

CHIEF JUSTICE'S COURT
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MR. JUSTICE JB PARDIWALA
HON'BLE MR. JUSTICE DIPANKAR DATTA
HON'BLE MR. JUSTICE MANOJ MISRA
HON'BLE MR. JUSTICE SC SHARMA

COURT NO.1 SECTION PIL-W
SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

Civil Appeal No. 2286/2006

**ALIGARH MUSLIM UNIVERSITY THROUGH ITS REGISTRAR FAIZAN
MUSTAFA**

Petitioner(s)

VERSUS

NARESH AGARWAL & ORS

Respondent(s)

TRANSCRIPT OF HEARING

10-Jan-2024

Document Control

Document Name & Date	Transcript of Civil Appeal No. 2286 of 2006 Hearing dated 10.01.2024
Status	Released
Version	1.0
Last Update	10.01.2024
Nature of Update	Original version
Release Date	10.01.2024
Document Owner	Supreme Court of India

10:45 AM IST

1 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Dr. Dhavan, you can continue to sit and argue.

2

3 **RAJEEV DHAVAN:** No. I'll try the podium first. If I have difficulty, I'll...

4

5 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Don't do that because if you, it'll unnecessarily
6 put pressure on your...yesterday, in about half an hour, 45 minutes, you were under distinct
7 discomfort, so you can sit and argue. There's no difficulty at all.

8

9 **RAJEEV DHAVAN:** Let me do the podium.

10

11 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Alright.

12

13 **RAJEEV DHAVAN:** I felt embarrassed yesterday.

14

15 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Dr. Dhavan, yesterday you made an important
16 point, I think, on the interpretation of Article 30, because Article 30 uses the word the right to
17 "establish" and "administer." Every minority, whether religious or linguistic, will have a right
18 to establish and administer. "Establish", you said, takes you to the founding moment,
19 "establish" should not be confounded or conflated with existence, and I was just reflecting on
20 that. That has some element of importance and great deal of importance for this reason, that
21 there may be a number of circumstances which are necessary for the existence of the
22 institution, but don't go to the establishment of the institution. For instance, no institution can
23 exist without a grant of land. You cannot construct if you don't get land. So, your existence is
24 dependent on the lease which you get from the State Government or the Central Government.
25 Second, you may not be able to function if you do not have in today's times, aid. So, your
26 existence may be conditional on the nature of the aid which you get. Third, apart from this,
27 you need recognition and affiliation. Without recognition and affiliation, you will be only a
28 shell. You have to award degrees. So, all these aspects may be relevant to the existence, the
29 viable existence of an institution, but they have no bearing on the establishment of the
30 institution. "Establishment", you said, therefore goes to the founding moment. Look at who
31 founded it. Look at the history. Look at the antecedent circumstances and determine who
32 really established the institution. In other words, "establishment" takes you to a point of time
33 in the past. "Administer" is not really confined to a moment of time in the past. And that's the
34 distinction I wanted to make, and I said, I'll put it up right up front. "Administer" is a

1 continuing, is a continuing facet. "Establish" is one time, who set it up. "Administer" is
2 something, which is a continuing exercise. So, who is actually in management of the
3 institution? "Administer", one can broadly say, can be equated, or you can derive some
4 sustenance from the nature of the management. Is the management of that institution in the
5 hands of a minority? And finally, the point which you made was that merely because an
6 institution is regulated by a statutory provision, a statute gives it the colour of an incorporated
7 body. A statute regulates various aspects of its existence, does not take away its minority
8 character, if the other parameters are fulfilled, namely the establishment and the
9 administration. I think that,

10

11 **RAJEEV DHAVAN:** That I think is the point, My Lord. But let me make it clear, that I've
12 said so, that these institutions must be institutions of excellence. They must accept regulation.
13 All kinds of secular regulations you must accept. That is what **TMA Pai** says My Lord, that is
14 what is said in **Kerala**. And therefore, when we look at "administer", Your Lordship put this
15 question to me yesterday, that it can't be 100%. it cannot be. In this day and age, in liberal
16 education, a student body comes to you and says, "we want to be there", you accept. The old
17 boys come, they say, "we want to be there", you accept? Now, these are big changes in the
18 concept of "administer."

19

20 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Teachers have to be represented, for instance,
21 in the Management Council, by statutory provision.

22

23 **RAJEEV DHAVAN:** That's right.

24

25 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Certain number of representatives of the
26 teachers have to be inducted in the Management Council.

27

28 **RAJEEV DHAVAN:** Absolutely. And one has to accept this. Gone are the British days, when
29 you did this or did that. Under the constitution, you have to accept this. That is the point, and
30 no minority can say, "we don't accept this."

31

32 **CHIEF JUSTICE D.Y. CHANDRACHUD:** So, the mere fact that some part of the
33 administration is also looked after by non-minority candidates who have a representative
34 voice by virtue of their service in the institution or their association or engagement with the
35 institution will not, in that sense, dilute the minority character of the institution.

36

1 **RAJEEV DHAVAN:** And as *Gandhi Faiz-e-Azam* says, if other people come in there,
2 what's wrong with it?

3 Of course, there was a dissent, but that's a different matter altogether.
4

5 **CHIEF JUSTICE D.Y. CHANDRACHUD:** But it can't be to the point where the entire
6 administration is in non-minority hands.
7

8 **RAJEEV DHAVAN:** Quite right.
9

10 **CHIEF JUSTICE D.Y. CHANDRACHUD:** And we may not be able to lay down a numerical
11 test. 50% of the administration or 60%. It will be very dangerous to do that.
12

13 **RAJEEV DHAVAN:** It is.
14

15 **CHIEF JUSTICE D.Y. CHANDRACHUD:** It must be more in the nature of a qualitative
16 test. Is a true essence of the administration such that the minority continues to be in...
17

18 **RAJEEV DHAVAN:** And the converse of that argument is the Government should not
19 interfere. That is what is said in *TMA Pai*.
20

21 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Finally, when you are wrapping up today, we
22 would like you to tell us what are the *indicia* of administration to indicate that AMU continues
23 to be administered by a minority.
24

25 **RAJEEV DHAVAN:** What I showed Your Lordship, is what was there in the 1920 Act, is
26 replicated in the '81, with some changes which are important. So, all that, the old boys are
27 there, several institutions which are Islamic are there, all that is there in the governing.
28

29 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Because we will have to also meet the test of, is
30 today, is AMU administered by a religious minority?
31

32 **RAJEEV DHAVAN:** Right. Once it goes to the Government, the Governing Board, are they
33 there or not there? As a wit said in New York, "is the 'there' there?" And I'm going to answer,
34 the 'there' is there. May I just first outline what I'm trying to do?
35

36 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Dr. Dhavan, would you be able to wrap up today
37 by 12:00? So that...

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37

RAJEEV DHAVAN: Yes.

CHIEF JUSTICE D.Y. CHANDRACHUD: Then we'll give Mr. Sibal time until 01:00, and then the others can complete in rapid fire. Because we'd like to wrap up the arguments on this case by tomorrow evening, because this bench is not available next week. But we'd like to conclude the...

RAJEEV DHAVAN: That's up to Your Lordships.

CHIEF JUSTICE D.Y. CHANDRACHUD: As we were discussing last evening, you have covered almost the entire... You'll be covering almost the entire ground, then the others would maybe throw in whatever they want to say apart from...

RAJEEV DHAVAN: The other side must have time to present their case. That's very important.

CHIEF JUSTICE D.Y. CHANDRACHUD: Absolutely.

DINESH DWIVEDI: Not possible, My Lord, tomorrow...

TUSHAR MEHTA: We may not be able to, My Lord, because, this would... it's a seven judges' bench, going down the history, and, some of the facts, which obviously, I'm not as a criticism saying, not placed before Your Lordships. But we may have to place before Your Lordships. That, we may, because, we will not repeat anything, *inter se* we will not repeat, there are many things which we'll have to place.

CHIEF JUSTICE D.Y. CHANDRACHUD: We have miscellaneous in the morning and we can assemble in the afternoon and then wrap up on Friday.

TUSHAR MEHTA: It may spill over next week. Your Lordships may consider.

CHIEF JUSTICE D.Y. CHANDRACHUD: Next week, bench is not available. So, we'll then have to take it the following week.

TUSHAR MEHTA: I thought, because of the other bench.

1 **CHIEF JUSTICE D.Y. CHANDRACHUD:** No, next week, in fact, the other bench is
2 because this bench is not available next week. One of the colleagues is not available next week.

3

4 **TUSHAR MEHTA:** Genuinely, not to stretch it, My Lord, but it may not be. We had a
5 meeting. And what are the points to be urged, we have internally discussed. But realistically
6 speaking, it may not be, it will not be possible on this side.

7

8 **CHIEF JUSTICE D.Y. CHANDRACHUD:** All right, let's start at least.

9

10 **RAJEEV DHAVAN:** I leave it to Your Lordships to work out the time, but it would be
11 required. I'm sorry, I've taken so much time.

12

13 **JUSTICE SANJIV KHANNA:** No, you're welcome. In fact, we hardly interrupted you
14 yesterday.

15

16 **RAJEEV DHAVAN:** The person who starts a case is like Sunil Gavaskar. After it has
17 established you can be Virat Kohli. All these people are Virat Kohli. Now, let me just
18 summarize what I'm trying to do. My argument so far have been as follows. Let me just outline
19 the arguments and then I can go fast. My first argument was the preliminary argument about
20 change of stance. My second argument is the one that I'm canvassing now, which is, is **Azeez**
21 **Basha** internally contradictory and superseded by other disputes? That is what I'm doing
22 now. And in our submission, it's going to be that **Azeez Basha** is no longer good law. That is,
23 apart from Your Lordships' interpretation of 30. So, at present time occupied with the
24 question, was it internally contradictory? Did it look at the other aspects of the Act on purpose?
25 No, it didn't. And then, look at the later decisions, starting from, do these decisions end up by
26 saying that **Azeez Basha** or asking Your Lordships that **Azeez Basha** is no longer good law.
27 I showed to Your Lordships, that in **St. Stephen's**, **Azeez Basha** is mentioned, but in the
28 next paragraph they say it's been superseded.

29

30 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Next paragraph?

31

32 **RAJEEV DHAVAN:** It's been superseded. **Patro**, etc. is mentioned. They said, "however,
33 we must look at this." So, My Lord, this is what I'm trying to do. The next stage will be to look
34 at the statutes. Statutes arising out of the reference, which is **UGC Yashpal** and National
35 Minority Act, Education Act. And then My Lord, I have some things to say about the Allahabad
36 Judgment. Your Lordship is not deciding the appeal, only the reference. So, this will be my
37 framework. Now, I come to **TMA Pai**. Because in our respectful submission, after all these

1 decisions, **Azeez Basha** is dead and buried. Your Lordships will kindly come to Volume 5(a)
2 and it starts at page 552. I will take Your Lordships straightaway to 606. Now, Your Lordship
3 has noticed in **Azeez Basha** that, in **Azeez Basha**, Article 26 was noted, as I showed to Your
4 Lordships. But they said if you've lost your right under 30, 26 is irrelevant. Now, **TMA Pai**,
5 at page 606. I won't read all of it My Lord. It effectively says that 26A is also the right that
6 minorities have, but that is a right that is given to both minorities and others.

7

8 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Which is the para that you want us to read at
9 606?

10

11 **RAJEEV DHAVAN:** 26.

12

13 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Para 26.

14

15 `10:54:43` ~~~ 3 ~~~

16

17 **RAJEEV DHAVAN:** So, this is now settled that both the majority and the minority have
18 rights under Article 26. That's important. Now may not kindly come to 613.

