ISSN 0971 – 3212

RELIGION AND LAW REVIEW

Volume XXXIII: No. 2
[2024]

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Institute of Objective Studies

Institute of Objective Studies [IOS]

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Consultative Council, RLR

Religion and Law Review

Volume XXXIII: No.2 **2024**

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Articles

LAW, SOVEREIGNTY AND SOCIETY IN BRITISH INDIA: A COLONIAL DISCOURSE

Queeny Pradhan*

This paper discusses the effects of the colonial laws and the legal system on the Indian society. The colonial discourse 'emerged alongside colonial rule, and over time was shared to a greater or lesser extent by officials, missionaries, and the indigenous elite, although deployed by these various groups to different, often ideologically opposite ends'.[1] The study will raise questions regarding imperialism, colonialism, the colonial legal system, the rule of law, legal pluralism, sovereignty and justice. From the beginning, the British did not confine themselves to the 'right of conquest', but also tried to define and legitimise their rule to benefit the ruled.[2] A certain sense of superiority is discernible in how the laws were imposed in this period.[3]

On the eve of colonial rule, India was governed by multiple laws. Attempts at codification and homogenisation by the colonial rulers will lead to the reification of personal laws. The Indians' response to the transplantation of an alien legal system in India is a significant aspect of developing laws. The evolution of the imperial legal system evokes [Office1] different responses from the governed. It becomes evident from the discussions that the rulers and the ruled participated in creating the laws that took shape in colonial laws, taking their positions on the aspects of tradition or modernity. It is not a simple story of opposing the colonial laws. Some supported the laws for various reasons. The paper explores the colonial imagination,

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1 Lata Mani, p. 122.

2 Thomas Metcalfe, *Ideologies of the Raj*, Cambridge University Press, 2007, p. 2.

3 Macaulay's Minutes, 2nd February, 1835; Skuy, David, 'Macaulay and the Indian Penal Code of 1862: The Myth of the Inherent Superiority and Modernity of the English Legal System Compared to India's Legal System in the Nineteenth Century', *Modern Asian Studies*, Volume 32, Issue 03, July 1998, pp. 513 – 557.

orientalist perception, stereotypes and biases about the socio-legal institutions and traditions prevailing in India. This resulted in contradictory policies of governance, engaging the indigenous populations in the emerging challenges, resulting in glaring inequalities and impoverishment.

The idea of a relationship between the sovereign and the subject was introduced by the British colonial rule, wherein the colonial rulers were portrayed as the '*mai-baap*' or the benevolent sovereign of the Indian people. The debate on Orientalism and the ancient jurisprudence was developed to legitimise British rule in India. The British rule in opposition to the past, which was based on despotic, arbitrary and chaotic laws of the oriental despots, brought in just and equal laws for all – the rule of law.[4] The promise of British justice – the cardinal principle of British rule in India was repeatedly stated, and the British Crown represented as the fountainhead of justice. The rule of law emerged as the moral justification of British imperialism and the most visible manifestation of British control and governance.[5]

The colonial state emphasised the significance of the rule of law as a distinctive marker of superiority, distinguishing them from the previous Indian rulers and their laws from the British. They emphasised the Right to justice by one's peers under the *Magna Carta*, primarily a feudal pact between the British King and the nobility. Other salient aspects of the rule of law projected by the colonial rulers were the trial by jury, *habeas corpus*, Independence of Judiciary and Codification of laws as a body of formal law equally binding on the subjects and the state.

The British officials claimed the rule of law to be universal. The colonial state constantly attempted to project the Rule of Law as a homogenous-feature of the modern Imperial state. The traditional and customary laws were to be displaced and superseded by the

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5 James Jaffe, *Ironies of Colonial Governance: Law, Custom and Justice in Colonial India*, Cambridge, 2015.

imperial laws with claims of association with the Roman laws, which were considered universal. Maine states: 'The ancient Roman code belongs to a class of which almost every civilised nation in the world can show a sample'.[6] English procedures and rules of adjudication were imposed in the courtroom trials. The English judges interpreted Hindu and Islamic laws according to their understanding and training.[7]

I want to examine colonial law and sovereignty in the light of land law, the institution of Panchayat, and the social laws regarding women. I focus on the historiography around these critical legal issues, where the aspect of colonial discourse is significant. Colonial discourse is a crucial area of research for scholars of history and law in the light of the contemporary discourses emerging in Indian society. Many of the debates and contentions today have their roots in the colonial discourses.

Permanent Settlement and the Colonial Law

In the early years of the British Rule, the colonial officials concentrated on creating a rule of Property in India. The colonial state in the late eighteenth century was keen to exploit the Indian resources for their imperial expansion and consolidation in India. They needed to effectively utilise the land revenue, the predominant source of income for the state.[8] The earliest land settlement was the Zamindari or the Permanent Settlement introduced in the Diwani of Bengal, Bihar and Orissa in 1793. The two principal architects, Lord Cornwallis and Philip Frances, agreed on one single point: that private property rights in the land would improve agricultural

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6 Sir Henry Maine, *Ancient Law*, J.M. Dent & Sons, London, 1936.

7 Bernard Cohn, *Colonialism and its Forms of Knowledge: The British in India*, Foreword by Nicholas B. Dirks, Princeton, USA, 1996, 'Law and the Colonial State, pp. 57-75.

8 David A Washbrook, 'The land remained overwhelmingly the single most important source of wealth and the base of production' in India in 'Law, State and Agrarian Society in Colonial India', in *Modern Asian Studies*, Vol. 15, No. 3, Power, Profit and Politics: Essays on Imperialism, Nationalism and Change in Twentieth-Century India, (1981), pp. 649-72, p. 650.

production and, hence, revenue for the state. The colonial state identified Zamindars as the 'improvers', which would result in land market development. The elitist approach, as described by Ranajit Guha, favouring the Zamindars, reflected the bias of the English officials.[9] The 'Cornwallis Code' of 1793 introduced the Permanent Settlement in Bengal, Bihar and Orissa.

The Zamindars became the 'proprietors of land', while the cultivators were termed as 'landless labourers' by a single stroke of penning of this law. These emerged as new legal categories as the colonial state now identified a class of landed aristocracy, which was liable to pay the revenue of the colonial state. As the property class, they were free to either keep or remove the cultivators, which traditionally had the rights over the land as long as they cultivated the land. The cultivators divested of their land had no legal right to approach the courts as the colonial law on Permanent Settlement recognised the Zamindars as the proprietors of land. As the recognised title land holders, the Zamindars bore the liability of paying the land revenue of the state. In case they failed to pay the land revenue, their land could be seized by the State lawfully and auctioned off to the highest bidder. Land became a marketable commodity to be sold, or auctioned or given on lease. In the light of no economic development or industrial growth, the land did not generate any capital but resulted in forced selling to pay the revenue of the state in cash. The outcome was the misery and suffer for the peasantry, who had to eke out their living either in miserable conditions in the cities as rickshaw pullers or continue to languish in the poorly-paid conditions in the countryside. With no alternative available in the cities, the countryside was burdened with more people working in agriculture with poor returns. 'The objectification of India…is perhaps most directly visible in the institutional domain of revenue policy and legal practice'.[10]

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9 Ranajit Guha, *Dominance without Hegemony: History and Power in Colonial India*, Harvard University Press, 1997, p. 1.

10 Bernard Cohn, *Colonialism and its Forms of Knowledge: The British in India*, Foreword by Nicholas B. Dirks, Princeton, USA, 1996, p. xiv.

The Zamindars had to fight legal battles under the newly created Company Courts and the English Court System introduced by the British Parliament under the Regulating Act of 1773. The English Rules of Adjudication and court procedures were introduced in the Anglo-Indian hybrid Company Courts called the Adalat System and the Supreme Court at Calcutta for succession to their Zamindaris and Talukdaris, as well as to protect themselves from the alienation of their property. The unfamiliarity with the English procedures and the use of a foreign language, English, in the Supreme Court created difficulties, resulting in harassment and delays. The constant tensions between the Company and the Supreme Court on the position of the Zamindars and the cultivators resulted in further hardships. It focuses on the nature of sovereignty in Bengal, particularly in this period. A private company, the East India Company, had come into possession of vast territories in India. It brought about a constitutional debate in Britain about whether a private entity had a sovereign right to acquire territories and rule. The 'doctrine of English constitutional law held that no British subject can acquire sovereignty over any territory', and this would result in parliamentary interference.[11] The matter was resolved in 1773 under the Regulating Act, wherein the Company continued to administer territories under its control on behalf of the Crown, with the Parliament making laws occasionally. This system would continue till 1858, when the power was transferred directly to the Crown, whose representative was the Viceroy of India.

Panchayats under the Orientalist-modernist View

The Historical School of Jurisprudence, Friedrich Karl von Savigny and Henry Maine asserted that law is a product of the evolution of society. For Savigny, law is defined by the spirit of the people, *Volksgeist*.[12] Henry Maine mainly promoted Oriental or comparative Jurisprudence in India. According to Maine, legal development is

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11 M.P. Jain, *Outlines of Indian Legal History*, Wadhwa & Company, Nagpur, 2003 Reprint (Fifth Edition), p. 56.

12 Robert E. Rodes, 'On the Historical School of Jurisprudence', 49, *The American Journal of Jurisprudence*, pp.165-184, 2004, p. 166.

central to social development. He traced the origin of Indian law to the patriarchal family associated in India in early times with land–so the village community constituted the source of land law in India. 'In the patriarchal household the eldest male ascendant… "manus" is abosolutely supreme'.[13] Maine talks of a long tradition of customary law in India. Maine feels that despite the codified law of Manu, a large body of indigenous customary laws have grown independently. Maine contends that the influence of Brahmanic views on law increased under British rule. According to him, the village community have lived under customary law.[14] The Council of village elders does not command; it simply declares the way it had been –antiquity is enough for its obedience. There is no right or duty in an Indian village community – the aggrieved does not complain of an individual wrong but a disturbance in the local order. Customary law is not enforced by sanction but by universal disapprobation; that is moral force. The hereditary village chief becomes the hereditary village judge. The notion of a self-sufficient village system with the ruler as a remote 'Oriental Despot' strongly imbues the understanding of pre-British India among the colonial officers and thinkers.[15]

Within the village community, Panchayats were considered necessary in the traditional Indian society in rural India. They are mentioned in ancient Indian texts but cannot be categorised in a particular way.[16] They performed several duties at the local level but were not the only local committees or bodies. The merchants had their guilds to resolve their issues. There were caste and occupational groups with their local committees. In South India, the villages had assemblies and sabhas, as described in the Uttaramerur Inscriptions of King Parantaka [Office1].[17]

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13 Morgan O. Evans, *Theories and Criticism of Sir Henry Maine*, Stevens and Haynes, London, 1896, p. 9.

14 *Ibid*., pp. 83-88.

15 Bernard S. Cohn, *Colonialism and its Forms of Knowledge: The British in India*, Princeton, USA, 1996, p. 63.

16 Derrett, J.D.M., "The Administration of Hindu Law by the British". *Comparative Studies in Society and History,* 4 (1961), 10-52, p.16.

17 Romila Thapar, *Penguin History of Early India: From the Origins to AD 1300,* Penguin, New Delhi, 2002, pp. 375-377. Extract from *Archaeological Survey of India Report (1904-5),* pp. 138 ff.

Throughout the 19th century, there was a continuous reinvention of Panchayats. The English officers initially tried to project Panchayats as the local judicial bodies, meting out justice according to customary traditions and not Hindu law codes. Thomas Munro (1820-27) and Mountstuart Elphinstone (1819-27) considered Panchayats as the instrument in the administration of justice.[18] Henry Maine and his notion of the self-sufficient village system influenced some of them. Panchayat was seen as an institution derived from India's common law, and it was considered to be the basis of the ancient Indian constitution.

Subsequently, the colonial administrators associated Panchayats as a civic body to transform India's civil society – based on progress, the rule of law, the right to private property and elite civic participation in the government.[19] The foremost advocates of this idea were the Scottish Orientalists – William Robertson[20] and Sir James Mackintosh.[21] They viewed India as a once great civilisation that had been corrupted by the arbitrary rule of the Mughal and Maratha despots, propagating the idea of 'oriental despotism'. In the British imagination, they should restore the social and political position of the village community, define property rights, and revive Panchayats to dispense civil law.

Panchayats, perceived as an ancient form of Indian social structure, were reinvented within the evolving structures of colonial law and governance. The Panchayats could not fit into the Anglo-Indian legal system of the colonial state. This was another colonial discourse whose 'meaning and significance was always heavily contested' till today.[22] The paradox of the colonial state is apparent when, on one side, they claimed to revive an ancient Indian structure, but at the same time, they tried to restructure it to meet the needs of the colonial legal regime. The Elphinstone Code of 1827 completely

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18 Jaffe, p. 4.
19 *Ibid.*
20 *Ibid.*, 9.
21 *Ibid.*, p. 2.
22 *Ibid.,* p. 13.

removed the Panchayats. The Sadr Diwani Adalats and the district courts were established to administer justice in the Bombay Presidency. Panchayats only assisted the judge by conducting a preliminary investigation.[23] These contestations and tensions constitute a colonial discourse which involves both the colonisers and the colonised in the process of negotiation and representation.

The main objective of the British colonial administrators was to use Panchayats as a point of interaction with the 'natives' to make them conscious as the 'subjects', that is, who they were, how they were expected to behave, and what was their place in the British empire. The later nationalist adoption of Panchayats as a uniquely Indian mode of self-governance was taken from the orientalist ideas.[24] Gandhi, Tilak and Gokhale appreciated Panchayats as the ideal of local self-governance.[25] The Panchayati system was adopted by the leaders of the Indian national movement as a critique of the Imperial System of Britain.[26]

The 'Women' Question and Modernity

One of the most contentious issues of the nineteenth century in India has been the position of women, particularly in Hindu society and the social legislation that came in this period. The colonial state puts itself in a bind. The issues of tradition and modernity are not problematised.[27] Incidentally, women themselves are not involved in Sati's issue. It is the colonial state that asks the pundit questions [Office]. The specificity of the question decides the response–the emphasis on the scriptural Brahminical authority based on texts privileges the Brahminic tradition over the customs. Raja Rammohun Roy draws on the 'shastras' to argue that the practice of Sati was not common in India's ancient past. The point that the woman being burnt alive on the funeral pyre of her dead husband in itself should

23 *Ibid*., p. 85.
24 *Ibid*., p. 3-4.
25 *Ibid*., p. 3.
26 *Ibid.,* p. 14.
27 Lata Mani, 'Contentious Tradition: The Debate on Sati in Colonial India', in *Cultural Critique*, No.7, Autumn, pp. 119-156, 1987, p. 120.

have been a question for modern society to condemn and stop as being cruel and inhuman. The British ask questions from the religious authority, but the ultimate power of decision rests with them. Their perception of the practices ultimately decides the colonial discourse. The British were careful to ensure that such official acts did not result in outrage and disaffection among the subject population. Similarly, the Widow Remarriage Act of 1856, with its leading proponent Ishwar Chandra Vidyasagar, also studied the Sanskrit texts to end this practice. Lucy Carroll, in her article on widow remarriage, has identified three areas of law in which one needs to understand the question of widows in nineteenth century India – customary laws, Hindu laws and statutory laws.[28] The legislation was primarily brought in for the upper-caste Hindu women who were denied the right of remarriage. It gradually applied to all Hindu women, again giving precedence to texts over customs.

After the Revolt of 1857, when they almost lost their prized Indian colony, they decided not to upset the constituency of their traditional loyalists, who were opposed to changes in the outdated and inhuman customs and practices. Often, the colonial state supported the most regressive elements of Indian society. In the Rukmabai case in 1885-87, which is also associated with the Age of Consent Bill, the colonial state tacitly supported the conservative social groups in the courts. Rukmabai's refusal to stay with her uneducated and consumptive husband (Sarkar, p. 388), to whom she was married at the age of 11 or 12, as an adult, and the use of the Restitution of Conjugal Rights by the husband derived from the English law is a blend of English laws in the Hindu law. The dominant social groups opposed Rukmabai's case, arguing that such an act by a woman would go against the religion and family structures. Interestingly, Rukmabai belonged to the carpenter caste, where divorce was part of the customary practice.[29] But the nationalist-revivalists, the term used by

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28 Lucy Carroll, 'Law, Custom and Statutory Social Reform: The Hindu Widow's Remarriage Act of 1856', in Sumit Sarkar & Tanika Sarkar (ed.) *Women and Social Reform in Modern India*, Permanent Black, Ranikhet, 2016, p. 114.

29 Tanika Sarkar, 'Conjugality and Hindu Nationalism: Resisting Colonial Reason and the Death of a Child Wife, in Sumit Sarkar & Tanika Sarkar (ed.) *Women and Social Reform in Modern India*, Permanent Black, Ranikhet, 2016, p. 399.

Tanika Sarkar as opposed to the liberal nationalists, believed in subsuming all identities with a common Hindu fold based on the Brahminical ordering of the social norms and structures.

Conclusion

The rule of law under the colonial state was primarily authoritarianism, which means that the law admits to no dissent and no disobedience. As Benton states, 'there was an ascendance of state laws'[30] in structuring the different contentions. The main focus of propagating the use of the rule of law was to discipline its Indian subjects. Law played a critical hegemonic role in projecting the British colonists as impartial arbitrators of a highly divided and contentious Indian society. The discourse of Edward Said on Orientalism in this context is useful in understanding how stereotypes were constructed about India as the 'Orient',[31] thereby justifying the authoritarian nature of British rule in India. In England, Britain was the first representative parliamentary democracy, whereas, in India, it exercised an oppressive regime with the use of semi-coercive institutions in the form of a colonial legal system and laws, sanctioning the coercive measures of the colonial state. Historians like Dow and Orme shaped the perception of the colonial officers[32], like John Shore, who states the Indians were used to the rule of the despots, and anything less despotic would be unfamiliar to them. The British failed to understand how the local societies operated in India, and they tried to introduce a homogenous order.

In all three issues discussed above, the Colonial State's unfamiliarity with the indigenous society resulted in establishing laws, which were translated and interpreted by the judges and also the Indian groups in different ways. For instance, the legislation on widow remarriage was imagined by Vidyasagar for the upper caste women who were prevented from remarrying and living in miserable conditions. The

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30 Lauren Benton, *Law and Colonial Cultures: Legal Regimes in World History, 1400-1900*, Cambridge University Press, 2002, p. 10.

31 Edward Said, 'Introduction' in *Orientalism*,, Routledge and Kegan Paul, London & Henley, 1978.

32 Cohn, p. 63.

law came to be interpreted by the different sections of the Indian society in their way, bringing in new criteria for appropriating the rights of women, and widows in particular. The lower caste groups tried to use the law to forfeit the widow's property, which was inherited from her first husband at the time of her remarriage and allowed to her by custom. The tension between customary practices and colonial law acquires significance in the Rukmabai case. Under Act XV of 1877, Rukmabai's decision to repudiate a marriage contracted in childhood brought her the possibility of imprisonment.[33] The Hindu society was in uproar over the issue of a woman's agency to decide on living with her husband. The fact that the caste to which she belonged permitted her by custom such a choice was ignored, and a dominant elite viewpoint was imposed, denying the heterogeneity of the view in a society with diverse views, traditions and practices. This case brought into focus the question of the Age of Consent in Hindu marriages. Once again, the general usage of the term 'Hindu' came into focus as there are diverse practices within what came to be called the Hindu law.

In post-independence India, Hindu laws are based on citations, precedents and case law developed in the colonial period. Lucy Carroll observed that "Hindu law as administered by the British Indian Courts was a mixture of Shastric Law, custom, and case-law, with a hardy dose of English legal concepts and notions, simplified and standardised for ease of application and administrative convenience'.[34] The Panchayat system, considered by the Orientalists as an essential aspect of the ancient Indian socio-legal system, was accepted and formulated by post-independent India as one of the edifices of local self-governance at the grassroots level, which was formally adopted in 1992 under the Constitution (Seventy-third) Amendment Act.[35]

Today's Indian laws are predominantly Anglo-Saxon-derived and no longer traditional laws based on informal arbitration tribunals. There

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33 Tanika Sarkar, p. 388.

34 Carroll, p. 120.

35 *Panchayati Raj Institutions in India* (online), in india.gov.in.

is a continuity between colonial and post-colonial times, and a search for 'Indian law' applicable to modern laws is still underway. In colonial times, the law often emerged as an instrument of creating hardships and fear in the subject populace, and the aspect of justice and violence of the state in imposing laws is an area that is being recently explored in the historiography on this subject.[36]

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[36] Elizabeth Kolsky, *Colonial Justice in British India: White Violence and the Rule of Law*, Cambridge, 2011, Jordanna Balkin, 'The Boot and the Spleen: When was Murder Possible in British India?', in *Society for Comparative Study of Society and History*, pp. 462-493, 2006, Martin J. Wiener, *An Empire on Trial: Race, Murder, and Justice under British Rule, 1870-1935*, Cambridge University Press, 2009.

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INTELLECTUAL PROPERTY RIGHTS AND HUMAN RIGHTS WITH SPECIAL REFERENCE TO RIGHT TO HEALTH

Gaurav Gupta*

ABSTRACT

Intellectual Property Rights (IPR) and Human Rights, and specifically the Right to Health, pose a highly complex and constantly evolving challenge to the field of global governance. IPR has been designed to incentivise innovation in the pharmaceutical and healthcare sectors in particular, but its very presence tends to erect barriers to access affordable medicines and technologies, especially in resource deprived settings. This research investigates the conflict between these two frameworks, the implications of which for equitable access to healthcare. It looks at how international agreements, such as the TRIPS Agreement, and mechanisms, such as compulsory licensing and patent pools, might help to strike a balance between innovation and public health needs. India is a focus aspect because it has become a global leader in providing affordable generic medicines, because of its progressive patent laws and a serious commitment to public health. India's status as the "pharmacy of the world" makes it an interesting arena for balancing IPR with health rights, although it is confronted by pressures from a global agenda for stricter IPR enforcement. The research delves into instances, like the HIV/ AIDS crisis and the COVID-19 pandemic, what practical and ethical considerations are involved in maintaining this balance.

Keywords: IPR, Right to Health, Human Rights, Patent, Doha Declaration, Compulsory Licensing, Generic Medicines.

Introduction

The IPR frameworks in between creativity and exclusivity work by rewarding inventions while temporarily restricting other people's

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abilities to copy it. IPR includes a set of legal mechanisms, such as patents, copyrights, trademarks, and trade secrets for the sake of various kinds of intellectual ventures. Particularly in the health sector, patents are a particularly critical tool to protect pharmaceutical innovations, medical devices and biotechnology. Although this exclusivity can be a barrier to equitable access to life saving drugs and health technologies, particularly in low- and middle-income countries where affordability and accessibility are critical.

On the other hand, rather than universality and the dignity, which is inherent to every individual, human rights emphasise mankind. Article 25 of UDHR & Article 12 of ICESCR constitute a right to health that enshrines states' obligation to make healthcare (and in particular, essential medicines) available, accessible, acceptable, and of adequate quality. Beyond mere access to medical services, this right extends to larger determinants of health, which have generated a legal and moral obligation upon states and international actors to remove barriers, including those derived from IPR regimes, which hinder realisation of this right.[1]

Conceptual Foundations

The content of pharmaceutical innovation designed by intellectual property law is through patent system that gives the inventors exclusive right for a fixed period. The exclusivity that is enshrined in the TRIPS Agreement is intended to allow innovators to recover the very large amounts invested in research, development, and clinical trials. But this system is inherently anticompetitive, leading to high drug prices keeping out vulnerable populations. Especially with lifesaving medications, this tension is acute, faced with promises of innovation, there's the imperative to ensure equitable access to healthcare. In addition, trade secrets, guard against the knowledge that is source of profit, for example, drug formulation and manufacturing processes. This encourages a competitive field and pushes out technological innovation yet hinders the sharing of

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1 Adhikarla Shraddha & Vaishnavi Viswanath, "Right to Health under Patent Regime in India", *Indian Journal of Integrated Research in Law*, 2(3) (May-June 2022): pp. 1-10.

important health related information that could otherwise speed up medical progress and improve public health outcomes.[2]

International legal instruments such as Article 12 of ICESCR codify this right to health, and correspondingly impose on states a state obligation to ensure the highest attainable standard of health (physical and mental).[3] Four elements interrelated with each other play this role: availability, including providing enough health facilities and goods; accessibility, including physical, financial and informational access without discrimination; acceptability, with reference to the cultural sensitivity and medical ethics; quality, with reference to scientifically and medically appropriate standards. However, when patents and trade secrets unfairly favour their owners over states' obligations to ensure affordability and availability of essential medicines under international law, interplay between these elements and IPR becomes contentious. The basis for this conflict is that legal frameworks ought to put public health ahead of proprietary interests and argue along human rights principles.

States are duty-bound under international law to respect, protect, and fulfill the right to health. This includes refraining from actions that obstruct access to health services and medicines and adopting measures to regulate private actors, including pharmaceutical companies, to ensure compliance with health rights obligations. The TRIPS Agreement permits flexibility, such as compulsory licensing, enabling states to override patent rights in cases of public health emergencies. However, the efficacy of these mechanisms is often hampered by geopolitical pressures and procedural complexities. In this context, the integration of human rights norms into IPR governance is essential to resolve the inherent legal tension. A rights-based approach necessitates recalibrating patent laws to balance

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2 Muis, Lidya Shery, "Accessibility of Pharmaceutical Product Patents for Public Health through the TRIPs Waiver", *Indonesian Journal of Law and Society,* 5, No. 1 (2024): pp. 115-136.

3 International Covenant on Economic, Social and Cultural Rights, Article 12, available at: https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights (last visited Dec. 5, 2024).

innovative incentives with the fundamental duty to ensure equitable access to healthcare, reaffirming the primacy of human rights in the face of commercial imperatives.[4]

International law obligates states to respect, protect and fulfill the right of health. It includes refraining from actions that prevent access to services and medicines and measures to regulate private actors, including the pharmaceutical companies, so they respond to obligations relating to health rights. States under the TRIPS Agreement are permitted to take away mandatory rights in the case of public health emergencies through compulsory licensing. Yet, gamers of these mechanisms often drag the efficacy down due to geopolitical pressures and procedural complexities. The legal tension inherent to IPR governance calls for a human rights-based approach to the integration of human rights norms into IPR governance. Rebalancing patent laws is necessary to account for a rights-based approach to both enforce innovative incentives and in the face of commercial imperatives the primacy of human rights.[5]

Facets of Conflict Between IPR & Right to Health

IPR & right to health have often been at odds with each other and in stark conflict with regard to access to medicines. IPR, especially patents, provide inventors with exclusivity and thereby they can charge high prices on pharmaceuticals. The exclusivity of *Novartis AG v. Union of India & Ors.*,[6] wherein court rejected a patent claim on the cancer drug Glivec. The incremental innovation did not exceed the Patentable threshold u/s 3(d) of the Indian Patent Act, 1970 pursuant to which it was held that generic production of the drug would be allowed and the costs drastically reduced. The implications of such judicial decisions reaffirm the tension in play between the profit enabling impulses of pharmaceutical companies and the people's right to the free provision of healthcare. At the same time,

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4 Jaime B. Herren, "TRIPS and Pharmaceutical Patents: The Pharmaceutical Industry vs. the World", *Intellectual Property Law Bulletin*, 14, No. 1 (Fall 2009): pp. 43-66.

5 *Id.*

6 2013 AIR SCW 2047.

these premiums have not only economic, but human rights implications, depriving vulnerable populations access to needed lifesaving drugs, a premise of the global HIV/AIDs crisis until generic antiretrovirals became available.

Public health emergencies expose the frailties of balancing IPR & health rights. During the COVID-19 pandemic, exclusivity has been a barrier to rapid global dissemination of critical health technologies for which there were no patents, in that case. Of course, compulsory licensing, such as under the TRIPS Agreement, also allows countries to get around patent rights in emergencies, as India showed with its compulsory licenses for the cancer drug Nexavar, when it upheld *Natco Pharma Ltd. v. Bayer Corporation*.[7] While legal flexibility, the procedural and political barriers to its use often prevent nations from using it, the systemic limitation in responding to urgent health crises. In addition, global vaccine distribution efforts such as COVAX were stymied by unequal access to patented technologies, reviving calls for temporary waiver of TRIPS, a proposal that richer nations and sometimes pharmaceutical lobbies fiercely opposed.

All of this worsens the inequities inherent in patent protection, including barriers to generic competition like patent evergreening and data exclusivity. India has also set itself against that practice of evergreening, where minor changes to existing drugs are patented to extend monopolies, bringing it into legal limelight. For example, the Novartis case highlighted the need to reward genuine innovation over exploitive behaviour. Likewise, the commercialisation of traditional knowledge is fraught with unique IPR problems, when indigenous medical practices are patented without adequate recognition or compensation to the originating communities. Cases like the turmeric and neem patents, which have since been revoked on legal challenges, highlight the global inequities of the IPR regime, where patented 'traditions' inventors invent, for the wealthy that is, with the rich repository of indigenous knowledge in developing countries being taken advantage of to enter under the guise of innovation. These legal conflicts underscore the urgency for reforms that would bring IPR

7 Order No. 45/2013.

enforcement into line with a human right to health as a universal human right, and equitable access therein.[8]

Balancing IPR and Right to Health

The TRIPS Agreement, which has been established under WTO, has played an important role in bringing world intellectual property standards into accord, but the TRIPS provisions often conflict with the basic right to health. TRIPS incorporates key flexibilities such as compulsory licensing and parallel imports that allow for conflict of interest, country cedes to public health over private patent rights, so that nations may identify conflicts of interest. In 2001, Doha Declaration on TRIPS and Public Health expressly affirmed that the TRIPS Agreement does not prevent members from taking legislative or administrative measures, including measures required by national emergency public health actions, to protect public health and nutrition, and that such measures cannot serve as a basis for action, thus allowing member states to issue compulsory licenses and take measures to protect public health without fear of trade sanctions.[9] *Eli Lilly v. Government of Canada* allowed to redefine patent standards for the public good, which it highlights.[10] Nevertheless, practical implementation of these flexibilities is limited by political and economic pressures, especially on developing nations.

Compulsory licensing becomes an important instrument to balance IPR and health access. This system enables governments to let the use of the patented invention be used without authorisation of the patenter, usually with royalties being provided by the latter. That provision has helped India, Brazil, and countries like them to tackle their critical health needs. India's ruling in *Natco & Bayer* authorised production of a generic version of Nexavar which had reduced its cost by 97% was based on Section 84 of Patent Act, 1970.[11] Like

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8 Robert S. Tancer, "The Pharmaceutical Industry in India: Adopting to TRIPS", *Journal of World Intellectual Property* 2, No. 2 (March 1999): pp. 171-188.

9 Tshimanga Kongolo, "TRIPS, the Doha Declaration and Public Health", *Journal of World Intellectual Property*, 6, No. 2 (March 2003): pp. 373-378.

10 ICSID Case No. UNCT/14/2.

11 *Supra* note 7.

Brazil, compulsory licensing was also used by Brazil to bring down the cost of HIV antiretroviral drugs and save thousands of lives. These actions are being lauded as progressive, but they bring enormous force from pharmaceutical corporations and even from some developed countries questioning their equity and universality of TRIPS enforcement. It underscores the need for continuing jurisprudence in support of the primacy of health rights.

Patent pools and open licensing also bring into sharp relief innovative solutions to reconcile IPR and the right to health. The WHO backed Medicines Patent Pool (MPP) enables the voluntary licensing of patents to generic manufacturers of essential medicines in low- and middle-income countries. During the COVID-19 pandemic, the global health organisations and pharmaceutical companies formed similar voluntary partnership and the COVAX initiative offered lifesaving vaccines at differential pricing according to country income levels. But voluntary mechanisms tend to fail in meeting the needs of the poorest nations, because their success depends on the goodwill of patent holders. These mechanisms therefore lack completeness and must therefore be supplemented by enforceable international mandates that bring about equity and accountability. The global community can do better at making IPR align with the imperatives of public health, by using a multilateral approach, involving legal flexibility along with cooperative frameworks and advocacy.[12]

India: A Unique Perspective on IPR and Right to Health

Patent Act, 1970 is the major factor in India's IPR approach, particularly in the sphere of public health. The designers of this Act actually intended this Act to privilege public health over the interests of multinational pharmaceutical corporations. The Indian Patent Act is a unique feature of which is that it intends to replenish innovation, rather than the tiny endless modifications of the existing drugs, which is often termed as 'evergreening'. For example, Section 3(d) prohibits

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12 Matthew Rimmer, "The People's Vaccine: Intellectual Property, Access to Essential Medicines, and COVID-19", *Journal of Intellectual Property Studies*, 6(1) (January 2022): pp. 1-71.

the issuance of patents on merely 'modifications' that do not involve such enhanced therapeutic efficacy. Essential to this provision has been that cheap and essential medicines like generics can remain affordable and accessible for things like cancer and HIV/AIDS. Excluding trivial patents has allowed India to create a generics industry that is crucial in the reduction of the cost of life saving medications, particularly in the Global South. The Act is in consonance with the constitutional obligation to ensure right to health (Article 21 of the Indian Constitution) enshrining the position of the State to provide affordable health care to all its citizens.[13]

As a global supplier of cheap generic medicines, India has built up a key role in the international pharmaceutical market. India's generics industry has long been an important player in the fight against diseases like HIV, tuberculosis, and now against COVID-19, supplying cheap, high-quality drugs to developing countries. The phrase "pharmacy of the world" has been used for years to describe India's pharmaceutical sector as a country that can manufactures generic versions of patented drugs and bring them to the world market at a fraction of price. India played a crucial role in the war against HIV/AIDS, since generic antiretroviral drugs produced in India have saved millions of lives in the world.[14] India's role in ensuring that people in low- and middle-income countries had access to essential medicines was recognised by the global health community as being in the strategic position of the country in the global health ecosystem. But that proactive approach on generics and compulsory licensing has attracted criticism and pressure from the West, principally US & EU, who have attempted, through bilateral and multilateral trade deals, to elicit more stringent IPR enforcement from India. The tensions of these pressures on the one hand, and on the other hand, of the constant tension between encouraging innovation through patents and ensuring that medicines are as affordable as possible domestically, have given rise to significant legal and policy tensions. The challenge for India is to strike a balance

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13 J. Neha, "Human Right to Health v. Patent Right in the Light of TRIPS Agreement", *LexForti Legal Journal,* 1, 6 (2019-2020): pp. 141-147.

14 *Id.*

between its international commitments to IPR protection with its public health priorities, as it tries to retain its status as a pioneer of affordable medicine production while coming under pressure to live up to global IPR standards.[15]

Human Rights-Based Approaches to IPR

It is an important step toward treating public health interests above the property interests of patent holders when IPR policies are integrated with human rights. Despite being orphaned by the US regime, international human rights law in particular the right to health as enshrined under ICESCR provides a rubric for countering the monopolistic impulses of IPR. The need for revising national patent laws and striking a balance between patent incentives for innovation, and protection of rights to essential medicines has been a major piece of this puzzle. India has shown that it has learned how important it is to amend patent laws to block patenting for minor modifications of already existing drugs (evergreening), and to allow compulsory licensing to ensure access to life-saving medicines at an affordable price. For example, the Indian Patent Act allows for mandatory licensing of patented drugs when public health interests are threatened, which has contributed to the low price of so called 'critical' drugs, particularly HIV/AIDS and anticancer treatments. International human rights bodies like the UN Committee on Economic, Social and Cultural Rights have also increasingly come to require not only the fulfillment of the right to health by states, but also that they protect the right by guaranteeing that patent regimes do not obstruct access to essential medicines. These bodies have pressed for more flexibility in the TRIPS Agreement in particular by mechanisms which qualified IPR regimes with public health exceptions.[16]

A shift is underway to have public health needs, rather than the exclusive interests of patent holders, come first when integrating

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15 *Supra* note 1.

16 Vishakha Nandini, "Patents for Pharmaceutical Sector & People's Right to Access to Health in India - Issues and Challenges", *Indian Journal of Integrated Research in Law* 2, No. 1 (January-February 2022): pp. 1-13.

human rights into IPR policies. The framework of IPR, potentially exhibiting monopolistic tendencies, lacks robust and well established international human rights law, notably the right to health as contained in ICESCR, to ground it. In this vein, the revision of national patent laws has been an important undertaking for achieving the equilibrium between encouraging innovation and there is proper access to essential medicines. India has shown that it has learned how important it is to amend patent laws to block patenting for minor modifications of already existing drugs (evergreening), and to allow compulsory licensing to ensure access to life-saving medicines at an affordable price. For example, the Indian Patent Act permits the government to grant compulsory licenses to introduce patented drugs when the public health interests are in jeopardy and has worked to lower drug prices when they are critical (HIV/AIDs, cancer) treatments. Moreover, international human rights bodies such as the UN Committee on Economic, Social and Cultural Rights have raised the obligation of states to protect the right to health and as a result lower access to essential medicines by states patent regimes. These bodies have also argued for additional ARCs and flexibility in the TRIPS Agreement generally, such as through the Doha Declaration with its invocation of public health exceptions running through IPR regimes.[17]

Conclusion

The intersection of IPR & Right to Health presents a complex legal conundrum that demands a nuanced balance between incentivising innovation and safeguarding public health. While IPR is crucial in fostering advancements in healthcare, it often exacerbates inequalities by restricting access to essential medicines, particularly in low-income and developing countries. The legal frameworks, such as the TRIPS Agreement and its flexibilities, offer avenues to mitigate these disparities, yet their implementation is often hampered by political, economic, and corporate interests. States, therefore, have an obligation to adopt a human rights-based approach that prioritises equitable access to healthcare, ensuring that intellectual property

17 *Id.*

protections do not undermine the right to health. This requires robust international cooperation, the reform of patent laws, and the promotion of alternative models of innovation that are more aligned with public welfare. Ultimately, a legal paradigm that harmonises IPR with human rights obligations, particularly the right to health, is not merely desirable but essential for ensuring global health justice and equity.

