

THE MINORITY STATUS OF ALIGARH MUSLIM UNIVERSITY

**Shah Rukh Ahmad*

Abstract

This paper explores the minority character of the Aligarh Muslim University and the controversies surrounding the institution's minority status. In the year 1967 the Supreme Court in the *Azeez Basha* case decided that the university was not established by the minorities and therefore it cannot be understood to be a minority institution for the purpose of article 30 of the Constitution of India. These events lead to a campaign by the Muslim community, which wanted the intervention of the politicians to restore the minority character of the university. In the year 1981 the Parliament of India made an amendment to the Aligarh Muslim University Act, 1920 which restored the minority character of the university but the controversy did not end there. The amendment was challenged in the Allahabad High Court in the year 2005 and the court read down this amendment restoring the *Azeez Basha* ruling. This article seeks to map the historical journey of the Aligarh Muslim University which has remained an institution of excellence and a place where the culture of the Muslim community is shared equally with love and affection by the other communities as well. Minority rights are now regarded as an integral part of the international human rights law and this paper further seeks to explore the controversies surrounding the minority status of the university keeping in mind minority rights as understood in the international human rights regime.

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I Introduction

THIS PAPER seeks to look into the rights of minorities from the point of view of human rights and an attempt has been made to explore the role of a human rights framework in addressing the issues with regard to the protection of minorities. The correlation between minorities and rights stems from the need to provide protection for groups that are inferior in numbers to the majority of the population who are at a risk of discrimination, persecution or repression because of their cultural, ethnic, racial, religious, linguistic, or social differences

*LL.M. Student, Indian Law Institute, New Delhi.

from the majority.¹Over a period of time the minority rights have gained the status of being an integral part of the international human rights law and this article seeks to look into article 30 of the Indian Constitution which grants the minorities the right to establish and administer institutions of their choice. Keeping that as the backdrop the article then seeks to study the minority status of the Aligarh Muslim University (AMU) and the controversies that have surrounded it.

The starting point for consideration of international human rights norms and standards in the modern era is the charter of the United Nations drafted in 1945 after the Second World War.²Historically minority rights predate human rights and they were an early modern phenomenon guaranteeing religious freedom in Europe in the sixteenth, seventeenth and eighteenth centuries.³ But it was only after the World War II that the international law started developing and also protecting the interests of the minorities. One of the strongest challenges to the current international human rights regime derives from an argument that human rights are a manifestation of the western liberal interest in the rights of the individual and that this emphasis neglects the needs and rights of minority groups, including religious minority groups.⁴

Before proceeding with the issue of minority rights, it becomes very important for us to also consider as to who a minority is. Although there is no universally recognised definition of a minority but minorities in the general sense is referred to those ethnic, religious, and linguistic groups who by virtue of their fewer population are lesser in number than the other dominant groups. There is another definition which could also be considered which was given by Francesco Capotorti who was the Special Rapporteur of the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities, in the year 1977. According to him a minority is:⁵

A group numerically inferior to the rest of the population of a State, in a non-dominant position, whose members being nationals of the State possess

¹Tove H Malloy, "Minority Rights: Overview" in David P. Forsythe (ed.) *Encyclopedia of Human Rights* (Oxford University Press, U.K. 2009).

²Peter G. Danchin, *Religion, Religious Minorities and Human Rights*, (Columbia University Press, U.S.A, 2002).

³*Ibid.*

⁴*Ibid.*

⁵Minority Rights: International Standards and Guidance for Implementation, The Office of the United Nations High Commissioner for Human Rights, available at: http://www.ohchr.org/Documents/Publications/MinorityRights_en.pdf (last visited on Apr. 20, 2017).

ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language.

The paper also analyses the status of minority rights under the international framework and further deals with the position of minority rights as dealt in the constitution of India. Article 30 of the Indian Constitution seeks to protect the right of the minorities to establish and administer educational institutions of their choice and this right has been the backbone for the educational upliftment of the minorities. The paper also focuses on the history of the AMU and this is very relevant because to appreciate the critique of the *Azeez Basha* decision one needs to be aware of the circumstances and the events which lead to the setting up of the university. Towards the end the focus lies on the challenges that were made to the minority status of the university and as to how the courts have dealt with them. Finally the conclusion deals with the position that the university does have a minority character which needs to be formally restored.

