MINORITY STATUS AMU & JMI

Foreword: Fawaz Shaheen

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FOREWORD

Minority Institutions Under the Indian Constitution

The question of constitutionally guaranteed rights of minorities is inextricably linked to both AMU and JMI. Both institutions predate the constitution, and their future character - as well as that of scores of others which were explicitly set up for the educational upliftment of a particular community - was an important question before the constituent assembly. Among the Fundamental Rights guaranteed by the constitution, only one related explicitly to religious minorities. Article 30 was specifically included to recognise the right of linguistic, religious and cultural minorities to establish and administer educational institutions "of their choice". Articles30(1)

Article 30(1) envisions that minorities in India should be able to provide general education to their children in an atmosphere that also preserves their cultural heritage and historical learning. In order to achieve this, the right enables members of the community to not only establish or set up their education institutions but also administer them in a manner best suited to the interests of the community. The protection of Article 30(1), popularly referred to as the 'minority status' of an institution, allows a fair degree of autonomy in management of the affairs of the institution. This includes matters such as appointments, admissions, governing structures, fees as well as any benefits or concessions - such as reservation - that may be made for members of the particular religious or linguistic minority.

In order to claim the benefits of Article 30(1), a community must show: "(a) that it is a religious/linguistic minority, (b) that the institution was established by it." Both these conditions have raised important questions before the Supreme Court; who is a minority in India, and what does it mean for a minority community to 'establish' an educational institution? Who is a Minority While the word 'minority' features in the marginal note for Article 29 and the text of Article 30, it has not been defined in the text of the Constitution. The judicial interpretation of the term minority as used in Article 30 has changed over a course of court pronouncements. In Re: The Kerala Education Bill [AIR 1958 SC 956] 'minority' was understood to be determined in relation to a particular legislation which was being challenged. The court opined that while it is easy to say that minority means a community which is numerically less than 50 per cent, the important question is 50 per cent of what? A community may be concentrated in a part of a State and may thus be in majority there, though it may be a minority in the State as a whole. Thus, according to this position, if a State law extending to the whole of a State was in question, the minority must be determined with reference to the entire State population. If it related to only a district or other part of the state, it would depend on the community's position in that part of the state. This view, according to which minority was to be determined in relation to the legislation under challenge, changed in T.M.A Pai's case in which the Supreme Court held that the term minority for the purpose of Article 30 cannot be determined on the basis of the legislating body. Thus, the current legal position is that a minority, whether linguistic or religious, will be determined with respect to their position in the State in which the educational institute is sought to be established

- Fawaz Shaheen
New Delhi

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MINORITY STATUS OF ALIGARH MUSLIM UNIVERSITY

INTRODUCTION

WHO IS MINORITY?

The controversy regarding AMU's Minority status revolves around the point whether or not AMU is a minority institute covered by article 30 of the Indian constitution. But before dwelling into question of law it is very pertinent to understand this very term 'minority' or to put it simply 'Who is minority in India?' The constitution does not define the term minority. In a country like India having rich diversity and with the presence of different faith groups, different linguistic groups also marked by ethnic and geographic differences, giving a precise answer to the question 'Who is minority?' is a difficult task. Total population of Christians in India is merely 2.3% but they form majority in state of Mehalaya, Mizorm and Nagaland. Sikhs form majority in Punjab. Muslims form majority in Kashmir. Then there are linguist minorities which also vary from state to state, take for consideration Marathi speaking community is minority in Assam and similarly Assamese speaking community is minority in Maharashtra.

Article 29 and 30 of Indian Constitution recognizes religious and linguistic minorities for protecting and guarantying cultural and educational rights to minorities. Due to ambiguity in definition of minority in Indian constitution, the legal question of who will be considered minorities and whether minority will be determined on national level or state level came before Honorable SC in two different cases. In Kerala Education Bill Case SC held minorities to be those comprising less than 50% of population, and in T.M.A Pai case SC

settled the determination of minorities at the level of state.

STATE OF INDIAN MUSLIMS

Although constitution of India recognizes linguistic and religious minorities but religious minorities preoccupy major discourses. Muslims (Muslims forms approx 15% of total population of India according to 2001 census) most populous among religious minorities are at the forefront in suffering from state based violence and systematic discrimination. Indian Muslims have faced anti-Muslim pogrom right from Independence of the country. Bhindwai (1970), Gujarat (1969), Nellie (1983), Mumbai (1992-93), Gujarat (2002) are only few to be named. Further Muslim representation in formal, salaried employment is very sparse. A recent National Sample Survey Office revealed that out of every 1000 urban Muslim males in employable age, only 288 (249 females) could find a regular job. Corresponding figures from other communities were as follows: Christians (494 for males and 647 among females), Hindus (463 males and 439 females) and Sikhs (418 males and 482 females).

According to 2011 census more than half of India's population is under 25 years of age, forming the largest youth population that any country has. Muslims in India have the highest share in this young population (approx 47%). One of the major issues regarding this age group is education. Statics from 2006 Scahar Committee clearly reveals the educational backwardness of Muslim Community. On many fronts, conditions of Muslims were found to be alongside SC/ST and in some respect were even worse than them. In the field of literacy the Committee found that the rate among Muslims was far below the national average. The gap between Muslims and the general average is greater in urban areas and women. 25 per cent of Muslim children in the 6-14 year age group have either never attended school or have dropped out. Expansion of educational opportunities since Independence has not led to a convergence of attainment levels between Muslims and all others. Dropout rates among Muslims are higher at the level of primary, middle and higher secondary. The disparity in graduation attainment rates is widening since 1970s between Muslims and all other categories in both urban and rural areas. In premier colleges only one out of 25 under-graduate students and one out of 50 post-graduate students is a

Muslim. Unemployment rate among Muslim graduates is the highest among all socio-religious communities. Only 3% of Muslim children among the school going age go to Madarsas. There is dearth of facilities for teaching Urdu. Lower enrolment in Urdu medium schools is due to limited availability of such schools at the elementary level.

THE CASE OF ALIGARH MUSLIM UNIVERSITY

HISTORICAL BACKGROUND

The first struggle for Independent India in 1857 ended in disaster for Indian Muslims. The British hled Muslims to be responsible for anti-British uprising; and Muslims faced ruthless punishment and merciless vengeance from the British. The Muslim nobility and middle classes were completely disimpowered. The colonial administration clearly saw the Muslim nobility as the primary ruling class they had replaced, and dealt with them accordingly.

The British introduced new education policy, replacing Arabic and Persian by English as a medium of Education. For the Muslims of India it wasn't merely a change of language, but an attack on their culture and an attempt to pollute their religion. By and large this prompted the Muslim Intelligentia to reject anything which came from west kept themselves aloof from modern English education. The result was that during 1880-81, though 36,686 Hindus studied in English high schools, only 363 Muslim pupils attended. Condition of Indian Muslims following the events of 1857 was of a perpetual decline and decay.

It was at this stage Sir Syed Ahmad Khan came into picture. He saw clearly the state of Indian Muslims and contended that the reason for decline of Muslims was their indifferent attitude towards education. Sir Syed believed that Muslims had failed to realize the fact that the world is entering into a new era, an era of Science and Technology. Without acquiring modern education there cannot be any progress in Muslim

Community. Educational reform and to prepare Muslims for this new era was the central theme in Sir Syed's thought. His monumental achievement was establishment Mohammedan Anglo-Oriental College at Aligarh, the sole purpose of this college was to impart modern education to Indian Muslims. This very college was letter transformed into Aligarh Muslim University.

The concequences of Sir Syed's efforts were varied and multifaceted. At the time it was critisised by many as a form of capitulation to colonial rule. However it also lead to the creation of a new educated Muslim middle class and the emergence of a political class that played a leading role for Indian Muslims in subsequent years. Another incident which further made the situation worse for Indian Muslims was Partition of the country in 1947. The year following partition was critical for Indian Muslims because after partition India was left with substantial Muslim population and a Hindu Majority. Cultural extermination and preservation of their culture was a great priority for Indian Muslims after partition.

It is very important to understand establishment of Aligarh Muslim University and plight of Indian Muslims as a Minority in this country in the context of this sociopolitical history of Indian Muslims.