19

20 **CHIEF JUSTICE D.Y. CHANDRACHUD:** That's how **Auroville** came in the, got the
21 benefit of 26, right?

22

23 **RAJEEV DHAVAN:** That's right My Lord.

24

25 **CHIEF JUSTICE D.Y. CHANDRACHUD:** And **Auroville**, 26 has nothing to do with your
26 minority status.

27

28 **RAJEEV DHAVAN:** Absolutely My Lord. If there is a majority, for example in UP....

29

30 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Chinnappa Reddy's judgement in **Auroville**
31 was about 26.

32

33 **RAJEEV DHAVAN:** Absolutely right. Now, in the state of UP, if the Hindus are in majority,
34 they can resort to 26. That's important. The majority also, has a stake in 26, and that is how
35 the Constitution has to be read. Then, may I take Your Lordships to page 615? I'm sorry, 613
36 is very important. In this, **TMA Pai** fleshes out what the meaning of the right under 30 is. It's
37 now fleshed out. Come to 50, para 50, page 613, and on this, everything turns. Are Your

1 Lordships there? It says the right to establish and administer broadly comprises the following
2 rights- to admit students, to set up a reasonable fee structure, to constitute a governing body,
3 to appoint staff and to take action if there is any dereliction of duty on the part of employees.
4 This is what the rights, as I said, the antecedent aspects are different. What are the rights that
5 come under "establishment"? This has now been established by Your Lordship's court. This is
6 very important.

7

8 **JUSTICE DIPANKAR DATTA:** Mr. Dhavan Sir, 50 would necessarily relate to minority.
9 The right to establish and administer, broadly comprises the following rights. All these rights
10 are of the minority?

11

12 **RAJEEV DHAVAN:** My Lord, in respect of 29 and 30.

13

14 **JUSTICE DIPANKAR DATTA:** In respect of 30. Here we are dealing with 30. So, therefore,
15 the minority institution would have the right to admit students? Minority institution would
16 have the right to set up a reasonable fee structure. All these, A to E are relatable to minorities?

17

18 **RAJEEV DHAVAN:** Yes. See, the heading. I am sorry.

19

20 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Unaided non-minorities.

21

22 **RAJEEV DHAVAN:** That's right.

23

24 **JUSTICE SANJIV KHANNA:** Because once you hold education as charity and you bring in
25 Article 26 Clause A, then they are dealing with non-aided, non-minority institution in that
26 under 50 they've given the power, the rights which they have the right to administer.

27

28 **RAJEEV DHAVAN:** My Lord as far as aided is concerned, they say that you can't have
29 maximum autonomy, but at the same time, the regulatory framework will apply to it. And
30 therefore...

31

32 **CHIEF JUSTICE D.Y. CHANDRACHUD:** As Brother Dipankar Datta said, para 50
33 applies only to minority institutions. Otherwise, what will happen is, that the rights which are
34 conferred on a minority, by para 50, recognized as inhering in a minority will also inhere in a
35 non-minority institution. That can't be so.

36

37 **JUSTICE DIPANKAR DATTA:** I think above, para 48.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37

CHIEF JUSTICE D.Y. CHANDRACHUD: That says, private unaided non-minority education institution.

JUSTICE DIPANKAR DATTA: That forms part of this heading.

RAJEEV DHAVAN: My Lord, let me take an example. Suppose there is a non-minority institution, the control of the Government is much greater.

CHIEF JUSTICE D.Y. CHANDRACHUD: Of course.

RAJEEV DHAVAN: Has to be, because, if Your Lordship will see the heading, of this private aided, and, both *Inamdar* and *TMA Pai* say aided institutions don't lose their right, just the regulation is more. The question was My Lord, in *Inamdar*, the question was, do you have to give seats to the Government? They said as far as unaided is concerned, you give it or not is a matter of negotiation. As far as aided is concerned, seats will go, because I assume My Lord...

CHIEF JUSTICE D.Y. CHANDRACHUD: But a non-minority institution cannot say, that "well, I am entitled to admit students at my choice". If you are a non-minority institution, you can't say "well, I will only admit whatever students I want from my denomination, or people of my liking". The right to admit is given only under Article 30.

RAJEEV DHAVAN: Absolutely.

CHIEF JUSTICE D.Y. CHANDRACHUD: And even that is subject to the restrictions which *St. Stephen's* has imposed.

RAJEEV DHAVAN: That's right. I don't quarrel with that proposition. *St. Stephen's* is a little more liberation, because it says, although the Act is there, it doesn't matter, we will protect your discretion, and that is the significance of *St. Stephen's*. Now, may I take Your Lordships...

JUSTICE SANJIV KHANNA: Just one minute.

RAJEEV DHAVAN: Now, kindly come to page 615, para 54, which is relevant to Your Lordship's summary this morning. The right to establish an education institution can be regulated. Such regulatory measures must, in general, be to ensure the maintenance and

1 proper academic standards, atmosphere, infrastructure, including qualified staff and the
2 prevention of maladministration by those in charge of the management. The fixing of a rigid
3 free structure dictating the formation of a composition of a governing body, compulsory
4 nomination of teachers and staff for appointment for admissions would be unacceptable
5 restrictions. So, My Lord, the general law will ally, the moment you intrude, that's where the
6 balance is upset.

7

8 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Yes.

9

10 **RAJEEV DHAVAN:** Now My Lord, kindly come to 621. Just above para 71, at Placitum D, it
11 has been held that the conditions for affiliation or recognition, which pertain to the academic
12 and educational character of the institution and ensure uniformity, efficiency and excellence
13 in educational courses are valid, but that they do not violate even the provision of Article 30,
14 but conditions that are laid down for granting recognition should not be such as to lead to
15 governmental control. Then 622, I'll briefly, just above paragraph 73. It says at the same time,
16 it has to ensure that even an aided institution does not become a government owned body and
17 controlled institute. Neither aid, normally the aid is granted is relatable to pay and allowances
18 of staff. Indeed, the management of private aided institutions has to incur revenue. Such aided
19 institution cannot obtain the extent of autonomy in relation to management and
20 administration, as would be available to private, unaided institutions. But at the same time, it
21 cannot also be treated as an education institution, departmentally run by Government or as a
22 wholly controlled Government institution to interfere with the constitution of the governing
23 body and staff. Now My Lords, page 623. What is a minority? This has now been settled. It
24 may not be relevant for Your Lordships. That is para 76. If therefore, are Your Lordships there?

25

26 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Yes.

27

28 **RAJEEV DHAVAN:** The State has to be regarded as the unit for determining linguistic
29 minority vis-a-vis 30, then with religious minority being on the same footing, it is the State
30 which in relation to the majority that will have to be determined. On page 624, at para 79, this
31 is affirmed. There can be therefore, little doubt that this court has consistently held that with
32 regard to a State law, the unit to determine a religious and linguistic minority can only be the
33 State. Of course, we prefer My Lord, Justice Ruma Pal's decision, which says it depends on the
34 statute. Now My Lords, 85, page 625. As I had argued before another bench, that although,
35 the basic structure applies to constitutional amendments, after *Bommai*, you take some
36 aspects into account, while interpreting the provision. So, My Lord, 85, secularism being one
37 of the important basic structures of our Constitution, Article 27 provides that no person shall

1 be compelled to pay any taxes, proceeds of which are specifically appropriated for the payment
2 of expenses. My Lord, I forgot to mention one other aspect. I forgot to mention one thing, may
3 I do it now? Because, secularism is an important part of this judgment, and there are very
4 eloquent provisions My Lord, statements at the end. May I take Your Lordships back to page
5 616, para 57? I will just summarize it. Has Your Lordships got it? It says that charitable
6 institutions can't be run for profit. And at the bottom of that My Lord, there can, however, be
7 a reasonable revenue surplus which may be generated by the education institution for the
8 purposes of development of education and expansion of the institution. You claim minority
9 status, you become charitable. You can't be a profit-making institution. Now My Lord, I was
10 on para 85. Now, may I come to para 89?

11

12 **JUSTICE SANJIV KHANNA:** Dr. Dhavan, can just repeat the sentence which you said just
13 now?

14

15 **RAJEEV DHAVAN:** My Lord, what this court says? If you are a charitable institution, which
16 you would be under Article 30, you are not institutions of profit. You have a revenue surplus.
17 You expand your institutions, but they're not profiting and this was a concern, arising out of
18 *Unni Krishnan*.

19

20 **JUSTICE SANJIV KHANNA:** Was this said in context of Article 26 or Article 30?

21

22 **RAJEEV DHAVAN:** 30...30. It would apply to 26 as well.

23

24 **CHIEF JUSTICE D.Y. CHANDRACHUD:** It would apply to 26 as well, because 26 uses
25 the expression "for religious or charitable purposes."

26

27 **RAJEEV DHAVAN:** That's right. That's right. I want to flag this My Lord, because this is
28 something that the minority institutions must accept. Education has become a profit-making
29 exercise. This court says claim charity, you are not, and we accept that. Now, My Lords, may I
30 come to 85, which I've read. Secularism, I'm sorry, is Your Lordship on 85?

31

32 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Yes, we got it.

33

34 **RAJEEV DHAVAN:** Your Lordships are whiz-kids. Your Lordships can go from one to the
35 other. Secularism being one of the important basic features of our constitution. Article 27
36 provides that no person should be compelled to pay any taxes, proceeds of which are
37 specifically appropriated for the payment of expenses for the promotion and maintenance of

1 any particular religion or religious domination. Now, My Lord, what it says about 29 and 30,
2 page 626, paragraph 89? It says Article 29 and 30 are a group of articles, relating to the cultural
3 and educational rights. And then it analyses what 70 does and 30 does. Then My Lord, a very
4 important aspect in para 93 at page 627.

5

6 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Actually, see para 91. That makes the
7 distinction between Article 26 and 30 clear.

8

9 **RAJEEV DHAVAN:** That's right. And it says, it applies also to majority institutions, 26. I
10 should have placed that.

11

12 **JUSTICE SANJIV KHANNA:** Dr. Dhavan, therefore, you are arguing that, to get protection
13 under Article 30, the institution must be run as a charitable institution?

14

15 **RAJEEV DHAVAN:** That's right. And that's laid down My Lord.

16

17 **JUSTICE SANJIV KHANNA:** No, I'm just asking, as a matter of...

18

19 **RAJEEV DHAVAN:** Yes, that is the majority judgment.

20

21 **JUSTICE SANJIV KHANNA:** That will be the third exception, which you have required.

22

23 **RAJEEV DHAVAN:** That's right, that's right, absolutely. An eleven-judge bench majority
24 says so My Lord. Who am I to say anything else? And it's all subject to reasonable restriction
25 as well, that Your Lordship will bear in mind. Now, may I come to para 93? Can Article 30...
26 I'm sorry...Can Article 30(1) be so read as to maintain that it contains an absolute rights of
27 minorities, whether based on religion or language, to administer, establish and administer
28 educational institutions in the manner they desire without being obliged to provisions of any
29 law? So, this is elaborated. Then cases are mentioned. 629, para 98. It is clear from the
30 aforesaid discussion that this court came to the conclusion that in the case of minority
31 educational institutions to which protection was available under Article 30, the provisions of
32 29(2), were indeed applicable. You can't force. If you give an aid, you can't force people to
33 attend, as I gave a personal example, that when I went to a Christian institution, they asked
34 my father "should he attend Chapel?" and he said "yes" and I was the better for it. I still
35 couldn't sing Christmas carols, but that's another point altogether. Now, if Your Lordships will
36 come to 109? I'll quickly run through this My Lord, what decisions are affirmed by **TMA Pai**.
37 **Mother Provincial** is affirmed in para 109. Now, it goes through **St. Xavier's** from 113.