II Recognition of minority rights under the international framework

The International Human Rights regimes have been very vocal about the protection of minorities. Internationally there are several kinds of minority groups which have been recognised for protection i.e., ethnic, religious, cultural and linguistic minorities. The Office of the United Nations High Commissioner for Human Rights in its publication on Minority Rights observes that:⁶

The promotion and protection of the rights of minorities require particular attention to be paid to issues such as the recognition of minorities' existence; efforts to guarantee their rights to non-discrimination and equality; the promotion of multicultural and intercultural education, nationally and locally; the promotion of their participation in all aspects of public life; the inclusion of their concerns in development and poverty-reduction processes; disparities in social indicators such as employment, health and housing; the situation of women and the special concerns of children belonging to minorities.

Ibid.

The International Covenant on Civil and Political Rights which was adopted in the year 1966 in its article 27 states that:

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

One can see from the language of the article that it seeks to protect a diverse range of minorities and gives them the right to enjoy, profess and practice their religion. The intention of the drafters very clearly conveys that the legislative intent is not only of protecting but also empowering the minorities in whichever state they may be residing.

In the year 1992 the General Assembly of the United Nations in order to further protect the interests of the various diverse minorities and also to give more importance to their rights as guaranteed by the article 27 of the ICCPR, adopted a text which was called the 'Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities'. The Declaration has nine articles and all of them relate to the promotion, protection and propagation of their religious and cultural practices. Article 4(4) of the Declaration states that:

States should, where appropriate, take measures in the field of education, in order to encourage knowledge of the history, traditions, language and culture of the minorities existing within their territory. Persons belonging to minorities should have adequate opportunities to gain knowledge of the society as a whole.

III Protection of minorities under the Indian Constitution.

After having looked at the position of minorities under the international law, we should now look at the Indian Constitution which I feel is the only constitution in the whole world which has given unparalleled rights to the minorities, both religious and linguistic. India is a country where there is an assimilation of cultures and different religions. No country apart from India has such a diverse and distinct scenario and the Indian constitution has taken care of it in a manner which not only strikes the cord with all but also empowers the minorities in such a way that no one could have ever thought.

Article 30 of the Indian Constitution talks about the right of minorities to establish and administer educational institutions of their choice. It states that:

(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.

According to Iqbal.A.Ansari the justification for special constitutional provisions to safeguard minority interests is provided by three considerations:⁷

- i. Cultural Pluralism
- ii. Inherently disadvantaged position of a permanent minority because of numbers or because of non-dominance, and
- iii. Affirmatory action of the state to compensate for denial of opportunities in the past.

All these factors were taken into consideration when the constituent assembly was convened on December 9, 1946. Jawaharlal Nehru in his speech on December 13, 1946 reassured the minorities and the depressed classes when he said that adequate safeguards shall be provided for minorities, backward and tribal areas, and depressed and other backward classes.⁸ An advisory committee was constituted on fundamental rights and minorities which was further divided into two sub-committees, one on minorities and the other on fundamental rights.⁹

The expression minority has been used in articles 29 and 30 of the Constitution but it has nowhere been defined. The Preamble of the constitution proclaims to guarantee every citizen -liberty of thought, expression, belief, faith and worshipø Articles 25 to 30 guarantee

⁷Iqbal A Ansari, "Aims and objectives of Article 30 of the Constitution: Judicial Opinion belies Constitutional History", in Tahir Mehmood (ed.) *Minorities and State at the Indian Law*, (Genuine Publications, New Delhi. 1991).

⁸*Ibid.*

⁹*Ibid.*

protection of religious, cultural and educational rights to both minority and majority communities. It appears that keeping a view that constitutional guarantees for protection of religious, cultural and educational rights of all citizens, it was not felt necessary to define 'minority'. Minority as understood from the constitutional scheme signifies to any community which is less than fifty percent of the population of the state concerned.

