KAPIL SIBAL:** Yes, absolutely. So this whole argument of usurpation, the Constitution gives the Parliament that right. But I don't want to argue it because it doesn't arise in *Basha*. But since...

**CHIEF JUSTICE D.Y. CHANDRACHUD:** *Basha* involved a challenge to the '65 Amendments.

**KAPIL SIBAL:** That's right and '51.

**CHIEF JUSTICE D.Y. CHANDRACHUD:** And '51.

**KAPIL SIBAL:** Yes.

**CHIEF JUSTICE D.Y. CHANDRACHUD:** And the 1981 Act then restored the position by, I don't know whether it restored it...

**KAPIL SIBAL:** No, it didn't exactly restore. It was a new legislature..

**CHIEF JUSTICE D.Y. CHANDRACHUD:** But it nullified the effect of the 1965 Act.

**KAPIL SIBAL:** That's correct. But that doesn't matter because the 372 gives power to Parliament to alter a law.

**JUSTICE SANJIV KHANNA:** Will it be correct to say...?

**TUSHAR MEHTA:** It seeks to nullify the judgment.

**KAPIL SIBAL:** No, that's not true.

**TUSHAR MEHTA:** I'll show.

**JUSTICE SANJIV KHANNA:** Will it be correct to say that in case we overruled *Basha*, then the challenge to the '65 Amendments will come into the fore end?

**KAPIL SIBAL:** No, My Lords, the point I'm making is somewhat different. We are challenging *Basha* on the day when it was decided. Therefore, none of this is relevant,

1 according to me, because the reference is only whether *Basha* was rightly decided on the day  
2 it was decided. That's the reference. But all these matters are now being brought in by the other  
3 side. All these matters, saying it's an institution of national importance...

4

5 **JUSTICE SANJIV KHANNA:** Just one minute.

6

7 **KAPIL SIBAL:** [INAUDIBLE] to do is whether *Basha* is rightly decided or not, on the  
8 parameters of law under Article 30. What Your Lordships are not asked to decide. Now, they  
9 are brought in Entry 63. It was not argued in *Basha*. I were to argue something else now.  
10 They brought in statutes that are minority statutes, that are now institutions, they are now  
11 incorporated under the National Minority Commission Act. Are we took the look at that?  
12 That's all irrelevant, wholly relevant. This is a decision of 1968 based on an Act of 1920 which  
13 Your Lordships are asked to decide whether it's right or wrong. Otherwise, they'll have to be  
14 pleadings. Because he has made some averments which are completely wrong, But you can't  
15 have pleadings in a reference. He's giving all kinds of examples. Land was given, it's completely  
16 wrong, but we are not into that. That's why I'm not arguing any of that. That's why I'm not  
17 even meeting that argument. But that whole argument is sought to be diverted to issues which  
18 are not before *Basha*, issues that don't arise under the 1920 Act.

19

20 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Alright, what else?

21

22 **KAPIL SIBAL:** I'm quickly trying to go through it. So, no. Then what happened was... just...  
23 I'm trying to finish as quickly as possible.

24

25 **JUSTICE DIPANKAR DATTA:** Mr. Sibal, just one simple question.

26

27 **KAPIL SIBAL:** Yes.

28

29 **JUSTICE DIPANKAR DATTA:** Did *Dawoodi Bohra* make it applicable prospectively?  
30 The principal laid down in *Dawoodi Bohra* or is it applicable retrospectively?

31

32 **KAPIL SIBAL:** I'll have to... I don't want to answer that question right away. I don't want to  
33 answer that question right away. I will certainly, My Lords. So, My Lords, what happens  
34 thereafter, and that's... Then comes, then comes *T.M.A. Pai*. Now this 54 writ petition, 54 to  
35 57 is tagged onto *T.M.A. Pai* before eleven judges.

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37 **CHIEF JUSTICE D.Y. CHANDRACHUD:** The order also says that.

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**KAPIL SIBAL:** That's right. So, My Lords, this whole argument that you couldn't refer it, two judges could not refer it. Of course, My Lords, the principles of law that time are different. But be that as it may, it was tagged on before eleven judges. Writ petition 54 to 57. You'll find that order My Lords, in 3(a), page 216. 552 My Lords, sorry. In 5(a), 552, first line. Sorry, My Lords. Supreme Court rules, My Lords. It says, "Where in the course of a hearing of any cause, appeal or other proceeding, bench considers that the matter should be dealt with by a larger bench, it shall refer the matter to the Chief Justice, who shall thereupon constitute such a bench for the hearing of it". It's Order 6, Rule 2.

**CHIEF JUSTICE D.Y. CHANDRACHUD:** And, Rule 1 anyway preserves the power of the Chief Justice.

**KAPIL SIBAL:** That's correct. And, even Justice Gogoi's reference was three judges. Even Justice Gogoi's reference was three judges. So, this objection that you know, it can't be referred, can't be referred, My Lords, it's all...

**CHIEF JUSTICE D.Y. CHANDRACHUD:** And though Chief Justice Gogoi was sitting on the judicial side, as Chief Justice, his powers are as per 6, Rule 1 of the Constitution...

**TUSHAR MEHTA:** If bench consists of the Hon'ble Chief Justice, it can be.

**KAPIL SIBAL:** Why can't two judges say, "Refer it to 7 and refer the matter to the Chief Justice?"

**TUSHAR MEHTA:** I'll not reduce the debate to that level. I'm not going to raise that objection. We have addressed Your Lordships on merits. **[NO AUDIO]** (I will also attach that. Objection can be settled on how to make a revenue. In this case, I'm not objecting. That's good, because you don't have it.) **[END OF NO AUDIO]**

**KAPIL SIBAL:** Initially he did. Therefore, I did.

**CHIEF JUSTICE D.Y. CHANDRACHUD:** The matter is too important for us to really raise the judgment of [UNCLEAR]

**TUSHAR MEHTA:** What I initially said was...

1 **CHIEF JUSTICE D.Y. CHANDRACHUD:** We can't be oblivious to the fact, reference of  
2 1981, tagged on to eleven judges, left open in *T.M.A. Pai*, then noticed in Justice Gogoi in the  
3 [UNCLEAR] order of 2019. But Mr. Sibal, one thing you must also bear in mind, that when  
4 Chief Justice Gogoi's bench made that reference to a larger bench of 2019 [INAUDIBLE].

5  
6 **TUSHAR MEHTA:** I have not raised it.

7  
8 **KAPIL SIBAL:** Then the pleadings are incomplete. There are no pleadings to this effect.

9  
10 **CHIEF JUSTICE D.Y. CHANDRACHUD:** But we have a per force, we have a  
11 Parliamentary Amendment of 1981.

12  
13 **KAPIL SIBAL:** Correct. But there [UNCLEAR]

14  
15 **TUSHAR MEHTA:** [NO AUDIO] (But there are not hold on a minute. Only one thing. I  
16 initially... allow me to answer the question. First those matter is not before you. Those  
17 pleadings are not before you. There are no pleadings. Regarding institution of national  
18 importance. There are no pleadings about how many acres of land was given. All that is not  
19 there whatever I have seen is a part of advancing) [END OF NO AUDIO]

20  
21 **KAPIL SIBAL:** How will it be decided?

22  
23 **TUSHAR MEHTA:** Whatever I have said is part of the record. Only give me a minute, just  
24 to answer the call. I have not raised a technical point. Initially I said, that the scope of reference  
25 is not redeciding *Basha* on facts which are concluded, the way they are argued. That's what I  
26 was saying.

27  
28 **KAPIL SIBAL:** No. In fact, My Lord. He said that's an inter party's decision. It cannot be  
29 altered by a bench. That's his argument, in the written submission.

30  
31 **TUSHAR MEHTA:** Reference could not have been made...

32  
33 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Mr. Sibal, Mr. Solicitor, we're in a combination  
34 of seven. When we decide a constitutional matter, perhaps it would be inappropriate for us to  
35 look at facts for deciding the minority character. Who gave how much land... Whatever is  
36 already on the record. What was brought in the record in *Basha*...

37

1 **KAPIL SIBAL:** And Allahabad High Court. Whatever was in the records from the Allahabad  
2 High Court, no problem.

3

4 **CHIEF JUSTICE D.Y. CHANDRACHUD:** So when we hear Mr. Prashar's *de jure vs de*  
5 *facto* argument, we must also keep at the back of my mind that it's a Constitutional Court  
6 sitting in a reference of seven.

7

8 **KAPIL SIBAL:** That's right.

9

10 **CHIEF JUSTICE D.Y. CHANDRACHUD:** So we really have to, in that sense, confine  
11 ourselves. And perhaps there's always a temptation to try and resolve everything forever. But  
12 it is difficult and we should be careful about doing that in a combination of seven, particularly  
13 in the absence of a [UNCLEAR] facts.

14

15 **KAPIL SIBAL:** My request is whatever pleadings are available in the Allahabad writ petition  
16 should be taken into account. But none of the... what he has pleaded now is part of...

17

18 **TUSHAR MEHTA:** It was a 32 petition. *Basha* was a 32 petition.

19

20 **KAPIL SIBAL:** No. I'm not on that. In the Allahabad High Court My Lord... I was trying to  
21 complete the list of dates. Then this matter My Lords, '81 onwards the Act came, then *T.M.A.*  
22 24 years we were granting degrees. Then in 2005, that's the next date. In 2005 My Lords, there  
23 was a 50% reservation for MDMS students. That was challenged. That resulted in the  
24 Allahabad judgment where the judge said, *Basha* has rightly decided. You are covered by  
25 *Basha*. It didn't go into anything else. So, that was not strictly before the Court. The issue was  
26 of only 50% reservation of the Muslim reservation.

27

28 **CHIEF JUSTICE D.Y. CHANDRACHUD:** *Basha* upholds the 1951 and the '65  
29 Amendment.

30

31 **KAPIL SIBAL:** Yes.

32

33 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Right? The Allahabad High Court sets aside the  
34 1981 Amendment on the ground of *Basha*.

35

36 **KAPIL SIBAL:** That's correct.

37

1 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Now two questions will arise before us.  
2 Suppose we hold that, we accept your... for the testing the argument. Suppose we accept your  
3 argument and hold that *Basha* was wrongly decided.

4

5 **KAPIL SIBAL:** Right.

6

7 **CHIEF JUSTICE D.Y. CHANDRACHUD:** *Basha* upheld in 1951 and 1965 Amendment.

8

9 **KAPIL SIBAL:** Correct.

10

11 **CHIEF JUSTICE D.Y. CHANDRACHUD:** What would be the consequence of our coming  
12 to the conclusion that *Basha* was wrongly decided on the amendments which were in  
13 challenge in *Basha*? Second, if we hold that *Basha* was wrongly decided, then what would  
14 be the impact of that on the Allahabad judgment? The Allahabad judgment dealt with a  
15 challenge to the subsequent amendment. Right? Now, if we... Allahabad is relied exclusively  
16 on *Basha*.

17

18 **KAPIL SIBAL:** Right.

19

20 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Now, if you come to the conclusion that *Basha*  
21 was wrongly decided.

22

23 **KAPIL SIBAL:** Correct.

24

25 **CHIEF JUSTICE D.Y. CHANDRACHUD:** It would immediately impact upon the  
26 judgment of the Allahabad High Court.

27

28 **KAPIL SIBAL:** Correct.

29

30 **CHIEF JUSTICE D.Y. CHANDRACHUD:** And therefore, the validity [NO AUDIO] [of  
31 the AP one amendment after this is the answer. That would be at large so much. What's the  
32 point? I'm making is all Your Lordship needs to decide is whether *Basha* is right or not. If it  
33 is right, My Lord, the consequences will be we are out if it is wrong, then the matter will be  
34 decided. Because we are out in the sense that it's rightly decided. Then the '81 Act whether it  
35 is valid. Not valid will be decided by another bench. Either way, it will be decided by the other  
36 bench.] [END OF NO AUDIO]

37

1 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Actually, if *Basha* is upheld the validity of the  
2 1981 Act becomes subsidiary.

3

4 **KAPIL SIBAL:** That's right.

5

6 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Because the '81 Act... The '81 Act purports to  
7 restore the minority character of the institution. If it is held not to be a minority institution...

8

9 **TUSHAR MEHTA:** Confers, not restored. Confers, according to us. It was never there. It  
10 confers. *Basha* says, it's not there.

11

12 **KAPIL SIBAL:** That's why we are dealing with *Basha*. That's the whole point. You can't rely  
13 on *Basha* to decide on the '81 Act.

14

15 **CHIEF JUSTICE D.Y. CHANDRACHUD:** So ultimately, our decision on the validity of  
16 *Basha* would impact upon not just the amendment, but it also has an impact on the  
17 Allahabad...

18

19 **KAPIL SIBAL:** Correct. And therefore, that matter will be decided by another bench. So,  
20 Your Lordships are, don't go into all this.

21

22 **JUSTICE SANJIV KHANNA:** Mr. Sibal, even if you overrule *Basha* or the two legal  
23 principles on interpretation of establishment and administration...

24

25 **KAPIL SIBAL:** That's right. But the '81 Act will come in, in the meantime. Correct.

26

27 **JUSTICE SANJIV KHANNA:** And in case *Basha* is overruled, then any one amendment,  
28 they may withdraw their appeals. There is nobody to persuade.

29

30 **KAPIL SIBAL:** We don't know what is going to happen. Litigation is part of the culture...

31

32 **JUSTICE SANJIV KHANNA:** It's quite clear. It solves no purpose then.

33

34 **KAPIL SIBAL:** I know. Your Lordship knows even when in litigations there is no purpose.  
35 Still, there is litigation.

36

37 **JUSTICE SANJIV KHANNA:** Fine.



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**KAPIL SIBAL:** Your Lordship experiences it every day. So, Dr. Dhavan will live to argue the next case. So, we have these submissions, they are being only to divert the attention of the Court to issues that are not before it.

**TUSHAR MEHTA:** '81 Amendment may be also examined because there are not several. They are not comfortable with that amendment.

**KAPIL SIBAL:** It's not referred.

**NEERAJ KISHAN KAUL:** We'll definitely have a bearing on the Allahabad High Court. Definitely have a bearing.

**TUSHAR MEHTA:** With a reference... The reference has emanated from that '81.

**NEERAJ KISHAN KAUL:** So to say that, that will have a... they have a direct there.

**TUSHAR MEHTA:** The reference is in that bit.

**NEERAJ KISHAN KAUL:** *Basha*... Allahabad High Court has decided either way.

**KAPIL SIBAL:** Not either way...

**JUSTICE SANJIV KHANNA:** If we overrule *Basha* and say that AMU has a minority status in view of...

**NEERAJ KISHAN KAUL:** Yes.

**JUSTICE SANJIV KHANNA:** [NO AUDIO] (any amendment is of no consequence absolutely. It relies on *Basha* and it says the amendment which has been brought about is not

**NEERAJ KISHAN KAUL:** [END OF NO AUDIO] is not removing the valid... is not a validating act, removing the basis of the law.

**JUSTICE SANJIV KHANNA:** No difference at all. Because once *Basha* is declared to be in bad law, the position as it was before *Basha* in law, would have to be examined. And therefore,

1 '81 Amendment, the reasoning of the Allahabad High Court that the legislature is directly  
2 overruling the High Court, no longer remains.

3

4 **NEERAJ KISHAN KAUL:** That is the second part. The first part is Allahabad High Court  
5 relies on...

6

7 **JUSTICE SANJIV KHANNA:** That's a case for you to...