1 It's an important decision. I didn't go through it because **TMA Pai** supersedes it in some
2 extent. Now comes My Lord, the famous dual test that was there in **Sidhajibhai**. That Your
3 Lordships will find on page, para 122 on page 641. I'll read para 122 from (f). The English don't
4 say "placitum" they say "place." The regulation must satisfy a dual test, the test of
5 reasonableness and the test that it is regulative of the institution to, making the institution an
6 effective vehicle of education for the minority community or other persons who resort to it.
7 One of Your Lordship's questions yesterday was about this. It was permissible by the
8 authorities to prescribe regulations which must be complied with before a minority institution
9 could seek or retain affiliation and recognition. But it was also stated that the regulations made
10 should not impinge on the minority character. This is in the last line, that it says a balance
11 must be obtained and Their Lordship say at the end of that paragraph, "in our view this is the
12 correct approach." I won't labour too much on this, but para 124, because I haven't cited those
13 decisions. I'll briefly indicate what it is. The decisions that are important are mentioned at para
14 124. For example, **Lily Kurien**, Constitution Bench. If you have to go to an outside authority
15 like the [UNCLEAR], they said, I'm sorry, that's bad. Then **Christian Medical College**
16 applied the industrial law. **Gandhi Faiz-e-Azam** says that you can have the Principal, senior
17 most teachers and of course, now we have as Lordship put it, if students come, they have to be
18 on the Board. Then, if I may take Your Lordships to how **St. Stephen's** have dealt with? It
19 starts at 125. I won't read the paragraphs that are approved because I have given them to Your
20 Lordships. Your Lordships will find that on page 644, and then, Your Lordships will see para
21 127, on the right to select students. The university regulation said that, "You must have our
22 criteria". Your Lordships said "No, it's a minority institution, and therefore it's entitled to have
23 its interview tests". Then, all that is mentioned. I come straightaway, that will continue, 135 is
24 important. We agree with the contention of the learned Solicitor General that the Constitution
25 does not give an absolute right. In **Sidhajibhai**, they said it is absolute. So, they said you have
26 to take into account national aspects and 134(6), decisions of this court have held the right to
27 administer does not include the right to maladminister. 138 is important. It actually says and
28 sums up what **St. Xavier's** did. May I come to 138?

29

30 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Yes.

31

32 **RAJEEV DHAVAN:** It's important. As we look at it, Article 30(1) is a sort of guarantee and
33 assurance to the linguistic and religious minorities of their rights to establish and administer
34 educational institutions. Secularism and equality being two of the basic pictures of the
35 Constitution. Article 30(1) ensures protection to the linguistic and religious minority, thereby
36 preserving the secularism of this country. Furthermore, the principles of equality and
37 secularism of the country necessarily apply to the enjoyment of the rights. No law can be

1 framed which will discriminate against such minorities with regard to establishment and
2 administration. This sums up **St. Xavier's**. Then over the page on 650, Your Lordships will
3 see **St. Xavier's** is quoted. Then page 650, bottom of the page, para 141, what Your Lordship
4 puts. However, conditions of aid that do not involve a surrender of substantial rights of
5 management would not be inconsistent with the constitutional guarantee, even if they
6 indirectly impinge upon some facet of administration. If, however, aid was decided on the
7 ground of an educational institution is under management of a minority, then such a denial
8 would be completely invalid. Then My Lords, paragraph 143. This means that the right under
9 30(1) implies that any grant that is given to the State to the majority cannot have such
10 conditions attached to it, which will any way dilute or abridge the rights of the minority
11 institution to establish and administer that institute. So that's the balance that is there in the
12 dual test. Then the constitutional debates are mentioned at 146 and 147 on page 653.

13

14 We have My Lord, caught in our submission aspects of the Constituent Assembly, I will not
15 repeat it. Then My Lord, page 655, para 151. The right of the aided minority institutions, to
16 preferably admit students of their community when 29(2), was applicable has been clarified
17 by this court a decade ago in **St. Stephen's**. While upholding the procedure of admitting
18 students, this court also held that the aided minority students were entitled to preferably admit
19 their community candidates to maintain the minority character of the institution. And then
20 My Lord, Placitum E, thus **St. Stephen's** endeavoured to strike a balance between the two
21 Articles. Now, My Lord, on secularism, there is a very evocative passage on page 657 which I'll
22 read to Your Lordships. It captures the diversity of India, and its important. My Lord para 157
23 on page 657. For the healthy family, it is important that each member is strong and healthy.
24 But then all members do not have the same constitution whether physical or mental. For
25 harmonious and healthy growth, it is but natural for the parents, and the mother in particular,
26 to give more attention and food to the weaker child, so, as to help him and her become
27 stronger. Then My Lord, just Placitum D, all the people of India are not alike. That is why
28 preferential treatment has been given, is not frowned upon by Article 30, which is a special
29 right. Then comes the evocative passage in para 158. The 1 billion population of India consists
30 of 6 main ethnic groups, 52 major tribes, 6 major religions and 6,400 castes and subcastes, 18
31 major languages and 1,600 minor languages and dialects. The essence of secularism can best
32 be depicted if a relief map of India is made in mosaic, where the aforesaid 1 billion people are
33 small pieces of marble that go into the making of a map. Each person, whatever is her
34 language, caste, religion has his or her individual identity, which has to be preserved so that
35 the pieces, so that when pieced together, it forms a depiction with different geographical
36 features. These small pieces of marble in the form of human beings, which may individually
37 be dissimilar, when placed together in a systematic manner produced the beautiful map of

1 India. The variations of colour as well as the different shades are small pieces My Lord, and
2 then, very quickly the summary at the end, page 658. 3(B) My Lords, which emphasizes "of
3 their choice." Then My Lord, in question 4 on page 659, I'll take Your Lordships, straightaway
4 to D. A minority institution does not cease to be so, the moment grant is granted by the
5 institution. As Your Lordship, said, it's a necessary condition, you can't survive without it.
6 Then, I come straightaway to 661, question number 8, whether the ratio laid down by this
7 court in **St. Stephen's** is correct. If not, what order? The basic ratio by this court in
8 **Stephen's** is correct, as indicated in this judgment. However, rigid percentage cannot be
9 prescribed. It must be left to authorities to prescribe a reasonable percentage. Then, question
10 number 11 on 662. That it applies to postgraduate level. At some stage when it was argued,
11 **TMA Pai** before seven-judge bench, one argument made by Justice Anand was, don't have it
12 for tertiary education. That has not been accepted. Now My Lord, I am done with this and I'll
13 summarize what I've said. In the light of these decisions, it cannot be said, that **Azeez Basha**
14 is a good law. Therefore, My Lord, whatever else Your Lordships may say, **Azeez Basha** is no
15 longer good law. On that there can be little doubt.

16

17 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Dr. Dhavan, how would you summarize as the
18 essential foundation of **Basha**? And how, to that extent, to what extent is **Basha** now
19 overruled by implicitly of course, by...

20

21 **RAJEEV DHAVAN:** Our respectful submission was in two areas. **Basha** said, if there is an
22 intervention of a statute, then you lose your character as a minority institution. Second,
23 **Basha** is contradictory because it says a university can be a minority institution, but the
24 intervention statute is there so it can't.

25

26 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Sorry. Can you just repeat the second part?

27

28 **RAJEEV DHAVAN:** It says that minority institutions include university, but then when
29 there is any intervention of statute, you lose your rights. Now, all the decisions that I quoted
30 go against that. The third aspect that I indicated to Your Lordships was that **Azeez Basha**
31 did not look at the whole Act to look at the purpose of the Act. Of course, AMU was not a party
32 with us is a different matter. So, the purpose of the Act when I took Your Lordship through the
33 1920 Act, is clearly as the Allahabad Bench put it, green. And the purpose of the Act has to be
34 looked at. This is adding to my argument on antecedent history. So **Azeez Basha** looks at the
35 antecedent history and ignores it. 4(a).

36

1 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Now, Dr. Dhavan, you have covered your
2 second point in the framework,

3

4 **RAJEEV DHAVAN:** That's right. Now, apart from the preliminary, I have covered the point.
5 *Azeez Basha* and the later decisions.

6

7 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Now we go to the third aspect, which is the
8 analysis of the statute previously and....

9

10 **RAJEEV DHAVAN:** *Azeez Basha*, through *Yashpal* indicates the UGC Act, and it also
11 recognizes the National Minority Education Act. I want to quickly place those before Your
12 Lordships.

13

14 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Right.

15

16 **RAJEEV DHAVAN:** Kindly come to 4(a). Volume 4(a). Thank you.

17

18 **CHIEF JUSTICE D.Y. CHANDRACHUD:** What we would like to have is a clear analysis
19 of how the 1920's statute has unfolded, the original provision and what is the effect of the
20 amendments. Because let's look at... then we can go to UGC and....

21

22 **RAJEEV DHAVAN:** I'll finish this in two minutes.

23

24 **CHIEF JUSTICE D.Y. CHANDRACHUD:** UGC and... then we'll... because that is to our
25 mind, very crucial.

26

27 **RAJEEV DHAVAN:** Yes, My Lords, the amended Act.

28

29 **TUSHAR MEHTA:** The chronology I'm going to give in my own way and that's if....

30

31 **RAJEEV DHAVAN:** I always respect the Solicitor's own way.

32

33 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Yes.

34

35 **RAJEEV DHAVAN:** Now My Lords, very quickly, so that.. because it arises out of the
36 reference, we must place it.

37

1 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Yes.

2

3 **RAJEEV DHAVAN:** Art is long and time is fleeting, I realize that. Now page 203, Volume
4 4(a). It says university means the university established or incorporated by or under. Mr.
5 Dwivedi's argument, accepted by this court is, it should be by and under. This is *Yashpal*, so
6 I am dealing with that. And includes any institution which may, in consultation with the
7 university, be recognized by the commission in accordance with the regulations made under
8 the Act. Then, I'll take Your Lordship straightaway to Section 22, My Lord. 22(1), on page 214.
9 The right of conferring or granting degrees shall be exercised only by a university established
10 or incorporated by or under a Central Act, a Provincial Act or State Act, or an institution
11 deemed to be university under Section 3, or an institution specifically empowered by Act of
12 Parliament to give degrees. This is the statutory position. It can't stand in the way of Article
13 30. Then My Lord, I don't want to, I just flag 23 and 24 that, if you don't do all this, you'll be
14 punished. Now I come very quickly, to the Minority Act. This is in the same volume, page 227...
15 221.

16

17 **RAJEEV DHAVAN:** We come to the end. So, if the UGC Act is seen it'll have to be by statute.
18 And if this is taken out of 30 subclause 1, it means all tertiary education, except private
19 institutions, will not get the protection of 30.

20

21 **JUSTICE SANJIV KHANNA:** It will nullify the effect of 30.

22

23 **RAJEEV DHAVAN:** That's right, that's right.

24

25 **JUSTICE SANJIV KHANNA:** Because every minority institution, once given a statutory
26 recognition, will fall outside the ambit of 30.

