

**NATIONAL COMMISSION FOR MINORITY
EDUCATIONAL INSTITUTIONS**

CASE NO. 1443 OF 2006

In the matter of :

Jamia Teachers Association
Through its Secretary
Jamia Millia Islamia
Maulana Mohamad Ali Jauhar Marg
Jamia Nagar, New Delhi – 110 025

....Petitioner

Vs.

1. The Vice Chancellor
Jamia Millia Islamia
Maulana Mohammad Ali Jauhar Marg
Jamia Nagar
New Delhi – 110 025

2. The Secretary
Ministry of Human Resource and Development
Department of Higher Education
Govt. of India
Shastri Bhavan
New Delhi

3. The Secretary
Ministry of Minority Affairs
Govt. of India
Paryavaran Bhawan
11th Floor, CGO Complex
Lodhi Road, New Delhi – 110 003

..... Respondents

4. Confederation of Muslim Educational Institutions of India
Through its Secretary, Mr. Kamal Faruqui
A-80, Nizamuddin East
New Delhi

..... Intervener

CASE NO. 891 OF 2006

In the matter of :

1. Jamia Students Union
Jamia Millia Islamia
Maulana Mohamad Ali Jauhar Marg
Jamia Nagar, New Delhi – 110 025
2. Mr. Shams Perwaiz
S/o Janab Nisar Ahmed
8-A, Sir Abdul Majid Khwaja Hostel
Jamia Millia Islamia
Maulana Mohamad Ali Jauhar Marg
Jamia Nagar
New Delhi – 110 025

...Petitioners

Vs.

1. The Vice Chancellor
Jamia Millia Islamia
Maulana Mohamad Ali Jauhar Marg
Jamia Nagar, New Delhi – 110 025

2. The Registrar

Jamia Millia Islamia
Maulana Mohamad Ali Jauhar Marg
Jamia Nagar, New Delhi – 110 025

3. Ministry of Human Resource and Development

Through its Secretary
Department of Education
Government of India
Shastri Bhawan
New Delhi

4. Ministry of Minority Affairs

Through its Secretary
Government of India
New Delhi

..... Respondents

CASE NO. 1824 OF 2006

In the matter of :

1. Jamia Old Boys Association

Through its President
Jamial Old boys Lodge
Behind Central Bank of India
Jamia Millia Islamia
Jamia Nagar, New Delhi – 110 025

2. Mr. Javed Alam
S/O Janab Mohammad Umar
R/o K-84, Street No. 8, Gautam Vihar
Delhi – 110 053

....Petitioners

Vs.

1. Prof. Mushirul Hassan
S/o Shri Muhibbul Hassan (Vice Chancellor)
Jamia Millia Islamia
Maulana Mohamad Ali Jauhar Marg
Jamia Nagar, New Delhi – 110 025

2. Mr. S. M. Afzal
S/o Shri S.H. Quadri (Registrar)
Jamia Millia Islamia
Maulana Mohamad Ali Jauhar Marg
Jamia Nagar, New Delhi – 110 025

.. .Respondents

CASE NO. 1825 OF 2006

In the matter of :

1. Jamia Old Boys Association
Through its President
Jamial Old boys Lodge
Behind Central Bank of India
Jamia Millia Islamia
Jamia Nagar, New Delhi – 110 025

2. Mr. Javed Alam
S/O Janab Mohammad Umar
R/o K-84, Street No. 8, Gautam Vihar
Delhi – 110 053

....Petitioners

Versus

1. The Vice Chancellor
Jamia Millia Islamia
Maulana Mohamad Ali Jauhar Marg
Jamia Nagar, New Delhi – 110 025
2. The Registrar
Jamia Millia Islamia
Maulana Mohamad Ali Jauhar Marg
Jamia Nagar, New Delhi – 110 025
3. Ministry of Human Resource and Development
Through its Secretary
Department of Education
Government of India
Shastri Bhawan
New Delhi
4. Ministry of Minority Affairs
Through its Secretary
Government of India
New Delhi

..... .Respondents

ORDER

(Delivered on the 22nd day of February, 2011)

Justice M.S.A. Siddiqui, Chairman

The Jamia Teachers Association has filed the petition (Case No. 1443/2006) for declaration that the Jamia Millia Islamia (for short the Jamia) is a minority education institution covered under Article 30(1) of the Constitution of India. The Jamia Students Union and the Jamia Old Boys Association have also filed separate petitions for the said relief and these petitions have been registered as Case No. 891 of 2006, 1824 of 2006 and 1825 of 2006, respectively. By the petition (Case No. 891/2006), the Jamia Students Union seeks directions to the respondent university to admit at least 50% students from the Muslim Community; to provide religious and secular education to Muslims and to take appropriate action against the Vice Chancellor and Registrar of the University for non-implementation of mandate of the Jamia Millia Islamia Society. By the petition No. 1824/2006, the Jamia Old Boys Association seeks initiation of the disciplinary proceedings against the former Registrar and Vice-Chancellor of the respondent University for violation of the educational rights of the minorities enshrined in Article 30(1) of the Constitution of India. The Confederation of Muslim Educational Institutions of India has intervened in the case in support of the petitioners' claim regarding the minority status of the Jamia. However, we are confining ourselves to the main relief sought by the petitioners relating to the

minority status of the Jamia. Since a common question of law and fact is involved in all these cases, they were taken up for hearing together and are being disposed of by this common order.

Shorn of verbiage, the petitioner's case is that in October 1920, the Jamia was founded by the national leaders, namely Maulana Mohemmad Ali Jauhar and Hakim Ajmal Khan as they wanted the Muslims to keep their education in their own hands entirely free from governmental interference. In 1925, the Jamia, being hard hit by financial crisis, moved to Delhi. However, it survived with the active support of leaders like Hakim Ajmal Khan, Dr. M.A. Ansari. Khwaja Abdul Majeed, Dr. Zakir Husain, Abid Hussain and Prof. Mohd. Mujeeb. In 1939, some Muslim teachers of the Jamia constituted a society and got it registered under the Societies Registration Act, 1860 as the Jamia Millia Islamia Society. In 1962, the UGC accorded Jamia the status of a deemed university under Section 3 of the University Grants Commission Act. On persuasion of the Muslim Community, the Jamia was given the status of a Central University under the Jamia Millia Islamia Act, 1988 (hereinafter to be referred as the Act). It is alleged that in 1920 the Jamia was founded by the Muslim Community for empowerment of Muslims through education and since then it is being administered by the Muslim community. On these premise it is alleged that the Jamia is a minority educational institution covered under Article 30(1) of the Constitution.

Mr. S. M. Afzal, the then Registrar of the Jamia filed his affidavit on 13.10.2006 in opposition of the petition. He resisted the petition on the ground that the Jamia is not a minority educational institution. Strong reliance was placed on Sections 5 and 7 of the Act, in support of the said contention. On the contrary, the present Registrar of the Jamia, Prof. S.M. Sajid has filed his affidavit stating that in 1920, the Jamia was founded by the National Leaders like Maulana Mohd. Ali Jauhar and Hakim Ajmal Khan for the benefit of the Muslim community. He has filed certain documents including some books containing early history of the Jamia. In short, now the stand taken by the Jamia fully supports the case of the petitioners relating to its minority status.