8

9 **NEERAJ KISHAN KAUL:** Allahabad High Court directly relies on *Basha* to say what it  
10 says. And then, in addition...

11

12 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Mr. Kaul, *Basha* denies minority status to  
13 AMU. The '81 Amendment sought to, as a Solicitor, I put it in from your point of view, the '81  
14 Amendments sought to confer the minority status. They say that this was declaratory. We will  
15 have to decide that. Now, the fact of the matter is, that if we come to the conclusion that *Basha*  
16 was wrongly decided, the immediate impact of that would be, that the denial of minority status  
17 to AMU was wrong. We don't agree with the reasons on the basis of which *Basha* denied  
18 minorities status to AMU.

19

20 **NEERAJ KISHAN KAUL:** Right.

21

22 **CHIEF JUSTICE D.Y. CHANDRACHUD:** In which case, the reason why my brother is  
23 putting that too is this, once if we overrule *Basha*, then what? The only basis for setting aside  
24 the 1981 Amendment was that Parliament has merely nullified the judgment in *Basha*  
25 without taking away it's basis. If we come to the conclusion that *Basha* was wrongly decided,  
26 that ground of challenge was weighed with the Allahabad High Court, ceases to have any  
27 relevance.

28

29 **NEERAJ KISHAN KAUL:** But it has a direct impact on the decision.

30

31 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Undoubtedly. But the whole postulate...

32

33 **NEERAJ KISHAN KAUL:** That's what I said.

34

35 **CHIEF JUSTICE D.Y. CHANDRACHUD:** The whole postulate of the Allahabad judgment  
36 is that, Parliament could not have, without taking away the basis of *Basha*, overruled it by a  
37 simple declaration that they did, by amending the definition. But, if we go to the source, which

1 is **Basha**, and come to the conclusion that **Basha** was wrongly decided, the basis of the  
2 Allahabad judgment itself is taken away.

3

4 **NEERAJ KISHAN KAUL:** I started by saying, that what **Basha** is decided it, has a direct  
5 impact on the Allahabad High Court judgment.

6

7 **CHIEF JUSTICE D.Y. CHANDRACHUD:** So, ultimately, it all boils down to whether  
8 **Basha** is correct or otherwise?

9

10 **KAPIL SIBAL:** That's all that I'm saying. That's the core issue. That's the point.

11

12 **GURU KRISHNAKUMAR:** Just to argue to what Mr. Kaul said, in the High Court, reliance  
13 was squarely placed on the '81 Amendment, because they have a 2005 decision which was  
14 taken after the '81 Amendment, saying that they are giving reservation. That was a cause of  
15 action for the writ petition before the High Court. In the process of defending that decision,  
16 square reliance was placed on the '81 Amendment. Therefore, the High Court went into it,  
17 looked into the factual finding in **Basha**, saying that it is not a minority institution. Now,  
18 therefore any... today, it can't be that My Lords... Say, the telescope is put back as it were,  
19 straight away to 1967, and then said... decide **Basha** in a vacuum whether it's, right or wrong.  
20 The difficulty is, in the process of doing that, '81 is relied upon, '72 is sought to be relied upon.  
21 Please ignore '81 for a minute, My Lords. 1972 sought to be relied upon. '72 is immediately  
22 after **Basha**. So with all this, I would respectfully submit, when there is a reference date, the  
23 matter proceeds on the basis that the entire matter is before the Court. One more aspect, please  
24 see the reference order. Reference order, as what rightly fell from My Lord, the Chief Justice,  
25 does not confine it only to the question of **Basha**. He talks about the NCMEI Act of 2006 as  
26 amended in 2010. The question is then, will the seven judges then completely excise from the  
27 consideration that Act also. Now they are relying on this 2006 Act also, as amended in 2010.  
28 So, these are, in my respect to submission My Lords, issues where it has to be a holistic...

29

30 **JUSTICE SANJIV KHANNA:** We are not concerned directly with 2006 or 2010 Act. That's  
31 not the subject matter of **Basha**, one. Number two, that has not been examined by any two  
32 judges bench or three judges bench.

33

34 **GURU KRISHNAKUMAR:** I followed, but then in the reference order...

35

36 **JUSTICE SANJIV KHANNA:** That's it. Now, directly making a reference over here without  
37 there being a direct... Yes, what does the second order of Chief Justice Gogoi does is, it just

1 narrates the history what has happened. The questions which are there are the ones which  
2 were already...

3

4 **GURU KRISHNAKUMAR:** Not necessarily. With respect, My Lords...

5

6 **NEERAJ KISHAN KAUL:** It will have some bearing. Why Justice Gogoi refers to it, and  
7 that is why we initially started by saying the scope of references [UNCLEAR] in our own terms.  
8 That entire reference, including Justice Gogoi's order, was about conjunctive or disjunctive.  
9 **Yashpal** in the NCMEI order, which Justice Surya Kant pointed out yesterday. The issue  
10 arose was, is it established or incorporated in the UGC Order. Now there **Yashpal** answered  
11 it by saying it's 'and'. The 2010 amendment, which was brought about later to the NCMEI Act  
12 also, said it's 'and' and not 'or'. In that context, Justice Gogoi, while dealing with the history of  
13 what has happened, since right from the beginning, the only issue... for 50 years, no decision's  
14 ever taken. **Basha's** decision on the individual findings on [UNCLEAR]. The only question  
15 which has been raised repeatedly, which the [UNCLEAR] government raised, is established  
16 and in public disjunctive or conjunctive. And I'll show that when my turn comes, My Lords.  
17 That's why Justice Gogoi, in the Reference Order of 2019, categorically relied on **Yashpal**, to  
18 say that **Yashpal**, NSC, NCMEI and UGC, dealing with the issue of 'or' versus 'and', not on  
19 the issue of AMU being a minority as administered or established. Only on the disjunctive and  
20 conjunctive issue.

21

22 **JUSTICE SURYA KANT:** Mr. Kaul, the principles laid down in **Yashpal**, will definitely  
23 have to be referred to while examining **Basha**, one. Two, the subsequent amendment which  
24 has direct bearing i.e. 1981 Amendment, say, put it otherwise, I think you can reformulate what  
25 you are probably trying to say. If the 1981 Amendment is approved by the seven judge bench,  
26 is upheld by the seven judge bench, then challenge to **Basha** becomes academic.

27

28 **NEERAJ KISHAN KAUL:** I bow down, My Lords.

29

30 **JUSTICE SURYA KANT:** Then examination of **Basha** also does not survive.

31

32 **NEERAJ KISHAN KAUL:** Grateful. But all that I am saying is, this whole reference to UGC,  
33 NSC, NCMEI, **Yashpal**, nothing it does with Gogoi's order. It was all dealing with disjunctive  
34 versus conjunctive.

35

36 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Let's hear Mr. Sibal, now. We have to wrap up.

37

1 **KAPIL SIBAL:** All this time has been...

2

3 **TUSHAR MEHTA:** Only one line, if Your Lordship permits?

4

5 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Let's complete Mr. Sibal's argument. He was  
6 almost...

7

8 **KAPIL SIBAL:** I'll answer it straight away, My Lords. Assuming for the moment Your  
9 Lordship decides that *Basha* is wrongly decided. Let's assume. What is the consequence?  
10 That I was a minority institution at the inception.

11

12 **JUSTICE SURYA KANT:** That may not expressly or impliedly approve the 1981  
13 Amendment.

14

15 **KAPIL SIBAL:** Forget 1981. Your Lordships will give a declaration that I am a minority  
16 institution. That's all. Forget the '81 Act. What is it? Your Lordships can't change the nature of  
17 the minority institution if you say that *Basha* has wrongly decided. That nature will not  
18 change under the 1981 Act. 1981 confers something, what Your Lordship should already have  
19 decided. What are we talking about? So let's be clear on what the lay of the land is. If *Basha*  
20 is wrongly, is rightly decided, then the question arises whether the 1981 Act...

21

22 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Whether we take it as a basis or maybe nullify  
23 it.

24

25 **KAPIL SIBAL:** Exactly. Then only it arises, not otherwise, because '81 will not change the  
26 status of the minority institution, with the declarations that *Basha* has wrongly decided.  
27 Therefore, all this is a red herring.

28

29 **CHIEF JUSTICE D.Y. CHANDRACHUD:** What more now, Mr. Sibal?

30

31 **KAPIL SIBAL:** I've been trying to finish. What can I do, My Lords?

32

33 **CHIEF JUSTICE D.Y. CHANDRACHUD:** There is always time out by the judges. You  
34 have to always factor that in. How long more, Mr. Sibal?

35

1 **KAPIL SIBAL:** No, not very long. Not very. I'm just trying to. Then I'll finally come on  
2 **Basha**. And that's it. Nothing more than that. So, My Lords, now the reference. If Your  
3 Lordships...

4  
5 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Yes.

6  
7 **KAPIL SIBAL:** You want the reference? Let's read the reference of Justice Gogoi. That's at  
8 Volume 3(a).

9  
10 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Where's the date ?

11  
12 **KAPIL SIBAL:** The date is 12th of February, 2019. February 12, 2019, Volume 3(a), page 216.

13  
14 **JUSTICE SURYA KANT:** In which case?

15  
16 **KAPIL SIBAL:** Sorry?

17  
18 **JUSTICE SURYA KANT:** The reference order?

19  
20 **KAPIL SIBAL:** Yes, in *AMU vs Naresh Agarwal* and all other connected matters. That's  
21 the challenge to the High Court order. Now can we see in *Azeez Basha*. The quote. "It is to  
22 our mind, quite clear that 30 Sub-Article(1) postulates as a religious community, will have the  
23 right to establish and administer educational institution of their choice. Meaning thereby that  
24 we're a religious minority established an educational institution. It will have the right to  
25 administer that. An argument has been raised to the effect that even though the religious  
26 minority may not have established the institution, it still have a right to administer it, if by  
27 some process it has been administering the same before the Constitution came into force."  
28 We're not prepared to accept this argument, and I am not arguing it. It's completely wrong.  
29 "The Article, in our opinion, clearly shows that the minority will have the right to administer  
30 an educational institution of their choice, provided they have established them, but not  
31 otherwise. The Article cannot be read to mean that even if the educational institution has been  
32 established by somebody else, any religious minority, would have the right to administer it  
33 because for some reason or other, it might have been administering it before the Constitution  
34 came into force. The words, 'establish' and 'administer' in the Article must be read  
35 conjunctively and so read, it gives the right to the minority to administer an educational  
36 institution, provided it has been established by it. We are of the opinion that nothing in that  
37 case justifies the contention raised on behalf of the petitioners, that the minorities would have

1 the right to administer an educational institution, even though the institution may not have  
2 been established by them. The two words must be read together and so read the Article gives  
3 the right to the minority to administer institutions established by it. If the education  
4 institution has not been established, it cannot claim to administer."  
5 That's what **Basha** held and I agree here. The judgment of the Allahabad High Court, which  
6 is under challenge, the present appeal rejects the prayers made on account of the decision of  
7 this Court in **Basha**. The issue arising in **Basha** supra was conferred, was referred to as seven  
8 judge bench by an order of this Court on 26th November, which is Justice Fazl Ali's order,  
9 which is writ petition so and so. The aforesaid writ petitions were heard, along with other  
10 connected matters in **T.M.A. Pai**, by a bench of eleven judges and the judgment in cases  
11 reported and so on so. Question which was formulated for answer in **T.M.A. Pai**, which  
12 coincidentally reflects the questions referred to by order of this Court of 26th November, past  
13 and writ petition so and so. "What are the indicia for treating an educational institution, a  
14 minority educational institution. Would an institution be regarded, as a minority educational  
15 institution because it was established by persons belonging to a religious and linguistic  
16 minority, or it's being administered by persons belonging to a religious or linguistic minority?  
17 However, the bench did not answer the question, stating that it will be dealt with by the regular  
18 bench. The order of the regular bench passed on 11th March, which, for reasons that we need  
19 not dilate, did not answer the aforesaid question. The said fact were shown that the correctness  
20 of **Basha** arising from the decision in **Basha** has remained undetermined. That apart, the  
21 decision of the court in **Yashpal** and the amendment of the NCMEI made in the year 2010,  
22 would also require an authority for pronouncement of the aforesaid question formulated,  
23 besides the correctness of the view in the judgment of this Court in **Basha**, which was been  
24 extracted above ordinarily and in the normal course, the judicial discipline would require the  
25 bench to seek a reference of this matter, by a five judge bench. However, being regard to the  
26 background as stated above on the precise question is already referred to seven judges and  
27 was, however, not answered where of the view that the present question set out above."

28

29 **JUSTICE DIPANKAR DATTA:** 'Referred to', 'set out above', what is that?

30

31 **KAPIL SIBAL:** So clearly, My Lord...

32

33 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Mr. Sibal, Justice Gogoi has referred to in the  
34 referring order... Chief Justice Gogoi's referring order, refers to two aspects. One, the  
35 correctness of the decision in **Basha** has been undetermined, has not been determined.

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37 **KAPIL SIBAL:** Correct.

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**CHIEF JUSTICE D.Y. CHANDRACHUD:** Second, question 3(A), which was framed in *T.M.A. Pai*, was not answered.

**KAPIL SIBAL:** That's correct.

**CHIEF JUSTICE D.Y. CHANDRACHUD:** So, that's why we'll just revisit that once observation there, para 9.

**KAPIL SIBAL:** Yes, that's the one... that's the one.

**CHIEF JUSTICE D.Y. CHANDRACHUD:** Para 8, actually we'll see first.

**KAPIL SIBAL:** Para 8. "The said fact, which shows that the connectors of the question arising from the decision in *Basha* has remained undetermined."

**CHIEF JUSTICE D.Y. CHANDRACHUD:** Now, we go to para 9.

**KAPIL SIBAL:** Then 9. "That apart, the decision of this Court in *Yashpal* and the amendment of the NCMEI made in 2004, and made in 2010, would also require authority to pronounce the aforesaid question formulated, is set out above, besides the correctness of the view in *Basha*." Now, My Lords, my answer to Your Lordships is very simple. If Your Lordships decide that *Basha* was wrongly decided, nothing else arises. Nothing else arises. Yes.

**CHIEF JUSTICE D.Y. CHANDRACHUD:** Three questions which Justice Gogoi had in his mind. One, the correctness of the decision in *Basha*.

**KAPIL SIBAL:** Correct.

**CHIEF JUSTICE D.Y. CHANDRACHUD:** Two, question 3(A), which was referred to in Item 3(A). In fact, he says that 3(A) covers the correctness of the entire decision, the 26.11.81 order.

**KAPIL SIBAL:** Correct.

**CHIEF JUSTICE D.Y. CHANDRACHUD:** And three the impact of *Yashpal*.



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**KAPIL SIBAL:** Correct. Now, as I said to Your Lordships, and I'm saying it time and again. If you hold that it was established by a minority, then nothing else arises. Sorry?

**JUSTICE SURYA KANT:** It talks about both the things.

**KAPIL SIBAL:** I know. But I'm on another point. Your Lordship is right, I'm not disputing that. My request to Your Lordships is, yeah. Assuming whether Your Lordships finds that *Basha* has wrongly decided and 1981 is unconstitutional. Where does it leave us? It'll leave us nowhere. Then we'll still be a minority institution.

**JUSTICE SURYA KANT:** You have to rephrase the reference, because keeping in paragraph 9 of the order, which you have just read out, *Yashpal* and 2004 Act Amendment in 2010, both are required to be examined. And in what context? Only aforesaid question formulated.