The real reason embodied in article 30(1) of the constitution is the conscience of the nation that the minorities, religious as well as linguistic are not prohibited from establishing and administering educational institutions of their choice for the purpose of giving their children the best education. They are given this right in order to preserve and strengthen the integrity and unity of the country and also to ensure equality with the majority and is not intended to place minorities in a more advantageous position *vis-a-vis* the majority and there is no reverse discrimination in favour of minorities.

IV History of Aligarh Muslim University

The Muhammadan College at Aligarh had been founded not with a view of meeting a demand that existed but a demand that had to be created.¹⁰ In August, 1871, the government of India had drawn the attention of local governments to the condition of the Muhammadans in education since they did not adequately or in proportion to the rest of the community avail of the educational advantages that the government offered.¹¹ The Indian Muslim community was an educationally weak community and only the elites were the ones who got any formal education. Looking at the pathetic state of the Indian Muslims, Sir Syed Ahmed Khan planned of opening an institution which would provide the best of education to the Muslims.

In 1875, the Muhammadan Anglo-Oriental College was started as a school and, in 1877 it was converted into a college. The founder Sir Syed Ahmed Khan died in the year 1898 and after his demise the Muslim community took it on itself to establish a University. In those days a University could be established by anyone and it could give a degree but for that degree to be recognised by the government an Act was to be passed by the legislature. In the year 1920, the AMU act was passed and the Aligarh Muslim University came into existence. Thirty lakh rupees were collected by the Muslim community and help was also taken from the other communities.¹² Since it was minority institution, compulsory religious teaching was

¹⁰M.S. Jain, *The Aligarh Movement* 39(Sri Ram Mehra & Co. Publishers, Agra, 1965).

¹¹*Ibid.*

¹²Interview of Faizan Mustafa, *Scroll*, January 16, 2016.

imparted to the students but this was later done away with when the constitution of India was made and the pre constitutional laws had to be brought in to conciliation with the constitution.¹³

The 1920 Act

The Long title of the Aligarh Muslim University, Act, 1920 read as:

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

The Preamble of the Aligarh Muslim University, Act, 1920 said that:

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

Section 13 provided that the Governor General shall be the Lord Rector of the University and Section 13(2) provided that:

The Lord Rector shall have the right to cause an inspection to be made by such person or persons as he may direct, of the University, its buildings, laboratories, and equipment, and of any institution maintained by the University, and also of the examinations, teaching and other work conducted or done by the University, and to cause an inquiry to be made in like manner in respect of any matter connected with the University.

Section 23 of the Act provided for the constitution of the court, and the proviso to section 23(1) laid down that:

No person other than a Muslim shall be a member thereof.

¹³*Ibid.*

And by virtue of section 23(2), the court was to be the supreme governing body of the University and would exercise all the powers of the University, not otherwise provided for by the 1920-Act, the Statutes, the Ordinances and the Regulations.

The 1951 Amendment

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

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

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

The University shall be open to persons of either sex and of whatever race, creed, caste, or class, and it shall not be lawful for the University to adopt or impose on any person, any test whatsoever of religious belief or profession in order to entitle him to be admitted therein, as a teacher or student, or to hold any office therein, or to graduate thereat, or to enjoy or exercise any privilege thereof, except in respect of any particular benefaction accepted by the University, where such test is made a condition thereof by my testamentary or other instrument creating such benefaction.

The proviso to section 8 contained:

Nothing in this section shall be deemed to prevent religious instruction being given in the manner prescribed by the Ordinances to those who have consented to receive it.

An amendment was also done in Sec. 13 and Sec. 14. In place of the Lord Rector, the University was now supposed to have a Rector and the power of the power of the Visiting

Board was conferred on the Visitor. The proviso to Sec. 23(1) which required that only Muslim members were to be a part of the court was also done away with and now even Non-Muslims could be a part of the court.

1965 Amendment

In the year 1965, A.M.U. reduced the internal or institutional reservations from 75% to 50% thereby increasing the external reservations which stirred a controversy.¹⁴ The reduction in internal reservations led to wide agitation and protests on the campus which led to disruption in peace.¹⁵ The Vice-Chancellor Ali Yavar Jung was assaulted and seeing the situation getting out of control the government made an amendment in the A.M.U. Act.¹⁶ The major changes which were done in the 1965 amendment pertained to Sec. 23 which comprised of the provisions relating to the composition and powers of the university court.

