

MINORITIES COMMISSION

Report re. the
Aligarh Muslim University
Bill, 1978.

MINORITIES COMMISSION

REPORT TO THE GOVERNMENT OF INDIA REGARDING THE ALIGARH MUSLIM UNIVERSITY (AMENDMENT) BILL, 1978

1. The Minorities Commission have pleasure in submitting this report to the Government of India in respect of Aligarh Muslim University and the Aligarh Muslim University (Amendment) Bill, 1978. The Commission have now had the benefit of a detailed discussion of the question with representatives of the Government of India, the Vice-Chancellor of the University, Dr. A. M. Khushro, and a representative deputation from Aligarh Muslim University and several other elements of the Minority Community concerned. The Commission have given their most careful consideration to the terms of the Bill, a copy of which was furnished to it on May 9, 1978. The Commission had been already seized of the matter earlier and had occasion to submit an interim report to the Government on May 9, 1978. This final report replaces what was communicated in the interim report.

2. On March 9, 1978, Mr. Shafiq-ur-Rehman, Convenor of the All India Aligarh Muslim University Action Committee, addressed to the Chairman and Members of the Commission a memorandum. This was received when the Commission was in session in Delhi from March 20 to 23, 1978. On March 30, the Chairman of the Commission wrote to Mr. Shafiq-ur-Rehman in reply saying that the Commission would examine what the Memorandum had to say.

3. On the same day the Chairman wrote to the Education Minister mentioning that the Commission had been approached to deal with this matter and in particular with the restoration of the minority and autonomous character of Aligarh Muslim University. The Chairman requested the Education Minister to send the Commission a note regarding the developments concerning the Aligarh Muslim University so that the Commission may have a preliminary discussion on this matter when they met in Delhi for their next meeting on 26th and 27th April. The Chairman went on to observe : "Now that the Minorities Commission is seized of this matter, I hope I may assume that further action by Government such as drafting and introduction of the Bill to be introduced in Parliament, will not be undertaken till the Commission have had an opportunity to express their considered views to Government".

4. On May 5, 1978, the Chairman received a letter from the Minister of Education dated 20th April acknowledging the Chairman's letter of the 30th March, along with a note about Aligarh Muslim University. No reference was made in the Education Minister's letter to Government's proposal to introduce a Bill in Parliament during the current session of Parliament, despite the Chairman's having drawn attention to the fact that the Commission was dealing with this matter and make their recommendations before a Bill was introduced.

5. On 5th May, the Members of the Commission read in the Press that on the previous day the Education Minister had made a statement in the Lok Sabha announcing the Government's decision to introduce a Bill regarding Aligarh Muslim University in the current session of Parliament and the Press report said that a similar mention had been made in the Rajya Sabha.

6. The Commission had expected to be consulted in a matter which is essentially one with which the Commission are concerned and one in regard to which the Commission had specifically requested an opportunity to make their recommendations to the Government. The Commission regret that they were not so consulted in the preparation of the Bill.

7. In substance, the representations made to us are to the effect that—

- (i) the minority character of Aligarh Muslim University should be recognised by Parliament;
- (ii) the right to administer the University should vest in the Muslim minority community; and
- (iii) the University should function as an autonomous and democratic institution.

8. In order to appreciate the points in controversy and to understand why such strong feelings have been expressed on the subject by representatives of the Muslim minority, it is important to appreciate the history of the institution. We are indebted to the report of the Aligarh Muslim University Inquiry Committee, 1961, for a concise and fair narration of that history. The Committee was set up in 1960 by the Executive Council of the University in consultation with and at the instance of, the Government of India. It had a most distinguished composition, viz., Prof. G. C. Chatterjee as Chairman, Prof. A. R. Wadia, Shri Kartar Singh Malhotra, Shri P. N. Sapru, M.P., Shri M. A. Shahmiri and Shri R. P. Naik, I.C.S. as Member-Secretary. The report was published in 1961 and it sets out the history of Aligarh Muslim University in Chapter 8 from which we quote :

9. "How this University came into being is well known. After a careful study of the then prevailing conditions in India, that great man, the late Sir Syed Ahmed Khan, arrived at the conclusion that the backwardness of the Muslim community was due to their neglect of modern education. The Indian war of Independence had left the Muslims of India, who had played a notable part in it, frustrated and disorganised. They had a violent prejudice against Western education and all that it stood for. Sir Syed felt that that attitude was greatly injurious to their interests. He, therefore, wanted them to have the benefits of a liberal education on Western lines, for without that he felt that they would not be able to progress along lines which would fit them to make their full contribution to the country of their birth. Also, for him Islam was a progressive force and he wanted young Muslims to be brought up in a liberal atmosphere, where they would be able to receive education in Western literature and science along with instruction in their own religion and traditions. For that reason he wanted religious

instruction made an essential part of the education of Muslim students. To achieve these objectives, he organised a committee to devise means for the educational regeneration of Indian Muslims. This devoted band of workers decided to establish a Muhammedan College and, on 12th May, 1872, a society called 'The Muhammedan Anglo-Oriental College Fund Committee' was started for collecting subscriptions for the realisation of that end. The result of this activity was the establishment of a school the opening ceremony of which took place on 24th May, 1875. In 1876 high school classes were opened and on 8th January, 1877 Lord Lytton, the Viceroy, visited Aligarh and laid the foundation stone of the College which was destined to become the centre of the Muslim educational movement in India. The address to the Viceroy contained the following passage which described the aim which the great founder had in view:—

'And looking at the difficulties which stood in our way and the success which has already been achieved we do not doubt that we shall continue to receive even in larger measure, both from the English Government and from our own countrymen, that liberal support which has furthered our scheme so that 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, of large hearted toleration, and of pure morality'."