SUPREME COURT OF INDIA ON AMU MINORITY CHARACTER: SYED'S COLLECTION OF BRICKS AND BOOKS MEANS INITIATION AND ESTABLISHMENT

76 Years of Legislative-cum-Judicial Complications and Interpretations

Prof. M. Afzal Wani*
Dr. Mubashir A. Malik**

Part-I

The Aligarh Muslim University (AMU), Aligarh, founded by Syed Ahmad, is a known seat of learning with a very high global acclamation, best known to every one as a Muslim University, established and administered by the Muslims of India. Its vision embodies the true India Idea with constitutional guarantees of development with cultural protection for all the groups of people. Officially, as a legal requirement, it came to be 'incorporated' as a university by the Aligarh Muslim University Act, 1920. This was the formal 'incorporation', as a university, of the then already existing institution established by Syed Ahmed and some of his contemporary scholars, aristocrats and the commons with donations of all kinds including land, movables and money. The administration of the university, on its incorporation, remained in the hands of Muslims. In 1951 and 1965, the Parliament of India made certain amendments in the Aligarh Muslim University Act, 1920 throwing open the membership of the AMU Court to persons of all religions, declaring the President of India as its visitor and the Governor of Uttar Pradesh as its Chief Rector. Further, the religious instructions in the

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university were made optional. The amendments enabled the administration of the University through a Vice-Chancellor, appointed according to a prescribed process, in a way balancing the requirements of the new legal understanding. All that could never have the effect of any alternation in the basic nature of the institution as a Muslim University established by the Muslims.

The constitutionality of the amendments made in the Aligarh Muslim University Act, 1920 came for consideration before the Supreme Court in *Azeez Basha* v. *Union of India*[1] which were challenged principally on the basis of Article 30 (1) of the Constitution.[2] The Supreme Court, in spite of the historical fact of establishment of Aligarh Muslim University by Muslims, surprisingly, declared that it was not established by them but by the Aligarh Muslim University Act, 1920 and hence they could not claim the right to administer it. Commenting on this judgement, Mr. Soli J. Sorabjee has observed: "The record of the Supreme Court, however, has not been free from aberrations. Its judgment in the *Aligarh Muslim University* case, based on dubious premises and marked by strained reasoning, is a glaring instance. This judgment has been soundly criticised by lawyers and jurists and has been a source of severe disappointment of the Muslim Community".[1a]

The Government of India later recognised, only to some extent, the investment of Muslims and by another amendment of the Aligarh

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1 AIR 1968 SC 662.

2 Article 30. Right of minorities to establish and administer educational institutions:
(1)All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.
(1A)In making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority, referred to in clause (1), the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause.
(2)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.

1a See Soli J. Sorabjee, "Legal Rights of Minority: National and International Protection", XV-XVI *ICLR* (1995-96), p. 162. See also M. Afzal Wani "Minority Rights in Education: Regulation and Restrictions", Vols. X-XI, *RLR* (2001-2002), pp. 135-165, at 154].

Muslim University Act in 1981 gave them participation in the administrative bodies of the university. The University is, however, retained as a central university under the union government. Later, the matter regarding the character of the AMU as a minority institution came again before the Supreme Court to be considered by a Constitutional Bench. That case was an outcome of a new situation in which the Academic Council of the AMU reserved 50% of the seats in Post Graduate Medical courses for Muslims which was challenged by certain non-Muslim candidates before the Allahabad High Court. The contention of these candidates was upheld by that court both in its single and division Benches.

Actually, in the light of the amendments as brought about by the Amendment Act of 1981, the Admission Committee of the Aligarh Muslim University 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 Aligarh Muslim University, Aligarh from external as well as internal candidates, (ii) 25% of the total seats be left for open 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 considered and accepted by the Academic Council and Executive Council in its meetings held on 15.1.2005 and 19.1.2005 respectively. The decision so taken was communicated to the Union of India by the Registrar of the University. On 10.2.2005 the minutes of the Executive Council,

approving the reservation as aforesaid was formally forwarded to the central government. A meeting between the Vice-Chancellor and the officers of the Ministry for Human Resource Development, Government of India, took place on 21.1.2005 and 23.2.2005. The Union of India is said to have communicated its acceptance to the proposed reservation vide letter dated 25.2.2005.

Then, against these resolutions, five connected writ petitions were filed in Allahabad High Court by 34 petitioners with MBBS degrees and claiming a right to be considered for admission to Post Graduate Medical Courses of Aligarh Muslim University. The petitioners who are Hindu by caste claimed that as such they have been deprived of their right to participate in the process of selection for admission to Post Graduate Courses against 50% of the total seats, reserved for admission through entrance examination conducted by the Aligarh Muslim University. Thus, reservation so made by the Aligarh Muslim University in favour of Muslim candidates on the ground of it being a minority institution, entitled to the benefit of Article 30 of the Constitution of India, is the bone of contention between the parties to these petitions.

The main issues which arose for the consideration of the Allahabad High Court[3] in these writ petitions were:

1. Whether the Aligarh Muslim University is a minority institution entitled to protection under Article 30 of the Constitution of India and, therefore, it can provide for reservation of seats for Muslim candidates only.

2. Whether the judgment and order of the Hon'ble Supreme Court in the case of *Azeez Basha* is no more a good law in view of the change effected in the statutory provisions, vide amending Act 62 of 1981? Whether the provisions of Act 62 of 1981 especially Sections 2 (1) and Section 5 (2) are retrospective in nature and have the effect of declaring

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3 *Dr. Naresh Agarwal* v. *Union of India*, 2005 SCC OnLine All 1705.

Aligarh Muslim University as a minority Institution within the meaning of Article 30 of the Constitution?

3. Whether the amended Sections 2 (1) and 5 (2) (c) are within the legislative competence of the Parliament and whether the said amendments are a brazen attempt to over rule the judgment of the Hon'ble Supreme Court in the case of *Azeez Basha*…?

4. Whether the reservation of the entire 50% seats for Muslims required to be filled on the basis of entrance examination to be conducted by the Aligarh Muslim University from Internal as well as external candidates is arbitrary and violative of Article 14 and Article 29 (2) of the Constitution of India?

Contentions

On behalf of the petitioners, it was contended:

(a) that Aligarh Muslim University has been declared to be a non-minority institution by the Supreme Court in the case of *Azeez Basha* and could not have provided any reservation in respect of Muslim students only. It was also contended that Section 2 (1) and Section 5 (2) (c) of the 1981 amending Act have the effect of virtually over-ruling the judgment of the Supreme Court in the case of *Azeez Basha* which is legally not permissible. The Supreme Court has, as a matter of fact, recorded a finding that Aligarh Muslim University has been established by an Act of legislature, and, therefore, cannot be said to have been established by the Muslim minority so as to claim protection of Article 30 of the Constitution of India. The finding could not have been overturned and the law declared by the Supreme Court is binding in view of Article 141 of the Constitution of India, whether the Aligarh Muslim University was a party to the proceedings in the case of *Azeez Basha* or not.

(b) It was further contended by the petitioners that the Union of India had taken a firm stand before the Supreme Court in the case of *Azeez Basha* that Aligarh Muslim University has not been established by the Muslim minority community and that it has been established under a legislative Act. The institution is, therefore, not entitled to the protection of Article 30 of the Constitution of India. The Union cannot now turn around and assert that the Aligarh Muslim University has been established by the minority community.

(c) With reference to the judgments in the case of *People's Union for Civil Liberties (Pucl) & another* v. *Union of India & others,*[4] *Bakhtawar Trust & others* v. *M. D. Narayan & Ors* [5]*; S. S. Bola & Ors.* v. *B. D. Sardena & Ors.,*[6] *Meerut Development Authority* v. *Satyaveer Singh,*[7] in the matter of *Cauvery Water Dispute Tribunal,*[8] it is submitted that the legislative power cannot be extended so as to over reach/reverse the decision of the court of law.

(d) The Supreme Court in the case of *N.T. Devin Katti* v. *Karnataka Public Service Commission*[9] has held that pending selections would not be governed by the subsequent amendment in the rules; there is no question of applying new rules or order to the pending selection.

(e) The reservation made for Muslims in respect of the entire 50% of the total seats is hit by Article 29 (2) of the Constitution of India. The manner in which the reservation has been effected (i.e., 100% reservation for one category of seats is violative of Article 14 of the Constitution of India. Petitioners being fully qualified for being considered against the aforesaid 50% of the total seats, have every right to maintain the present writ petition and to insist upon the

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4 2003 (4) SCC 399.
5 2003 (5) SCCC 298.
6 AIR 1997 SC 3127.
7 1996 JT 9, SCC 382.
8 AIR 1993 (1) Suppl. SCC 96.
9 1990 (3) SCC 157.

Aligarh Muslim University to hold selection for admission against 50% seats through entrance examination conducted by the Aligarh Muslim University itself in accordance with law ensuring the right of the petitioners to participate in the said process of selection.

On behalf of Aligarh Muslim University and the Union of India it has been argued that the legislative competence of Parliament to enact a law in respect of Aligarh Muslim University is referable to Entry 63 of List I of VIIth Schedule to the Constitution of India and, therefore, the competence of the Parliament to enact a provision like Section 2 (1) and Section 5 (2) (c) cannot be questioned on the ground of legislative competence. The amending Act of 1981 has been enforced to fulfill the fundamental rights of Muslims, who were in minority in the undivided country prior to independence and in India even after independence with specific reference to Article 30 of the Constitution of India. Such legislations do not create a fundamental right. They only ensure fulfillment of the fundamental right of the minority. The amending Act 1981 recognises the historical fact as was apparent from the records before the Parliament to the effect that the Aligarh Muslim University was established by the Muslims and, therefore, the declaration in Section 2 (1) reads with Section 5 (2) (c), being a recognition of historical fact which the petitioners have not been able to demonstrate in any manner to be arbitrary or whimsical, cannot be faulted with. The judgment of the Supreme Court in the case of *Azeez Basha* was based on an interpretation of the statutory provisionis as were then part of the Aligarh Muslim University Act. The basis of the conclusion arrived at by the Supreme Court having been substituted by the Amendment Act of 1981, the judgment in the case of *Azeez Basha* loses all force subsequent to amendment under Act of 1981. Aligarh Muslim University has now been rightly recognised to have been established by a minority community (Muslims). The 1920 Act was only for the purpose of incorporation of an institution, which, was established by the Muslims, into a

University. There was only a change in the form and not in substance by such incorporation. The Aligarh Muslim University being an autonomous University, is competent to lay down its own process for admission of students including reservation in favour of Muslim students subject, however, to the same being reasonable i.e., within the parameters fixed by the Supreme Court in its various judgments. It is not necessary for the Central University to seek any prior approval of the Government before providing reservation in respect of minority students. However, in the facts of the case the Central Government has in fact approved the reservation so provided by the Aligarh Muslim University. As such the reservation to the extent of 50% of the total seats reserved by the Aligarh Muslim University for Muslim students only in respect of Post Graduate Medical Courses cannot be said to be constitutionally invalid in any manner. This reservation to the extent of 50% of the total seats is in conformity with judgment of the Hon'ble Supreme Court in the case of *Saurabh Chaudhari and others* v. *Union of India and others.* [10]

The manner to administer is left to the minority community. The methods applied by the minority institutions are usually to ensure the minority purpose by a combination of delineating the purpose of the institution and ensuring a presence of the minority community on various bodies in charge of the Institution. It was also submitted before the Court that the petitioners have no locus to challenge the reservation so provided by the Aligarh Muslim University in respect of Muslim candidates. Lastly, it was submitted that the writ petitions had become infructuous in view of subsequent developments as well as in view of the fact that practically all the petitioners have either been admitted to the various courses or they have not been found eligible for being admitted in any of the courses of Aligarh Muslim University.

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10 (2003) 11 SCC 146.

It was again asserted that the Amending Act of 1981 was a recognition of the historical fact that the Aligarh Muslim University was established by Muslims who were in minority in India at all the relevant times. Such recognition of a historical fact by the Amendment Act, 1981 cannot be objected to in as much as it is within the legislature competence of the Parliament with reference to Entry 63, List-I, Schedule-VII of the Constitution of India. The plenary power of the Parliament can be questioned only on the grounds (a) that the legislature has no competence to enact the law, (b) that the legislation is hit by the rights guaranteed under Part-III of the Constitution. The legislative competence of the Parliament to enact the Amendment Act of 1981 is not in dispute. The Amendment Act, 1981 is only in furtherance of the commitment of the State to fulfill and protect the rights of the minority community and as such it cannot be said to be hit by any of the Articles contained in Part-III of the Constitution of India.

The Parliament has not made any attempt to over reach or overrule the judgment of the Hon'ble Supreme Court in the case of *Azeez Basha*. The Parliament in exercise of its legislative powers has brought the Act in tune to recognise the historical facts. It was clarified that the stand taken by the Attorney General of India in written submissions to the effect that no permission of the central government is required by the Central University which is an autonomous body for providing reservation in respect of Muslim candidates is based on true and correct application of law laid down by the Supreme Court in the cases of *TMA Pai Foundation* v. *State of Karnataka* [11] and *Islamic Academy of Education and another* v. *State of Karnataka and others* [12]; as well as in *Saurabh Chaudhari's* case. The University being autonomous body has a right to fix the reservation quota for students of minority community within the permissible limits on its own.

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11 (2002) 8 SCC 481.

12 (2002) 8 SCC 481.

> In respect of the doubts that had arisen with regard to original intention of its founders to set up a Muslim Uiversity large number of documents were before the Legislature, for establishing a clear intention of the Muslim community to establish a Muslim University by converting the original M.A.O. College through an Act of incorporation. Accordingly the Parliament subsequent to the Judgment of the Supreme Court in the case of *Azeez Basha* had to step in to clear the haze, which was the basis for the judgment of the Supreme Court and to declare that the original minority character of M.A.O. College was never lost by incorporation brought by Legislative Act for enforcing the University Act, 1920. The declaration made in that regard by Amendment Act, 1981 cannot be said to be based on no material so as to categorise the amendment as a fraud on the legislative powers or on the Constitution. Census of various years has been produced before the Court in support of the plea that Muslims were in minority not only in United Province but in the entire country in the year 1920 when the Aligarh Muslim University was incorporated and even today.

The respondents, thus, formulated their contentions under the following broad heads:

(a) It is within the legislative competence of the Parliament vide entry 63, List-I, Schedule VII of the Constitution of India to enact a legislation for Aligarh Muslim University which is declared to be an Institution of national importance and, therefore, the amending Act of 1981 is within the legislative competence of the Parliament.

(b) By the Amending Act of 1981 the Parliament has changed the basis on which the previous decision of the Hon'ble Supreme Court was founded. The change so effected cannot be termed as usurpation of the judicial powers. The Amendment Act has the effect of removing the ambiguity and curing the defects as were noticed in the earlier judgment of the Hon'ble Supreme Court in the case of *Azeez Basha*. Such amendment

being within the legislative competence of the Parliament cannot be said to be a brazen overruling of the judgment of the Hon'ble Supreme Court by the legislature which is prohibited.

(c) The Parliament has fulfilled its obligation to protect a fundamental right and has only given effect to its constitutional duty to protect the fundamental rights of the minority community by recognising the fact that Aligarh Muslim University has been established by the Muslims. The Parliament has only cleared the doubts, which has arisen because of the language of the earlier Act. There is no impediment for the Parliament to give due recognition to the fundamental rights of the minority community, specifically if the Parliament feels that there has been a deprivation of such a right by an Act of the Parliament itself. In support of these contentions reliance has been placed upon the judgments of the Supreme Court in the cases of *State of U.P.* v. *Zalim & Ors.*,[13] *Bakhtawar Trust* and *Shri Prithvi Cotton Mills Ltd.* v. *Broach Borough Municipality.*[14]

(d) The Amending Act of 1981 is a declaratory statute, retrospective in nature it has removed or cured the defects which were noticed in the earlier legislation, subject matter of consideration in the case of *Azeez Basha*. Because of the curative action of the competent legislature the earlier judgment becomes inoperative and unenforceable.[15]

(e) Once it is established that Aligarh Muslim University has been established by a minority community, the right to administer the same is vested in the minority community. It is supported by the fact that there can be no waiver of the right of administration. Mere non-performance or the defeasance of the right will not waive the right and the minority

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13 1996 SCC 751 (Cri. 7).

14 1969 (2) SCC 233.

15 See *Ujagar Prints II* v. *Union of India & Ors.,* (1989) 3 SCC 488).

community can claim at any point of time, such right of administration, so long as the establishment of the institution by the minority community is established.

(f) Aligarh Muslim University being a Muslim minority institution has a right to provide quota in respect of students of its own community. Such a right has been recognised by Constitution Bench Judgment of the Supreme Court in the cases of *T.M.A. Pai Foundation* and *St. Stephen's College* v. *University of Delhi*.[16]

(g) The Aligarh Muslim University has taken a well reasoned decision in respect of reservation of seats for Muslims in Post Graduate Courses which has since received acceptance by the Union of India as per letter dated 25.2.2000. In the latest judgment of the Hon'ble Supreme Court in the case of *P.A. Inamdar and others* v. *State of Maharashtra and Others*[17], it has been further clarified that admissions in minority institutions should reflect its minority character which may be jeopardised if they do not do so.

The constitutional and legal principles on which the present writ petitions are based were given a consideration by the Allahabad High Court as is given below.

Constitutional Scheme and Legal Principles

The Preamble of the Constitution of India indicates the objectives of the founding fathers who claim to speak on behalf of the people of India. In it the words "Secular" and "Socialist" were inserted by 42nd Constitutional Amendment, declaring India a country of secular people living together. The people of India in delegating to the legislature, executive and judiciary their respective powers retained for themselves certain rights termed as fundamental rights, which are paramount to the delegated powers. Reference may be had to the

16 (1992) SCC 558.
17 2005 (3) ESC (S.C.) 373.

judgment of the Supreme Court of India in the case of *A.K. Gopalan* v. *State of Madras*[18], wherein it has been said that "it is true to say "that in a sense the people delegated to the legislative, executive and the judicial organs of the State, their respective powers while reserving to themselves the fundamental rights, which they made paramount by providing that the State shall not make any law which takes away or abridges the rights conferred by that part". In the case of *State of West Bengal* v. *Subodh Gopal Boase*[19], it has been declared that fundamental rights are natural basic rights which are recognised and guaranteed as natural rights inherent in the status of a citizen of a free country. Such rights are guaranteed against State action, which in turn includes the Parliament and State Legislature as well as other instrumentalities of the State. Any law made in violation of fundamental rights would be null and void.[20]

There is a broad distinction between fundamental rights guaranteed by the Constitution and those rights which are guaranteed by a Statute. If the statute deals with the right, which is not fundamental in character, the statute can take it away but the statute cannot take away a fundamental right.[21] Thus, fundamental rights need no recognition or conferment by any statutory enactment of the legislature nor any law necessarily to be framed by the Parliament for enforcement of such fundamental rights. However, it may be emphasised that these fundamental rights are also subject to ultimate laws, which may be in the interest of the nation.

It is clear on a consideration of the provisions of Part-III of the Constitution that the makers of the Constitution deliberately and as an advisory made the clear distinction between fundamental rights available to "any person" and those guaranteed to "all citizens". In other words, "all citizens" are persons but all the persons are not citizens under the Constitution. The legal significance of "all citizens"

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18 AIR 1950 SC 27.
19 AIR 1954 SC 92.
20 Article 13 of the Constitution of India.
21 *M/s Pannalala Binjraj and Others* v. *Union of India and Others,* AIR 1957 SC 397.

has been explained by the Supreme Court of India in its judgment[22], with reference to the provisions of Article 5 to Article 11 of the Constitution of India read with the Citizenship Act, 1955, a distinction between nationality and citizenship and between natural persons, in contradistinction to legal juristic persons, covered by the definition of 'Citizens' entitled to the benefit of the fundamental rights made available to citizens only has been considered in detail. The said legal proposition has been reiterated in the case of *Tata Engineering and Locomotive Co. Ltd.* v. *The State of Bihar and Others* [23]*; Union of India and Others*[24].

In the aforesaid legal background, the Hon'ble Supreme Court of India has reiterated time and again that an incorporated company or corporation formed by a group of citizens has a distinct legal entity vis-à-vis the citizens who have formed the same, the Corporation or Company may claim rights which are available to persons only but they are not entitled to claim fundamental rights, which are available to citizens of the country. Articles 14, 20, 21, 22 and 27 are rights, which are guaranteed in favour of a person, which may include natural as well as juristic persons, while rights guaranteed under Articles 19, 26, 29 and 30 are rights which are available to citizens only, who are necessarily natural persons and, therefore, said rights are not available to other juristic legal persons. Articles 29 and 30 of the Constitution of India, which are related to cultural and educational rights are:

> "Article 29 (1). Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.
>
> (2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

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22 *State Trading Corporation of India Ltd.* v. *The Commercial Tax Officer and Others,* A.I.R. 1963 SC.

23 AIR 1965 SC 40.

24 (2004) 1 SCC 712 (para 30).

> Article 30 (1). All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.
>
> (1A) In making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority, referred to in clause (1), the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause.
>
> (2) 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."

It has been settled by series of judgments that the right guaranteed under Article 30 of the Constitution of India is available to the citizens of India only. The Supreme Court of India in the case of *St. Stephen's College* v. *University of Delhi*[25], has held as follows:

> "Prior to the commencement of the Constitution of India, there was no settled concept of Indian citizenship. This Court, however, did reiterate that the minority competent to claim the protection of Article 30 (1) of the Constitution, and on that account the privilege of establishing and maintaining educational institutions of its choice, must be a minority of persons residing in India. They must have formed a well defined religious or linguistic minority. It does not envisage the rights of the foreign missionary or institution, however laudable their objects might be. After the Constitution the minority under Article 30 must necessarily mean those who form a distinct and identifiable group of citizens of India.
>
> Right to establish and administer an educational institution has been subject matter of consideration in series of judgments of the

25 (1992) 1 SCC 558.

Supreme Court of India. The Article 30 is in two parts. Under it, the first part of right is the initial right to establish institutions of minority's choice. "Establishment" means bringing into existence of an institution and it must be by a minority community. It is of little relevance if the members of the other community take advantage of such institution or bring in income for establishment of the institution. The second part of right relates to the administration of such institutions. "Administration" means the 'management of affairs' of the institution. The management must be free of control, so that the founders or their nominees can mould the institution as they think fit, and in accordance with their ideas of how the interests of the community in general and the institution in particular will be best served. No part of the management can be taken away and vested in another body without encroachment of guaranteed fundamental rights.[26] The extent of the meaning of the word 'Establish' was considered in the case of *Azeez Basha.* The right to administer broadly includes the following rights:

(a) Admit students

(b) Set up a reasonable fee structure

(c) Constitute a governing body, and

(d) Appoint Staff and to take disciplinary action.[27]

As regards the legislative power of the Parliament to frame a law in respect of the subjects enumerated under respective entries of List-1 and List-3 of the Seventh Schedule of the Constitution of India, that has been enshrined under Articles 245 and 246 of the Constitution of India, in the case of *Ujagar Prints II* v. *Union of India*[28]*,* the Supreme Court held that the "Entries in the legislative lists, it may be recalled, are not sources of the legislative power, but are merely topics or

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26 See *State of Kerala* v. *Very Rev. Mother Provincial,* AIR 1970 SC 2079.

27 Reference may be had to the Constitutional Bench Judgment of Supreme Court in the case of *T.M.A. Pai Foundation* v. *State of Karnataka,* (2002) 8 SCC 481.

28 (1989) 3 SCC 488.

fields of legislation and must receive a liberal construction inspired by a broad and generous spirit and not in a narrow and pedantic sense". Aligarh Muslim University has been declared to be an Institution of national importance, and accordingly included in Entry 63, List-1 (Union List) of Seventh Schedule to the Constitution of India. Therefore, the legislative competence of the Parliament to frame law in respect of the aforesaid subject matter is not in doubt nor any doubt in respect of such legislative competence of the Parliament has been raised. The legislative power of the Parliament to enact a law on the subject includes the power to re-enact, repeal, amend or change a statute falling under the respective entry. The legislative power of the Parliament can also be invoked for fulfilling the fundamental rights or for giving effect to such rights. As a matter of fact, the parliamentary acts for protecting religious endowment through various regulatory Statutes are well recognised[29]. Such statutory enactments do not in any way curtail the rights conferred in respect of the religious institutions.

The legislature, under the Constitution, has power to legislate retrospectively as well as prospectively. By such exercise of power, the legislature can retrospectively remove the basis of a decision rendered by a competent court, thereby rendering that decision ineffective. 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 not be possible for the court to arrive at the same verdict under the changed law. It is well settled that a validating Act may even make ineffective judgment and orders of the competent court provided it, by retrospective legislation, removes the cause of invalidity or the basis that has led to those decisions.[30] However, the Hon'ble Supreme Court has specifically held that the legislature cannot negate a prior judgment of the Constitutional

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29 See *Sri Sri Visheshwaran of Kashi Nath* v. *State of U.P.,* (1997) SCC 606 (Kashi Temple), *A. S. Narayana* v. *State of Andhra Pradesh*, (1996) 9 SCC 548.

30 See (1969) 2 SCC 283; Sri *Prithvi Cotton Mills Ltd. v. Broach Borough Municipality Trust and Others*. AIR 1997 SC 3127; *S. S. Bola and Others* v. *B. D. Sardana and Others,* (2003) 5 SCC 298; *Bakhtawar Trust and Others* v. *M. D. Narayan and Others*, (2004) 1 SCC 712; *Dharam Dutt and Others* v. *Union of India and others.*

Court of Law except by legislative Acts, which alter the very basis of the earlier judgment. Any other attempt would sound the death knell of the rule of Law, as has been observed by the Supreme Court in certain cases.[31]

In the Constitutional Bench judgment of the Supreme Court in the matter of *Cauvery Water Dispute Tribunal* [32], it has been held that the legislature can change the basis on which a decision is given by the court and thus change the law in general, which will affect a class of persons and events at large. It cannot, however, set aside an individual decision inter parties and affect their rights and liabilities alone. Such an act on the part of the legislature amounts to exercising the judicial power of the State and to functioning as an appellate court or tribunal.

It is settled that an amending Act purely classificatory in nature will have retrospective effect.[33] Whether an Amending Act is retrospective and declaratory in operation or prospective would depend upon the purposes of the Act, object of the Amending Act and the language used.

As regards the extent for the minorities institutions to admit students of minority group, it would depend on variable factors. The situation would be according to the type of the education and nature of the institution. Generally higher the level, lesser should be the reservation.[34] However, it is for the state authorities to properly balance the interest of all. The relevant authority for determining the quantum of reservation in case of minority university incorporated under a central statute, is the central government.[35] The Constitutional Bench of the Supreme Court in the case of *Saurabh*

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31 See *People's Union for Civil Liberties* v. *Union of India,* (2003) 4 SCC 399 (Para), *P. Sambha Murthy* v. *State of Andhra Pradesh,* (1987) 1 SCC 362 and *Dharam Dutt and Others* v. *Union of India and Others,* (2004) 1 SCC 712.

32 AIR 1993 (1) Suppl. SCC 96.

33 *Kabul Singh* v. *Kundan Singh*, (1995) 2 SCC 639.

34 See *T. M. A. Pai Foundation Case* (para 49 and 151).

35 *Bharti Vidyapeeth (Deemed University) and Others* v. *State of Maharashtra and another,* (2004) 11 SCC 755 (Para 25).

Chaudhary [36] has held that reservation can be in particular cases up to 50% of the total seats for post graduate medical courses on the basis of the institutional preference.

Findings

From the above account of the Constitutional Scheme and legal principles, the Allahabad High Court recorded its finding as follows:

Part-III of the Constitution with sub-title 'Fundamental Rights' contains Articles 12 to 35. The right guaranteed under the aforesaid Articles are guaranteed against the State. The 'State' in turn include within ambit is the Government and the State Legislature or any local or other authority within the territory of India or under the control of India.[37] Article 12 to 35 make distinction between a citizen and a person. Certain rights are conferred on any person e.g., right to equality, contained in Article 14, rights guaranteed under Articles 20, 21, 25 and 27. Similarly certain fundamental rights are conferred only on citizens e.g., right to freedom contained in Article 19, right guaranteed under Articles 29 and 30 and rights available to persons including corporations which are juristic persons or persons in the eyes of law. So far as fundamental rights guaranteed to the citizens are concerned such rights are available only to citizens (natural persons). Such fundamental rights which are available to citizens are not available to corporations or other body corporates which they do not answer the description of citizen. Suffice it to refer the judgments of the Hon'ble Supreme Court in the cases of *Hans Muller* v. *Suptd. Presidency Jail, Calcutta*[38], and *The Tata Engineering and Locomotive Co. Ltd.* v. *The State of Bihar and Others*[39]. The facts qua the establishment of Aligarh Muslim University were subject matter of consideration before the Supreme Court in the case of *Azeez Basha* and the Court has recorded its conclusion saying:

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36 (2003) 1 SCC 146.
37 Article 12.
38 AIR 1955 367 – 1955 (1) SCR 1285.
39 AIR 1965 SC 40.

> "We are, therefore, of the opinion that the Aligarh Muslim University was neither established nor administered by the Muslim minority and therefore there is no question of any amendment to the 1920 Act being unconstitutional under Article 30 (1) for that Article does not apply at all to the Aligarh University."

From the aforesaid judgment of the Supreme Court, it is to be seen as to whether the conclusion about establishment of the Aligarh Muslim University is solely based upon the interpretation of the provisions (which have since been amended) of the Aligarh Muslim University Act, 1920, as were existing on the date of consideration or is based upon various factors and over all reading of the Act itself. If the answer to the question is that the findings are based solely on the provisions (which have since been amended) of the Aligarh Muslim University Act, 1920, as they then stood then it may be contended that the foundation of the judgment has since been amended/ removed by the Parliament, by means of the Amending Act of 1981, and, therefore, the law laid down by the Supreme Court in the case of *Azeez Basha* no more holds good. To that extent the amendment made by the Parliament cannot be said to be a brazen overruling of the judgment of the Supreme Court. It is only at that stage the Court has to be seen as to whether the amendments made by the Act of 1981 so fundamentally alter the basis/foundation of the judgment of the Supreme Court in the case of *Azeez Basha* or not?

In the given context the Allahabad High Court reproduced the relevant paras of the *Azeez Basha* judgment as follows:

> "(3) It is necessary to refer to the history previous to the establishment of the Aligarh Muslim University in 1920 in order to understand the contentions raised on either side. It appears that as far back as 1870 Sir Syed Ahmad Khan thought that the backwardness of the Muslim community was due to their neglect of modern education. He, therefore, conceived the idea of imparting liberal education to Muslims in literature and science while at the same time instruction was to be given in Muslim religion and traditions also. With this object in mind, he

organised a committee to devise ways and means for educational regeneration of Muslims and in May, 1872 a society called the Muhammadan Anglo-Oriental College Fund Committee was started for collecting subscriptions to realise the goal that Sir Syed Ahmad Khan had conceived. In consequences of the activities of the committee a school was opened in May, 1873. In 1876, the school became a High School and in 1877 Lord Lytton, then Viceroy of India, laid the foundation stone for the establishment of a college. The Muhammadan Anglo-Oriental College, Aligarh (hereinafter referred to as the M.A.O. College) was established thereafter and was, it is said, a flourishing institution by the time Sir Syed Ahmad Khan died in 1898.

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

(5) It is necessary now to refer in some detail to the provisions of the 1920 Act to see how the Aligarh Muslim University came to be established. The long title of the 1920 Act is in these words:

"An Act to establish and incorporate a teaching and residential Muslim University at Aligarh".

The preamble says that "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 which are respectively known as the Muhammadan Anglo-Oriental College, Aligarh, and Muslim University Association, and to transfer and vest in the said University all properties and rights of the said Societies and of the Muslim University Foundation Committee". It will be seen from this that the two earlier societies, one of which was connected with the M.A.O. College and the other had been formed for collecting funds for the establishment of the University at Aligarh, were dissolved and all their properties and rights and also of the Muslim University Foundation Committee which presumably collected funds for the proposed university were transferred and vested in the University established by the 1920 Act.

(6) Section 3 of the 1920 Act laid down that "the First Chancellor, Pro-Chancellor and Vice-Chancellor shall be the persons appointed in this behalf by a notification of the Governor General in Council in the Gazette of India and the persons specified in the schedule as the first members of the Court", and they happened to be all Muslims. Further, Section 3 constituted a body corporate by the name of the Aligarh Muslim University and this body corporate was to have perpetual succession and a Common Seal and could sue and be sued by that name. Section 4 dissolved the M.A.O. College and the Muslim University Association and all property, movable and immovable, and all rights, power and privileges of the two said societies, and all rights, powers and privileges of the Muslim University Foundation Committee were transferred and vested in the Aligarh University and were to be applied to the objects and purposes for which the Aligarh Muslim University was incorporated. All debts, liabilities and obligations of the said Societies and Committee were transferred to the University, which was made responsible for discharging and satisfying them. All reference in any enactment to either of the Societies or to the said Committee was to be construed as reference to the

> University. It was further provided that any will, deed or other documents, whether made or executed before or after the commencement of the 1920 Act, which contained any bequest, gift or trust in favour of any of the said Societies or of the said Committee would, on the commencement of the 1920 Act be construed as if the University had been named therein instead of such society or committee. The effect of this provision was that the properties endowed for the purpose of the M.A.O. College were to be used for the Aligarh University after it came into existence. These provisions will show that the three previous bodies legally came to an end and everything that they were possessed of was vested in the University as established by the 1920 Act. Section 5 provided for the powers of the University including the power to hold examinations and to grant and confer degrees and other academic distinctions."

"(18) The contention of the petitioners is that by these drastic amendments in 1965 the Muslim minority was deprived of the right to administer the Aligarh Muslim University and that this deprivation was in violation of Article 30 (1) of the Constitution; and it is to this question we turn now."

(19) Under Article 30 (1), "all minorities whether based on religion or language shall have the right to establish and administer educational institutions of their choice." We shall proceed on the assumption in the present petitions that Muslims are a minority based on religion. What then is the scope of Article 30 (1) and what exactly is the right conferred therein on the religious minorities? It is to our mind quite clear that Article 30 (1) postulates that the religious community will have the right to establish and administer educational Institutions of their choice meaning thereby that where a religious minority establishes an educational institution, it will have the right to administer that. An argument has been raised to the effect that even though the religious minority may not have established the educational institution, it will have the right to administer it, if by some process it had been administering the same before the Constitution came into force. We are not prepared to accept this argument. The Article in our opinion clearly shows that the minority

will have the right to administer educational institutions of their choice provided they have established them, but not otherwise. The Article cannot be read to mean that even if the educational institution has been established by somebody else, any religious minority would have the right to administer it because, for some reasons or the other, it might have been administering it before the Constitution came into force. The words 'establish and administer' in the Article must be read conjunctively and so read it gives the right to the minority to administer an educational institution provided it has been established by it. In this connection our attention was drawn to in *re : The Kerala Education Bill*[40] where, it is argued, this Court had held that the minority can administer an educational Institution even though it might not have established it.

In that case an argument was raised that under Article 30 (1) protection was given only to educational institutions established after the Constitution came into force. That argument was turned down by this Court for the obvious reasons that if that interpretation was given to Article 30 (1) it would be robbed of much of its content. But that case in our opinion did not lay down that the words 'establish and administer' in Article 30 (1) should be read disjunctively, so that though a minority might not have established an educational institution it had the right to administer it. It is true that at p. 1062 (of SCR) : at p. 982 (of AIR) the Court spoke of Article 30 (1) giving two rights to a minority i.e., (I) to establish, and (II) to administer. But that was said only in the context of meeting the argument that educational institutions established by minorities before the Constitution came into force did not have the protection of Article 30 (1). We are of opinion that nothing in that case justifies the contention raised on behalf of the petitioners that the minorities would have the right to administer an educational institution even though the Institution may not have been established by them. The two words in Article 30 (1) must be read together and so read the Article gives 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.

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40 AIR 1958 SC 956.

We have, therefore, to consider whether the Aligarh Muslim University was established by a Muslim minority; and if it was so established, the minority would certainly have the right to administer it.

(20) We should also like to refer to the observations in *Durgah Committee, Ajmer v. Syed Hussain Ali*[41]. In that case this Court observed while dealing with Article 26 (a) and (d) of the Constitution that even if it be assumed that a certain religious institution was established by a minority community it may lose the right to administer it in certain circumstances. "If the right to administer the properties never vested in the denomination or had been validly surrendered by it or had otherwise been effectively and irretrievably lost to it, Article 26 cannot be successfully invoked."

We shall have to examine closely what happened in 1920 when the 1920 Act was passed to decide:

1. whether in the face of that Act it could be said that the Aligarh University was established by the Muslim minority,

2. whether the right to administer it, ever vested in the minority, and

3. even if the right to administer some properties that came to the University vested in the minority before the establishment of the Aligarh University, whether it had been surrendered when the Aligarh University came to be established.

(21) Before we do so we would like to say that the words 'educational institutions' are of very wide import and would include a university also. This was not disputed on behalf of the Union of India and, therefore, it may be accepted that a religious minority had the right to establish a university under Article 30 (1). The position with respect to the establishment of universities before the Constitution came into force in 1950 was this. There was no law in India which prohibited

41 AIR 1961 SC 1402.

any private individual or body from establishing a university and it was, therefore, open to a private individual or body to establish a university. There is a good deal in common between educational institutions, which are not universities and those which are universities. Both teach students and both have teachers for the purpose. But what distinguishes a university from any other educational institution is that a university grants degrees of its own while other educational institutions cannot. It is this granting of degrees by a university, which distinguishes it from the ordinary run of educational institutions.[42] Thus, in law in India there was no prohibition against establishment of universities by private individuals or bodies and if any university was so established, it was a necessity for granting degrees before it could be called a university. But though such a university might be granting degrees it did not follow that the Government of the country was bound to recognize those degrees. As a matter of fact, as the law stood up to the time the Constitution came into force, the Government was not bound to recognise the degrees of universities established by private individuals or bodies and generally speaking the Government only recognised degrees of universities established by it by law. No private individuals or body could before 1950 insist that established by it by law. No private individuals or body could before 1950 insist that the degrees of any university established by him or it must be recognised by the Government. Such recognition depended upon the will of the Government generally expressed through statute. The importance of the recognition of Government in the matters of this kind cannot be minimised.

This position continued even after the Constitution came into force. It was only in 1956 that by sub-s (1) of S. 22 of the University Grants Commission Act (No. 3 of 1956), it was laid down that "the right of conferring or granting degrees shall be exercised only by a University established or incorporated by or under a Central Act, a Provincial Act or a State Act or an institution deemed to be a University under Section 3 or an institution specially empowered by an Act of Parliament to confer or grant degrees."

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42 See *St. David's College Lampeter* v. *Ministry of Education,* 1951-1 AII ER 559.