**KAPIL SIBAL:** Therefore, my request to Your Lordship is you first examine whether *Basha* has rightly decided or not. Render a judgment there. If you come to the conclusion *Basha* has wrongly decided, the second question need not be gone into. If you come to the conclusion *Basha* has rightly decided, then in any case, the 1981 issue will have to be...

**CHIEF JUSTICE D.Y. CHANDRACHUD:** They said, 'besides the correctness of the...'. Beside means in addition to.

**KAPIL SIBAL:** In addition to. Therefore, we have to move in a way, that in fact, it decides the matter one way or the other. Then you can decide the '81 issue. If you decide against me on *Basha*.

**CHIEF JUSTICE D.Y. CHANDRACHUD:** All right. Now, what remains now, Mr. Sibal?

**KAPIL SIBAL:** NCMEI Act... Amendment to the NCMEI Act would require an authority, the amendment.

**JUSTICE DIPANKAR DATTA:** On the question formulated.

**KAPIL SIBAL:** No, My Lords, this is not the NCMEI Act.

**CHIEF JUSTICE D.Y. CHANDRACHUD:** What are the indication?

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**KAPIL SIBAL:** Actually, if you look at 9, My Lords... Actually, we have not fully understood the way 9 is formulated. Kindly read 9 again. "That apart, the decision of this Court in *Yashpal*." Now, *Yashpal* dealt with bogus universities in one building. "And the amendment to the NCMEI." What was that amendment? Originally university was excluded, now university is included. That's all. And how that amendment will impact the question formulated.

**CHIEF JUSTICE D.Y. CHANDRACHUD:** Mr. Sibal, also, we have to bear in mind, with a little bit of experience, that when you refer a matter, you're not looking at the matter threadbare. Sometimes you are. Suppose you were to refer it to a bench of nine. Now we have heard it for the last... Now we are completely in [UNCLEAR] of all the...

**KAPIL SIBAL:** In control of the matter.

**CHIEF JUSTICE D.Y. CHANDRACHUD:** No, but what we are saying is, normally... Otherwise, when you make a reference, you refer on the basis of... without really much ado, without going into a very detailed consideration of the matter. Therefore, the words of a referring court never bind the court to which it is referred. Because you are a larger bench, you have to reformulate the questions to bring finality to the dispute. But at the same time, there are some parameters which you keep in mind.

**KAPIL SIBAL:** Of course.

**CHIEF JUSTICE D.Y. CHANDRACHUD:** ... which is. You can't go beyond the pleading. You are answering basically a question of law.

**KAPIL SIBAL:** That's all that I'm saying. Even this amendment it says, "Would also require an authority... on the aforesaid question formulated". What is the aforesaid question formulated? Whether *Basha* is rightly decided or not. All [UNCLEAR] relates only to *Basha*.

**CHIEF JUSTICE D.Y. CHANDRACHUD:** But Mr. Sibal, equally, just as you are saying, don't freeze *Basha* in point of time. Look at the law laid down by our Court before *Basha* and after *Basha*. Because rightly, you've also relied on *St. Stephen's* and *T.M.A. Pai*.

**KAPIL SIBAL:** That's just a declaration of the law from the beginning.

1 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Likewise, we can't freeze our version of whether  
2 **Basha** is correctly decided, without reference to the entirety of the statutory history governing  
3 AMU. But we can't say, we'll freeze it as of the statutes, as in existence one day before **Basha**  
4 was decided. That may not be a correct approach...

5  
6 **KAPIL SIBAL:** The point is, My Lords, the 1920...

7  
8 **CHIEF JUSTICE D.Y. CHANDRACHUD:** We have to look at the overall layer of the  
9 statutory scheme in relation to AMU.

10

11 **KAPIL SIBAL:** Mr Lord, which we have placed before you. We have placed before you. We  
12 have not questioned... anything that happened after that only reaffirms the fact... the '81 only  
13 said that it was a minority institution. Now whether that was right or wrong, is a separate issue.

14

15 **CHIEF JUSTICE D.Y. CHANDRACHUD:** That's your argument and that's your point.  
16 Even if you were to look at the '81 Amendment, '81 reinforces what, according to you, is the  
17 correct position even before '81.

18

19 **KAPIL SIBAL:** That's right. So, My Lord, therefore, you can look at it. You can decide against  
20 us, then that question will arise. So, My Lord, let me quickly now finish with this. Now, having  
21 said that, kindly now see what **Basha** decided. So we done. First, what are the correct  
22 statements in **Basha**? Kindly look at factual aspect My Lords. So that I don't waste Your  
23 Lordship's time. Kindly come to page 9 of Volume 3(a). Yes, it says. Kindly see placitum A and  
24 B, Statement of Fact. "Further, it seems that the existing MAO College was made the basis of  
25 the university and was made over to the authorities established by the 1920 Act for the  
26 administration of the university, along with properties and funds attached to the college, the  
27 major part of which had been contributed by Muslims, though some contributions were made  
28 by other communities." This is a factual statement. Correct? Nothing wrong with the  
29 statement. It only shows what? That we are the ones who set up the university. That 30 lakh  
30 today is translated today into 2006, as translated to rupee 280 crores and today it will be 500  
31 crores. So **Basha** accepts that the MAO College was in existence. It was made the basis of the  
32 university and the properties and the funds attached, that means everything at the college was  
33 handed over to the university and the section itself says. So the genesis of it is correct, that  
34 **Basha** affirms. Now, two is, come to page 14 now. I'm just indicating the facts that are  
35 accepted by **Basha** itself. It says, "that brings us to the end of Section 19, sections of 1920."  
36 Your Lordships have that? Sorry. It's not there. Page 14, yes, kindly. The next paragraph

1 between B and C... sentence starting, "the annexure to the 1920 Act." Your Lordship has that?  
2 Between B and C, at page 14?

3

4 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Yes. The last...

5

6 **KAPIL SIBAL:** "Annexure to the 1920 Act gives the names of the foundation members of the  
7 Court 124, who are all Muslims and who were to hold office for five years from the  
8 commencement." Factual statement, correct. Indicates the genesis. Then come to page 15, 3rd  
9 paragraph, 4th line. That's between placitum C and D. "It is remarkable that, though the  
10 proviso to 23(1) was deleted as far back as 1951, there was no challenge to the '51 Act till after  
11 the ordinance of '65." It's factually correct. Nobody challenged it. "The reason for this might  
12 be that there was practically no substantial change in the administrative setup of the 1920 Act,  
13 and it is only when a drastic change was made by the ordinance of '65, followed by the Act that  
14 challenge was made, not only to the '65 Act, but also to the '55 Act insofar as it did away as a  
15 proviso of 23(1)." So factually, **Basha** acknowledges that nothing changed, despite the '51 Act.  
16 Acknowledges that fact. And what was the proviso? That all members of the Court shall be  
17 Muslims. That's the third factual issue. Fourth, page 16, top of the page.

18

19 "The statute was.." right, placitum A. May I read it, My Lord? "The statutes were also amended  
20 in many of the parts of the Court, were transferred by the amendment to the Executive Council.  
21 Further, the constitution of the Court was drastically changed by the amendment of the 8th  
22 statute. And it practically became a body nominated by the visitors, except for the Chancellor,  
23 the Pro Chancellor, the members of the Executive Council who were ex officio members, and  
24 three members of Parliament, two to be nominated by the Speaker of the House and one, the  
25 Chairman of the Council of States. Changes were also made in the constitution of the Executive  
26 Council. Finally, the '65 Act, provided that every person holding office is a member of the  
27 Court, or the Executive Council, as the case may be, immediately before the 20th day of '65,  
28 shall on and from the set date cease to hold office. It was also provided that until the Court and  
29 the Executive Council were reconstituted, the visitor may, by general or special order, direct  
30 any office of the university to exercise the powers." So this tells you, this is the reason for  
31 challenge of the '65 Act. Correct, My Lords? That's why it was challenged.

32

33 Now come to page 17, top of the page, placitum A. "The words, 'establish' and 'administer' in  
34 the Article must be read conjunctively, and so that it gives the right to the minority to  
35 administer an educational institution, provided it has been established by it." So, that's the  
36 statement of the law, provided we have established it. So, that's correct also.

37

1 Then 17, at page 17, Placitum F, "We therefore, we have therefore, to consider whether Aligarh  
2 Muslim University was established by the minority community and if it was so established, the  
3 minority community would certainly have the right to administer it." So, clear, My Lords?  
4 That's what they say. So test is only of establishment, nothing more. And at the inception,  
5 correct? So that's page 17. Then come to page 18. No, "Before we do so...", Placitum...  
6 paragraph starting, "Before we do so..."

7 "Before we do so, we should like to say, that the words educational institution are a wide  
8 import and would include a university also." Please mark that. That is the contradiction in  
9 **Basha.**

10

11 Now, My Lords, kindly see... I'm sorry, I should have read the first paragraph. "We shall have  
12 to examine", sorry, "We shall have to examine closely what happened in 1920, when the Act  
13 was passed to decide firstly, whether in the face of that Act, it could be said that the Aligarh  
14 University was established by the Muslim minority." According to me, a wrong question asked  
15 and you've got the wrong answer. He says, if by virtue of that Act, can you say that the  
16 university was established. And that's the answer he gives. "So, we actually have to examine  
17 what happened in '20, when the '20 Act was passed to decide firstly, whether in the face of the  
18 Act it could be says that the Aligarh University was established by the Muslim minority.  
19 Secondly, whether the right to administer it, ever vested as a minority." This is also wrong. I've  
20 shown to Your Lordships, the provisions. Court was all Muslim. Money was there. Executive  
21 Council, Academic Council. In the Executive Council out of 30 members, 23 were Muslims.  
22 That's administration. In the Academic Councils, the majority were always Muslim. That's the  
23 administration. And three, "Even if the right to administer some properties that came to the  
24 university vested in the minority before the establishment of Aligarh, whether it has  
25 surrendered when the Aligarh University..." My Lord, what does that mean? Surrender means  
26 what? If you want to become a university, we'll have to transfer all rights and obligations to  
27 the university. There is no other way to become a university. So, where's the question of  
28 surrender? By virtue of the statute to be called a university, we have to transfer all rights and  
29 obligations of property, teachers, students, everything, which is exactly what we did. Then  
30 before we do so, we should like to say that, educational institutions are a wide import and  
31 would include a university also. This was not disputed on behalf of the Union.

32

33 **JUSTICE DIPANKAR DATTA:** University is an educational institution.

34

35 **KAPIL SIBAL:** That's right. Not dispute. So, it comes under 3, Sub-Article 1. That's the point  
36 I was making, My Lords. Union of India. "And therefore, it may be accepted that a religious  
37 minority had the right to establish university under 30 as per Rule 1. The position with respect

1 to the establishment of universities before the Constitution came into force in 1950 was this.  
2 There was no law in India which prohibited any private individual or body from establishing  
3 a university, and it was therefore open to the private individual or body to establish university.  
4 There's a good deal in common between educational institutions which are not universities,  
5 and those which are. Both teach students and both have teachers. But what distinguishes a  
6 university from the other, is that a university grants degrees of its own, while the education  
7 institutions cannot". Then come back, this is what he said. Now, kindly come back to placitum  
8 H. "The importance..." Kindly see, just above it. "The importance of the recognition of  
9 government in matters of this kind cannot be minimized. The position continued even after  
10 the Constitution came into force. It was only in '56", and that's the 22 that Your Lordship  
11 referred to, My Lord Justice Surya Kant. Then kindly come to page 19, at the bottom placitum  
12 H. "It is true". 19 words, "It is true, as it's clear from the '20 Act that the nucleus of the Aligarh  
13 University was the MAO College". Kindly see My Lords. These are all acceptance of our facts.  
14 It is true.

15

16 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Where is that? Which is the page?

17

18 **KAPIL SIBAL:** 19 at the bottom, last paragraph. These are the contradictions in the  
19 judgment. "It is true that..." one second, let me read it. "It is true, as is clear from the '20 Act,  
20 as they nucleus of the Aligarh University was the MAO College, which was till then a teaching  
21 institution under the Allahabad University. The 'conversion of that carriage', if we may use  
22 that expression, into a university, was however, not by the Muslim minority." What does that  
23 mean?

24

25 **JUSTICE SANJIV KHANNA:** What it says, basically, is a new institution which has come  
26 up.

27

28 **KAPIL SIBAL:** Naturally My Lords. There's no other choice in the matter.

29

30 **JUSTICE SANJIV KHANNA:** Then we'll see how it was incorporated.

31

32 **KAPIL SIBAL:** It took place by virtue of the '20 Act, which was passed by the Central  
33 Legislature. There was no Aligarh University existing till the '20 Act was passed. It was brought  
34 into existence by the '20 Act. This is the logic. So because it was brought into existence, it loses  
35 its minority character.

36

1 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Now page 20, at placitum, between A and B, it  
2 says, "It was brought into being by the 1920 Act, and must therefore be held to have been  
3 established by the Central Legislature, which by passing the 1920 Act incorporated it. This  
4 follows the provisions of the 1920 Act which said to establish and incorporate". That's where  
5 they get this.

6

7 **KAPIL SIBAL:** That's where they get it.

8

9 **CHIEF JUSTICE D.Y. CHANDRACHUD:** So to that extent, they are right. The 1920 Act  
10 said that the Act is establishing and that it is incorporated.

11

12 **KAPIL SIBAL:** My Lords, but it doesn't matter, because you can establish and incorporate  
13 being a minority institution. It doesn't answer that question. Any number of statutes now  
14 which do that even today. You are incorporated.

15

16 **JUSTICE DIPANKAR DATTA:** University should be brought into existence.

17

18 **KAPIL SIBAL:** Who determined?

19

20 **JUSTICE DIPANKAR DATTA:** Who determined? Ultimately, when the...

21

22 **KAPIL SIBAL:** The Act.

23

24 **JUSTICE DIPANKAR DATTA:** The legislature.

25

26 **KAPIL SIBAL:** That's the question. Of course, the legislature determined that the  
27 university... and the conditions are... What are the conditions? That you must have this  
28 amount of area, you must have this amount of student-teacher, there'll be an Executive  
29 Council, there will be a structure. All that. That's the 19(6) conditions. Those are the regulatory  
30 conditions. But the choice to set up a university is mine. Now, did the minority set it up or not,  
31 is the question.

32

33 **JUSTICE DIPANKAR DATTA:** Mr. Sibal, if you come to page 19, there's one paragraph  
34 which is worth reading. "There was nothing in 1920...", the sentence starts like that.

35

36 **KAPIL SIBAL:** Yes. 1920. "To prevent the Muslim community if it so chooses". Correct. I'll  
37 read it, My Lords. "To establish a university. But if it did so, the degrees of such university

1 were not bound to be recognized". So where does it take us My Lords? What's the use of  
2 having...

3

4 **JUSTICE DIPANKAR DATTA:** Therefore, in order to get the degrees recognized by the  
5 government, you had to approach...

6

7 **KAPIL SIBAL:** Correct. But that doesn't mean it was established by the government. That's  
8 the question, My Lords. I had no choice in the matter. If I want to be called... and to be a  
9 university is my right under 30, and the nucleus came from the college and that property and  
10 everything. So the question is, I can't be a university. To be a university is my right under 30.  
11 That also *Basha* accepts. This is the problem.

12

13 **JUSTICE SURYA KANT:** It was not disputed before the bench, that even before 1956, the  
14 degree could be awarded only by a university.