The Ministry of Human Resource Development, Government of India has sought stay of the proceedings on the ground that in Azeez Basha vs. Union of India AIR 1968 SC 662, the Supreme Court has held that the Aligarh Muslim University is not a minority institution as it was incorporated under the Act of the Central Legislature and now the said issue has been reagitated by the Aligarh Muslim University by filing a special leave petition before the Supreme Court. According to the said Ministry, the decision of the Supreme Court will have a bearing on merits of the case in hand.

It needs to be highlighted that Shri Firoz Bakht had intervened in the proceedings by filing an application in opposition to the petitions filed by the petitioners. On 19.7.2010, he withdrew his application, which was dismissed as

withdrawn vide orders dated 21.9.2010. Consequently, the issue No. .(i) framed relating to jurisdiction of this Commission was deleted. In the meantime, the Confederation of Muslim Educational Institution of India also filed an application for intervention in the proceedings.

The following issue was framed :-

Whether the Jamia Millia Islamia University is a minority educational institution covered under Article 30(1) of the Constitution?

At the outset we must make it clear that this Commission has been created under an Act of Parliament to facilitate exercise of the educational rights of the minorities enshrined in Article 30 (1) of the Constitution. The weight of judicial authority leans in favour of the view that the Statement of Objects and Reasons accompanying a bill, when introduced in Parliament cannot be used to determine the true meaning and effect of the substantive provisions of the Statute. They cannot be used except for the limited purpose of understanding the background and the antecedent state of affairs leading upto the legislation and the evil which the statute was sought to remedy. However, judicial notice can be taken of the factors mentioned in the Statement of Objects and Reasons and of such other factors as must be assumed to have been within the contemplation of the Legislature when the Act was passed. If the provisions of the National Commission of Minority Educational Institutions Act are interpreted keeping in view the background and context in which the Act was enacted and the purpose sought to be achieved by this enactment, it becomes clear that the said 'Act' is intended to create a new dispensation for expeditious disposal of cases relating to grant of affiliation by the affiliating universities, violation/ deprivation of educational rights of the minorities enshrined in Article 30(1) of the Constitution,

determination of Minority Status of an educational institution and grant of NOC etc. This Commission is a quasi-judicial tribunal and it has been vested with the jurisdiction, powers, and authority to adjudicate upon disputes relating to grant of affiliation to the colleges covered under Article 30(1) of the Constitution, to determine the minority status of educational institutions and to grant NOC etc. and rights conferred upon the minorities under the Act without being bogged down by the technicalities of the Code of Civil Procedure.

Section 11(f) of the National Commission of Minority Educational Institutions Act confers jurisdiction on the Commission to decide all questions relating to the status of any institution as a minority educational institution and declare its status as such.

Bearing in mind, the mandate of Article 30(1) of the Constitution as interpreted by various authoritative pronouncements of the Supreme Court and Section 2(g) of the National Commission for Minority Educational Institutions Act, following facts are required to be proved for grant of minority status certificate to a minority educational institution on religious basis:

- (i) that the educational institution was established by a member/members of the religious minority community;
- (ii) that the educational institution was established for the benefit of the minority community ; and
- (iii) that the educational institution is being administered by the minority community.

It has been held by the Supreme Court in Azeez Basha's case (supra) that the words 'educational institutions' are of very wide import and would include a university also. Article 30(1) of the Constitution gives linguistic and religious minorities a fundamental right to establish and administer educational institutions of their choice. These rights are protected by a prohibition against their violation. The prohibition is contained in Article 13 of the Constitution which declares that any law in breach of the fundamental rights would be void to the extent of such violation. Article 30 is a special right conferred on the religious and linguistic minorities because of their numerical handicap and to instill in them a sense of security and confidence, even though the minorities cannot be per se regarded as weaker sections or under privileged segments of the society. A stream of Supreme Court decisions commencing with the Kerala Education Bill Case AIR 1958 SC 956 and climaxed by T.M.A. Pai Foundation vs. State of Kerala (2002) 8 SCC 481 has settled the law for the present. The whole edifice of case law on Article 30(1) has been bedrocked on Kerala Education Bill case. The constitutional estate of the minorities should not be encroached upon, neither allowed to be neglected nor maladministered. This quintessence of the decision may now be aptly borne out by pertinent excerpts from various decisions rendered by the Supreme Court.

In Azeez Basha's case (supra), the Supreme Court has held that the expression "establish and administer' employed in Article 30(1) was to be read

conjunctively that is to say, two requirements have to be fulfilled under Article 30(1) namely, that institution was established by the community and its administration was vested in the community. In S.P. Mittal vs. Union of India AIR 1983 SC 1, the Supreme Court has held that in order to claim the benefit of Article 30(1), the community must show; (a) that it is a religious/linguistic minority; (b) that the institution was established by it. Without specifying these two conditions, it cannot claim the guaranteed right to administer it.

In St. Stephen's College vs. University of Delhi (1992) SCC 558, the Supreme Court has declared the St. Stephen's College as a minority educational institution on the ground that it was established and administered by members of the Christian Community. Thus, these were the indicia laid down by the Supreme Court for determining the status of a minority educational institution and they have also been incorporated in Section 2(g) of the Act. Article 30(1) of the Constitution postulates that members of a religious or linguistic minority have the right to establish and administer educational institutions of their choice. It is a matter of proof through production of satisfactory evidence that the institution in question was established by the minority community claiming to administer it. The proof of the fact of the establishment of the institution is a condition precedent for claiming the right to administer the institution. The onus lies on one who asserts that an institution is a minority institution. It has been held by a Division Bench of the Madras High Court in T.K.V.T.S.S. Medical Educational and Charitable Trust vs. State of Tamil Nadu AIR 2002 Madras 42 that "once it is

established that the institution has been established by the minority, and is administered by that minority, that would be sufficient for claiming the fundamental right guaranteed under Article 30(1) of the Constitution.” In Andhra Pradesh Christian Medical Association vs. Government of Andhra Pradesh, AIR 1986 SC 1490, the Supreme Court has held that the Government, the University and ultimately the Court can go behind the claim that the institution in question is a minority institution and "to investigate and satisfy itself whether the claim is well founded or ill founded." A minority educational institution continues to be so whether the Government declares it as such or not. When the Government declares an educational institution as a minority institution, it merely recognizes a factual position that the institution was established and is being administered by a minority community. The declaration is merely an open acceptance of the legal character of the institution which must necessarily have existed antecedent to such declaration (N. Ammad vs. Emjay High School (1998) 6 SCC 674).

A Society or Trust consisting of members of a minority community, or even a single member of a minority community, may establish an institution. The position has been clarified by the Supreme Court in State of Kerala vs. Mother Provincial AIR 1970 SC 2079, the Supreme Court has observed:

"Establishment means bringing into being of an institution and it must be by a minority community. It matters not if a single philanthropic individual with his own means, institution or the community at large founds the institution or the community at large contributes the funds. **The position in law is the same and the intention in either case must be to found an institution for the benefit of a minority community**

by a member of that community. It is equally irrelevant to this right that in addition to the minority community, others from other minority communities or even from the majority community can take advantage of these institutions.”