A BRIEF HISTORY OF AMU

Sir syed was secular in his approach but was well aware of the fact that it was Muslim community that suffered most after the Revolt of 1857. When the British decided to reduce the use of persian in the functioning of the state, Sir Syed was determined that the bright future of Muslims live in adoption of English and western education. Sir Syed knew the importance of looking beyond the traditional Oriental learning. In this troubled time when Muslims were concern about their future and Sir Syed wanted to inculcate confidence and determination in them.

Sir syed began to prepare the foundation of a Muslim University by starting schools at Moradabaad (1858) and at Ghazipur (1863). Sir syed established the scientific society in 1864 at Ghazipur where he was posted in judicial services of British Government. Later on he was transferred to Aligarh and the society shifted there. The main objective behind establishing this Society was to translate English books of

various subjects in Urdu and to develop a scientific temper of reason and research among Muslims. In 1866 scientific society launched its journal Aligarh Institute Gazette.

In 1869 Sir syed visited England, which marked the turning point for him. The learning atmosphere and vicinity of University of Cambridge impressed him. In 1870 he started a monthly " Tehzibul Akhlaq", to incorporate religious, social and educational spirits and also to preserve the Urdu language.

He dreamed of creating an educational institution, on the pattern of Oxford and Cambridge University. But the task wasn't easy. There were many hindrances, among which lack of funds stood first. There are many stories of how patience Sir Syed was while collecting donation. He never let his ego and royalty come in between. It is said that he even danced in front of the audience with watery eyes and trembled legs just to raise funds.

Not only this, there was enormous opposition and negative criticism from orthodox section which also stood as a mountain between him and success. There were around five fatwas issued against him. But these hindrances didn't let his ambition fade away. And the Mohammedan Anglo Oriental College was established in 1877 with full bloom. The foundation stone of College was laid on 8th January, 1877 by Lord Lytton. The college was established with Western Education System without compromising with its Islamic Values.

Sir syed addressed the occasion and made two points very clear —the aim was to establish a university and it was to be established by Muslims. "From the seed which we sow today, there may spring up a mighty tree whose branches, like those of the banyan of the soil, shall in their turn strike firm roots into the earth and themselves send forth new and vigorous saplings; that this College may expand into a University whose sons shall go forth throughout the length and breadth of the land to preach the gospel of free enquiry and of large-hearted toleration and of pure morality" (Mulk , Nawab Mohsinul (ed.), Aligarh(1898): Addresses and Speeches Relating to the MAO College, p. 32, quoted in Khalik Ahmad Nizam, History of the Aligarh Muslim University, Delhi: Idarah-i-Adabiyat-i Delli, p. 17).

On Lord Ripon's visit to Aligarh in 1884, Sir Syed said: "Some day when our endowments are sufficient, we would request

the Government to confer upon us the legal status of an independent University." Thus we can conclude that Sir Syed envisioned and planned to establish a University.

The movement to establish a Muslim university boosted when the 12th Muslim Education Conference met in Lahore on April 1, 1898. At this conference the Proposals for a Muslim university were fully discussed. The idea was welcomed by the deligates. In December 1902, at the 16th session of the MEC held in Delhi, the Aga Khan supported the proposal in his presidential address in which he visualised this university as a Muslim Oxford. He appealed to Muslims to raise funds for the project (Muslim University Press (1972): Presidential Addresses of the Muhammadan Education Conference entitled Khutabat-I-Aliyah, pp. 206-218).

The movement got another boost on January 10, 1911, Muslim University Foundation Committee replaced the Syed Memorial Fund Committee. The head of the committee was Aga Khan and it was based in Aligarh. To bring this work to its climax one more body was made named the Muslim University Association. A Constitution Committee was set up on February 16, 1911 with the Raja of Mahmudabad as president. These two men pushed the project forward. A deputation waited on the Education Minister, Government of India, Harcourt Butler on May 16, 1911, to present a draft constitution followed by another on September 23, 1911. Butler demanded that the university should have an endowment of Rs.3 lakh.

Viceroy Lord Hardinge forwarded to the Secretary of State for India Lord Crewe on June 10, 1911, his advice to accept a university in Aligarh provided that it was adequately funded and under effective government control. He was given the green signal to negotiate the terms with Muslim leaders. But the Constitution Committee was not satisfied . The main issue was the university's right to accept affiliation of colleges all over India, its autonomy, and its name to which the British objected.

The Constitution Committee met at Lucknow, on August 11-12, 1912, and passed three resolutions: to reject London's decisions on affiliation; the Viceroy's role as Chancellor; and the university's name. On October 15 a meeting of the Muslim University Association concluded to accept the government's terms. The Foundation

Committee, its superior, ratified the decision in April 1916. There was no progress until the new Education Minister , Sir Mohammed Shafi, an old Aligarhian, took the office. A revised draft constitution was prepared in 1920. The government proposed changes were accepted.

The Bill received London's approval in July 1920 and was published in the Gazette. It clearly showed the compromise agreed by both. "The Muslim University Association having requested the foundation of a University and certain funds and property being available to this end, it is proposed to dissolve that Association and the Muhammadan Anglo-Oriental College, Aligarh, and to transfer the property of those societies to a new body called 'the Aligarh Muslim University'. The present Bill is designed to incorporate this University." The Bill was moved in the Imperial Legislative Council by the Education Member Sir Mohammed Shafi on August 20, 1920. It met at the Council Chamber, Viceregal Lodge, Shimla, with the Governor General in the chair.

Select Committee's report was presented on September 2, 1920, and was considered on September 9. In reply to all the debates and discussions , Sir Mohammed Shafi said: "In a somewhat long experience of Legislative Councils, both provincial and Imperial, I have seldom seen a Bill of the first importance such as the Muslim University Bill pass through the various stages with such little opposition and so smoothly as the measure which we are now about to place on our Statute Book." As President, the Governor General said: "Before putting the question [to vote] I should like to add my congratulation to the Muslim community on the passage of this Bill." And with this the Aligarh Muslim University Act was passed and the Alighar Muslim University, the lamp of darkness came into being by incorporating into it the MAO college, Muslim University Assocaition, The Foundation Committee and all their resources.

1951 AMENDMENT

After the of Independence of India, the 1920 Act, was amended so as to bring it in lines with the Constitution of India. Since compulsory religious instruction was imparted at AMU it had to be amended so as to remove the conflict with article 28(3) which provides that:

> ***No person attending any educational institution recognised by the State or receiving aid out of State funds shall be required to take part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution or in any premises attached thereto unless such person or, if such person is a minor, his guardian has given his consent thereto Cultural and Educational Rights.***

Section 9 which provided for compulsory religious instruction was amended and so was Section 8. The new section 8 came to be read as:

> ***The University shall be open to persons of either sex and of whatever race, creed, caste, or class, and it shall not be lawful for the University to adopt or impose on any person, any test whatsoever of religious belief or profession in order to entitle him to be admitted therein, as a teacher or student, or to hold any office therein, or to graduate***

thereat, or to enjoy or exercise any privilege thereof, except in respect of any particular benefaction accepted by the University, where such test is made a condition thereof by my testamentary or other instrument creating such benefaction.

The provison to section 8 contained:

Nothing in this section shall be deemed to prevent religious instruction being given in the manner prescribed by the Ordinances to those who have consented to receive it. An amendment was also done in Sec. 13 and Sec. 14. In place of the Lord Rector, the University was now supposed to have a Rector and the power of the power of the Visiting 117 Board was conferred on the Visitor. The proviso to Sec. 23(1) which required that only Muslim members were to be a part of the court was also done away with and now even NonMuslims could be a part of the court.

1965 AMENDMENT

In the year 1965, A.M.U. reduced the internal or institutional reservations from 75% to 50% thereby increasing the external reservations which stirred a controversy. The reduction in internal reservations led to wide agitation and protests on the campus which led to disruption in peace. The ViceChancellor Ali Yavar Jung was assaulted and seeing the situation getting out of control the government made an amendment in the A.M.U. Act.The major changes which were done in the 1965 amendment pertained to Sec. 23 which comprised of the provisions relating to the composition and powers of the university court.
The amendment reduced the powers of the court and it was left to do the following three functions:-

1. to advise the Visitor in respect of any matter which may be referred to the Court for advice;
2. to advise any other authority of the University in respect of any matter which may be referred to the Court for advice; and
3. to perform such other duties and exercise such other powers as may be assigned to it by the Visitor or under this Act. The University Court no longer remained the supreme governing body and was left with advisory functions. The composition of the court was also altered and both court and Executive council were packed with the nominees of the Visitor i.e. the President of India.