15

16 **KAPIL SIBAL:** Absolutely.

17

18 **JUSTICE SURYA KANT:** And that university must be recognized by the government. Then  
19 only that degree holds.

20

21 **KAPIL SIBAL:** That's right. No doubt about it. In other words, if I want, if my, if my right  
22 exists under 30 and I get it incorporated, I lose my right under 30. That's what it comes to.

23

24 **CHIEF JUSTICE D.Y. CHANDRACHUD:** I think what the... I mean, we're just  
25 understanding the logic of the Court. What they are saying. Is that a universe... educational  
26 institution includes a university. Aligarh Muslim University in its character as a university, is  
27 established by an act of the Central Legislature and because it is established by an act of the  
28 Central Legislature, notwithstanding all the efforts which were made by the Muslim  
29 community for, sort of, in the movement to set up the college and then convert it into the  
30 university the establishment is by an act of the legislature and not by the Muslim... That's the  
31 logic.

32

33 **KAPIL SIBAL:** But let me answer that straight away. The word, 'established' in Article 31 is  
34 different from the concept of establishment under an Act. I answer that straight away.  
35 Establishment under the Act is the recognition. The word, 'established' in 30(1) has a  
36 connotation 30 or 30 Sub-Article 1 has a connotation which relates to the genesis of the  
37 institution, whether it's a college or it's a university or it's a school. Establishment in the



1 statutory sense is the recognition for incorporation to grant a degree. So these are two separate  
2 concepts. We can't confuse the word, 'establish' in the context of one which is established in  
3 the under Article 30, Sub-Article 1. There Your Lordship is right that in that sense that word,  
4 'established' used in the incorporation sense. Today, for example, you want to set up a  
5 university, you have to go through the same thing. It's a minority university, you go through  
6 the same thing, but it doesn't destroy your character in the minority university.

7

8 **JUSTICE SANJIV KHANNA:** The minorities by themselves do not have the right to create  
9 statutorily a university. They have to go to the authority.

10

11 **KAPIL SIBAL:** Yes. They have no choice My Lords. That's 19(6).

12

13 **JUSTICE SANJIV KHANNA:** For that matter, any individual doesn't have...

14

15 **CHIEF JUSTICE D.Y. CHANDRACHUD:** And 30 recognizes your right to found a  
16 university also.

17

18 **KAPIL SIBAL:** That's right. That's accepted even in *Basha*.

19

20 **CHIEF JUSTICE D.Y. CHANDRACHUD:** And only... to establish a university. The only  
21 statutory way of doing it is to go through an Act of Parliament.

22

23 **KAPIL SIBAL:** That's right. Then that concept of establishment can't be confused because  
24 it's used in two separate senses.

25

26 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Mr. Sibal we are on the verge of... the stroke of  
27 lunch. The bails are about to be removed.

28

29 **KAPIL SIBAL:** My Lord, what happens is sometimes the ball is balled and the bails don't get  
30 removed, My Lord. So therefore, please wait till 02:00. I'll finish very soon.

31

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

33

34 **KAPIL SIBAL:** Deeply obliged. Your Lordships have been very kind.

35

36 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Yes, Mr. Sibal.

37

1 **KAPIL SIBAL:** When we left off, My Lords, I made the distinction between 'establish'. Now  
2 My Lords, the word 'establish' in Article 30 is used in the constitutional sense. The word  
3 'establish' in the statute is used in the statutory sense.

4

5 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Just one second. Yes, Mr. Sibal.

6

7 **KAPIL SIBAL:** This is clear from the definition and I will read it. 'University' - of the UGC  
8 Act - 'University means a university established or incorporated by or under a Central Act.'  
9 That's why it's in that sense. The word 'establish' in that statutory sense, by or incorporated,  
10 'established or incorporated by or under the Central Act.' The word 'established' in 30 with  
11 reference to the setting up of the institution and that's where **Basha** confused the concept of  
12 establishment. Even 22 uses the same expression. Same thing. Because you can establish a  
13 university by incorporation, that's what it means. Now, back to Volume 3(a), page 20. Yes.

14

15 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Volume 3(a)?

16

17 **KAPIL SIBAL:** Volume 3(a), page 20.

18

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

20

21 **KAPIL SIBAL:** And My Lords, I was referring to that sentence - 'There was no Aligarh  
22 University existing till '20 Act was passed. It was brought into being by the '20 Act and must  
23 therefore be held to have been established by the Central Legislature, which by passing the act  
24 incorporated it. The fact that it was based on the MAO college would make no difference to the  
25 question on who established it.' That's where they went wrong. So, he accepts that it was based  
26 on the MAO college, but he says- 'Makes no difference.' So now My Lords, come straight away  
27 to page 21. And that page 21, that Placitum, last paragraph. Yes, last paragraph. My Lords have  
28 that? 'From the history we have set out above, it will be clear that those who were in charge of  
29 the MAO College, the Muslim University Association and the Muslim University Foundation  
30 Committee were keen to bring into existence the University at Aligarh.' This is the admission.  
31 'There was nothing in law then to prevent them from doing so, if they so desired, without  
32 asking the Government to help them in the matter.' So, they accept the fact that - Yes, we are  
33 the ones who wanted to bring a university into existence. It was the minority community. But  
34 if they brought into existence university of their own, degrees of the university are not bound  
35 to be recognized by the Government. So, that's 21.

36

1 Placitum G - 'It seems to us that it must have been felt by the person's concern that it would  
2 be of no use bringing into existence a university if the degree is conferred by the state  
3 university were not to be recognized by the Government.' So he... in fact, **Basha** sets out the  
4 reason why we went. So that's on 21. Now, these are the correct statement of facts in **Basha**  
5 My Lords, which I pointed out. Now, the incorrect statements of fact. I'll just point those out.  
6 First of all is page 23. The incorrect statements of fact. Paragraph 2, in page 23. Yes. It says...  
7 Placitum between B and C, sentence C. 'It will thus be seen...' Your Lordship has that?  
8 Paragraph at page 23, 2nd paragraph. 'It will thus be seen' - just be above Placitum F - 'That  
9 besides the fact that the members of the court had to be all Muslims. There was nothing in the  
10 Act to suggest that the administration of the Aligarh University was in Muslim minority as  
11 such.' Correct?

12

13 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Where are you reading, Mr. Sibal?

14

15 **KAPIL SIBAL:** Paragraph page 23.

16

17 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Yes. 'Besides, there were other bodies...' that  
18 para ?

19

20 **KAPIL SIBAL:** Yes, that para, five sentences thereafter, 'It will thus be seen..'

21

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

23

24 **KAPIL SIBAL:** 'It will thus be seen that besides the fact that the members of the court had  
25 all to be Muslims. There was nothing in the act to suggest that the administration of the Aligarh  
26 University was a Muslim minority as such. Besides the above, we have already referred to  
27 Section 13, which showed how the Rector, namely the Governor General, is overriding powers.'  
28 This is completely wrong because the overriding power is in every university in the hands of  
29 the Visitor, whether it is Rector at that time or the Visitor now. In every statute, whether it's  
30 *qua* minority, *qua* majority. The overriding powers are there always, but that's not the test.  
31 Yeah, My Lords, I'm sorry. My learned friend is right. I missed it out myself. Page 21 end of  
32 the page. My fault. Sorry. I am missing out things. Placitum H, My Lords. 'It may be accepted  
33 for the present purposes that MAO College and Muslim University association and Muslim  
34 University foundation were institutions established by the Muslim minority.' Accepts the fact.  
35 'And the two of them were administered by societies.' Now My Lords, therefore, 23 is this one  
36 fact which I showed to Your Lordships. Then kindly come to page 11. Yeah, page 11. Back to  
37 page 11. That's incorrect facts. It says - 'There is no condition.' Placitum between G and F. Last

1 sentence in the second paragraph. 'There is no condition that the Lord Rector and the  
2 members of the visiting board must belong to the Muslim community. How is that relevant?  
3 Can be said that the Governor General of India must belong to the Muslim community? What,  
4 what, what... or for that matter the Chancellor must belong to that community? And present  
5 such..... how can anybody say that? 'There is no condition that the Rector and the members of  
6 visiting board must belong to the Muslim community.' So that's My Lords, *ex facie* wrong.  
7 Then come to page 13. 'This again shows...' I'm sorry. At the bottom page 12. Right up there.  
8 Yes. Page 12,  
9

10 **JUSTICE SANJIV KHANNA:** We have understood.  
11

12 **KAPIL SIBAL:** Yes. Now My Lords, just see page 13, Placitum A and B. 'This again shows  
13 that in the matter of such disputes the court, which is called the supreme governing body of  
14 the university, did not have the power to resolve it.' My Lords, if the dispute is between the  
15 Academic Council and the Executive Council, they say the power... there was no power in the  
16 court to resolve it. How does that... what does that....? Because arbitration was provided for.  
17 How is that relevant for the purposes of establishment?  
18

19 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Alright.  
20

21 **KAPIL SIBAL:** So, that My Lords, that's 13. But just one or two more things. Then My Lords,  
22 kindly come to page 13 at the bottom. 'There is nothing anywhere in any section of the  
23 act.'...'There is nothing' - My Lords, last paragraph, second line - 'There is nothing anywhere  
24 in any Section of the Act which vest the administration of the University in the Muslim  
25 Community. The fact that in the proviso to 23, it is provided that the court which shall consist  
26 only of Muslim does not necessarily mean that.' Now My Lords, this is factually incorrect and  
27 Your Lordships may note that. 'In the Academic Council, 15 members from the court, are from  
28 the court which are Muslims.' Factually incorrect statements. Page 19, Volume... Your  
29 lordships may just note that. Page 19, Volume 3. 'In the EC, 20 out of 30 are elected by the  
30 court.'  
31

32 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Just give us the figures again?  
33

34 **KAPIL SIBAL:** Yes. 'In the Academic Council, 15 members are from the court and are all  
35 Muslims,' that's at page... because at that time, court were all Muslims. That's page 19, Volume  
36 3(g) and that's the Academic Council. 'In the Executive Council, 20 out of 30 were to be elected  
37 from the court, all Muslims.' That's two thirds. 'And 6 were to be elected by the Academic

1 Council.' Which were also Muslims. And VC and PVC were to be elected from the court. They  
2 were also Muslims. So for him to say, that there was nothing anywhere in the Section which  
3 vests the administration, factually so incorrect from the Act itself. It's not outside the Act. One  
4 is at page 19, the second is at page 21, and the third is at page 11.

5 The AC is at page 19. EC is at page 21 and the Control is at page 11. Control was of the minority  
6 community. So that is factually incorrect. The next one. The next one. Page 18, right at the top.  
7 'We have to examine closely what happened...'

8

9 **JUSTICE SANJIV KHANNA:** We have already got.

10

11 **KAPIL SIBAL:** My Lords, we have already got that so therefore, forget that. I've already said  
12 that. Then page 19, second paragraph. 'There is nothing in the '20 Act to prevent the Muslim  
13 majority if it suits minority to establish university. But if it did so, the degrees were not bound  
14 to be recognized.' Already said that. And then he themselves, he says - it may be that page 20  
15 - that the '20 Act was passed as a result of the efforts of the Muslim majority... minority but  
16 that does not mean that the Aligarh Muslim University came into being. That's it. It's the page  
17 20 itself. It's contradictory. Page 20, Placitum D. It may be that the '20 act was passed as a  
18 result of efforts, but that does not mean... So that takes care of that. Then page 22, Placitum C.  
19 'It was thus the Central Legislature ' - Placitum C - 'which brought into existence the Aligarh  
20 Muslim and must be held to have established it.' That My Lords, that was the basis of the order  
21 in any case. Then right at the end, last paragraph. 'It appears from paragraph 8 of the Schedule  
22 that even though members of the court had to be Muslim, the electors were not exclusively  
23 Muslim.' That's neither here nor there. I have have already shown that to Your Lordships. Then  
24 page 23, first paragraph last three lines.

25

26 'Further 15 members of the court were to be elected by the Academic Council the membership,  
27 which was not confined only to Muslims.' Sure. Then page 23. 'These provisions, in our  
28 opinion...' Placitum.... last, My Lords, Placitum between F and G. 'These provisions, in our  
29 opinion, clearly show that the administration....' My Lord, not relevant, really speaking. We  
30 are on administration. So, really that takes care, of what was right and what was wrong. So,  
31 My Lords, I've done that. And the last thing now. Then I'm done. What is the last thing? 'What  
32 is it that we brought in?' And 'what was transferred to Aligarh Muslim University?' One, 30  
33 lakhs.

34

35 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Just one second.

36

1 **KAPIL SIBAL:** Yes. Government at that time asked us to bring this in. 30 lakhs raised by  
2 the Muslim University Association, which is worth 300 crores today. In 2005, it was valued as  
3 287 crores. This is reflected in Section 7, of the '20 Act. Section 7 of the '20 Act, Volume 3 (g),  
4 at page 7. Section 7 of the '20 Act, Volume 3 (g) at page 7. So 'founded'. That's what Dr. Davan,  
5 My Lord, kept on saying. It was founded. So, the sponsorship is ours. We sponsored it. All  
6 land, infrastructure, movable, immovable properties of MAO college and the Muslim  
7 University Association stood transferred to AMU. So, all land, all infrastructure, movable,  
8 immovable properties of the MAO College and the Muslim University Association stood  
9 transferred to AMU. So, all the assets, movable, immovable, all transferred. That's at Section  
10 4(1) of the '20 Act in Volume 3(g) at page 6. Section 4(1), of the '20 Act, Volume 3(g), page 6.  
11 This is... the next is even more important. 'Any property given to the MAO College or Muslim  
12 Association by gift, trust would be read as will gift to MOU.' Kindly see, My Lord, this is a  
13 private. Lordship knows, will is a private act, My Lords. And a private instrument. Even that,  
14 My Lord, goes. It's deemed under the Act to be given to be a gift. Even Government land  
15 becomes theirs, My Lord. This shows continuity. This is Section 4(iv) of the 1920 Act. Section  
16 4 (iv), of the 1920 Act, Volume 3(g), page 6. Then, 'All buildings of MAO College...' Next, My  
17 Lord. "All buildings of MAO College, were to vest in the AMU and the same name were to be  
18 kept of those buildings. May names could not be changed.' That's Section 4 (v) of the '20 Act.

19

20 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Section 4....

21

22 **KAPIL SIBAL:** (v) of the '20 Act, Volume 3(g), page 6. Then My Lords, five. 'All employees  
23 of MAO College transferred to AMU.' Yes. Shows continuity, My Lords, all this shows. This is  
24 My Lords, Volume 4 (vi) of the '20 Act, Volume 3(g), page 6. 'All employees and all students  
25 of the MAO college permitted to complete their education in the AMU.' So, students were  
26 transferred. Again, continuity. That Section 32 (5), of the 1920 Act, at page 14. So, this is how  
27 My Lords, the continuity is established, the genesis is established, the foundation is  
28 established and *Basha* acknowledges all this, but it says - 'Doesn't matter because there is an  
29 Act.' It matters. It matters because this is the only institution of its kind set up with intent to  
30 serve the interests of secular India and to protect the minority institutions in empowering their  
31 children and others to be part of the workforce of India. If you reject this, you destroy that  
32 dream. That dream should not be destroyed. Thank you very much.

33

34 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Thank you very much Mr. Sibal. Yes, Mr.  
35 Khurshid?