(emphasis supplied)

In Christian Medical Association (supra) the Supreme Court has also held that "what is important and what is imperative is that there must exist some real positive index to enable the institution to be identified as an educational institution of the minorities." Needless to add here that the right enshrined in Article 30(1) of the Constitution is meant to benefit the minority by protecting and promoting its interests. There should be a nexus between the institution and the particular minority to which it claims to belong. The right claimed by a minority community to administer the educational institutions depends upon the proof of establishment of the institution. It is relevant to mention that in Ahmedabad St. Xaviers' College Society vs. State of Gujarat (1974) 1 SCC 717, the Supreme Court has held that "It is doubtful whether the fundamental right under Article 30(1) can be bartered away or surrendered by any voluntary act or that it can be waived. The reason is that the fundamental right is vested in a plurality of persons as a unit or if we may say so, in a community of persons necessarily fluctuating. Can the present members of a minority community barter away or surrender the right under the article so as to bind its future members as a unit? The fundamental right is for the living generation. By a voluntary act of affiliation of an educational institution established and administered by a religious minority the past members of the community cannot surrender the right of the future

members of that community. The future members of the community do not derive the right under Article 30(1) by succession or inheritance”.

It has also been held by the Supreme Court in Olga Tellis vs. Bombay Municipal Corporation AIR 1986 SC 180, that “it is not possible to accept the contention that the petitioners are estopped from setting up their fundamental rights as a defense. There can be no estoppel against the Constitution. If a person makes a representation to another on the faith of which the latter acts to his prejudice, the former cannot resile from the representation made by him. He must make it good. This principle can have no application to representations made regarding the assertion or enforcement of fundamental rights. But the high purpose which the Constitution seeks to achieve by conferment of fundamental rights is not only to benefit individuals but to secure the larger interests of the community. No individual can barter away the freedom conferred upon him by the Constitution. In the instant case, some responsible persons and teachers of the Jamia had persuaded the Central Government to confer on the Jamia the status of a Central University under an Act of Parliament. But that does not mean that the Muslim community had either waived or bartered away the fundamental right guaranteed under Article 30 of the Constitution.

In Chikkala Samuel vs. District Education Officer, Hyderabad AIR 1982 AP 64, the Andhra Pradesh High Court has held that a minority institution imparting general secular education in order to claim the benefit of Article 30(1) must show

that it serves or promotes in some manner, the interest of the minority community or a considerable section thereof. Without such proof, it was observed, that there would be no nexus between the institution and the minority as such. This decision has been quoted with approval in St. Stephen's case (supra).

In Ahmedabad St. Xavier's College Society vs. State of Gujarat (1974) 1 SCC 717, the Supreme Court has observed;

“That the ultimate goal of a minority institution to imparting general secular education is advancement of learning. This Court has consistently held that it is not only permissible but also desirable to regulate everything in educational and academic matters for achieving excellence and uniformity in standards of education.”

At this juncture, we may usefully excerpt the following observations of the Supreme Court in St. Stephen's case (supra):

“..... In the nation building with secular character, sectarian schools or colleges, segregated faculties or universities for imparting general secular education are undesirable and they may undermine

secular democracy. They would be inconsistent with the central concept of secularism and equality, embedded in the Constitution. Every educational institution irrespective of the community to which it belongs is a 'melting pot' in our national life. The students and teachers are the critical ingredients. It is there, they develop respect for, and tolerance of, the cultures and beliefs of others. It is essential therefore, that there should be proper mix of students of different communities in all educational institutions.”

It has been held by the Supreme Court in T.M.A. Pai's case (supra) that “the essence of secularism in India is the recognition and preservation of different types of people, with diverse languages and different beliefs, and placing them together so as to form a whole and united India. Articles 29 and 30 do not more than seek to preserve the differences that exist, and at the same time unite the people to form one strong nation.

It is relevant to mention that the whole object of conferring the right on minorities under Article 30(1) is to ensure that there will be equality between the majority and the minority. If the minorities do not have such special protection they will be denied equality. It is therefore, not at all possible to exclude secular education from the ambit of Article 30(1). A liberal, generous and sympathetic

approach is reflected in the Constitution in the matter of the preservation of the rights of the minorities so far as their educational institutions are concerned. Article 30(1) was intended to have a real significance and it is not permissible to construe it in such a manner as would rob it of that significance. The meaningful exercise of the right under Article 30(1) would and must necessarily involve recognition of the secular education imparted by the minority institutions without which the right will be a mere husk.

The word 'establish' indicates the right to bring into existence, while the right to administer an institution means the right to effectively manage and conduct the 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 interest of the community in general and the institution in particular will be best served. It has been held in the case of Ahmedabad St. Xavier's case (supra) that it is difficult to subscribe to the view that the educational institutions mentioned in Article 30(1) are only those which are intended to conserve language, script or culture of the minorities. The words "of their choice" which qualify 'educational institutions' show the vast discretion and option which the minorities have in selecting the type of institutions which they want to establish. The minorities can, however, choose to establish an educational institution which is purely of general secular character and is not designed to conserve their distinct language, script and culture. The fact that the Jamia was established as a National Muslim University with the object of

imparting secular education would not take it out of the ambit of Article 30(1), which is an Article of faith.

In Azeez Basha's case (supra) the challenge was mainly directed to certain amendments made in the Aligarh Muslim University Act, 1920 by the Amendment Act of 1951 and also of 1965. It was contended before the Supreme Court that by the amendments incorporated in 1965, the management was deprived of the right to administer Aligarh Muslim University and that this deprivation was in violation of Article 30(1) of the Constitution. Having regard to the contention raised, their Lordships made a detailed study of the history of the Aligarh Muslim University in the light of the provisions of the University Act, 1920. The Supreme Court observed that although the nucleus of the Aligarh Muslim University was the Mohammadan Anglo-Oriental College which was till 1920 a teaching institution, the conversion of that college into the university was not by the Muslim minority but it took place by the virtue of the Act, 1920 which was passed by the central legislature. As there was no Aligarh Muslim University existing till the Act of 1920 and since it was brought in being by the Act of Legislature, the Supreme Court refused to hold that it was established by the Muslim community. It was also held that there is no proof to justify the claim that the Aligarh Muslim University owed its establishment to the Muslim minority and they therefore, have no right to administer the University by virtue of the fundamental right guaranteed under Article 30(1) of the Constitution.

With these prefatory remarks we proceed to examine the claim of the petitioners relating to the minority status of the Jamia. It is necessary to refer to the history of Jamia previous to its incorporation under the Act in order to understand the contentions raised by the petitioners. The petitioner has filed evidence by way of affidavits of Prof. Tabrez Alam Khan, Mr. Javed Alam, Mr. Shams Pervez and Mr. Obaid-ul-Haque to prove that the Jamia was established and administered by the Muslim Community and it was not established by the Act. Prof. S.M. Sajid, Registrar of the respondent University, has filed his affidavit to prove that the Jamia was established by Nationalist Leaders like Maulana Mohd. Ali Jauhar and Hakim Ajmal Khan for the benefit of the Muslim Community. Strong reliance has been placed on certain books annexed with the affidavits and the Memorandum of Association of the Jamia Millia Islamia Society registered under the Societies Registration Act in 1939.