10. It may be mentioned that, in his address of welcome, Sir Syed gratefully acknowledged the help he had received from various quarters, individuals and communities. He drew pointed attention to some of the special features of the College, its basis of self-help, its residential system and its spirit of toleration. He remarked : "There have been before schools and colleges founded and endowed by private individuals. There have been others built by sovereigns and supported by the revenues of the State. But this is the first time in the history of the Muhammedans of India that the College owes its establishment not to the charity or love of learning of one individual, not the splendid patronage of a monarch but of the combined wishes and united efforts of the whole community. It is based upon the principles of toleration and progress such as find no parallel in the annals of the East". (*Writings and Speeches of Sir Syed Ahmed Khan* compiled and edited by Shan Mohamed, Nachiketa Publications Limited, 1972 page 125, vide also *History of the M.A.O. College, Aligarh* by S. K. Bhatnagar—Sir Syed Hall Publication No. 1, A.M.U., Asia Publishing House, 1969, page 53). At a meeting of the Mohammedan Anglo-Oriental College Fund Committee on February 10, 1873, one of its more distinguished members, Mr. Syed Mohammed Mehmood, who was the son of Sir Syed Ahmed Khan and won distinction as a High Court Judge, put forward a detailed scheme before the Committee.

11. We should like to set out here the opening sentences of the scheme:—

"Before offering any remarks upon the scheme to be adopted at the proposed Institution, I may be allowed to bring to the notice of the Committee a word which appears to me to have been used by mistake.

This Committee calls itself "The Mohammedan Anglo-Oriental College Fund Committee". I think what we mean to found is not a College but a University, and I hope the members will consent to my proposal that instead of the word College the word University may be substituted. (*Selected Documents from the Aligarh Archives* edited by Yusuf Hussain, published for the Department of History, Aligarh Muslim University, Asia Publishing House, Bombay, 1967, page 222)."

It is clear from this that the idea of establishing a Muslim University from the nucleus of the College existed at the very inception a century ago.

12. By the time Sir Syed Ahmed Khan died in 1898, the Muhammedan Anglo-Oriental College, Aligarh, was already a flourishing institution. Soon after his death in March 1898, the Board of Management of the College established a "Sir Syed Memorial Fund Committee" to build a University in his memory and in fulfilment of his desire and to raise funds for that purpose. The matter was placed before the All India Muhammedan Education Conference which adopted a proposal for the establishment of a Muslim University at its twelfth session held in December 1898 at Lahore (Proceedings of the All India Muhammedan Education Conference, Muslim University Press, Aligarh, 1935, page 69).

13. The idea of establishing such a University was warmly greeted by the distinguished Muslim personalities of the day. In December 1902, at the sixteenth session of the Education Conference held in Delhi, Sir Sultan Muhammed Shah, Aga Khan, supported the proposal in his Presidential address in which he visualised this University as a Muslim Oxford which should attract students not only from India but from other countries such as Turkey, Iran and Afghanistan as well. He appealed to the Muslims to raise funds for the project. (*Presidential Addresses of the Muhammedan Education Conference* entitled *Khutabat-I-Aliyah*, Muslim University Press, 1972; pages 206-218). One finds similar sentiments expressed by Mr. Badruddin Tyebji in July 1906 in his address to the Aligarh College Association in England. He said: "If, as I hope, Aligarh develops into a University it will become the centre of attraction of education for all Mohammedans, not only from the various Mohammedan schools and colleges of India, but also, it may be, from all other parts of the Mohammedan world" (*Badruddin Tyebji* by G. A. Natesan, Madras, pages 16, 17).

14. Fund collecting had begun in earnest. In January 1911 a Muslim University Foundation Committee was established followed by a Constitution Committee set up in February to draft the Act, the Statutes and Regulation of the University. Raja Mohammed Ali Mohammed Khan of Mahmudabad was the President of the latter Committee and the Aga Khan the President of the former. Thus, as the Chatterjee Report records, "the movement for the establishment of the Muslim University continued to gather strength from year to year till on the 10th June, 1911, the Government of India communicated to the Secretary of the State the desire of the Muslim Community and recommended that sanction might be given to the establishment of such a University at Aligarh. The principle of the establishment of such a University was approved and negotiations continued resulting in a despatch from

the Government of India in November 1911, to the Secretary of State, in the final paragraph of which was contained the following observation of the Government of India :

“Such in outline is the scheme which we recommend to your Lordship. It represents the result of considerable discussion and of somewhat long negotiations. The spirit that has animated both parties to the negotiations has, we are glad to be able to inform Your Lordship, been excellent and we trust that your Lordship in sanctioning a University at Aligarh will share the hope, which we confidently entertain, that this new and interesting educational experiment supported by the confidence of the Government and the Mohammedan Community will be the source enlightenment and prosperity of that Community and will fitly crown and carry on the noble work and the lofty hopes of Sir Syed Ahmed Khan’.”

15. The Government of India imposed two conditions which were outlined in a letter by the Education Member of the Viceroy's Executive Council, Sir Harcourt Butler, to the Raja of Mahmudabad in July 1911: “First, that your Committee can show that you have adequate funds in hand for the purpose and, secondly, that the constitution of the proposed University is acceptable in all details to the Government of India and to His Majesty's Secretary of State for India”.