27

28 **RAJEEV DHAVAN:** That's right. Statutory intervention My Lord, will not be, override 30.
29 And that is the problem in *Azeez Basha*, and that is why, it was heavily criticized by Mr.
30 Seervai and other people. I'll just give the pages of Mr. Seervai's... I won't go more than that.
31 It's in Volume 3(G) My Lord. I won't take Your Lordships to it, page 185. And the judgment,
32 said [UNCLEAR] is there. I've already argued that it's not a proposition which is correctly
33 stated in a *Azeez Basha*. Now, I come back to the National Minorities Act, which is in 4(a),
34 and I'm going to page 221. Just very quickly My Lord, I'm done with this Act. Your Lordship,
35 has got 221? Now My Lord, 2(g). What is a minority educational institution? Means a college
36 or educational institution established and administered by a minority [UNCLEAR]. My Lord,
37 earlier in the original Act, it said, "other than a university", that is not so anymore. In 2004,

1 universities were not included. So (g) said "other than universities", that now, as part of the
2 amendment My Lord, is universities are included. I don't want to go back to the original Act,
3 I've quoted that in my written submission. Then My Lord, Section 10, page 223. The heading
4 is 'Right to establish a minority educational institution'. Page 223, Section 10, 'Subject to the
5 law contained in any other law for the time being, any one person who desires to establish a
6 minority education may apply to the competent authority.' This is for the future. Justice
7 Nariman's judgment in *St. Clooney* looks at it. I don't want to go there. And then 11 at 224.
8 The commission on page 224(f). What I'm saying is that Article 30, through this Act has been
9 made a statutory law. Also, that is why I wanted to place it before Your Lordships and it's in
10 the records.

11

12 **JUSTICE SANJIV KHANNA:** The Amendment to Section 2F was.... 2G was, with effect of
13 1-09-2010.

14

15 **RAJEEV DHAVAN:** Yes, yes. Now, My Lord I come to answer Your Lordship's question on
16 the here now 1982 Act, then I'm done My Lord. Apart from a few.... My Lord this is dealt with
17 in my written submission at page 50. But I'll take Your Lordships through the Act first. The
18 written submission My Lord is comprehensive on this.

19

20 **CHIEF JUSTICE D.Y. CHANDRACHUD:** This line of statutory provisions. Where would
21 we get there?

22

23 **RAJEEV DHAVAN:** Sorry, My Lord?

24

25 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Which volume will they be in?

26

27 **RAJEEV DHAVAN:** My Lord 3(g), page 30. We've got the book as well if Your Lordship
28 wants it.

29

30 **CHIEF JUSTICE D.Y. CHANDRACHUD:** We'll just look at the....

31

32 **RAJEEV DHAVAN:** First, we come to, I'm on the last leg, My Lord.

33

34 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Yes.

35

36 **RAJEEV DHAVAN:** Now, the statement of objects and reasons, which is in another volume
37 My Lord.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35

CHIEF JUSTICE D.Y. CHANDRACHUD: That we saw yesterday.

RAJEEV DHAVAN: No, My Lord, of the 82 Act.

CHIEF JUSTICE D.Y. CHANDRACHUD: Of the 82 Act?

RAJEEV DHAVAN: 81 amendment.

CHIEF JUSTICE D.Y. CHANDRACHUD: Right.

JUSTICE SANJIV KHANNA: This will be volume?

RAJEEV DHAVAN: My Lord Volume 4(a) at page 148.

CHIEF JUSTICE D.Y. CHANDRACHUD: Volume 4(a), page 88, right?

RAJEEV DHAVAN: Sorry, My Lord. 148.

CHIEF JUSTICE D.Y. CHANDRACHUD: Okay. Should we look at the Act first?

RAJEEV DHAVAN: That's what My Lord, because the purpose of the Act My Lord has to be understood. And the Allahabad High Court actually struck down three provisions, because there was usurpation of judicial power.

CHIEF JUSTICE D.Y. CHANDRACHUD: Yesterday we saw volume 4(a), page 88.

RAJEEV DHAVAN: That My Lord, is original Act. Now I'm on the 82 Act. 81 Amendment.

JUSTICE DIPANKAR DUTTA: That was the SOI for the original Act.

CHIEF JUSTICE D.Y. CHANDRACHUD: SOI for the original Act

JUSTICE DIPANKAR DUTTA: Not the Act.

1 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Not the Act. Only SOI for the Act. Look at the
2 original Act and then see how that Act has been modified by the 81 amendment. The we will
3 know what is deleted by the...

4

5 **RAJEEV DHAVAN:** My Lord, when I look at the Act, I will refer to the original. Now, this
6 Statement of Objects and Reason says, India is a multireligious country and its strength lies in
7 the fact that all communities in the country...

8

9 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Volume 4(a), page?

10

11 **RAJEEV DHAVAN:** Page 148. 4(a).

12

13 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Right.

14

15 **RAJEEV DHAVAN:** Now 148, it says, 'India is a multireligious country and its strength lies
16 in the fact that all communities living in the country are free to establish educational and other
17 institutions of their choice. The Government have introduced in Parliament an amendment to
18 remove doubts from the minds of the Muslim community, regards the character of Muslim
19 universities. But the amendments of the Aligarh Muslim would be meaningless and would
20 become redundant if statutes are not amended to satisfy the sentiments of the Muslim
21 community.' Now, I'll just take Your Lordships to very quickly to Section 2. Section 2.

22

23 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Yes.

24

25 **RAJEEV DHAVAN:** Section 2 adds to the preamble of the original Act, takes away from the
26 original Act to add the words, to remove the words "establishment and".

27

28 **JUSTICE SANJIV KHANNA:** That's to only incorporate?

29

30 **RAJEEV DHAVAN:** Right. And the Allahabad High Court struck this down, saying it was
31 the usurpation of judicial power. Parliament was sitting in appeal. Not before the court at this
32 stage, but I had to go through the Act, so I have to mention this...

33

34 ...Refer to two other provisions, My Lord, straightaway. Now Your Lordships will see that, in
35 3(l), on page 148. 'University means the educational institution of their choice established by
36 Muslims in India, which originated in the Muhammadan Anglo-Oriental College and which

1 was subsequently incorporated to Aligarh Muslim University.' This provision was struck down
2 by the Allahabad High Court.

3

4 Then, I come to 5(2), Section 4, Subsection (c). Now, My Lord Amendment of Section 5 in 4
5 is, 'to promote especially the educational and cultural advancements of the Muslims in India.'
6 This was struck down by the Allahabad High Court. Has Your Lordship got it, My Lord?

7

8 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Section 5?

9

10 **RAJEEV DHAVAN:** 5, My Lord, the first part in Clause 2, it says (c), 'to promote specially
11 the educational, cultural advancement of the Muslims of India.' That is in Section 4, My Lord.

12

13 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Section 5.

14

15 **RAJEEV DHAVAN:** Section 4, amending Section 4.

16

17 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Amending Section 4.

18

19 **RAJEEV DHAVAN:** Right.

20

21 **JUSTICE SANJIV KHANNA:** Are you challenging all the three striking downs or?

22

23 **RAJEEV DHAVAN:** No, these are the three.

24

25 **JUSTICE SANJIV KHANNA:** No, the first two you are really, challenging the first two or
26 the third one also?

27

28 **RAJEEV DHAVAN:** No, I'm challenging everything. I'm saying no usurpation of the judicial
29 power I put it in my written submission.

30

31 **CHIEF JUSTICE D.Y. CHANDRACHUD:** That's not the subject matter of the reference.

32

33 **RAJEEV DHAVAN:** Yes.

34

35 **CHIEF JUSTICE D.Y. CHANDRACHUD:** This will be decided by the normal bench.

36

1 **RAJEEV DHAVAN:** Yes, I understand, but I'm placing it before Your Lordships to
2 understand the....

3

4 **TUSHAR MEHTA:** On that My Lord, entire matter is referred.

5

6 **RAJEEV DHAVAN:** If Your Lordship is going to decide that I'll need another day which I
7 don't want. So may I just quickly take Your Lordship through the amendments, because this
8 will give Your Lordships an idea of what the changes in the 81 Act are, and then I'll quickly run
9 through the 81 Act. May I proceed? Then Your Lordships will see that...

10

11 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Change in 2(l), which is made by the, how was
12 2(l) earlier, prior to the amendment?

13

14 **RAJEEV DHAVAN:** There was no 2(l).

15

16 **TUSHAR MEHTA:** There was. University means Aligarh Muslim University.

17

18 **RAJEEV DHAVAN:** I think I can assist the Court.

19

20 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Because you know Volume 3(g), I will tell you
21 why I asked the question. Volume 3(g), I have multiple windows open. Volume 3(g) at page
22 40. At page 40 contains the amended definition of university. Where is the original definition
23 of university? Which volume will we get it?

24

25 **RAJEEV DHAVAN:** The same volume. Page 5 My Lord.

26

27 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Page 5?

28

29 **RAJEEV DHAVAN:** But originally just referred to the University. Now it's gone further and
30 this is struck down. My Lord, I'm trying to go fast, because I need...

31

32 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Page 78 of?

33

34 **TUSHAR MEHTA:** 4(a).

35

36 **CHIEF JUSTICE D.Y. CHANDRACHUD:** 4(a) page 78. I got it. So 2(h), original...

37

1 **RAJEEV DHAVAN:** So, page 78. I'm obliged to my learned friend. It simply said on page. It
2 said it on (h) there was no (l). It says in (h), University means the Aligarh Muslim University,
3 that's all. Is it clear My Lord?

4

5 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Before the 1981 Act, you had i, j, k...

6

7 **RAJEEV DHAVAN:** Up to h.

8

9 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Because the original Act has only up to h.

10

11 **RAJEEV DHAVAN:** That's right My Lord.

12

13 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Now. Original h was obviously substituted
14 sometime before 1981 by some other Act.

15

16 **TUSHAR MEHTA:** See, '51, '65, '70.

17

18 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Right. So, we just want to see the whole
19 unfolding.

20

21 **TUSHAR MEHTA:** I am going to.

22

23 **RAJEEV DHAVAN:** Let them place it. That was there in *Azeez Basha* as well, but there is
24 a time constraint.

25

26 **CHIEF JUSTICE D.Y. CHANDRACHUD:** The original definition of university, said the
27 Aligarh Muslim University. This amendment says established by, means the educational
28 institutions of their choice, established by the Muslims of India, which originated as the MAO
29 College Aligarh and which was subsequently incorporated as the...

30

31 **RAJEEV DHAVAN:** This brings in the history.

32

33 **CHIEF JUSTICE D.Y. CHANDRACHUD:** So really speaking, what this tries to do is to
34 take away the basis of *Basha* because *Basha* says it was not established. It was not
35 established...

36

37 **RAJEEV DHAVAN:** Absolutely right. And that is the issue, My Lord in the appeal.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37

TUSHAR MEHTA: ...basis or not. That was the question.

DINESH DWIVEDI: Attempted to take.

TUSHAR MEHTA: Yes, attempted to take.

RAJEEV DHAVAN: My Lord, whether Parliament has the right, whether it is an appeal or whether it is a brazen overruling that My Lord will have to be decided.

CHIEF JUSTICE D.Y. CHANDRACHUD: But therefore, for the purpose of this reference, we proceed on the basis that the amendment is valid? Because we can't do that because we are a larger bench.

RAJEEV DHAVAN: To some extent My Lord they.....

CHIEF JUSTICE D.Y. CHANDRACHUD: Because Allahabad has struck it down.

RAJEEV DHAVAN: That's right.

CHIEF JUSTICE D.Y. CHANDRACHUD: We can't treat it as valid today and there is an appeal pending before us,

RAJEEV DHAVAN: Right.

JUSTICE SANJIV KHANNA: Dr. Dhavan, your argument is on the first issue, is that *Basha*, both the conclusions as far as established....

CHIEF JUSTICE D.Y. CHANDRACHUD: This is not in the statute. It's been struck down.