It appears that when Maulana Mohd. Ali Jauhar visited the Darul-Ulum Deoband in connection with the Khilafat Movement, he was shown Maulana Qasim's original writings about the objectives of establishment of the Darul Ulum, tears came out of Maulana Mohd. Ali Jauhar's eyes and impromptu he exclaimed: 'what is the relation of these principles with reasons? These are purely inspirational'. Then he said "this is strange that the conclusion we have arrived today, after wandering a hundred years aimlessly (that we should never keep our collective institutions dependent upon any help of the English Government, but with self reliance stand up keeping them in our own hands,

these elders had surprisingly already reached it a hundred years ago).” (quoted from the History of the Darul Ulum Deoand, Vol I compiled by Sayyid Mahboob Rizvi translated into English by Prof., Murtaz Hussain F Quaraishi, 1980 Edn, page 33).

It was felt by Ali brothers (Maulana Shaukat Ali and Maulana Mohd. Ali Jauhar), Dr. M.A. Ansari and Hakim Azmal Khan that Islamic teaching had been neglected in MAO College, Aligarh as it became a Centre of English fashion and culture. Allama Shibli Numain also withdrew himself from the MAO College because of the same reason and in 1894 founded Nadvat-ul-Ulema at Lucknow (U.P.) for Islamic teachings. Since the MAO College was considered a pro-British institution, they aimed it turning into a national university. Accompanied by Dr. M.A. Ansari, Hakim Azmal Khan and Gandhiji, Ali brothers visited the MAO College and addressed the students to submit to the national aspiration, and join hands with them, in having run the college on independent lines in the best interests of the community and the country. On 28 October, 1920, trustees of the MAO College convened a meeting to study the situation created by Ali Brothers. They expressed their emphatic disapproval of the action of Ali Brothers addressing the students, asking them to pass a resolution in support of non-cooperation movement. The trustees sought the help of the police to get Ali brothers and their comrades evicted from the Old Boys Lodge on the ground that it was being used for sedition purposes. However, on their eviction from the

lodge, they hired a few tents and pitched them at some distance of the college campus and carried out their mission.

However, on 29th October 1920, the inauguration ceremony of the National University was announced after Friday prayer in the college mosque. The object of establishment of the National University was explained in the following presidential address delivered by the Sheikul Hindu Maulana Mahmud - ul-Hasan:

“..... to keep Muslim education in Muslim hands entirely free from external control, so that we may be perfectly immune from pernicious alien influences in our ideas and beliefs, our moral and action, our character and conduct, and also to enable the students to imbibe all that was best in western culture and science as well as to make the institution an efficient substitute for the ancient Muslim Universities of Baghdad and Cordova.”

The presidential address was followed by a speech from Maulana Mohd Ali Jauhar, who reiterated his intention of the Nationalist Muslims to convert the MAO College , Aligarh into a National institution. The MAO College, Aligarh marked the first turning point for Muslims in India, Jamia the second.

At the initial stage, Maulana Mohd. Ali Jauhar occupied few rooms of the college and started enrolling students for the Jamia. Anticipating police intervention in the said venture, Maulana Mohd. Ali Jauhar shifted location of the Jamia to an adjacent place on October 31, 1920. Maulana Mohd. Ali Jauhar became the first Principal, Tasadduq Ahmad Khan Sherwani the first Registrar, Sheikh-ul-Hind Maulana Mahmud-ul-Hasan the guiding patron and Hakim Azmal Khan, the Amir. The objects of the Jamia were spelt out by Maulana Mohd. Ali Jauhar in the following words:

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

able to stand by themselves as sufficiently independent units in the army of Islam's missionaries.”

Maulana Mohd. Ali Jauhar stressed the teaching of Islamic history and Quran in the Jamia, and the training of students for service to the nation. In his various articles published in Hamdard, he explained following basis objectives for establishment of the Jamia :

“Jamia Millia Islamia is first a Jamia i.e. a university. And then it is a Millia, a group of followers of a faith. In other words, it is a teaching institution where both religious and other, i.e., worldly, education is imparted. It does not restrict itself to teaching only religious matters, as is the case with Deoband and Madarsa Nizamia. It also does not limit its education to that of the current English language schools. And then this Jamia is Jamia-i-Islamia, so that it teaches Islam. It must be noted, however, that its door are open to followers of all religions. The curriculum of the Jamia includes the learning of the Arabic language, so that the students can understand both the Quran and Hadith (the sayings of the Prophet) as much as the unlettered man in the times of the Prophet could. Although one

should refer to scholarly commentaries of the Quran, one should not be entirely dependent on them nor on others for following the basic tenets of Islam....

Jamia's objective is that Muslims should neither follow blindly the previous 'fixed' path, nor should they believe that the essence of religion lies in a few problems of jurisprudence.... the Jamia has instilled hatred in the heart of every student – be he a Muslim or a Hindu – against subjugation by foreign powers. It has kept its air free of transgression and prejudice. For these reasons, the Jamia is both Jamia Islamia and a national university.”

(quoted from Partners in Freedom Jamia Millia Islamia by Mushir ul Hasan at page 66)

In 1921, Hakim Ajmal Khan delivered the first convocation address of the Jamia. He stressed on the need of interfaith understanding through education as that would strengthen the united Indian nationalism. According to him, one of the main objectives of the Jamia was to inject in the students a deep love for mother land. Elaborating the Jamia's role in education, Dr. Zakir Hussain observed in Hamdard-i-Jamia in August 1937:

“The biggest objectives of Jamia Millia is to prepare a roadmap for the future lives of Indian Muslims with the religion of Islam at its core, and to fill the map with the colour of the civilization of India in such a way that it merges with the colours of the life of common man. The basis of this objective is the belief that a true education of their religion will imbibe in Indian Muslims a love for their country and a passion for national integration, and prepare them to take active part in seeking independence and progress for India. An independent India join hands with other countries in seeking peace and international cooperation....

To use the roadmap for the future of Indian Muslims, especially for creating a curriculum for their children. Learning for earning a living is the current trend, and learning for the sake of learning was the guiding principle in the past. The Jamia regards both these precepts as narrow and restraining. It wants to give knowledge for the sake of life, the wide circle which includes religion, wisdom, industry, politics, economics and other fields. It wants to enable its students to appreciate national civilization and values of

everyday life, and work according to their disposition in a selected field so that their work improves collective lives at least to a certain extent. It is an accepted fact that the most important question facing Indians is that of earning a living. Jamia Millia recognizes this need and wants to develop in its students a capacity to earn a living by any fair means, but its main principle is that man should regard earning a living as subservient to life itself. Similarly, recompense should be secondary to service. A man's guiding principle should be to become a useful member of society and civilization. In other words, he should find a niche for himself where his knowledge and wisdom are put to the best use in service of the society, as well as in earning a living so that his needs and those of his family are satisfied."