16. A deputation on behalf of the Constitution Committee had already met Sir Harcourt Butler in May 1911 and discussed the proposals and the more important details of the draft constitution. The Constitution Committee met from August 18 to 20, 1911, to finalise the Constitution in the form of a draft Bill. The finalised draft was submitted to the Government and published to elicit public opinion. Further discussion then took place between the representatives of the Constitution Committee and Sir Harcourt Butler in September and the draft underwent revisions in the light of the discussions.

17. In July 1912 the Government of India published a communique to the effect that the jurisdiction of the Universities of Banaras and Aligarh would be confined to the cities in which they would be respectively located. It may be mentioned here that a proposal for Banaras Hindu University was also under discussion then. The communique evoked widespread criticism. A communication dated August 9, 1912, from the Education Member informed the President of the Constitution Committee that the University would not enjoy the right of affiliating colleges and schools outside its territorial limits and that the name of the University would be Aligarh University, and not Muslim University. He also queried the powers of the Chancellor. He also stipulated that the Viceroy would not be the Chancellor of the University, which would be free to elect its own Chancellors. He added that the powers which it was proposed to entrust to the Chancellor should be entrusted to the Governor-General in Council, but he recalled : “It had been the dream of Sir Syed Ahmed Khan which occupied his thought in his declining years to found a University for Mohammedans at Aligarh.

18. These suggestions were considered by the Constitution Committee on August 11-12 at Lucknow where strong criticism was expressed. It was commonly hoped that the Muslim University situated at Aligarh would have the power to affiliate schools and colleges throughout the country, that it would be acknowledged as an institution of the Muslim minority and named as a Muslim University, and further, its autonomy would be fully preserved though certain powers would be entrusted to the Viceroy but not to the Governor-General in Council as Sir Harcourt Butler suggested. The Committee recorded its views in a resolution on all these points and conveyed its views to Sir Harcourt Butler in a letter.

19. The Foundation Committee met in Lucknow on December 27, 1912, and it insisted that the name of the University should be the Muslim University Aligarh and not the Aligarh University. It also insisted that it was not prepared to invest the Governor-General-in-Council with those powers which it was prepared to invest in H.E. the Viceroy as the Chancellor of the University, and expressed its regret at the disapproval of the Secretary of State for India of the proposal for the appointment of the Viceroy as Chancellor of the University and asked for a reconsideration of his decision. The meeting set up a Committee consisting of eminent Muslim public figures such as Iqbal and Fazle Hussain from the Punjab and Jinnah and Fazalbhoy Currimbhoy from Bombay. The Foundation Committee met once again in July 1913, this time in Aligarh, and took an important step. It decided to create a "Muslim University Association" consisting of 200 representatives from different parts of the country in order to keep the University fund intact and utilise the income derived from it for developing the college, pending its elevation to a University. The University Association was also authorised to negotiate with the Government of India.

20. In March 1914 the Muslim University Association was registered. By 1915 the funds collected totalled over the minimum of Rs. 30 lakhs which was fixed by the Government as the minimum essential for launching the University. But the negotiations between the Government of India and the representatives of the Muslim community had reached a deadlock which led to a division of opinion among Muslims—between those who preferred to temporise and others who wished to continue the effort to secure the complete acceptance of the Constitution Committee's terms.

21. Meanwhile, the Banaras Hindu University Act had become law in 1915 and this strengthened the hands of the moderates who successfully persuaded the Foundation Committee at its meeting at Aligarh under the Chairmanship of Prince Hamidulla Khan of Bhopal on April 8, 1917, to accept the Banaras Hindu University Act as a precedent. This resolution was approved in January 1920 by the Muslim University Association as well. In March a report of the Sub-Committee was approved by the Association and negotiations were resumed in the same month between the Government of India and the Association. This time they were successful. Complete agreement was reached between the two sides on the Bill as well as on the first Statutes of the University.

22. The Bill was introduced in the Central Legislative Council on August 7, 1920, by Sir Mohammed Shafi who had become the Education

Member of the Viceroy's Executive Council. The Statement of Objectives and Reasons annexed to the Bill read *inter alia* :

"The Muslim University Association having requested the foundation of a University on certain funds and property being available to this end, it is proposed to dissolve that Association and the Mohammedan Anglo-Oriental College, Aligarh, and to transfer the property of these societies to the new body called 'The Aligarh Muslim University'. The present Bill is designed to incorporate this University, to indicate its functions, to create its governing bodies and to define the functions Special features of the University will be the imparting of Muslim religious education to Muslims and the inclusion of Departments of Islamic Studies.

2. The First Statutes are schedules to the Bill and consist of those which may be regarded as fundamental for inception of the Scheme.

3. The general terms of the Bill and Statutes have been discussed with representatives of the Muslim University Association."

Tracing the background, Sir Shafi said : "The Hon'ble Members will also be glad to hear that the Government of India hopes to give substantial financial assistance to the proposed University in order to mark their own goodwill towards an institution which they earnestly hope will be a source of immense benefit to the Indian Muslims."

23. It is interesting to note that the Secretary of the M.A.O. College, Nawab Syed Muhammed Ali, had been nominated by the Viceroy as a member of the Central Legislative Assembly to help the Education Member in piloting the Bill.