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37 **KAPIL SIBAL:** Your Lordships may pardon me for a while, My Lord?

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

**SALMAN KHURSHID:** Please Your Lordships. My Lord, I adopt whatever my learned colleagues have said with big appreciation and gratitude. I'm only picking out some first principles that would, I believe, assist Your Lordships in coming to a conclusion which essentially, as I understand, is simply in the backdrop of whatever has been explained to Your Lordships whether the establishment were used in Article 30 leads to a situation in which everything is there. Everything is there except the actual act of establishing it by an act of Parliament. Does that take away? So My Lords essentially, there are three propositions that I'm placing before Your Lordships. My Lords very, very briefly in a few minutes, the backdrop of Aligarh Muslim University because Your Lordships have been told how Sir Syed Ahmad pursued the establishment. First of MOA College and then his followers pursued the establishment of the university. The matter begins with 1957 and the Sir Syed wrote out this great book, the treatise about the reasons for the uprising, the mutiny, or what we call independence, the war of independence, the first war of independence. And thereafter, one of the important causes for him, as he found, was the backwardness of Muslim community, particularly the educational backwardness of the Muslim community. So he set out to bring about education. He had already set up something called the scientific society the purpose of which was to translate scientific books into Urdu so that they could be made accessible to the community and make the community more aware of what the scientific developments were happening. And that was Sir Syed. Then My Lord, after 1857, he visited Oxford University. He tried to absorb and understand how a good university could be made. And then, of course the same designs of Oxford University were reproduced in the architectural plans of what was MAO College and then Aligarh University. Of course, we didn't have colleges as Oxford and Cambridge have, but the buildings were designed around what are called Halls of Residents. It was to be a residential university. So there were halls of residents. Each hall having very eminent background and each hall having a particular character. So My Lords there is what is called in Aligarh, an Aligarh Tehzeeb. Very important. And I'm saying all this My Lords because I have a sentimental attachment to Aligarh. I was born in the Vice Chancellor's house, therefore I do have a claim, sentimentally, on Aligarh. But be these are [UNCLEAR] My Lords. There's a particular Tehzeeb translates into culture or a subculture that Aligarh represents. I do believe there's a culture in every great institution. Your Lordships know culture in every great institution but Aligarh has a unique culture which a great deal has to do with ability to speak, ability to propound, ability to interact, ability to imagine and to project. My Lords, this is seen right through the Aligarh University's culture. When the university is established. Your Lordships have also already seen that it was established with the effort of the community. And

1 therefore, I distinguish in first principle, two kinds of establishments. Two kinds of statutory  
2 acts that may be propounded by Government. One is a non-consensual act. Where My Lords,  
3 an institution that is followed on bad times, where there is widespread dock of corruption that  
4 people are not being served as they should be served. And the Government steps in to say, that  
5 in order to save this institution, we need to take it over and they take over that institution. It's  
6 a non-consensual necessarily. But they can also be a consensual takeover which is exactly what  
7 Aligarh was about. Where everybody gathered and said, "Please convert us into a university."  
8 And as Mr. Kapil Sibal just argued, all those assets and the entitlements of Alig...of MAO  
9 College were handed over to the university. My Lord, two things have happened when Aligarh  
10 Muslim University Act was passed in 1920. It was not assumed that there would be a difference  
11 between two different kinds of universities, which we now have become familiar with, private  
12 university and a public university. Your Lordships asked, what minority institutions or  
13 university level institutions are there? And it seems that Aligarh being one, provided Your  
14 Lordships agree with us, Jamia University is the second one, dependent on whatever the  
15 decision will happen in Aligarh. Jamia was a breakaway offshoot of Aligarh. Jamia was part of  
16 the independence movement, because in the independence movement, it was felt that  
17 whatever...

18

19 **JUSTICE SANJIV KHANNA:** Mr. Khurshid, we are not dealing with Jamia's case because  
20 that's a separate matter. So, if you want to go into that, it may be expanding the scope of the  
21 reference.

22

23 **SALMAN KHURSHID:** I'm only saying that Your Lordships asked me if there were more  
24 than Aligarh institutions that would likely or felt to be minority institutions. Jamia is one, but  
25 that's also in litigation and I do believe in the High Court...

26

27 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Apart from Jamia any other examples in the  
28 country?

29

30 **SALMAN KHURSHID:** There are other examples. In fact, the other side has produced some  
31 examples. Those are all so called private universities. My Lords, there's the Mahavir Jain  
32 University. There is the Christ University. Christ College. Your Lordships mentioned Vellore.  
33 Vellore Medical college. Now My Lords, what has happened there is. most of the Christian  
34 institutions, either are like St Stephen's college within a larger complex of a university or they  
35 are all deemed universities. So My Lords, if you start with the school, you start with possibly a  
36 society that is registered under the Registration Act. From the society, you develop a college  
37 that is also under Registration Act and whatever affiliation is provided. The college then could



1 possibly become deemed university. Nothing happens. The character is preserved throughout.  
2 It's just the transformation from a deemed university to a full university when the question  
3 marks come. Your Lordships asked about Jamia. Jamia remain or retain that character  
4 without any question while it was a deemed university. The moment Jamia became a full  
5 university, Jamia also came under the same question mark that now is placed before Aligarh  
6 university. So My Lords, the private universities are there, but just for Your Lordships'  
7 information, the private universities that are treated as minority institutions has a slight  
8 tweaking from the model of Aligarh. Aligarh model was that everything that is owned by the  
9 societies was handed over - Jamia did the same thing - was handed over to the university and  
10 the societies were dissolved .What the private universities now are doing is that the society  
11 doesn't get dissolved. The societies retains whatever it has but the society comes under the  
12 umbrella of a university and the society is told the conditions if once they are met, the  
13 Government should be informed that the conditions are met. And on meeting those  
14 conditions, the university will come into operation. So, there are today the dichotomy is, that  
15 you can have a private university provided Your Lordships, at some stage in this matter or  
16 elsewhere hold that just the fact that this is the university has been established 'by an act of  
17 Parliament or an act of the State Legislature' will not deny it its minority character. That  
18 finding hasn't yet come. But if there is such a finding, then private universities will exist. But  
19 as far as we understand from our point of view, if Your Lordships, decide against us and in  
20 favour of **Azeez Basha** as decided by the Bench of Five judges, then we couldn't, one way or  
21 the other, get a private university or a public university that would have the tag of 'being a  
22 minority university.' So, that's very critical. And My Lords, for this purpose, what I'm asking  
23 Your Lordships to do, is to consider that when a society is registered, you can get together and  
24 could be a group of people.... unorganized people, et cetera, can set up a school, but in order  
25 to get legal identity or legal entity or legal personality, they have to register themselves as a  
26 society. And the registration is under a statute, the registration is an act, the lowercase, act, a-  
27 c-t, of the Government or of the State. And yet it continues to be recognized as the private  
28 university. Here, the moment you go beyond a deemed university and you ask for being made  
29 into a full university. Your Lordships have already heard, it can only be done through an act of  
30 Parliament, and therefore, the moment, it is done through by an act of Parliament, you lose  
31 your... You lose your.... So, you are giving by one hand under 30, Article 30 (1), and taking  
32 back by the other hand, by saying - 'well, if you're constituted or you are established or you are  
33 formed.' So if Your Lordships were to use the meaning of 'founded', it would be easy to then  
34 come to a conclusion, that, 'founding involves a participatory inclusion of the sponsoring  
35 society.' In the private universities, they are now called sponsoring societies. Where is, here,  
36 Your Lordships will saw... Your Lordships saw the history. My second point would be brief  
37 point.

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

**SALMAN KHURSHID:** As Your Lordships have noted, and the *Azeez Basha* judgement has also noted, MAO College was a minority institution. There is no doubt about it. And Your Lordships have been shown all the indicia for something being a minority institution. My Lords, it's just a brief point related to this, the actual administration could well be part of the indicia to decide whether it's a minority institution. But, it may well be, that an institution, an institution that is to be administered after it's come into the status of a university, may have an extensive regulation by which the administration... the free administration may be restricted to some extent. That will only be enabling provisions restricted by, in terms of reasonable restriction. But, that may not have any reflection on whether it is a minority character or not. If it is a minority character, the restriction will be limited. If it is not a minority character, may be the restriction will be more liberal. But, My Lord, *T.M.A. Pai* has indicated that, where there is an unaided minority institution and an unaided private university.... private institution, which may not be a minority institution, the difference in the extent to which you can regulate is very limited. Is very limited. Maximum freedom must be allowed to in educational institutions. And what the maximum freedom that is needed for a minority institution is to carry the flavour of the minority institution. The culture and ethos of a minority institution, that is very critical. Then, My Lord, if Your Lordships will turn just briefly to my written submissions. Your Lordships will see it in 1(b). I must apologize, My Lords, there is an article, that because of some technical difficulties is attached to this. It's an article, which only indicates the request, that Your Lordships look at this matter in a particular manner in which Ronald Dworkin has described it. So, Your Lordships will see in the backdrop of, what I told Your Lordships about Aligarh, Your Lordship will just see there. The second paragraph. It's very important, historically very important. Your Lordships will find this in Mr. Noorani's book, which is in Volume 3(h). This is taken from Mr. Noorani's book, Your Lordships will see the second paragraph. 'The way, Aligarh participates in the various walks of national life will determine the place of Muslims in India's national life. The way India conducts itself towards Aligarh, will determine largely. Yes, that will determine largely, the form which our national life will acquire in the future.' My Lord, this is a statement, made at a stage when Dr. Zakir Hussain was Vice Chancellor. And having said this, in the presence of the President, Dr. Rajendra Prasad, who was visiting the university. My Lords, Aligarh University from the time of Prime Minister Nehru to the time of Prime Minister Modi has a rich legacy of how the top leadership of the country has seen Aligarh. Time of Nehru's...My Lords, Nehru came and asked whether Aligarh didn't have Tarana. It didn't have a song of the institution. And promptly that very night, a student inspired by what Prime Minister Nehru had said... His

1 name being Majaz Lakhnawi. He grew up to be an outstanding poet of this country. Majaz  
2 Lakhnawi, then a student of Aligarh Muslim University sat down that night and wrote out the  
3 Tarana. My Lords, if Your Lordship will permit me four lines of that Tarana, just to give you a  
4 flavour of how the community and those who participated in education at the university  
5 actually saw that university. Just five lines. I'll translate any word that might be different. *Yeh*  
6 *mera chaman, Yeh mera chaman, Yeh mera chaman hai mera chaman. Apne chaman ka*  
7 *bulbul hoon.* I am the nightingale of my garden. This is my garden. This is a *chaman* that I  
8 belong to. *Jo tare haram mein roshan hai woh shama yahan bhi jalti hai.* The light that you  
9 find in the Haram Sharif in Medina is lit here as well in this university. *Is dasht ke goshe se,*  
10 *ek joo-e-hayat ubalti hai.* From every spot in this garden, there is a stream that flows and that  
11 stream is the stream of life. *Ye dasht-e-junoon deewanon ka, ye bazm-e-wafa parwanon ki.*  
12 This is a place of passion of those who are passionate about what Aligarh is. And this is also  
13 the place from where we rise like a *parwana*. We rise and fly high up in heavens. *Ye shahr-e-*  
14 *tarab roomanon ka, ye khuld-e-bareen armanon ka.* Essentially, basically, this is the citadel  
15 of those who have aspirations and those who have dreams. *Fitrat ne sikhaya hai humko.*  
16 Nature has taught us here. *Uftaad yahan parwaz yahan.* Begin your life learn to begin your  
17 life here, learn to fly high from here..*Gaaye hai wafa ke geet yahaan...we*  
18 have sung the songs of faith here. *Chede hain junoon ke saaz yahan.* This is where we have  
19 started the lyrics of *Wafa*, of faith.

20 So My Lords, this is the flavour caught by Majaz. But this is a flavour that all of the Muslim  
21 community felt about Aligarh and there were resistance for Sir Syed, from people who were  
22 extreme conservatives. My Lords, we are talking about pre-partition days. Extreme  
23 conservatives who resisted it and when Sir Syed went out to collect money. They said, "We will  
24 give you money. But first show us that you can dance like the British. You want to make an  
25 university that is universal. You want to make an university that can compete with Oxford, you  
26 want to make an university that is of high intellect, et cetera. Why don't you first show that you  
27 can dance like them." And he bore this with fortitude. He bore this and said, "Whatever money  
28 you give, I need it for my university. I'll take it for my university." My Lords, that was a great  
29 sacrifice that he did. So then the next proposition I have is, how would Your Lordships...how  
30 Your Lordships are examining essentially fundamental rights. Your Lordships are looking at  
31 part three. A fundamental right that the minority has been granted for setting up institutions.  
32 Whether that fundamental right can be cut down or not cut down by an interpretation, is what  
33 I am asking Your Lordships to consider, and in this My Lords, Your Lordship be good enough  
34 to turn to Volume 5(c). Your Lordship will turn to 5(b) at page 366, paragraph 42. My Lords,  
35 there are just three or four paragraphs that I will indicate to Your Lordships. My Lord Chief  
36 Justice's very eloquent description of the nature of fundamental rights because I want to  
37 pinpoint this because this will help Your Lordships then take a view on what to be done with

1 Article 30. If Your Lordships will just allow me to read a little bit, because obviously, in the  
2 context...

3

4 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Page? What page?

5

6 **SALMAN KHURSHID:** Privacy... My Lords, the page is 366, paragraph is 42 in 5(c).