Sub-section (2) thereof further provided that "save as provided in sub-s (1), no person or authority shall confer, or grant, or hold himself or itself as entitled to confer or grant any degree." S. 23 further prohibited the use of the word 'University' by an educational institution unless it is established by law. It was only thereafter that no private individual or body could grant a degree in India. Therefore, it was possible for the Muslim minority to establish a university before the Constitution came into force, though the degrees conferred by such a university were not bound to be recognised by the Government.

(22) There was nothing in 1920 to prevent the Muslim minority, if it so chose to establish a university; but if it did so the degrees of such a university were not bound to be recognised by the Government. It may be that in the absence of recognition of the degrees granted by a university, it may not have attracted many students, and that is why we find that before the Constitution came into force, most of the universities in India were established by legislation. The Aligarh University was also in the same way established by legislation and it provided under S. 6 of the 1920 Act that "the degrees, diplomas and other academic distinction granted or conferred to or on person by the University shall be recognised by the Government as are the corresponding degrees, diplomas and other academic distinctions granted by any other university incorporated under any enactment."

It is clear, therefore, that even though the Muslim minority could have established at Aligarh in 1920 a university, it could not insist that degrees granted by such a university should be recognised by the Government. Therefore, when the Aligarh University was established in 1920 and by S. 6 its degrees were recognised by the Government, an institution was brought into existence which could not be brought into existence by any private individual or body for such individual or body could not insist upon the recognition of the degrees conferred by any university established by it.

The enactment of S. 6 in the 1920 Act is a very important circumstance which shows that the Aligarh University when it came to be established in 1920 was not established by the Muslim minority

for the minority could not insist on the recognition by the Government of the degrees conferred by any university established by it.

(23) It is true and is clear from the 1920 Act, that the nucleus of the Aligarh University was the M.A.O. College, which was till then a teaching institution under the Allahabad University. The conversion of that college (if we may use the expression) into a university was, however, not by the Muslim minority: it took place by virtue of the 1920 Act which was passed by the Central legislature. There was no Aligarh University existing till the 1920 Act was passed. It was brought into being by the 1920 Act and must, therefore, be held to have been established by the Central Legislature which by passing the 1920 Act incorporated it. The fact that it was based on the M.A.O. College, would make no difference to the question as who established the Aligarh University. The answer to our mind as to who established the Aligarh University is clear and that is that it was the Central Legislature by enacting the 1920 Act that established the said University. As we have said already, the Muslim minority could not establish a university whose degrees were bound to be recognised by the Government as provided by S. 6 of 1920 Act : the one circumstance along with the fact that without the 1920 Act the University in the form that it had, could not come into existence shows clearly that the Aligarh University when it came into existence in 1920 was established by the Central Legislature by the 1920 Act. It may be that the 1920 Act was passed as a result of the efforts of the Muslim minority. But that does not mean that the Aligarh University when it came into being under the 1920 Act was established by the Muslim minority.

(25) What does the word 'established' in Article 30 (1) mean? In *Bouvier's Law Dictionary*, Third Edition, Vol. 1, it has been said that the word 'establish' occurs frequently in the Constitution of the United States and it is, therefore, used in different meanings, and five such meanings have been given, namely, (1) to settle firmly, to fix unalterably, as, to establish justice; (2) to make or form; as, to establish a uniform rule of naturalisation; (3) to found, to create, to regulate; as, Congress shall have power to establish post offices; (4) to found, recognise, confirm or admit; as, Congress shall make no law

respecting an establishment of religion; (5) to create, to ratify, or confirm, as, We, the people, etc., do ordain and establish this Constitution. Thus it cannot be said that the only meaning of the word 'establish' is to be found in the sense in which an *eleemosynary* institution is founded and we shall have to see in what sense the word has been used in our Constitution in this Article. In Shorter Oxford English Dictionary, Third Edition, the word 'establish' has a number of meanings i.e., to ratify, to confirm, to settle, to found, to create. Here again founding is not the only meaning of the word 'establish; and it includes creation also. In Websters Third New International Dictionary, the word 'establish' has been given a number of meanings, namely, to found or base squarely, to make firm or stable, to bring into existence, create, make, start, originate. It will be seen that here also founding is not the only meaning; and the word also means to bring into existence. We are of opinion that for the purpose of Article 30 (1) the word means to bring into existence; and so the right given by Article 30 (1) to the minority is to bring into existence an educational institution, and if they do so, to administer. We have, therefore, to see what happened in 1920 and who brought the Aligarh University into existence.

(26) From the history we have set out above, it will be clear that those who were incharge of the M.A.O. College, the Muslim University Association and the Muslim University Foundation Committee were keen to bring into existence a university at Aligarh. There was nothing in law then to prevent them from doing so, if they so desired without asking the Government to help them in the matter. But if they had brought into existence a university on their own, the degrees of that university were not bound to be recognised that it would be of no use bringing into existence a university, if the degrees conferred by the said university were not to be recognised by the Government. That appears to be the reason why they approached the Government for bringing into existence a university at Aligarh, whose degrees would be recognised by the Government and that is why we find Section 6 of the 1920 Act laying down that "the degrees, diplomas, and other academic distinctions granted or conferred to or on persons by the university shall be recognised by the Government…" It may be accepted for present purposes that the M.A.O. College and the

Muslim University Association and the Muslim University Foundation Committee were institutions established by the Muslim minority and two of them were administered by Societies registered under the Societies Registration Act (No. 21 of 1860). But if the M.A.O. College was to be converted into a university of the kind whose degrees were bound to be recognised by the Government, it would not be possible for those who were in-charge of the M.A.O. College to do so. That is why the three institutions to which we have already referred approached the Government to bring into existence a University whose degrees would be recognised by the Government. The 1920 Act was then passed by the Central Legislature and the university of the type that was established there under, namely one whose degrees would be recognised by the Government, came to be established. It could not have been brought into existence otherwise. It was thus the Central Legislature which brought into existence the Aligarh University and must be held to have established it. It would not be possible for the Muslim minority to establish a university of the kind whose degrees were bound to be recognised by the Government and therefore it must be held that the Aligarh University was brought into existence by the Central Legislature and the Government of India. If that is so, the Muslim minority cannot claim to administer it, for it was not brought into existence by it. Article 30 (1), which protects educational institutions brought into existence and administered by a minority, cannot help the petitioners and any amendment of the 1920 Act would not be ultra virus Article 30 (1) of the Constitution. The Aligarh University not having been established by the Muslim minority any amendment of the 1920 Act by which it was established, would be within the legislative power of Parliament subject of course to the provisions of the Constitution. The Aligarh University not having been established by the Muslim minority, no amendment of the Act can be struck down as unconstitutional under Article 30 (1).

(27) Nor do we think that the provisions of the Act can bear out the contention that it was the Muslim minority which was administering the Aligarh University after it was brought into existence. It is true that the proviso to Section 28 (1) of the 1920 Act said that "no person other than a Muslim shall be a member of the Court", which

was declared to be the supreme governing body of the Aligarh University and was to exercise all the powers of the university, not otherwise provided for by that Act. We have already referred to the fact that Select Committee was not happy about this provision and only permitted it in the Act out of deference to the wishes of prepondering Muslim opinion.

(29) … These provisions in our opinion clearly show that the administration was also not vested in the Muslim minority; on the other hand it was vested in the statutory bodies created by the 1920 Act, and only in one of them, namely, the Court, there was a bar to the appointment of anyone else except a Muslim, though even there some of the electors for some of the members included non-Muslims. We are, therefore, of opinion that the Aligarh University was neither established nor administered by the Muslim minority and, therefore, there is no question of any amendment to the 1920 Act being unconstitutional under Article 30 (1) for that Article does not apply at all to the Aligarh University."

Inferences drawn by the Allahabad High Court

After these paras were quoted by the Allahabad High Court, it noted that a feeble attempt was made to create a doubt with regard to law so declared by the Supreme Court with reference to the opinion expressed by Constitutional Expert Sri H. M. Seervai in his book "*Constitutional Law of India*". The Allahabad High Court further observed that the Supreme Court has dealt in great detail with the historical background in which the Muhammadan Anglo-Oriental College, Aligarh and Muslim University Association were dissolved and their properties and rights were transferred and declared to be vested in the University. Section 3 of the Act declared the constitution of a body corporate by the name of Aligarh Muslim University having perpetual seal and a right to sue and to be sued by that name. The dissolution of M.A.O. College and the Muslim University Association was also specifically noticed in Section 4 of the Act. The effect of Section 3, Section 4 read with Section 6 of the original Act vis-à-vis the University being brought into existence by a legislative Act are the main basis for the decision of the Supreme

Court in *Azeez Basha*. The said sections have not been amended and holds ground even today. Mere deletion of the word 'Establish' from the long title and amendment to Section 2(1), whereby the University has been defined to be an educational Institution of their choice, established by the Muslims of India, which originated as M.A.O. College, Aligarh and which was subsequently incorporated as Aligarh Muslim University in itself is not sufficient to hold that the Aligarh Muslim University, which was a creation of a legislative Act, has not been so created. 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 Aligarh Muslim University is a minority Institution covered by Article 30 of the Constitution of India. In the case of the *Bakhtawar Trust* [43], the Supreme Court has held that two questions ought to be answered for judging as to whether the basis upon which the earlier decision of the Court was based, had been changed for the purposes of coming to a conclusion that the earlier law declared by the Court is no more good law, the questions are (a) what was the basis of the earlier decision, and (b) what if any may be said to be the removal of that basis.

From the judgment of *Azeez Basha*, which has been quoted in extension herein above, this Court has no hesitation to hold that the basis of the judgment of the Hon'ble Supreme Court in *Azeez Basha* has not been so fundamentally altered so as to come to a conclusion that if the amendments made under the 1981 Act had been there before the Supreme Court at the time of decision of *Azeez Basha* the judgment would have been otherwise. The Supreme Court has clarified the meaning to be attached to the word 'Establish' as mentioned in Article 30 of the Constitution of India, and has held that the same means to bring into existence. The bringing into existence of the Aligarh University by an Act of Legislature has been considered by the Hon'ble Supreme Court in the light of the historical background and various provisions of the Act, including Sections 3, 4 and 6, which remain unamended. The Hon'ble Supreme Court has taken note of the fact that the foundation of the Aligarh Muslim University lay in the M.A.O. College as well as in the Muslim

43 Para 27.

University Association. Thereafter, having regard to Sections 3, 4 and 6 read with other sections of the Act, whereby Aligarh Muslim University was declared to be a body corporate, having perpetual succession and a common seal, it has been held that the Aligarh Muslim University was a statutory body distinct from its members, who had contributed to incorporation of the same.

The legal position with regard to fundamental rights being altered with the incorporation of a company/corporation has been a subject matter of consideration before the Hon'ble Supreme Court in the case of *Dharam Dutt* as well as in *State Trading Corporation of India Ltd.* v. *The commercial Tax Officer and Others* [44] it has specifically been held that with incorporation, the corporate body becomes a distinct legal entity vis-à-vis the members, who have contributed to the incorporation. Fundamental rights, which are available to the citizens[45] under the Constitution of India, are not available to the incorporated bodies as they do not answer the description of citizen of India.

Aligarh Muslim University having been incorporated as a legal juristic person under a legislative Act of 1920, as such cannot claim fundamental right guaranteed for citizens under the Constitution of India nor the members of the minority community can claim such a fundamental right in respect of a body incorporated.

It is no doubt true that in the case of *Azeez Basha* it has been held that Institution as referred to in Article 30 may include the University also. The aforesaid conclusion of the Supreme Court has to be read in the background, in which it has been so held. The Supreme Court itself in the case of *Azeez Basha* has recorded that a private University could be created prior to the enforcement of University Grant Commission Act, 1956 although the degree awarded by the said University may not be necessarily recognised by the Government. Meaning thereby that prior to University Grants Commission Act there was no bar for a private University being established and degree

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44 A.I.R. 1963 Sc. 1811.

45 Articles 19, 29 and 30.

awarded which may or may not be recognised by the State. As a matter of fact reference may be had to the following institutions, which were awarding degrees/certificates without having been established by any Act of Legislature, prior to the enforcement of the University Grant Commission and such degrees/certificates were recognised by the State:

1. *Hindi Sahitya Sammelan*, Allahabad, AIR 1971 SC 966.

2. *Tibbia College (Medical College),* AIR 1962 S C 458.

Subsequent to the enforcement of the University Grants Commission Act, 1956 a private University can be established provided such University is granted recognition as 'deemed University' by the University Grant Commission. Therefore, to that extent minority citizens may establish a minority University subject to it being declared a 'deemed University' by the University Grants Commission.

In view of the aforesaid, the Court is of the opinion that the judgment of the Hon'ble Supreme Court in the case of *Azeez Basha* was based on over all consideration of the provisions of the Act and the historical background, in which Aligarh Muslim University was brought into existence. 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.

This leads us to the second issue namely, whether the members of the minority community who are said to have founded the University, retained a right to administer the University even after its incorporation. From Section 3 read with Section 13, 15, 16 to 22 of the Act, it is apparently clear 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 administration of the University has all along vested in the officers and the bodies continued under the statutory provisions itself. The Supreme Court has, therefore, held in

the case of *Azeez Basha* that the right of administration was never vested in the Muslim minority, subsequent to the creation of the University itself under 1920 Act. The contention of the counsel for the respondent to the effect, that the right of administration automatically flows once it is established that the institution is established by a minority community is too broad a proposition to be accepted. From the judgments, which have been noticed herein above, it is settled that Article 30 consists of two-parts: (1) right to establish, (2) right to administer. Both rights are to be read conjunctively.[46] However, it does not necessarily follow that every time the citizens of minority community, when establish an institution, they necessarily desire that the said institution must be administered by the members of the minority community only. It is always open to the founder members, who establish an institution, to hand over the administration of the same to person who may not belong to minority community and, therefore, it is not always necessary that the right to administer the minority institution would follow automatically, once the institution is established by the minority. The right to administer depends upon the wish and desire of the founder members. From the facts, which have been noticed in the case of *Azeez Basha* and as apparent from the Act of 1920, right to administer the University was ever retained by the members of the Muslim Community. As a matter of fact, the right to administer had been willingly surrendered in favour of the statutory authorities and bodies constituted under the Act. …Even if it be assumed that a certain religious institution was established by a minority community it may lose the right to administer it in certain circumstances.

Then the Allahabad High Court referred to the changes incorporated in 1920 Act by the amending Act of 1951 and Act of 1965. The proviso to Section 23 (1) of the Act, 1920, which provided that all members of the Court would only be Muslims, was deleted vide Amending Act of 1951. In order to give effect to the said amendment, the Amending Act of 1965, provided that all members of the Court as well as of the Executive Council cease to hold such

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46 See *T. M. A. Pai Foundation* and *St. Stephen's College.*

office from the appointed date i.e., 20th May, 1965. The provisions of the aforesaid Act of 1951 and 1965 were challenged before the Supreme Court specifically by the Muslims only, who alone could claim a right as citizens to seek protection under Article 30 of the Constitution of India. The challenge was repelled by the Supreme Court after recording a finding amongst others that the right to administer was never vested in Muslim minority.

Then the Court pointed out if it is held that amendment incorporated vide Act 1981 declare Aligarh Muslim University to be a minority institution with reference to Article 30, it would logically follow that the amendments made vide Amending Act, 1951 and the Amending Act of 1965, whereby the constitution of the governing bodies was altered by the legislature would *ipso facto* be rendered void, being hit by Article 13 of the Constitution of India in as much as the amendments made by the Act of 1951 and 1965 would violate the rights of the minority institutions vested under Article 30 of the Constitution. The contention of respondents, if accepted, would create a situation whereby the legislative Acts of 1951 and 1965, declared constitutionally valid by the Supreme Court, would be rendered void being hit by Article 13 of the Constitution of India.

In the opinion of the Court the power to amend the statutory provisions cannot be extended to such an extent so as to create a situation whereby a legislative Act, declared constitutionally valid, could be rendered unconstitutional by subsequent legislative enactment.

Another inference drawn by the Allahabad High Court is that the *Azeez Basha* decision was not solely based on the interpretation of the statutory provisions, so as to enable the legislature to declare vide Section 2 (1) that the Aligarh Muslim University has been established by the Muslim minority. The declaration in that regard under Section 2 (1) is on the face of it an attempt to negate the judgment of the Supreme Court specifically when such declaration has been made without altering the foundation / basis on which the judgment in the case of *Azeez Basha* was based. Section 2 (1) has the effect of setting aside an individual decision *inte-parte*. Such an Act on the part of the

legislature amounts to exercise of judicial power, and functioning as an Appellate court or Tribunal.[47] In order to save Section 2 (1), as substituted under 1981 Act from being stuck down on the ground of brazen overruling of the judgment of the Supreme Court in *Azeez Basha* it is necessary to read down the said provision in a manner so as to hold that the word "Established" referred to in Section 2 (1) necessarily refers to Muhammadan Anglo Oriental College, which was established by Muslims and was subsequently incorporated into the University, as has been held in the case of *Azeez Basha*. Accordingly, it is held that the word 'Established' in Section 1 (1) may be read with reference to Muhammadan Anglo-Oriental College only, which was established by Muslims.

One more inference was drawn by the Court that the Academic Council and Executive Council of the Aligarh Muslim University, which have been constituted under the statutory provisions of the Aligarh Muslim University Act itself and declared to be a body corporate[48], could not assert a fundamental right guaranteed by Article 30 of the Constitution of India. As held by the Supreme Court, such rights are available to citizens only and, therefore, the statutory body like the Academic Council and Executive Council could not have claimed any protection for themselves under Article 30 of the Constitution so as to provide reservation for the Muslim students nor it was open to the Executive Council and the Academic Council, which are creature of legislative enactment itself to assert that Aligarh Muslim University is entitled to the benefits of Article 30 of the Constitution of India, specifically when Academic Council and the Executive Council in control of the University on date have been reconstituted by the Amending Act of 1951 read with the Amending Act of 1965, the constitutionally whereof has been upheld by the Hon'ble Supreme Court only after coming to the conclusion that Aligarh Muslim University was not a minority institution.

The Allahabad High Court noted the fact that the fundamental rights (Article 30 of the Constitution of India) are available to a citizen of

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47 See the *case of Cauvery Water Tribunal.*

48 Section 3 of the Act.

India only. Admittedly the Aligarh Muslim University cannot be held to be a citizen, as it is a body corporate and, therefore, on its own it cannot claim protection of Article 30 of the Constitution of India. It is only the Muslim minority members who can claim such protection and could challenge the validity of Amending Acts of 1951 and 1965. It makes no difference as to whether the Aligarh Muslim University was a party in the case of *Azeez Basha* or not. Even otherwise at no point of time any attempt was made by the Aligarh Muslim University to get itself impleaded into those proceedings nor the law declared by the Supreme Court in the case of *Azeez Basha* was ever questioned by any review petition.

Final Decision of the Allahabad High Court

The Court recorded its decision that it has reservation with regard to the extent of reservation provided in respect of Post Graduate Medical Courses by the Aligarh Muslim University (i.e., 50% of the total seats) as well as to the manner in which the said reservation has been implemented i.e., one category of the seats being completely reserved for Muslim students (50% of the total seats required to be filled by open examination to be conducted by the Aligarh Muslim University), both the aforesaid issues are not required to be gone into any further in as much as this Court has held that Aligarh Muslim University is not a minority Institution, entitled to protection of Article 30 of the Constitution of India and, therefore, has no right to provide any reservation on the basis of religion. The reservation provided by the Academic Council of the Aligarh Muslim University vide its resolution dated 15th January, 2005 the resolution of the Executive Council dated 19th February, 2005 and the approval granted by the Central government vide letter dated 25.02.2005 to that extent are hit by Article 29 (2) of the Constitution of India and as such cannot be legally sustained.

No reservation can be provided by the Aligarh Muslim University for admission of students on the basis of religion only and any decision in that regard, being hit by Article 29 (2) of the Constitution of India, would be patently illegal and without jurisdiction.

It is held that the judgment of the Supreme Court in the case of *Azeez Basha* still holds good even subsequent to the Aligarh Muslim University Amendment Act, 1981 (Act No. 62 of 1981). Aligarh Muslim University is not a minority Institution within the meaning of Article 30 of the Constitution of India. Therefore, the University cannot provide any reservation in respect of the students belonging to a particular religious community.

The resolution of the Academic Council dated 15th January, 2005, the decision of the Executive Council dated 19th February, 2005 as also the approval granted thereto under letter of the Union of India dated 25th February, 2005 are hereby quashed. The admissions granted in pursuance of the aforesaid reservation stand cancelled. The Aligarh Muslim University is directed to conduct a fresh entrance examination in respect of the 50% seats of the Post Graduate Medical Courses, preferably within one month from the date a certified copy of this order is filed before the Vice-Chancellor of the University, without making any reservation on the basis of religion.

Part-II

The AMU preferred an appeal to the Supreme Court which was considered by a two-judge Bench of the Court. The Bench maintained the selection already done by the University, but referred the actual issues for the consideration of a Constitutional Bench.[49]

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49. *Aligarh Muslim University* v. *Naresh Agarwal*, 2024 SCC OnLine SC 3213. decided on 08-11-2024...
https://www.scconline.com/blog/post/2024/11/08/amu-minority-status-verdict-supreme-court/
Recapitulated story: In 1877, Sir Syed Ahmed Khan, a Muslim reformer of the 19th century, founded the Muhammadan Anglo-Oriental College (MAO College) at Aligarh. Through this institution, he sought to popularise modern British education among Muslim society while carefully balancing and protecting Islamic values and principles. Despite being an institute mainly for persons of the Islamic faith, MAO College was open to other communities as well.
On 14 September, 1920, the Aligarh Muslim University Act, 1920 (AMU Act) was passed to incorporate the MAO College and another Muslim University Association into a single University named the Aligarh Muslim University

(AMU). According to Section 23 of the AMU Act, the Court of the University, the governing body of the university, must only consist of persons belonging to the Islamic faith.

In 1951, the AMU Act was amended to do away with the compulsory religious education provided to Muslim students by the University. Further, the amendment removed the provision which mandated only Muslim representation in the Court of the University. Later, the Act was amended in 1965. The Court was no longer the supreme governing body of the AMU. It became a body whose members were nominated by the Visitor (the President of India). The powers were distributed among other bodies of the University like the Executive to democratise the management.

Petitioners in *S. Azeez Basha and Anr* v. *Union of India* (1967) argued that the amendment violated their right to establish and administer educational institutions under Article 30 (1) of the Constitution of India. Further, they contended that the amendments violated the institution's right to carry out religious and charitable causes (Article 26(a)), the freedom of religion (Article 25), the right to conserve culture and language (Article 29), and the right to acquire property (Article 31).

On 20 October, 1967, a five-judge bench, comprising Chief Justice K.N. Wanchoo and Justices R.S. Bachawat, V. Ramaswami, G.K. Mitter and K.S. Hegde, held that no fundamental rights of the petitioners were violated and upheld the amendment. The Bench reasoned that AMU was neither established nor administered by the Muslim minority. Pointing out that the Act was enacted through a Central Legislation, the Court stated, "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". They held that the provisions of the Act "clearly show" that the administration of AMU was not "vested in the Muslim minority".

In 1981, the Act was amended to redefine 'university' as an educational institution "established by the Muslims of India" which was initially MAO College and later became AMU. Powers of the University under Section 5 were amended to include a new clause for promoting the educational and cultural advancement of the "Muslims of India".

In 2005, the AMU reserved 50% seats in postgraduate medical courses for Muslim candidates by claiming it to be a minority institution. This was challenged in *Dr. Naresh Agarwal* v. *Union of India* (2005). The petitioners relied on S. Azeez Basha to argue that AMU is not a minority institution. The Union and the University contended that S. Azeez Basha was nullified by the 1981 amendment. Therefore, it can make provisions for the benefit of Muslim students. The Allahabad High Court struck down the reservation policy and held that the AMU could not have an exclusive reservation because it was not a minority institution according to S. Azeez Basha.

Submissions supportive of AMU Minority character and *In Reference to Adverse Aziz Basha Judgment*[50]

1) *Aziz Basha* failed to recognise that the words *'establish' and 'administer'* are not preconditions to define a minority but the consequential rights that flow from such a recognition;

2) The assumption that a university loses its minority status when recognised by a statute, conflicts with the right of minorities to establish educational institutions;

3) It fails to deny the role of the Muslim community in the establishment of AMU but, through strained reasoning held against the reality that its origins and administration were rooted in legislation. The *Aziz Basha* Judgment is based on complication, not interpretation to restrict the recognition of minority institutions under Article 30;

4) Its complication in the interpretation of the word 'establish' in Article 30 (1) is contrary to the expansive view adopted by

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In 2006, the Union government and the University challenged the High Court decision in the Supreme Court. On 24 April, 2006, a Division Bench of Justices K.G. Balakrishnan and D.K. Jain put a stay on the reservation policy of the AMU. The constitutionality of the policy was referred to a larger bench to decide.

In 2016, the National Democratic Alliance government, elected to the Union in 2014 withdrew from the appeal contending that it does not acknowledge the minority status of the University. The University pleads its case alone.

On 12 February, 2019, a three-judge bench comprising Chief Justice Ranjan Gogoi and Justices L. Nageswara Rao and Sanjiv Khanna referred the decision in S. Azeez Basha for reconsideration by a seven-judge bench.

On 12 October, 2023, the matter was listed before CJI D.Y. Chandrachud who constituted a seven-judge bench consisting of himself, and Justices S.K. Kaul, Sanjiv Khanna, B.R. Gavai, Surya Kant, J.B. Pardiwala, and Manoj Misra, to hear the matter.

50. *Aligarh Muslim University* v. *Naresh Agarwal*, 2024 SCC Online SC 3213: Delivered by the Supreme Court on 8th November, 2024. *S. Azeez Basha* v. Union of India, 1967 SCC OnLine SC 321...
https://www.scconline.com/blog/post/2024/11/08/amu-minority-status-verdict-supreme-court/

subsequent judgments; and

5) This decision has been superseded by subsequent decisions like *TMA Pai* [51], which emphasised that the religious character of an institution cannot be stripped down by government interventions.

6) Upholding *Azeez Basha*[52] could jeopardise the minority status of several educational institutions, including recognised minority institutions like St. Stephen's College and Christian Medical College;

7) Minority rights were acknowledged by the State before the adoption of the Constitution through various legislative enactments like the Indian Councils Act of 1909, and the Government of India Acts of 1919 and 1935, which provided reservations to Muslims, Sikhs, and Christians in the legislature;

8) The formation of AMU was characterised as a "movement" rather than a "surrender" by the Mohammedan Anglo-Oriental College. Provisions in the AMU Act, including the transfer of assets, liabilities, and special provisions for Muslim students, underscore the continuation of minority rights with the establishment of AMU;

9) Entry 63 in the Union List of the Seventh Schedule to the Constitution deals with the competence of the Union to make laws regarding AMU and BHU but does not determine who established or administers the universities. Article 30, which guarantees minority rights, cannot be negated merely because the institution is of national importance in terms of Entry 63;

10) The evolution of the AMU Act can be broken down into four phases: pre-1951 with Muslim administration, the 1951

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51. T.M.A. Pai Foundation & *Ors.* v. *State of Karnataka & Ors.* on 31 October, 2002.
52. *S. Azeez Basha and Anr.* v. *Union of India* on 20 October, 1967; AIR 1968 SC 662.

Amendment aligning with the Constitution, the 1965 Amendment diluting minority status, and attempts to restore minority status in 1972 and 1981;

11) While the 1951 amendment aligned the Act with the Constitution by removing compulsory religious education, the 1965 amendment diluted minority administration by reducing "the Court" to an advisory role, shifting the supreme governing authority to the "Visitor" and the President of India; and

12) Amendments in 1972 and 1981 aimed to restore AMU to minorities. The 1981 amendment explicitly stated that AMU was "established by the Muslims of India" and aimed to promote Muslim educational and cultural advancement. The 1981 amendment accommodated a democratic setup, focusing on the institution's original purpose rather than numerical representation.

13) The enactment of the Act of 1920 marked the formal recognition of the MAO "College" as the Aligarh Muslim University, reflecting a crucial legislative step in its evolution into a full-fledged university;

14) Compliance with regulatory requirements, constitutionally grounded in Article 19(6) does not diminish the right guaranteed by Article 30 to minorities to establish institutions of their choice;

15) Article 30 grants religious and linguistic minorities the autonomy to establish and administer institutions of their "choice". Institutions covered by Article 30 have the flexibility to choose their administrative set-up, even if it includes individuals outside the minority community. This choice is solely vested in the institution;

16) Assessing the numerical composition within the administration is inadequate to determine its minority status. Minority institutions have the prerogative to include non-minorities in their administration while maintaining their minority status. St.

Stephen's College, Delhi, despite having a Christian representation of less than 5 per cent, maintains its classification as a minority institution;

17) The crucial factor for recognising an educational institution as a Minority educational institution lies in its genesis, focusing on three key aspects:

    a. the purpose for which it was founded (educational advancement of the minority community);

    b. the identity of the founders and major fund providers (being substantially from the concerned minority); and

    c. the concept's initiation by a member of the minority;

18) Provisions within the AMU Act focus on governance structures, academic standards, and prevention of maladministration. These statutory measures primarily relate to the administration of the University and do not alter the constitutional fact of its establishment by a minority;

19) AMU was established with the objective of providing quality education specifically to Muslims. The exclusivity of such institutions in offering education tailored to the needs of minorities was not adequately considered by *Azeez Basha*;

20) The denial of reservation to institutions like AMU results in fewer degrees and job opportunities, exacerbating socio-economic disparities within minority groups;

21) The founders of AMU satisfactorily fulfilled the five-step criteria laid down in T.M.A. Pai to ascertain the right to administer. The criteria related to admission policies, fee structures, governance, faculty appointments and disciplinary action;

22) The objective of establishing AMU was to obtain the status of an independent university and not demonstrate allegiance to colonial authorities;

23) A minority institution can accede to some regulations to maintain a particular standard of education. With that, the institution also retains the right to challenge any invasive restrictions imposed on it; and

24) The imperial government never interfered with the administration of the University after it was incorporated. MAO College was also supervised by the British government even when it was not a university. MAO College was acknowledged as a minority institution under *Azeez Basha*;

25) Adopting a 'political, moral reading' of Article 30 would facilitate a broader interpretation of the term 'established'. Ronald Dworkin's definition of a 'political moral reading' involves invoking moral principles about political decency and justice for interpreting constitutional provisions[53];

26) Aligarh Tehzeeb represents a distinctive cultural ethos cultivated by the AMU. This unique cultural identity encompasses traditions, values and practices that have evolved within the university;

27) The concept of takeover in the context of educational institutions can be categorised into non-consensual and consensual takeovers. In the case of AMU, there was a consensual takeover, where changes and amendments were made to its structure and character through a process that involved the University's participation and consent; and

28) AMU was founded by members of the Minority community. The societies formed for this purpose had a crucial role in the establishment and evolution of the University, contributing resources, support and a collective vision that shaped the identity and character of AMU.

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53. [Reliance was placed on Ronald Dworkin, "The Moral Reading of the Constitution" (March 21, 1996).]

29) The purpose of Article 30 rests primarily on two grounds: (a) The ability to retain the minority identity; (b) The ability to fully participate in the national mainstream;

30) *Azeez Basha* adopts an approach by which the institution could either retain the minority status or integrate into the national mainstream and lose it;

31) The Indian secularism model allows state involvement in religious activities without compromising their character;

32) In advocating for a broader interpretation of 'establish' in Article 30, there is a need to distinguish between 'establish' and 'incorporate' to better preserve constitutional protection for minority educational institutions.

33) The AMU Act of 1920 only "incorporated" AMU. This is fundamentally different from the establishment of the institution;

34) Stripping away the minority character of AMU would diminish its significant place in history since the institution has led to: (a) The creation of a Muslim-educated middle class; and (b) The education of women.

35) The validity of the 1981 amendment should not be considered in this case. The Parliament enacted it to reinstate AMU's minority status, which is now being contested by the current Union government. Considering the Union's arguments requires reassessing Parliament's reasoning behind the law.

36) An inclusive definition of 'minority educational institutions' includes universities established and administered by minorities.

Submissions against the AMU Minority Character

Azeez Basha is good law, and that AMU is not a minority institution. They argued that AMU was established by the Parliament. The submissions of the respondents and the intervenors are:

1) The right guaranteed by Article 30 can only be exercised if there is legislation in place to enable the establishment and administration of minority institutions. This legislation should empower minorities to form institutions under constitutional provisions; and

2) While Article 30 guarantees minorities certain rights, they are not exempt from other constitutional requirements, particularly regarding reservation.

3) *Azeez Basha* correctly recognised the choices available to AMU in 1920. It had the choice of either affiliating with another university or surrendering its minority status to the imperial government;

4) Under the AMU Act, AMU voluntarily surrendered its minority institution status to the imperial government. This is shown by the historical context of the Aligarh Split, where the institution's leaders chose cooperation with the British government over retaining its Muslim character;

5) The British government exerted control over AMU, as evidenced by provisions in the 1920 Act. The Lord Rector had significant authority in the administration of the institution. The Act dissolved the previous governing body and transferred property and decision-making authority to secular government authorities;

6) The 1920 Act was a substantive statute which dealt with the specifics of the administration of the institution. The administration of the institution predominantly vested with the non-minority;

7) The British government mandated that AMU should not be a religious institution and should be controlled by secular authorities;

8) Amendments in 1951 made the 1920 Act consistent with constitutional provisions. This affirmed that AMU was established by statute, not by the minority community;

9) Justice M.C. Chagla in the course of legislative debates in 1965 stated that AMU was neither established nor administered by minorities. *Azeez Basha* correctly held that AMU surrendered its minority status to the British Government;

10) The validity of the 1981 amendment is questionable, as it is contrary to previous judicial decisions;

11) The 1981 reference sought clarity on the definition of a minority educational institution. The reference did not include the question of whether AMU is a minority educational institution. Legal challenges in 2005 regarding reservations for Muslims in postgraduate programmes led to the current reference. This reference also focused on a specific legal question without reopening factual controversies;

1) The term *"establish"* under Article 30 should be interpreted to mean tangible and manifest establishment. The indicia to decide the minority character of an institution contemplated under Article 30(1) of the Constitution, must include the following:

    a) The institution/university must necessarily be established and administered by the minority community; and

    b) The institution/university should be established by the minority, for the minority and as a minority institution.

2) There are concerns about the potential misuse of minority status without a strict standard of actual establishment. The drafting history of fundamental rights under Articles 29 and 30 consistently uses "establish" and "administer" conjunctively and further expresses apprehensions about an over-expansive

interpretation of these Articles;

3) The genesis of an institution does not determine its minority status. Legislative enactments are the final authority on the establishment, as seen in legislations where the minority status is explicitly recognised;

4) The reliance on *St. Stephen*[54] is self-defeating since this Court applied the standard of administrative control as an indicium in that case. The involvement of the Government in AMU's establishment, clear intent and specific provisions indicate the national and non-minority character of the institution;

5) The National Commission for Minority Educational Institutions Act, 2004 ["NCMEI Act"] and its Amendment in 2010 provide that an institution needs to be established and administered by minorities to be a minority educational institution. The said definition is not under challenge; and

6) The consequence of recognising AMU as a minority educational institution is that seats cannot be reserved for the other categories of the Scheduled Castes/Scheduled Tribes/Socially and Educationally Backward Classes.

Other opinions against the Minority Character

7) For a community to be considered a "minority", it must fulfil three criteria:

   a) It must be numerically lesser than the majority;

   b) It cannot be the ruling group even if it is numerically smaller; and

   c) The group itself should identify as a minority.

8) Muslims were not recognised as a minority during British rule, as

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54. *St. Stephen's College* v. *University of Delhi* on 6 December, 1991.

Hindus and Muslims were considered equals. Syed Ahmed Khan, the founder of Mohammedan Anglo-Oriental College, claimed in a letter that the Muslim community never considered itself as a minority and instead as rulers prior to the British government;

9) Judgments of this Court have held that Article 30(1) applies to institutions that were established before the commencement of the Constitution. However, these decisions dealt with colleges and schools and not a university. Article 30(1) does not apply to a university that was established before the commencement of the Constitution because a university before the enactment of the University Grants Commission, 1956 could only have been established by the Government and not a person; and

10) *Azeez Basha* was a standalone and statute-specific judgment. Overruling it would disrupt the Union's control over AMU, constituting "public mischief". The precedent set by the case should only be overturned if there is a substantial risk to public interest, which is not the case here.

11) The correctness or validity of *Azeez Basha* was not within the purview of the reference order, which solely aimed to clarify the meaning of "established and administered" under Article 30;

12) The Parliament cannot deny a fact by creating legal fiction in a subsequent legislation. The 1981 amendment only attempted to change who "established" the University but made no change in the provision related to the administration of the University. It attempted to rewrite history by altering the recognition of the University's establishment;

13) AMU's inclusion as an institution of national importance under Entry 63 of the Union list gives the Union government sole authority over it.

14) Altering AMU's status would require a constitutional amendment rather than a legislative amendment; and

15) Over the past decades, there has been no demand for minority status for AMU, as evidenced by legislative actions in 1951 and 1965. The demand for minority rights now would conflict with existing reservation rights for Scheduled Castes, Scheduled Tribes, and Socially and Economically Backward Classes.

16) The "new sovereign," presumably referring to contemporary legislative and executive authorities, holds the discretion to determine the approach towards minority rights. This implies that decisions regarding minority rights are subject to the interpretation and judgment of current governing bodies;

17) H.V. Kamath in the Constituent Assembly advocated for parliamentary legislation on universities to demonstrate their impartial and non-communal nature. Similarly, Naziruddin Ahmed, a member of the Muslim League in the Constituent Assembly, asserted that universities were rightly under the Union's jurisdiction; and

18) A fact established by legislation cannot override a fact recognised by the Court.[55]

19) Granting minority status to AMU would undermine Parliament's authority and interfere with powers vested under Entry 63.

20) AMU was created 'by the Statute' (Act 21 of 1920) and not 'under the Statute'.

21) The Rajya Sabha debates related to the amendments of 1981 reveal a misconception that this Court in *Azeez Basha* neglected AMU's history before 1920. The amendment failed to alter the foundational aspect of *Azeez Basha*, which is centred on the Muslim community's concessions to the terms of the British Government.

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55. Reliance was placed on *Indira Sawhney* (II) v. *Union of India & Ors.*, AIR 2000 SC 498.