24. The Bill represented a compromise between the demand of the Muslims and the stand of the Government of India. The Muslims secured acceptance of the demand in regard to the name, character and administration of the University. It was to be a Muslim institution administered by the Muslims. But they in turn had to accept the Government's condition as to its restriction on the powers of affiliation. A Government spokesman rejected the amendments to the Bill on the ground that the Government was 'Unable to depart from the understanding arrived at with the representative body', viz. the Muslim University Association. (*Gazette of India* 1920, part VI, page 114).

25. Although the Act provided that the First Chancellor, Pro-Chancellor and the Vice-Chancellor would be appointed by the Governor-General in Council, the Education Member gave the following assurance in the presence of the Viceroy and the Governor-General : "I may, with your Excellency's permission, assure my Hon'ble friend that in making this first appointment the Governor-General in Council will keep the wishes of the (Muslim) community in view". (*Gazette of India* 1920, part VI, page 1180).

26. The preamble to the Act referred to the societies registered under the Societies Registration Act, viz., the Mohammedan Anglo-Oriental College, Aligarh, and the Muslim University Association and also to the Muslim University Foundation Committee. The Preamble to the Act read as follows :

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

27. Section 4 of the Act provided for the dissolution of the M.A.O. College and the Association and for the transfer of all property belonging to the Foundation Committee to the University and for such property being applied to the objects and purposes for which the University was incorporated. Section 4(iv) provided : “Any will, deed or other document, whether made or executed before or after the commencement of this Act, which contains any bequest, gift or trust in favour of either of the said Societies or of the said Committee shall, on the commencement of this Act, be construed as if the University was therein named instead of such Society or Committee”.

28. Under Section 5 of the Act, the University had the power “to promote oriental and Islamic studies and give instructions in Muslim theology and religion and to impart moral and physical training”. Under Section 9, the Court of the University had power “to make statutes providing that instruction in the Muslim religion shall be compulsory in the case of Muslim students”. Section 23 of the Act placed a restriction on the membership of the Court which was the supreme governing body of the University, namely, that “no person other than a Muslim shall be a member thereof”. Not only was the membership of the Court restricted to Muslims but even the electoral college of the Court was predominantly Muslim in character (*vide* Section 8 of the Act). The Act of 1920 thus recognised the minority character of the University. In other words, the Government and the Legislature gave recognition to the minority character of the University.

29. At the meeting of the Governor-General’s Legislative Council in which the Bill was finally passed into law, the Governor-General said : “I should like to add my congratulations to the Muslim community of the passage of this Bill. I have come here specially this morning to preside in order that I might add my good wishes and congratulations to those which have already been uttered in this Council”. (*Gazette of India* Sept. 25, 1920, part VI, page 1190).

30. Certain amendments were made to this Act in 1951 in view of the coming into force of the Constitution of India in 1950, and the effect has been well described in the Chatterjee Committee’s report from which we quote below :

31. “10. Towards the establishment of the M.A.O. College, the institution which Sir Syed founded and which in 1920 became the nucleus of the Aligarh Muslim University contributions were

made by a generous public including non-Muslims donors. The institution, therefore, owes its establishment to private charity. It continued to function as a college until 1920 when an Act was passed by the Central Legislature for establishing the Aligarh Muslim University. This Act gave a constitution to the University which continued in force until 1951 when certain amendments of an important character were effected in it. The main features of the 1951 Act were that, as laid down by Article 28(9) of the Constitution of India, religious instruction was to be given only to those who wished to receive it, membership of the Court was to be thrown open to all persons irrespective of religion or caste, the President of India to be the visitor of the University and he was to exercise the same powers as he had been doing before as its Lord Rector, and the Governor of Uttar Pradesh was to be Chief Rector of the University. It substituted for Section 8 of the Principal Act, the following section :—

'8. 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 any testamentary or other instrument creating such benefaction.'

Provided that nothing in this section shall be deemed to prevent religious instruction being given in the manner prescribed by the Ordinance for those who have consented to receive it.

32. "11. By this Section, the disqualifications imposed by the old Act on non-Muslims being members of the Court were removed. The point worth noting about the amending Act of 1951 is that while bringing the provisions of the Act into conformity with the requirements of the Constitution it did not alter its fundamental character as a Muslim University for the educational advancement of Muslims.
33. "12. The fact that in the lists the Aligarh Muslim University has been allotted to the Union list does not, in any view of the law, change its character as a minority institution.
34. "13. If the amending Act of 1951 does not alter the essential character of the University as a 'minority' institution, nor does the rising spiral of financial assistance by Government. This was categorically settled by the Supreme Court in their opinion on the Kerala Education Bill. On this issue of financial assistance, their Lordships observed : "No educational institution can, in actual practice, be carried on without aid from the State and if they will not get it unless they surrender their rights, they will, by compulsion of financial necessity, be compelled to give up their rights under Article 30 (1)."

35. "15. It is, thus, clear that while no citizen shall be denied admission to an educational institution receiving aid out of the State funds on grounds only of religion, race, caste, language, or of any of them, the relevant provisions in the Constitution, as interpreted by the Supreme Court, ensure that the University will not cease to be a 'minority' institution merely because it admits students which do not belong to the minority community nor will it, on that account, cease to be entitled to aid from Government.
36. "17. From the time the M. A. O. College came to be established and later became the Muslim University, the University has followed a policy of throwing its doors open to non-Muslims provided of course they satisfy the requirements laid down by it for admission. While claiming the right to give preference to Muslims, the University has never imposed a ban on the admission of non-Muslim students. Indeed no quotas have at any time been fixed for Muslim and Non-Muslim students. Any other policy would have been open to grave objection for it would have been contrary to the liberal ideals which must inspire a temple of learning such as a University. The proportion of non-Muslim students at the University is at present very nearly 35%. It is not, in our opinion, an unreasonably small proportion."