JUSTICE SANJIV KHANNA: Established and administered is concerned was incorrect. So, if you succeed on this ground then the other point whether the amendment is....

RAJEEV DHAVAN: That's true. It will not survive.

JUSTICE SANJIV KHANNA: It will not survive?

1 **RAJEEV DHAVAN:** If *Azeez Basha* goes it won't survive.

2

3 **JUSTICE SANJIV KHANNA:** It won't survive. Because the issue would be whether these
4 amendments made deal with the reasoning part of the judgment and try and overrule the
5 reasoning part of the judgment by legislative amendment, or they are in fact making changes
6 in the statute itself.

7

8 **RAJEEV DHAVAN:** So, subsequent decisions of the court My Lord and the statute, we are
9 on now.

10

11 **JUSTICE SANJIV KHANNA:** Yes. Subsequent decisions of the court. That's your
12 argument.

13

14 **RAJEEV DHAVAN:** My conclusion.

15

16 **JUSTICE SANJIV KHANNA:** So therefore, you've taken this point at the end?

17

18 **RAJEEV DHAVAN:** Yes, yes, My Lord, of course.

19

20 **CHIEF JUSTICE D.Y. CHANDRACHUD:** And Dr. Dhavan, what happens is, this does not
21 say notwithstanding any judgment decree or order. It's not a validating provision. It's merely
22 an amendment of the definition provision.

23

24 **RAJEEV DHAVAN:** It said invalidated.

25

26 **CHIEF JUSTICE D.Y. CHANDRACHUD:** What it basically does is to introduce a new
27 definition of the expression 'university', to provide that this is a university which is established
28 by the Muslims of India, originally called the Muhammadan Anglo-Oriental College and which
29 was subsequently incorporated.

30

31 **RAJEEV DHAVAN:** Correct.

32

33 **CHIEF JUSTICE D.Y. CHANDRACHUD:** So, the definition traces what, in the view of
34 Parliament, is the evolution of the AMU, original establishment. Then, the Muhammadan
35 Anglo-Oriental College and then subsequent incorporation. This doesn't override *Basha*.

36

37 **RAJEEV DHAVAN:** No, My Lord Section 4 is what.....

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37

CHIEF JUSTICE D.Y. CHANDRACHUD: Because Parliament can, it could have taken away the basis of *Basha*. What it really does is merely to alter the definition. That's all.

RAJEEV DHAVAN: No, My Lord kindly come to Section 4, My Lord, on page 148, because it goes further.

JUSTICE SANJIV KHANNA: Dr. Dhavan, just remember one thing. Today, you're arguing a specific case, but what you are arguing may have its repercussion on other matters.

RAJEEV DHAVAN: We do My Lord.

JUSTICE SANJIV KHANNA: Just remember that.

RAJEEV DHAVAN: I'm before a Constitution bench My Lord.

JUSTICE SANJIV KHANNA: Yes. So, there's a distinction between amending a statute to take away the basis of a judgment.

RAJEEV DHAVAN: Correct My Lord.

JUSTICE SANJIV KHANNA: And amendment which deals with only the reasoning part, not really that statute itself.

RAJEEV DHAVAN: Correct My Lord.

JUSTICE SANJIV KHANNA: And then tries to overrule the judgment.

RAJEEV DHAVAN: My Lord I have dealt with that.

JUSTICE SANJIV KHANNA: "Overrule the judgment" in the inverted commas.

RAJEEV DHAVAN: Correct. And *Pavitra* too My Lord, now summarizes what this is. Your Lordship's decision. Now My Lord, it's not just the preamble, it is amendment of Section 5, because it's a substantive change, Subsection C, to promote especially all the educational and cultural advancement to the Muslims in India. So, it's not just My Lord the Statement of Objects and Reasons. Or the definitions clause. This was also struck down. And that is

1 important My Lord, notwithstanding may not be there, because Your Lordships have held
2 from *Prithvi Cotton* that that's not a necessary provision. [INAUDIBLE] some of the
3 provisions and then come to the 82 Act, My Lord. If Your Lordships may permit me. My Lord
4 140.

5

6 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Was it made with retrospective effect or was it
7 prospective?

8

9 **RAJEEV DHAVAN:** Our argument was, that since it's a declaratory statute, it will have
10 retrospective effect. It's in my submission. It doesn't specifically say so, but it's a declaratory
11 statute. Your Lordship's judgments on this are quite clear. Can I quickly run through some of
12 this and come to the 82 Act? My Lord, kindly come to 149, in this volume. With the proviso on
13 149, that nothing in this Section shall be deemed to prevent religious instruction being given
14 in the manner prescribed by the Order.

15

16 **JUSTICE SANJIV KHANNA:** 149 in?

17

18 **RAJEEV DHAVAN:** Top of the page. It gives the section and puts in this proviso.

19

20 **JUSTICE SANJIV KHANNA:** 149.

21

22 **RAJEEV DHAVAN:** Your Lordship's decisions on the proviso are well known. Your
23 Lordships got it, My Lord? Top of the page, Volume 4(a), at 149. And this has not been struck
24 down. Can I quickly go through the Act, My Lord? Your Lordship will come to certain
25 provisions.

26

27 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Actually, Dr. Dhavan, Section 1(ii) of the 1981
28 Act...

29

30 **RAJEEV DHAVAN:** Yes, My Lord.

31

32 **CHIEF JUSTICE D.Y. CHANDRACHUD:** ...is a *prima facie* indicator, at least. Section
33 1(ii) is at least a *prima facie* indicator that it is prospective. Because it says it shall come into
34 force with effect from such date as may be appointed in the Gazette.

35

36 **RAJEEV DHAVAN:** Yes, of course, My Lord. The Act will come into force.

37

1 **CHIEF JUSTICE D.Y. CHANDRACHUD:** We still take your point that in a given case, an
2 Act could be still declaratory of a position. Now what we will really have to see in this. When
3 Parliament introduced the 1981 amendment, did they, one aspect was the change in the
4 definition of university, but did the substantive provisions of the amended statute make a
5 fundamental change in the basis of the decision?

6
7 **RAJEEV DHAVAN:** My respectful...

8
9 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Because if it did not, if it did not make any
10 fundamental change in the basis of the statute, which was interpreted in *Basha*, then clearly,
11 it's outside the power of Parliament to do so. Right? If *Basha* says, look, I am relying on these
12 statutory provisions to indicate that this is not administered by a minority, Parliament can
13 then amend the statute, even with retrospective effect to indicate, well, I'm altering these
14 provisions to ensure that this is run by a minority. That Parliament can do. But if Parliament
15 does not do that, if Parliament has not done it, it cannot merely by a change of definition...

16
17 **RAJEEV DHAVAN:** My Lord.

18
19 **CHIEF JUSTICE D.Y. CHANDRACHUD:** ... overcome the impact of a binding judgment
20 of ...

21
22 **RAJEEV DHAVAN:** My respectful submission, if you see the change in 5(c), it is a
23 substantive change.

24
25 **CHIEF JUSTICE D.Y. CHANDRACHUD:** So let us see now, which are those substantive
26 changes with the 1981 Act brings about and do those changes take away the basis of *Basha*?

27
28 **RAJEEV DHAVAN:** That's right. And therefore, it's not just the preamble and the definition.

29
30 **CHIEF JUSTICE D.Y. CHANDRACHUD:** 5(c) to promote especially the educational and
31 cultural...

32
33 **RAJEEV DHAVAN:** Advancement of the Muslims.

34
35 **JUSTICE SANJIV KHANNA:** Dr. Dhavan, if you say that's a substantive change, then how
36 do you say it's retrospective?

37

1 **RAJEEV DHAVAN:** Because of *Azeez Basha* being so limited, it is..

2

3 **JUSTICE SANJIV KHANNA:** No, that's a separate argument.

4

5 **RAJEEV DHAVAN:** Yes.

6

7 **JUSTICE SANJIV KHANNA:** That's a separate argument. That argument stands on its own
8 legs.

9

10 **RAJEEV DHAVAN:** Correct.

11

12 **JUSTICE SANJIV KHANNA:** It doesn't have to depend upon whether it's substantive or
13 procedural.

14

15 **RAJEEV DHAVAN:** That Your Lordships will decide. I can only...

16

17 **JUSTICE SANJIV KHANNA:** But if, once you say it's a substantive amendment, then it
18 will, question of retrospectivity will be...

19

20 **RAJEEV DHAVAN:** My Lord, in my respectful submission is, it changes the basis. It is not
21 a brazen overruling as Your Lordship puts it.

22

23 **JUSTICE SANJIV KHANNA:** I've not pointed out anything.

24

25 **RAJEEV DHAVAN:** No no.

26

27 **JUSTICE SANJIV KHANNA:** It's just a question. Just a question. It's not my opinion.

28

29 **RAJEEV DHAVAN:** No, that is the whole purpose of the Allahabad judgment, but that's a
30 different matter. And therefore on 149, the proviso is also a substantive change.

31

32 **JUSTICE SANJIV KHANNA:** Lot of issues which will come up, but no doubt confined to
33 our... can amendment be of such a nature?

34

35 **RAJEEV DHAVAN:** They will come up My Lord. But I am mainly placing it because You
36 Lordship wanted to know what the changes are. And the 81 amendment...

37

1 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Actually Dr. Dhavan, there are two separate
2 issues. One, the first part of your argument has been that *Basha* is wrongly decided.

3

4 **RAJEEV DHAVAN:** Correct.

5

6 **CHIEF JUSTICE D.Y. CHANDRACHUD:** *Basha* is wrongly decided on the basis of the
7 statute as it stood on the date *Basha* was decided. That's one aspect of the controversy. The
8 second is that the basis of *Basha* is taken away by the subsequent Parliamentary Amendment
9 and which is, has been rejected by the Allahabad High Court. Allahabad High Court says you
10 have merely nullified the effects of the judgement of the Supreme Court, which is not open to
11 you, as Parliament.

12

13 **RAJEEV DHAVAN:** Absolutely, but that is the subject matter of appeal before Your
14 Lordships.

15

16 **CHIEF JUSTICE D.Y. CHANDRACHUD:** I'm only on this. Can we really separate out one
17 from the other? Perhaps, because for our purposes, do we proceed on the assumption that the
18 1981 amendment is valid or invalid? We will have to treat it as invalid if we are not adjudicating
19 upon it. Because then we have to proceed on the basis of the law as it stands following the
20 judgment of the Allahabad High Court.

21

22 **RAJEEV DHAVAN:** That's right, Allahabad [UNCLEAR] invalid. I'm saying My Lord that
23 that decision is wrong.

24

25 **CHIEF JUSTICE D.Y. CHANDRACHUD:** You are right. So, if we have to treat it as wrong,
26 we can treat it as wrong, provided we overcome or overrule Allahabad. Right? For the purpose
27 of this reference, if we treat it as valid, we will be *sub silentio* saying that Allahabad High
28 Court's decision is incorrect, in which case, if we send it back to a three-judge bench, what will
29 that three-judge bench proceed on the basis of? They will say that a seven-judge bench has
30 proceeded on the basis of.....

31

32 **RAJEEV DHAVAN:** If Your Lordships says it's invalid then certainly creates problems
33 before the three-judge bench. That is what I am saying *prima facie*, this is what the 81 Act
34 sought to do.

35

36 **KAPIL SIBAL:** Just read the Act, nothing more than that. So that Your Lordships knows
37 what the Act does. And decide the question that has been referred to.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37

CHIEF JUSTICE D.Y. CHANDRACHUD: But Mr. Sibal, when we read the Act, we will have to therefore excise those portions of the Act which are not in existence by virtue of the Allahabad judgement.