(quoted from Partners in Freedom Jamia Millia Islamia by Mushir ul Hasan at page 92)

Thus, the Jamia was established in Aligarh in 1920 in the wake of Khilafat and non-cooperation movement with the main object of exploring the methods by which education could be made truly national. National Leaders like Maulana Mohd. Ali Jauhar, Hakim Ajmal Khan, Dr. Mukhtar Ansari, Maulana Abul Kalam

Azad, Maulana Mahmud-ul-Hasan, Dr. Zakir Hussain were among its founders. Dr. Zakir Hussain, Dr Sayed abid Hussain, Shafiq-ur-Rehman Kidwai and Prof. Mohd. Nujeeb, threw themselves with heart and soul in Jamia's work. Hakim Ajmal Khan and Dr. M.A. Ansari took the responsibility of providing funds to the Jamia. During the hard days of Jamia, Seth Jamal Mohd. of Madras donated a big amount and resuscitated the Jamia.

The financial crunch hit the Jama hard in 1928. Dr. Zakir Hussain suggested to the then Chancellor Dr. M.A. Ansari that either the trustees should take the responsibility of collecting funds or if they are unable to raise the fund, they should close down the Jamia. He further suggested that the trustees should hand over the Jamia to a group of teachers who are devoted and committed to the cause of the Jamia. At that time, the trustees were not doing anything substantial for overcoming the financial crunch. Dr. Zakir Husain felt the need of a total change in the old constitution of the Jamia and the establishment of a new Association for restructuring and reorganizing the Jamia. However, at the crucial moment, Muslim teachers of the Jamia came forward and in 1928 under the leadership of Dr, Zakir Hussain resolved to form the Anjuman-e-Talimi Milli (later to be known as Anjuman-e-Jamia Millia Islamia), whose members signed a pledge to serve the Jamia for at least 20 years on a salary of not more than Rs. 150/- per month. Dr. Zakir Hussain had gradually reduced his salary from Rs. 150/- to only Rs.40/- per month.

The aims and objects of the Anjuman-e-Talim-e-Milli founded in 1928, incorporated later in the Memorandum of Association of the Anjuman-e-Jamia Millia Islamia were more or less as under:-

1. "To promote and provide for the religious and secular education of Indians, particularly, Muslims, in conformity with sound principles of education and in consonance with the needs of national life as well as the life of the Muslim Community in India, and to that end to establish and maintain suitable educational institutions;
2. To hold examinations and award degrees, diplomas and certificates;
3. To conduct educational experiments;
4. To conduct and aid academic research and to disseminate knowledge;
5. To enter into contracts, give or raise loans and acquire and hold property, movable and immovable;

6. To sell, purchase, lease, exchange, invest or otherwise transfer all or any of the property, movable or immovable, for the time being vested in the Anjuman;
7. To collect funds, accept, gifts, donations and subscriptions for the maintenance of the institutions and the furtherance of the objects of the Anjuman;
8. To do all the acts and things as are necessary for or conducive to the said objects.”

In 1939, Jamia became a registered society under the Societies Registration Act, 1860. In 1940, Jamia was shifted to the present campus in Okhla. In 1951, the Central Government recognized, the educational programmes of the Jamia and its degrees and teachers training courses were recognized as equivalent to B.A. and B.T.

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

1. The Indian Muslims should keep their education in their own hands entirely free from the alien influence which had sapped initiative and independence of character;

2. The Muslims should base the education of the youth on their own cultural heritage and Islamic traditions.

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

It needs to be highlighted that one of the aims and objects of the Jamia Millia Islamia Society, Delhi mentioned in its Memorandum of Association was as under :-

- (i) to promote and provide the religious and secular education of Indians, particularly Muslims, in the Jamia Millia Islamia, in conformity with sound principles of education and in consonance with the needs of national life and to that end, to establish and maintain suitable educational institutions within the Jamia campus and to set up and organize educational extension centres in the Union Territory of Delhi from time to time".

In 1962, on the recommendations of the University Grants Commission, status of the deemed university was conferred on the Jamia under Section 3 of the UGC Act. On conferral of the status of a deemed university, the Jamia got all the facilities which are available to the autonomous universities. Alongwith it got the right to give degrees on its own. It has to be borne in mind that the mere fact that status of a deemed university was granted to the Jamia under Section 3 of the U.G.C. Act and it was as a matter of convention bound to follow the statutory provisions of the U.G.C. Act would not clothe the Jamia with a statutory status or character. It has been held by the Supreme Court in Vaish Degree College vs. Lakshmi Narain AIR 1976 SC 888 that before an institution can be a statutory body it must be created by or under a statute and owe its existence to a Statute. Here a distinction must be made between an institution which is not created by or under a statute but is governed by certain statutory provisions for the proper maintenance and administration of institution. At this juncture we, may usefully excerpt the following observations of their Lordships in Vaish Degree college (supra):

“There have been a number of institutions which though not created by or under any statute have adopted certain statutory provisions, but that by itself is not, in our opinion, sufficient to clothe the institution with a statutory character. In Sukhdev Singh vs. Bhagatram

Sardar Singh Raghuvanshi AIR 1975 SC 1331 at p. 1339 this Court clearly pointed out as to what constitutes a statutory body. In this connection my Lord A.N. Ray, C.J., observed as follows:

“A company incorporated under the Companies Act is not created by the Companies Act but comes into existence in accordance with the provisions of the Act. It is not a statutory body because it is not created by the statute. It is a body created in accordance with the provisions of the statute.”

It is, therefore, clear that there is a well marked distinction between a body which is created by the statute and a body which after having come into existence is governed in accordance with the provisions of the statute. In other words the position seems to be that the institution concerned must owe its very existence to a statute which would be the fountainhead of its powers. The question in such cases to be asked is, if there is no statute would the institution have any legal existence. If the answer is in the negative, then undoubtedly it is a statutory body, but if the institution

has a separate existence of its own without any reference to the statute concerned but is merely governed by the statutory provisions it cannot be said to be a statutory body”.

In 1988, the Jamia was granted the status of a Central University under the Act. While piloting the Bill, Mr. Shiv Shankar the then Minister of Human Resource Development, Government of India had made the following statement at the floor of the Parliament:

“it is being felt for the last few years that the status of deemed university conferred on it is not sufficient keeping in view its historical character and its service to the nation. It has been the demand of teachers and other responsible persons of Jamia and also of our society that the status of autonomous university be conferred under the law of parliament, so that it could provide facilities for higher studies. The Government has also held consultations with the University Grants Commission, the Chancellor of Jamia Millia Islamia, some personalities and experts in this field. Jamia has come into

existence as a national shrine for education. Keeping its selfless service during the freedom struggle and its secular character we have reached at a conclusion that it should be granted the status of a Central Statutory University under the law passed by Parliament to enable it to achieve specialization in the field of research and educational development programmes. The aim and object of the Bill is to recognize the Jamia Millia as a statutory University and also to merge the Jamia Millia Society of Delhi in it.“

(emphasis supplied)

In 1940, W.C. Smith visited Jamia and described Jamia as ‘one of the most progressive and one of the best in India’. He observed:

“One admirable result of the exclusion, voluntary and enforced, of this institution from the official educational system of India, is an international breadth of vision. It has escaped the provincialism of exclusively British culture which weighs heavily on the ordinary colleges of imperialistic India. The Jamiah’s degrees have been recognized in Germany, France and the United States,

while official British prestige think that it cannot afford to notice them.... The Jamiah is consequently in touch with a wider world than are most other indigenous colleges in India.”