The amendment reduced the powers of the court and it was left to do the following three functions:-

- (a) to advise the Visitor in respect of any matter which may be referred to the Court for advice;
- (b) to advise any other authority of the University in respect of any matter which may be referred to the Court for advice; and
- (c) to perform such other duties and exercise such other powers as may be assigned to it by the Visitor or under this Act.

The University Court no longer remained the supreme governing body and was left with advisory functions. The composition of the court was also altered and both court and Executive council were packed with the nominees of the Visitor i.e. the President of India.

V The first challenge to minority status

After the 1965 amendment some Muslims went to the Supreme Court and challenged the 1965 Amendment Act along with the 1951 Amendment Act. This is known as the Azeez

¹⁴*Supra* note 12.

¹⁵*Ibid.*

¹⁶*Supra* note 10.

Basha case or *Azeez Basha v. U.O.I.*¹⁷ The decision was rendered by a constitution bench comprising of Wanchoo, K.N. (Cj), Bachawat, R.S., Ramaswami, V., Mitter, G.K., Hegde, K.S. The main point of contention of the petitioners was that the Amendments had infringed their rights guaranteed to them by virtue of Art. 30. They no longer could exercise the freedom to administer the university as per their choice. While deliberating on the issue the court went into the history of A.M.U. and looked at all the amendments which were done and as to how initially the institution was founded. It is to be noted that Art. 30 has two main components *i.e.*, the right to establish and administer. The court went into a very detailed inquiry regarding the establishment of the university and therefore mapped the whole journey of the Aligarh movement. Even, after finding that all the initial work regarding the setting up, the way it was functioning and the involvement of the Muslim minority in administering the university, the court held that:

It was clearly brought into existence by the 1920 Act for 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 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. Art. 30(1), which protects educational institutions brought into existence and administered by a minority, cannot help the petitioners and any amendment of the 1920-Act would not be ultra vires article 30(1) of the Constitution.

It is to be noted that in those days a university whose degrees would be recognised by the government could be brought into existence only by an Act of the Parliament. The Muslim community thought fit to establish a University whose degrees would be recognised by the government so that the students could reap the benefits of having a degree which was recognised by the government of India. The money which was collected, the infrastructure which was there and the already existing framework of the university was disregarded by the court when it held that:

¹⁷1968 SCR (1) 833.

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 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 Government.

The court after referring to several legal dictionaries for finding out the meaning of establish held that to be founded was not the only meaning which could be given to the term establish. It was held that:

We are of opinion that for the purpose of Art. 30(1) the word means to bring into existence, and so the right given by Art. 30(1) to the minority is to bring into existence an educational institution, and if they do so, to administer it.

This decision of the apex court has been severely criticised by the legal academia. Noted jurist H.M. Seervai observes that:¹⁸

It is the first case in which the Supreme Court has departed from the broad spirit in which it had decided cases on cultural and educational rights of minorities... It is submitted that the decision is clearly wrong and productive of grave public mischief and it should be overruled.

Professor S.P. Sathe in the Annual Survey of Indian Law writes:¹⁹

The view of the Court that since the Aligarh Muslim University was incorporated by an Act of the Central Legislature it could not be a minority institution is too textual. If incorporation of a university is the sole test of its establishment no private university can ever be started *in* India. This is neither constitutionally sound nor educationally desirable. The Act of incorporation is a device of social control, not of regimentation in educational planning. It is

¹⁸H.M. Seervai, *Constitutional Law of India*, (Universal Law Publishing, Gurgaon, 4th edn., 2007).

¹⁹ S.P. Sathe, "Constitutional Law: Fundamental Rights" 3 *ASIL* 29-31 (1967).

submitted that the law needs to be reconsidered not only in the light of our constitutional ideology but also from the standpoint of sound educational policy.