37. The Committee in our opinion rightly said : "Our emphatic view on this point is that provided the University, as an autonomous institution, is allowed to regulate its admission policy, it is quite unnecessary to lay down in any statutory form any rigid quotas for Muslim and non-Muslim students. Academic freedom carries with it the right to regulate the admission policy pursued by a university, which is basic to the purposes for which a university exists."

38. The Committee also said : "A consideration, which has to be borne in mind is that the University was intended to be a residential and teaching one. Due to pressure of numbers, the expansion of facilities for higher education, and the limited accommodation in University hostels and halls, it has not been strictly possible for the University to adhere to the requirement of providing hostel accommodation for at least 75% of its population. This, however, is no ground for changing its essential character and allowing colleges in Aligarh to get affiliated to it. A change of that kind would affect the basic character of the University".

39. The Chatterji Committee had dealt with the question of reserving a minimum percentage of places for Muslims in enrolment and recruitment to the faculty and staff. With the restoration of autonomy to the University, we would leave it to the Court to deal with the question as exigencies arise from time to time. The Court could be expected to keep in mind two considerations which need not be in conflict, namely, to provide for Muslims increased opportunities for higher education, and to ensure the implementation of the commitment made under the policy set forth in Section 8 of the Act.

40. Till 1965, no one disputed that Aligarh Muslim University was an institution established by the Muslims of India which they were entitled to administer in accordance with the terms of the Act of 1920 and enjoy the protection of the Fundamental Right conferred by article 30 of the Constitution of India which reads as follows :

“30 Right of minorities to establish and administer educational institutions :

- (i) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.
- (ii) The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language”.

41. However, in 1965, some shocking incidents took place on the campus in which the Vice-Chancellor Nawab Ali Yavar Jung was grievously assaulted. The President promulgated the Aligarh Muslim University Ordinance 1965 which in the view of the Muslims, violated their Fundamental Right under Article 30. A petition was filed in the Supreme Court challenging the constitutional validity of the Ordinance. On behalf of the Government an affidavit was filed in the Supreme Court in July 1965 in reply to the petition by an Under-Secretary in the Ministry of Education, which categorically asserted that the Aligarh Muslim University “did not have any characteristic of a religious denomination of any nature whatsoever as to attract the provisions of Articles 26 or 30(1) of the Constitution of India.”

42. More specifically the Union of India contended that “Aligarh Muslim University is an institution established not by a minority community so as to attract the provisions of Article 26 or 30(1) of the Constitution of India but by the Central Government”. Indeed, the Government of India categorically denied “that the Aligarh Muslim University had a Muslim character”, as suggested by the petitioners and argued, instead, “that like any other University, it was only one of the powers of the University to promote Oriental and Islamic studies and to provide instructions in Muslim theology and religion”. He added : “Merely because the said University has been named as Muslim University, it does not necessarily savour of the character of the institution of the minority community”. If, as the Government contended in the Azeez Basha case, Aligarh Muslim University has no Muslim Character, how was it that in the preamble to the original Act, which has survived all the amendments, the reference is to “a teaching and residential *Muslim* university”? (Emphasis ours).

43. It seems to us that the Government erred by over-arguing the case for intervention in the University. The stand it took ignored the whole history of the institution and the commitment that the predecessor Government had made in incorporating into a University an existing Muslim College and all its assets. News about the Government of India's stand came as a shock to the Muslim community in view of the fact that, only in the previous month,

on June 18, 1965, the correspondence between the Government of India's Education Minister, Mr. M. C. Chagla, and the Vice Chancellor of the University, who had been subjected to such a brutal and dastardly assault, had been published. It showed that, so far as Mr. Ali Yavar Jung was concerned, the brutal assault on him had not embittered him or obliged him to depart from the correct position. He wrote : "I am reminded of the talks I have had with you on this subject and of your assurance that, subject always to the sovereign will of Parliament, there was not the slightest intention on the part of the Government to alter the Muslim character of the University". There was no contradiction of this statement in Mr. Chagla's reply.

44. On August 11, 1965, the petition was withdrawn by the petitioners on the Supreme Court pointing out that the Ordinance was a temporary measure and the petitioners might wait to see whether the Act violated their rights under Article 30(1) of the Constitution. The Aligarh Muslim University (Amendment) Act 1965 was subsequently passed. The main amendment in the 1965 Act was in Section 23 of the Act of 1920 in regard to the composition and powers of the Court of the University. Sub-section (2) and (3) of the 1920 Act were deleted with the result that the Court could not remain the supreme governing body and could no longer exercise the powers conferred by the sub-sections. The powers of the Executive Council were increased and many of the powers of the Court were transferred to the Council. The Constitution of the Court was drastically changed and it became practically a body nominated by the Visitor.