(quoted from Partners in Freedom Jamia Millia Islamia by Mushir ul Hasan at page 102)

The aforesaid statement of W.C. Smith clearly indicates that Jamia’s degrees were recognized in Germany, France and America. It has been held in Aziz Basha’s case (supra) that before coming into force of the Constitution of India there was no law in India which prohibited any 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 thus in law in India there was no prohibition against establishment of universities by private individual; or bodies and if any university was so established it must of necessity be granting degrees before it could be called; a university 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”.

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 recognized by Government”.

It is beyond the pale of controversy that on 26th January, 1950, when the Constitution came into force, the Jamia as a university was in existence and was being administered by the ‘Jamia Millia Islamia society’ which was a registered society constituted by members of the Muslim community and degrees granted by it were recognized in some foreign countries also. Even the Government of India had recognized the degrees granted by the Jamia.

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

held by the Muslim minority and the Jamia was also being administered by Muslims. The degrees awarded by the Jamia were also recognized in Germany, France and America.

The Jamia Millia Islamia Act 1988, codified, declared, confirmed and encapsulated the continuous and preexisting factual and legal position of the Jamia by incorporating the existing institution formally under the Act as a central university. Reference may, in this connection be made to the provisions of Section 2 (o) of the Act (Act No. 58 of 1988) which defines university as under :-

“University” means the educational institution known as “Jamia Millia Islamia” founded in 1920 during the Khilafat and Non-Cooperation Movements in response to Gandhiji’s call for a boycott of all Government-sponsored educational institutions which was subsequently registered in 1939 as Jamia Millia Islamia Society, and declared in 1962 as an institution deemed to be a University under Section 3 of the University Grants Commission Act, 1956, and which is incorporated as a University under this Act.”

Section 4 of the Act provided for dissolution of the Jamia Millia Islamia Society. Section 4 reads as under :-

“Section 4 – on and from the commencement of this Act, --

- (i) the Society known as the Jamia Millia Islamia society, Delhi, shall be dissolved, and all property, movable or immovable, and all rights, powers and privileges of the said Society shall be transferred to and vest in the University and shall be applied to the objects and purposes for which the University is established;
- (ii) all debts, liabilities and obligations of the said Society shall be transferred to the University and shall thereafter be discharged and satisfied by it;
- (iii) all references in any enactment to the said Society shall be construed as references to the University;
- (iv) any will, deed or other documents, whether made or executed before or after the commencement of this Act, which contains any bequest, gift or trust in favour of the said society shall be construed as if the University was therein named instead of the Society;
- (v) subject to any orders which the Majlis-i-Muntazimah (Executive Council) may make, the buildings which belonged to Jamia Millia Islamia, Delhi, shall continue to be known and designated by the names and style as they were known and designated immediately before the commencement of this Act;

(vi) subject to the provisions of this Act, every person employed immediately before the commencement of this Act in the Jamia Millia Islamia, Delhi shall hold such employment in the University by the same tenure and on the same terms and conditions and with the same rights and privileges as to pension and gratuity as he would have held under the Jamia Millia Islamia, Delhi, if this Act had not been passed.

Sub-Section (ii) of Section 6 of the Act confers power on the Jamia to promote the study of the religions, philosophy and culture of India. Sections 19 and 20 of the Act read alongwith Clause 14 of the Statutes of the University clearly go to show that even after enactment of the Jamia Millia Islamia Act, the management of the Jamia is being looked after by the principal executive body of the University, namely, the Majlis-i-Muntazimah (Executive Council). Section 20 provides that the Majlis-i-Talimi (Academic Council) shall be the principal academic body of the university. It needs to be highlighted that the provisions of Sections 19 and 20 of the Act are the replica of Clauses (9) and (10) respectively of the Memorandum of Association of the Jamia Millia Islamia Society. Thus, the evidence on record clearly proves that since its inception, administration of the Jamia remained in the hands of Muslims.

It is also relevant to mention that there is a mosque in the campus of the Jamia. It has been proved from the affidavits of Prof. Tabrez Alam Khan, Mr.

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

Clause 4 of Memorandum declares that the Jamia shall be an autonomous educational body. It further declares that the medium of instruction at all stages of education in all the institution maintained by the society shall be in

Urdu. Clause 5 of Memorandum provides that following shall be the officers of the Jamia:-

- “(i) The Amir-i-Jamia (Chancellor);
- (ii) The Shaikhul Jamia (Vice Chancellor)
- (iii) The Khazin (Treasurer);
- (iv) The Musajjil (Registrar)
- (v) The Deans of Faculties;
- (vi) The Proctor;
- (vii) The Librarian; and
- (viii) Such other persons as may be declared by the Rules to be Officers of the Jamia.”

Section 9 of the Act retains almost similar designation of the officers of the Jamia as under :-

- (i) the Amir-i-Jamia (Chancellor);
- (ii) the Shaikh-ul-Jamia (Vice Chancellor);
- (iii) the Naib Shaikh-ul-jamia (Pro-Vice-Chancellor);
- (iv) the Musajjil (Registrar);
- (v) the Deans of Faculties;
- (vi) the Dean of Students' Welfare;
- (vii) the Finance Officer; and

- (viii) such other officers as may be declared by the Statutes to be officers of the University.

Retention of designations of the authorities of the Jamia even on enactment of the Act clearly reflects to its minority character. This is in consonance of the assurance given by the then Minister for HRD, Government of India to the Parliament on 2.9.1988 that “..... we have no intention to bring any change in the character of this institution whatsoever. I want to make it clear so that there is no ambiguity. Why should there be any doubt in anybody’s mind. Its character will remain in accordance with the wishes of its founders and which was put into practice by them and we will maintain the same”.

Clause 7 of the Memorandum provided for the authorities of the Jamia which are as under:-

- (i) “The Anjuman, Jamia Millia Islamia, hereinafter called the Anjuman (Court);
- (ii) The Majlis-i-Muntazimah (Executive Council);
- (iii) The Majlis-i-Talimi (Academic Council);
- (iv) The Majlis-i-Maliyat (Finance Committee);
- (v) The Faculties; and
- (vi) Such other authorities as may be declared by the Rules to be Authorities of the ‘amla’.

Section 17 of the Jamia Millia Islamia Act also provided for the authorities of the University:-

- (i) the Anjuman (Court);
- (ii) the Majlis-i-Muntazimah (Executive Council);
- (iii) the Majlis-i-Talimi (Academic Council);
- (iv) the Majlis-i-Maliyat (Finance Committee);
- (v) the Faculties
- (vi) the Planning Board; and
- (vii) such other authorities as may be declared by the Statutes to be authorities of the University.