AZEEZ BASHA CASE

First major blow to minority status of Aligarh Muslim University came from Indian Judiciary in case of Azeez Basha v Union of India. In this case constitutionality of the 1951 and 1965(amending) acts were challenged, praying that they should be declared ultra vires. The petitioners in the case argued that Aligarh Muslim University was established by Muslim Community and the Amending acts of 1951 and 1965, took away their rights to administer as provided in Article 30 (1) of the Constitution. While respondents contended that AMU was not established by the Muslim Community rather it was established by Government of India by virtue of Statute, and therefore Muslim Community cannot claim their right to administer AMU under Article 30 (1). The central issue of the case was who established Aligarh Muslim University. In reaching its judgment the Court dwelled into history of AMU and noted that MAO College was the nucleus of AMU, that it was only because of the foundation of the MAO College and the subsequent effort of Muslims that the AMU act was eventually passed. But even after acknowledging the initial work of Muslim Community in establishing AMU, the court held that

It (AMU) was clearly brought into existence by the 1920 Act for it could not have been brought into existence otherwise. It was thus Central Legislature which brought into existence the Aligarh University and must be held to have established it. It would not be possible for the Muslim Minority to establish a university of the kind whose degrees were bound to be recognized by Government and therefore it must be held that Aligarh University was brought into existence by the Central legislature and Government of India. If that is so, the Muslim minority cannot claim to administer it, for it was not brought into existence by it. Article 30 (1), which protects educational institutions brought into existence and administered by a minority, cannot help the petitioners and any amendment of the 1920 Act would not be ultra vires article 30 (1) of the Constitution.

Here it is important to note the position before the commencement of the Constitution with respect to establishment of Universities. There was no law prohibiting establishment of a university by a private body or obligating the government to recognize the degrees of a privately constituted university. Any recognition depended upon

the will of the government. Therefore, it was necessary that a university whose degrees would be recognized by the government could only be brought into existence by an Act of Parliament.

Government of India informed the Muslim University Association (MUA was formed for establishing Aligarh University) that a sum of 30 lakh should be collected before the university could be established. Therefore funds were collected from all over India by Muslim community and it was only after depositing the amount that AMU Act was passed.

Judgment of SC in Azeez Basha was widely criticized among legal fraternity, Seervai (a leading constitutional lawyer at that time), expressed his dissent in following words

It is the first case in which the SC has departed from the broad spirit in which it had decided cases on cultural and educational rights of minorities. It is submitted that the decision is clearly wrong and productive of grave public mischief and it should be overruled.
Professor S.P. Sathe who was a distinguished legal luminary and a renowned academic in the judicial universe of India wrote in the Annual Survey of Indian Law

The view of the Court that since Aligarh Muslim University was incorporated by an Act of the Central Legislature it could not be a Minority institution is too textual. If incorporation of a University is the sole test of its establishment no private university can ever be started in India. This is not constitutionally sound and educationally desirable. The Act of incorporation is a device of social control, not regimentation in educational planning. It is submitted that law needs to be reconsidered not only in the light of our constitutional ideology but also from the standpoint of sound educational policy.

Legal scholars were not the only ones to question the reasoning of SC in Azeez Basha case, Tara Chand a famous historian who was MP of Rajya Sabha at time remarked that

It will be a falsification of the history India if it asserted from any quarter that the Aligarh Muslim University was not established by the Muslims, and primarily for the educational advancement of the Muslim of India.

1981 AMENDMENT

The decision of Supreme Court in Azeez Basha Case was a great setback for Muslim community and enraged a wave of anger against the judgment. Central Government took notice of the resentment of the community and Beg Committee was formed to look into the matter. Beg Committee suggested amendments in AMU act to restore the minority status. But in 1972 a new amendment was pushed through Lok Sabha which aggravated the steps which had been initiated in 1965 and tightened the control of the center over the university.

In 1981 a new amendment to AMU act was again passed this time to restore the minority status of AMU. There were no serious objections from any corner to provisions of the new act. The new amendments includes

Section 2(I) defined the University as: University means the educational Institution of their choice established by the Muslims of India, which originated as the Muhammadan Anglo-Oriental College, Aligarh and which was subsequently incorporated as the Aligarh Muslim University.

Section 5(2)(c) of the Act read as To promote especially the educational and cultural advancement of the Muslims of India; Section 23 was amended to include:

1. The Court shall consist of the Chancellor the Pro-Chancellor, the Vice Chancellor and the Pro-Vice- Chancellor (if any) for the time being, and such other persons as may be specified in the Statutes.
2. The Court shall be the supreme governing body of the University

and shall exercise all the powers of the University not otherwise provided for by this Act, the Statutes, the Ordinances and the Regulations and it shall have power to review the acts of executive and the Academic Councils (save where such Councils have acted in accordance with powers conferred on them under this Act, the Statutes or the ordinances).

THE CASE OF DR. NARESHAGARWALVS UNION OF INDIA

In the light of the amendments as brought about by Act No. 62 of 1981 the Admission Committee of the Aligarh Muslim University (AMU hereinafter) in its meeting held on 10th January 2005 recommended that the total seats available for Post Graduate Medical Courses be reserved in the manner as follows :

a. 25% of the total seats be reserved for internal candidates i.e. institutional quota;
b. 75% of the total seats be termed as All India quota seats to be filled as below;

(75% All India quota seats be bifurcated into two parts, (i) 50% of the total seats be reserved for Muslims only to be filled by Entrance Examination to be conducted by the AMU, Aligarh from external as well as internal candidates, (ii) 25% of the total seats be left foropen category to be filled through the All India Examination to be conducted by the All India Institute of Medical Sciences, New Delhi.)

The recommendations of the Admission Committee were then considered and accepted by the Academic Council and Executive Council in its meetings held on 15.1.2005 and 19.1.2005Respectively. The decision then formally forwarded to the Union Government and the same was accepted and communicated its accent on 25.2.2005. Subsequent to the decision of the University and approval of the Union Government, five writ petitions were filed in the Allahabad High Court by 34 petitioners. Their main contention, inter alia, that these 50% seats which are required to be filled from internal as well as external candidates on the basis of the entrance examination to be conducted by the AMU have been reserved for Muslim candidates only. The petitioners who were

Hindus have been deprived and excluded from their right to participate in the process of selection for admission against 50% of the total seats.

The aforesaid 50% reservation was said to impinge on Article 29(2) and violative of Article 14 of the Constitution of India. Counsel for the petitioners points out that the reservation contradicts the law declared by the Hon'ble Supreme Court in S. AzeezBasha And Anrvs Union Of India where the Supreme Court has concluded that AMU has been established by legislative Act of Government of India, and neither it could be said to have been established by the Muslim minority nor they have any right of administration. Thus cannot claim the protection under Article 30 of the Constitution of India. The counsel further put forth that amendment made in Sections 2(1) and 5(2)(c) of the Aligarh Muslim University Act, 1920 in 1981 is ultra vires the Constitution, a brazen overreach to reverse the judgment in the case of AzeezBasha (supra) and be declared as such.

Since the vires of an Act of Parliament were questioned, the Attorney General also made submissions along with the counsel for Respondent. They both took a stand that the very basis of the Judgement in the case of AzeezBasha (Supra) has been altered and it loses all authority vide amending Act of 1981 with specific reference to Sections 2(1) and 5(2)(c), thus it remains no more a good law.

They further claimed that the change so effected has no intention to usurp the judicial powers rather the Amendment Act has removed the ambiguity and cured the defects as were noticed in the earlier judgment of the Supreme Court In the case of AzeezBasha (supra). The Parliament has fulfilled its obligation and only given effect to its constitutional duty to protect the fundamental rights of the minority community by recognizing the fact that AMU has been established by the Muslims. Once it is established that AMU has been established by a minority community, the right to administer the same by the community and a right to provide quota in respect to its own community students restores.