Main Issues

1) Whether an educational institution must be both established and administered by a linguistic or religious minority to secure the guarantee under Article 30;

2) What are the criteria to be satisfied for the 'establishment' of a minority institution? Whether Article 30(1) envisages an institution which is established by a minority with participation from members of other communities;

3) Whether a minority educational institution which is registered as a society under the Societies Registration Act, 1860 soon after its establishment loses its status as a minority educational institution by virtue of such registration; and

Conclusion of the Supreme Court

1) Article 30(1) can be classified as both an anti-discrimination provision and a special rights provision. A legislation or an executive action which discriminates against religious or linguistic minorities in establishing or administering educational institutions is *ultra vires* Article 30(1). This is the anti-discrimination reading of the provision. Additionally, a linguistic or religious minority which has established an educational institution receives the guarantee of greater autonomy in administration. This is the 'special rights' reading of the provision;

2) Religious or linguistic minorities must prove that they established the educational institution for the community to be a minority educational institution for the purposes of Article 30(1);

3) The right guaranteed by Article 30(1) is applicable to universities established before the commencement of the Constitution;

4) The right under Article 30(1) is guaranteed to minorities as defined upon the commencement of the Constitution. A different right-bearing group cannot be identified for institutions

established before the adoption of the Constitution;

5) The incorporation of the University would not *ipso facto* lead to surrendering of the minority character of the institution. The circumstances surrounding the conversion of a teaching college to a teaching university must be viewed to identify if the minority character of the institution was surrendered upon the conversion. The Court may on a holistic reading of the statutory provisions relating to the administrative set-up of the educational institution deduce if the minority character or the purpose of establishment was relinquished upon incorporation; and

The following are the factors which must be used to determine if a minority 'established' an educational institution:

a. The indicia of ideation, purpose and implementation must be satisfied. First, the idea for establishing an educational institution must have stemmed from a person or group belonging to the minority community;

b. Second, the educational institution must be established predominantly for the benefit of the minority community; and third, steps for the implementation of the idea must have been taken by the member(s) of the minority community; and

c. The administrative-set up of the educational institution must elucidate and affirm (I) the minority character of the educational institution; and (II) that it was established to protect and promote the interests of the minority community.

1. The view taken in *Azeez Basha* that an educational institution is not established by a minority if it derives its legal character through a statute, is overruled. The questions referred are answered in the above terms. The question of whether AMU is a minority educational institution must be decided based on the principles laid down in this judgment. The papers of this batch of cases shall be placed before the regular bench for deciding whether AMU is a minority educational institution and for the

adjudication of the appeal from the decision of the Allahabad High Court in *Malay Shukla* (*Aligarh Muslim University* v. *Malay Shukla,* 2006 SCC OnLine All 2207) after receiving instructions from the Chief Justice of India on the administrative side.[56]

56. The reference is disposed of in the above terms. Pending applications, if any, stand disposed of.

MUSLIM WOMEN'S ABSOLUTE RIGHT TO *KHULA*: INSIGHTS INTO JUDGMENT OF KERALA HIGH COURT

Prof. M. Afzal Wani*

I

In the High Court of Kerala at Ernakulam came for consideration, through a review petition, the most significant issue concerning the declaration of the right of Muslim women to resort to the extra-judicial divorce of *khula*, unilaterally. [1] The court exhaustively delved into the crucial question of the existence of the right of Muslim women to resort to the extra-judicial divorce of *khula*, allowing her to terminate her marriage and declared that the right to terminate the marriage at the instance of a Muslim wife is an absolute right, conferred on her by the holy Qur'an and is not subject to the acceptance or the will of her husband. In the review petition filed by the husband, he did not dispute the authority given to the Muslim wife to invoke *khula*, but rather raised, as a ground of review, the procedure acknowledged by this Court to invoke the remedy of *khula* by the Muslim wife. The Court declared that the *khula* would be valid if the following conditions were satisfied:

a) A declaration of repudiation or termination of marriage by the wife.

b) An offer to return dower or any other material gain received by her during marital tie.

c) An effective attempt for reconciliation was preceded before the declaration of *khula*.

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1 2022 SCC Online Ker 5512: AIR 2023 Ker 33; (Before A. Muhamed Mustaque and C.S. Dias, JJ.) XXXXX … Review Petitioner/s v. XXXXX … Respondent/s. R.P. No. 936 of 2021†Decided on October 28, 2022.

Opposite to woman's absolute right to *khula* herself by herself[2], it was contended before the court that if a Muslim wife wishes to terminate her marriage with her husband, she has to demand *talaq* from her husband and on his refusal, she has to move the *qazi* or Court. She has no absolute right to pronounce *khula* like the right of her counterpart to pronounce *talaq*. The submissions made before the court included:

1. as a consequence of the declaration of such right, a large section of Muslim women is resorting to *khula* in derogation of the Sunnah.

2. The Court is not competent to decide on religious beliefs and practices and the Court ought to have followed the opinion of Islamic Scholars.

3. Almost all across the globe, it is recognised that on demand of the wife to terminate the marriage, the husband has to pronounce *talaq*, obliging her demand.

4. In countries where *qazi*s are recognised, on refusal of the husband, the *qazi*s would terminate the marriage.

5. Nowhere in the world, a Muslim wife is allowed to unilaterally terminate the marriage.

6. In the absence of *qazi*s, the competent civil court in India have to terminate the marriage.

In favour of the women's right reference was made to the holy Qur'an, Surah Al-Bakarah, 2, verse 229, in which the right of Muslim wife has been explicitly referred to, which reads thus:

> The divorce is twice, after that, either you retain her on reasonable terms or release her with kindness. And it is not lawful

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2 The term '*khula herself* by the wife' is used in contrast to the general term 'declaration of *talaq* to her by the husband'. Husband has a right to *talaq her*. Can she not *khula herself*?

> for you (men) to take back (from your wives) any of your *Mahr* (bridal money given by the husband to his wife at the time of marriage) which you have given them, except when both parties fear that they would be unable to keep the limits ordained by Allah (e.g., to deal with each other on a fair basis). Then if you fear that they would not be able to keep the limits ordained by Allah, then there is no sin on either of them if she gives back (the *Mahr* or a part of it) for her *Al-Khul'* (divorce). These are the limits ordained by Allah, so do not transgress them. And whoever transgresses the limits ordained by Allah, then such are the *Zalimun* (wrong-doers, etc.).

The Court explained in this context that the limit of moral authority postulated in the above verse alongside the legal right providing a remedy for a Muslim woman, may require delineation to decide on the question involved. The moral injunction that one has to be contended with is perhaps reiterated with a warning of the life hereafter, by pointing out that they shall not transgress the limits set by the Almighty. The intersection of the moral injunction and the legal right shows the accountability to the Almighty in the life hereafter as per the faith, but it cannot be a determination of the validity of the legal right in a court of law in a secular country. The moral injunction so stipulated in the above verse has to be read in the context of the Prophet's warning to the believers that divorce is "the most hated of the permissible things to Allah".[3]

Explaining the matter further, the Court exhorted:

> The legal conundrum in this case, is not an isolated one. It has evolved over the years as the scholars of Islamic Studies, who have no training in legal sciences started to elucidate on the point of law in Islam, on a mixture of belief and practice. Islam has a code of law, apart from laying down rules relating to beliefs and practices. Legal norms are the cornerstones of creating a social and cultural order within the Muslim community. The dilemma

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3 (See Sunan Ibn Majah, Book on Hadith, 2018 Vol. 3, Ch.1, Book 10 (English Translation).

that persisted, in this case, is, perhaps, more related to the practice that has been followed for years, overlooking the mandate of the legal norm conferring on Muslim women the right to terminate the marriage without the conjunction of the husband. The Court in such circumstances is expected to look at the legal norm, if the same relies upon Qur'anic legislations and the sayings and practices of the Prophet (Sunnah). The underlying distinction between Fiqh and Shariah needs to be stressed here. Fiqh has been loosely translated to English as Islamic law and literally means 'the understanding of what is intended'. Shariah means 'a straight path'. Fiqh refers to the science of deducing Islamic laws from the evidence found in the sources of Islamic law. (See the distinction of Fiqh and Shariah in the book, 'The Evolution of Fiqh' by Dr. Abu Ameenah Bilal Philips).[4]

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4. In setting its observation in context the Court asserted: "Ordinary scholars and the Islamic clergy, who have no formal legal training find it difficult to deduce Islamic law from its sources. Fiqh denotes the true intentions and objects of Islamic law. It requires a legal mind to deduce Islamic law from the sources. The dilemma faced by the Islamic clergy in understanding triple *talaq* was based on the practice followed in society for centuries, on the footing that a single pronouncement of triple *talaq* would constitute a valid *talaq*. This was related to the decree of the Caliph Umar, who was one of the successors to the Caliphate, after the demise of the Prophet Mohammed^{saw}. Noting the misuse of the authority given to the husband, who invariably invoked *talaq* and revoked *talaq* thereafter, causing miseries and hardships to the women; on a complaint made by the women and acting on their behalf, the Caliph decreed that such pronouncement of *talaq* would be a valid divorce. This decree, though, does not look in tune with the Qur'anic legislation that refers to cyclic pronouncement of *talaq* at different intervals, was devised to meet a particular situation in the society at that point in time. Caliph Umar resolved to exercise his executive power to meet a particular exigency, to redress the grievances of women. This power of the ruler is akin to the power exercised by the executive in the modern State. That executive power was so exercised, to tide over a particular situation. This practice, allowed at a particular time, was relied upon by the Islamic clergy to justify instantaneous triple *talaq*, overlooking Qur'anic injunctions. The Islamic clergy failed to distinguish between the legislative authority of the Qur'an and the executive power of the Islamic ruler to meet particular contingencies. We have narrated the above aspect only to bring home the point that the Islamic clergy who have no legal training or

The Court also supported its view by the well-known ruling of the Prophet Muhammad[saw]:

> One Thabit had two wives. One of them was Jamilah. Jamilah did not like the looks of Thabit. She approached the Holy Prophet. She said, "Messenger of Allah! Nothing can keep the two of us together. I do not dislike him for any blemish in his faith or his morals. It is his appearance that I dislike. I want to separate from him". The Prophet replied, "Will you give him back the garden he gave you"? She replied, "I am prepared to give him the garden he gave and even prepared to give more". The Prophet said, "You only need to give him the garden". Then the Prophet summoned Thabit and told him to accept the garden and divorce Jamilah.[5]

Further contentions considered by the Court are:

1. The Muslim Personal Law is the rule of decision in questions relating to marriage, dissolution of marriage, maintenance, etc., of the Muslim community.

2. The verses of the Qur'an cannot be the subject matter of interpretation of secular courts.

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knowledge in legal sciences, cannot be relied upon by the Court to decide on a point of law involved, relating to the personal law applicable to the Muslim community. The Courts are manned by trained legal minds. The Court shall not surrender to the opinions of the Islamic clergy, who have no legal training on the point of law. No doubt, in matters related to beliefs and practices, their opinion matters to the Court and the Court should have deference for their views". *Ibid.*

5 (See for more reading on this, 'The Rights and Duties of Spouses', 7th edition, by Maulana Sayyid Abul A'la Maududi, page 49). Relying on this, the counsel for the petitioner and Adv. Hussain C.S. argued that the Prophet has prescribed a procedure for divorce in the above manner at the instance of a Muslim woman and therefore, it is not open for the Court to prescribe the procedure in a different manner. According to them, on the demand of the wife, the husband has to pronounce *talaq*. We are called upon to decide as to the true procedure to be followed for divorce at the instance of the wife (*khula*).

3. The Shariah is based on four sources, namely, the Qur'an, Sunnah, *Qiyas* (analogy) and *Ijma* (consensus); when the Qur'an is silent on any aspect, attention must be turned to the Sunnah of the Prophet, thereby using it to supplement the verses of the Qur'an.

4. The Qur'an grants women the right to obtain *khula* (Surah Al-Baqarah, 2: verse 229), it does not prescribe a procedure for the same. In such an instance, the learned counsel submitted that the correct procedure for *khula* can be evidenced from the Hadith of Thabit. Relying upon the verses of the Qur'an and the Hadith, he contended that the following mandate flows in respect of *khula*:

5. Although *khula* is an extra-judicial form of divorce, when the husband refuses to give consent, it takes the form of faskh (a judicial divorce); judge having no discretion in the matter, but to give effect to the *khula*, if the wife insists.[6]

Many more jurisprudential questions were raised before the Court for not considering the right of women to *khula* as absolute. The Court, however, could not agree with these contentions. Thus, the Court concluded, "*in the absence of any mechanism in the country to recognise the termination of marriage at the instance of the wife when the husband refuses to give consent, the court can simply hold that khula can be invoked without the conjunction of the husband*".[7]

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6 The learned counsel for the petitioners cited numerous judgments to fortify his submissions on the nature of *khula*. We are not referring to any of the judgments for the reason that none of the judgments have decided upon the question involved in this review. All the decisions of foreign courts and domestic courts refer to the practice and form of *khula* exercised. In the judgment cited of the Apex Court in *Juveria Abdul Majid Patni* v. *Atif Iqbal Mansoori* [(2014) 10 SCC 736], the Court had adverted to the form of *khula* followed, to decide upon a question arising under the Protection of Women from Domestic Violence Act, 2005.

7 Emphasis added.

II

The Court has added opinions on this subject from various sources with the caption: "Understanding the True Meaning of *Khula*": The same have been reproduced here with their para nos. for academic purposes, scholarly discussions and verification of the veracity of sources.

15. In order to understand the true meaning of *khula* and the procedure to be followed, we need to trace back the evolution of the right of women to obtain a divorce, from the pre-Islamic period onwards. This period was referred to, in the Holy Qur'an, as the period of ignorance. Many of the laws that were in existence in the pre-Islamic period were modified, adapted or abrogated during the Islamic period. Marriage in pre-Islamic Arabia was a recognised institution for creating a family which was the primary unit of society. Without marriage, there would be no family and no ties to unite different members of a community. Marriage in pre-Islamic society was one way to increase the strength of the tribe, by begetting more children who would be the next generation of the tribe. (Quoted from 'Changing the position of women in Arabia under Islam during the early 70th Century', Research Thesis submitted by Farya Abbas Abdullah Sulaimani, University of Salford, 1986). The author refers to the existence of payment of dower by the bridegroom to the bride in pre-Islamic Arabia. The author also refers to the existence of the right to divorce in pre-Islamic Arabia, for both men and women. The man had the right to divorce whenever he liked without restrictions and conditions. The right of the wife to dismiss the marriage also has been referred to by the author. The author says that women used to dismiss their marriage at their will. He narrates the procedure as follows: "If they lived in a tent, they would turn round, so that if the door had faced east, it now faces west, and when the man saw this, he knew that he was dismissed and he did not enter." A similar kind of divorce has also been referred to in the book titled 'Women and Gender in Islam', written by Leila Ahmed [pg. 44].

Divorce and remarriage appear to have been common for both men and women, either of whom could initiate the dissolution. Kitab al-

Aghani reports: "The women in the Jahilia, or some of them, divorced men, and their [manner of] divorce was that if they lived in a tent they turned it round, so that if the door had faced east it now faced west … and when the man saw this he knew that she had divorced him and did not go to her". Divorce was not generally followed by the *'idda'*, or 'waiting period' for women before remarriage-an observance Islam was to insist on-and although a wife used to go into retirement for a period following her husband's death, the custom, if such it was, seems to have been laxly observed.

16. Abdur Rahim in his book, 'The Principles of Islamic Jurisprudence' [pg. no. 10], refers to another form of termination of the marriage at the instance of wife.

The wife among the Arabs had no corresponding right to release herself from the bond of marriage. But her parents by a friendly arrangement with the husband could obtain a separation by returning the dower if it had been paid or by agreeing to forgo it if not paid. Such an arrangement was called *khula* lit. stripping, and by it the marriage tie would be absolutely dissolved.

17. Thus, it is clear that the woman exercised the authority to divorce unilaterally even during the pre-Islamic period.

18. In the post-Islamic period, Islam emphasised on conciliation as the preferred mode of resolution of all disputes between the believers. The believers, at the first instance, will have to resort to conciliation, before resorting to the authority given to them to terminate any sort of legal relationship. In *Surah Al-Hujurat*, 49, verses 9 and 10 read thus:

> Verse 9. "*And if two parties or groups among the believers fall to fighting, then make peace between them both, but if one of them rebels against the other, then fight you (all) against the one that which rebels till it complies with the Command of Allah; then if it complies, then make reconciliation between them justly, and be equitable. Verily! Allah loves those who are equitable*".

> Verse 10. "*The believers are nothing else than brothers (in Islamic religion). So make reconciliation between your brothers, and fear Allah, that you may receive mercy".*

19. *In Surah An-Nisaa*, 4, verses 35 and 128, the Qur'an particularly refers to marital disputes and commands the believers to follow proper conciliation to resolve disputes.

> Verse 35. *"If you fear a breach between them twain (the man and his wife), appoint (two) arbitrators, one from his family and the other from her's; if they both wish for peace, Allah will cause their reconciliation. Indeed Allah is Ever All-Knower, Well-Acquainted with all things".*
>
> Verse 128. *"And if a woman fears cruelty or desertion on her husband's part, there is no sin on them both if they make terms of peace between themselves; and making peace is better. And human inner-selves are swayed by greed. But if you do good and keep away from evil, verily, Allah is Ever Well-Acquainted with what you do".*
>
> The authority given to the women in Surah Al-Baqarah, 2, verse 229, must be read in the above background.

20. Now, we will come back to the procedure illustrated in the reported Hadith of Jamila demanding divorce from Thabit. The Prophet had different roles during his lifetime. He was the messenger of God, he was a mediator and conciliator. He was also an arbitrator/adjudicator. In 'From Prophetic Actions To Constitutional Theory : A Novel Chapter In Medieval Muslim Jurisprudence' [Int. J. *Middle East Stud.*, 25 (1993), pp. 71-90.] the author, Sherman A. Jackson has discussed the various roles of the Prophet.

According to Al-Qarafi, the Prophet functioned in four distinct capacities : (1) Messenger, (2) Mufti, (3) Judge, and (4) Imam or Head of State. His actions thus constituted either (1) verbatim communications from God, (2) *fatwas*, (3) judicial rulings (*ahkam*; sing. *hukm*), or (4) discretionary injunctions (*tasarrufat*; sing. *tasarruf*) enjoined by the head of state.

21. M. H. Kamali, in his book, 'The Principles of Islamic Jurisprudence' [pg. 54], discusses the different capacities in which the Prophet acted.

The legal Sunnah (Sunnah *tashri'iyya*) consists of the exemplary conduct of the Prophet, be it an act, saying, or a tacit approval, which incorporates the rules and principles of Shariah. This variety of Sunnah may be divided into three types, namely, the Sunnah, which the Prophet laid down in his capacities as Messenger of God, as the Head of State or Imam, or in his capacity as a Judge.

22. These roles cannot be overlooked while adverting to the true meaning of the procedure followed by the Prophet for terminating the marriage between Jamila and Thabit, at the instance of Jamila. The direction given by the Prophet to Jamila to return the garden, is on an equitable consideration. In a unilateral divorce invoked by her, she has to return what she had received from her husband. This part constitutes the substantial law as far as *khula* is concerned. *Talaq* is considered as a unilateral termination by the husband. The Qur'an therefore, casts an obligation upon the husband to provide fair provisions for the wife's future, subject to his means. (See the verses 236 & 241 of Surah Al-Baqarah, 2 of the Qur'an).

> Verse 236. *"There is no sin on you, if you divorce women while yet you have not touched (had sexual relation with) them, nor appointed unto them their Mahr (bridal money given by the husband to his wife at the time of marriage). But bestow on them (a suitable gift), the rich according to his means, and the poor according to his means, a gift of reasonable amount is a duty on the doers of good".*
>
> Verse 241. *"And divorced women shall be provided for, equitably–a duty upon the righteous".*

23. The verses 236 and 241 would establish that the husband is legally bound to ensure fair provisions for the protection of the wife who would be separated, on pronouncement of *talaq* by the husband.

24. It is particularly required to advert to, here, that the right to invoke *talaq* or its validity is not dependent on the acceptance or acknowledgment of the provisions for her future.

25. The Prophet was approached by Jamila as she had no knowledge of the procedure of divorce, at her instance. The Prophet responded to her request, asking her to return what she had obtained from Thabit. She agreed and thereafter, Thabit was asked to pronounce *talaq*. In another instance of *khula*, referred to in the book 'the Rights and Duties of Spouses', 7th edition, by Maulana Sayyid Abul A'la Maududi, relating to the second wife of Thabit, Habeeba; she was also granted divorce in a similar manner. In another case, during the period of the Caliph Umar, a woman pleaded for *khula*. Umar counseled her to patch up the differences. She was adamant. Then Umar ordered that she be kept alone in a cell for three days, after which, she was produced before him. She did not budge from her demand. On production, she said that those were the three nights of peace she had in years. Umar summoned her husband and delivered the judgment and granted her separation. The same author, Maududi, refers to another instance of separation of Rubay'ah, daughter of Muawwiz. She sought for separation from her husband, in return for all her property. The husband did not accept the deal. The case was brought before Caliph Osman who accepted the woman's plea and ordered the separation. In all these cases, there was a third party intervention, of the Prophet or Caliph (ruler of Arabia). In these cases, on the intervention of the Caliph, the husband pronounced *talaq*, accepting the return of the property given to the wife. This procedure is being cited as the procedure to be followed for extra judicial divorce by *khula* at the instance of the wife.

26. We have to differ on the point of procedure cited by the counsel for the review petitioners and the others. We cannot ignore the situations in these illustrated cases. The obligation of the wife to return the property she obtained from the husband forms part of the substantial law. The mandate of conciliation and the involvement of third-party, as referred to in the various instances noted above by us, cannot be overlooked. It was more of a conciliatory situation where the Prophet or the ruler, as the case may be, decided the termination

of marriage at the instance of the wife, as it also involved the return of property to the husband. In those circumstances, the intervenor could demand that the husband pronounce *talaq* and terminate the marriage. The pronouncement of *talaq* by the husband partakes the acknowledgment of the materials he is entitled to receive in return, bringing an end to the marital tie. No doubt, this procedure is most desirable for believers to follow for termination of marriages at the instance of the wife. However, the point is whether this procedure is itself the law for effecting *khula*. To understand this, one needs to distinguish between Hadith and Sunnah. Hadith refers to the narration of the conduct of the Prophet in a situation. Whereas, Sunnah refers to the law deduced from it. See 'The Principles of Islamic Jurisprudence' by M.H. Kamali [pg. No 49].

Hadith differs from Sunnah in the sense that Hadith is a narration of the conduct of the Prophet whereas Sunnah is the example or the law that is deduced from it. Hadith in this sense is the vehicle or the carrier of Sunnah, although Sunnah is a wider concept and used to be so especially before its literal meaning gave way to its juristic usage. Sunnah thus preferred not only to the Hadith of the Prophet but also to the established practice of the community. But once the literal meanings of Hadith and Sunnah gave way to their technical usages and were both exclusively used in reference to the conduct of the Prophet, the two became synonymous. This was largely a result of al-Shafi'i's efforts, who insisted that the Sunnah must always be derived from a genuine Hadith and that there was no Sunnah outside the Hadith. In the pre-Shafi'i period, 'Hadith' was also applied to the statements of the Companions and their Successors, the *Tabi'un*. It thus appears that 'Hadith' began to be used exclusively for the acts and sayings of the Prophet only after the distinction between the Sunnah and Hadith was set aside.

27. Further, the distinction between legal and non-legal Sunnah is equally relevant. Shah Abdul Hannan in the book 'Usul Al Fiqh' writes:

A very important classification is legal and non-legal Sunnah. Legal Sunnah (Sunnah *tashriyyah*) consists of the Prophetic activities and

instructions of the Prophet as the Head of the State and as Judge. Non-legal Sunnah (Sunnah *Ghayr tashriyyah*) mainly consist of the natural activities of the Prophet (Al-afal-al-jibilliyyah), such as the manner in which he ate, slept, dressed and such other activities which do not form a part of Shariah. This is called *adat* (habit) of the Prophet in the Nurul Anwar, a text-book of Usul. Certain activities, may fall in between the two. Only competent scholars can distinguish the two in such areas. Sunnah, which partake of technical knowledge such as medicine, agriculture is not part of Shariah according to most scholars. As for the acts and sayings of the Prophet that related to particular circumstances such as the strategy of war, including such devices that misled the enemy forces, timing of attack, siege or withdrawal, these too are considered to be situational and not a part of the Shariah. (Khallaf : .'ILM - Usul al Fiqh', Mahmud Shalutat : Al Islam, Aqidah wa Shariah).

28. The procedure delineated and relied upon only refers to the settlement of a demand and the husband obliging thereon, by accepting return of the materials by pronouncing *talaq*, at the intervention of a third-party. That procedure adopted in a particular situation cannot itself be made a general law relating to *khula* while analysing the right of the wife to obtain divorce. The general law has to be understood from the purport of the authority given and not with reference to the situation or circumstances under which it was exercised. In Islamic law, it is desirable that all kinds of disputes are resolved amicably between believers, either themselves or with the assistance of the Ruler. If the matter is resolved by the Ruler or with the intervention of a third-party, that procedure itself cannot be cited as the procedure for the determination and validity of the right conferred under the Qur'anic legislation. The right itself has to be understood from the scheme of the law. We are not invalidating the procedure of arriving at a settlement between spouses on demand of the wife, as above. We reiterate that that procedure is most desirable for parties. We also clarify our judgment to that extent. However, we cannot hold that the procedure followed situationally, be treated as a law when parties are not able to arrive at such a settlement. If the procedure itself is understood as the law, that would derogate from the right conferred on a Muslim wife, under Qur'anic legislation, to

terminate the marriage at her will. The Qur'anic verses are in unqualified terms recognising that right. Deduction of law from a particular conduct of the Prophet is not easy as the Prophet acted in different and varied capacities either in isolation, or in combination of those different capacities. This has resulted in different understandings of the Sunnah among Islamic scholars. This difference has extended to beliefs and practices as well. The existence of different schools of thought among the Muslim community would vouch for this. We, in our judgment under review, also adverted to the different ways of effecting *khula* across the globe.

29. Many Islamic scholars, while distinguishing the features of legal and non-legal Sunnah, have adverted to the following aspects ['The Principles of Islamic Jurisprudence' by M.H. Kamali, pg. no 57]:

"To distinguish the legal from non-legal Sunnah, it is necessary for the mujtahid to ascertain the original purpose and context in which a particular ruling of the Sunnah has been issued and whether it was designed to establish a general rule of law. The Hadith literature does not always provide clear information as to the different capacities in which the Prophet might have acted in particular situations, although the mujtahid may find indications that assist him to some extent. The absence of adequate information and criteria on which to determine the circumstantial and non-legal Sunnah from that which constitutes general law dates back to the time of the Companions. The difficulty has persisted ever since, and it is due mainly to the shortage of adequate information that disagreement has arisen among the ulema over the understanding and interpretation of the Sunnah". [45. Ghazali, Mustasfa, II, 51; Badran, Bayan, pp. 41-42; Mutawalli, Mabadi', p. 38.]

THE FALLACY OF THE ARGUMENT THAT WOMEN HAVE NO RIGHT TO TERMINATE MARRIAGE ON HER OWN:

30. According to the learned Adv. Hussain, C.S., if the husband refuses to pronounce *talaq* on the request of the wife, a *qadi* has the power to pronounce *talaq*, and in the absence of a *qadi*, the modern courts can exercise the power of *qadi*. A *qadi* can act as a conciliator,

mediator and also as guardian. A *qadi*, in Islamic law, has the following powers and functions [See Engy Abdelkader, 'To Judge or Not to Judge: A Comparative Analysis of Islamic Jurisprudential Approaches to Female Judges in the Muslim World (Indonesia, Egypt and Iran)', *Fordham International Law Journal*, Volume 37, Issue 2 (2014)].

"Notably, the pre-modern Muslim judge functioned in a manner wholly distinct from his modern Western counterpart.

As an initial matter, mediation figured prominently in resolving disputes arising in pre-industrial Islamic societies. These disputes encompassed quasi-legal matters as well as those arising between siblings or spouses.

In addition to resolving disputes, the judge's typical activities included supervising charitable trusts; acting as a guardian over orphans; attending to public works; and leading Friday prayers and funeral prayers (an exclusively male province), among other responsibilities. Notably, the courts also functioned as judicial registries.

Notably, the Qur'an and Hadith literature do not provide explicit provisions setting forth necessary qualifications or credentials concerning service in the judiciary–although Islamic scholars will later draw upon both of these textual sources to support opinions on the subject."

31. A *qadi* cannot be equated with a court in the modern State.

Apparently, the reference to the *qadi* in this context is to exercise his authority as a guardian rather than an adjudicator. It is acknowledged by Islamic law that the Muslim wife has the right to demand termination of marriage. The argument that if the husband refuses, she has to move the court to look into the matter. For what purpose she has to move the court, begs the question. The court is neither called upon to adjudicate nor called upon to declare the status, but simply has to pronounce termination of marriage on behalf of the wife. The court in our country is not a guardian of an adult and able

woman. If there is nothing for a court to adjudicate, the court cannot assume the role of a guardian and pronounce termination of marriage at the instance of a woman. Conferring authority upon the court is an exercise in futility, in as much as the court cannot entertain the request as there is no dispute to be resolved between the parties. The relief of declaration of status based on divorce can be given only when divorce is effected through an extra-judicial method. If the court treats such a request for termination in the like manner of *faskh*, there would be no obligation on the part of the wife to return the materials she obtained from her husband. It is to be remembered that in judicial divorce in the nature of *faskh*, the courts are deciding the cause on the premise of fault. If the arguments of the review petitioner is accepted that the court will have to pronounce termination of marriage, then the claim for *khula* would turn on fault. The very nature of *khula* has always been recognised as a mode of divorce on a no-fault basis. This is exactly the reason, in the judgment under review, we interpreted that the residuary ground as referred under Section 2(ix) of the Dissolution of Muslim Marriages Act, 1939 cannot be equated with *khula*. Dissolution of Muslim Marriages Act only contemplates dissolution of marriage at the instance of Muslim woman on fault grounds. If the Qur'an, in unequivocal terms, permits spouses to terminate their marriage on their own will, it cannot be said that the Sunnah further qualifies it, subjecting it to the will of the husband, in the case of *khula*.

32. Sunnah cannot override or abrogate the primary legislation. [See 'The Principles of Islamic Jurisprudence' by M.H. Kamali, pg. no. 60]

As Sunnah is the second source of the Shari'ah next to the Qur'an, the mujtahid is bound to observe an order of priority between the Qur'an and Sunnah. Hence in his search for a solution to a particular problem, the jurist must resort to the Sunnah only when he fails to find any guidance in the Qur'an. Should there be a clear text in the Qur'an, it must be followed and be given priority over any ruling of the Sunnah, which may happen to be in conflict with the Qur'an. The priority of the Qur'an over the Sunnah is partly a result of the fact that the Qur'an consists wholly of manifest revelation (*wahy zahir*) whereas the Sunnah mainly consists of internal revelation (*wahy*

batin) and is largely transmitted in the words of the narrators themselves. The other reason for this order of priority relates to the question of authenticity. The authenticity of the Qur'an is not open to doubt, it is, in other words, *qati*, or decisive, in respect of authenticity and must, therefore, take priority over the Sunnah, or at least that part of Sunnah which is speculative (*zanni*) in respect of authenticity. The third point in favour of establishing an order of priority between the Qur'an and the Sunnah is that the latter is explanatory to the former. Explanation or commentary should naturally occupy a secondary place in relationship to the source, 55. CE. Shatibi, Mawagfagar, IV, 3, Badran, Usad, p. 1011. Furthermore, the order of priority between the Qur'an and Sunnah is clearly established in the Hadith of Mu'adh b. Jabal which has already been quoted. The purport of this Hadith was also adopted and communicated in writing by 'Umar b. al-Khattab to two judges, Shurayh b. Harith and Abu Musa al-Ash'ari, who were ordered to resort to the Qur'an first and to the Sunnah only when they could find no guidance in the Qur'an. [156. Shatibi, IV, 4; Siba'i, Sunnah, p. 377; Badran, Usal, p. 82. Shatibi adds that two other prominent Companions, 'Abd Allah b. Mas'ud, and 'Abd Allah b. 'Abbas are on record as having confirmed the priority of the Qur'an over the Sunnah.].

There should in principle be no conflict between the Qur'an and the authentic Sunnah. If, however, at conflict is seen to exist between them, they must be reconciled as far as possible and both should be retained. If this is not possible, the Sunnah in question is likely to be of doubtful authenticity and must, therefore, give way to the Qur'an. No genuine conflict is known to exist between the Mutawatir Hadith and the Qur'an. All instances of conflict between the Sunnah and the Qur'an, in fact, originate in the solitary, or Ahad, Hadith, which is in any case of doubtful authenticity and subordinate to the overriding authority of the Qur'an. [158. Cr. Badran, Usaf, p. 102.].

33. Sunnah is the second source of legislation. The first and primary source is the Qur'an itself. The Sunnah cannot be interpreted in such a way as to either abrogate or reduce the scope of the command of the Lawgiver in the primary legislation. To understand the scope of

discussion in this, it is necessary to understand the nature and varieties of law given in the primary legislation.

34. The nature of law given in the Qur'an is classified as defining law and declaratory law. There are varieties of sub-classes of law under these headings. M.H. Kamali in his book, 'The Principles of Islamic Jurisprudence' [pg. nos. 279-280], refers to defining law as follows:

Hukm shar'i is divided into the two main varieties of *al-hukm al-taklifi* (defining law) and *al-hukm al-wad'i* (declaratory law). The former consists of a demand or an option, whereas the latter consists of an enactment only. 'Defining Law' is a fitting description of *al- hukm al-taklifi*, as it mainly defines the extent of man's liberty of action. *Al-hukm al-wad'i* is rendered 'declaratory law', as this type of *hukm* mainly declares the legal relationship between the cause (*sabab*) and its effect (*musabbab*) or between the condition (*shart*) and its object (*mashrut*)[5. Cf. Abdur Rahim, Jurisprudence, p. 193, for the use of English terminology.].

Defining law may thus be described as a locution or communication from the Lawgiver which demands the *mukallaf* to do something or forbids him from doing something, or gives him an option between the two. This type of *hukm* occurs in the well-known five categories of *wajib* (obligatory), *manduh* (recommended), *haram* (forbidden), *makruh* (abominable) and *mubah* (permissible). Declaratory law is also subdivided into the five categories of *sabab* (cause), *shart* (condition), *mani'* (hindrance), '*azimah* (strict law) as opposed to *rukhsah* (concessionary law), and *sahih* (valid) as opposed to *batil* (null and void).[6. Khallaf, 'Ilm, p. 101; Qasim, Usul, p. 213.].

35. As stated above, defining law, is a locution or communication from the Lawgiver addressed to *Mukallaf* (accountable/responsible person) which consists of a demand or an option; it occurs in the five varieties of *wajib* (obligatory), *manduh* (recommended), *haram* (forbidden), *makruh* (abominable) and *mubah* (permissible). The learned author defines declaratory law as a communication from the Lawgiver, which enacts something into a cause, a condition, or a

hindrance to something else. The nature of classification as above, indicates that the right to exercise *talaq* or *khula* would form part of defining law and the sub-category of *mubah* (permissible). M.H. Kamali, in another book, '*Shariah Law Questions and Answers'* [pg. nos. 66-67] has further discussed these categories:

Human actions are categorised according to a scale of Five Values, namely, those that are obligatory (*wajib*), recommended (*manduh*, also *mustahab*), permissible (*mubah*, also *ja'iz*), reprehensible (*makruh*) and forbidden (*haram*). The first and last of these, namely the *wajib* and the *haram*, are legal categories in that they are binding and may also be justiciable. These two categories mainly originate in the decisive rulings of Qur'an and Hadith and are fairly limited in scope, whereas the remaining three categories occupy a much wider space, as they are also largely developed through juristic interpretation and *ijtihad*. The *ijtihadi* conclusions and rules concerning the evaluative labeling of human conduct into these categories are, on the whole, instructive and often rationally undisputable yet not binding - unless they are also upheld and endorsed by general consensus (*ijma*'), in which case they become a part of the actionable ruling (*hukm*) of the Shariah and acquire a binding force. These five values, known as *al-ahkam al-khamsah*, constitute the main bulk of the practical or positive law, the *ahkam amaliiyyah*, and the main subject matter of fiqh. The Scale of Five Values consists mainly of identifiers of the value attached to practical conduct of competent persons. The *wajib* and *haram* pertaining especially to human relations and *muamalat* are also enforceable in the courts of Shariah, but those which pertain to the purely religious and devotional aspects of Islam, such as performing the prayer or haj, normally do not give rise to legal action. The other three categories are not enforceable and basically fall outside the ambit of law enforcement. They are matters mainly of personal choice and may consist of advice, encouragement or discouragement, etc., that should be followed, in the case of recommendable/*manduh*, and should be avoided, in the case of reprehensible/*makruh*, whereas the permissible/*mubah* is totally neutral and may or may not be acted upon. The advice contained in these three categories may have cultural import and consequences and may also affect aspects of personal piety, customary and social

relations, but it is not actionable in the way the *wajib* and the *haram* are.

36. In 'Imam Al-Shatibi's Theory of the Higher Objectives and Intents of Islamic Law', the author, Ahamd Al-Raysun [pg. nos. 148-149] has extensively discussed the sub-category of *mubah* (permissible):

The first thing which al-Shatibi concludes in his discussions of the category of *mubah* is that "that which is permissible, insofar as it is permissible, is something which one is neither required to do nor required to refrain from". 181. He then proceeds to express the same thought in the language of objectives, saying, "…As far as the Lawgiver's intention is concerned, it makes no difference whether one performs such an action or refrains from it".

What we are speaking of here is the essential meaning of the category of *mubah*, or 'permissible'. Scholars have described actions which fall into this category as neutral in the sense that there is an equal preference, if you will, for performing them or refraining from them, and that one is free to choose between these two options. This, then, is the meaning of the term 'permissible' when considered is isolation from all attendant circumstances and influences. Viewed from this perspective, the Lawgiver intends neither that we perform such an action nor that we refrain from it, and as such, neither choice is required of us, for if we are required either to perform it or to refrain from it, then it will fall into one of the other four categories of actions and can no longer be classified as 'permissible'.