7

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

9

10 **SALMAN KHURSHID:** Your Lordship started with privacy because that was the issue  
11 before Your Lordships, that privacy as a fundamental right. Your Lordships have considered  
12 John Locke, and Your Lordships have considered William Blackstone, et cetera, et cetera. And  
13 in paragraph 43, Your Lordships, have summed it up - 'The notion that certain rights are  
14 inalienable was embodied in the American Declaration of Independence in the following  
15 terms; we hold these truths to be self-evident, that all men are created equal, that they are  
16 endowed by their creator with certain unalienable rights that amongst these are life, liberty  
17 and the pursuit of happiness.' Then My Lords, 'life' as interpreted in Article 21, Your Lordship  
18 knows, goes far beyond the original text of the Constitution. Then Your Lordship, will be good  
19 enough to come to the bottom of 43 at page 367. In quotes, right at the top of that page - 'For  
20 its drafters to ignore, to forget or to depreciate the rights of man are the sole causes of public  
21 misfortune and Government corruption. These rights are natural rights, inalienable and  
22 sacred. The National Assembly recognizes and proclaims them. It does not grant them,  
23 concede or establish them.' My Lords, an interesting word, 'establish' is used here. 'And their  
24 conservation is the reason for all political communities within these rights, figures, resistance  
25 to oppression.' And then My Lord, Roscoe Pound, in paragraph 44, 'The spirit of the common  
26 law.' The quote is - 'Natural rights means simply interests which we think ought to be secured,  
27 demands which human beings will make which we think ought to be satisfied. It is perfectly  
28 true that neither law nor state creates them. But it is fatal to all sound thinking to treat them  
29 as legal conceptions for legal rights the devices which law employs to secure such of these  
30 interests as it is expedient to recognize are the work of the law, and in that sense, the work of  
31 the state.' Then Your Lordships will see the next quote, which is on the classical natural law  
32 that's found in the revival of natural law, second line. 'One was natural rights, qualities of the  
33 ideal or perfect man in a state of perfection by virtue of which you ought to have certain things  
34 to be able to do certain things. These were a guarantee of stability because the natural rights  
35 were taken to be immutable and inalienable.' Please My Lords. 'The social compact, a  
36 postulated contract basis of civil society. Here was a guide to change an ideal law of which  
37 positive laws were only declaratory. An ideal body of perfect precepts governing human

1 relations and ordering human conduct guaranteeing the natural rights and expressing the  
2 social compacts.' My Lords, it's the social compact of equality. It's the social contract of  
3 participation and social contact as Your Lordships have seen of life with dignity. And would  
4 Your Lordship then consider, that the entire range of rights, certainly the rights of life with  
5 liberty includes the right to educate yourself, includes the right to educate yourself with other  
6 colleagues and with other friends, and that rights should not be truncated by an interpretation  
7 of court saying this establishment.... And there My Lords, already have what Mr. Kapil Sibal  
8 had argued. Then 46, because this sums up. Paragraph 46 at page 368. 'Natural rights are not  
9 bestowed by the State. They inhere in human beings because they are human. They exist  
10 equally in the individual, irrespective of class or strata, gender or orientation.' So My Lords,  
11 this really sums up. Then if Your Lordships will quickly look at paragraph 48. And there I  
12 believe, My Lord, because, this will link up with the article I wanted to place before Your  
13 Lordships. 'The idea that individuals can have rights against the state, that are prior to rights  
14 created by explicit legislation, has been developed as part of a liberal theory of law,  
15 propounded by Ronald Dworkin in his similar work title, 'Taking rights seriously'." In My  
16 Lords, next page 369. If Your Lordships will then see page 369, at the bottom. This is Ronald  
17 Dworkin. 'Individual rights are political trumps, held by individuals. Individuals have rights  
18 when for some reason, a collective goal is not sufficient justification for denying them, what  
19 they wish, as individuals to have or to do or not a sufficient justification.. or not a sufficient  
20 justification for imposing some loss or injury upon them. Dworkin asserts the existence of a  
21 right against Government, as essential to protecting the dignity of the individual. It makes  
22 sense to say that, a man has a fundamental right against the Government in the strong sense  
23 like free speech. If that right is necessary to protect his dignity or his standing as equally  
24 entitled to concern and respect or some other personal value of life consequence.' And My  
25 Lord, that, I believe, is what Your Lordships are now looking at, in terms of 'the rights of the  
26 minority.' Then My Lords, if Your Lordships will come to one more important... important...  
27 419. If Your Lordships will come to. 419. My Lords, that's important because, it indicates, how  
28 Your Lordships have handled the issue of rights. 419. Just before 419, if Your Lordships will  
29 come to page 408 and this is the beginning of the Lordship's discussion on fundamental rights.  
30 Paragraph 120. Just above paragraph 121, I'll save Your Lordship's time in dealing everything,  
31 the last 3-4 lines. 'The fundamental rights, in other words, are primordial rights, which have  
32 traditionally been regarded as 'natural rights'.

33

34 In that character, these rights are inseparable from human existence. They have been  
35 preserved by the Constitution. This being a recognition of their existence even prior to the  
36 Constitutional documents.' So, My Lords, I'll argue, I would argue, that, these rights that  
37 minorities have, as individuals, existed before 1950. And if in the 1950, translation of those

1 rights into the document would in any way truncate them, then Your Lordships would consider  
2 whether there are possible ways in which that truncation can be avoided, and in this case, it is  
3 only a matter of interpretation. It is not a matter of voiding any portion or rewriting that  
4 portion, but merely a matter of interpretation given by 5 eminent judges of this court, to see if  
5 that interpretation could itself be altered to give more meaning to natural rights and to human  
6 rights. My Lords, 418 is where Your Lordships come to. Having considered all the general,  
7 fundamental right cases, Your Lordships come to, what Your Lordships called 'Discordant  
8 notes'. My Lord, in the entire thesis that Dworkin has, Dworkin's thesis of how to look at  
9 institutional interpretation of rights, he also has a significant section, which talks about the  
10 mistake. A mistake, that must be corrected, a mistake that must be restricted at an appropriate  
11 stage. And here Your Lordships are considering **ADM Jabalpur**, as a possible mistake. And  
12 then, if there is a mistake, what is best to be done? Your Lordships considered what the  
13 majority had said. Then at page 144, Your Lordships, come to the dissenting opinion of My  
14 Lord Justice Khanna. My Lord, this is page 418. In his dissenting opinion, Justice Khanna,  
15 emphatically held that -'The suppression of the right to move any court for the enforcement of  
16 the right under Article 21 upon a proclamation of emergency would not affect the enforcement  
17 of the basic right to life and liberty. The constitution was not the sole repository of the right to  
18 life and liberty. **ADM Jabalpur** goes on even to say so.' Then My Lords, Your Lordship will  
19 just leave that paragraph 525, internal paragraph 525. And Your Lordship's comment then  
20 comes the bottom of that paragraph. 'Even in the absence of Article 21, it would not be  
21 permissible for the State to deprive a person of his life and liberty without the authority of the  
22 law.' Your Lordships are actually saying that even in the absence of 21 because of whatever  
23 Legislation or whatever the law that is being propounded, it will not take away your right to  
24 come to court to seek remedy. That was a critical decision in dissenting judgment that My Lord  
25 Justice Khanna gave. Then, My Lord, at page 136, very quickly. At page 419, paragraph 136.  
26 Your Lordship's held as follows. 'The judgments rendered by all the four judges constituting  
27 the majority of **ADM Jabalpur** was seriously flawed. Life and personal liberty are inalienable  
28 to human existence. These rights are as recognized in **Keshwanand Bharti** primordial  
29 rights. They constitute rights under natural law, the human element and the life of the  
30 individual is integrally founded on the sanctity of life. Dignity is associated with liberty and  
31 freedom. No civilized state can contemplate an encroachment upon life and personal liberty  
32 without the authority of law, neither life nor liberty are bounties conferred by the State nor  
33 does the Constitution create these rights. The right to life has existed even before the advent  
34 of the Constitution. In recognizing the right the Constitution does not become the sole  
35 repository of the right. It would be preposterous to suggest that a democratic Constitution  
36 without the bill of rights would have individuals governed by the state without either the  
37 existence or the right to live or the means of enforcement of that right. The right to life being

1 inalienable to every individual, it existed prior to the Constitution and continued enforced  
2 under Article 372 of the Constitution. Justice Khanna, was clearly right in holding that the  
3 recognition of the right to life and personal liberty under the constitution does not denude the  
4 existence of that right apart from it. Nor can there be a fatuous assumption that in adopting  
5 the Constitution, the people of India surrendered the most precious aspect of human persona,  
6 namely life, liberty and freedom to the State on whose mercy these rights would depend. Such  
7 a construct is contrary to the basic foundation of Rule of Law, which imposes restraints upon  
8 powers rested in the modern State when it deals with liberties of the individual. The power of  
9 the court to issue a writ of *habeas corpus* is a precious and undeniable feature of Rule of Law.'  
10 And Your Lordships can consider various other judgments and Your Lordship can finally  
11 overrule the majority as far as the *habeas corpus* case was concerned. My Lords I'm asking  
12 Your Lordships to consider whether the same perception would apply to interpreting the  
13 Constitution. I'm not asking that any part of the Constitution be held void. That would be a  
14 very far-fetched argument. But the integrity of the Constitution and the harmony of the  
15 Constitution in the sense of how it tries to represent primordial rights. My Lords, would lead  
16 Your Lordships I hope to actually coming to a conclusion that the word established, when it  
17 comes to minority rights of education is something that had to be considered liberally to  
18 include participatory functioning. Only the *de jure* regulation may come from the statute  
19 because it cannot come in our system from anywhere else. But that the purpose of the statute  
20 and the heart of that statute and the background history of that statute of the Act itself would  
21 have to be, would have to be considered. My Lords, this is the fundamental argument that I  
22 am placing before Your Lordship. But if Your Lordships could now consider going back to my  
23 written submissions. My Lords, there is... what I'm saying is supported by the thesis that  
24 Ronald Dworkin places in his book called 'Freedom's Law'. But it's reproduced here when, as  
25 it first appeared - The moral reading of the Constitution Philosophy. We will see. This is at  
26 page 9 of my written submissions. Volume 1(b). Volume 1(b), right in the top.

27  
28 I am emphasizing this because several of Your Lordships have, in many judgments, have  
29 indicated how Dworkin can influence decision making in terms of how two conflicting views  
30 have to be harmonized in how the judge has to come to a conclusion. If I may just read that  
31 little bit here in paragraph 1? 'There is a particular way of reading and enforcing a political  
32 Constitution, which I call the moral reading. Most contemporary Constitutions declare  
33 individual rights against the Government in a very broad and abstract language, like the First  
34 Amendment of the United States Constitution which provides that the Congress shall make no  
35 law breaching the freedom of speech. The moral reading proposes, that we all, judges, lawyers,  
36 citizens interpret and apply these abstract clauses on the understanding when they invoke  
37 moral principles about political decency and justice. The First Amendment for example,

1 recognizes a moral principle that it is wrong for Government to censor or control what  
2 individual citizens say or publish and incorporates it into American Law. So when some novel  
3 or controversial constitutional issue arises about whether for instance, the First Amendment  
4 permits laws against pornography, people who form an opinion must decide, how an abstract  
5 moral principle is best understood. They must decide whether the true ground of the moral  
6 principle that condemns censorship in the form in which this principle has been incorporated  
7 into American Law extends to the case of pornography.' Then My Lords, next paragraph. 'The  
8 moral reading therefore, brings political morality into the heart of the Constitutional Law. But  
9 political morality is inherently uncertain, etc, etc.' Then this article goes on to, what are the  
10 alternatives to this moral view? I would argue My Lords, that this moral view that Dworkin  
11 has suggested is already reflected each time Your Lordships have said, that there is a  
12 Constitutional morality that we must submit to. Initially known by way of Constitutional  
13 values. But Your Lordships have now talked about Constitutional morality. The political  
14 morality that Dworkin talks about is similar to Constitutional morality that Your Lordships  
15 have applied. And Constitutional morality looks at the Constitution as a whole not in pieces,  
16 etc., etc. to arrive at an integrated idea. And I submit My Lords, that an integrative idea of  
17 Constitutional morality would urge, would certainly point Your Lordships towards coming to  
18 a conclusion. Then minority rights can't suddenly disappear by way of an artificially restricted  
19 interpretation of a word like 'establish'. That's basically my argument, to essentially support  
20 what all the other counsels have argued that this is an additional reason, political... moral  
21 reading of the Constitution that would give Your Lordships... conclude.

22

23 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Thanks Mr. Khurshid.

24

25 **SALMAN KHURSHID:** Deeply grateful My Lords.

26

27 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Yes, Mr. Farasat?

28

29 **SHADAN FARASAT:** My Lords., I am appearing in Civil Appeal 2316 of 2006. That's 701.7  
30 before Your Lordships board. Your Lordships, in this seven judge combination are being  
31 essentially called upon to interpret the word 'establish' in Article 30 of the Constitution and  
32 whether the meaning of 'establish' as given by *Azeez Basha* is correct. My Lords, if I've  
33 understood the purpose, the core purpose of the reference. I'll begin my submissions by  
34 borrowing from My Lord, the Chief Justice's observation today. How do we read Article 30?  
35 Do we read as something which creates a ghetto or is it for a larger purpose? My respectful  
36 submission - and I'll just flag two submissions are there, but just as the opening I will flag My  
37 Lords - is that in any country, a minority craves for two things which Article 30 recognizes.



1 And those two things are firstly, to retain its minority identity. And secondly, while retaining  
2 its minority identity to fully and completely participate in the national life and national  
3 mainstream. My Lords, in my respectful submission, **Azeez Basha**, apart from the specific  
4 reasoning, proceeds on the basis that you can do either one or the other. You can't do  
5 simultaneously both. So, you can be a minority, you stay in your space. But if you become a  
6 university, and the law requires you to... the Parliament to enact something, then you lose your  
7 status. You can't be both. If you have provisions in your statute, which permit others to be part  
8 apart from the community for which it is being established, that may disentitle you. That is  
9 the background. My Lords, the second background submission is, that Your Lordships will  
10 bear in mind that AMU, today, we are testing AMU status in 2024. In its present form it has  
11 existed from 1920. 104 years, even if we exclude the MAO portion. And then My Lords, if we  
12 include that, it is 150 years. My Lord, AMU is one of the main factors, if not the main factor,  
13 for creation of an educated Muslim middle class in India. It is responsible for it and it  
14 continues to nurture it. If Your Lordships were to come to a conclusion that it's not a minority  
15 institution, my respectful submission would be - 'That would gravely damage that role which  
16 AMU has played.' My Lords, with that background my two submissions, I'll just flag, and then  
17 I'll go into them. The first submission is that, the distinction between establishing an education  
18 institution and the device to bring it into legal existence is well recognized in our law, which  
19 has been completely ignored by **Basha**...

20

21 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Distinction between?

22

23 **SHADAN FARASAT:** Establishing an educational institution and the device to bring it into  
24 legal existence is well recognized in our law, which has been completely ignored by **Basha**.  
25 That's my first submission, which I'll seek to develop. Any educational institution, forget a  
26 university, a university, Your Lordships have clearly seen, requires a statute. Any educational  
27 institution will necessarily require a legal device. A college or constituent college will require  
28 something else, affiliated college may require something else, at school you will require  
29 registration. The logic of **Basha** is... and Your Lordship saw that, when Mr. Sibal was arguing,  
30 that was shown to the court... that the Central Legislature established the minority institution.  
31 Because, the statute was passed by the Central Legislature, the Imperial Legislature.  
32 Established and that's the meaning of 'established' for the purpose of Article 30 of the  
33 Constitution. My Lords, my respectful submission is, it conflates, obviously establish...  
34 establishment and incorporation, that it definitely conflates. But, what it also conflates is,  
35 'established by and established through'. It is 'established by a minority through the legal  
36 device of a statute'. And this distinction is actually the fulcrum on which all private universities  
37 exist in our present day legal regime. I'll show that. Your Lordships will just have Volume 3 (i).

1 I just want to show the distinction between 'established by' and 'establish through'. Volume 3,  
2 My Lords may have?

3

4 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Volume 3?

5

6 **SHADAN FARASAT:** 'T'. 'T' for India. Page 3 of that. My Lords, this is a UGC regulation. It's  
7 called 'UGC Establishment of and Maintenance of Standards in Private Universities,  
8 Regulation 2003.' It begins at page 2, My Lords, of Volume 3 (i). I am referring to My Lords,  
9 the definition of a private university, at page 3, 2.1. 'Private....' My Lords have that? All My  
10 Lords have? 'Private university means university duly established through a State/ Central Act  
11 by a sponsoring body with a society registered under the Society's Registration Act 1860.' The  
12 law, the statute is the device. The establishing authority is the registered society, in this case,  
13 a sponsoring body. My Lords, that's the fundamental distinction in my respectful submission,  
14 which *Basha* misses. A statute can be the legal device, My Lords, the highest form of legal  
15 device. Undoubtedly. There can be lower forms of legal device. A registration certificate under  
16 a Society's Registration Act, that is also issued by a Governmental Authority. But by the logic  
17 of *Basha*, 'that is also established by the Government'. Now My Lords, will have just Volume  
18 3(h). Just the private...My Lords the private university regime is based on a sponsoring body.  
19 Normally it's a business house, or it could be a charitable organization which establishes a  
20 registered society. They prepare a plan, they put it to the Government of the day. The  
21 Government either enacts an act bringing that university into existence. Separate act or there  
22 are states which have a regular one act and you add it as a schedule. So as you come along, you  
23 add one university after another as a schedule. Now, in that respect, My Lords will have  
24 Volume 3(h).