The legislative competence of the parliament has also been elaborated with reference to Entry 63 of List I of VIIth Schedule to the Constitution of India where AMU has been declared to be an institution of national importance. Moreover, the amending Act of 1981 is the recognition of the historical fact that the AMU was established by

Muslims who were in minority in India at all the relevant time.

The single judge thus pronounced his Judgement after listening to both the parties. First, the court conceded the legislative competence of the Parliament to frame law in respect of the aforesaid subject matter. However, with regard to the 'curative/clarificatory nature' of the 1981 Amendment, the court said,

"The power of legislature to remove the defect which is the cause, for invalidating the law, by the appropriate legislation is well recognised. However, such legislative power is to be exercised in a manner that it would no more be possible for the court, to arrive at the same verdict under the changed law. In other words, the every premises of the earlier judgment should be degraded thereby resulting in fundamental change of the basis upon which the earlier judgment was founded. A decision of a Court of law has a binding effect unless the very basis upon which it is made is so altered that the said decision would not have been made in the changed circumstances."

However, after a minute perusal of the AzeezBasha (supra) Judgement, Court opined that it was based on overall consideration of the provisions of the Act and the historical background in which AMU was brought into existence and such basis, on which the aforesaid judgment was founded has not been so fundamentally altered under Act of 1981 so as to create a situation that in the changed circumstances the Court could not have rendered said judgment.

Further, the court said that the effect of Section 3, Section 4 r/w Section 6 of the original

Act vis-a-vis the University being brought in existence by a legislative Act are the main basis for the decision of the Supreme Court in AzeezBasha. The said sections have not been amendedand hold ground even today. Mere deletion of the word "Establish" from the long title andamendment to Section 2(1), in itself, is not sufficient to hold that the AMU, is established by the Muslims of India, which originated as M.A.O. College, and which was subsequently incorporated as Aligarh Muslim University The entire Act has to be read as a whole, amendment in the long title and few sections of the Act are not themselves sufficient for record a finding that the AMU is a minority institution covered by Article 30 of the Constitution of India.

The above discussion clearly defies the argument presented

by the respondent that subsequent developments make the AzeezBashaJudgement force-less. Second, with regard to Administration, the court makes reference to Section 3 r/w Sections 13, 15, 16 to 22 of the Act which apparently clears that the administration of the University was vested in the officers and the statutory bodies, which were constituted under the Act itself and at no point of time the founders, who had contributed to establish the University claimed any right to administer the same. The Supreme Court has, also, held in AzeezBasha that the right of administration was never vested in the Muslim minority subsequent to the creation of theUniversity itself under the 1920 Act.

Third, the court denied protection to AMU under Article 30 of the constitution as it perceives it to be a legal juristic person, an incorporated body under the legislative Act of 1920. The court makes a clear distinction between such body and 'citizen', who have exclusive entitlement over Articles 19, 29, and 30 under the Constitution of India.

Finally, the court shows unwillingness to delve into the question of 'reservation' as the court has already held AMU is not a minority institution and not entitled to protection of Article 30 of the Constitution and therefore has no right to provide any reservation on the basis of religion. The reservation provided by the University and the approval granted by the Central Government vide letter dated 25.2.2005 to that extent are hit by Article 29(2) of the Constitution of India and as such cannot be legally sustained. The court also declared that no reservation can be provided by the AMU for admission of students on the basis of religion only and any decision in that regard, would be patently illegal and without jurisdiction.

The court thus cancels the admissions granted in pursuance of the aforesaid reservation and directs the University to conduct a fresh entrance examination in respect of the 50% seats of the Post Graduate Medical Courses.

THE ALIGARH MUSLIM UNIVERSITY, ALIGARH V MALAY SHUKLA

Meanwhile AMU went for appeal before the division bench of Allahabad High Court. However, the court came to the same conclusion contending that The Aligarh Muslim University, a body corporate, came into existence only by Act of legislature and by merely changing

the definition of Section 2(1) by amending the preamble and long title, the fact that the University came into being by an Act of legislature cannot be forgotten.

Though the court accepted that 1920 Act was passed as a result of the efforts of the muslim minority, a fact that had been clearly noted in paragraph 23 of the AzeezBasha's judgment and is also clear from previous history of the establishment of the University

The court also supported the view of single Judge bench that the basis of judgment insofar as the establishment part is concerned, it was also not completely changed by the 1981 Act so as to make the AzeezBasha's judgment ineffective. In addition, the aforesaid provisions were found contrary to the AzeezBasha'sJudgement and brazen attempt to overrule the judicial decision. Consequently the provisions of Section 2(1) and Section 5(2)(c) as well as amendment in preamble and long title are found liable to be struck down.

ALIGARH MUSLIM UNIVERSITY V. NARESHAGARWAL

Finally, The AMU along with the UPA government went to the Supreme Court against the High Court Judgement. But, in 2016 the NDA government sought to withdraw the appeal by saying that AzzezBasha, and later the Allahabad High Court, correctly interpreted the law. AMU protested against the withdrawal of the appeal, saying that the change in government's position was due to political consideration Lately, on 12.02.2019, Senior Counsel Rajeev Dhavan appearing for AMU sought reference to a 7 judge Bench to decide on the correctness of the 5 Judge Bench in AzzezBasha. He argued that the erroneous effect of AzzezBasha is that no University can be granted a Minority status despite there being a fundamental right to establish Minority Institutions under Article 30. Ultimately, a three Judge bench comprising the then CJI RanjanGogoi, Justices NageshwarRao and SanjeevKhanna referred the matter to a 7 Judge Constitution Bench.

CONCLUSION

"From the seed we sow today there may spring up a mighty tree, whose branches, like those of the banyan of the soil, shall in their turn strike firm roots into the earth and themselves send forth new and vigorous saplings; that this college may expand into a university, whose sons shall go forth throughout the length and breadth of the land to preach the gospel of free inquiry, of large-hearted toleration and of pure morality,"

- Sir Syed Ahmad Khan at the time when Viceroy Lord Lytton laid the foundation of the MAO (Mohammadan Agro-Oriental) college on January 8, 1877.

Aligarh Muslim University was dream of Sir Syed Ahmad Khan, which he started in the form Mohammadan Anglo-Oriental College. The cornerstone of Sir Syed's philosophy was the development of a scientific spirit, which he considered to be a sine qua non for intellectual advancement and social progress. Establishment of AMU cannot be understood in isolation without taking into consideration history of MAO College. Sec 2 of MAO college Laws,1877 provides that "the college is primarily for the Muslims and so far as consistent with above objectives for others". This provision is in consonance with reasoning of SC in case of Kerala Education Bill, where SC observed that minority institutions are primarily for the minority that has established them. It is very important to understand that reservation in minority institute is

different from state institutions. State institutions cannot have religion based reservation because of Article 15 which prohibits state from discriminating citizens on grounds of religion, race, caste, sex, place of birth etc. On the other hand linguistic and religious minorities are entitled to establish their institution by virtue of Article 30, so that they can preserve their language and culture.

Although currently there is no religion based reservation in AMU, 50% seats are reserved for internals students. This 50 % reservation is given to those students who have completed their Senior Secondary School from AMU in case of Bachelor courses and those who have completed their Bachelors from AMU in case of Post Graduate Courses irrespective of religion. Restoration of minority status of AMU will empower the university administration to introduce religion based reservation where it feels necessary. Furthermore it will also give more autonomy to university administration in its day to day affairs. The selective religion based reservation can be used very productively to reduce the talent opportunity deficit among Muslims of India.

In the end it can only be stated that history of AMU bears witness that AMU was established by Muslims for imparting modern education with Islamic values primarily to Muslims at the same time it was open for all (in fact the first graduate of the university was Ishwari Prasad and the first MA was Amba Prasad both belong to Hindu Community). Hence it deserves all the protection that Article 29 and 30 of Indian constitution guarantees to minorities and their institutions.

MINORITY STATUS OF JAMIA MILLIA ISLAMIA

INTRODUCTION

"In any democratic society, the constitutional impulse for giving some special rights to minorities stems not from the desire to create a 'pampered' or 'appeased' section of population but to give to them a sense of security and confidence"

- Prof. Faizan Mustafa

In febuary 2011, a historic order was passed which declared JMI a muslim Minority institution thus widened the scope of Muslim community to administration and manage the instituation as per the need of community. The order was passed by the Statoury body National Commission for Minority Educational Institution which came into being in 2004 by the act of Parliament. This order was a recognition of the fact that JMI had come into being by the efforts of the Muslims of India. The order was immediately challenged in court where the Union Government initially supported the Minority status of JMI. But in 2018 the centre government not only opposed the Minority status of JMI but also assert that it was not born out of the hand of Muslim community but came into existence by the act of parliament 1988.