37. The nature of *khula* is in the form of a 'permissible' action, to the Muslim wife who seeks to exercise the option of terminating her marriage. This reflects the autonomy of choice exercised by the wife. The will of the wife so expressed cannot be related to the will of the husband who has not expressed his choice to terminate the marriage. The very idea of categorisation under the law, of an action as permissible, is to retain that action within the domain of the person who exercises the option, by relating it with his or her autonomy. Extending such actions to the will of another would certainly keep

the action out of the category of 'permissible'. The law being categorised so, it cannot be whittled down or constricted by the will of her husband upon whom no authority is conferred to enforce such permission. It is relevant to note that, there is no qualifying obligation on the husband in the form of the five categories of defining law, either in the Qur'an or the Sunnah, to accept or repudiate the will expressed by the wife to make the permissible activity contingent or dependant upon any qualifying factors.

JURISTIC SOLUTION TO THE DILEMMA OF THIS NATURE IN ISLAM

38. The review petitioner would admit that neither the Qur'an nor Sunnah has provided any guidance in the event the husband refuses to pronounce *talaq*. As already noted, the invocation of *khula* in the cases referred by the different authorities all refers to the intervention of a third party, like the ruler. Islam itself has provided the guidance to overcome situations like this where a legal vacuum is created.

39. Muslim women in India are confronted with the situation where no solution would be available to them to effectuate this right, conferred on her as per Qur'anic legislation, if the arguments of review petitioner are accepted. We note that these arguments have been raised on the footing that the traditions and practices that have been followed have become part of faith. In the light of the above argument, we are also looking at a different dimension of the question from the perspective of those who conform to the faith.

40. *Istihsan* is an Arabic term for juristic discretion. In 'Principles of Islamic Jurisprudence', M.S. Khamali [pg. nos. 218-220] refers to *Istihsan* as follows:

"The jurist who resorts to *istihsan* may find the law to be either too general, or too specific and inflexible. In both cases, *istihsan* may offer a means of avoiding hardship and generating a solution which is harmonious with the higher objectives of the Shari'ah". It has been suggested that the ruling of the second Caliph, 'Umar b. al-Khattab, not to enforce the hard penalty of the amputation of the hand for

theft during a widespread famine, and the ban which he imposed on the sale of slave-mothers (*ummahat al-awlad*), and marriage with *kitabiyahs* in certain cases were all instances of *istihsan*. [5. *Umm al-walad* is a female slave who has borne a child to her master, and who is consequently free at his death. A *kitabiyah* is a woman who is a follower of a revealed religion, namely, Christianity and Judaism.] For 'Umar set aside the established law in these cases on grounds of public interest, equity and justice. [6. Cf. Ahmad Hasan, Early Development, p. 145.].

"The Hanbali definition of *istihsan* also seeks to relate *istihsan* closely to the Qur'an and the Sunnah. Thus according to Ibn Taymiyyah, *istihsan* is the abandonment of one legal norm (*hukm*) for another which is considered better on the basis of the Qur'an, Sunnah, or consensus".

"But the Malikis view *istihsan* as a broad doctrine, somewhat similar to *istislah*, which is less stringently confined to the Qur'an and Sunnah than the Hanafis and Hanbalis have. Thus according to Ibn al-'Arabi, '*istihsan* is to abandon exceptionally what is required by the law because applying the existing law would lead to a departure from some of its own objectives".

41. In '*Istihsan* The Doctrine of Juristic Preference in Islamic Law' by Saim Kayadibi, the author says that during the early Islamic period, the term *istihsan* was neither known nor directly defined and, therefore, when it was applied in judgment it was applied without giving any specific definition or application. Support of *istihsan* considered the fundamental principle of ease and avoidance of hardship as the sole basis of *istihsan*. The rights and obligations conferred upon believers, in Islam, cannot be denied for want of a system as envisaged in Shariah.

42. In "Shari'ah Law: An Introduction", by M.H. Kamali [pg. nos. 274- 275], the author discusses the various instances when the principle of *istihsan* was put into practice by the caliphs to remedy the injustice caused by the strict application of Shariah.

Some instances of obvious imbalance in the distribution of inheritance can also be addressed, I believe, by recourse to the principle of *istihsan* (juristic preference), especially in cases where strict enforcement of the existing law leads to unfair results in the distribution of family wealth. In such situations, *istihsan* authorises the judge and the jurist to find an alternative and a preferable solution to the case before them which would realise considerations of equity and fairness. Notwithstanding the existence of valid precedent on this as reviewed below, Muslim jurists and judges have not made an effective use of the resources of *istihsan*. Without wishing to enter into details, I may refer here briefly to the renowned case of *al-mushtarakah* (the apportioned) which was decided by the Caliph 'Umar b. al-Khattab. In this case, a woman was survived by her husband, mother, two germane and two uterine brothers. The Qur'anic rules of inheritance were strictly applied but the result was such that the two maternal brothers received one-third of the estate and the two full brothers were totally excluded. This is because the former are Qur'anic sharers (*dhawu'l-furud*) whereas the latter belong to the category of residuaries ('*asabah*). The former must take their shares first and what is left is then distributed among the residuaries. The full brothers complained to the Caliph and forcefully pleaded with him about the justice of their case. According to reports, the full brothers addressed the Caliph in the following terms: suppose our father was a donkey (which is why the case is also known as *alhimariyyah*), we still shared the same mother with our maternal brothers. The Caliph was hesitant to act in the face of the clear Qur'anic mandate, yet he decided on equitable grounds, after a month of consultation with the leading Companions, that all the brothers should share equally in the one-third.

Unfair results of a similar type can occasionally arise, sometimes due to technical reasons, which could be addressed by recourse to *istihsan*, and the judges should not hesitate to do so when *istihsan* can be invoked to serve the ideals of equitable distribution. To give an example, suppose that a deceased person is survived by a son and a daughter. During the lifetime of his father the son had bad relations with him and did not bother to seek his forgiveness even during the months of his last illness, while the daughter took the responsibility

and spent much of her hard-earned income on her father's medical bills before he died. When this happened, however, the son was quick to claim double the share of his sister in inheritance. This would be the kind of case, in my view, where *istihsan* can be invoked to remedy the unfair outcome that is anticipated from a strict conformity to the normal rules of inheritance. This is the basic rationale of the doctrine of *istihsan*, to remedy unfair results which may arise from a strict application of the existing rules of Shari'ah. Yet to the best of my knowledge, Muslim countries have not introduced enabling legislation that would authorise the judges to apply *istihsan* to remedy such situations. *Istihsan* admittedly does not seek to introduce new law. It is rather designed so as to address case by case situations where strict implementation of the existing law may lead to unfair results. *Istihsan* in this way offers some potential to vindicate the cause of equity and fairness when this might present a compelling case for reconsideration and review. For this to become reality, we need lawmakers, judges and jurists of great professional fortitude to make laws and adjudicate cases that break away with the prevailing mindset of *taqlid*.

43. In this light, it is also important to give due consideration to the *maqasid* (goals and purposes) of Shariah. M.H. Kamali, in his book, "Shariah Law Questions and Answers" [pg. nos. 204-205] refers to *maqasid* and its importance in understanding the Shariah:

A) The *maqasid* (plural of *maqsad* - goals and purposes) of Shariah, or the higher purposes of Islamic law (henceforth *maqasid*) refer to the meaning, purpose and wisdom that the Lawgiver has contemplated in the enactment of Shariah laws. *Maqasid* thus refer to the higher purposes of the law, which are meant to be secured through the implementation of that law, and they give the law a sense of direction and purpose. It also means that the rules of Shariah, especially in the spheres of human relations and *muamalat*, are not meant for their own sake but to secure and realise certain objectives. When the dry letter of the law is applied in such a way that it does not secure its intended purpose and fails, for instance, to secure the justice and benefit it is meant to secure, or when it leads, on the contrary, to harm and prejudice, the law is most likely reduced to a purposeless exercise,

which must be avoided. The laws of Shariah are generally meant to secure justice and the interests and prosperity of the people both in this world and the hereafter. But the detailed rules, commands and prohibitions of Shariah also have their specific purposes, which are often identified in the text of the law, or by recourse to interpretation and *ijtihad*.

44. The *maqasid* of Shariah can be arrived at by the process of *ta'lil* (ratiocination). The significance of the process of *ta'lil* in matters not pertaining to worship has been elaborated by the author, M.H. Kamali in the book, "Shariah Law: An Introduction" [pg. no. 55]:

3. *Ta'lil* is not valid with regard to *'ibadat*, but outside this area the Shari'ah encourages investigation and enquiry into its rules. Ratiocination in the Qur'an means that the laws of Shari'ah are not imposed for their own sake, nor for want of mere conformity, but they aim at realisation of certain benefits/objectives. This also tells us that when there is a change of a kind whereby a particular law no longer secures its underlying purpose and rationale, it must be substituted with a suitable alternative. To do otherwise would mean neglecting the objective of the Lawgiver. According to al-Shatibi, the rules of Shari'ah concerning civil transactions and customary matters (*mu'amalat wa 'adat*) follow the benefits (*maaalih*) which they contemplate. We note, for instance, that the Shari'ah may forbid something because it is devoid of benefit, but it permits the same when it secures a benefit. A deferred sale, for example, of dirham for dinar : forbidden because of the fear of usury (*riba*) therein, but a period loan is permitted because it secures a benefit (deferment is harmful in one and beneficial in the other). Similarly fresh dates may not, in principle, be sold for dry dates for fear of uncertainty (*gharar*) and usury (*riba*) but the Prophet permitted this transaction, known as *'araya*, because of the people's need for it.

Moreover, instances of abrogation in the rulings of Qur'an and Sunnah which took place during the lifetime of the Prophet can properly be understood in these terms. Instances are also found in the precedent of Companions where some of the laws of Shari'ah were suspended because they no longer secured the benefit which

they had initially contemplated. Since the '*illah* and rationale on which they were premised were no longer present they were suspended or replaced with suitable alternatives. We note, for example, that the Caliph 'Umar b. al-Khattab suspended the had punishment of theft during the year of the famine. The Caliph also stopped distribution of agricultural land to Muslim warriors in Iraq despite a Qur'anic ruling that entitled them to war booty; he also suspended the share of the pagan friends of Islam (the '*allafat al-quluh*) in the revenues of *zakah*. These were persons of influence whose co-operation was important for the victory of Islam. The Qur'an had assigned a share for them (9: 60), which the Caliph later discontinued on the ground, as he stated, that 'Allah has exalted Islam and it is no longer in need of their support'. The Caliph thus departed, on purely rational grounds, from the letter of the Qur'an in favour of its general purpose and 'his ruling is considered to be in harmony with the spirit of the Qur'an'.

45. In the absence of any other method in the manner suggested by the counsel for the review petitioner and others, to effectuate the right conferred on Muslim women being prevalent in this country, the Court's authority in conferring upon Muslim women the right to invoke *khula* at her own will, will have to be respected. The Qur'an lays emphasis on the power of the authority and directs the faithful to follow the authority in Surah An-Nisaa, 4: 59 of the Qur'an by commanding believers as follows:

> Verse 59. *"O you who believe! Obey Allah and obey the Messenger (Muhammad), and those of you (Muslims) who are in authority. (And) if you differ in anything amongst yourselves, refer it to Allah and His Messenger, if ye do believe in Allah and in the Last Day. That is better and more suitable for final determination".*

46. Al Haj A.D. Ajijola in the book 'What is Shariah?' [pg. no. 161] has discussed the power vested in the authority to enact laws:

Strictly in theory in Islam, the authority to enact laws primarily belongs to God, and He alone has the supreme legislative power in the Islamic system. The Caliph, or the Executive Head of the Muslim

Commonwealth has no sovereign power nor any royal prerogative, he is theoretically simply the principal magistrate to carry out the injunction of the Qur'an and the ordinances of the Prophet. He has no legislative functions as God alone is the Legislator in Islam. Thus, according to Muslim concept of law and the popular belief, there is technically no legislative power in the State. But in reality these refer only to the basic law expressed or implied in the Qur'an or accepted Hadith. In any case, this actually means that any law made by Muslim community must not be repugnant or be in conflict with the provision of the Qur'an and the accepted Prophet's tradition. Otherwise, a Muslim State like non-Muslim states has unlimited power to make law for the protection and the good of the community.

47. *Istihsan* is a doctrine for the Court to adopt and apply, if there are no other methods to streamline the rights conferred on believers to act upon. So, assuming that the argument of the review petitioner holds good, in the absence of any mechanism in the country to recognise the termination of marriage at the instance of the wife when the husband refuses to give consent, the Court can simply hold that *khula* can be invoked without the conjunction of the husband.

48. We, therefore, find no reason to review the judgment. We record our deepest appreciation to Advocate Hussain C.S. who is not a practitioner before this Court, having argued the case with meticulous preparation, despite the fact that we cannot accept his views and opinions.

III

The matter was then brought to the Supreme Court of India.[8]

Supreme Court Issues Notice In SLP Against Kerala High Court's Judgment Upholding Muslim Women's Right To Seek Extra-

[8] [X v. X, 2022 SCC OnLine Ker 5512, decided on 28-10-2022]... https://www.scconline.com/blog/post/2022/11/04/kerala-high-court-upholds-that-musim-women-can-terminate-marriage-even-without-the-will-of-the-husband-by-invoking-*khula*-legal-research-legal-news-updates/

Judicial Divorce '*Khula*' By Sukriti Mishra|1 Apr., 2024 7:30 PM The Supreme Court today issued notice in a Special Leave Petition moved by Kerala Muslim Jamaat against Kerala High Court's Judgments of 2021 and 2022, which upheld the rights of Muslim women to invoke unilateral extra-judicial modes of dissolving marriage, i.e., "*Khula*". The Kerala High Court had held so in its judgment of 2021, and a review petition against the said judgment was dismissed by another detailed judgment in the year 2022. The Bench of Justice A.S. Bopana and Justice Sanjay Kumar said, "Delay condoned. Issue notice to the Respondent". Senior Advocate Devadatt Kamat appeared for the Petitioner. Justice Bopana said, "It's a 2021 Order of the High Court". The Senior Counsel responded, "Yes, we are not on the individual merits of the case". Also Read - Prosecution Failed to Indicate His Involvement: SC Acquits Man Accused of Killing Woman Using Coconut Scrapper In 1989. "By now she might be remarried also", Justice Kumar remarked. The Senior Counsel replied, "No, we are really concerned of this law; that is completely contrary to your Lordships' own Judgment of 2014. In fact, the Madras High Court also has taken a contrary view". Taking note of the submissions, the Bench issued notice to the Respondent. Pertinently, a Division Bench of Kerala High Court on April 9, 2021, overruled a 49-year-old Judgment titled *KC Moyin* vs *Nafeesa and Ors.* delivered on 6 September, 1972 that effectively barred Muslim women from resorting to extra-judicial modes of dissolving marriage and instead upheld the validity of these modes. "All other forms of extra-judicial divorce as referred in Section 2 of the Shariat Act are thus available to a Muslim woman. We, therefore, hold that the law declared in KC Moyin's case (supra) is not good law," the High Court had ordered. Also Read - Second Complaint On Almost Identical Facts As First Complaint Not Maintainable; If Core Of Both Complaints Is Same, Second Complaint Ought Not To Be... "These cases have been brought to this level in light of Mat. A. No. 89 of 2020, wherein a young woman, hereinafter referred to as 'Y' (name withheld to protect her privacy) was granted a decree of divorce by the Family Court, Thalassery. 'Y' had instituted the petition under the Act, on the grounds that her husband–'X', was impotent and treated her with cruelty.

Challenging, the decree 'X' has preferred the appeal", the High Court had noted. It also noted, "As seen from the Shariat Act extra-judicial divorce was in vogue and recognised as legally valid in British India. Section 2 of the Shariat Act statutorily recognised the personal law and dissolution of marriages without intervention of the Court through *talaq*, *illa, zihar, lian, khula*, and *mubara'at* etc.; There are four major forms of dissolution of marriages as recognised under Islamic Law and protected under the Shariat Act at the instance of the wife; they are: *Talaq-e-tafwiz, Khula*, *Mubara'at* and *Faskh*". Also Read - Resolution Plan Approved By Committee of Creditors Prevails Over SEZ Act & Statutory Dues Claims: SC Dismisses NOIDA Special Economic Zone Authority's... The Court had observed that the Dissolution of Muslim Marriages Act (1939) is a declaratory regulation that does not amend all rules of Muslim law. The Court had relied on the Allahabad High Court's ruling in *Sofia Begum* vs. *Syed Zaheer Hasan Rizvi* (January 22, 1946) that the 1939 Act's objective is to enlarge the rights of Muslim women, and the courts must give effect to that. It had also relied on *Jamila Khatun* vs. *Kasim Ali* (1951) Bombay High Court's Judgment whereby it was held that the 1939 Act crystallised only a portion of the Muslim law and could not be applied to the provisions of the whole law. The High Court had held that a Muslim woman's right to *Khula* is "absolute" and "does not depend upon the consent or assent of the husband". Cause Title: *X* v. *Y* and *Kerala Muslim Jamaat* v. *Y* [Diary No. 11727-2023 & Diary No. 16709 - 2023].[9]

[9] https://www.verdictum.in/court-updates/supreme-court/supreme-court-issues-notice-in-slp-against-kerala-high-courts-judgment-upholding-muslim-womens-right-to-seek-extra-judicial-divorce-*khula*-1528535?infinitescroll=1

OBJECTION TO THE WAQF (AMENDMENT) BILL, 2024

[*Further to amend the Waqf Act,* 1995]

I. Name Change Clause

1. In Section 1 of the Waqf Act, 1995 (hereinafter referred to as the Principal Act), in Sub-section (1), for the word "Waqf", the words "Unified Waqf Management, Empowerment, Efficiency and Development" shall be substituted.

Objection

It is not required. It dilutes the holistic main purpose of the legislation to some concoctions leaving scope for anti-waqf activities under the cover of actions, actually not covered by the basic purpose of the Islamic Institution of Waqf. Use of the terms of Management, Empowerment, Efficiency and Development is manipulative and not necessary. Provisions of the Bill should reflect the purpose of the amendment as to *protect and develop* any Waqf for the benefit of any beneficiaries, essentially without a circuitous mechanism to take over waqf properties in the name of "Unified Waqf Management, Empowerment, Efficiency and Development".

II. Filing of the details of the waqf

The Bill requires filing of the details of each waqf as–

> 3B. (1) *Every waqf registered under this Act, prior to the commencement of the Waqf (Amendment) Act, 2024,* shall file the details of the waqf and the property dedicated to the waqf on the portal and database, *within a period of six months from such commencement.*[1]

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[1] (2) The details of the waqf under Sub-section (1), amongst other information, shall include the following, namely:
(a) the identification and boundaries of waqf properties, their use and occupier;

Objection

This cannot be done *within six months***.** As regards the nature of details required and the system and practice of functioning of government and non-governmental organisations, the task cannot take less than five years in a country so vast and wide. Is there any such example of six months of the data creation and storage in India so far? If not the proposed six months for submission of details to take away Waqf properties and not to protect them for beneficiaries. The expenditure and manpower required for the purpose will be very huge and unaffordable, if required to be done in such a short period.

III. Any Government property identified or declared as waqf property

3C. (1) Any Government property identified or declared as waqf property, before or after the commencement of this Act, shall not be deemed to be a waqf property.

(2) If any question arises as to whether any such property is a Government property, the same shall be referred to the Collector having jurisdiction who shall make such inquiry as he deems fit, and

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(b) the name and address of the creator of the waqf, mode and date of such creation;
(c) the deed of waqf, if available;
(d) the present mutawalli and its management;
(e) the gross annual income from such waqf properties;
(f) the amount of land revenue, cesses, rates and taxes annually payable in respect of the waqf properties;
(g) an estimate of the expenses annually incurred in the realisation of the income of the waqf properties;
(h) the amount set apart under the waqf for–
  (i) the salary of the mutawalli and allowances to the individuals;
  (ii) purely religious purposes;
  (iii) charitable purposes; and
  (iv) any other purposes;
  (i) details of court cases, if any, involving such waqf property;
  (j) any other particular as may be prescribed by the Central Government.

determine whether such property is a Government property or not and submit his report to the State Government:

Provided that such property shall not be treated as waqf property till the Collector submits his report.

(3) In case the Collector determines the property to be a Government property, he shall make necessary corrections in revenue records and submit a report in this regard to the State Government.

(4) The State Government shall, on receipt of the report of the Collector, direct the Board to make appropriate correction in the records".

Objection

Giving power to Collector is totally in violation of the Principles of Separation of Powers and Rule of Law.

The circumstances prevailing in various circles clearly indicate that the motivated groups of people with certain orientations are sure to bring in question various waqf properties and influence the Collector, and other offices involved in the process, and deprive Muslims from their genuine waqf properties. The administrative environment is not in favour of beneficiaries of Waqf, mainly for the reason that the various governments are in possession of a large number of waqf properties without rent and with wrongful intention to not return them to the waqf beneficiaries. Certain politically motivated persons are also indirectly benefiting from the government-occupied waqf-property. They also carry hostility towards waqfs and work to manage more taking over of waqf properties by governments through manipulation. That is why, the properties which are waqf properties till date should be allowed to remain waqf properties. Manipulation to take away waqf properties should not be allowed in any case.

The position of "Survey Commissioner" should be retained as in the existing Act.

IV. Constitution of the Council

In Section 9 of the principal Act, for Sub-section (2), the following Sub-section shall be substituted, namely:

"(2) The Council shall consist of–

(a) the Union Minister In-charge of waqf – Chairperson, ex officio;

(b) three Members of Parliament of whom two shall be from the House of the People and one from the Council of States;

(c) the following members to be appointed by the Central Government from amongst Muslims, namely:

(i) three persons to represent Muslim organisations having all India character and national importance;

(ii) Chairpersons of three Boards by rotation;

(iii) one person to represent the mutawallis of the waqf having a gross annual income of five lakh rupees and above;

(iv) three persons who are eminent scholars in Muslim law;

(d) two persons who have been Judges of the Supreme Court or a High Court;

(e) one Advocate of national eminence;

(f) four persons of national eminence, one each from the fields of administration or management, financial management, engineering less or architecture and medicine;

(g) Additional Secretary or Joint Secretary to the Government of India dealing with waqf matters in the Union Ministry or Department – member, ex-officio:

Provided that two of the members appointed under clause (c) shall be women:

Provided further that *two members* appointed under this Sub-section shall be *non-Muslim*.

Objection

Waqf is a religious welfare institution which is to be managed by the persons belonging to the Muslim Community of India. This is constitutionally accepted in India under various articles in the Chapter on Fundamental Rights. It is also in conformity with International Bill of Rights and UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities,1992.

It is in accordance with the spirit of Freedom of Religion for all to allow their donations for welfare to be managed in accordance with own religious norms by themselves. An attempt to dilute this right is squarely motivated and obnoxious. It also reflects taking over other's religion and insult to dedication in favour of Allah and his followers to manage it.

V. Constitution of the Board for a State and the National Capital Territory of Delhi

In Section 14 of the Principal Act –

(a) for Sub-sections (1), (1A), (2), (3) and (4), the following Sub-sections shall be substituted, namely:

"(1) The Board for a State and the National Capital Territory of Delhi shall consist of, not more than eleven members, to be nominated by the State Government –

(a) a Chairperson;

(b) (i) one Member of Parliament from the State or, as the case may be, the National Capital Territory of Delhi;

(ii) one Member of the State Legislature;

(c) the following members belonging to Muslim Community, namely:

(i) one mutawalli of the waqf having an annual income of one lakh rupees and above;

(ii) one eminent scholar of Islamic theology;

(iii) two or more elected members from the Municipalities or Panchayats:

Provided that in case there is no Muslim member available from any of the categories in Sub-clauses (i) to (iii), additional members from category in Sub-clause (iii) may be nominated;

(d) two persons who have professional experience in business management, social work, finance or revenue, agriculture and development activities;

(e) one officer of the State Government, not below the rank of Joint Secretary to that State Government;

(f) one member of the Bar Council of the concerned State or Union territory:

Provided that two members of the Board appointed under clause (c) shall be women:

Provided further that two of total members of the Board appointed under this Sub-section shall be non-Muslim:

Provided also that the Board shall have at least one member each from Shia, Sunni and other backward classes among Muslim Communities:

Provided also that one member each from Bohra and Aghakhani communities shall be nominated in the Board in case they have functional auqaf in the State or Union territory:

Provided also that the elected members of the Board holding office on the commencement of the Waqf (Amendment) Act, 2024 shall continue to hold office as such until the expiry of their term of office.

Objection

Waqf is a religious welfare institution which is to be managed by the persons belonging to the Muslim Community of India. This is constitutionally accepted in India under various articles in the Chapter on Fundamental Rights. It is also in conformity with International Bill of Rights and UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities,1992.

It is in accordance with the spirit of Freedom of Religion for all to allow their donations for welfare to be managed in accordance with own religious norms by themselves. An attempt to dilute this right is squarely motivated and obnoxious. It also reflects taking over other's religion and insult to dedication in favour of Allah and his followers to manage it.

VI. Encroachments

The provisions are being diluted.

Objection

The provision introduced by the Amendment Act of 2013 should be fully retained to protect the waqf and waqf-properties from all kinds of encroachments by the government, government agencies and private persons or individuals.

VII. Miscellaneous

Definition of "waqf" as waqf by any person practicing Islam for at least five years and having ownership of such property.

Objection

To deny right to any person who is a Muslim to dedicate his property and wait for five years to constitute a waqf is too harsh and without good reason. It is sure to prevent people from following and acting upon their faith for five years. This a glaring example of freedom of conscience.

Omitting the provisions relating to the "waqf by user".

Objection

Waqf is an old institution which existed even when regulatory systems in the whole country were not as advanced as now. Customs and usages were regulating the transactions and actions. This is still a practice even in many business circles. It is quite unacceptable to omit the "waqf by user".

EQUAL JUSTICE: STRENGTHENING PUNISHMENTS FOR RAPE IN INDIA

Mohammad Afzaal Rashid*

In India, where the ideals of justice and equality are protected in the Constitution, an ugly reality persists as an epidemic of violence against women that seems to escalate year after year. The National Crime Records Bureau (NCRB) report reveals a shocking 4% surge in crimes against women in 2022, painting a disturbing picture of the country's safety landscape. From cruelty by husbands and relatives to abductions, assaults, and rapes, the number of reported crimes rose from 3,71,503 in 2020 to a staggering 4,45,256 in 2022.[1]

This isn't just a set of cold statistics; it represents the lived experiences of countless women whose voices continue to echo in major cities and states alike. In Delhi alone, there were 14,158 cases of crimes against women in 2022, followed by 6,176 in Mumbai, and 3,924 in Bengaluru, each city struggling with its own rates of charge-sheeting offenders. Uttar Pradesh topped the chart with 65,743 cases of crimes against women, closely trailed by Maharashtra and Rajasthan, where over 45,000 cases were reported in each state.[2] These staggering numbers indicate an urgent need for stronger legal measures to tackle the rising wave of injustice and violence that women face daily.

The troubling reality is that despite such alarming figures, the legal response remains inadequate. While the Criminal Law (Amendment) Act of 2013 mandates capital punishment in specific cases involving the rape of minors or gang rape[3], the selective application of this

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1 *NEWSclick Report, "Crime against Women in India Up by 4%: NCRB Report 2023", News Click (December 5, 2023).*

2 Megha Sood and Payal Gwalani, "Crimes against Women Rise in Mumbai, Second Only to Delhi, Reveal NCRB Stats", Hindustan Times (December 5, 2023).

3 Yamini, "Criminal Law (Amendment) Act, 2013: Sexual Offences," LawOctopus (April 8, 2015).

penalty has left a significant gap in delivering justice. Why should the severity of the punishment be restricted to only certain categories when the crime itself, rape, is inherently heinous, regardless of the victim's age or the number of perpetrators?

The inconsistency in applying capital punishment undermines its potential as a deterrent. If the laws were restructured to impose capital punishment as the standard consequence for all cases of rape and rape with murder following due process it could act as a powerful deterrent, ensuring that the gravity of the crime is met with an equally grave consequence. The current system, where the most severe penalty is reserved only for select cases, fails to account for the widespread nature of this crime and the devastating impact it has on victims and society at large.

Current Legal Framework on Rape Cases

India's current legal system has defined strict penalties for rape, with the severity of the punishment depending on the circumstances of the crime.

Punishment for Rape

Chapter XVI of IPC Section 376 Clause: 3, prescribes imprisonment ranging from ten years to life, accompanied by a fine. For cases involving survivors below sixteen years, the punishment increases to twenty years of imprisonment to life. If the survivor is below twelve years, the death penalty is an option. The fine imposed should be fair and adequate to cover the medical expenses and rehabilitation of the survivor and must be paid directly to them.

Punishment for Gang Rape

Chapter XVI of IPC Section 376 D, prescribes for Gang rape, where multiple perpetrators assault a victim collectively, carries severe consequences. All individuals involved are equally responsible and face imprisonment of twenty years to life. If the survivor is under sixteen, life imprisonment is mandatory. If the survivor is under

twelve, the law allows the death penalty. Like in other cases, the fine is directed towards the survivor's medical care and rehabilitation.

Punishment if a Woman Dies Due to Rape

Chapter XVI of IPC Section 376 A, prescribes when rape results in the victim's death or leaves her in a permanent vegetative state, the punishment ranges from twenty years to life imprisonment or even the death penalty.

Punishment if the Rapist is a Minor

Under the *amended Juvenile Justice Act, 2015,* minors aged 12-18 are prosecuted differently. Their cases are handled by the Juvenile Justice Board, considering their age and circumstances. If not released on bail, they are placed in observation homes rather than jails, reflecting a rehabilitative rather than punitive approach.[4]

Gaps and Limitation in Current Legal Framework

While the legal provisions appear strong on paper, they expose several critical gaps and inconsistencies:

Age-Based Considerations

The lenient treatment of minors who commit heinous crimes like rape raises concerns. Crimes like rape and murder require a mature understanding of right and wrong. If a minor is mentally capable of committing such a crime, they should be held accountable with the same severity as adults. The current system often leads to lighter sentences for juveniles, which can undermine justice.

Inconsistent Sentencing

The varied sentencing for different categories of rape (20 years, life imprisonment, or the death penalty) lacks consistency. In cases of

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[4] Raman Devgan, "IPC Section 376 of Indian Penal Code".

such brutal crimes, the punishment should be standardised to reflect the gravity of the offense. The current system leaves room for disparity, which may result in perceived leniency and the failure to deliver justice effectively.

These limitations highlight the urgent need for reform. A standardised, stricter legal approach, irrespective of the age of the perpetrator, can serve as a stronger deterrent and ensure justice is delivered uniformly in all cases of rape and sexual violence.

The Case for Expanding Capital Punishment

The current legal framework in India limits capital punishment to specific cases of rape, such as when the survivor is a minor or in cases of gang rape. However, this selective application fails to address the broader range of heinous crimes committed through rape. The argument for expanding capital punishment to include all cases of rape, regardless of the victim's age or the number of perpetrators, is grounded in both justice and deterrence.

Consistency in Justice: Rape is a grave crime that inflicts severe physical, emotional, and psychological trauma on the victim. The severity of the punishment should correspond to the gravity of the crime. By restricting capital punishment to specific cases, the legal system inadvertently creates a hierarchy of suffering, where the severity of punishment does not always match the severity of the crime. This inconsistency undermines the principle of justice, where all victims of rape deserve equal protection under the law.

Deterrence and Public Sentiment: Capital punishment has a significant deterrent effect, as it unequivocally demonstrates the seriousness with which society views such crimes. The public sentiment, as evidenced by recent polls, shows strong support for strict measures against heinous crimes. An India TV poll revealed that 95% of 10,287 voters support stricter laws for crimes like rape[5],

[5] Nivedita Dash (ed.), "India TV Opinion Poll: Should India Also Have Strict Laws for Heinous Crimes Like Rape?", *India TV, updated August 21, 2024*.

reflecting a national consensus on the need for harsher punishments. Expanding the scope of capital punishment could align legal practices with public expectations, reinforcing the deterrent effect and enhancing societal confidence in the justice system.

Legal and Human Rights Considerations: The argument for expanding capital punishment must be balanced with human rights considerations. It is essential to ensure that capital punishment is only applied after all legal procedures are meticulously followed. This includes thorough investigations, fair trials, and opportunities for appeal. By safeguarding these procedural rights, the application of capital punishment can be made more just and equitable, minimising the risk of wrongful convictions and maintaining respect for human rights.

International Perspectives and Precedents: Many countries have adopted strict measures for handling severe crimes, reflecting a global trend towards more strong legal responses. For instance, the United States and several countries in the Middle East enforce capital punishment for various severe offenses, including rape. These international examples highlight the effectiveness of strict penalties in deterring violent crimes and ensuring justice.

Making Capital Punishment the Default Option

In light of the alarming increase in rape and rape with murder cases, it is crucial to advocate for capital punishment as the default response, rather than limiting it to specific categories such as gang rape or cases involving minors. This approach reflects the severity of the crime and aligns with several crucial principles of justice, deterrence, and fairness. Rape is a profoundly severe crime, causing extensive trauma to victims. By imposing capital punishment as the default response, the legal system acknowledges the grave harm inflicted upon survivors and ensures that the punishment is proportionate to the crime. This measure not only reflects the seriousness of the offense but also offers a sense of justice and closure to victims and their families.

Capital punishment also serves as a significant deterrent against future crimes. The fear of facing such a severe consequence can discourage individuals from committing rape. While the deterrent effect of punishment can be influenced by various factors, evidence from criminologists like Edwin Sutherland and Michael Tonry suggests that the certainty of severe punishment can enhance deterrence.[6] Expanding the use of capital punishment to include all rape cases would reinforce the message that these crimes are met with the highest level of severity.

The current selective approach to capital punishment introduces inconsistencies in the legal system, where certain cases are treated with greater severity based on specific criteria. This selective application can create perceptions of injustice, as it implies varying degrees of seriousness based on the nature of the crime. By applying capital punishment universally to all cases of rape and rape with murder, the legal system would ensure that all perpetrators face equal retribution, reinforcing the principle of equal justice.

Incorporating the social contract theory into this argument further strengthens the case for capital punishment. According to this theory, citizens agree to surrender certain rights to the State in exchange for protection and justice. This contract implies a duty on the part of the State to administer justice that corresponds to the severity of the crime. When a person commits a heinous crime like rape, the punishment must match the gravity of the offense to uphold the principles of justice and ensure that the social contract is honoured.

Institutional views and expert opinions support the expansion of capital punishment. The National Commission for Women (NCW) and various human rights organisations advocate for harsher penalties to address the high rates of sexual violence in India.[7] Additionally, international precedents demonstrate the effectiveness

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[6] Daniel S. Nagin, "Deterrence in the Twenty-First Century", in *Crime and Justice,* 42 (2013), DOI: https://doi.org/10.1086/670398.

[7] *Annual Report 2018-2019, National Commission for Women, Jasola Institutional Area, New Delhi.*

of capital punishment in achieving justice and deterring severe crimes.

Critics raise concerns about wrongful convictions and ethical issues surrounding capital punishment. To address these concerns, it is essential to implement strong safeguards in the judicial process, including thorough investigations, fair trials, and the right to appeal. By ensuring that all legal procedures are rigorously followed, the risk of wrongful convictions can be minimised, making capital punishment both just and humane.

Public Opinion: The Demand for Stricter Laws

The overwhelming public sentiment in India strongly supports harsher punishments for heinous crimes like rape. According to a recent poll conducted by India TV, 95% of 10,287 voters advocated for stricter laws to address such severe offenses.[8] This substantial majority reflects a widespread demand for more stringent legal measures to combat the rising tide of sexual violence. This public opinion is reminiscent of the significant societal push that led to the enactment of the *Criminal Law (Amendment) Act, 2013*, also known as the Nirbhaya Act, introduced a number of amendments in *Sections 375, 376, 166 (A), 166 (B), 326 (A), 326 (B), 354 (A), 354 (C)* and *354 (D)* of Indian Penal Code (IPC)[9] related to Indian rape and sexual crime laws and investigative protocols, the most significant of which was the extension of the definition of rape and the imposition of harsh penalties. Established in the wake of the horrific Nirbhaya rape case, this legislation was a direct response to the public outcry for stronger measures to ensure women's safety and hold perpetrators accountable.[10] The Nirbhaya Act exemplifies how public pressure can lead to significant legal reforms, reinforcing the need for a robust response to sexual violence.

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8 Dash, "India TV Opinion Poll".

9 Madhur Sharma, "Laws Have Changed After Nirbhaya Rape Case, Have These Amendments Deterred Crimes Against Women?", *Outlook*, December 16, 2022.

10 Anshita Surana, "Nirbhaya Act/Criminal Law (Amendment) Act, 2013", *Getlegal India*, November 1, 2021.

The current demand for capital punishment as a default response is aligned with this historical context. It highlights a societal consensus that existing penalties are insufficient in addressing the gravity of rape and rape with murder. The will of the people, as demonstrated by the poll and historical legislative changes, calls for severe consequences that reflect the severity of these crimes. Incorporating this feedback into policy discussions is crucial for ensuring that the legal system aligns with public expectations and values. By addressing the growing demand for tougher penalties, the justice system can better serve its role in protecting victims and deterring future offenses.

Addressing Criticisms: Human Rights and the Debate over Repentance

Critics of capital punishment often raise valid concerns about its potential to infringe on human rights, particularly regarding the risk of wrongful convictions and the irreversible nature of the death penalty. These concerns underscore the need for a stringent legal process to ensure that capital punishment is applied only in cases where guilt is unequivocally established.

To address these concerns, it is essential that capital punishment be implemented only after all legal procedures have been meticulously followed. This includes a fair and thorough trial where the accused is granted the right to a strong defense, and all evidence is rigorously examined. The death penalty should be considered only after all appeals have been exhausted and the perpetrator's guilt is overwhelmingly proven. By adhering to these rigorous safeguards, the legal system can ensure that capital punishment is applied fairly and justly. This approach helps to protect human rights while also upholding the integrity of the justice system. It is crucial to maintain a focus on fairness and thoroughness in the judicial process to prevent wrongful convictions and to ensure that justice is served appropriately. Thus, while the debate on capital punishment continues, ensuring a fair trial and comprehensive legal review remains fundamental to its ethical application.

One more criticism regarding the notion of giving rapists a second chance or offering them an opportunity for repentance. Many human rights activists argue that rehabilitation and the possibility of reform should be prioritised over irreversible punishment like the death penalty. However, this perspective fails to acknowledge the gravity and deliberate nature of rape.