45. Writ petitions were filed in the Supreme Court challenging the Constitutional validity of the Act, in *S. Azeez Basha Vs. Union of India* AIR; 1968 Supreme Court 662. The Supreme Court held that the words "Educational institutions" in Article 30 "would include a University also". The Court also held that the words "establish and administer" in Article 30 cannot be read disjunctively but must be read conjunctively. In other words, "the Article gives the right to the minority to administer institutions established by it. If the educational institution has not been established by a minority it cannot claim the right to administer it under Article 30(1)", the Supreme Court ruled. The Court set out, first, the contentions of the petitioner, referred to the history of the Aligarh Muslim University, and considered in detail the provisions of the Act of 1920. Having done so, it considered the scope of Article 30 and proceeded to decide whether, in view of the Act of 1920, the Muslim minority could be said to have "established" the University. It considered Section 6 of the Act as also some other provisions and held that "the Aligarh University when it came into existence in 1920 was established by the Central Legislature by the 1920 Act. It may be that the 1920 Act was passed as a result of the efforts of the Muslim Minority. But that does not mean that the Aligarh University when it came into being under the 1920 Act was established by the Muslim minority". Clearly, the Court's adverse ruling rests on its construction of the Act of 1920. The Supreme Court's decision in regard to the establishment of Aligarh Muslim University seems to involve the theory that any institution incorporated through an Act of the Legislature is established by the legislature. It could, however, be that the legislature does no more than provide the legal basis for the functioning of an institution instead of actually establishing it.

46. The Court observed: "It may be accepted for the present purposes that the M.A.O. College and the Muslim University Association and the Muslim University Foundation Committee were institutions established by the Muslim minority". And again: "It is true as is clear from the 1920 Act that the nucleus of Aligarh University was the M.A.O. College".

47. The effect of the Supreme Court's judgement in Azeez Basha's case is that since an educational institution includes a University, therefore Article 30(1) confers on the minorities the right to establish and administer a University of their choice. But the Court rejected the claim of the Muslim based upon Article 30(1) of the Constitution mainly on two grounds, viz. (i) that Aligarh Muslim University was not established by the Muslims inasmuch as it was established by an Act of the Legislature, and (ii) that the scheme of the 1920 Act did not confer the exclusive right to administer the University on the Muslims. It would appear that the interpretation of the Supreme Court of the word "establish" appearing in Article 30(1) has not been followed by the Supreme Court in some subsequent cases. In Azeez Basha's case, reference was made to the several meanings given to the word "establish". One of the meanings given to the word was "to found"; another meaning given to the word was "to bring into existence". The Supreme Court preferred to adopt the second meaning referred to above and held that "for the purpose of Article 30(1), the word means "to bring into existence". But in a later case the Supreme Court treated the expression "to bring into existence" to mean "to found". In *Kerala v. Mother Provincial AIR 1970 S.C. 2079*, the Supreme Court observed: "Established here means to bring into being of an institution and it must be by a minority community. It matters not if a single individual by his own means *founds* the institution or the community at large contributes the funds. The position in law is the same and the intention in either case must be *to found* an institution for the benefit of the minority community by a member of that community" (emphasis ours). It may be noticed that the judgement in this case was of a bench of six judges whereas the judgement in Azeez Basha's case was by a bench of five judges. It is now well settled that the judgement of a larger bench which is also later in point of time prevails over an earlier judgement by a smaller bench.

48. It is obvious that the Supreme Court in Azeez Basha's case put a narrow interpretation on the word "establish" and that, while holding that the M.A.O. College and the Muslim University Association and the Muslim University Foundation Committee which formed the nucleus of Aligarh University was established by the Muslim minority, it rejected the claim of the Muslims on the basis of the narrow interpretation of the word "establish". If the view taken by the Supreme Court in Azeez Basha's case is correct, it would mean that a religious or linguistic minority is debarred from establishing a University in as much as a University can only be established by an Act of the Central or State Legislature. This would mean the deprivation of a right conferred on the minorities by Article 30 of the Constitution and would be violative of the said Article. It is now well settled that the interpretation of any piece of legislation or of any provision thereof has to be in favour of its constitutionality and not against it. Further, the Supreme Court has also held in a later case that a liberal construction should be put

on Article 30 of the Constitution and that "a liberal and generous and sympathetic approach is reflected in the Constitution in the matter of preservation of the right of minorities so far as their educational institutions are concerned" and "the catholic approach which led to the drafting of the provisions relating to the minority rights should not be set at naught by narrow judicial interpretations". (*Vide St. Xaviers College Vs. State of Gujarat* AIR 1974 S.C. 1389 at page 1874). If the Supreme Court in Azeez Basha's case had adopted the meaning of the word "establish" as "to found", as was done in the case of Mother Provincial and if it had put a liberal construction on Article 30 as was put in the case of St. Xaviers College, then the decision in Azeez Basha's case would have gone in favour of the Muslims.

49. In our view, the judgement ignores the historical background to the founding of the University and the legal and moral commitments that the State accepted when it provided by the Act for the taking over of the assets of the original foundation at Aligarh as also the endowment which the Muslim community had collected. It is inconceivable that the M.A.O. College and the Muslim University Association should have agreed to surrender their identities and assets except on the basis of the firm hope that Aligarh Muslim University would embody Muslim aspirations and ideals at least to the same extent as the original foundation had done.

50. Mr. H. M. Seervai, one of the country's leading Constitutional lawyers, who served as Advocate-General of Maharashtra for seventeen years has, in his work *Constitutional Law of India*, carefully analysed the judgement. His critique of the judgement has been widely acclaimed as sound (*Constitutional Law of India* by H. M. Seervai, N. M. Tripathi P. Ltd., Bombay, Vol. I, 1975 pages 610 to 616). Mr. Seervai points out that the judgement of Vaisey J. in *St. David's College Vs. Minister of Education* (1951) 1 All E.R. 559, on which the Supreme Court relied, negatives the proposition that the *only* essential feature of a University is the power to confer its own degrees, for it was clearly stated by Vaisey J. that it was an "essential feature of a University that it should be incorporated by the highest authority, i.e. by the sovereign power". See also Halsbury Vol. 13 page 707 (3rd Ed.) Vol. 15, para 280 (4th Ed.) in which the law is stated in the same terms.