The affidavit filed by the Centre based its argument on legally flawed Azzez basha's case(1968) which has been discussed in detail in the previous section. Before we dwell on the Legal Minority status of JMI, it is required that first we first know the foundation and history of JMI.

HISTORY OF JMI

In S.P. Mittal vs. Union of India[1] , the Supreme Court has held that in order to claim the benefit of Article 30(1), the community must show; (a) that it is a religious/linguistic minority; (b) that the institution was established by it. So as per the Judgement the institution claims the Minority Status would need to Prove its foundation and establishment by the members of the same community. Before we engage ourselves on Legal technicalities, it is desirable to first to know the history and foundation of JMI to derive the accurate conclusion.

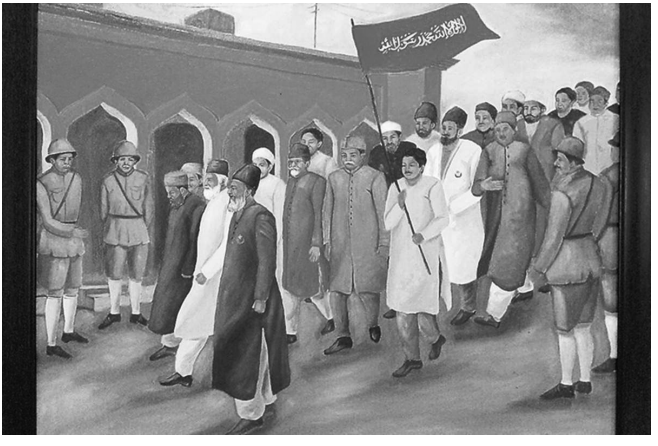
Born out of political crisis, it seemed for a while that the University may not survive. The story of its growth from a small institution in the pre-independence India to a central university located in New Delhi. is a saga of dedication, conviction and vision of a people who worked against all odds and saw it growing step by step. They "built up the JMI stone by stone and sacrifice by sacrifice," said Sarojini Naidu. Rabindranath Tagore called it "one of the most progressive educational institutions of India".—offering integrated education from nursery to research in specialized areas.

Under the colonial British rule, two dominant trends joined hands and contributed towards in the birth of JMI. One was the anti-colonial Islamic activism and the other was the pro-independence aspiration of the politically radical section of western educated Indian Muslim intelligentsia. In the political climate of 1920, the two trends gravitated together. The anti-colonial activism signified by the Khilafat and the pro-independence aspirations symbolised by the noncooperation movement of the Indian National Congress helped to harness creative energies and the subsequent making of JMI. But the excess injustice have been done in history by painting the Khilafat movement with the colour of non-cooperation movement which deserves to be elaborated with a significant details.



1. AIR 1983 SC 1

The foundation of JMI is a story of defiance at the same time of obedience. The Founders of JMI as history suggests were not much pleased with the Colonial influence in AMU, particularly in the backdrop of the Khilafat and Non-Cooperation Movements. They deceided to walk off the campus with a flag ***'LA ILLAHA ILLALLAH'*** (No God but one) written on it as emblem of defiance of Colonial power and obedience of Almighty and as a sign of their rebellion against them.



FOUNDERS OF JMI

The Foundation Committee of JMI met on 29 October 1920. It comprised of many members from different part of Nation prominent of them are: Ali Brothers , Dr. Mukhtar Ahmad Ansari (Delhi) , Mufti Kafayattullah (Delhi) , Maulana Abdul Bari Farang Mahali (UP) , Maulana Sulaiman Nadvi (Bihar), Maulana Shabbir Ahmed Usmani (UP) , Maulana Husain Ahmad Madni (UP) , Chaudhury Khaleeq-uz-zaman (UP) , Nawab Mohammad Ismail Khan, Tasadduq Husain Khan (UP), Dr. Mohammad Iqbal (Punjab), Maulana Sanaullah Khan Amritsari (Punjab) ,Maulana Abul Kalam Azad (Bengal and Bihar) to name few of many.

National Commission for Minority Educational Institution's(NCMEI) Observation and Granting of Minority Status [2]

Bearing in mind, the mandate of Article 30(1) of the Constitution as interpreted by various authoritative pronouncements

2. Extracts are taken from NCMEI's order, Jamia teachers Association and ors. v. The Sec. of Home Ministry and ors. CASE NO. 1443 OF 2006.

of the Supreme Court and Section 2(g) of the National Commission for Minority Educational Institutions Act, following facts are required to be proved for grant of minority status certificate to a minority educational institution on religious basis:

1. that the educational institution was established by a member/ members of the religious minority community;
2. that the educational institution was established for the benefit of the minority community ; and
3. that the educational institution is being administered by the minority community.

The Honorable Justice M.S.A Siddique, then Chairman of NCMEI before grant Minority status to JMI observed the history of JMI on the above mentioned facts.

Also in In S.P. Mittal vs. Union of India[3], the Supreme Court has held that in order to claim the benefit of Article 30(1), the community must show; (a) that it is a religious/linguistic minority; (b) that the institution was established by it.

In St. Stephen's College vs. University of Delhi[4], the Supreme Court has declared the St. Stephen's College as a minority educational institution on the ground that it was established and administered by members of the Christian Community. The Supreme Court in State of Kerala v. Mother Provincial[5], the Supreme Court has observed: "Establishment means bringing into being of an institution and it must be by a minority community. It matters not if a single philanthropic individual with his own means, institution or the community at large founds the institution or the community at large contributes the funds. The position in law is the same and the intention in either case must be to found an institution for the benefit of a minority community by a member of that community. It is equally irrelevant to this right that in addition to the minority community, others from other minority communities or even from the majority community can take advantage of these institutions." The Supreme Court in T.M.A. Pai's[6] that "the essence of secularism in India is the recognition and preservation of

3. AIR 1983 SC 1
4. (1992) SCC 558
5. AIR 1970 SC 2079
6. T.M.A.Pai Foundation & Ors vs State Of Karnataka & Ors CASE NO.: Writ Petition (civil) 317 of 1993.

different types of people, with diverse languages and different beliefs, and placing them together so as to form a whole and united India. Articles 29 and 30 do not more than seek to preserve the differences that exist, and at the same time unite the people to form one strong nation. It is relevant to mention that the whole object of conferring the right on minorities under Article 30(1) is to ensure that there will be equality between the majority and the minority. If the minorities do not have such special protection they will be denied equality. It is therefore, not at all possible to exclude secular education from the ambit of Article 30(1). A liberal, generous and sympathetic approach is reflected in the Constitution in the matter of the preservation of the rights of the minorities so far as their educational institutions are concerned. Article 30(1) was intended to have a real significance and it is not permissible to construe it in such a manner as would rob it of that significance. The meaningful exercise of the right under Article 30(1) would and must necessarily involve recognition of the secular education imparted by the minority institutions without which the right will be a mere husk.