KAPIL SIBAL: That's not for adjudication. The reference Your Lordships need not touch upon it. You asked the, answer the basic reference question My Lord? This is only, since Your Lordships wanted to know what happened, this is only shows Your Lordship....

CHIEF JUSTICE D.Y. CHANDRACHUD: Mr. Sibal, there is one problem. No. The minority character of AMU, one of the considerations which we'll have to bear in mind is the statutory evolution of AMU, right? Now, in taking into account the statutory evolution of AMU, you have to look at the amendments which are made and the validity of any view taken by a High Court striking down that amendment. That's a live issue for us. How do we ignore that?

KAPIL SIBAL: For the purposes of this reference treat it as that, as a statute that's in void. For the purposes of this reference. You decide the question. You decide the question, the fundamental question whether Aligarh Muslim University is a minority institution or not. That doesn't depend on statute. It depends on the judgments of this Court.

CHIEF JUSTICE D.Y. CHANDRACHUD: No, but therefore, do we ignore the provision? Are you saying that we ignore Section 2(l) as introduced by the 1981 Act?

KAPIL SIBAL: 81 amendment, ignore the 82 Act and decide the question whether it is referred to you.

RAJEEV DHAVAN: My Lord at present our respectful submission...

CHIEF JUSTICE D.Y. CHANDRACHUD: But then suppose when it goes to a bench of three, the bench comes to the conclusion that 2(l) is valid.

KAPIL SIBAL: Supposing Your Lordships comes to the conclusion, that in fact, *Basha* is bad law nothing else is [UNCLEAR]. If you come to the conclusion *Basha* is good law, then this question will arise.

JUSTICE SANJIV KHANNA: If we come to the first conclusion then the amendments, even if they are struck down, may not make any difference.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37

KAPIL SIBAL: Then it is academic...But if you hold,

JUSTICE SANJIV KHANNA: No, but Mr. Dhavan wants to argue that.

RAJEEV DHAVAN: No, what I want to argue is, at this stage, Your Lordship will not preempt the three-judge bench or the five-judge bench, that's all. Because if Your Lordship says invalid, that is the issue before the three-judge bench or five-judge bench, not before that.

CHIEF JUSTICE D.Y. CHANDRACHUD: For us to decide whether *Basha* is correct law or not, we have to look at the state of the statutory provisions as on the day before *Basha* was decided. The statute, as it stood, immediately before 1968.

RAJEEV DHAVAN: That's the '20 Act as amended.

CHIEF JUSTICE D.Y. CHANDRACHUD: But look at it how difficult it will be, and inadvisable it will be to do that. That is, we decide upon the correctness of a Constitution bench judgment in *Basha* on the basis of the statute as it stood in 1968 and that will have an impact on the minority status of AMU without us taking into account the subsequent developments which are taken. Can we in that sense, bifurcate...

RAJEEV DHAVAN: No need. No need. This is a remedial statute whose validity will be judged My Lord later on. Don't preempt that process right now. Just say whether it's valid or not has to be decided by another bench.

JUSTICE SANJIV KHANNA: If I'm not mistaken, this controversy also arose in relation to certain amendments under the Income Tax Act, 80M, if I'm not mistaken or something like that. Because there's a judgment of this court when the statute was amended, the judgment of this court itself was then referred to a larger bench.

RAJEEV DHAVAN: Yes, yes.

JUSTICE SANJIV KHANNA: Maybe section is wrong, but it was one of those chapter 6A deductions. And then we dealt, the Constitutional bench dealt with the main issue itself, leaving, relegating the issue whether the amendments made were correct or can withstand the constitution via these challenges.

1 **RAJEEV DHAVAN:** Yes, My Lord. My Lord there are at least 45 decisions of this court going
2 into this question, including tax, including labour etc. and they culminate in *Pavitra* too. I'm
3 not canvassing this here, but I'm just saying, whether it's valid or invalid, Your Lordship will
4 say will be decided. To invalidate it in this case is not correct.

5

6 **JUSTICE SANJIV KHANNA:** We are answering in reference of the appeal.

7

8 **RAJEEV DHAVAN:** Correct, correct My Lord. That's all. My Lord, may I just say that our
9 position, if Your Lordship should say the 81 lakh validity of these sections will be decided by
10 that bench. The more important part of this amendment is on the administrative provision.

11

12 **DINESH DWIVEDI:** May I..

13

14 **RAJEEV DHAVAN:** That's important, My Lord.

15

16 **DINESH DWIVEDI:** May I intervene?

17

18 **RAJEEV DHAVAN:** Because that's the question Your Lordship put to me on administrative.
19 So, I'll just do that. Mr. Dwivedi, you can hold till reply.

20

21 **DINESH DWIVEDI:** No, I just wanted to say this that the whole reference is arising in the
22 backdrop of a challenge to the Allahabad High Court judgment which has struck down this.
23 That's the basis of the reference. And it comes to Your Lordships in that's...

24

25 **JUSTICE SANJIV KHANNA:** Mr. Dwivedi, there's an issue on that. In fact, I was a little
26 surprised by this plea raised by Dr. Dhavan. His primary argument is the reasoning given,
27 forget about the...he's saying, accept the statute as it existed. The reasoning given to hold that
28 the university is established and administered not by the minority community is wrong. So, he
29 is challenging that. And he relies upon..

30

31 **DINESH DWIVEDI:** We...

32

33 **JUSTICE SANJIV KHANNA:** Just one moment. He relies upon two arguments. The basis
34 of the judgment itself is flawed internally and in terms of the law as laid down by this court
35 starting from *Kerala* right till the end *T. M. A. Pai* etc. He has not referred to the subsequent
36 judgments after *T. M. A. Pai*, but..

37

1 **DINESH DWIVEDI:** With respects, My Lord. With respects, My Lord.

2

3 **JUSTICE SANJIV KHANNA:** Now, the second aspect is if we accept that argument of his,
4 there's no difficulty then. But if we reject his argument, then the constitutional validity of the
5 *vires* of the 81 Amendment arise for consideration. 81 amendment per se has not been referred
6 to, this appeal has not been referred to be decided by this bench.

7

8 **DINESH DWIVEDI:** That's the basis of the reference law. If you take it away, then it
9 becomes a review petition against...

10

11 **JUSTICE SANJIV KHANNA:** 81 Order of Justice Fazal Ali, have nothing to do with the
12 amendment.

13

14 **TUSHAR MEHTA:** I'm sorry. 81 Order of Justice Fazal Ali does not pertain to Allahabad
15 Muslim university.

16

17 **JUSTICE SANJIV KHANNA:** Correct.

18

19 **TUSHAR MEHTA:** It was some different institute.

20

21 **JUSTICE SANJIV KHANNA:** Correct.

22

23 **TUSHAR MEHTA:** Thereafter My Lord, when the challenge to the Allahabad High court..

24

25 **RAJEEV DHAVAN:** My Lord, let us finish.

26

27 **DINESH DWIVEDI:** But there is a point...

28

29 **RAJEEV DHAVAN:** My Lord, let us finish.

30

31 **DINESH DWIVEDI:** There is a larger point but when the question is..

32

33 **RAJEEV DHAVAN:** ...to the larger point.. My Lord, this is not fair. This is not fair. I am at
34 the fag-end of my argument, they have the right to reply... whether it comes in the reference
35 or not, Your Lordship will decide. So, this is not fair, My Lord. This popping up, I have rarely
36 seen in this court.

37

1 **DINESH DWIVEDI:** We can also raise voice Dr. Dhavan.

2

3 **RAJEEV DHAVAN:** Let me proceed with the 81 amendment My Lord. The 81 amendment
4 has two parts. One part relates to *Azeez Basha* and those changes the other part, which is
5 the more important part relates to administration, which is not struck down, and I'm putting
6 it before Your Lordship because I have to. What Your Lordship's question is. What about the
7 administrative parts? I'll quickly run through them My Lords and I want to sit down. So, My
8 Lord kindly come to page 149.

9

10 **CHIEF JUSTICE D.Y. CHANDRACHUD:** 149, volume 3(a)?

11

12 **RAJEEV DHAVAN:** No.

13

14 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Sorry we are at Volume 4(a).

15

16 **RAJEEV DHAVAN:** Now My Lord, 149 we begin on the administrative parts and that is Your
17 Lordship's question, I couldn't say on the change in places. I had to put it to Your Lordships.
18 Now My Lord kindly come to 149 Sub-section 7. Chancellor shall be elected by the Court. One
19 amendment to Section 18. Pro-Chancellor shall be elected by the Court. 20A shall be elected
20 by the Court. Then, Section 23 is important, because over the page, at page 140. Sub-clause 2,
21 150. The Court shall be the supreme governing body... Different from 1920. It's supreme body.
22 My Lord I love the choir but I don't have to deal with it. So, if Your Lordships were to see all
23 this and that is the important thing that the administration, it makes it absolutely clear will be
24 under supreme body. That is the question Your Lordship put to me. That question of changing
25 the basis will be decided later. And *de facto* I've shown to Your Lordships that *de facto* they
26 are all Muslims. That's how the Union of India sees it when these appointments are made. In
27 my written submission, it's at para 67, page 67. The *de facto* argument is also there, because
28 you all gather it to see who is actually administered now. The Lord, may I come to the 82 Act
29 very quickly. 81 Act.

30

31 **JUSTICE SANJIV KHANNA:** Page?

32

33 **CHIEF JUSTICE D.Y. CHANDRACHUD:** This was the 81 Act.

34

35 **RAJEEV DHAVAN:** We've dealt with the amendment. Now we look at the Act because all
36 those provisions about Islamic, promoting all those are there.

37

1 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Let's see those?

2

3 **RAJEEV DHAVAN:** I won't refer to that because everything else remains the same.

4

5 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Where is that Act. Where do we get that Act?

6

7 **RAJEEV DHAVAN:** 3(g). Rather at page 38. The amendments are there, 2(l), etc. is there. I
8 don't want to go into that. But the substantive amendment on page 41 Section 5, Sub-clause c
9 is not definition My Lord. It's a substantive amendment.

10

11 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Section?

12

13 **RAJEEV DHAVAN:** My Lord 41. The change in (c) which has been struck down, but that's
14 a different matter altogether.

15

16 **CHIEF JUSTICE D.Y. CHANDRACHUD:** 5(c)?

17

18 **RAJEEV DHAVAN:** But if you see 5(2)(a), which has not been struck down, to promote,
19 promote Oriental and Islamic studies and give instructions in Muslim theology. This has not
20 been struck down. It remains.

21

22 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Provision On 5(2)?

23

24 **RAJEEV DHAVAN:** So, My Lord that has not been struck down. Then My Lord page 42. If
25 Your Lordships will permit me?

26

27 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Yes.

28

29 **RAJEEV DHAVAN:** May I proceed My Lord. Your Lordships will see 9(a), amended in '72,
30 which is original Section 12, goes into this. "To establish within a radius of 25 kilometres of the
31 university mosque, such special centres and laboratories for research and instructions as are
32 in the opinion necessary. So, it has this other aspect and, in Your Lordships stay order Your
33 Lordship indicated that this will continue. Then My Lord I come to very important provisions.
34 Kindly come My Lord, all that business about the college is transformed, I won't go into that.
35 Kindly come to page 45. The Rector disappears, he becomes a Visitor. So, as far as the Visitor
36 is concerned, we know as I indicated there is a template, the external bodies and the internal
37 bodies. So, the Visitor My Lord will say, are you administering it properly or not? And that

1 concept of Visitor is there in all the institutions. Your Lordship has, Chancellor has that power,
2 whether it's Bangalore, Calcutta, whatever it may be. This is not an invidious provision. Then
3 My Lord if Your Lordships would come to 47 Chancellor now is elected by the court, Section
4 17. Pro-Chancellor is elected by the court. All those colonial provisions are gone. 19 My Lord
5 Vice-Chancellor shall appoint the Visitor and the recommendation My Lord will come from
6 the court, that's on Page 61, 62. Then My Lord kindly come to 23, as it stands now. I'm on
7 administration. The court shall consist of the Chancellor, Pro-Chancellor, Vice-Chancellor etc.
8 , it shall be in Subsection 2, the Supreme Governing Body. Then My Lord page 53.