51. After considering the history of the foundation of Aligarh Muslim University, Mr. Seervai writes:

"As regards the meaning given by the Court to the word 'establish', it is submitted that the meaning is not correct. It was not disputed that 'to found' is one of the meanings of the verb 'to establish', and it is submitted that in the context, it is the correct meaning as is clear from the definition of the verb 'to found', namely 'set up or establish (especially with endowments)'. The Muslim community established the University and provided it with its endowments. Even if the definition given by the Court were correct, namely, 'to bring the University into existence', it is submitted that the Muslim Community brought the University into existence in the only manner in which a University could be brought into existence, namely, by involving the exercise by the sovereign authority of its legislative power. The Muslim community provided lands, buildings, colleges and endowments for the University, and without these the university as a body would be an unreal abstraction".

52. Having considered Mr. Seervai's critique carefully, we cannot but share his regret which he expresses in these terms: "It is submitted that this is the first case in which the Supreme Court has departed from the broad spirit in which it has decided cases on cultural and educational rights of minorities, which was reflected in the passage from the judgement of Chief Justice Das, quoted at the beginning of this chapter (Chapter 14). In the present case, the Supreme Court has on narrow, technical grounds, which are erroneous, held that a minority which had striven for and obtained the establishment of a Muslim University and endowed it with considerable property and money, had not established that University, and that provision of the Act of 1920 vesting the supreme government of the University exclusively in Muslims did not vest the administration in Muslims. On the Supreme Court judgement there is nothing to prevent Parliament from converting the Muslim University into a University for foreign students or for backward classes. It is submitted that the decision is clearly wrong and productive of grave public mischief and it should be overruled".

53. The passage quoted by Mr. Seervai from Chief Justice Das in the Kerala Education Bill case contains the following moving words: "So long as the Constitution stands as it is and is not altered, it is, we conceive, the duty of this Court to uphold the fundamental rights and thereby honour our sacred obligation to the minority communities who are of our own".

54. The judgement in Azeez Basha's case was delivered on October 20, 1967. It added greatly to the unrest and disquiet among the Muslim minority. The then Prime Minister, Mrs. Indira Gandhi, authorised Mr. Fakhruddin Ali Ahmed, Minister for Industrial Development and Company Affairs, to deal with the Aligarh question. He convened a meeting of some Muslim leaders from all over the country on August 2, 1968, in Udhayog Bhavan, New Delhi.

55. The Committee thus set up submitted its report which, it is important to note, was forwarded by the Officer on Special Duty (Wakfs) in the Ministry of Law (Legislative Department) of the Government of India to various persons. In all but name, the Committee was an official body. The Committee made detailed suggestions by way of amendments to the Act of 1920 but one recommendation which received particular notice and welcome from the Muslim community was in Section 19(ii) which reads as follows:—

"Notwithstanding any judgement, decree or order of any Court or Tribunal to the contrary, the Aligarh Muslim University shall be deemed to have been established by the Muslim minority of India as an educational institution of its choice, and shall be administered and managed as provided for in Articles 29 and 30 of the Constitution of India."

56. We regret to observe that the amendments to the Act of 1920 by the Aligarh Muslim University (Amendment) Act, 1965, not only affected the rights under Article 30 but completely undermined the autonomy of the University. The Act provided for an immense concentration of power in the hands of a nominated Vice-Chancellor. This, we might add, was completely against the universally accepted principle of autonomous administration of Universities.

57. Having given the matter our fullest consideration, we are of the view that not only should the autonomy of the University be fully restored but that it should be categorically declared now, in order to remove all doubt, that Muslim University, Aligarh is an educational institution established by the Muslims which they are entitled to administer under Article 30(1) of the Constitution of India. We see nothing inimical to secular values in such a declaration for the simple reason that this right is conferred on the authorities by the Constitution itself, and there are several hundred minority institutions in the country, besides Aligarh Muslim University, that enjoy this right. The history of Aligarh Muslim University not only shows that it was established by the Muslims of India but that, as a token of their approval of the establishment of such a University, non-Muslims and Government also gave some assistance.

58. An amendment of the Act of 1920 by an Act of Parliament will suffice to recognise Aligarh Muslim University as an institution established by the Muslim minority. We are of the view that an amendment of the Constitution is unnecessary. The statute book is full of instances of such legislative rectification of effects of judgement in regard to which the legislature desires a change. There are also instances of constitutional amendments to secure the same end.

59. The report of the Committee which was appointed by the Executive Council of Aligarh Muslim University suggested in place of the preamble of 1920 the preamble which is set out below:

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

The report further suggested that “University” be defined in Section 2(k) in these terms:

2(k) “University” means the Aligarh Muslim University established by the Muslims of India.

60. We have given careful consideration to the Aligarh Muslim University Bill, 1978. We are of the view that the Bill is a welcome step towards the restoration of the autonomy of the University with power to make Statutes. Additionally, the composition of the Court, the Executive Council and the Finance Committee of the University are to be restored to the position that obtained after the Amendment Act of 1951. We feel that these changes fully meet the criteria of an autonomous institution.