It is necessary to refer to the history of JMI previous to its incorporation under the Act in order to understand the contentions raised by the petitioners before the NCMEI. They filed evidence by way of affidavits to prove that the JMI was established and administered by the Muslim Community and it was not established by the Act. Prof. S.M. Sajid, Registrar of the respondent University, has filed his affidavit to prove that the JMI was established by muslim Leaders like Maulana Mohd. Ali Jauhar and Hakim Ajmal Khan for the benefit of the Muslim Community. Strong reliance were placed on certain books annexed with the affidavits and the Memorandum of Association of the Jamia Millia Islamia Society registered under the Societies Registration Act in 1939. It was felt by Ali brothers (Maulana Shaukat Ali and Maulana Mohd. Ali Jauhar), Dr. M.A. Ansari and Hakim Azmal Khan that Islamic teaching had been neglected in MAO College, Aligarh as it became a Centre of English fashion and culture. Allama Shibli Numain also withdrew himself from the MAO College because of the same reason and in 1894 founded Nadvat-ul-Ulema at Lucknow (U.P.) for Islamic teachings. Since the MAO College was considered a pro-British institution, they aimed it turning into a national university. Accompanied by Dr. M.A. Ansari, Hakim Azmal Khan and Gandhi, Ali brothers visited the MAO

College and addressed the students to submit to the national aspiration, and join hands with them, in having run the college on independent lines in the best interests of the community and the country. On 28 October, 1920, trustees of the MAO College convened a meeting to study the situation created by Ali Brothers. They expressed their emphatic disapproval of the action of Ali Brothers addressing the students, asking them to pass a resolution in support of noncooperation movement. The trustees sought the help of the police to get Ali brothers and their comrades evicted from the Old Boys Lodge on the ground that it was being used for sedition purposes. However, on their eviction from the lodge, they hired a few tents and pitched them at some distance of the college campus and carried out their mission. However, on 29th October 1920, the inauguration ceremony of the National University was announced after Friday prayer in the college mosque. The object of establishment of the National University was explained in the following presidential address delivered by the Sheikul Hindu Maulana Mahmud - ul-Hasan: "..... to keep Muslim education in Muslim hands entirely free from external control, so that we may be perfectly immune from pernicious alien influences in our ideas and beliefs, our moral and action, our character and conduct, and also to enable the students to imbibe all that was best in western culture and science as well as to make the institution an efficient substitute for the ancient Muslim Universities of Baghdad and Cordova."

The objects of the JMI were spelt out by Maulana Mohd. Ali Jauhar in the following words:

"To our mind the greatest need of Muslims is that they should be Muslims in the truest sense of the word, and for the purpose it is essential that we should not tolerate the lacerating distinction between temporal and spiritual things, nor encourage any differentiation of species among the Muslims such as the clergy and the laity. The evils from which Muslim society in the country was suffering had to be clearly understood, and remedies had to be devised thereof, and incorporated in scheme of studies. The goal that was always kept in view was to turn out from these institutions not only young men of culture according to modern standards, but true Muslims imbued with the spirit of Islam, and possessing enough knowledge of their religion to be able to stand by themselves as sufficiently independent units in the army of Islam's

missionaries."

Maulana Mohd. Ali Jauhar stressed the teaching of Islamic history and Quran in the JMI, and the training of students for service to the nation. In his various articles published in Hamdard, he explained following basis objectives for establishment of the JMI : "JMI Millia Islamia is first a JMI i.e. a university. And then it is a Millia, a group of followers of a faith. In other words, it is a teaching institution where both religious and other, i.e., worldly, education is imparted. It does not restrict itself to teaching only religious matters, as is the case with Deoband and Madarsa Nizamia. It also does not limit its education to that of the current English language schools. And then this JMI is Jamia-i-Islamia, so that it teaches Islam. It must be noted, however, that its door are open to followers of all religions. The curriculum of the JMI includes the learning of the Arabic language, so that the students can understand both the Quran and Hadith (the sayings of the Prophet) as much as the unlettered man in the times of the Prophet could. Although one should refer to scholarly commentaries of the Quran, one should not be entirely dependent on them nor on others for following the basic tenets of Islam.... JMI's objective is that Muslims should neither follow blindly the previous 'fixed' path, nor should they believe that the essence of religion lies in a few problems of jurisprudence.... the JMI has instilled hatred in the heart of every student – be he a Muslim or a Hindu – against subjugation by foreign powers. It has kept its air free of transgression and prejudice. For these reasons, the JMI is both Jamia Islamia and a national university." [7]

ELABORATING THE JMI'S ROLE IN EDUCATION, DR. ZAKIR HUSSAIN OBSERVED IN HAMDARD-I-JMI IN AUGUST 1937:

"The biggest objectives of JMI is to prepare a roadmap for the future lives of Indian Muslims with the religion of Islam at its core, and to fill the map with the colour of the civilization of India in such a way that it merges with the colours of the life of common man. The basis of this objective is the belief that a true education of their religion will imbibe in Indian Muslims a love for their country and a passion for national integration, and prepare them to take active part in seeking

7. Partners in Freedom Jamia Millia Islamia by Mushir ul Hasan, Niyogi Books, at page 66.

independence and progress for India. An independent India join hands with other countries in seeking peace and international cooperation.... To use the roadmap for the future of Indian Muslims, especially for creating a curriculum for their children. Learning for earning a living is the current trend, and learning for the sake of learning was the guiding principle in the past. The JMI regards both these precepts as narrow and restraining. It wants to give knowledge for the sake of life, the wide circle which includes religion, wisdom, industry, politics, economics and other fields. It wants to enable its students to appreciate national civilization and values of everyday life, and work according to their disposition in a selected field so that their work improves collective lives at least to a certain extent. It is an accepted fact that the most important question facing Indians is that of earning a living. JMI recognizes this need and wants to develop in its students a capacity to earn a living by any fair means, but its main principle is that man should regard earning a living as subservient to life itself. Similarly, recompense should be secondary to service. "A man's guiding principle should be to become a useful member of society and civilization. In other words, he should find a niche for himself where his knowledge and wisdom are put to the best use in service of the society, as well as in earning a living so that his needs and those of his family are satisfied." [8]

Thus, the JMI was established in Aligarh in 1920 in the wake of Khilafat and non-cooperation movement with the main object of exploring the methods by which education could be made truly national. National Leaders like Maulana Mohd. Ali Jauhar, Hakim Ajmal Khan, Dr. Mukhtar Ansari, Maulana Abul Kalam Azad, Maulana Mahmud-ul-Hasan, Dr. Zakir Hussain were among its founders. Dr. Zakir Hussain, Dr Sayed abid Hussain, Shafiqur-Rehman Kidwai and Prof. Mohd. Nujeeb, threw themselves with heart and soul in JMI's work. Hakim Ajmal Khan and Dr. M.A. Ansari took the responsibility of providing funds to the JMI. During the hard days of JMI, Seth Jamal Mohd. of Madras donated a big amount and resuscitated the JMI.

We may mention here at the cost of repetition that in his inaugural address in 1920, Shaikh-ul-Hind Maulana Mahmud-ul-Hasan had suggested that:-

1. The Indian Muslims should keep their education in their own hands

8. Partners in Freedom Jamia Millia Islamia by Mushir ul Hasan, Niyogi Books, at page 92.

entirely free from the alien influence which had sapped imitative and independence of character;

2. The Muslims should base the education of the youth on their own cultural heritage and Islamic traditions. The whole history of the JMI that can be gleaned through the writings and speeches of its founders, is one of the doing things in the light of the aforesaid guidelines. From the very beginning the founders interpreting the ideals of the JMI have emphasized the main characteristics of Islamic Culture that it aspired to bridge the gulf between worldly (Duniyavi) and the religious (Deeni) education. In the words of Mohd. Mujeeb, one of the aims and objectives of the JMI was to evolve a system of education that would be an organic fusion of faith and knowledge".

DID JMI COME INTO BEING THROUGH THE 1988 ACT ?

The affidavit challenging the Minority status of JMI pointed to few points one of them is alleging the establishment of JMI. The Affidavit goes on saying that JMI not establish by the Muslim community for the benefit of Muslim community but came into being by the act of parliament, JMI Millia Islamia act 1988. If we go as the afiidavit allege then before the act there was no Institute as JMI and over a night right after the passage of Act the University came into being and structure erected with the same pace. This Statement is as Strong as the stand of Centre.The existence of university is known from the recognition it received in society. Justice

M.S.A Siddique then chairman of NCMEI observed the same during issuing the Grant to JMI. Justice Siddique admitted the books and scribed speeches made during the formation of JMI.

In 1940, W.C. Smith visited JMI and described JMI as „one of the most progressive and one of the best in India'. He observed: "One admirable result of the exclusion, voluntary and enforced, of this institution from the official educational system of India, is an international breadth of vision. It has escaped the provincialism of exclusively British culture which weighs heavily on the ordinary colleges of imperialistic India. The JMI's degrees have been recognized in Germany, France and the United States, while official British prestige think that it cannot afford to notice them.... The JMI is consequently

in touch with a wider world than are most other indigenous colleges in India."14

14 Partners in Freedom Jamia Millia Islamia by Mushir ul Hasan, Niyogi Books, 2006 at page 102

It is beyond the pale of controversy that on 26th January, 1950, when the Constitution came into force, the JMI as a university was in existence and was being administered by the "Jamia Millia Islamia society" which was a registered society constituted by members of the Muslim community and degrees granted by it were recognized in some foreign countries also. Even the Government of India had recognized the degrees granted by the JMI. Hence the fact is established that JMI existed even before the Constituition, it came into being after act[9] of out of Question.