Critics who advocate for leniency or the possibility of repentance overlook the irreversible trauma inflicted on the victims. The argument for offering a second chance to rapists is fundamentally flawed when considering the nature of crime. Rape is not a momentary interval in judgment but a deliberate, calculated act. According to the largest international study on rape carried out by the United Nations in 2013, involving 10,000 men across multiple countries, rape is rarely an impulsive crime. The study reveals that rapists often plan their attacks meticulously, targeting their victims, trailing them, and acting when they find the right opportunity. This premeditation underscores the absence of remorse and suggests that the crime is not about uncontrollable passion but cold, calculated intent. Furthermore, the study highlights that rape is frequently a serial crime. Among the men surveyed, 72% exhibited psychopathic traits or anti-social personality disorders, and 68% had difficult childhoods marked by violence, bad parenting, or repression. These individuals show no signs of guilt, remorse, or repentance.[11] The idea that they could be rehabilitated or deserve a second chance disregards both the severity of their crime and the likelihood of recidivism.

The justice system should not be influenced by the belief of repentance for individuals who inflict such life-altering trauma on their victims. In cases where the crime is as grievous as rape, particularly when it involves repeated offences or significant planning, the priority must be to ensure justice for the victims and maintain the safety of society. Repentance should not be a factor when the crime is inherently unforgivable.

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11 Mihir Srivastava, "Mind of a Rapist", *Newslaundry*, April 20, 2018.

Policy Suggestions

Addressing the universal issue of sexual violence requires a comprehensive strategy that goes beyond implementing capital punishment. While some additional policy measures that can contribute to a more effective approach:

1. **Sex Education:** Integrating comprehensive sex education into school curriculum is essential for prevention. Education about consent, respectful relationships, and the impact of sexual violence can foster a culture of respect and understanding. Teaching children and young adults about boundaries and mutual consent from an early age can help reduce instances of sexual violence and shift societal attitudes towards respect and equality.

2. **Increased Police Presence:** Strengthening security in public institutions such as hospitals, educational institutions, and other vulnerable areas can enhance safety. By increasing police presence and ensuring thorough monitoring, these institutions can better deter potential perpetrators and create a safer environment for women. This increased caution can also ensure that victims receive rapid and supportive responses when they report crimes.

3. **CCTV Surveillance:** Expanding the installation of CCTV cameras in public spaces and high-risk areas can act as both a deterrent and a tool for evidence collection. Effective surveillance helps monitor and document incidents of violence, which is crucial for investigations and prosecutions. Enhanced visibility of security measures can also contribute to a reduction in the likelihood of attacks and provide stronger evidence for legal action.

4. **Support Services for Survivors:** Establishing and funding comprehensive support services for survivors of sexual violence is critical. This includes providing access to counseling, legal assistance, and medical care. Ensuring that

survivors have access to these resources can help them navigate the legal system and recover from trauma, improving their chances of receiving justice and rebuilding their lives.

5. **Strengthening Legal Frameworks:** Updating and strengthening existing laws to address gaps and ensure stringent enforcement can enhance the effectiveness of the justice system. This includes revising definitions of sexual violence, closing loopholes, and ensuring that perpetrators are held accountable for their actions. Regular review and reform of legal frameworks can help keep pace with evolving understandings of sexual violence and improve overall legal responses.

Implementing these measures alongside capital punishment can create a more all-inclusive approach to combating sexual violence. By addressing prevention, protection, and support, we can work towards a safer and more just society for all individuals.

REPORTS ON CONFERENCES/ SEMINARS ETC.

IOS organises Panel Discussion on Union Budget-2024 (August 01, 2024)

A panel discussion on "Union Budget-2024" was organised by the Institute of Objective Studies on August 1, 2024 at its auditorium at New Delhi.

The discussion began with the recitation of a verse from the Holy Qur'an by Mr. Shamshad Ahmed with its Urdu translation.

The first panelist was Prof. Amitabh Kundu, Professor Emeritus, L.J. University, Ahmedabad. It may be recalled that he was the Chairperson of the post-Sachar Evaluation Committee, set up by the Ministry of Minority Affairs, Government of India. In his presentation, Prof. Kundu, held that some points came to his mind to understand whether efforts were made to reduce regional disparities in the budget. If steps had been taken to give some sops to backward states? Since the Planning Commission had been dissolved, states could not forcefully plead their case at other forums. But the current budget allocated more funds to Bihar and Andhra Pradesh. He questioned if the states which had been given special facilities deserved that. He also quoted the leaders of India Alliance terming the budget as *"Kursi Bachao Budget"* (Save the chair budget). He said that it was not correct to state that the two states received large amounts as special assistance. Bihar had been allocated a big amount for the construction of roads, bridges and new buildings for IIT and hospitals. Meaning thereby funds for the development of infrastructure. In fact, Andhra Pradesh deserved the financial assistance for the development of its capital, Amravati. Funds for Andhra Pradesh would be arranged through the multinational companies. He held that the central government would have its say in the funds allocated to Bihar. It would have been better if the state also had its say in the utilisation of the assistance. It was difficult to say whether the special central assistance given to Bihar and Andhra Pradesh would have any impact on other states, he noted.

Referring to the allocation of budget to the Ministry of Minority Affairs, he said that according to the Union finance minister, Ms. Nirmala Sitharaman, this year's budget provided Rs. 500 crore additional to the Ministry compared to last year's budget. It would have to be examined what had been done to benefit the minorities. He referred to the Ex-Prime Minister, Dr. Manmohan's announcement on the floor of the House that Andhra Pradesh would be given special financial assistance. He said that the allocation to the Ministry of Minority Affairs stood at Rs. 3097 crore for the financial year 2023-2024 while it accounted for Rs. 3,183 crore for the current financial year. Regarding Muslim children in the age group 6-14 years attending school, he observed that while Muslims accounted for 88.9 percent, 99 percent children of upper castes were going to school. Thus no big difference between the two attending school was noticeable. As far as the students of the age of 16 years and above going to higher secondary school is concerned, while the percentage of upper caste Hindus stood at 40 percent as against 15 percent of the Muslims. Similarly, in terms of technical education, upper castes stood at 21 percent as against the Muslims at 12 percent. Highlighting main features of the current year's budget, he said that under the internship scheme announced in the budget, 4.1 crore youth would be provided employment, skill-training and other opportunities over a 5-year period with an outlay of Rs. 2 lakh crore. This internship would be made available to them through big companies.

Prof. Kundu expressed doubt about the implementation of the internship scheme, and he had his own reasons for it. According to him, IITians covered under the scheme will not get job. Since there was caste bias in the companies, it cast doubt on the implementation of the scheme. It was difficult to reach out to the weaker sections. He urged the government to look at these aspects.

The second panelist was Prof. Arun Kumar, Malcolm Adiseshiah Chair Professor, Institute of Social Sciences, New Delhi. He spoke on Union Budget 2024-25 for the few: A sub-optional Macro strategy, and Micro strategy. He said that it was a coalition government and thus the corporate sector was worried. But Bihar and Andhra Pradesh benefited from the budget. This worry stemmed

from the fact that taxes were paid by the corporate sector. Comparing the current budget with the last year's, he said that the increase this year in total was only 7 percent, from Rs. 47.66 lakh crore to Rs. 48.20 lakh crore. Thus there was no big increase in the size of the budget. Announcement to achieve 5-year expenditure target was to make it look like big. Commenting on the internship scheme under which 500 companies would provide internship to 1 crore youth over a period of 5 years, he said that the allocated amount of Rs. 10,000 crore had not yet been spent. He noted that this was nothing extraordinary. In 2023-24, it was increased to Rs. 324,641 crore, but the expenditure was Rs. 273,985 crore. He described the special assistance given to Andhra Pradesh and Bihar as a gimmick. Expenditure to key heads were increased to cover inflation. Giving an example of agriculture and allied activities, he remarked the funds were allocated but not spent. There was no funding for the schemes for marginalized sections in real terms. He held that the country was said to be on the path of fiscal consolidation. But it was pure deficit financing. F.D. expected to be at 5.9 percent of GDP in 2023-24 had been brought down to 5.6 percent. This might benefit the middle class which was out of the ambit of Income Tax, he said.

Prof. Arun Kumar pointed out that 1.5 crore were the effective tax payers. About 2 crore people belonging to the middle class were paying income tax. While 5 percent were paying direct taxes, 25 percent were indirect tax payers. There was net decrease of taxes worth about Rs. 7000 crore which worked out to 0.18 percent. He observed that the international financial institutions limited the size of the government's budget. They wanted to limit the role of the government, so that the private sector could expand. It dented the ruling party's claim of making the country *"Atma Nirbhar"* (Self-reliance) or "Vishwa Guru" (World Teacher). There was 80 billion dollars deficit in China. There was also the admission of the weakness of Indian economy and an overwhelming dependence on Chinese imports. He noted that the demand for labour was shifting from unorganized to organised sector. He made out a case for making India a part of the Chinese supply chain and dent *"Atma Nirbharta"*. While the organised sector was increasing, the unorganized sector

was declining. Unemployment and crisis in the agriculture was a matter of concern. Fiscal deficit was dictated by international financial institutions, he concluded.

The third panelist was Prof. Asheref Illiyan, Head of the Department of Economics, Jamia Millia Islamia, New Delhi, who focused on agriculture and allied sectors. He said that several measures had been announced for the development of agriculture and the allied sector. Growth in agriculture came down by 4.5 percent. In 2024-25, the Ministry of Agriculture had been allocated Rs. 1,32,470 crore which was 2.7 percent of the total budgeted expenditure. This was estimated to be 5 percent higher as compared to the revised estimate of 2023-24 of Rs. 1,26,666 crore. He noted that the allocation for the Ministry of Fisheries was declining in real terms. PM's Fasal Yojana too registered a decline by 2.7 percent. Thirty percent farmers were covered by the crop insurance scheme. He cited the example of the South Korean government which paid the premium of the insurance. No allocation for research and development in the sector had been, he added.

Chairman of the IOS, Prof. M. Afzal Wani said that every programme of the government should be part of human being. Just treatment should be given to people and remedies of every sort be made available to them. He explained the difference between Indian and British justice system. He pleaded that the justice system be made available to everybody.

In his presidential speech, former Head of the Department of Economics, Jamia Millia Islamia, Prof. Naushad Ali Azad, explained that budget was an exercise by the government to take money and give it back to various sectors. Budget was the source of money coming and going. He said that this budget was influenced by elections and the government was forced to present the budget. He held that unemployment was a core issue and it had been given some space. Special financial aid given to Bihar was impacted by election results. He observed that every government presented its budget according to its priorities. Indian economy was characterised by so many things. Unemployment and employment were two different

issues. Future of work was discussed at the meeting called by the Ministry of Finance before the budget. He said that jobs were shrinking due to the advancement of technology. Thus the nature of work had to be defined. Situation had come to such a pass that even the technocrats did not wanted to work in the corporate sector. They wanted to work as freelancers. The good thing is that India is a big market of technology. It offered demographic dividends and was a partner of global value change. India's growth rate was consistently high in the past one or two decades. He concluded saying "No country in the world is like India."

The Panel Discussion ended with a vote of thanks extended by the Vice-Chairperson of the Institute, Prof. (Ms.) Haseena Hashia. A fairly good number of economic experts, teachers and university students attended the panel discussion.

IOS Discussion on "Waqf (Amendment) Bill 2024" (August 16, 2024)

An open-house discussion on "Waqf (Amendment) Bill 2024" was organised by the Institute of Objective Studies at its auditorium on August 16, 2024.

Opening the discussion, Professor Emeritus, Islamic Studies, Jamia Millia Islamia, Prof. Akhtarul Wasey said, "Waqf is not a new thing as the Prophet (PBUH) liked it much. Waqf is dedicated for the pleasure of Allah and the welfare of the community." He questioned the timing of bringing the Bill. The government woke up in 2024 after the target to achieve 400 plus seats in parliamentary election came a cropper. The proposed amendment Bill was aimed at targeting Muslims. Under the new provisions, district magistrates have been given the power to decide if an asset was Waqf or not. Being a government servant, a district magistrate could not remain neutral. He could not go against the wishes of the government. He asserted that the inclusion of non-Muslims as members of the Waqf Council could never be accepted. If Waqf Act had to be amended, it could be done keeping in view the wishes of the waqif who executed the waqf or the Aimma (Imams), he held.

Prof. Wasey refuted the contention that the Sachar Committee had recommended amendment to the Waqf Act. In fact, the BJP had opposed the Committee and its recommendations at that time. He alleged that the BJP launched a sustained campaign against the Topi (head gear) and the beard. "We cannot allow this to happen". He praised the Samajwadi Party supremo, Akhilesh Yadav for his statement supporting Muslims' concern over the motive of the government in introducing the Bill. He asked the senior congress leader and the Leader of Opposition in the Lok Sabha, Rahul Gandhi to also speak on the subject. He urged the Muslim leadership to garner support of the NDA partners like, Telugu Desham Chief, Chandrababu Naidu, JDU leader and Bihar Chief Minister, Nitish Kumar, Lok Jan Shakti Party Chief, Chiragh Paswan and Rashtriya Lok Dal Chief, Jayant Chowdhary. He reiterated that Muslims could sacrifice their lives but would never compromise on faith. He called

for launching the country-wide campaign against ill-motive of the government. This campaign should also include non-Muslims. He questioned if the government had the temerity to interfere with the religious affairs of Sikhs.

Former Union Minister for Minority Affairs, K. Rahman Khan commented that the Bill sought to revert to pre-1995 position. The Arbitration Act was proposed to be applied to the Amendment Act. If the said Act was enforced then the encroachment on waqf land and property which was existing since long could not be removed. Many public sector units which were occupying space on waqf land could not be dispossessed. He said that the proposed Act conferred sweeping powers to district collectors. Collectors could not remain unbiased because they were supposed to work as directed by the government. This government wanted to give all powers relating the waqf to collectors. Collectors would enjoy all powers of decision making in respect of waqf. They would decide the status of the property, whether it was waqf or not, he noted.

K. Rahman Khan pointed out that the government wanted to abolish waqf. That was the reason for deleting 12 sections in the new Bill. All the Muslims should protest against the Bill and compel the government to withdraw it. He held that Bill was sans transparency. Besides, the Bill had made 40 amendments. He asked the Muslim organizations to come forward and oppose the Bill. He also impressed upon them to contact leaders of different political parties in order to enlighten them on the Bill. He was skeptical about the resolution of issues in the Joint Parliamentary Committee on Waqf Amendment Bill 2024.

Former judge of the Allahabad High Court, Justice Zakiullah Khan stated that waqf was in existence since ages. Waqf was aimed at benefiting the Muslim community in terms of education, medical treatment, etc. He said that any adult person can execute waqf in his life-line. The first Waqf Act was made by the Britishers with the intention to take control over waqf property. Thereafter Acts were passed in 1938 and 1940. In 1956 a complete Act was made followed by another Act in 1960. He categorically stated that waqfs could be

managed by Muslims only, though a non-Muslim could also will his property as waqf. The role of a non-Muslim was confined to the execution of waqf. He said that the Act of 1995 was comprehensive and inclusive as necessary amendments were made in it. Since no rules were framed till sometime after Partition, refugees from a cross the border were allotted land on rent at nominal rates. But after sometime, the allottees stopped paying rent. The income by way of rent was proposed to be utilized for opening and running colleges and schools.

Justice Zakiullah Khan expressed dismay that the institutions of higher learning like, the Jamia Millia Islamia and Aligarh Muslim University that symbolized the aspirations of Muslims, had not been granted the status of a minority institution. Referring to the appointment of the chief executive officer of the waqf board, he said that in Uttar Pradesh, it had been statutorily provided that the CEO of the state waqf board would not be below the rank of the Additional District Magistrate. Surprisingly enough, the state Shia Waqf Board was headed by an Ayurvedic doctor. The Amendment Bill should have left no room for mischievous persons to be a part of the waqf management. The proposed Bill had made the collector the sole authority to decide about the status of the waqf. No district magistrate could dare go against the policy of the government. He could not function independently of the government; he could not remain unbiased, he noted.

Justice Khan raised the question of the rule of law in U.P. and Madhya Pradesh where houses of a particular community were being bulldozed without following proper procedure. This was nothing but a sheer mischief. This Amendment Bill had been brought to subject Muslims to harassment. By changing the name of the Act, they were depriving poor Muslims of their right. They were also making the Limitation Act enforceable in the amended law. This was aimed at declaring a waqf property as non-waqf. After 1857, the English government grabbed waqf land and conversed it into Nazul land. This government also was trying to convert waqf land into Nazul land. They were busy preparing a framework for Nazul land to make a new waqf law. They completely dismantled the structure of waqf.

He called upon the beneficiaries to educate the members of the community about the purpose and management of waqf. He said, "once waqf shall always remain waqf". He urged the community leaders to remain united for the protection of waqf property. Waqf land could be used for opening a dispensary for the use of the poor and deprived people of the community. Citing a glaring example of the occupation of waqf land, he said that Ambani's 26-storey building in Mumbai was built on the waqf land. In a similar case in NOIDA, a temple came up on the waqf land earmarked for the graveyard. This Bill should not be allowed to be passed in Parliament. A campaign to create awareness among Muslims about the Bill should be launched, he added.

President of the All India Milli Council, Maulana Hakim Abdullah Mughisi, observed that the open-house discussion on the issue was well-timed. He expressed that the unity in opposition to the Bill displayed by the community leaders, ulema, Imams and the Members of the Parliament would continue till the Bill was withdrawn. He assured that he would work shoulder to shoulder with the opponents of the Bill. But the protest against the proposed law should continue because it was a ploy to dismantle the very system of Awqaf, he stressed.

Senior lawyer of the Supreme Court, Yusuf Hatim Muchhala congratulated the IOS for organizing the discussion on a very important issue. The matter had been referred to the JPC for examination. He disagreed with K. Rahman Khan's view that the JPC would do nothing in the matter. He opined that giving power of waqf commissioner to district magistrates was against the basic principles of law. "Collector is nothing, but a paid officer of the government. Waqf property is for the benefit of the downtrodden in the Muslim community". He saw in the Bill a hidden motive to grab waqf land. The collector was a mere puppet of the government. They could not divide Muslims into two categories. While the stakeholders knew nothing about the members of the JPC, the issue was very serious for the community. He pleaded that the title of the land should be decided by a judicial officer. He also quoted the late Qazi Mujahidul Islam that the work of judicial review should be assigned to the

Shariah Court. He suggested that a committee should be formed to take necessary steps look after the matter. He also said that seminars similar to this should be organised everywhere to sensitise the community members about the Bill. He asked the stakeholders to prepare papers for presentation to the JPC.

Javed Alam, an active worker for the cause of waqf, held that the Bill was based on UP model. He said that a survey of the waqf properties in the state was undertaken by the government. Non-Muslims were sensitized about the waqf property and its market value. He was of the view that the JPC would do nothing worthwhile. He called for mass awakening and mass mobilization of Muslims for the cause.

Raees Ahmed, an advocate from Delhi informed that there was a big graveyard near the airport in the city. He said that about 522 graveyards belonging to Muslims had disappeared with the passage of time. He suggested that small videos on Awqaf like the ones made by Prof. Faizan Mustafa, should be shot and released to create awareness among Muslims.

Chairman of the IOS, Prof. M. Afzal Wani, said that a judicial authority should be put in place to decide whether a property was waqf or not. He noted that the waqf property was a sentimental creation which connected the waqif with Allah. If the waqif's intention was diluted, then the waqf would lose its sanctity. The spirit behind willing a waqf property should be purely religious. Waqf came under the Shariah category. Thus the real property should be tied up. One who determined the property should be of the same faith. He held that the waqf was a charitable institution and its benefits would accrue to non-Muslims as well during natural calamities, like floods and drought. He repented that though the Muslims had property, they did not know how to manage it. Allah had given gold mines to Muslims, but they were in a slumber. He said that the waqf property should remain in the hands of a faithful. He called for working devotedly, but with detachment. He counselled against giving the property to a novice. He briefly spoke about the IOS. He said that the Institute was engaged in promoting constitutionalism and federalism.

Mujaddid IOS Centre for Arts and Literature organises discussion on the book "Dr Mohammad Manzoor Alam: Unkahi Kahani *(Insaf, Shumuliat Aur Barabri Ki Jidd-o-Joh'd)*" (August 17, 2024)

A discussion on the book "Dr Mohammad Manzoor Alam: Unkahi Kahani *(Insaf, Shumuliat Aur Barabri Ki Jidd-o-Joh'd)*", written by the senior journalist, A.U. Asif, was organised by the Mujaddid IOS Centre for Arts and Literature at the IOS conference hall on August 17, 2024.

It may be recalled that Dr. Mohammad Manzoor Alam is the Founding Chairman and Chief Patron of the Institute of Objective Studies. The book, published by Genuine Publications & Media Pvt. Ltd., focuses on his life and contribution to the promotion of constitutionalism, federalism and the uplift of socially and economically backward sections of society.

The function began with the recitation of a Qur'anic verse by Mr. Mansoor Ahmad.

Introducing the book, Mr. A.U. Asif said that the book was based on a personality who devoted his life to promote objectivity. He drew a parallel between the book profiling the life sketch of Sir Syed Ahmad Khan and the present book focusing on Dr. Manzoor Alam's journey of life. While the former was written by Khwaja Altaf Husain Hali, the latter was authored by him. Hali also wrote on the celebrated Urdu poet, Mirza Ghalib. He noted that writing a book for him was a challenge as well as an adventure. He said, he has been writing since very early age and so far worked on 1000 personalities. He also wrote in the defunct Hindi Weekly *Dharmyug* and *Hindustan*. It took him 10 or 11 years to plan the book. Claiming that the book was of a different type, he said that not many books had been written in the lifetime of a personality. Referring to his first encounter with Dr. Alam, he said that Dr. Sanaullah who was a doctor by profession and lived in USA once told him that he (Dr. Alam) became popular in Aligarh Muslim University. Dr. Sanaullah came to know of this fact

while travelling from Aligarh. Dr. Alam was keenly interested in knowing the world, the country and its burning issues, he added.

Mr. A.U. Asif said hundred personalities have given their opinion about Dr. Manzoor Alam, and all of them have been included in the book. Fifty others have also written about him. Besides, 16 scholars are from outside the country who expressed their views on him. These include Dr. Ahmed Totonji and Prof. Omar Hasan Kasule. Twenty others include the ex-Vice President of India, Dr. Hamid Ansari and the ex-Chief Justice of India, the late Justice A.M. Ahmadi. One hundred and one persons shared their opinion on the personality and other aspects of the life of Dr. Alam. The late Qazi Mujahidul Islam, ex-General Secretary of the All India Milli Council and the late Amin Usmani, Secretary, Islamic Fiqh Academy (IFA) had a high opinion about him. He held that it was a difficult task to persuade Dr. Alam to talk about himself. But this was made possible only after he had several sittings with him. Commenting on his brief visit to the United States of America at a time when 9/11 incident took place, he said that Dr. Alam was invited to speak on it in a nearby mosque. Incidentally, it was Friday that day. In his speech, he warned the U.S. against violence. Senior journalist, Mr. Santosh Bhartiya, in his latest book wrote that Dr. Alam did not offer politics as a subject in post-graduation because his teacher disliked the subject. He took a cue from his teacher and did not offer politics in higher studies. Instead, he chose Economics as a subject of study. He concluded that the book did not look like a biography.

Convener of Mujaddid IOS Centre for Arts and Literature, Mr. Anjum Naim drew a parallel between the prominent Muslim leader, Syed Shahabuddin and Dr. Manzoor Alam. Both of them ceaselessly worked towards the establishment of Muslim identity. Dr. Alam firmly believed that no ill was beyond treatment. That is why he focused on research and thought in the IOS. He is an ardent supporter of dialogue and mutual understanding among different religions. Keeping this in view, he brought several institutions on one platform. *Ta'assuraat*, a small booklet as a supplement to the main book was also released on the occasion.

Mr. Arif Iqbal, the editor of the '*Urdu Book Review*', described the biography of Dr. Alam as a research work done by a research scholar. The Sirah of the Prophet (PBUH) is another biography that is in circulation for hundreds of years. He said that the biography penned by Mr. A.U. Asif was a multi-faceted work which was no less than a precious gift to the readers. Journalist, Dr. Ishrat Zaheer narrated a story about Dr. Alam in which he quarreled with his grandfather over a Dalit boy of his village. He disagreed with his grandfather and defended the Dalit boy. With the passage of time, his concern for depressed and deprived sections grew and he came out in support of these sections. Senior Urdu journalist and writer, Mr. Ahmad Javed said that he and Dr. Alam belonged to the same area in Bihar. His native village was about 15 kilometers away from his hamlet. Referring to his idiosyncrasies, he held that Dr. Alam was blessed with the power of tolerance, firm belief and determination. He knew very well of the value and the punctuality of time. He noted that biography writing was an art. He termed it as the finest profile book. It detailed Dr. Alam's concern for the country and the Muslim community. He said that the pages of the book were worthy of emulation for the people like him. They were also indicative of the lessons to learn. He maintained that more often than not, people conceded defeat very easily when confronted with obstacles. "Easiness always brings comfort and happiness quickly, but the hurdles are very disappointing". He said, we think and make plans, but when it comes to translating them into action, they deter us because of the lack of strong will, efforts and consistency. If one analysed the history of the world from East to the West and peeped into the lives of various personalities, he would find that they were similar to Dr. Manzoor Alam. Dr. Alam was the living symbol of strong will and an urge to do something tangible. He said that Dr. Alam was a strong link between the academic institutions of the Islamic world.

Senior Urdu journalist and a representative of the Voice of America (Urdu service) in India, Mr. Suhail Anjum, said that everyone who wanted to do something positive in life should read this book. He observed that this was a long-awaited book. There were so many facets of his life which were inspiring for those who wished to do

something concrete for the well-being of humanity, he added. Journalist, Mr. Javed Iqbal held that Dr. Alam endured extra-ordinary passion to do something as an 'odd man out'. Nothing worthwhile was possible with strong passion, he said. Ibne Saud from Chennai stated that he knew Dr. Alam since 1979. He used to meet him while in Delhi. He had been constantly in touch with him. Ex-Editor of Urdu magazine '*Aajkal*', Dr. Abrar Rahmani, shared his views on the life and work of Dr. Alam. Mr. Iqbal Patni from Gujarat said that he was always by his side whenever Dr. Alam paid a visit to Gujarat. The Chief Editor of *Millat Times*, a digital newspaper, Shams Tabrez Qasmi threw light on various aspects of Dr. Alam's life and his contributions. Mufti Nadir Qasmi from the Islamic Fiqh Academy said that Dr. Alam's life was worthy of emulation. Social activist, Abdul Mannan recounted his qualities as a true human being.

In his presidential remarks, the Chairman of the IOS, Prof. M. Afzal Wani, praised Mr. A.U. Asif for authoring a book on a person who devoted his entire life for the cause of objectivity. He wanted to know how many people understood what the objectivity was. In this connection, he referred to the name of Prof. Upendra Baxi who taught law at Delhi University and stood for objectivity. He said that the personality of Dr. Manzoor Alam is identified with a thought that wanted to reach out to every individual. He said we pay more attention to the structure than the thought behind the work, whereas the real stimulant to a work is the thought. But the tragedy of our time is that the thought is not explored. He held that many books were being printed every year, but have no readers. He said that the success of this book would depend on the extent to which Mr. A.U. Asif conveyed the message to readers. The importance of the book should be seen from that prism. We have to come up to that level. Any delay in this task will create problems, he noted.

Prof. Wani pointed out that Muslims were millionaires and they could have created 10 universities like the AMU. But since they did not have the thought, this could not become possible. Thus what was important was the spirit behind the work. He said that there was no emphasis on thought in the Muslim community. We must see what we are giving to the community. Here comes the need for objectivity.

If one is institution-builder, he must keep this in mind. Referring to the contribution of Dr. Manzoor Alam, he said that he worked for better education, equal opportunities, constitutionalism and federalism. He headed India's best think-tank. If one sought a person who understood economy, geo-politics and religious studies then he would find only one person. And he is none else but Dr. Manzoor Alam. He gave expression to thought, Prof. Wani concluded.

Mr. Anjum Naim conducted the proceedings and proposed a vote of thanks to those who attended the function.

IOS Condoles the sad demise of Abdul Rasheed Agwan (August 24, 2024)

A condolence meeting to mourn the sad demise of the scholar, writer, researcher, social activist and the Founding Secretary General of the Institute of Objective Studies, Abdul Rasheed Agwan, was organised by the Institute at its auditorium on August 24, 2024.

The meeting began with the recitation of a verse from the Holy Qur'an by Maulana Abdullah Tariq. Mr. Mansoor Ahmad, in-charge of the IOS multimedia division, in his opening remarks said that Abdul Rasheed Agwan was gifted with several qualities. He served as the Secretary General of the Institute of Objective Studies since its inception in 1986 till 1993. He later became the Finance Secretary of the Institute from 1993 to 1995, and remained member of its general assembly till 2003. He authored a book *Islam and the Environment* for the Institute. He combated his serious illness successfully. 'Shaka' was the last book he wrote in Hindi, a novel which was released a few days before his death. He never recovered from a road accident which he met while travelling in Rajasthan.

Noted scholar, Mr. Kaleemul Hafeez, expressed his sorrow over the passing away of Abdul Rasheed Agwan and held that a close friend said good bye to his friends. He was not an ordinary man, he was extra-ordinary in many ways. He left a rich legacy of activism, research, writing and thought. He was an inspiration to everyone who came into contact with him. He was worthy of emulation. What alienated him from others was that he possessed a scientific temper and never bragged. He said that Agwan was a great man whose love for the service of humanity and unflinching faith in Allah was unparalleled. He spent his life in simplicity. He treated old and young alike. He was a visionary who looked at the things from a scientific prism, Mr. Hafeez added.

Dr. M. A. Jauhar noted that he was associated with Abdul Rasheed Agwan for about 23 years. He disclosed that both of them drew a plan for the politics and change. They dreamt of working in 20 different fields. He said that both of them called the local MLA to

discuss their plan on these 20 points. He attributed the Shaheen Bagh Bridge and the hospital in Khadar area in Delhi to his unceasing efforts. Besides, sewage treatment plant in Okhla was built due to his efforts, he remarked.

Ms. Shaheen Kausar said that she had no words to praise Abdul Rasheed Agwan as a dynamic and a well-meaning person. His services to the Muslim community could not be lost sight of. It was he who got her admitted as a member of the Social and Democratic Party of India (SDPI). He made Volunteers of Change in her school. That is the reason why his personality was unique. He never nursed a grievance against anybody. She added that he was always concerned about the youngsters and women.

Editor of the Urdu monthly, *Afkaar-i-Milli*, Dr. Syed Qasim Rasool Ilyas, observed that Abdul Rasheed Agwan died two days after his last book was released. He said that he was associated with him since the last 40 years. He was selfless in working for the uplift of the common man. "He always thought of doing something new and big, and I worked with him on several projects". If in a meeting the decision was not in accordance with his wishes, he would raise the issue in the next meeting. He was instrumental in building Ayesha Shelter House for women for their skill development. Milli Model School was another project which was launched at his initiative. Whatever he did, he did it for the pleasure of Allah. He guided people by his high character and noble deeds, and whoever came into contact with him, he did not remain uninfluenced from him. He said, pious is one who feeds the poor. He used to search for the poor people to feed them. Besides, he was a mobile encyclopaedia of Qur'anic knowledge. During the fasting month of Ramadhan, he used to invite 250-300 people daily for Iftaar. He urged those who were close to him to fulfil his unfulfilled tasks. He also called for measuring up to the expectations of the Holy Qur'an.

Vice-president of the Delhi State All India Muslim Majlis-e-Mushawarat, Dr. Idris Qureshi, said that Abdul Rashid Agwan involved him in several social activities. He used to work on several fronts and connected himself to the like-minded people. He

expressed the confidence that his labour for the uplift of the poor and the needy would not go in vain.

Chairman of the Institute of Objective Studies, Prof. M. Afzal Wani recalled his association with Abdul Rasheed Agwan in 1986 when the former was studying in the Jawaharlal Nehru University. He was staying at the Jhelum Hostel of the University then. Two persons came to him by the scooter which was driven by Abdul Rasheed Agwan. The pillion rider was none else but Dr. M. Manzoor Alam, the Chief Patron and Founding Chairman of the Institute of Objective Studies. That was the time when the IOS was in the process of being established. He said that he handed over his dissertation for Ph.D. to Dr. Alam for its publication by the Institute of Objective Studies. The dissertation was published later in book form by the Genuine Publications & Media Pvt. Ltd. "Both of them talked to me on Muslim issues. From the time on, whenever I happened to be in Delhi, I met them without fail". He expressed concern that both judiciary and legislature were eroding the principles of Shariah, and called it intellectual poverty. He strongly believed that there was no dearth of scholars who had ideas but that needed to be translated into action. He insisted that those who gave the idea of understanding, must make it public, so that some work could be done on it. He also called for remaining alert on Taqwa (purity). There should also be mutual understanding.

Abdul Rasheed Agwan's son, Rafiq Agwan, thanked all those who attended the meeting and paid homage to his father. He described his father as his mentor, friend and soul and his love for children would continue to inspire them. He spent his entire life for the pleasure of Allah. He would always be remembered for his efforts to the Muslim community. His work in the field of empowerment of the minorities and environment was noteworthy. He wrote 13 books and produced more than 100 papers, Rafiq Agwan added.

Social activist, M.H. Ghazali said that when he came to Delhi, he had the first meeting with Abdul Rasheed Agwan. It was on his advice that he joined the Institute of Objective Studies. Later on, he met the late Maulana Amin Usmani, Secretary of Islamic Fiqh Academy, New

Delhi. Abdul Rasheed Agwan was the embodiment of love and kindness. He never got enraged with anybody, he noted.

Javed Rahmani observed that Abdul Rasheed Agwan always encouraged the youth. His work for youth empowerment and women empowerment was the hallmark of his commitment to social uplift.

In his presidential remarks, the Patron of the IOS, Prof. Z.M. Khan, observed that Abdul Rasheed Agwan's name was continuously ringing in his ears. Dr. M. Manzoor Alam used to refer to his name very often. It was anybody's guess if a man could work in so many areas. His profile was multifarious. Despite ailment, he worked according to the role cut out for him. He was ceaseless in his efforts to do something tangible for the society. Ultimately, he earned the pleasure of Allah who is Omniscient. He assured that the IOS would not be found wanting in fulfilling his vision. He also said that the Institute would do in the best of the possible capacity to take his work forward.

The condolence meeting ended with the special congregational *dua* held by Maulana Abdullah Tariq for his salvation and a place in *Jannah*.

A large number of Agwan's friends, admirers, scholars and social activists attended the meeting.

IOS organises Consultative Meeting on Waqf Amendment Bill, 2024 (August 25, 2024)

A consultative meeting on Waqf Amendment Bill, 2024 was organized by the Institute of Objective Studies (IOS) on August 25, 2024 at the Board Room of the Constitution Club of India, New Delhi.

The meeting was presided over by the former Union Minister of Minority Aaffairs, Government of India, Mr. K. Rahman Khan.

In his introductory remarks, Secretary General of the IOS, Mr. Mohammad Alam said, "The Institute of Objective Studies look for academic and scholarly approach for issues and challenges. IOS has a long history of working on issues related to Waqf and produced valuable data and research on the subject." He observed that we have a lot many concerns which needed to be thoroughly dealt with, and an objective approach was adopted. "We also intend to form a core group which will not stop at engaging with the present situation but will work to define and design a strategy and plan as to how to educate the community on Waqf and its utility, its prudent management which can be properly utilized to empower the community and benefit the deserving people", he said.

In his presidential speech, Mr. K. Rahman Khan, former Union Minister of Minority Affairs, Govt. of India, held that the Waqf Amendment Bill, 2024 was being examined by Joint Parliamentary Committee (JPC). The Bill should be discussed clause by clause, before sending our objections and suggestions to it. He described the nomenclature of the Bill as unnecessary and undesirable. There was nothing logical in the nomenclature. The change in the name of the Bill smacked of malafide intention of the government. The change was sought to dismantle the entity of Waqf. He called for releasing the new name of the Waqf Amendment Bill. With the change in the name, the common man would be put to a disadvantage because of inability to comprehend what the Waqf was. The proposed Bill had no unified approach to the issue and no provision for the

development of the Waqf properties. He noted that an attempt had been to sub-divide categories. As a former Union Minister, he addressed the issues of Aghakhanis and Bohra communities. There was also a question of viability in the proposed Bill. He said that a member of these communities could have been accommodated. But this was not done in the last 10 years, though there was concentration of population of that community in Surat. This was necessary because there was no operational Board for Shias. There were no Boards for them in the states other than Gujarat, he observed.

He further said that under Section-3 of the proposed Bill, no Mutawallis would be appointed verbally. The Waqf Boards would not have the power to appoint them verbally. He referred to a mosque in Chennai, where no record of its existence was available. Waqf meant the dedication of an asset for the pleasure of Allah. He described the proposed Bill as mischievous and suggested that all the questions arising out of the Bill should be put to members of BJP for their reply. While registering no opposition to provision for audit and accounts, he stressed that the amendments to the proposed Bill should be drafted. He sought to know why *Masajids, Khanqahs, Qabristans* should be used by communities other than Muslims. He also called for fully concentrating on the Bill because not much time was left for making representation to the JPC. He reproved that as against the earlier practice of reaching a consensus on an important issue, this time stakeholders were not taken on board. But in the changed situation, we should be ready to face any challenge. He said that some non-Muslims had also created Waqf but they could not manage the affairs of it. Non-Muslims might benefit from the Waqf property, but they could not be vested with the power to manage it. He called for rejecting the Bill in the present form. He also spoke on the creation of Waqf *Alal Aulaad*. Problems arose due to the flaws of the country's legal system. He said that instead of the government, Muslims should have control over Awqaf. The Tirupati Temple Act and Kashi Vishwanath Temple Act provided that only Hindus would be nominated to their Boards. Contrary to this, why should then the provision for the nomination of non-Muslims as members of Waqf Boards be made, he questioned.