Clause 8 of Memorandum declares that the Anjuman shall be the highest authority of the Jamia and shall have the power to review the acts of the Majlis-i-Muntazimah and Majlis-i-Talimi. By Section 18 of the Act, the Anjuman (Court) was to be the Supreme Governing Body of the Jamia and would exercise all the powers of the Jamia, which was provided for by the Memorandum of Association. Clause 9 of Memorandum provided that Majlis-i-Muntazimah shall be the executive authority of the Jamia. Section 19(1) of the Act contains similar provisions. Clause 10 of Memorandum declares that Majlis-i-Talimi shall be the academic body of the Jamia. Section 20(1) of the Act also provided that the Majlis-i-Talimi (Academic Council) shall be the principal academic body of the University. Thus, the basic statutes of the Jamia as mentioned in the Act are almost in pari materia with the provisions of the Memorandum of Association. It is

relevant to mention that all the members of the Jamia Millia Islamia Society were Muslims and the Anjuman (Court) has been electing only Muslims as Chancellors and Vice Chancellors of the Jamia. These facts are beyond the pale of controversy.

Having regards to the facts and circumstances of the case, we find and hold that since its foundation in 1920 till enactment of the Jamia Millia Islamia Act, the Jamia never lost its identity. The aim and object of the Act was to recognize the Jamia as a Statutory University and also to merge the Jamia Millia Islamia's Society in it. As stated earlier, in 1962, on the recommendation of the University Grants Commission, the Central Government granted the status of a deemed university to the Jamia under Section 3 of the U.G.C. Act. Mere conferral of the status of a deemed university the Jamia was not in our opinion, sufficient to clothe it with a statutory character. In Vaish Degree College vs. Lakshmi Narain AIR 1976 SC 888, it has been held by the Supreme Court that before an institution can be a statutory body it must be created by or under the statute and own its existence to a statute. In the instant case, the Jamia did not owe its very existence to a statute. As stated earlier, since its foundation in 1920 till enactment of the Jamia Millia Islamia Act, the Jamia never lost its identity. Even prior to the enactment of the Act, the Jamia had legal existence of its own without any reference to the statute concerned. On the contrary, the evidence on record clearly proves that the Jamia owed its establishment to the Muslim Community. The Jamia had its independent existence as a university long before enactment

of the Act. In the instant case that is no conversion of the Jamia into another institution created by or under a Statute. The Jamia was existing till the Act which was passed by the Parliament. It is an admitted position that prior to enactment of the Act, the degrees conferred by the Jamia were recognized by the Central Government. In Aziz Basha's case (supra) the Supreme Court observed that although the nucleus of Aligarh Muslim University was the Mohammadan Anglo-Oriental College which was till 1920 an educational institution, the conversion of that college into the University was not by the Muslim Community but it took place by virtue of the Act of 1920 which was passed by the then Central Legislature. As there was no Aligarh Muslim University existing till the Act of 1920 and since it was brought into existence by the Act of Central Legislature, the Supreme Court refused to hold that it was established by the Muslim Community. Thus, the ratio decidendi of Aziz Basha's case (supra) does not govern a case like in hand.

It is also significant to mention that on 9.5.1997, the Executive Council of the Jamia had passed the following resolution:

“MINUTES OF THE MAJLIS-I-MUNTAZIMAH (EXECUTIVE COUNCIL) HELD ON 9TH MAY 1997

An ordinary meeting of the Majlis-i-Muntazimah (Executive Council), Jamia Millia Islamia, was held on Friday, the 9th May,

1997 at 11.00 a.m. in the Conference Hall, Administrative Block,
Khayaban-e-Ajmal, New Delhi – 110 025.

The following were present:

- | | |
|--|-----------|
| 1. Prof. Mushirul Hasan
Offg. Vice-Chancellor | Chairman |
| 2. Prof. M. Shamim Hanfi
Dean, Faculty of Humanities & Langs. | Member |
| 3. Prof. Z. A. Taqvi
Dean, Faculty of Natural Sciences | Member |
| 4. Prof. Anisur Rahman
Dean Students Welfare | Member |
| 5. Dr. Z.H. Zaidi
Professor, Department of Physics | Member |
| 6. Mrs. Pushpa Verma
Reader, Deptt. Of T.T. & NFE | Member |
| 7. Justice Sardar Ali Khan
House No. 16-4-777/1
Malakpet, Hyderabad (A.P.) | Member |
| 8. Mr. Hasib Ahmad
Registrar | Secretary |

The following were also present:

1. Mr. Niamat Husain, Jt. Registrar
2. Mr. N.U. Siddiqui, Offg. Finance Officer
3. Dr. Rocket Ibrahim, Secretary, JTA (invited as Observer)
4. Mr. Shoeb, President, JSU (invited as Observer)

Resolution No. 1 to Resolution 10

Resolution No. 11

The Executive Council considered in detail the demands of functions of the Jamia Millia Islamis, unanimously adopted following resolutions:

'The Majlis-i-Muntazimah (Executive Council) approves of the Ordinances I & II and endorses the background note adopted by the Academic Council at its meeting held on 3.5.1997.

The Majlis-i-Muntazimah (Executive Council) furthermore, adopted the following amendments to the existing Jamia Millia Islamia Act 1988. It calls upon the Government of India to accept them at the earliest so that the historic character of the institution can be adequately safeguarded:

- a. The Jamia Millia Islamia was founded in October 1920 by Maulana Mahmud Hasan, Hakim Ajmal Khan, Maulana Mohamed Ali, Dr. M.A. Ansari, Abdul Majid Khwaja and Dr. Zakir Hussain. They were, along with other distinguished public figures and educationists, its chief architects.

- b. The Jamia Millia Islamia embodies the liberal and secular spirit of our constitution. At the same time this institution reflects the educational and intellectual aspirations of Indian Muslims. For this reason it is important that the Jamia Millia Islamia be declared as a minority institution so that, its historical character is intact. We believe that there is complete unanimity and consensus on this issue amongst the students, teachers, administrative staff and the larger Jamia biradari.

- c. The aims and objects of the Jamia Millia Islamia shall be:
“To promote and provide for the religious and secular education of Indians, particularly Muslims, in conformity with sound principles of education and in consonance with the needs of national life and to that end, to establish and maintain suitable educational institutions within the Jamia campus and to set up and organize educational extension centres in the Union Territory of Delhi from time to time.

- d. The medium of instruction at all stages of education in all the institutions of the Jamia shall be Urdu, but instruction may be imparted through the medium of other languages as well.

The above two resolutions (c and d) were part of The Memorandum of Association, Jamia Millia Islamia Society, Delhi. We believe they should be included in the amended Jamia Act.

The said resolution clearly indicates that the Jamia has apparently retained its minority character even after the enactment of the Act. It is an admitted position that the Jamia is an aided educational institution. It is well settled that mere receipt of aid does not annihilate the right guaranteed under Article 30(1) of the Constitution. It has been held in the case of P.A. Inamdar (supra) that “a minority institution does not cease to be so, the moment grant-in-aid is received by the institution. An aided minority educational institution, therefore, would be entitled to have the right of admission of students belonging to the minority group and at the same time, would be required to admit a reasonable extent of non-minority students, so that the rights under Article 30(1) are not substantially impaired and further the citizens’ rights under Article 29(2) are not infringed. What would be a reasonable extent, would vary from the types of institution, the courses of education for which admission is being sought and other factors like educational needs. The State Government concerned has to notify the percentage of the minority students to be admitted in the light of the above observations.”