From the brief history we set out above, it will be clear that yearning for the establishment of a National Muslim University first cropped up in the heart of Maulana Mohd. Ali Jauhar and from him it proliferated to his comrades as a result whereof the JMI was founded by prominent National leaders of the Muslim community. We also find and hold that the JMI was established with object of empowering the Muslim community through education and also of injecting Islamic ideas in it. Needless to add here that Hakim Ajmal Khan was elected first Chancellor of the JMI and Maulana Mohd. Ali Jauhar became its first Vice Chancellor. We further find and hold that on pursuation of the Muslim community the Act was enacted after the Governing bodies of the JMI and the Jamia Millia Islamia Society passed resolutions to the effect that the existing properties, funds and educational institutions formed primarily for the benefit of the Muslim community be vested in the statutory university so that the preexisting institution may be incorporated and granted the status of a central university. It is relevant to mention that when the Constitution came into force on January 26, 1950, all the properties, movable and immovable of the JMI were held by the Muslim minority and the JMI was also being administered by Muslims. The degrees awarded by the JMI were also recognized in Germany, France and America.[10] [11]

It is also relevant to mention that there is a mosque in the

9. Jamia Millia Islamia Act, 1988
10. Partners in Freedom Jamia Millia Islamia by Mushir ul Hasan , NIYOGI BOOKS, 2006 at page 102
11. The Glorious Qur'an, Surah Al-Alaq, verse 5.

campus of the JMI. It has been proved from the affidavits JMI Teachers Association (JTA) that since its foundation, the JMI bears an emblem, which has a star on the right with the inscription "Allah-o-Akbar". Beneath the said star is Holy Quran with the inscription in Arabic language "Allammal Isaana Malam Yalam" 17(taught the man that which he knew not). On either side of the Holy Quran are two date trees identifying the land where God's last prophet was born. At the bottom of the emblem, there is a small silver crescent with the inscription "Jamia Millia Islamia' in Urdu. It would thus appear that since its foundation in 1920, the JMI has apparently maintained its Muslim character and that would be evident from its very name, emblem and the establishment of a mosque. The Constitution of the JMI consisted of Memorandum of the Society. Clause 3 of the Memorandum spelt out the aims and objects of the Society and one of the aims of the Society was "to promote and provide for the religious and secular education of Indians, particularly Muslims in the Jamia Millia Islamia, in conformity with sound principles of education and in consonance with the needs of national life and to that end, to establish and maintain suitable educational institutions within the JMI campus and to set up and organize educational extension centres in the Union Territory of Delhi from time to time."

Having regards to the facts and circumstances of the case, we find and hold that since its foundation in 1920 till enactment of the Jamia Millia Islamia Act18, the JMI never lost its identity. The aim and object of the Act was to recognize the JMI as a Statutory University and also to merge the "Jamia Millia Islamia's Society in it. As stated earlier, in 1962, on the recommendation of the University Grants Commission, the Central Government granted the status of a deemed university to the JMI under Section 3 of the U.G.C. Act. Mere conferral of the status of a deemed university the JMI was not in our opinion, sufficient to clothe it

with a statutory character. In Vaish Degree College vs. Lakshmi Narain, it has been held by the Supreme Court that before an institution can be a statutory body it must be created by or under the statute and own its existence to a statute. In the instant case, the JMI did not owe its very existence to a statute. As stated earlier, since its foundation in 1920 till enactment of the JMI Act, the JMI never lost its identity. Even prior to the enactment of the Act, the JMI had legal existence of its own without any reference to the statute concerned. On the contrary, the evidence on record clearly proves that the JMI owed its establishment to the Muslim Community. The JMI had its independent existence as a university long before enactment of the Act. In the instant case that is no conversion of the JMI into another institution created by or under a Statute. The JMI was existing till the Act which was passed by the Parliament. It is an admitted position that prior to enactment of the Act, the degrees conferred by the JMI were recognized by the Central Government. Even if we for the sake of argument go with the judgement of Aziz Basha's case[12] the Supreme Court observed that although the nucleus of Aligarh Muslim University was the Mohammadan AngloOriental College which was till 1920 an educational institution, the conversion of that college into the University was not by the Muslim Community but it took place by virtue of the Act of 1920 which was passed by the then Central Legislature. As there was no Aligarh Muslim University existing till the Act of 1920 and since it was brought into existence by the Act of Central Legislature, the Supreme Court refused to hold that it was established by the Muslim Community. Thus, the ratio decidendi of Aziz Basha's case[13] does not govern a case like in hand. Not all five fingers are equal so the case of AMU and JMI is. The affidavit opposing the Minority status of JMI is based on the rationale of legally flawed[14] Aziz Basha's[15] which is of whole different nature as compare to AMU

DOES RECEIVING GRANT –IN AID CEASES THE MINORITY STATUS OF AN INSTITUTION ?

It was argued that since JMI set up "by an Act of Parliament," is funded by the Central government, and was not "set up by a minority

12. 1968 AIR 662, 1968 SCR (1) 833
13. ibid
14. Agreed Upon.
15. Supra

sect, the university does fall under the realm of being a "minority institution."

The JMI has apparently retained its minority character even after the enactment of the Act. It is an admitted position that the JMI is an aided educational institution. It is well settled that mere receipt of aid does not annihilate the right guaranteed under Article 30(1) of the Constitution. It has been held in the case of P.A. Inamdar & Ors vs State Of Maharashtra & Ors that "a minority institution does not cease to be so, the moment grantinaid is received by the institution. An aided minority educational institution, therefore, would be entitled to have the right of admission of students belonging to the minority group as per the rights under Article 30(1)".

It has to be borne in mind that if we go as according to Azeez Basha's case the MAO College had lost its identity by its conversion into the AMU, which was established by the AMU Act 1920. In the instant case, the JMI never lost its identity till enactment of the Act. we may say at the cost of repetition that, the provision of Section 2(o) read with Section 4 of the Act postulates a statutory recognition of the fact that the JMI was founded in 1920 during the Khilafat and non-cooperation movement which was subsequently registered in 1939 as Jamia Millia Islamia Society, and declared in 1962 as a deemed university under Section 3 of the U.G.C. Act. defines university as under :-
"University" means the educational institution known as "Jamia Millia Islamia" founded in 1920 during the Khilafat and Non-Coperation Movements in response to Mohandas Gandhi's call for a boycott of all Government sponsored educational institutions which was subsequently registered in 1939 as Jamia Millia Islamia Society, and declared in 1962 as an institution deemed to be a University under Section 3 of the University Grants Commission Act, 1956, and which is incorporated as a University under this Act"

The history of facts and events which led to the establishment of the JMI, we have no hesitation in holding that the JMI was founded by the Muslims for the benefit of Muslims and it never lost its identity as a Muslim minority educational institution.

NDA GOVERNMENT'S AFFIDAVIT OF 2018

The rationale behind the fresh affidavit opposing the Minority status of JMI by Government is purely relied on legally flawed Azzez basha's case which invalidated few provisions of amendment to AMU act and is challenged and pending on apex court. Few points were made in the fresh affidavit opposing the Minority status of JMI which deserves to be appreciated.

"In any event, the Board of JMI is elected and need not necessarily consist of majority belonging to Muslim religion. The question of it being a minority institution therefore does not arise."

It is already well setteled fact that , the Supreme Court has held that in order to claim the benefit of Article 30(1), the community must show;

a. that it is a religious/linguistic minority;
b. that the institution was established by it. And we have already seen what is more than enough to establish the minority status of JMI, forget about being the board not consisting majority belonging to Muslim religion.

"Treating a central university as a minority education institution is repugnant to law besides undermining its status and is against the basic tenet of a central university... By no stretch of imagination, Article 30(1) could be read to mean that even if an educational institution has been established by a Central Act, still the minority has the right to administer it."