Participating in the discussion, Professor Emeritus Islamic Studies, Jamia Millia Islamia, and former Vice-Chancellor, Maulana Azad University, Jodhpur, Prof. Akhtarul Wasey, held that the Bill was the outcome of a majoritarian approach which was unlikely to change. This only showed their arrogance. It was surprising that they did not show any inclination nor did they feel it necessary to bring the Bill during the last ten years' of their rule. But they woke up to the need for change all of a sudden at the time of Lok Sabha elections. He emphatically stated that the Bill had been brought to punish a community after their failure to secure 400-plus seats in the elections. He suggested that Mr. K. Rahman Khan, former Union Minister of Minority Affairs, Govt. of India, Dr. Syed Zafar Mahmood, President of Zakat Foundation of India and Mr. Mohammad Alam, Secretary General, Institute of Objective Studies should sit together and prepare a questionnaire to be presented to the JPC for consideration. The said questionnaire should be given in writing on behalf of the community or Muslim organisations. He also suggested that no comments on the points of agreement or acceptance be made in public. There should be uniformity in the point of views so as to look like unanimity in the community on the issue. Differences within the community should not come out in the open, he stressed.

He further said that there were around 4500 *khuddams* in various Sufi shrines and their opinion carried with the community. So, they should be roped in. Their opinion would send out a positive message to the powers that the "Diwan of Ajmer Sharif Dargah is not a hereditary incumbent as he is nominated by the Government of India. The so-called Sufi organization is backed by the government and as such he has no locus standi and no influence over the Muslim community." He noted that the JPC had 8 Muslim members. One each came from Janta Dal (United), Telugu Desham Party, Lok Jan Shakti Party and Rashtriya Lok Dal. They could favourably plead our case. He suggested that the IOS should hold talks with the functionaries of Gurdwaras Management Committees. He called for giving the community's voice to others as well in order to seek their support. He held the community as well as the government for the present imbroglio. He said that the entire Bill had been designed with an ulterior motive to cause damage to Muslims. He suggested that a

4-member committee with Mr. Mohammad Alam as its Convener, be set up to draw up a list of suggestions to be presented to the JPC. He commented that their slogan of crossing 400-mark in the elections turned out to be a fiasco. The slogan backfired, he said.

President of the Zakat Foundation of India, Dr. Syed Zafar Mahmood, described the Waqf Amendment Bill as dangerous. He said they were attacking the legacy by making a provision for the appointment of the Chairman of the Waqf Board by written order. "If a non-Muslim wants contribute to waqf, he can do so. There is no justification for any amendment to the Act. Thus the amended Bill must be annulled in its entirety." He held that they inserted advertisement regarding the amendment in every newspaper of every language. He questioned the rationale behind making amendments in the Act. How did they feel the need for such amendments? Did they ever visited any of the Waqf Boards to acquaint themselves with its working? He asked if the Mutawallis had been taken into confidence before drafting the amendment Bill. He further questioned if they wrote to any of the stakeholders before doing the exercise. He suggested that statements of all stakeholders be obtained and sent to the JPC for discussion, examination and consideration. Questions arising out of the amendments should be made available to the Members of Parliament, like Mr. Asaduddin Owaisi and Mr. Sanjay Singh for their perusal and as a ready reference. Besides, point-by-questions and their answers be readied. They wanted an upper hand of the Centre as well as states in regard to Awqaf. He informed that letters of objections to the Bill had already been sent to the chairman and members of the JPC. He further pointed that letters regarding objections to the Bill had also been sent to several prominent people, including Mr. Najeeb Jung and Dr. Udit Raj. Detailed information regarding Waqf had been uploaded on the website of the Zakat Foundation, which can be accessed at www.zakatindia.org.

Dr. Syed Zafar Mahmood said this Bill is violative of Article 13 (2) of the Indian Constitution which reads, "The State can not make laws that take away or limit the rights given by Part-III of the Constitution." Under the provisions of the amended Bill, two members of the Central Waqf Council will be non-Muslims. It also

provides for two non-Muslim members of the State Waqf Boards. It has been further provided that a non-Muslim can also be the Chairman of the Waqf Board.

Assistant General Secretary of the All India Milli Council, Mr. Shaikh Nizamuddin suggested that a core group be formed to prepare material for presentation to the JPC. He called for launching a mass movement against the Bill. He informed that the All India Milli Council is also organizing meetings in this connection. He suggested that all the technical points be put on record.

Chairman of the IOS, Prof. M. Afzal Wani held that the IOS is an academic institution and thus it can not launch a campaign. "We can make a sound documentation and do research on the subject." He said that the lawyers should be engaged and the community leaders be also involved in making out a strong case against the arbitrary amendment Bill. He noted that Waqf was a religious institution and it should not affect the freedom of conscience. "Waqf is dedicated for the pleasure of Allah. The purpose of Waqf is to feed the hungry." He said that the protection in favour of Waqf should always be there. He noted that the jurisprudence was developed on use and it was recognized everywhere.

Patron of the IOS, Prof. Z.M. Khan emphasized that all the organization should be collated. He said that joint efforts should be made so that the government could realise that the Muslim community was agile.

IOS lecture on Affordable Access to Quality Higher Education and Muslim Minorities (September 08, 2024)

The 38th annual meeting of the General Assembly (GA) of the Institute of Objective Studies concluded on September 8, 2024. On this occasion, a lecture program on 'Affordable Access to Quality Higher Education and Muslim Minorities' was organised by the Institute at its auditorium.

The lecture was delivered by Prof. Furqan Qamar, Professor of Management, Jamia Millia Islamia, New Delhi. Introducing the speaker, the Vice-Chairperson of the IOS Prof. (Ms.) Haseena Hashia, said Prof. Qamar is a former Vice-Chancellor of the Rajasthan University and the Central University of Himachal Pradesh. He is also ex-Secretary General of the Association of Indian Universities. He is a well-known academician and his contribution in the field has been recognized in India and abroad, she noted.

Delivering the lecture, Prof. Furqan Qamar, expressed concern over declining proportion of Muslims in education. One of the reasons for this decline was that education had become a costly affair which majority of Muslims no longer afforded. Both the government and the community leaders were worried that 15 percent population of the country was lagging behind in education, leading to the lack of employment opportunities for them. What was happening since the last 12 years was also causing concern. But, one must not get disappointed and hope that good days would return. He said that if a community wanted to progress, it must participate in politics. It was also a matter of concern that the Muslim representation in politics was declining. The Sachar Committee report in 2006 showed mirror to the plight of Muslims. The report described Muslims as the largest minority and the second largest majority in the country. Despite this, there were only 58 IAS officers in the country as against about 150 if taken into account their numerical strength. Referring to the latest edition of the All India Survey of Higher Education (AISHE) published by the Ministry of Education, Government of India, he said, the number of Muslims in higher education declined from 21.10

lakh in 2019-20 to 19.22 lakh in 2020-21. Thus, 1.79 lakh Muslim students are missing from the country's higher education system. As a result of this, the share of Muslim students in higher education decreased from 5.45 percent to 4.64 percent during the corresponding year.

Prof. Qamar held that it was for the first time that the enrolment of Muslims in higher education declined on a year-on-year basis. Until 2019-20, their numbers had been increasing though varyingly and gradually increased from 6.97 lakh (or 2.53 percent of the total enrolment in higher education) in 2010 to 21.01 lakh (5.45 percent). He noted that before 2014 and after the Sachar Committee report, the enrolment of the Muslim students in higher education registered 11-12 percent rise. But, according to the 2021-22 report, this came down after 2014. A decline in Muslim enrolment in higher education by 8.53 percent in one year was simply inexplicable. He questioned if the pandemic caused it. But, if it was so, why only the Muslims were affected. They were not the only social group which was economically poor and socially disadvantaged. "While it may be perplexing to pinpoint the reasons and causes for the sudden drop the low enrolment of Muslims in higher education in India. It is generally attributable to a combination of socio-economic factors. Educational disparities, natural and perceived discrimination are some of the factors that contribute to the drop in their enrolment". He further said that socio-economic conditions played a pivotal role in determining access to higher education. Most of the Muslims in India came from economically disadvantaged backgrounds and faced access barriers due to poverty and the lack of financial resources. Economic challenges also restricted their ability to pursue higher education due to rising costs of receiving education, he added.

Prof. Qamar pointed out that the real barrier was ostensibly seen after 2014 when the new government at the Centre was installed and it took oath of office to uphold the Constitution. But the question was whether it acted as per the spirit of the Constitution. Their indifference to the community was one of the reasons for Muslims' inaccessibility to education. In this context, he referred to Assam Chief Minister's diatribes against Muslims. He also took note of an

analysis which said that Muslims wanted to give education to their children but financial constraints and government's apathy prevented them. This also led them to send their wards to madrasas. A mere 2.5 to 3 percent children are enrolled in madrasas. Some of the madrasas are recognized by the Madrasa Board. He said that the ratio of girls in enrolment was higher than the boys. Girls were performing better than boys. This trend was visible across religions. Under the Right to Education Act (RTE), enrolment from class 1 to 10th was compulsory. But, till the children reached class 10th, a large number of them dropped out. Significantly, the rate of dropouts declined in 11th and 12th classes. He held that economic weakness was the main cause of drop-outs after 8th class. They did not send their children to Industrial Training Institutes (ITI) either and engaged them in other occupations. He said that out of 21 lakh, 5 lakh Muslims took admission in various institutions.

Prof. Qamar maintained that the other reason for the higher rate of drop-outs was non-implementation of the Sachar Committee report which recommended that Muslim students should also be awarded scholarships. Scholarships being given to Muslim students had since been discontinued. The number of Muslim students studying in various institutions stood at 5 lakh. While 3.4 percent students were studying in central universities, 90 percent and 10 percent Muslim students were receiving education in colleges and other universities respectively. Fifty to sixty percent colleges had vocational courses. He said, "They do not get education in the institutions from where they could progress. Institutions where they study cannot ensure a job to them". Muslims opened a number of schools. In UP, there is a chain of Islamia colleges. There were a number of schools from where the functionaries entered politics. More often than not principal and the manager in Islamia Colleges are at the loggerheads with each other. In order to make them more viable, quality of education should be improved. Besides, facilities for teacher's training and technical support should be put in place. He urged the community leaders to convince the community that they had equal rights before the eye of the law.

Prof. Qamar opined that there were two goods – merit good and public good. While the activity like planting trees comes under merit

good, benefiting himself and others, falls under the category of public good. Education also comes under this category because, besides benefiting oneself, it benefits society. A substantial amount of money should be spent on education. According to the recommendations of the Kothari Commission, 6 percent of the GDP should be spent on education. Out of this, 2 percent each should be spent on primary and secondary education. Today, instead of being public good, education had become a public responsibility. This was why education entered the domain of private sector. About 90 percent medical colleges and 70 percent technical institutions were in the private sector. Private institutions were subsisting on the fees from students. Some philanthropists made donations to certain private institutions like Jamia Hamdard, New Delhi. Today, higher education is beyond the reach of the common man. Referring to the universities in the private sector, he said that private universities were replacing government-run universities. They were subsisting on loan and heavy fees, instead of government grant. Universities like Aligarh Muslim University, Jamia Millia Islamia and Delhi University charge less frees from the students but due to the lack of hostel facilities, they are forced to take private accommodation in the town, he noted.

Prof. Qamar pointed out that education today was very costly and most of the parents were unable to afford it. There is mushrooming of coaching institutes for preparing candidates for admission to IITs and medical colleges. These coaching institutes charge exorbitantly from the candidates. Since quality education is very costly, it poses a big challenge before the parents, he said. Members of Scheduled Castes and Schedule Tribes did benefit from reservation, but for Muslims it remained elusive. Laying stress on the need for good schools, he urged the management of Islamia colleges to end politics and raise the standard of teaching. There were about one lakh seats in medical colleges and an amount ranging between Rs. 1 crore and Rs. 4 crore was being charged by the private medical college as fees. This leads the candidates to seek admission to medical colleges in Bangladesh, Sri Lanka, etc., where fee structure was cheaper compared to India. While calling for the identification of the problems and their resolution, he felt the reasons were either structural or financial.

Prof. Qamar commented, "Muslims in India suffer on account of the misconception of being outsider, invader, anti-national, pro-Pakistan, descendants or cruel rulers who committed atrocities on Hindu natives of India. Sadly, NEP 2020 hardly does anything to break this stereotype. It may be hoped that the just constituted steering committee for the national curriculum framework would address". He further said that what the community needed was handholding and support to make it to the mainstream higher education in a much larger numbers commensurate with their share in the population. Silence on or sidelining these issues on the part of the policy, did not go with *'Sabka Saath, Sabka Vikas, Sabka Vishwas* and *Sabka Prayas'*. The majoritarian overtone in the policy might not only alienate its own nationals from contributing their might to national development, he concluded.

In his presidential remarks, the Chairman of the IOS, Prof. M. Afzal Wani observed that Prof. Furqan Qamar's lecture provided hints that could be helpful in solving problems. They could also serve the vision document for Muslims. He said that the IOS would give it wide publicity for the benefit of Muslim educational institutions. His speech ignited a new spirit in the community. He urged Muslims to take his speech to heart. He suggested to the Muslim institutions to invite Prof. Qamar for his lecture on the subject that was so vital for the benefit of the community.

Earlier to the lecture program, the following two important publications brought out by the Institute of Objective Studies were released during its General Assembly meeting:

1. *The Making of India: A Journey through Eight Centuries*, edited by Prof. Syed Jamaluddin

2. *Inter-Religious Understanding for Universal Equality and Fraternity*, edited by Prof. M. Afzal Wani.

At the end of the lecture, Vice-Chairperson of the Institute, Prof. (Ms.) Haseena Hashia proposed a vote of thanks.

IOS Condolence Meet to Pay Tribute to A.G. Noorani (September 12, 2024)

A condolence meeting was organised by the Institute of Objective Studies on September 12, 2024 at its auditorium to mourn the death of the lawyer, scholar, constitutional expert, political commentator, author, journalist and a recipient of the IOS Lifetime Achievement Award, A.G. Noorani, who passed away in Mumbai recently at the age of 93. A fairly good number of his admirers, scholars and journalists gathered to pay homage to him.

The program started with recitation of a verse from the Holy Qur'an by Hafiz Asif Jamal from the Urdu section of the Institute.

Vice-Chairperson of the Institute, Prof. (Ms.) Haseena Hashia, who conducted the proceedings, briefly spoke about the life and contribution of A.G. Noorani. She described him as a "mobile encyclopaedia". He was a lawyer, political commentator, journalist and a writer. To top it all, he was a bold and non-conformist personality. He was awarded the Sixth IOS Lifetime Achievement Award for his contribution in the field of prolific writing and expert comments on topical issues. His book on Kashmiris is still regarded as standard work on the hill state, she said.

Paying tribute to A.G. Noorani, Professor Emeritus of Islamic Studies, Jamia Millia Islamia, Prof. Akhtarul Wasey, held that he was an extra-ordinary person who was born in Mumbai and was also laid to rest there. He was an author who possessed facts on which he built up his works. He wrote on the RSS and Kashmir with facts and figures. Whatever he wrote, he did it with boldness. He remained unmarried throughout his life and treated the country as his family. He said that Noorani was a self-respecting person who never went to Delhi even on the invitation of Mrs. Indira Gandhi. He was always armed with facts and never compromised on principles. Once he was invited by the late Sayyid Hamid to speak on Sirah. His speech was so enchanting that it held the audience spell-bound. He always used facts and proofs to support his contention while writing an article or a book. He was a regular contributor to several newspapers and

magazines, including the *Frontline*. He brought to the fore the facts which were unassailable. Though Noorani is no more in the world, his work is alive, he added.

Former Director-General of Jammu and Kashmir tourism, Mohammad Saleem Beg held that Noorani's admirers were still not less in number. He was a lawyer, historian, political activist and a journalist. He was a well-wisher of Kashmir and the Kashmiris loved him so much. His views on Kashmir were truly authentic and dynamic. Kashmiris owed an obligation to him. He said that in Noorani, Kashmiris saw a pleader who spoke on their behalf. Kashmiris would always remain grateful to him. Nobody was as sincere for the Kashmiris as he had an interface with truth and always support it. He was of the view that the Kashmiris did not make out their cause properly. He also believed that the Pakistanis were casual in their approach. He was undeterred from speaking the truth. He described Noorani as a person to fundamentally speak truth. He was very fond of Kashmiri dishes. While in Delhi, he never skipped 'Nihari' from a particular hotel in the walled city. He loved food wherever it was available. In this respect, he was very versatile. His mental disposition was very tough, Beg remarked.

Senior journalist based in Turkey, Iftikhar Gilani, observed that Noorani was a regular contributor to the *Frontline* and *Outlook*. He died at the age of 93 years and wrote a total of 21 books. He wrote 800 articles for fortnightly English magazine *Frontline* alone. Besides, he regularly wrote for several newspapers. He said that 93 years were not enough to read whatever he wrote. He came into contact with Noorani in 1993 and worked as a researcher for some of his books. His journey of writing never took a stop. His association with Kahmir dated back to the days of Sheikh Abdullah when he was at the helm. He recalled how Mridula Sarabhai, the sister of the then Chairman of the Atomic Energy Commission, Vikram Sarabhai and a congress leader, engaged Noorani to appear for Sheikh Abdullah in the apex court as his counsel. Kashmiris believed that their ideology had resemblance with his ideas on Kashmir. He had a dynamic stand on the Kashmir issue.

Gilani pointed out that Noorani had briefed Brajesh Mishra, National Security Advisor and Principal Secretary to the Prime Minister, Atal Bihari Vajpayee on Kashmir. He was fond of delicious food. He was a morose and did not like to engage in unnecessary conversation. He had said that he owed a debt and wanted to pay off by completing the third volume of his book on Babri Masjid. He exposed Pakistan on her China policy. So many things would have been laid bare, had the second volume of his book on India-China border dispute been completed. It is a matter of regret and dismay that Muslim scholars by and large ignored him and did not give him due recognition. He was all praise for the IOS Chief Patron, Dr. M. Manzoor Alam for honouring him with the IOS Lifetime Achievement Award. He also praised the All India Majlis-e-Ittehadul Muslimeen (AIMIM) Chief Asaduddin Owaisi, M.P., for taking care of Mr. Noorani. He made a living by the royalty he received from his books. He concluded saying that the *Millat* cold-shouldered him.

Senior Urdu journalist, A.U. Asif, said that Iftekhar Gilani was the best available person to speak about Mr. Noorani. He touched upon all the aspects of his life. He was one of the rare personalities who was quoted for his facts and figures. He did full justice to every topic he selected for writing. He suggested to Gilani to write a book on Mr. Noorani since he was very close to him. He noted that Mr. Noorani's writings were very argumentative. But before his death, he would have made some more disclosures about the Babri Masjid.

Senior Congress leader of Kashmir and former Union Minister, Prof. Saifuddin Soz observed that he knew him since the past three decades. He was a *Qalandar* (a spiritual person with inner higher knowledge) and an embodiment of truth. He had deep understanding of history. He wrote a book exclusively based on Article 370 of the Constitution. His work on Kashmir was the last book he wrote. He said that Mr. Noorani boldly defended the self-determination demand of the Kashmiris. He spoke to powers–that–be and wrote to them without fear. He spoke truth so long as he was alive. His book on Article 370 was very voluminous. His death is a great loss to India, particularly Muslims. He was not given due respect and recognition which he deserved. He had a deep understanding of Indian Muslims

and the Jammu and Kashmir Constitution. He said that he never come across a person of his stature. He was a person who could never be fixed. He equally loved Hindus, Muslims and other religions. Mr. Noorani was true to the core and led a life of a bold person, he concluded.

Vice-Chancellor of Chanakya National Law University, Patna, Prof. Faizan Mustafa commented that there were many prominent personalities in the last generation who had concern for the *Millat*. Mr. Noorani was one of them. He wrote extensively on almost every issue. His book on Indo-China relations was so critically written that several research scholars have done a Ph.D. on it. He also wrote on political trials, including the trial of the great Greek philosopher, Socrates. He said that "jury which tried the Socrates consisted of 501 members". He also wrote on the trial of the last Mughal emperor, Bahadur Shah Zafar. Mr. Noorani wrote that Bahadur Shah Zafar's trial was not fair because he was a sovereign and no British law could apply to him. Moreover, this case was not brought into the public domain. His trial was also not fair because it was conducted under the Evidence Act. He said that Mr. Noorani also wrote on the trial of the great martyr, Shaheed Bhagat Singh. His trail too was not fair. Mr. Noorani was unsparing in his analyses. According to him, all the decisions under Article 370 were illegal. He also wrote on the film "Censor Board". Prof. Mustafa added that he wrote on almost every issue before leaving this mundane world.

Senior journalist and Voice of America Urdu representative in India, Suhail Anjum described his death as a big loss to India in general and Muslim community in particular. There was no dearth of scholars in the country, but he was matchless in several respects. He was versatile as he touched upon almost all the important issues. He wrote on Babri Masjid and his articles were very analytical. In 2005, he interviewed the then President of Pakistan, General Pervez Musharraf which was published in the *Frontline* as a cover story. He was a regular contributor to several magazines and newspapers. Noorani never compromised on facts, he said.

In his presidential remarks, the Chairman of the IOS, Prof. M. Afzal Wani observed that many great scholars were born in pre-Independence era, and Mr. A.G. Noorani was one of them. He was witness to the making of the Constitution. Before 1947, people had envisioned that India would become a sovereign democratic republic in which every citizen should get his right. This was a mindset of the leaders who visualized India as free and democratic polity. It was their adroitness, courage and dexterity that so many ideas were put into the Constitution in order to make it a perfect and a compact law book of governance. Referring to Mr. A.G. Noorani's contribution, he said that whenever he pleaded he did it for federalism. He always remained uncompromising. He used to highlight the basic foundations of the Constitution. He was an opinion maker of the Constitutional values. He loved the rule of law and human values. Justice Krishna Ayyar and A.G. Noorani were of the same ilk, he said. His personality could not be epitomized in a few adjectives. His thoughts and ideas did not concern one community, they were for all. He emphasized the need for developing a culture to nurture researchers. "As Muslim intellectuals, we should understand and research niceties of the issues. If any loophole is found, it should be plugged." He said that Mr. Noorani had the capability to express the spirit of the Constitution through his pen. He had deep understanding and the spirit to view the Constitution in its right perspective. Indians wanted a comprehensive Constitution and a stable country which they secured, he concluded.

The condolence meet ended with *dua*, followed by a vote of thanks proposed by Prof. (Ms.) Haseena Hashia.

IOS Lecture on Artificial Intelligence (AI) Revolution: Shaping Tomorrow (September 27, 2024)

A lecture on *Artificial Intelligence (AI) Revolution: Shaping Tomorrow* was organized by the Institute of Objective Studies (IOS) in hybrid mode on September 27, 2024. Nilanjan Das, group creative editor, India Today Group, design head, data Intelligence Unit and chief creative editor, CUT and Creator for World first AI new Anchor 'Sana' was the speaker who explained the niceties of the AI.

The lecture began with the recitation of a Qur'anic verse by Network Administrator, IOS, Mansoor Ahmad.

Introducing the topic, Secretary General of the IOS, Mohammad Alam, said that the lecture was most significant. Briefly speaking about Nilanjan Das he said that Mr. Das is an expert in the field which had become an important tool to obtain quick results. Referring to the activities of Institute, he noted that its focus had always been on socio-economic issues. Marginalized sections and the minorities had been subjects of study and evaluation. The Institute regularly organizes symposia, seminars and discussions on the public policy issues. Organizing national and international seminars is a regular feature of the Institute. The proceedings of programs are published by the Institute in book form. It has so far published about 500 titles. At the Institute, we believe in "Think and work together", he added.

Speaking on the subject, Nilanjan Das said that as an early AI adopter, he leveraged its transformative power across the world. He noted that traditional computers would be governed by the AI within a year. He explained how the AI would design tomorrow. "It is a tool, rather a brilliant tool. There are unlimited possibilities and it will put single technology into practice". Referring to AI images and covers, he said, it creates visual images and it has to be done quickly. There is no camera involved and it is done automatically. Earlier, photo creators used to take 15 days, but now it was done in one hour. Two years ago also it was so. It created layers and layers of

image. Commenting on the AI video, he noted that after the introduction of AI, everything was quick. We can create something out of nothing. As a trailblazer, we changed image with different expressions, he added.

Nilanjan Das observed that key sectors like media, education, health and technology were transforming at an unprecedented pace. "In media, AI is reshaping content creation and audience engagement, enabling hyper-personalized experiences. In education, it offers intelligent tutoring systems and adaptive learning tools that cater to diverse student needs. Healthcare is experiencing breakthroughs with AI-driven diagnostics, personalized medicine and predictive analytics, improving patient outcomes. In the tech sector, AI is pushing the boundaries of innovation, automating complex processes and driving advancements in fields like robotics, cyber security and software development. Together, these shifts are shaping a future driven by intelligent systems", he held. 'Sana', the AI version of the anchor had been created and TV news channel Aaj Tak had become fastest in India in this respect. He noted that the Group was busy in upgrading a more advanced one which would be its next version. The group was also engaged in creating an emotion-based version. New version would have more reflections, he said.

Nilanjan Das pointed out that AI music was very interesting. Working on the music version, one need not create an orchestra or musical instruments. There was music and songs and news broadcast music. He said that the creation of MIT Management Revolution Ping was an AI revolution. Crazy people were doing it now. Commenting on the role of AI in primary and secondary education, he held that AI-driven system assessed students, levels and learning styles. It also created customized lesson plans that targeted individual strengths and weakness. Then come online gaming. He said that AI-powered tutoring systems and virtual assistants enhanced engagement. AI automated grading, attendance and lesson planning and enabled teachers to focus on students' interaction. AI provided universities with insights. AI-powered platforms also enabled remote learning, expanding access to education. Referring to specialized learning and life-long learning, he said that there were AI-powered

internships and practical experiences. There was continuous upskilling with the AI. He held that the AI offered a lot of jobs, increased efficiency and enhanced decision-making.

Further, Nilanjan Das focused on negative aspects of AI and said that it led to job displacement. It also created skill gaps and increased surveillance. Automation could replace routine jobs in sectors like manufacturing, retail and administrative roles leading to unemployment and inequality. As far as the positive aspects are concerned, they bring precision in medicine and ensure efficient healthcare. It is also helpful in early detection of diseases. Use of Robotics in surgery has been made possible by the AI. Similarly, expansion of telemedicine has become a reality today due to the application of AI. It has enhanced user experience. Collaboration in development and improved communication are other positive aspects of AI, he concluded.

In his presidential remarks, the Chairman of the IOS, Prof. M. Afzal Wani, observed that knowledge was something that never ended. "There is action and action turns into project. We are bound to go with AI at this age. There cannot be any law to stop it. There are lots of benefits. AI is more reliable than human perception", he said. He warned that AI could also be misused as a knife was misused. He also referred to robotic technology which helped reach the level of precision. He advised, "First record the actions that are harmful. Robot can stand during all seasons. It is more reliable than human mind. It may also signal that the officers are wrong. It is yet to be used in a big way because only about two percent people in India are AI literate. AI and human environment have to co-exist". He opined that power would come through technology. He asked to look to technology which was useful for teachers and judges. AI can be used in governance, teaching, administration, public distribution system, banking, business etc., in a better way. Humanity has a better chance. AI should be learnt by everyone, he stressed.

At the end of the lecture, Prof. Wani extended a vote of thanks to the attendees.

IOS book "Educational Institutions Established by Muslims in India (1986-2016)" released (October 19, 2024)

The book "Educational Institutions Established by Muslims in India (1986-2016)" was released at a function organised by the Institute of Objective Studies at its auditorium on October 19, 2024. Professor (Dr.) Mohammad Afshar Alam, Vice-Chancellor, Jamia Hamdard released the book.

The programme began with the recitation of a Verse from the Holy Qur'an by Mr. Mansoor Ahmad with its translation in Urdu.

Vice-Chairperson of the IOS, Prof. (Ms.) Haseena Hashia introduced the topic and presented a brief profile of the speakers. She also briefly highlighted the activities of the Institute. She explained how Ms. Naaz Khair, who compiled the book, and Mr. Saleem Baig, the researcher, did extensive research on Muslim Educational Institutions in India by elaborating on the reasons for the choice of the topic by the Institute of Objective Studies. She said that during the last 30 years, geopolitical, geographical, socio-political scenario underwent a change with the BJP rule leaving a strong fundamentalist influence on the Indian psyche.

Ms. Naaz Khair, an independent researcher, consultant, activist, and educationist while introducing the book held that the work investigated the efforts of the Muslim community in the field of education in India from 1986 to 2016. The period from the Shah Bano Case to 2016 was specifically chosen following the enactment of the Muslim Women Protection of Rights and Divorce Act (1986), the implementation of Mandal Commission Report (1990), the demolition of the Babri Masjid (1992), passage of the National Commission for Minority Act (1992), the Sachar Committee Report (2006), the creation of the Ministry of Minority Affairs (2006), the Ranganath Mishra Report (2007), the Triple Talaq issue and several major incidents of communal violence primarily targeting the Muslim Community. She highlighted the initiatives taken by Muslims in establishing educational institutions which were not highly endorsed

in the academic and non-academic sectors by giving a quick rundown to the main objective, detailed methodological research, analysis of data, and other significant findings.

"The study methodology involved compiling information on educational institutions established by Muslims using both existing secondary sources and RTI. Educational bodies such as NEPA, AICTE, NCMEI, AISES and UGC were approached for community-wise lists of educational institutions", she informed. The study also explored the various aspects of 'Educational Institutions' and Muslims' contribution in recognized and unrecognized sectors of schools, madrasas (both modernised and religious madrasas), colleges, and universities, in the field of education in India. Unfortunately, Muslims are often considered as deprived and underdeveloped. Hence, it is a matter of concern how 15 percent of the population is overlooked in the socio-economic and political spheres of institutional education, she noted. She further highlighted the difficulties they faced while making the work possible, especially in the process of RTI by emphasizing on several findings, educational institutions identified by "Muslim-sounding names" in compiling a total of 21338 recognized and unrecognized private schools, colleges, institutions and madrasas established during 1986-2016, she added.

It may be recalled that the book is the outcome of a research project of the Institute of Objective Studies which was assigned to Naaz Khair in the year 2015. The book is the latest publication of the IOS. Researcher, Mr. Saleem Baig highlighted the obstacles in accessing detailed information due to resistance from madrasa authorities, lack of government data, and bureaucratic hurdles with the special reference to the information under RTI. He further shared the incidents occurred while collecting the wide range of data on Muslim Institutions in India.

Releasing the book, Professor (Dr.) Mohammad Afshar Alam lauded the efforts of the Institute of Objective Studies by bringing out such a marvellous research work, and said how these institutions contributed to the educational and social development of the Muslim minority in India with the particular focus on the challenges and

achievements in this field. He appreciated the extensive efforts made by the researchers in compiling the data. He referred to the contribution of Jamia Millia Islamia and Aligarh Muslim University in facilitating the research. He mentioned, "the book also highlighted the efforts made by these institutions to preserve the cultural identity by promoting modern education. The researchers highlighted Muslim educators' strife to maintain between the religious values and secular education".

Prof. Alam explained how the book addressed the governmental policies affecting Muslim education by citing various authentic reports of socio-economic conditions along with the gaps in the attainment of education in India that could improve its access and quality in Muslim-majority schools and colleges. He further hinted at the challenges Muslim-oriented academics faced due to "Muslim-sounding names" by giving the example of Bhukhari University in Bihar, which was not issued NOC by the government. He also cited the case of the Crescent and USTM (minority institution) with secular names. Muslims were educationally backward due to their marginalisation. Sometimes biases against the community were witnessed as in the case of the University of Science and Technology in Meghalaya, he noted.

Prof. Furqan Qamar, senior Professor of Management, Jamia Millia Islamia, congratulated Naaz Khair and Salim Baig for accomplishing such a difficult task, especially in the process of RTI and other challenges. He explained the historical, political, and economic dimensions of Muslim educational institutions, and expressed concerns over "Muslim-sounding names" affecting perceptions and access to education.

Prof. Qamar also focused on child rights in madrasas and the impact of GST, demonetization, and COVID-19 on educational institutions. He stressed the need for continuing the research beyond 2016 to address current challenges in Muslim education by suggesting to access database on the IOS and other websites. He said, "the Association of Indian Universities also has done some work on the subject by bringing out two volumes. This book has a list of

institutions which may have duplication but they can be rectified." He took exception to the National Child Rights Protection Commission's Chairman Mr. Priyank Kanoongo's remarks that there was violation of child rights in madrasas.

Prof. M Akhtar Siddiqui, ex-Professor, Faculty of Education, Jamia Millia Islamia, thanked IOS for publishing the book. "It is such a historical book that will benefit researchers, stakeholders, and academicians". He extensively explained different themes by making detailed analyses of the book. He explained in detail the issue of Muslim schools, colleges, universities and madrasas. "This is significantly important because it has made the concern known with a good degree of authenticity despite Muslims being economically marginalised", he noted.

Prof. Siddiqui discussed the limitations of study, lack of theory-based analyses, and suggested that Muslim institutions should create data-based platforms for further research.

He underscored that this initiative be driven by 'service to the nation' not impelled by any 'commercial interest'. He acknowledged the same concept and said that this was only a conservative reflection of Muslims being aware of the value of education and dedication to the cause of nation building. "They are aware, but this is the only contribution of Muslims in nation building. As a matter of fact, it is much more than that", he concluded.

Prof. Madhu Prasad, former Professor at Zakir Hussain Delhi College, Delhi University underlined the importance of madrasas and made special mention of Madarasa Ghaziudin. She said that it carried its sense of continuity with the importance of the mother-tongue as the medium of teaching. She said, "It's not only education, in everything Muslims have contributed more than any other community".

Referring to the Idea of secularism and the importance of knowledge, she said that there were "Muslim-sounding names" like Zakir Hussain Delhi College. She appreciated Salim Baig for the work he has dedicatedly done by managing lots of other challenges. She

highlighted the impact of the events like Shah Bano, Triple Talaq issue, and demolition of Babri Masjid and said that they did not just affect Muslim women, but also disheartened other women. She made a concluding remark, "You all have started an incredible work, and now it is our responsibility to take this work forward. And we all are one."

Prof. (Ms.) Haseena Hashia, who conducted the proceedings, extended a vote of thanks to the attendees.

IOS two-day International Conference on "Prof. Abdul Hamid Ahmad AbuSulayman: Personality, Intellectual and Scholastic Legacy" (December 11-12, 2024)

A Two-Day Online International Conference on "Prof. AbdulHamid Ahmad AbuSulayman: Personality, Intellectual and Scholastic Legacy" was organised by the Institute of Objective Studies in collaboration with AbdulHamid AbuSulayman Kulliyyah of Islamic Revealed Knowledge and Human Sciences, IIUM, Malaysia and International Islamic Fiqh Academy, Jeddah, KSA on December 11 and 12, 2024.

The conference extending over two days was thematically structured to base on Six Sessions, including an Inaugural Session, Four Technical Sessions and a Valedictory Session.

Inaugural Session

The beginning was made by the recitation from the Holy Qur'an by Mr. Shahbaz Alam, a student from INCIEF University, Malaysia.

Former Dean, Faculty of Humanities and Languages, Jamia Millia Islamia, New Delhi, Prof. Mohammad Ishaque presented the theme of the conference. Prof. Hamidullah Marazi, visiting fellow, ISTAC, IIUM, Malaysia, presented the profile of Prof. AbuSulayman. Secretary General of the International Islamic Fiqh Academy, Jeddah, KSA, H.E. Dr. Koutoub Moustapha Sano delivered the keynote address. There was a special address from Chief Patron and Founding Chairman of the IOS, Dr. Mohammad Manzoor Alam which was read out by the Secretary General of the IOS, Mr. Mohammad Alam, because of his inability to attend physically. Address as a Guest of Honour was delivered by former Founding Secretary General, Alwaleed Bin Talal Foundation, KSA. The family of Prof. Dr. Abdul Hamid AbuSulayman was represented by his daughter, former Founding Secretary General, Alwaleed Bin Talal Foundation, KSA. Dr. Muna AbuSulayman who delivered a touching speech on the occasion. The Dean, AbdulHamid AbuSulayman

Kulliyyah of Islamic Revealed Knowledge and Human Sciences, IIUM, Malaysia, Prof. Dr. Shukran Bin Abd. Rahman also delivered a speech as another Guest of Honour of the session. The Session was presided over by Prof. M. Afzal Wani, Chairman of the Institute of Objective Studies. Prof. Haseena Hashia extended a vote of thanks to the speakers and participants of the conference.

Former Dean, Faculty of Humanities and Languages, Jamia Millia Islamia, New Delhi, While giving an introduction of the Institute and theme of the conference, Prof. Mohammad Ishaque said, IOS is a non-political and not-for-profit organisation and an NGO in consultative status (Roster) with the Economic and Social Council (ECOSOC) of the United Nations. The Institute has been recognised nationally and internationally for promoting research, conducting surveys on relevant themes, publishing books and journals in areas of national concern and pressing challenges of civil societies, awarding scholarships to meritorious university scholars, actively participating in social welfare, educational and management fields. The focal areas may also be identified for developing models suited to the Indian masses, particularly the poor, marginalised and deprived sections. He noted that the institute organised conferences, seminars, symposia and workshops at national and international level and discussions at headquarters and various Chapters on relevant themes. So far, more than 1350 such gatherings have been organised successfully.

Prof. Ishaque said that Prof. AbuSulayman made a profound contribution to the inter-faith dialogue. His works were the spring board for the young scholars to understand Islam in broader perspective. His ideas stood for charity, pride, brotherhood and solidarity. He realised that cultural crisis in *Ummah* was caused by absence of cultural progress. Prof. AbuSulayman was a towering personality among Islamic scholars. His ideas were grounded in Islamic knowledge, he noted.

Prof. Hamidullah Marazi, while presenting the profile of Prof. AbuSulayman, he said that Prof. AbuSulayman stood as a monumental figure in contemporary Islamic thought, celebrated for his extensive contribution to the Islamisation of Knowledge and

educational reforms across the Muslim world. His remarkable journey from the sacred city of Mecca to becoming a revered scholar and educator, reflected a deep and nuanced engagement with both Islamic tradition and the complexities of modernity. He observed that the vibrant intellectual milieu surrounding him, populated by scholars and practitioners of Islamic sciences, profoundly shaped his worldview and instilled a lifelong passion for the pursuit of knowledge. Prof. AbuSulayman developed an acute awareness of the interplay between faith and reason. He often expressed that "The foundation of our understanding must be rooted in both tradition and rational inquiry", a guiding principle that would inform his scholarly endeavours throughout his life. This dual commitment to faith and reason positioned him as a bridge between the past and present and the tradition and modernity.