Legal scholars were not the only ones who doubted the wisdom of the Apex court but historians like Tara Chand who was then a Member of the Parliament in the Raj Sabha reacted very strongly to the situation.²⁰ He said:²¹

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

Amendment Act of 1981

After the *Azeez Basha* decision there was a deep sense of anguish in the Muslim community. A committee of eight members known as the Beg Committee was appointed to look into the matter. On the advice of the committee an amendment was made in the year 1972 to the AMU Act but this amendment instead of doing good to the character of the University, inflicted a huge blow. Firstly it aggravated the steps which had been initiated in 1965, which amounted to denying the minority character of the AMU and secondly it concentrated too much power in the hands of the vice-chancellor which violated the principle of autonomy.²²

Finally in the year 1981 after several years of struggle the Muslim community was able to get the government of India to pass an amendment which restored the minority character of the AMU. The main changes which were done in the Act were in the preamble and long title.

Section 2(I) defined the University as:

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

Section 5(2)(c) of the Act read as:

²⁰Violette Graff, "Aligarh's Long Quest for 'Minority' Status Amu (Amendment) Act, 1981" *Economic and Political Weekly*, Jan 11, 1990.

²¹*Ibid.*

²²*Supra* note 12.

To promote especially the educational and cultural advancement of the Muslims of India;

Section 23 was amended to include:

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

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

This amendment restored the minority character of the university.

VI The second challenge to the minority status

In the year 2005 the AMU reserved some seats in the post graduate medical courses for the Muslims. 25% of the total seats were reserved for the internal candidates of AMU*i.e.*, the institutional quota and the rest 75% seats were to be further divided into. 50% of these were kept for the Muslims which were to be filled by an entrance test conducted by the university itself and the rest 50% were to be filled by the All India Exam which was to be conducted by the All India Institute of Medical Sciences, New Delhi.

After this was notified by the university about thirty four petitions were filed in the Allahabad High Court. The court formulated the following issues in the case of *Naresh Agarwal v.U.O.I*,²³ which were to be deliberated upon:²⁴

i. Whether the Aligarh Muslim University was a minority institution and whether it could provide for reservation of seats for Muslim candidates only. This issue was to be decided with reference to the following sub-issues: -

²³2005 SCC OnLine All 1705.

²⁴*Id.*, para 4.

(a) Whether the judgment in the case of Azeez Basha, was no more a good law because of the 1981 amending Act?

(b) Whether the provisions of the 1981 Act, especially Section 2(1) and Section 5(2) were retrospective in nature and had the effect of declaring Aligarh Muslim University as a minority institution within the meaning of Article 30 of the Constitution?

ii. Whether the amended Section 2(I) and 5(2)(c) were within the legislative competence of the Parliament?

iii. Whether the reservation was arbitrary and violative of Article 14 and Article 29(2) of the Constitution of India?

iv. Whether the petitioners had any locus to maintain the present writ petitions?

The single judge bench comprising of J. Arun Tandon held that:²⁵

In order to save Section 2(I), as substituted under 1981 Act from being struck down on the ground of brazen overruling of the judgment of Hon'ble 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(I) 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 the Azeez Basha. Accordingly it is held that the word "Established" in Section 2(I) may be read with reference to Muhammadan Anglo Oriental College only, which was established by Muslims.

The court was of the view that the 1981 Amendment Act did not change the basis of the *Azeez Basha* decision to such an extent 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 court read down the Amendment Act and after reading down the Amendment Act of 1981 the judge further held that:

In the opinion of the Court the power to amend the statutory provision cannot be extended to such an extent so as to create a situation whereby legislative

²⁵*Id.*, para 58.

Act, declare constitutionally valid, could be rendered unconstitutional by subsequent enactment.

The university went into appeal in the case of *The Aligarh Muslim University, Aligarh v. Malay Shukla*,²⁶ against the decision of the single bench. The appeal was heard by a division bench of Ajoy Nath Ray, CJ and Ashok Bhushan J. The court held that a decision can be overruled either by a direct appeal or if the same issue comes up before a court of higher authority and the earlier precedent is disapproved. Therefore it held that the Parliament was not entitled to make the amendment since it lacked the legislative competence. It was held that:

According to Article 245 of the Constitution parliament may make laws subject to provisions of the Constitution. According to Article 13 any law made by State which takes away or abridges the rights conferred by Part-III is void. Declaring the Aligarh Muslim University as minority institution by parliament enactment is not in the competence of parliament in view of the judgment of the Apex Court and if the parliament declares by the legislative enactment that Aligarh Muslim University is minority institution the said declaration shall contravene Article 30 since Article 30 provides that only institutions administered and established by minority are entitled for protection under Article 30. The parliament thus could not have directly declared by parliamentary enactment that Aligarh Muslim University is a minority institution. The amendments which has been brought by 1981 Amendment Act has not been able to change the basis of *Azeez Basha* and thus tend to overrule a judicial decision which is not in competence of the parliament.