9
10 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Just one second Dr. Dhavan, the composition
11 of the court which becomes the supreme governing body of the institution is provided in this
12 particular statute itself, right?

13
14 **RAJEEV DHAVAN:** Yes sir, and it will be there in the statutes as well.

15
16 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Can we just see where these statutes are?

17
18 **RAJEEV DHAVAN:** I will, My Lord. I just want to...

19
20 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Because Section 23 says, 'the court shall consist
21 of the Chancellor the Pro-Chancellor, the Vice-Chancellor, the Pro-Vice-Chancellor, and such
22 other persons as specified in the statutes. Now, who are those such other persons which the
23 statute specified.

24
25 **RAJEEV DHAVAN:** I'll show that. Just note 53 on the ordinances, 'Giving of religious
26 instruction' in subsection j, which was there in the original Act. Now, I'll take Your Lordships
27 straight away to the statutes. I'm not going to cover the ground that I did in 1920, that the
28 religious aspects are there, because that has not been changed. Now My Lord, kindly come to
29 the statutes. Yeah, it starts with 60. Relevant provisions are on page 74.

30
31 **CHIEF JUSTICE D.Y. CHANDRACHUD:** 74?

32
33 **RAJEEV DHAVAN:** 74. Can I take Your Lordships through some of the provisions? Because
34 Your Lordships asked what the others are. My Lord. It has the usual provisions, the staff must
35 be there, the students must be there. Then My Lord on 75, the donors, of course, they may not
36 be Muslims, but the point is, most of them are. At the bottom of 75. And then ex-students are
37 there, page 75, just at the bottom of that page. Now, the important provisions which I pointed

1 out in the 1970 Act are still there. Page 76 is important in this respect. Can I proceed? 76 says,
2 76 remains the same, 'Representatives of the All India Muslim Education Conference.' Then
3 My Lord, representation of Muslim Culture and Learning. Now, kindly see on Muslim Culture
4 and Learning, 15 persons representing Muslim culture, 6 persons representing Muslim
5 Colleges of Oriental Learning, 4 persons from WAQF Board, 2 persons representing Urdu
6 language, 5 persons representing Muslim Educational and Cultural Society situated outside
7 the state.

8

9 **CHIEF JUSTICE D.Y. CHANDRACHUD:** I made a mathematical total. This Clause 15 to
10 Clause 29. Sorry, Clause 25 to Clause 29 is, it would include 15 and 6, 21 and 4, 25, 27 and 5,
11 32 people. Now, what is the composition of the court in terms of numerical strength?

12

13 **RAJEEV DHAVAN:** About 180.

14

15 **CHIEF JUSTICE D.Y. CHANDRACHUD:** 180? So, 32 out of...

16

17 **SHRAVAN:** Overwhelming majority throughout the distance of the university *de facto* has
18 always been Muslim. Although it may not be specifically stated that 90% [UNCLEAR] *de jure*
19 and *de facto*.

20

21 **CHIEF JUSTICE D.Y. CHANDRACHUD:** That's a legal argument, but as a matter of fact
22 in the court, now we are clear, the court under Section 23 is the supreme body. It performs all
23 the executive functions, is a governing body. Now expressly by the statute, there is a
24 requirement that 32 people out of the 180 odd, must be, ordinarily they would be Muslims. I
25 mean, there are five representatives.

26

27 **RAJEEV DHAVAN:** These are Muslim institutions.

28

29 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Yes, of course. Five representatives of the All
30 India Muslim Education Conference. That's right. So, it will be 37. 37 out of a total of 180.
31 Would that impact upon whether we call it... the words are established and administered by...

32

33 **RAJEEV DHAVAN:** My Lord, what I put to Your Lordships as in *Faiz-e-Azam*. Now, My
34 Lord, liberal education requires all these representatives. Therefore, the important point is the
35 presence My Lord, not just Muslims, of these institutions is enough. Whether it should be
36 majority or not is another matter.

37

1 **CHIEF JUSTICE D.Y. CHANDRACHUD:** But if you say that the test under Article 30 is
2 it has to be administered, would it be sufficient that the administration is given to a composite
3 body, a large body, a multi member body, out of which say in this case 32, or 37 out of 180 are
4 Muslims. Does that then satisfy the administration test under Article 30?

5

6 **RAJEEV DHAVAN:** Our respectful submission is the presence is there, and that is enough.
7 In this day and age My Lord, you have to incorporate the other people, as Your Lordship put
8 it, the students are there, the staff is there. It's inevitable but that doesn't mean the hold in one
9 sense or the presence has been affected in any way. It doesn't have to be 100%.

10

11 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Dr. Dhavan, what is worrying is this. The test
12 is of management, right? For the purpose of administration. Now we take your point that well
13 as an University now governed by law you have to induct people who are representatives of
14 various stakeholders in the University, the teachers, the students, the faculty so on and so
15 forth, we got that point. But then this would really lead to a *de minimis* argument that look,
16 even though the controlling voice in the administration is not that of the minority yet we must
17 still treat it as being administered by that minority. For treating an educational institution as
18 administered by a minority should the controlling voice in the administration not be of the
19 minority. Or even if. Could it be...I mean we are formulating the hypothesis. It's an important
20 issue to consider. Could it be the law, or could it be the position of constitutional law that even
21 though the controlling voice in the administration is not of the minority, yet it should be
22 treated as a minority education institution under Article 30 because the minority has some
23 element of presence in the managing body. Will some element of presence in the managing
24 body suffice?

25

26 **RAJEEV DHAVAN:** My Lord, our respectful submission is that take the Vice-Chancellor.
27 They've all been Muslims. They will be here as well then, the *de facto* argument is an important
28 argument. And therefore, My Lord presence. They haven't lost control entirely to secular
29 forces.

30

31 **CHIEF JUSTICE D.Y. CHANDRACHUD:** All Vice-Chancellors has traditionally been
32 elected by the court, right?

33

34 **RAJEEV DHAVAN:** Yes. All of them, barring three.

35

36 **CHIEF JUSTICE D.Y. CHANDRACHUD:** And therefore, Shravan's argument that these
37 are the *de facto* and not just *de jure*.

1

2 **RAJEEV DHAVAN:** And not My Lord, Your Lordships will examine the *de facto* argument
3 and the *de jure* argument and combined with that, the day this presence is enough. Where do
4 you get another statutes of presence like this, I'll leave it there. Now all the other provisions
5 are of an Islamic nature My Lord, I don't want to go through them. That's the same as the '20
6 Act. What I want to say My Lord, if Your Lordship looks *de facto*, it is administered by
7 Muslims. And Your Lordship will examine that. **Basha** was concerned only with
8 establishment.

9

10 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Mr. Farasat will take on that particular link or
11 Mr. Sibal will take on that link. We will see who is going to that yet.

12

13 **RAJEEV DHAVAN:** And then it says even if you are administered it is relevant. Now My
14 Lords, my written submission, I'll just take two minutes.

15

16 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Volume?

17

18 **RAJEEV DHAVAN:** Volume 1(a). Now My Lord, has Your Lordships got it, page 9? These
19 are the issues My Lord, that this written submission deals with. Your Lordship will examine
20 them My Lord. I've dealt with all these issues. Also, My Lord Your Lordships will see this
21 business of the 81 Act My Lord.

22

23 **JUSTICE SANJIV KHANNA:** In fact, Dr. Dhavan, first two questions are the real ones.
24 Probably...

25

26 **RAJEEV DHAVAN:** Yes. Naturally because **Azeez Basha** is quoted in the reference.

27

28 **JUSTICE SANJIV KHANNA:** First two and 5.

29

30 **RAJEEV DHAVAN:** Yes. 4 also arises out of the reference. 5 arises out of the reference.

31

32 **JUSTICE SANJIV KHANNA:** 4 will arise in a slightly different way. Not directly.

33

34 **RAJEEV DHAVAN:** No, My Lord, because the reference refers to the UGC and the National
35 Minorities Act. So, it's taken from them.

36

37 **JUSTICE SANJIV KHANNA:** Okay, fine. That will be their argument in fact.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37

RAJEEV DHAVAN: Now My Lord, all this business of the Allahabad High Court My Lord is at page 44.

JUSTICE SANJIV KHANNA: 5 and 6 will...

RAJEEV DHAVAN: I don't want to go there. Your Lordship's question is on administration, so the two parts of the 81 Act can be delineated. That dealing with changing the basis and that dealing with the administration. There are two distinct parts to the Act. I have put in the argument on changing the basis, Your Lordships need not decide on it right now. That is for another bench, My Lord. I'll just take one minute. My Lord, that's me. I think you want to hear another voice. I'm sorry, I've stepped over, Your Lordships were conferring, rightly so.

CHIEF JUSTICE D.Y. CHANDRACHUD: Anything else, Mr. Dhavan?

RAJEEV DHAVAN: That's all.

CHIEF JUSTICE D.Y. CHANDRACHUD: Thank you very much, Dr. Dhavan. We will hear Mr. Sibal after lunch. Thank you, Dr. Dhavan.

CHIEF JUSTICE D.Y. CHANDRACHUD: Yes, Mr. Sibal.

KAPIL SIBAL: I may, My Lord, brush the canvas with a broad brush to tell Your Lordships why and how Your Lordships have to look at this matter. This is, first of all, a Pre-constitutional law. The 1920 Act is a Pre-constitutional law. Pre-constitutional laws have to be tested under Article 13. If they are inconsistent with any fundamental right, they can be struck down. Article 30 is a right, fundamental right given to minorities. If Your Lordships looks at the 1920 Act, I'll come to that later, and comes to the conclusion that the Act itself is *ultra vires* Article 30. Your Lordship can strike it down.

CHIEF JUSTICE D.Y. CHANDRACHUD: But, has there been a challenge to the validity of the Act itself?

KAPIL SIBAL: No. The Act says - 'It can be altered also under 372.' The Act itself can be altered.

1 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Proceedings before the...

2

3 **KAPIL SIBAL:** No. Today, today, Your Lordships are testing the validity of 1920.

4

5 **CHIEF JUSTICE D.Y. CHANDRACHUD:** But no. Where is the challenge ... is there a
6 challenge to the validity of the Act?

7

8 **KAPIL SIBAL:** When *Basha* is already... I'll come to that. When *Basha* itself is the subject
9 matter of reference, then you'll have to decide whether *Basha* is rightly decided or wrongly
10 decided, that will in turn lead Your Lordships to testing the 1920 Act.

11

12 **CHIEF JUSTICE D.Y. CHANDRACHUD:** But if you strike down the 20 Act, then the very
13 status of the university evaporates.

14

15 **KAPIL SIBAL:** No, My Lord. Strike down the 20 Act, in the context of Article 30. That it
16 violates my right under 30. And that takes Your Lordships to the reference of *Basha*.

17

18 **JUSTICE SANJIV KHANNA:** Mr. Sibal, what is your argument?

19

20 **KAPIL SIBAL:** My argument is, please look at it as a Pre-constitution Act.