It is an admitted position that the JMI is an aided educational institution. It is well settled that mere receipt of aid does not annihilate the right guaranteed under Article 30(1) of the Constitution. It has been held in the case of P.A. Inamdar that "a minority institution does not cease to be so, the moment grant-inaid is received by the institution. An aided minority educational institution, therefore, would be entitled to have the right of admission of students belonging to the minority group. And when its come right to administration, it is also well setteled fact that the administration belongs to those who established the institution as per Art. 30(1).

It was argued that since JMI set up "by an Act of Parliament," is funded by the Central government, and was not "set up by a minority sect, the university does fall under the realm of being a "minority institution."

In Vaish Degree College vs. Lakshmi Narain , it has been held by the Supreme Court that before an institution can be a statutory body it must be created by or under the statute and own its existence to a statute. In the instant case, the JMI did not owe its very existence to a statute. As stated earlier, since its foundation in 1920 till enactment of the JMI Act, the JMI never lost its identity. Even prior to the enactment of the Act, the JMI had legal existence of its own without any reference to the statute concerned. On the contrary, the evidence on record clearly proves that the JMI owed its establishment to the Muslim Community. The JMI had its independent existence as a university long before enactment of the Act. In the instant case that is no conversion of the JMI into another institution created by or under a Statute. The JMI was existing till the Act which was passed by the Parliament. It is an admitted position that prior to enactment of the Act, the degrees conferred by the JMI were recognized by the Central Government.

After thoroughly reading the fresh affidavit, one must inclined to say that this affidavit is as legally sound as the judgement of Azzez Basha's case . It seems that the learned council did not read the order of NCMEI when it granted minority status to JMI as it was also alleged that the order did not took notice of Azeez basha's case . When we go through the 58 pages order of NCMEI we find that it mentioned the same case not less than 5 times.

NCMEI'S FINAL STATEMENT BEFORE DECLARING JMI A MINORITY INSTITUTION

A bench headed by Justice(Retd.) M.S.A Siddique after thoroughly observing and hearing the argument from both side issued the following Statement which are as "...We find and hold that Jamia Milia Islamia is a minority educational institution covered under Article 30 (1) of the Constitution of India with section 2(G) of the National Commission for Minority Educational Institutions Act," the order said, adding that the University existed even before the Constitution was in place.

Jamia was established for the purpose of keeping Muslim education in Muslim hands, entirely free from external control. Thus the Muslim community brought Jamia into existence in the only manner in which a university could be brought into existence.

FOR MUSLIMS' BENEFIT

The Commission in its order held: "On a conjoined reading of Section 2(o) and 4 of the Jamia Millia Islamia Act along with the history and facts and events which led to the establishment of Jamia, we have no hesitation in holding that Jamia was founded by the Muslims for the benefit of the Muslims and it never lost its identity as a Muslim minority educational institutions."

"An aided minority educational institution, therefore, would be entitled to have the right of admission of students belonging to the minority group and would be required to admit a reasonable extent of non-minority students so that the rights under Article 30(1) are not substantially impaired," the order said. "It is well settled that mere receipt of aid does not annihilate the right guaranteed under Article 30(1) of the Constitution."

POWER AND JUSRISDICTION OF NCMEI TO GRANT MINORITY STATUS

In a case to Sisters of St.Joseph of Culny v. State of West Bengal the issue was raised on the power and jusrisdiction of NCMEI. The Supreme Court judgment has not only upheld the NCMEI's powers of original jurisdiction but also the power to intervene at any stage if the rights of minority educational institutions are violated.

The Sisters of St. Joseph of Culny and several other parties including the NCMEI were before the apex court.

The 1973 memorandum of society which established St. Joseph of Culny did refer to its purpose amongst others "of establishing schools/ colleges etc. primarily for the Catholics but also for others irrespective of religion, race, caste, community or social status". In 1997, this society made an application to North Bengal University that it wanted to establish a secular college and did not want minority status. The West Bengal government gave its approval for the establishment of a secular institution and the first governing council was accordingly constituted. In 2004. North Bengal University gave permanent affiliation to the college. However in 2007, the college sought minority status from the NCMEI. The NCMEI, in an ex-parte order, upheld the college's minority status and a certificate to that effect was issued. The NCMEI subsequently dismissed the (review) application of North Bengal

University in 2009. When the matter went to the Calcutta high court, both the single judge as well as divisional bench held that the NCMEI has no original jurisdiction to determine the minority status of an institution and thus invalidated the certificate issued by it. The Supreme Court judgment has not only upheld the NCMEI's powers of original jurisdiction but also the power to intervene at any stage if the rights of minority educational institutions are violated.

The court also dealt at length with the original decision to establish a non- minority and secular institution and the subsequent decision to convert the college into a minority institution. It rightly held that fundamental rights can never be waived and, therefore, that the subsequent assertion of the institutions minority character is perfectly legal.

CONCLUSION

To Conclude this, we must keep in mind the jouney we started from introduction to here and also not forget the Journey and Struggle Jamia Millia Islamia took Since 100 years to achieve the glory where it stand today. Latter is a Flower and former is its fragnance. As we look on the lucid clear history and foundation of JMI right from the Snatch to the top one must be incline to say that it is first and till stands last achievement the Muslim in India have earned which they are left with. The Minority Status JMI have earned is not a sudden thing which happened over a night but decades of hardships of uncountable names who worked and made unforgatable sacrifices, a group of young Jamia teachers, led by Dr. Zakir Husain, took a pledge to serve Jamia for the next twenty years on a salary not more than Rs. 150. This group was called the Life Members of Jamia. (History repeated in 1942 when a second group of Jamia teachers took a similar pledge). The riots following partition that shook the northern India did affect Jamia; but not its campus. Gandhi that its campus remained "an oasis of peace in the Sahara" of communal violence. Maktaba Jamia alone lost books worth seven lakhs in arson.

As required in S.P. Mittal's case it is established thought the article that JMI qualify to be a Minority Status and same was observed by Justice(Retd.) M.S.A Siddique in NCMEI order which declared JMI a Minority Institution. Same as we talk JMI was not made in a day, it is also a fact that aligation was not merely made out of no where. It also evolved as the Glory of JMI. If we take the of the logo inscribed,

excess injustice have been Made when its come to its interpretation. It is "JAMIA MILLIA ISLAMIA" is translated as National Islamic University which is not even close to its actual meaning, "MILLIA" is translated as National, its close to meaning is found in Urdu Language which is "QAUM". Its Closest meaning in English Language is Community not National as the officials claim. It was made by the Muslim Community for the benefit of Muslim comminity .

Its been already established by the evidences that all the claims made against the Status of JMI is baseless and stands no ground. But if the justice system arrive at the same Judgement as legally flawed as Aziz Basha's case , the condition of Muslim community will turn worst which is already above the alarming situation. If we exclude the 50% seats reserved for Muslims in JMI, Muslim population dwindles to 13.77% from present 63.77% — which is lesser than the correlative national population of 13.8%. The representation ratio in other top institution for Example in National Law Univerties is low as 0.76% would become 0.00% as the same survey suggest that 70.55% of Students come from Educated family. The representation in Judiciary, Parliament and Bureocracy which stands as low as 4%, 4%, and 5% will soon move to the category of absentees. It is also worth mention that as per NCRB date the total % of Muslim inmates in Jail is 21% which would rise more rapidly if the youths not made exposed to the education. As the saying goes..."if one part of body is infected, it spread in a whole of body". If the steps are not taken to improve the conditions and construct the opportunities , the same thing will soon visible on other the members of communities as well which would in turn effect the whole of the nation.

The Question raised should not be why a university reveiving the grant must be deprived of its minority status but it should be why it was granted the minority status after decades when it was close to mark a century. Why the sufficient aid was not granted when it was struggling with the finances and when teachers took oath to serve the university for nominal salary and save its cause, Why despite knowing the fact that a particular community countinously marked underpriveliege ignored and left to their condition. And only 10% of Sacchar committee's recommendations implemented which also mentions to grant aid to minority institution.

The Author is of the opinion that not only JMI and AMU's

Minority status should be upheld but Muslims as underprivilege (as the reports suggest) must be encouraged to open their own Educational instituite on a roadmap of JMI and AMU. Policies must be introduced which grants quota in higher educational Instituite of National Importance, as suggest the basic principle of law "Unequally must be treated uequally".

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