VII Conclusion

The emergence of culture as an arena of intense political controversy is one of the most puzzling aspects of our current condition. The claims of diverse groups engaged in the name of this or that aspect of their cultural identity has become contestants in the public sphere of democracies and is embroiled in characteristic struggles for recognition.²⁷It is to be noted that in view of the legislative backing that we have in terms of the provisions incorporated in our

²⁶ Special Appeal No. 1321 of 2005

²⁷Seyla Benhabib, *The Claims of Culture* (Princeton University Press, New Jersey, 2002).

constitution and the international framework that recognises minority rights, minority rights are now part of the human rights regimes. Martha Nussbaum says that cultural norms have their own distinctive beauty and the world risks becoming impoverished as it becomes more homogeneous.²⁸The protection of minorities is based on the basis that their culture, language, distinctiveness and identity needs to be protected because of the importance attached with all these things.

While doing this research I had to struggle to find out about similar protective mechanisms that had been incorporated by other countries in their jurisdictions and it makes me proud that India is the only country with so many safeguards in the Constitution for the protection of the minorities. The case of AMU is a very unique one and no similar challenges could be located anywhere. This uniqueness flows from the fact that The Aligarh University's existence comes pre-independence and it also finds mention on the Union list of the Constitution under entry 63. The main controversy relates to the minority character of the University and I feel the controversy could have been put to rest in the year 1967 when the Supreme Court it feels in my opinion made an error while interpreting the article 30 of the Constitution in light of the historical facts. History becomes very important for the AMU because it is a matter of historical fact that it was indeed established by the Muslim minority community. Although, it was established by the Muslim community, there was a sense of accommodation in the atmosphere of Aligarh that people from other communities were equally respected and in fact they were more openly and respectfully accommodated.

The ruling in *Azeez Basha* according to me revolved around the discourse regarding the interpretation of the word 'establish' which the apex court held did not mean only to be 'found'. Since other meanings could be given to the term 'establish' other than found, it was not the correct way to have been taken up by the court. The court could have held easily the university to be having a minority character, based on the historical facts which were there in front of the court and holding the meaning of establish to be found, since that is the most common meaning and understanding for the term establish that one come across. There was another big lapse, which was that the university was not a party to the 1967 case and the decision was rendered without hearing the university. There were lapses on the part of the university administration as well since it did not intervene or go for appeal against the

²⁸Martha Nussbaum, 'Women and equality: The capabilities approach' 138 *ILR* 230 (1998).

decision of the apex court. These lapses happened because of the internal politics of the university and this careless attitude was not expected from the administration.

Furthermore the ruling that was given in the single and division bench of the Allahabad High Court relies heavily on the apex court ruling and they also in their wisdom after going through the historical facts and timeline felt that the minority character was absent from the university and it was the act of legislature and not the minority community that had established the university. The passing of the properties, subsequent incorporation, collection of money by the Muslim community and the struggles of Sir Syed Ahmed Khan were all either unseen or were not having the requisite authority to define the act of establishment as an act by the Muslim minority. In fact the courts went a step ahead and held that the Parliament cannot legislate and was incompetent to make the 1981 Act. The AMU comes under the field of legislative power of the Parliament. It finds its place in entry-63 of list-1 of the 7th schedule of our Constitution meaning thereby that the Parliament can legislate on it. The 1981 Act had done away with the *Azeez Basha* decision because it had altered the basis of the decision and that it was a validating act. The finding of the courts needs to be revisited on both counts *i.e.*, the minority character with regard to the historical factors of the university and the legislative competence which the Parliament of India, very well has.