61. The Statement of Objects and Reasons appended to the draft Bill refers to ‘persistent demands both inside and outside Parliament for the restoration of the basic character of the University and its democratic functioning’. There is also a claim that, in reviewing the provisions of the amending Acts of 1965 and 1972, due regard has been given to ‘the strong

feelings among a large section of the Muslims of India and the staff and students of the University'. If 'democratic functioning' is part of the basic character of the University, we fear its restoration will not be achieved by the provisions of the draft bill. The Bill makes the Court autonomous and powerful to a degree not provided for in any other University in the country, but the Bill does not make the Court democratic. To mention the most glaring instance, the faculty representation on the Court will consist of all the Professors and Chairman of Departments, three readers and two lecturers. In a faculty numbering over nine hundred, the sixty odd professors will all sit on the Court, and the several hundred junior faculty will be represented by five of them 'in order of seniority', and by an odd reader or lecturer who happens to be Chairman of a professor-less Department. There may be sound reasons for adopting this policy; but it will be a travesty to claim that this is a device to ensure 'democratic functioning'.

62. We may also point out that in determining the composition of 'the supreme governing body of the University', namely the Court, no representation has been provided for the several hundred non-teaching employees of the University. We would accept the proposition that an academic institution should be run by academic persons. If that is the accepted view, several categories of members of the Court set forth in the Bill may not have the qualifications to sit on it.

63. Another set of undemocratic provisions one notices in the Bill consists of sections 33 and 34. These refer to the Teachers' Association and Staff Associations. Why should the constitution of the Teachers' Association be prescribed by Ordinances instead of by the teachers themselves? Why should the University oblige non-teaching staff, through Ordinance, to be organised into four a separate staff associations, unless they choose to do so? We mention these matters since they indicate how power is sought to be organised and deployed under the proposed system of autonomy.

64. In view of this, the Commission feel that this part of the Bill needs to be carefully reviewed with a view to ensuring that the restoration of the autonomy of the University, which we welcome, is accompanied by a democratic basis for its functioning. We would suggest that, to ensure democratic norms, representation of faculty other than professors should be at least equal to the number of professors on the Court. We notice that wherever elections are mentioned in the Bill, it is specified that they would be 'by simple majority'. The correct course would be to hold all elections by the system of the Single Transferable Vote. We would further urge that the aim of the law in this, as in all universities, should be to de-emphasise the pursuit of power and replace it with the pursuit of learning.

65. We now come to the very important question of the definition of "University" in Clause 3 of the Bill which seeks to amend Section 2(1) of the Act. The definition of "University" does not, in our view, bring out its minority character. On the other hand, it makes a clear distinction between the M.A.O. College and the University and emphasises the fact that what was established by the Muslims was only the M.A.O. College and not the University. In the Statement made by the Education Minister in Parliament the Government has appreciated the feelings of frustration prevalent amongst

Muslims over the denial of the minority character of the University, but the proposed amendment does not remove the causes of frustration. We have therefore evolved a formula which in our view would meet the needs of the case:

“‘University’, means the educational institution of their choice established by the Muslims of India, and which was incorporated and designated as Aligarh Muslim University in 1920 by this Act.”

66. In our view, the virtue of this formulation lies in the fact that, while it accepts the legitimate claim of Muslims that Aligarh Muslim University should be entitled to the Constitutional guarantee of the Fundamental Right embodied in Article 30, it would in no way affect the powers of Parliament to discharge its proper functions in regard to ‘an institution of national importance’.

If necessary, an explicit declaration to that effect can be made in the Bill itself in terms of Entry 63 of List I. The Muslim University is both an educational institution established by the Muslims as well as an educational institution of national importance; a centre of Muslim learning and culture to which the country attaches the highest importance. As the Chatterjee Committee puts it, “though a minority institution, Aligarh Muslim University should be looked upon as the Nation’s contribution to the promotion of that composite culture in which all the peoples of this land can take legitimate pride”.

67. A series of pronouncements of the Supreme Court have defined the scope and ambit of Article 30. The right so guaranteed is not free from all regulation. It is now well settled that the State can lay down standards of education, and regulatory measures can be imposed to maintain educational standards. This is not part of the right of management. That the right to administer is not the right to maladminister has been repeatedly stressed. The regulation must not affect the minority character of the institution or the minority’s right to administer it. (Vide *Ahmedabad St. Xavier’s College Society and Another Vs. State Gujarat* AIR 1974; S.C. 1389; Vide also AIR 1970 S.C. 2079; AIR 1963 S.C. 540 and AIR 1958 S.C. 956).

68. The State is free to impose reasonable restrictions in the interests of efficiency of instruction, discipline, health, sanitation and the like, to secure a proper functioning of the institution in educational matters. The State possesses this power in regard to any minority institution and all the more so in regard to Aligarh in view of Entry 63 List I.

69. Thus Parliament’s legislative competence in regard to Aligarh Muslim University will remain. It will be subject only to the Muslim minority’s right to administer it under Article 30(i). In view of Aligarh’s history, this right indubitably belongs to it and was not questioned till July 1965. Its explicit recognition by Parliament will redress a long standing and justified grievance of a minority, without adversely affecting the national interest.

70. Aligarh Muslim University occupies a position of unique importance and significance in the country precisely because it is an educational institution established by the Muslims. Like Brandeis and many such Universities in the United States and other countries, it reflects the cultural heritage of the minority which brought it into being and its desire to contribute to the national well-being through learning.

71. No one has described Aligarh's unique position in the national life better than did Dr. Zakir Hussain when he was its Vice-Chancellor: "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".

M. R. MASANI,
Chairman

M. R. A. ANSARI,
Member

V. V. JOHN,
Member