Prof. Marazi held that one of Prof. AbuSulayman's most significant contributions was his tenure as a founding member and the second Rector of the International Islamic University (IIUM), Malaysia from 1989 to 1999. Under his visionary leadership, IIUM evolved into a vibrant academic institution that harmonised Islamic teachings with modern knowledge fostering critical thinking and ethical education. "Prof. AbdulHamid Ahmad AbuSulayman remains a pivotal figure in the discourse surrounding the Islamisation of Knowledge and educational reforms. His efforts to integrate Islamic principles with modern educational practices have left an indelible mark on the landscape of Islamic thought. As the Muslim world navigates the complexities of the modern age, his insights serve as a guiding light, emphasising the importance of a comprehensive, ethical and integrated approach to knowledge that meets the needs of society", he pointed out.

H.E. Dr. Koutoub Moustapha Sano, in his keynote address, observed that Prof. AbuSulayman was an intellectual giant, a critical scholar, a social critic and effective administrator. His intellectual journey of more than a half century, was innovation and cross-fertilisation of ideas and practical solutions. He was always interested in knowing the causes of the decadence and backwardness of the Muslim *Ummah* on the one hand and attempted at developing mechanism and methods

of overcoming them on the other. He always argued vehemently that Muslims did not lack good belief system. He believed that the Muslim *Ummah* suffered from intellectual malaise that required profound and serious diagnosis. He said, "It is a lived experience in thought and its translation into institutions. His works demonstrate profundity and comprehensiveness comprising international relations, Islamic economics, and education in the light of primary Islamic sources as part of the transformative agenda focusing on education and girls, reform, corruption. In his analysis of the global issues, he believed that the first step is to create a critical approach to the reality based on innovation and creativity".

Dr. Sano held that Prof. AbuSulayman was certainly a visionary, an intellectual and a thinker very sincere and honest. He embodied the lofty Islamic universalistic values of truthfulness honesty, dedication, kindness, equity, non-discrimination and excellence. Above all, he was a father figure for many who passed through IIUM. He transformed the trajectory of the IIUM to become a truly international institution. He truly worked for the *Ummah* and humanity at large. Owing to his tireless efforts, many of his students became policy makers, politicians, scholars, judges, lawyers, businessmen and businesswomen in different parts of the world. Undeniably, he contributed hugely to the socio-economic and intellectual development of Malaysia. Prof. AbuSulayman identified several misconceptions and malformations in the thinking of the Ummah leading to an intellectual crisis. In his approach, he rejected the severing of the spiritual from the mundane. Rather, he called for the unification of the spiritual values and ethics with the mundane with regard to the technical applications. He noted that the alternative paradigm Prof. AbuSulayman discussed in his book, in particular, *'Crisis in the Muslim Mind'* was Islamic *Islah* which meant the authenticity of Islam. This involved a proper methodology with regard to education and knowledge creation and development. He emphasised the need for developing new readings and interpretations to respond intelligently to new challenges with regard to social cohesion and the development of a functional and harmonious family, Dr. Sano added.

Dr. Mohammad Manzoor Alam said that Prof. AbuSulayman was a remarkable man who was a reform-minded intellectual and an exemplary Muslim. His writings demonstrated his in-depth understanding of the Quran and *Sunnah*. He stood apart from other Islamic academics because he did not subscribe to conventional interpretations of Islam. His writings stimulated Muslim intellectuals' minds and exhorted them to quit blaming others for their failures and instead, look within for answers. "He exemplified the critical thinking and forward-thinking mind-set that are essential to bringing about a renaissance and resurrection in the Muslim world. With a lofty vision and mission of a comprehensive Islamic reform project with reform of thoughts and education, he dedicated his entire life to the advancement of education in the Islamic world and consistently pushed for the transformation of Muslim societies via knowledge of the Quran and *Sunnah*".

Dr. Mohammad Manzoor Alam maintained that Prof. AbuSulayman made four trips to India to attend seminars and conferences hosted by the IOS. In February 2001, he received the honorary D.Litt. from Jamia Hamdard, New Delhi. He delivered two lectures at Aligarh on 'Violence and Islam' and 'Child Development in Islamic Perspective'. He asked everyone who is devoted to Prof. AbuSulayman's ideas, thoughts, information, and books – especially IIIT and IIUM, to consider how to realise his aspirations in the light of shifting global landscape, particularly in the wake of the pandemic and evolving technological development.

Delivering her speech, Dr. Muna AbuSulayman, said that his father, Prof. AbuSulayman, was an intellectual doyen and a visionary. He was a philosopher, and did a lot of work in the field of Islamic civilisation and philosophy for the coming generations. He made several areas accessible for researchers. He had a long list of students and left behind a rich intellectual legacy for the young generation. He was beyond narrowness and had a global reach, she pointed out.

In his address Prof. Dr. Shukran Bin Abd. Rahman, said that he had the privilege of working with Prof. AbuSulayman. He did a missionary work on education which would inspire future

generations. His theory of Islamisation of Knowledge was an area which was being strengthened by his students. According to him, there were three domains of knowledge – human knowledge, sound knowledge and Islamic knowledge. Prof. AbuSulayman was instrumental in conceptualising Kulliyyah knowledge of Islamic discipline. He tried to achieve the goal of holistic development of curriculum. He made an invaluable contribution to the development of a culture by using his knowledge, Dr. Rahman pointed out.

Delivering the Presidential address, Prof. M. Afzal Wani, put the conference in an objectively valuable context by referring to the Quranic verse: "[While the wicked people] make will and effort to blow out the 'Noor of Allah' with their mouths (utterances): but Allah will carry 'His Noor' to perfection in all its fullness; painful though it may be to all those who 'Deny the Truth'. [Al Quran, Surah Saff: 8] He explained that the people with such averse-intentions and actions are found among the human beings almost in every age, but Allah keeps on creating people with good intentions and actions to work to maintain and sustain the enlightenment created by Noor of Allah, in its promised endurance. Prof. Wani asserted that the life of Prof. AbdulHamid Ahmad AbuSulayman should be, in all its reflections, understood as one of those blessed persons who choose to work, during their lives, to expand in its perfection the enlightenment created by Noor of Allah. He devoted his life to endeavour for the establishment of institutions of international repute and train his students and friends to serve this great cause, important for all the people of the world. Prof. Wani mentioned that Prof. AbuSulayman had opined that faith should not be diluted, it should rather be strengthened with zeal for knowledge. Counting the qualities of Prof. AbuSulayman, Prof. Wani referred to his woks exploring the realities behind crisis in human mind, need for rightful parenting, access to knowledge, desiring a harmonious world and a better future of humanity. Prof. Wani also stated that Prof. AbuSulayman was a person with leadership qualities to perform well in the contemporary times, possessing compassion, reason, humility and respect for others. "Prof. AbuSulayman, besides having respect for others, talked much about Tawakkal, courage, observance of the purpose of Ibadah, to strengthen the faith and Tawakkaltu Alallah",

Prof. Wani elucidated. He remarked much emphatically, with reference to the writings of Prof. AbuSulayman and his underscoring the principle of Asalah, that the courage necessary to stand for humanity, human friendliness, protection of global environment (including plant and animal kingdom), peace and justice comes from of the real enlightenment, the Noor of Allah". Concluding his Presidential address, Prof. Wani noted that the life of Prof. AbuSulayman, through so many destinations across the world, is full with inspiration and guidance for working for others with commitment and concern. The closeness between him and Dr. M. Manzoor Alam, Founder of IOS is a great example of intellectual togetherness for working in the arena the knowledge and enlightenment.

At the end of inaugural session, the Vice-Chairperson of the Institute, Prof. Haseena Hashia thanked all the speakers, participants, media persons and the organizing staff for their contributions.

Technical Session-I

Presided over by Prof. M. Afzal Wani, the first technical session focused on 'Personal life, orientation and emergence as an extraordinary expert of societal issues'. First speaker of the session was Prof. (Dr.) Muhammad Mumtaz Ali, from the Department of Usuluddin and Comparative Religion, AHAS Kulliyyah of Islamic Revealed Knowledge and Human Sciences, IIUM, Malaysia. He spoke on 'Methodologic Issues: A Critical Analysis of the Contribution of Prof. AbdulHamid AbuSulayman.' He said that he included Prof. AbuSulayman in the list of Revivalist scholars. Revival of humanity was necessary for the survival of humanity, and for this revival of Islamic intellectual framework was necessary. According to time and context, revivalists re-conceptualised the Islamisation of human knowledge. They wanted to see *Ummah* as a developed *Ummah*. He emphasised the need for reviving Islamic thought through the methodology. Intellectual reform must be rational and empirical. He was determined to achieve Islamic reform. Prof. AbuSulayman offered to give new Islamic theory of methodology – methodology of Islamic thought. He countered

western view of Islam by setting forth the exclusiveness of Islamic thought, Dr. Ali said.

The second speaker was Prof. (Dr.) Rahmah Binti Ahmad H. Osman, from AHAS Kulliyyah of Islamic Revealed Knowledge and Human Sciences, IIUM. She noted that Prof. AbuSulayman was a profound scholar who looked into the potential of Islamic thought. He transformed the research concept despite his fragility. He called for dignity of every individual. He was nurturing Islamic intellect. In England, he commanded respect. He was not only a scholar, but also a servant of humanity. He wanted that Arabic should be learnt by every Muslim, she held.

Dr. Mahmud Mai Jianjun, Assistant Professor, AHAS Kulliyyah of Islamic Revealed Knowledge and Human Sciences, IIUM, focused on 'Cultivating a Tawhidic Mentality for Muslim *Ummah*'s Renewal.' He said that there was crisis in Muslim societies. There was much concern among Muslims over the sufferings of Palestinians. He called for addressing issues of Islamic thought. There was also the need for actualisation of Islamic worldview and the change in the mindset of Muslim *Ummah*. Muslims should gain knowledge because science and technology have limitations. He said that Taqwa and Sunnah are essential parts of Islam. In Qur'an, Allah promises to held believers. "If you support Allah, He will support you. Tawheed is key and the solution to the problem originates in religion".

The fourth speaker was Dr. Min Ke Qin, Assistant Professor in AHAS, Kulliyyah of Islamic Revealed Knowledge, IIUM, who spoke on 'Prof. AbdulHamid A. AbuSulayman's era and atmosphere.' He said that Prof. AbuSulayman was ahead of his age. He emphasised the need for revitalisation of higher education among Muslims. Muslim countries were facing poverty and *Ummah* was facing a phase of poverty. There was a problem of the state of Israel and the countries around it were facing humiliation. *Ummah* was growing weak and weak. "Israel is a permanent hurdle to the peace in the region. This is the crisis which the Muslim countries should seek solution."

The last speaker of the session was Dr. Lubna Naaz, guest faculty, Department of Islamic Studies, Women's College, Aligarh Muslim University, Aligarh, who centered on 'Societal issues facing the Muslim world: A Study of Prof. AbdulHamid A. AbuSulayman.' She said that Prof. AbuSulayman laid emphasis on Islamisation of education in society. He pleaded for universal principles of justice. He also called for incorporation of Islamic values in education. He laid emphasis on the revival of Islamic civilisation, she added.

Technical Session-II

The second technical session was chaired by Prof. Arshi Khan, from the Department of Political Science, Aligarh Muslim University, Aligarh. The theme of the session was 'Prof. AbdulHamid Ahmad AbuSulayman's educational and academic pursuit at International Islamic University Malaysia.'

Prof. Iyad M.Y. Eid, Assistant Professor, AHAS Kulliyyah of Islamic Revealed Knowledge and Human Sciences, IIUM, was the first speaker of the session, who focused on enhancing student's academic research skills through IIUM vision to restore the revival of the Ummah. He described Prof. AbuSulayman as a great thinker and a receiver of knowledge. He contributed to society, Dr. Eid said. He was followed by Dr. Hamoud Yahya Ahmed Mohsen, Assistant Professor, AHAS Kulliyyah of Islamic Revealed Knowledge and Human Sciences, IIUM. He spoke on 'Three years on: Reflecting on Prof. AbdulHamid A. AbuSulayman's transformational leadership and its lasting impact at IIUM.' He held that Prof. AbuSulayman was regarded as a unique gem in the Muslim world. He propounded the theory of Integration of Islamic Knowledge with modern disciplines. He was a global leader of Islamic education. He had a lasting imprint on education. Prof. AbuSulayman generated a new life in academics, Dr. Mohsen pointed out.

Dr. Abroo Aman Andrabi, Assistant Professor, Department of Islamic Studies, Jamia Hamdard, New Delhi was the third speaker who touched upon 'Prof. AbdulHamid A. AbuSulayman: A visionary legacy in Islamic thought and scholarly reform.' She said that Prof.

AbuSulayman reflected compassion, humility and human dignity. His ideas were responsive to modern challenges. He called for methodological and scientific development without compromising Islamic thought. He also said that there should be global discourse of human rights in the Muslim framework. He wanted the integration of Islamic knowledge with global knowledge, she noted. The fourth speaker was Dr. Abdul Wahed Jalal Nori, Assistant Professor, AHAS Kulliyyah of Islamic Revealed Knowledge and Human Sciences, IIUM. He referred to Prof. AbuSulayman's idea of the distribution of resources and the quantification of justice. They touched upon several issues, like economic priorities according to Islam, ethical leadership of Muslims and addressing contemporary global economic crisis raised by Prof. AbuSulayman.

The last speaker of the session was Mr. Muhammad Mahmood Shihab Al-Naimi, researcher in the field of Islamic thought, Malaysia. He spoke on the repercussions of distorting the Islamic world vision from Prof. AbdulHamid A. AbuSulayman's perspective. He discussed quantification of scientific paradigm and programmes. He also shed light on the science of *Shariah* and engineering.

Day-2, December 12, 2024

Technical Session-III

The third technical session was chaired by Prof. Hamidullah Marazi. The session focused on works of Prof. AbdulHamid Ahmad AbuSulayman.

The first speaker of the session was Dr. Mohamed Sheikh Alio, Assistant Professor, AHAS Kulliyyah of Islamic Revealed Knowledge and Human Sciences, IIUM. He spoke on the Arabic works of Prof. AbdulHamid A. AbuSulayman. He said that Prof. AbuSulayman was a great Muslim scholar, leader, thinker, educationist, author and capacity builder. He introduced innovative ideas to the contemporary traditional discourse regarding Islamisation of Knowledge. He contributed to 23 major Arabic works, either as a sole author, co-author or editor in a time span of 59 years. He published 39 articles

between 1965 and 2015 through 12 journals in nine countries, including India, Malaysia, Morocco, Qatar and Saudi Arabia. His works had theoretical and institutional impact on Muslim *Ummah*, Sheikh Alio noted.

The second speaker was Dr. Mohammad Muslim, Assistant Professor, Department of Islamic Studies, AMU, Aligarh. He dwelt on 'Islamic parenting: A study of Prof. AbdulHamid A. AbuSulayman.' He said nowadays parenting is a big challenge. Children need attention of their parents because they are careless. They should get Islamic parenting. Parenting is not an easy thing. Parents should first learn Islamic values. There should be parent-child relationship as suggested by Prof. AbuSulayman. Environment in which they are living should be favourable to Islamic values. *Surah Luqman* of the Qur'an has laid down guidance for parenting, he observed.

The third speaker was Dr. Mohammad Ajmal, assistant professor, Centre for Arabic and African Studies, School of Language, Literature and Culture Studies, Jawaharlal Nehru University, New Delhi. He spoke on "The genius of Prof. AbdulHamid A. AbuSulayman in the light of his book 'The problem of tyranny and corruption in Islamic thought and political history: A critical and analytical assessment." He said that the *Ummah* imbibed Islamic values and Islamic teachings since the beginning to lead the life in a good way. Prof. AbuSulayman stressed the need for building the concept of society as per Islam. He also insisted on preventing the prevailing corruption and tyranny in Muslim countries.

The fourth speaker was Dr. Fauzia Maraam, former Ph.D. fellow, Department of Islamic Studies, AMU, Aligarh. She spoke on Prof. AbdulHamid A. AbuSulayman's book 'Parenting: An exploration in Parent-Child Relations: A guide to raising children.' She referred to the rights and duties of parents and children. She also discussed the role of the family and a healthy environment to raise children. Parents must produce children who love Allah. Prof. AbuSulayman used to emphasise the need for building a good and strong nation, she said. The fifth speaker was Dr. Rukhshanda Shaheen from the

Department of Islamic Studies, AMU, Aligarh. She dwelt on 'Crisis in Muslim thought: A critique of Prof. Abdul Hamid A. Abu Sulayman.' She observed that according to Prof. AbuSulayman, *Ummah* is a prisoner to the old ideas. He discussed the methodological ideologies. He wanted that the Islamic knowledge be integrated with modern knowledge, she held. Dr. Mohammad Azam Qasmi from the Department of Sunni Theology, AMU was the sixth speaker who focused on the 'Character and Personality Development: The perspective of Prof. AbdulHamid A. AbuSulayman.' He said that Prof. AbuSulayman laid emphasis on the role of parents in the character building of a child. This was very important for friendship and shared values. This was also essential for moral, ethical, intellectual and social development, he noted. Dr. Mohammad Shekaib Alam of the IIUM was the last speaker of the session who spoke on 'Islamic principles in International Relations: A value-driven approach to Conflict Resolution and Peace Building.' He said that the world was consistently in conflict. Islamic theory of international relations was the answer to the contemporary global problems. He held that the involvement of the US and Russia was responsible for ignoring human rights. There was a need for consultation and consensus building in the world, he added.

Technical Session-IV

Chaired by Prof. Mohammad Ishaque, the fourth technical session was focused on Islamiyat Al-Ma'arifah and Prof. AbdulHamid Ahmad AbuSulayman's thoughts. Prof. (Dr.) Asem Shehadeh Saleh Ali, Head, AHAS Kulliyyah of Islamic Revealed Knowledge and Human Sciences, IIUM was the first speaker who spoke on 'The collective mind in the Islamisation of Knowledge according to Prof. AbdulHamid A. AbuSulayman in the light of epistemology.' He said that Prof. AbuSulayman called for application of Islamisation of Knowledge and incorporation of collective minds. His approach was analytical. He stressed the need for identifying areas of agreement and disagreement. He said analysis is dynamic. Prof. AbuSulayman left an intellectual legacy of Islam, he observed. Prof. (Dr.) Jamal Ahmed Bashier Badi, from AHAS Kulliyyah of Islamic Revealed Knowledge and Human Sciences, IIUM who touched upon the topic

'Prof. AbdulHamid A. AbuSulayman's project on creative thinking from an idea to reality.' He said that in 1995, Prof. AbuSulayman formed a committee consisting of 10 academicians from different departments of IIUM, Malaysia to design a syllabus. In December 1996, he established the general studies department under Kulliyyah of Islamic Revealed Knowledge and Human Sciences, IIUM. He had a visionary intellect. He suggested that his creative thinking should be included in universities in the Muslim world as a subject. But the creative thinking course has since been abolished in the IIUM, he said.

The third speaker was Dr. Aijaz Ahmed, Associate Professor, Department of Islamic Studies, AMU, who spoke on 'Prof. AbdulHamid A. AbuSulayman's way of thinking: A study with special reference to his integrated approach to education and intellectual reform.' He called Prof. AbuSulayman a great scholar and a visionary. He occupied a distinctive place among Islamic scholars. He was very practical. Many internal and external challenges were imposed by western scholars on Islamic knowledge. He was for the revitalisation of Muslim education for the benefit of *Ummah*. He also stressed the need for generating and sharing Islamic knowledge and values, Dr. Ahmed stated.

The last speaker of the session was Dr. Siti Hadija Mohd, Assistant Professor, Department of History and Civilisation, AHAS Kulliyyah of Islamic Revealed Knowledge and Human Sciences, IIUM. The theme of her discussion was 'Historiographical documentation and impact assessment of Prof. AbdulHamid A. AbuSulayman's selected public addresses. She said that Prof. AbuSulayman's public addresses presented a significant, yet under-appreciated part of his intellectual legacy. His personal addresses were filled with personal anecdotes. His speeches were delivered during critical times when Muslims faced internal and external challenges. Calling for engaging with the Qur'an, he laid emphasis on the education that fostered independent thing which was creative and problem solving, she held.

Valedictory Session

As a guest of honour at the valedictory session, Prof. Emiratus Datuk Dr. Osman Bakar, rector, IIUM, Malaysia said that IIUM humbly

remembered the legacy of Prof. AbdulHamid Ahmad AbuSulayman. He was a visionary man for integrating Islamic knowledge with modern education. He addressed ethical and moral challenges. He promoted cultural dialogue. Owing to his endeavours, IIUM is the world's leading Islamic University. He also promoted contemporary thinking among Muslim intellectuals. He had a holistic approach to epistemology and world view. Prof. Baker asked for drawing inspiration from Prof. AbuSulayman's legacy.

Dr. Zaid Barzinji, President, Maqasid Institute, USA, in his speech as another guests of honour, observed that Prof. AbuSulayman excelled in economics too. He said that his thoughts were driven by Allah and what Allah expected of him. He knew that his vision required several generations to realise. He said, "The Qur'an has reflection of cycles. There is need for discovering and committing to the Qur'an. World view is the starting point of reflection cycles. The challenge is to trust ourselves to approach the Qur'an. Reform cycles also apply in education and life." While Prof. AbuSulayman was involved in reforming higher education, he also cared about early learning as a critical point, Dr. Barzinji said.

Imam Mohamed Magid, former President, Islamic Society of North America, USA, as another guest of honour, observed that Prof. AbuSulayman was a great contributor. He believed that there was gap between text and context, and tried to address the complications of context. His contributions were very amazing. His approaches included the holistic approach to the Qur'an, the life-style of the Prophet (PBUH) and the encouragement to the people to understand the context. He allowed one to engage with him, Imam Magid maintained.

Datuk Prof. (Dr.) Abdelaziz Berghout, Dean, International Institute of Islamic Thought and Civilisation, AHAS Kulliyyah of Islamic Revealed Knowledge and Human Sciences, IIUM, held that Prof. AbuSulayman's multi-disciplinary background like, Economics, Islamic Studies, led him to identify Islamic perspective. He developed the idea of Islamisation of Knowledge. In him, Muslim mind was more inclusive. "Islamisation of Knowledge means dealing with our

legacy. His dynamism of Islamic knowledge has four points – Importance of *Maqasid* of the Qur'an and importance of reform of the Muslim mind; Muslim mind to deal with law; Importance of *Ikhlaq* or ethics and importance of Ijtihad of Muslim mind or Muslim world", Dr. Berghout added.

In his valedictory address, Prof. Omar Hasan Kasule, Secretary General, IIIT, USA, held that Prof. AbuSulayman left a rich legacy which reflected his character and personality. His social service involved helping pilgrims in Makkah during the *Hajj*. He was also an investor who invested in the real estate in Makkah. He had forays into public administration and academic administration. He was a thinker, author and a good husband. He was a dedicated family man and considerate to the weak. He spared time for small problems and respect for others. Though he had strong opinions, yet he was not against others. He had strong arguments for what he believed and not strong in attacking others. Several things made him somebody. These were: character-intellectual; Think by looking around you and actual problem of the *Ummah*. He was a global thinker, original thinker, brave thinker and had unique packaging of thoughts. He used long sentences with some repeats because he wanted related facts together. He focused on small problems. He said that Prof. AbuSulayman did not give references because he was an original thinker. He had long sentences, some of which were of half a page or one full page, Prof. Kasule concluded.

In his presidential address, Patron of the IOS, Prof. Z.M. Khan, said that he had a chance to play host to Prof. AbuSulayman in Delhi because of Dr. Mohammad Manzoor Alam. He also had an opportunity to visit his office in the United States. His views on women under Islam were very well explained. He proved how the interpretation of the Qur'an was wrongly used. He said all the generations are not the same in the eye of the Almighty. New generations revolutionise things.

At the end, a 7-point resolution was unanimously adopted on the occasion. The resolution was read out by Prof. Mohammad Ishaque. Following is the text of the resolution:

It is a matter of immense satisfaction that the Institute of Objective Studies, New Delhi, India, in collaboration with AbdulHamid AbuSulayman Kulliyyah of Islamic Revealed Knowledge and Human Sciences, International Islamic University Malaysia and International Islamic Fiqh Academy, Jeddah, KSA successfully organised a two-day online international conference on "Prof. AbdulHamid Ahmad AbuSulayman: Personality, Intellectual and Scholastic Legacy" at New Delhi on December 11-12, 2024 via ZOOM in which academicians and scholars, at a good scale from many nations, like India, USA, Malaysia, Saudi Arabia, etc., participated and presented their research papers.

The delegates to the conference, while appreciating the organisation of this conference by the Institute of Objective Studies, adopted the following resolutions:

1. While literature encompassing most of the aspects of civilisational changes had been developed in the world, especially in Europe, Prof. AbdulHamid Ahmad AbuSulayman developed thought for progress of Muslims and their march ahead, based on the Qur'an, the life of the Prophet (PBUH) and the Muslim literature with due reason and rationality.

2. While facing challenges from theorists living in the scientific and technologically rich environment, Prof. AbdulHamid Ahmad AbuSulayman successfully made a way for thinking with educational missions as ingrained in the revealed knowledge, mainly the Qur'an and the *Sunnah*.

3. While the philosophical contribution of Prof. AbdulHamid Ahmad AbuSulayman has been studied by scholars with concern in various institutions and universities, identifying reasons for crisis in Muslim mind, oppression and inequality, the scholars are urged upon to pay more attention on his writings to identify the thought for a balanced approach in present globalising world for more equity, equality and justice for all human beings living in various jurisdictions.

4. That the existing institutions and universities should have specific research programmes for exploring the socio-economic and political environment, with responses of Prof. AbdulHamid Ahmad AbuSulayman.

5. That proper methodologies should be developed for inter-religious understanding as has been adopted by Prof. AbdulHamid Ahmad AbuSulayman to deliver the facts with original flavors and natural essence.

6. The creative thinking paper which was included in the curriculum of IIUM by AHAS Kulliyyah of Islamic Revealed Knowledge and Human Sciences has unfortunately abolished in 2023. This conference strongly proposes and recommends to the authorities concerned at IIUM to include it again, and urges upon other universities of the Muslim world to include it in their curriculum as a tribute to Prof. AbuSulayman.

7. That a chair in the name of Prof. AbdulHamid Ahmad AbuSulayman in Islamic thought and International Relations may be created at the Institute of Objective Studies.

At the end of the conference, Prof. Dr. Haseena Hashia, Vice-Chairperson, IOS proposed a vote of thanks to the participants.

IOS book "Mohammad Nejatullah Siddiqi: Life and Contributions to Islamic Economics" released (December 21, 2024)

The book "Mohammad Nejatullah Siddiqi: Life and Contributions to Islamic Economics" was released at a virtual programme organised by the Institute of Objective Studies on December 21, 2024.

It may be recalled that the book has been edited by Prof. Javed Ahmad Khan, former Director, Centre for West Asian Studies, Jamia Millia Islamia, New Delhi.

The programme began with the recitation of a Quranic verse.

In his welcome address, Secretary General of the IOS, Mr. Mohammad Alam, highlighted the activities of the institute. He said that established in 1986, the institute had so far organised more than 1300 programs at national and international level, and published 450+ books on various subjects. It was engaged in undertaking research and surveys on the status of minorities and socially and economically deprived sections. Referring to the book, he said that it was a prestigious publication of the institute. The book focused on the contribution of the noted scholar of Islamic banking and finance, Prof. Mohammad Nejatullah Siddiqi. His books in English were recognized nationally and internationally. "The book is a significant contribution to understanding the life and legacy of Prof. Mohammad Nejatullah Siddiqi. It holds immense relevance for the contemporary Muslim world," he added.

Speaking about the book, Prof. Javed Ahmad Khan, Editor, observed that the book had been published by the IOS on the contribution of Late Prof. Siddiqi. It was the idea of Dr. Mohammad Manzoor Alam, Chief Patron and the Founding Chairman of the IOS, to visualize an international conference on the contributions of Prof. Siddiqi. Prof. Siddiqi theorized in 1960s the Islamic banking and finance without interest. He was the most prominent social scientist and economist of Independent India. He said that the book was worth reading. It was a collection of essays on various aspects of Islamic banking and finance

as propounded by Prof. Siddiqi. He was meticulous about training young students. He stressed the need for more research on his ideas which had not been covered in the book. Prof. Siddiqi also laid emphasis on educating madrasa students in financial literacy and development. He said that Prof. Siddiqi embodied three core values – mental clarity, modesty and family. His vision for Islamic economics was not just theoretical, but aimed at practical global development.

Prof. Emeritus Dato Dr. Azmi Omar, President and CEO of INCEIF University, Malaysia, released the book virtually. Speaking on the occasion, he said that Prof. Siddiqi's contribution was not only in Islamic economics, but also ethics in economics. He was a unique individual and was ahead of his times. He was pioneer in Islamic economics based on Islamic principles. Highlighting the enduring relevance of Prof. Siddiqi's ideas, he said that in today's world marked economic inequality and moral crisis, his theories offered a beacon of hope. His legacy underscored the profound importance of Islamic principles in addressing modern challenges. He theorized Islamic economics in the context of Islamic thought. His inter-disciplinary approach to economics expanded the scope of Islamic economics. He also raised the question of poverty and the foundational area in Islamic economics and finance. A lot of research on Islamic economics and finance was still needed. As the founder of modern Islamic economics, he would always be remembered for his scholarly contributions and unwavering dedication to building a better world, Dr. Omar added.

In his key-address, CEO of Fajr Capital Group, Dubai, UAE, Dato Iqbal Ahmed Khan, reflected on his personal relationship with Prof. Nejatullah Siddiqi during his days at Aligarh Muslim University, Aligarh. He said that Prof. Siddiqi used to discuss Islamic economics even in his university days. During Emergency in 1975, he was among the intellectuals imprisoned for their opinions. He held that his father, Mr. Iftikhar Ahmed Khan strongly supported Prof. Siddiqi during those difficult days. His understanding of Islamic economics and finance was very deep. He was in the service of humanity and faith. Consultation with Prof. Siddiqi impacted his life. His father visited Prof. Siddiqi in prison during the Emergency. His ground-

breaking ideas and thoughts inspired a generation of scholars. He observed that according to Prof. Siddiqi, faith and reason could work together. His ideas were rooted in Islamic faith. He said that he was doing a small service to fulfil Prof. Siddiqi's dream of Islamic finance.

Another key speaker, Dr. Mohammad Ahmadullah Siddiqi, Professor Emeritus of Journalism and Public Relations, Western Illinois University, USA, and nephew of Prof. Mohammad Nejatullah Siddiqi, held that he used to attend discussions at the home of his uncle, Prof. Nejatullah Siddiqi. He lived with him and saw him focusing on the people who were developing his ideas of Islamic economics. He received the guidance of his uncle. In his book, *Maqasid-e-Shariah*, he presented a survey of Islamic economics. He explained the just and fair economic system under Islam. He said that economic system under capitalist and socialist system, was exploitative. Both the systems did not focus on fairness and justice. He praised the establishment of an Economic Research Centre in Aligarh as one of Prof. Siddiqi's notable achievements. He hoped that Prof. Siddiqi's legacy and scholarship would continue to inspire scholars in the field of Islamic economics and finance.

Prof. Abdul Azim Islahi, a student of Prof. Nejatullah Siddiqi and ex-Professor of Islamic Economics, King Abdul Aziz University, Jeddah, KSA, highlighted his deep understanding of Islamic banking and his advocacy for a non-profit economic system, and its relevance in today's context. He described Prof. Siddiqi as a mentor whose humility, intellectual depth and commitment to reforming Islamic economics left an indelible mark on his academic journey. He said that Prof. Siddiqi was dissatisfied with the existing Islamic economic models and his drive for reformation, particularly in promoting financial literacy and economic empowerment within the Muslim community. He held that Prof. Siddiqi's vision extended beyond theoretical frameworks to practical applications that could transform lives.

Head of the Department of Economics, Abida Inamdar Senior College of Arts, Science and Commerce, Pune, Dr. Aftab Alam pointed out that banking without interest was the main contribution

of Prof. Mohammad Nejatullah Siddiqi. He laid down foundational principles of Islamic banking. He explained how Prof. Siddiqi meticulously dissected the intricacies of Islamic finance, offering profound insight into its principles, practices and implications. He said that prohibition of *Riba* (interest) in all financial transaction which was decried by Islamic law (*Shariah*), was one of his key themes. He remarked that Prof. Siddiqi's work contrasted the inequalities of an interest-based economy with justice and equity embedded in Islamic finance. He also explored financial instruments like *Mudharabah* (profit sharing) *Musharakah* (joint venture) and *Wakalah* (agency) emphasizing their application in contemporary banking processes.

In his presidential remarks, Chairman of the IOS, Prof. M. Afzal Wani, provided a historical perspective of Prof. Siddiqi's personal and professional life. He described the challenges Prof. Siddiqi faced during the tumultuous times and his efforts to establish peace and justice. He remarked that sovereignty, polity and economy were the three pillars of Prof. Siddiqi's Islamic economic thought in which he highlighted economic interfaces, injustice and the cultural identities. He also focused on the key factors of the book and said how he balanced the situation of Islamic economics and the welfare economy. He came up with some of the important recommendations. One of these was tackling unemployment. Islamic theorists must know how to reduce unemployment and how the resources could be used in a sustained manner. Second, managing inflation as inflation would be there, but it should be steady. Third, fostering consumer confidence and investing in banking, cooperative sector or elsewhere and using the things that made a person happy. He also called for building confidence stating that Prof. Mohammad Nejatullah Siddiqi's work offered insights into these goals.

At the end, Vice-Chairperson of the Institute, Prof. (Ms.) Haseena Hashia, extended a vote of thanks to the participants.

Mujaddid IOS Centre for Arts and Literature organises Discussion on "*Issues before the Teaching of Urdu Language*" (December 28, 2024)

A discussion on "*Issues before the teaching of Urdu Language*" was organised by the Mujaddid IOS Centre for Arts and Literature on December 28, 2024 at the auditorium of the Institute of Objective Studies.

The program began with recitation of a Qur'anic verse by Mr. Nasim Ahsan of the Institute.

Senior Urdu journalist and writer Mr. Ahmed Javed introduced the topic before the discussion, which was chaired by renowned Urdu writer Mr. Azim Akhtar. He gave a brief explanation of the causes of the current situation in Urdu language instruction. He claimed that the government's apathy was one of the contributing factors. There were no new hires for the Urdu teaching positions. The situation has become so bad that positions for Urdu instructors are being eliminated and vacancies are not being filled. Furthermore, no appropriate plans had been put in place for the training of Urdu teachers. Additionally, he mentioned the parents' lack of enthusiasm in encouraging their children to take Urdu as a subject.

Prof. Mohammad Kazim noted that Urdu, owing to its sweetness and simplicity, has demonstrated its significance globally and managed to survive even in challenging conditions. Addressing the challenges in teaching the language, he expressed concern over the declining interest among Muslims, calling it a serious issue. He emphasized the need for proper training programs for Urdu teachers and the integration of modern technology in Urdu education. He cautioned against despair, describing it as a destructive force that drains one's energy. While acknowledging the existing challenges, he stressed the importance of persistent efforts rather than inaction. Additionally, he raised concerns about the lack of seriousness in curriculum development and questioned the direction and implementation of the new education policy.

Prof. Shahzad Anjum from the Department of Urdu, JMI, New Delhi emphasized that the issue was extensive, spanning across primary, secondary, and university education. He noted that challenges existed at every level and needed to be tackled with a practical approach. Meanwhile, Prof. (Ms.) Haseena Hashia, Vice-Chairperson of the IOS, highlighted the gradual decline of Urdu's vibrancy. She underscored the importance of updating the Urdu dictionary and creating alternative words. Additionally, she advocated for a structured system to publish supplementary books that could enhance Urdu textbooks.

Dr. Shuaib Raza Khan stated that all student textbooks were now available in Urdu. Both NCERT and NIOS have developed high-quality Urdu textbooks. He noted that NIOS had even taken an additional step by introducing a law syllabus for senior secondary students. However, he pointed out that the main issue was the extremely low number of students choosing the subject.

All the speakers at the discussion shared their insights on the challenges of teaching Urdu based on their experiences. They thoroughly examined the existing shortcomings and weaknesses in the education system. To address these issues, they stressed the importance of encouraging the Muslim community to speak Urdu at home. Additionally, they emphasized that Urdu should not only be used for conversation but also for writing signboards in shops, homes, and business transactions. They further suggested promoting the habit of reading Urdu newspapers to strengthen the language's presence.

Earlier, Mr. Anjum Naim, the Convenor of the Mujaddid IOS Centre for Arts and Literature, welcomed the guests and provided an overview of the Centre's activities. He mentioned that the Centre actively organizes discussions, seminars, and talks on various issues related to arts and literature, with a special focus on Urdu. He also assured that such events would continue to be held regularly.

Presiding over the discussion, Mr. Azim Akhtar acknowledged the significant progress made by the IOS under the leadership of Dr.

Mohammad Manzoor Alam. Speaking on the condition of Urdu, he remarked that the language suffered due to official neglect and the community's indifference. He pointed out that many Muslim families did not encourage their children to take Urdu as a subject at the secondary level, and the lack of interest in speaking Urdu at home further contributed to its decline. Additionally, he noted that the circulation of Urdu newspapers was not growing because readership was decreasing. He stressed the importance of revitalizing the language by encouraging people to read newspapers, magazines, and books in Urdu.

The program was attended by several distinguished guests, including Mr. Mansoor Ahmad, Mr. Kalam Arshad, Mr. Firoz Hashmi, Mr. Abdul Mannan, Mr. Siraj Makki, Mr. Suhail Anjum, Mr. Safi Akhtar, Dr. Ishrat Zahir, Dr. Naushad Alam, along with numerous Urdu teachers and students.

At the end, Mr. Anjum Naim expressed his gratitude to all attendees by proposing a vote of thanks.

RELIGION AND LAW REVIEW

Volume XXXIII: 2024

ISSN 0971 – 3212

Declaration

Place of publication	:	New Delhi, India
Periodicity	:	Bi-annual/Annual
Language	:	English only
Editor	:	Prof. M. Afzal Wani
Owner, Publishers & Printers	:	**Institute of Objective Studies** 162, Jogabai Main Road, Jamia Nagar, New Delhi – 110025

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SECRETARY GENERAL, IOS

Computer setting by Mohammad Naseem, New Delhi

Printed at: Bharat Offset Press, 2035, Gali Qasim Jaan, Delhi-110006