25

26 **JUSTICE DIPANKAR DATTA:** What about 3.1?

27

28 **SHADAN FARASAT:** My Lords. That's right My Lords.

29

30 **JUSTICE DIPANKAR DATTA:** 'Shall be established by a separate State Act.' Here the  
31 preposition used is 'by'.

32

33 **SHADAN FARASAT:** That's right.

34

35 **JUSTICE DIPANKAR DATTA:** Whereas in the definition it is 'through'. What is the effect?

36

1 **SHADAN FARASAT:** My Lords, the point really is that when established... Your Lordship is  
2 right. It uses 'by', but I am trying to emphasize the larger principle that the legal instrument is  
3 only a device. My Lords, obviously let us... If **Basha** is right, let's test the proposition. Under  
4 Article 30 we are interpreting the word 'established'. Every establishment will be by some legal  
5 action. Minorities can never establish anything forget a university. It will be any... even if a  
6 college is there it will be a registered society. The society, the registration will be issued by a  
7 authority established by that Central Government authority. Registrar of Societies. Instead of  
8 Parliament, Central... My Lords, Imperial. The finding is it's the Imperial Legislature instead  
9 of that, it will be established by Registrar of Societies.

10

11 **JUSTICE SURYA KANT:** No. But don't you think that...

12

13 **SHADAN FARASAT:** That's exactly. I'm so grateful to My Lords. I'm just coming to that. In  
14 fact, your private university regime also has minority institutions within it, and five of those  
15 institutions are relied on by learned Solicitor in his written submission, I referred to them and  
16 all of them in fact, support our point. So My Lords, with that just come for a moment the UP  
17 Act and that is in Volume 3(h). Kindly have Volume 3(h), page 231 is where it begins. Kindly  
18 have page 234. 3(h). At 236. Kindly have the definition of Sponsoring Body (aa). 'A Sponsoring  
19 Body in relation to a university established under this Act means a society registered under  
20 the Societies Act or any public trust registered under the Indian Trust Act.' Very similar, My  
21 Lords. AMU was effectively run by a registered society. And Mr. Khurshid pointed out. Now,  
22 of course, there was a... those societies subsumed. Now it continues to exist separately, but it  
23 is established by the society through the device of the Act.

24

25 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Which is the provision you're referring?

26

27 **SHADAN FARASAT:** My Lords, it's 2(aa) at page 236. 'A Sponsoring Body in relation to a  
28 university established under this Act.' And My Lords will have Section 8 which is at 242. I am  
29 only arguing for the broad principle. I am not...Your Lordships will have 8. 'On the  
30 commencement of this Act, the existing universities enumerated in Schedule 1 shall stand  
31 incorporated under this Act.' So you can have something existing. A legal device incorporates  
32 it. Now, just have the Schedule at 261. My Lords, 261. There's a Schedule. Above the Schedule  
33 it says 63. 'Notwithstanding anything contained in this Act, the university established by  
34 religious or linguistic minority of the State of UP shall continue to have the privileges as  
35 guaranteed under Article 13.' This provision, in my respectful submission, is meaningless if  
36 **Basha** stands. Because **Basha** says the minute a Legislation intervenes, you lose your status.  
37 So, My Lords, this provision obviously cannot... Just like the High Court in the impugned

1 judgment here has said - 'A Parliamentary Amendment cannot set aside the basis of *Basha* ,  
2 which is interpreting 'established' under Article 30'. These are in this provision. Now My  
3 Lords, we will just have the first, the Integral University Act. These are examples which the  
4 learned Solicitor only has given. I'll just come to his written submission. The Integral  
5 University Act, it's a minority institution. Serial number 5, Tirthankar Mahavir is a Jain  
6 university, also a minority institution. And My Lords, over the page, at Serial number 27, Era  
7 University Lucknow, that is also a minority institution. Learned Solicitor is correcting me, it's  
8 Era.

9  
10 **CHIEF JUSTICE D.Y. CHANDRACHUD:** What is it? Era, is it?

11  
12 **SHADAN FARASAT:** Era University Lucknow. Now My Lords, will have the learned  
13 Solicitor's written submission Volume 2(b), page 51, para 85.

14  
15 **JUSTICE DIPANKAR DATTA:** Volume 2?

16  
17 **SHADAN FARASAT:** B, B for Bombay.

18  
19 **JUSTICE DIPANKAR DATTA:** Page?

20  
21 **SHADAN FARASAT:** 51. My Lords, para 85. My Lords have that? Para 85. 'An analysis of  
22 Legislations establishing other minority universities makes it clear that where the intention  
23 was to establish a minority institution, the Legislature had included specific provisions in the  
24 establishing act itself to give the university a character of minority institution.' My Lords, the  
25 first example is Sam Higginbottom University of Agriculture, UP. It says at the bottom that -  
26 'Established and administered by the Ecumenical Minority Christian Society, namely the Sam  
27 Higginbottom.' My Lords, my respectful submission is, this is exactly what the amendment in  
28 '81 sought to do in the case of AMU. My Lords, the '81 amendment which Your Lordships read  
29 yesterday, the definition of university that was established by the Muslim community. The '81  
30 Amendment is exactly this.

31  
32 **JUSTICE SANJIV KHANNA:** But his argument is not that. His argument is at the stage of  
33 establishment itself...

34  
35 **SHADAN FARASAT:** But that makes no difference for the reason. I quite see what the  
36 question is.

37

1 **JUSTICE SANJIV KHANNA:** That's what his argument.

2

3 **SHADAN FARASAT:** But that makes no difference. No, no, I'm not putting an argument.

4

5 **JUSTICE SANJIV KHANNA:** No. Don't. Put the argument as it is.

6

7 **SHADAN FARASAT:** No. So My Lords, established and administered by the Ecumenical  
8 minority. The proposition I'm placing from My Lord's, consideration is this, it makes no  
9 difference how the Parliament or a Legislature describes in the statute as to the formation.

10

11 **JUSTICE SANJIV KHANNA:** They may be flawed. Logically there is a flaw. The flaw is  
12 because Article 30 uses the word 'establish and administration'.

13

14 **SHADAN FARASAT:** Correct.

15

16 **JUSTICE SANJIV KHANNA:** So you can't by a Legislature... even if it is not established,  
17 created because, then there'll be conflict between the Legislature and... in fact, you are  
18 countering your own argument now.

19

20 **SHADAN FARASAT:** No, My Lord, it is the same... if I understood My Lord, Justice  
21 Khanna's question.

22

23 **JUSTICE SANJIV KHANNA:** Yes. You first you raised the point, that the statute cannot  
24 take away my right, which is under the Constitution, which is the right given under the  
25 Constitution is to establish a minority university or an institution. The statute cannot take  
26 away that right, but now you're arguing to the contrary where the statute itself provides for it.

27

28 **SHADAN FARASAT:** I am saying the statutory amendment, be it in the case of AMU or be  
29 it in the case of this university, makes no difference till the time the authority in **Basha** stands,  
30 which is that the minute you legislate, the minute you legislate you lose the status. So, these  
31 universities all have to go too. It makes no difference that they describe with that. That's the  
32 point I'm making. In support of these universities, the learned Solicitor is saying that -'Listen  
33 they say that it is established by the Minority.' But that's not the test in **Basha**. **Basha** says,  
34 the minute the Legislature intervenes out you go. So everything goes. I swim and sync with the  
35 examples the learned Solicitor has given to support his case and against me. So the point I'm  
36 making...

37

1 **CHIEF JUSTICE D.Y. CHANDRACHUD:** So according to you, what the 1981 Act did was,  
2 to recognize this dichotomy. The 1981 Act recognized that the establishment of the education  
3 institution was by the Muslim minority. The legal form which was given to it of incorporation  
4 was brought about by the 1920 Act.

5

6 **SHADAN FARASAT:** Correct. So My Lords, all I'm saying is that explanation really...

7

8 **CHIEF JUSTICE D.Y. CHANDRACHUD:** And by essentially what the 1981 Act has done  
9 is to recognize that, as a matter of fact the establishment was by the Muslim minority though,  
10 as a matter of fact the form of giving it a legal device in the form of an incorporation was  
11 brought about by a statute.

12

13 **SHADAN FARASAT:** That's correct. But the problem still remain. And that's why the High  
14 Court has struck it down. Your Lordships will have page 54. What's the basis on which the  
15 High Court strikes down that first 'University' definition? Only on the basis that, **Basha**  
16 means, under the Constitution 'establish', Article 30 'establish', is equal to incorporation. Since  
17 you have a statute, therefore, in the statute, what the Parliament says is irrelevant, therefore  
18 it has to go.

19

20 **CHIEF JUSTICE D.Y. CHANDRACHUD:** To the extent that **Basha** equated  
21 establishments with incorporation, it was open to Parliament to adopt a varied approach by  
22 distinguishing the Constitutional facet of establishment from the legal device of giving that  
23 establishment a legal recognition.

24

25 **SHADAN FARASAT:** And that could have possibly been done only to a Constitutional  
26 amendment. That's the short. So, My Lords, what I'm saying is....

27

28 **CHIEF JUSTICE D.Y. CHANDRACHUD:** A Legislative amendment.

29

30 **SHADAN FARASAT:** Constitutional amendment. You'll have had to amend Article 30 itself.  
31 Because, you are changing the interpretation of 30 as interpreted by **Basha**. So, the only thing  
32 the Parliament could have done is amend Article 30 itself, which it didn't do, and therefore, it  
33 has been struck down here by the High Court. That's why Your Lordships, are reconsidering  
34 judicially now, whether **Basha** is correct? That's the short point before Your Lordships. So,  
35 My Lords, my submission is this, if **Basha** is...

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37 **JUSTICE SANJIV KHANNA:** We have understood it. We have understood.

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**SHADAN FARASAT:** Yes. So that's the first submission. So, if *Basha* stands, then there cannot be a minority university in this country. Forget AMU. Including the examples my learned Solicitor has given. All of them will go. They have to go. If *Basha* stands, all of them will have to go. I will go, but, so will they...

My Lords, the second submission as a subpart of that is, Article 30 interpretation cannot be hinged on the changing regulatory landscape of educational universities or institutions. I'll just give example. The East India... before, there was no Company's Act. As Your Lordships know, My Lord, East India Company was established under a specific charter. Until 1844, when the UK Companies Act came for the first time, it was either through a separate act or specific charter of the Crown. Today My Lords, the position everywhere is, that the Parliament can form a company and the Parliament has enacted a Companies Act, in which you can register. There are two simultaneous mechanisms. Somewhat, something similar is happening on the university side also. Not exactly, but somewhat similar. These things keep on changing. UGC Act tomorrow can change My Lord. And as Your Lordship, My Lord, Justice Surya Kant pointed out - 'Is that a problem today?'. Of course it's a problem. The way it's structured, it is a problem. But if tomorrow it says that you don't need a law of a university. Article 30 cannot be hinged on a changing regulatory landscape. That's what *Basha* has done, by saying - 'The minute it's an Act, you go out.' It has to have an independent meaning, irrespective of how the law below the Constitution is changing. That's the second error, My Lord, which *Basha* makes.

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

**SHADAN FARASAT:** My Lords, then my other submission is something which, My Lord, is really not submission, which a question, which arose from the bench. I'll just try to answer it in very short. My Lord, like Mr. Sibal argued, and this is without prejudice to his argument, that once I have established.... *Basha* talks about an establishment, then, it's under Article 30, it's my right to administer. If the Parliament intervenes through a law, I can say that's violating my right. 'To administer', is my right, the minute I'm shown to have established under Article 30.

**JUSTICE SANJIV KHANNA:** That may not be fully correct. Because, even if a minority institution establishes it, it may not visualize the right to administer will be retained by the minority community.

1 **SHADAN FARASAT:** My Lord, I'll just.... Without prejudice... So, I see the point.

2

3 **JUSTICE SANJIV KHANNA:** So, there is no question that, the person who establishes will  
4 like to retain.

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6 **SHADAN FARASAT:** I am grateful, I'm extremely grateful. So, this takes into account.

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8 **JUSTICE SANJIV KHANNA:** That may not flow from the first proposition. Right to... right  
9 or establishment itself will not lead to the conclusion that the person who has established or  
10 the community which has established is also the administrative.

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12 **SHADAN FARASAT:** My Lords, may I say like this. There is no duty to administer. Your  
13 Lordships are right. But there is a right to administer. If I want to administer it through myself,  
14 I have a right to do it. But there is no duty that I should administer it only through myself. I  
15 can do it like Mr. Sibal argued through somebody else.

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17 **JUSTICE SANJIV KHANNA:** That's the different...

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19 **SHADAN FARASAT:** That's a submission.

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21 **JUSTICE SANJIV KHANNA:** That's a different argument.

22

23 **SHADAN FARASAT:** Yes. So, My Lords, once I have... So there's a duty and there's no  
24 obligation that you must continue to administer through yourself.

25

26 **JUSTICE SANJIV KHANNA:** You are, in fact yourself now accepting, establishment may  
27 be by one person, administration maybe by another person or a community.

28

29 **SHADAN FARASAT:** I am only saying this without prejudice to his argument, but I am  
30 just...Your Lordships will allow me to make the submission. Just for a minute. My Lords, the  
31 minute there can be today.... What is the legal regime, without going into the details. Let us  
32 assume it's a legal regime which does not aggressively exclude others from participation in the  
33 university. That's the point. It doesn't say people who are not Muslims will be limited to 5% or  
34 10% or 15%. right? That's what. But can that ever be determinative once I have established it,  
35 and I am *de facto* actually running it. A neutral regime does not impact my *de facto*  
36 administration. A legally neutral regime. The regime which can become problematic, which  
37 will infringe my right, will be this. If the parliament tomorrow says that -'You, Mr. AMU cannot



1 have more than 20% Muslims in your EC.' I'll immediately challenge it, although I need not.  
 2 But I will immediately challenge it saying, "Listen, I want to administer it through myself. You  
 3 are violating it." But a neutral regime which doesn't reserve seats for Muslims till that time,  
 4 I'm in *de facto* control. Does not at all... I'm an administration today. The present regime does  
 5 not, legal regime does not in any way impact my day to day administration. I'll show that in a  
 6 moment. In court, in EC, in Academic Council, Muslims are in overwhelming majority with  
 7 the present legal regime. Why do I need to challenge it? So a neutral regime. A regime which  
 8 does not....In a secular country...I am an institution of higher learning. If in a secular country  
 9 run by a Constitution, I have not aggressively sought to limit others, will that be a point against  
 10 me? Even though factually I'm in complete control, and there's no risk of being losing that  
 11 control. On that My Lords, just some data. Your Lordships will have Volume 3(c). Your  
 12 Lordships will have page 551. Page 551 of Volume 3(c). C for Calcutta. First is AMU court  
 13 composition. My Lords, this is actually 51. This is... My Lords, this has been filed by the  
 14 university itself before Your Lordships. I'm just taking Your Lordships through it. From 19...  
 15 This is the court, the actual composition of the court in terms... 551. Yes, My Lordships. So, it  
 16 has taken all the different appointees, how the people in the court are appointed, different  
 17 provisions on the left hand side. And then set from year to year how many Muslims and non-  
 18 Muslims were there. M and NM is the indicator of Muslims and Non-Muslims. 1983, Your  
 19 Lordships will have at the bottom straight away. Total. I just want to show the total. 165-7.  
 20 This is the court. This is the supreme body, as even **Basha** recognizes. And this is '81 onwards.  
 21 152-7, 152-11, 95-15, 137-15. My Lords, this ends at the latest 223. Your Lordships will get 2023  
 22 at page 557. At the bottom is total again. 2018 is 147-15, 129-20, 75-15 that is still 82%. So, at  
 23 no point in time for the last 40 years, the court has had less than 80% Muslims. *de facto*  
 24 control, despite the legal regime, whatever it may have been. Why do I need to change the legal  
 25 regime and aggressively prevent when all my feeding bodies to the court are ensuring that the  
 26 composition does not change? That the minorities are in control in fact. And this is My Lords,  
 27 I've shown the data for 40 years but Your Lordships may take it, this is the status for 104 years,  
 28 undisputed. Now My Lords, kindly have page 558, which is EC, Executive Council  
 29 composition. My Lords, 558 the next page up.