It needs to be highlighted that by the D.O. No. F.612006 – Desk (4) dated 3.4.2006, the Ministry of HRD issued a directive to the Jamia to take appropriate steps to admit students from Muslim minority community at least to the extent of 50%. That being so, the Central Government has fixed the minimum percentage governing admissions of students of the Muslim community in the Jamia. By issuing the said direction, which is in consonance with the aforesaid directions of

the Supreme Court, the HRD Ministry has impliedly recognized the factual position relating to the minority status of the Jamia.

Needless to add here that the provisions of Sections 2(iv) and 4 (i) (ii) & (iii) of the Act read alongwith the circumstances enumerated above clearly indicate that although the Act converted the status of the existing institution (the Jamia) into a Central University but it has not impacted its earlier minority character. Section 2(o) of the Act acknowledges it in no uncertain terms that Jamia was founded by the leaders of the Khilafat movement. It is well known that the Khilafat movement was spearheaded by Maulana Shaukat Ali and Maulana Mohd. Ali Jauhar and that the Khilafat movement gave birth to the non-cooperation movement launched by Gandhiji.

It has to be borne in mind that according to Azeez Basha's case (supra) the MAO College had lost its identity by its conversion into the AMU, which was established by the AMU Act 1920. In the instant case, the Jamia never lost its identity till enactment of the Act. we may say at the cost of repetition that, the provision of Section 2(o) read with Section 4 of the Act postulates a statutory recognition of the fact that the Jamia was founded in 1920 during the Khilafat and non-cooperation movement which was subsequently registered in 1939 as Jamia Millia Islamia Society, and declared in 1962 as a deemed university under Section 3 of the U.G.C. Act. Section 2(o) defines university as under :-

“University” means the educational institution known as “Jamia Millia Islamia” founded in 1920 during the Khilafat and Non-Cooperation Movements in response to Gandhiji’s call for a boycott of all Government sponsored educational institutions which was subsequently registered in 1939 as Jamia Millia Islamia Society, and declared in 1962 as an institution deemed to be a University under Section 3 of the University Grants Commission Act, 1956, and which is incorporated as a University under this Act”

Section 2(o) of the Act drives us to peep into the history of facts and events which led to the establishment of the Jamia. We have demonstrated earlier that in 1920, the Jamia was established in the wake of Khilafat and non-cooperation movement with the main object of exploring the methods by which education of Muslims could be made truly national. Distinguished National leaders like Maulana Mohd. Ali Jauhar, Hakim Ajmal Khan, Shaikh-ul-Hind Maulana Mahamud-ul-Hasan. Maulana Abul Kalam Azad, Dr. M.A. Ansari and Dr. Zakir Hussain were among its founders. Bearing in mind the history of facts and events which led to the establishment of the Jamia, it could be held that the Jamia was founded by the Muslims. It is an admitted position that in 1951 much before the enactment of the Jamia Milia Islamia Act, the Central Government recognized degrees conferred by the Jamia. Thus the Jamia possessed one of

the essential qualities of a university. Needless to add here that Ali brothers namely Maulana Mohammed Ali Jauhar and Maulana Shaukat Ali had launched the Khilafat movement which was subsequently converted into non-cooperation movement led by Mahatama Gandhi and other nationalist leaders. Thus section 2(o) of the Act encapsulates a brief history previous to the establishment of the Jamia. It was Maulana Mohd. Ali Jauhar, who conceived the idea of imparting true national education to Muslims. We may say at the cost of repetition that at that time the MAO College was considered as Pro-British institution and the Jamia Biradari extorted the students of the MAO college to submit to the national aspiration, and join hands with them in having run the college on independent lines in the best interest of the community and the country. The trustees of the college expressed their emphatic disapproval of the action of Ali Brothers addressing students asking them to pass a resolution in support of the non-cooperation movement. It is said that thereafter the idea of establishing a National Muslim University gathered strength and ultimately the Jamia was established for the purpose of keeping Muslim education in Muslim hands entirely free from external control. Thus the Muslim community brought the Jamia into existence in the only manner in which a university could be brought into existence. The Muslim community provided lands, buildings and endowments for the Jamia, and without these, the Jamia as a body corporate would be an unreal abstraction. The above history leads to one conclusion and one conclusion only, namely, that Jamia was established by Muslims, for Muslims, though non-Muslims could be admitted.

It is beyond pale of controversy that in 1928, the Jamia faced a serious financial crisis. At the crucial movement, some devoted teachers under the leadership of Dr. Jakir Hussain resolved to form the Anjuman-i-Talimi - i - Milli (later to be known as Anjuman-i-Jamia Millia Islamia), whose members signed a pledge to serve the Jamia for at least 20 years on a salary of not more than Rs. 150/- per month. Thereafter, in 1939, the Jamia Millia Islamia was registered as a society under the Societies Registration Act. One of the aims and object of the society was as under :-

- (i) To promote and provide for the religious and secular education of Indians, particularly Muslims, in the Jamia Millia Islamia in conformity with sound principles of education and in consonance with the needs of national life and to that end, to establish and maintain suitable educational institutions within the Jamia Campus and to set up and organize educational extension centres in the Union Territory of Delhi from time to time.

The fact that the Jamia Millia Islamia was registered as Jamia Millia Islamia Society in 1939 also finds mention in Section 2(o) of the Act. Section 4 (1) of the Act provides that on and from commencement of the Act, the Jamia Millia Islamia Society shall be dissolved, and all property, movable or immovable and all rights,

powers and privileges of the said society shall be transferred to and vest in the university and shall be applied to the objects and purposes for which the university is established. Sub Section (iii) of Section 4 declares that all references in any enactment to the said society shall be construed as references to the university. Thus the property and assets of the Jamia run by the said society formed for the benefit of Muslims were vested in the university.

In the Kerala Education case (supra) Chief Justice Das observed that an institution established and managed by a community did not lose its character as a minority institution because a sprinkling of members of the other communities were admitted to it. It is significant to mention that the Memorandum of Association of the said society clearly reflects that the management of the Jamia was vested in the Muslim community. The Anjuman (court) of the Jamia was the supreme governing body. The Act borrowed and engrafted similar provisions of the Memorandum of Association of the said society. On enactment of the Act, there was no conversion of an educational institution into a university as the Jamia as a university was already in existence prior to coming into force of the Act.

It is also relevant to mention that sub Section (v) of Section 4 declares that “subject to any orders which the Majlis-i-Muntazimah (Executive Council) may make, the buildings which belonged to Jamia Millia Islamia, Delhi, shall continue

to be known and designated by the names and styles as they were known and designated immediately before the commencement of this Act.” Thus on a conjoint reading of Sections 2(o) and 4 of the Act alongwith the history of facts and events which led to the establishment of the Jamia, we have no hesitation in holding that the Jamia was founded by the Muslims for the benefit of Muslims and it never lost its identity as a Muslim minority educational institution.

For the foregoing reasons, we find and hold that the Jamia Millia Islamia is a minority educational institution covered under Article 30(1) of the Constitution read with Section 2(g) of the National Commission for Minority Educational Institutions Act. A certificate be issued accordingly.

**JUSTICE M.S.A. SIDDIQUI
CHAIRMAN**

**DR. MOHINDER SINGH
MEMBER**

**DR. CYRIAC THOMAS
MEMBER**

22.02.2011