30

31 It's 558, if Your Lordships will have it. Next page, 558. This is the EC composition from '83  
 32 onwards. For the last 40 years. At the bottom, Your Lordships will see, M - 16, NM - 4. 16-4,  
 33 15-4, 22-5, 17-4 ...80% to 95% is the range. Your Lordships, this ends... just kindly have, 564  
 34 for a moment. 563, first for a moment. Page 563. At the bottom. In years 2015 and '16, 21-0,  
 35 27-0. 27 Muslims, no this thing... That's not something to take pride over, but, the point I'm  
 36 saying is that, by and large, 80% to 100% EC, which is a primary executive body is in *de facto*  
 37 control of the minority. So, court, I have shown, My Lord, Executive Council, I've shown, now.

1 And this is with a completely secular regime, which doesn't positively say - 'Oh, so and so has  
2 to be limited to 5%.' My Lords, now the Academic Council, which is the third body. My Lords,  
3 Court, EC,AC, are the three bodies, which run the university. Now, the third body, which is  
4 Academic Council, and that Your Lordships will find at page 565. At the bottom. Muslims -  
5 102, non-Muslims 13. This is '83. Again, Muslims. 102-13, 91-14. And this ends at 572. The  
6 current position, Your Lordship will have the current position at 2023. 136-7 as of today,  
7 Academic Council. And the reason for this is this, the way the EC, AC, etc. are the feeder  
8 mechanisms for this, are in effect, Old Boy's Society, Alumni Society, other minority  
9 institutions, et cetera. So it's insured. So, the fact that I positively, aggressively do not  
10 discriminate in my statute against others is immaterial. Because, with that legal regime, I am  
11 insured a *de facto* control. There's no threat today, with the existing legal regime of losing the  
12 *de facto* control. The thing which will be problematic, like I said, if the Parliament says - 'You  
13 can't in your EC have more than 20% Muslims.' Then I challenge it. But a secular regime  
14 doesn't impact me. That mixes up secularism and right under Article 30, that actually blends  
15 in very well with the scheme of the Constitution as to what's the meaning of... I don't need to  
16 aggressively remove others in my document to show that, oh, I'm minority. Only if I positively  
17 exclude aggressively everybody else. So, once I am established, unless I, who then have right  
18 to then administer, feel threatened by any provision, I continue to administer the institution  
19 also. Your Lordship will not just check provisions, therefore, and say, "Because of this, you are  
20 excluded. Therefore, it's a problem."

21

22 **JUSTICE SANJIV KHANNA:** You're not agreed by, the therefore, neither the '51 or '65  
23 amendment?

24

25 **SHADAN FARASAT:** My Lord, '65, really... '51 people challenged when, court, all Muslim  
26 court was changed to My Lords, a secular provision, really speaking. But *Basha* itself  
27 recognizes that on the ground, nothing changed because of this mechanism.

28

29 **JUSTICE SANJIV KHANNA:** My question is not that.

30

31 **SHADAN FARASAT:** Really speaking today. I'm speaking for the Petitioner. I can't, of  
32 course, speak for everybody. Speaking for the Petitioner I represent, I'm not agreeing that. I  
33 am not agreed by that. And My Lords, the present dispute arises... Just one, detour, My Lord.  
34 Present dispute arises in the context of reservations. That's the next data. I'll just quickly put  
35 it, and then...

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37 **JUSTICE SANJIV KHANNA:** That is a separate question altogether.

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**SHADAN FARASAT:** No, My Lords. I agree. But how does this has come to Your Lordships? This dispute arose in 2005,

**JUSTICE SANJIV KHANNA:** You are wanting to go into that question? Then we'll have to...

**SHADAN FARASAT:** No, My Lord, I'm not flagging something. I'm not at all going to address it on merit. Not at all. Just flagging one point. The present dispute only arises not because of any provisions really in that. What happened, 50% reservation was given. And only reason to give that was, in the professional schools, Jawaharlal Nehru Medical College, a very sought after college. The distribution, for instance, is almost 50:50 between Muslims and non-Muslims. Sometimes it can be 45 also. Muslims go to 45 sometimes, so there the idea was to protect that to 50. Otherwise in the rest of the university- I have that data here - 70% to 80% student body is Muslim. The need for reservation... that's how the present dispute arise. Only in the context of professional highly competitive spaces. Medical and engineering colleges, Your Lordships know anywhere it's highly competitive. That's the space where there was basically a reservation was brought in. Otherwise, reservation is not even needed because 70% to 80% of the student body is anyways, Muslim.

**JUSTICE SANJIV KHANNA:** You have St. Stephen's College, you have T.M.A. Pai, Xaviers in between... So don't go on that. If you go on that, we'll have to...

**SHADAN FARASAT:** My Lords, the test in Stephen's would have come to my rescue even if I was not in this position. All I'm saying is, I don't even need that test necessarily. Is my submission to Your Lordships given my situation. Of course, if I was worth off, the test would still help me. No doubt. If Your Lordships will permit one page if I can hand over if Your Lordships permit. Just the data of the composition of the student body. Well as the total students today in the university is 23,675. Out of that the Muslim students are 18,700 which comes to percentage of Muslim students 77.39%. Percentage of Muslim female students out of all the women students, 81% are Muslim. Out of the male students, 79% are Muslims. And the overall composition 77.39. That's how it comes. The control on the administrative side is substantial. It's catering to the Muslim community in substance. It also takes everybody else in alignment with the secular ethos of the Constitution without aggressively discriminating against it. Can that be a point against me in an Constitutional adjudication? That I cease to be a minority. So, My Lords, that's the submission on administration. My final submission. My Lords, this university has served a very important purpose of creating an educated Muslim

1 middle class. It has literally created. I don't intend to exaggerate. It actually has... Education  
2 of Muslims and AMU go hand in hand. And the reason is the minority status is very relevant  
3 for that. This is recognized in many judgments of Your Lordship as well, I'm not going to take  
4 you through them, but the point is this, students from Bengal, from Karnataka, from Kerala,  
5 from Muslim families will send their children only to AMU. They may be today... they may not  
6 hundred years back, they may not have been great universities. But today they're accepted in  
7 universities all over the country. A Presidency college is there. Calcutta University is there. In  
8 South we have... but lot of... that's the composition, I could not place it. But the composition  
9 of AMU from all over India because of its minority status. Because that minority identity,  
10 which I started my submissions with, is relevant to a minority. That's why we have that Article  
11 30. And this is especially true for women students, because the burden of bearing the cultural  
12 markers of identity. Be it a majority or be it a minority always comes on the women. And when  
13 it comes to girl education, the existence of the minority status of AMU is very relevant. It's a  
14 very important consideration in family sending their women to this institution and possibly to  
15 access higher education at all. If the institution ceases to be a Muslim minority institution, it  
16 may very well hamper the education of Muslim women in India. Higher education or Muslim  
17 women India.

18  
19 **JUSTICE SANJIV KHANNA:** Over the last hundred years without the minority institution  
20 tag, it has continued to be an institution of national importance. How does it matter that if we  
21 are not with you on *Basha*? You started your address by saying that it would create great  
22 damage. Without the minority tag, institution has continued to be an institution of national  
23 importance. How does it matter for the people whether it is a minority institution or not? it's  
24 only the brand name - AMU.

25  
26 **SHADAN FARASAT:** My Lords, may I try to answer that? Although *Basha* came, until  
27 *Basha* it was considered as a minority institution. *Basha* came. '81 amendments sought to  
28 undo it. Thereafter My Lords, this has been litigated through. There has always been a stay,  
29 except from the reservation aspect. The '81 amendment to the extent it sought to clarify the  
30 establishment and therefore the minority status. Even in my submission wrongly so, it couldn't  
31 have done it but that doesn't matter. There's always been a stay. So, really speaking today  
32 because of the operation of the *status quo* orders of Your Lordships on the '81 amendment it  
33 continues to be minority institution. In fact, if Your Lordships uphold *Basha*, for the first  
34 time clearly now, it will become a non-minority institution.

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36 **JUSTICE SANJIV KHANNA:** The last argument may have a counterpoint. We are not  
37 going into that. There'll be a counterpoint.

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**SHADAN FARASAT:** My Lords, fair enough.

**JUSTICE SANJIV KHANNA:** That's the most [UNCLEAR]

**SHADAN FARASAT:** My submissions is this that a minority...

**JUSTICE SANJIV KHANNA:** That may not be a purely a legal argument.

**SHADAN FARASAT:** It may not be a... but Your Lordships, when you're interpreting 'establish' under Article 30, Your Lordship will take the social circumstance in some level of account. Of course it is not a purely legal argument. If something can promote Muslim girl education, possibly, and ensure the minority status, there's no harm in it. In a secular set up.

**TUSHAR MEHTA:** Muslim women is.. they are studying everywhere. Let's not belittle them. They are studying in every....

**SHADAN FARASAT:** I am not belittling anybody, My Lords. It's a fact in the community.

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

**SHADAN FARASAT:** It is a fact in the community. Your Lordships, I mean these are sociological aspects, so of course Your Lordships, will not make a judicial finding on it. But it's a fact that communities send their children generally and women specifically because of the minority status. It's a fact. Finally, so what I would submit, just I want to read out three... there is a very illustrious list of women, just want to place, women alumni of AMU. That is there in if Your Lordships, will have my written submission para 24. This is volume 2(b). Page 35, read in Page 35. Running page 35. 1(b). I'm sorry, 1(b). My apologies. 1(b), page 35. 'In 19..' paragraph 24. 'In 1937, the school was upgraded to AMU Women's College, notably the AMU's Women's College was established at a time when the literacy rate among Indian women was just 3% and almost two decades before premier women colleges such as LSR came into existence. In this manner, AMU became a catalyst for empowering Muslim women, breaking societal norms and contributing to the broader movement for women's right and education in India during the early 20th century. The university's commitment to gender equality and educational opportunity laid a foundation for the advancement of women in various fields, contributing to the socioeconomic and intellectual upliftment. The success of AMU is therefore, inseparable from the triumphs of Muslim women in the subcontinent who have

1 excelled across diverse fields. Among these are trailblazers such as Rana Safvi, a distinguished  
2 historian, Ismat Chughtai -Your Lordship are aware of Lihaaf- a renowned novelist, Hashima  
3 Hasan, a notable scientist at NASA and renowned educationist Najma Akhtar. These  
4 accomplished women have made significant contribution in areas such as law, education,  
5 politics, literature and activism, underscoring the broad spectrum of talent that AMU has  
6 fostered over the years. In fact, even the first Chancellor of AMU was a woman, Sultan Jahan,  
7 Begum of Bhopal. The appointment of a woman as the inaugural Chancellor marked a  
8 significant historical milestone. It was the first time a woman served as the Chancellor of any  
9 Indian university.' So My Lords, the point I'm making is the minority status and the women  
10 education have gone somewhat together. And it has really fostered education amongst  
11 Muslims, in particular Muslim women, and that can be impacted potentially. And finally, I'll  
12 just conclude my submissions with something I saw in the Union's written submissions by the  
13 learned Solicitor. The broad width of that submission is, that you are such a great institution,  
14 you are so good, you are excellent, you have faculties across the board, how could you be  
15 minority? I am paraphrasing it. I'm certainly paraphrasing.

16

17 **TUSHAR MEHTA:** It's not like that.

18

19 **SHADAN FARASAT:** But the point is, it is an institution of national importance. It is an  
20 institution of national importance and a big institution. It's an institution of excellence and  
21 somewhat that leads to the fact that you are not a minority. My respectful submission is, that  
22 AMU does what Article 30 requires of minority institutions exceptionally well, that should not  
23 be held against it. The fact that I'm a successful minority institution cannot be the basis for  
24 making me move out of that minority zone. So, this is on the aspect. Also Entry 63, My Lord.  
25 Final conclusion. My Lords, Entry 63 is of national is importance. Institutes of national  
26 importance. Just on that, final submission. A minority institution can be an institution of  
27 national importance. There's nothing. It's not as if only the majorities can establish institutes  
28 of national importance. That's my final submission. I'm extremely grateful for that.

29

30 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Thank you, Mr. Farasat.

31

32 **JUSTICE S.C. SHARMA:** Mr. Farasat, only one question. Is there any other institution,  
33 minority institution in the country, which is 100% funded by Government of India?

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35 **SHADAN FARASAT:** My Lord, I cannot perfectly answer that, My Lord. I don't have the  
36 data. But, my understanding is that, most minority institutions, including Jamia Millia Islamia  
37 , for instance.

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**JUSTICE S.C. SHARMA:** I am saying 100%.

**SHADAN FARASAT:** My Lords, 100%. Substantially, nearly 100 it would be. Exact numbers... I can't. But substantially funded. Even Jamia, Millia Islamia in Delhi, which is established under '87 Act of Parliament, will almost be nearly 100. I can't My Lord, vouch it for it, exactly 100. I'm grateful, My Lords.

**M. R. SHAMSHAD:** Your Lordships, whatever time I am left with, Your Lordship may permit me on two aspects. One is how *Anjuman-e- Rahmania* approached Your Lordship in 1981 and how finally that petition was disposed off, despite on 26 November 1981, honourable two judges referring the matter to seven judges. So, first, Your Lordship may have, the reference. I need to read few lines of that reference because it is important. Your Lordship may have 3(a), 209. Volume 3(a) 209. I have placed that writ petition also on record, My Lord, of 1981. The circumstance due to which that petition came to be filed. 3(a) 209, if Your Lordship has. At the bottom, Your Lordship has recorded...

**CHIEF JUSTICE D.Y. CHANDRACHUD:** ...about 15 minutes or so?

**M. R. SHAMSHAD:** If Your Lordship gives me 15 minutes today, I'll be able to conclude. Otherwise, Your Lordship may give me next day.

**CHIEF JUSTICE D.Y. CHANDRACHUD:** Mr. Shamshad, we don't want to rush you. You take your 10 minutes or 15 minutes after we come back. Next week we are not sitting.

**M. R. SHAMSHAD:** I'm so deeply obliged.

**CHIEF JUSTICE D.Y. CHANDRACHUD:** We'll be sitting on the 23rd for this matter. We'll give you 15 minutes. But, keep down.

**M. R. SHAMSHAD:** I'll not exceed 20 minutes, My Lord. I'm so deeply obliged.

**CHIEF JUSTICE D.Y. CHANDRACHUD:** Just by the fact that we are rising. So we'll give you a little time on that day.

**M. R. SHAMSHAD:** I'm so deeply obliged.

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