21

22 **JUSTICE SANJIV KHANNA:** Correct.

23

24 **KAPIL SIBAL:** And in the light of that, test that act in the context of our Constitutional
25 Rights under Article 30. You may come to the conclusion that the tests laid down in terms of
26 Article 30, because, the *Basha* judgment came in 1968. Now, My Lords, much water has
27 flown down the Ganges after 1968.

28

29 **CHIEF JUSTICE D.Y. CHANDRACHUD:** But nobody challenged the Act, Mr. Sibal.

30

31 **KAPIL SIBAL:** I'm not saying....

32

33 **CHIEF JUSTICE D.Y. CHANDRACHUD:** How can we deal with the validity of the act, if
34 the....

35

1 **KAPIL SIBAL:** Please, My Lord, I'm, at the moment, My Lords, only asking Your Lordships
2 to look at it as a Pre-constitutional Law. We'll come to the argument as to 'how it can be
3 challenged, how it can't be challenged.'

4

5 **CHIEF JUSTICE D.Y. CHANDRACHUD:** All of you are appearing for Aligarh Muslim
6 University?

7

8 **KAPIL SIBAL:** I am appearing, My Lord, for the Old Boys Association.

9

10 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Old Boys Association. And Mr. Dhavan was for
11 AMU. And Shravan?

12

13 **KAPIL SIBAL:** Right, My Lords.

14

15 **CHIEF JUSTICE D.Y. CHANDRACHUD:** There is no challenge to the Act. How can
16 we....?

17

18 **KAPIL SIBAL:** I'm not challenging the Act at all. Please appreciate. I'll ask you Your Lordship
19 to interpret the Act in terms of Article 30.

20

21 **CHIEF JUSTICE D.Y. CHANDRACHUD:** That's of course...

22

23 **KAPIL SIBAL:** That's all that I'm wanting Your Lordships to.....

24

25 **CHIEF JUSTICE D.Y. CHANDRACHUD:** There is no difficulty there. That's you can
26 always...

27

28 **KAPIL SIBAL:** In violation of my right under 30. There's nothing more than that, that I'm
29 asking Your Lordships to do.

30

31 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Yes.

32

33 **KAPIL SIBAL:** Now, as Your Lordship knows, Article 30 has been interpreted over a period
34 of time. And when *Basha* came into being in 1968, there are several judgments after *Basha*.
35 Which give Your Lordships, as to what the true meaning of Article 30 is. Right, My Lords?
36 Those judicial dicta will have to be taken into account to interpret whether *Basha* was rightly
37 decided or wrongly decided. Forget the amendments made. I'm not concerned with that. Now,

1 if Your Lordship looks at the Constitution, in the broadest sense, what happens is, there are
2 all kinds of minorities. There are Hindu minorities, there are Muslim minorities. But when it
3 comes...Christian minorities. But when it came to Scheduled Cast and Scheduled Tribes, a
4 special.... I'm talking about now education. A special provision for reservation for them was
5 made in the Constitution itself. Then came the amendment to Article 15. And that reservation
6 then was extended to the Backward Community. So, you have reservations in educational
7 institutions for Scheduled Castes, for Scheduled Tribes, for Backward Communities. No
8 reservation could have been given to the Muslim community or to the Christian community,
9 or to the Sikh community because it would be violative of 15 and 14 and 16. So, in the context
10 of the framework of the Constitution, there was no other way to give an opportunity to those
11 left out, to allow for, to allow for education...

12

13 **JUSTICE SANJIV KHANNA:** No Mr. Sibal, I don't think the reference is on this issue.
14 Article 30 has its various connotations. There is impact of Article 30, which is entirely different
15 from what we are deciding today. We are deciding only a limited question what is meant by
16 the term 'established and administered' in Article 30. We are not dealing with what is the effect
17 if an institution is declared to be a minority institution. Because that's been a subject matter
18 of lot of debate. Probably they wanting us to go into that.

19

20 **KAPIL SIBAL:** I am giving the background, My Lord. I am not... This is not... Please
21 appreciate.

22

23 **JUSTICE SANJIV KHANNA:** You wanted us to go into that question.

24

25 **KAPIL SIBAL:** No, I'm just giving a background as to why 30 came into being, My Lord.

26

27 **CHIEF JUSTICE D.Y. CHANDRACHUD:** What you are saying is that the beneficial
28 provisions which were carved out *per se* the SCs, STs in the social and educational Backward
29 Classes could not have been given to the minorities because they would have been the bar of
30 15(1).

31

32 **KAPIL SIBAL:** That's right.

33

34 **CHIEF JUSTICE D.Y. CHANDRACHUD:** No discrimination on ground of religion there.

35

36 **KAPIL SIBAL:** There is a rationale...

37

1 **CHIEF JUSTICE D.Y. CHANDRACHUD:** What was the special provision which was
2 crafted by the constitution makers? Article 30. That's why the Article 30 has been called in a
3 sense an Article of Faith. You must put ourselves back in 1949, 1950, and the idea was to give
4 a sense of confidence to the religious and linguistic minorities that they would be safe within
5 the confines of.....

6
7 **KAPIL SIBAL:** It is in this context that Article 30 is in the Constitution. I'm just giving Your
8 Lordships just the broad Constitutional framework. So when this happened, look back at the
9 time of 1950, when we became a Republic, where were these higher educational institutions?
10 There were none. In fact, the only five or six higher educational institutions were University of
11 Calcutta, University of Allahabad, University of Lahore, University of Bombay and University
12 of Madras. That's all.

13
14 **CHIEF JUSTICE D.Y. CHANDRACHUD:** In fact, you know Mr. Sibal, Bombay University
15 had jurisdiction over present day Karnataka, Maharashtra, Gujarat, and if I'm not mistaken,
16 parts of Sindh as well.

17
18 **KAPIL SIBAL:** My Lords, there were hardly any institutions of higher education and if Your
19 Lordships are aware, and I'm sure Your Lordships are, the only 14% of India was educated.
20 14% of 300 million people. There were no institutions. So, when these five institutions....
21 actually they were set up after 1857 and it was set up on the basis of the London University.
22 Because unless you had a university, you couldn't get a job unless you had a degree. So, when
23 these universities were set up, then the British thought that we must regulate them also
24 because they must have standards. This is all as a background to look at 30 later. I'm just giving
25 Your Lordships a background, nothing more than that. So, My Lords, then 1904, a regulation
26 was framed that all these universities must be regulated under one statute so that standards
27 are maintained. Right? Then what happened was in the meantime, there was this movement
28 by the minorities and by the Hindu community - 'What about our institution for us?' So the
29 genesis of Aligarh Muslim University is based on this movement within the minority
30 community that apart from these five, six universities, we must have a university for ourselves.
31 That's how the Aligarh Muslim University came into being. And imagine Sir Syed, and I'm
32 talking about 1870 My Lords, the patience that that man had that we should not be looking at
33 Muslim education alone. We should be looking at secular, scientific education. English
34 language should be **[NO AUDIO]** (the basis of instruction we have to move along with the
35 world the community must be, must once embrace modern education.) **[END OF NO**
36 **AUDIO]** and the kind of subjects that were to be taught, I'll show Your Lordships. The same
37 movement was in the Hindu community. So, My Lords, around the same time, the Banaras

1 Hindu University was set up and Aligarh Muslim University was set up. So, what happened
2 was My Lords, when the Republic came into being, these were the two Universities, one *qua*
3 the minority, the other *qua* the majority. They became institutions of national importance.
4 Why? Because they were set up under the Central Legislative Assembly by an Act of the
5 Assembly itself, of the Central Government, the British Government of the Imperial
6 Government.

7

8 **JUSTICE SANJIV KHANNA:** So, what about the other universities which were...?

9

10 **KAPIL SIBAL:** By Act, My Lords.

11

12 **JUSTICE SANJIV KHANNA:** They were all [UNCLEAR] by Act.

13

14 **KAPIL SIBAL:** Yes, and then they regulated in 1904 together.

15

16 **JUSTICE SANJIV KHANNA:** They were regulated in 1904?

17

18 **KAPIL SIBAL:** It will have an impact on the... the meaning of. Why am I saying this? It will
19 tell you the meaning of 'established', it will give you a meaning of 'administration'. Give you
20 some indication as to what it means. Then My Lords, what happened was, then these were the
21 only two Universities which were set up by the Central Legislative Assembly, and Your
22 Lordship knows there was a time, when the Constitution was framed, education was a state
23 subject. So they could not be administered by the State, in which they were located, both were
24 in UP.

25

26 **CHIEF JUSTICE D.Y. CHANDRACHUD:** In fact apropos what your submissions, sorry
27 for the digression, if you look at entry 63...

28

29 **KAPIL SIBAL:** I was coming precisely to that.

30

31 **CHIEF JUSTICE D.Y. CHANDRACHUD:** The Union list, it says, the institutions known...

32

33 **KAPIL SIBAL:** National importance.

34

35 **CHIEF JUSTICE D.Y. CHANDRACHUD:** ... of the commencement of this Constitution as
36 the Banaras Hindu University, the Aligarh Muslim University and Delhi University. The

1 University and then came later the University establishment pursuant of Article 371E, any
2 other institution declared by Parliament, by Law, to be an institution of national importance.

3

4 **KAPIL SIBAL:** Yes and My Lords, Ambedkar says, this is because we must protect the
5 cultural ethos of India. The Genesis is a movement, within the Muslim communities, that we
6 must have an institution for ourselves. Now if Your Lordships ask me, there's an actual
7 confusion, as to when a statute recognizes a university degree, it establishes the institution,
8 My Lord there is a complete confusion. It has nothing to do with establishment, a degree
9 granted by a university, is a recognition of that degree which allows you employment, nothing
10 more. The concept of establishment, is dehors that. It's an act of recognition by the State, of
11 the degree.

12

13 **CHIEF JUSTICE D.Y. CHANDRACHUD:** But the Anglo Muhammadan College could
14 have well been affiliated to an existing university, in which case they couldn't have granted
15 their own degrees.

16

17 **KAPIL SIBAL:** No.

18

19 **CHIEF JUSTICE D.Y. CHANDRACHUD:** They could have been affiliated...

20

21 **KAPIL SIBAL:** That's only a recognition of the degree that whatever course, like St. Stephen's
22 is affiliated to Delhi University. So you recognize the degree.

23

24 **CHIEF JUSTICE D.Y. CHANDRACHUD:** But they constituted a university, so that they
25 could themselves grant degree.

26

27 **KAPIL SIBAL:** That's correct. And that's for what? Recognition of their course of studies,
28 consistent with the standards set up by the Government. That's the heart...

29

30 **CHIEF JUSTICE D.Y. CHANDRACHUD:** What is the year is the setting up of Banaras
31 Hindu University? It celebrated its 100 years recently.

32

33 **KAPIL SIBAL:** 1915.

34

35 **TUSHAR MEHTA:** 1915.

36

37 **CHIEF JUSTICE D.Y. CHANDRACHUD:** 1915, so 2015 they celebrated.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37

TUSHAR MEHTA: This college was affiliated with Allahabad University.

KAPIL SIBAL: That's correct.

TUSHAR MEHTA: And Allahabad University used to confer degrees.

KAPIL SIBAL: That's correct.

TUSHAR MEHTA: This MAO. First Calcutta University

KAPIL SIBAL: Calcutta and then Allahabad.

TUSHAR MEHTA: Then Allahabad University.

KAPIL SIBAL: Therefore My Lord, there's a basic... according to me, 'confusion' that the grant of the status or recognition of a degree is the establishment of the institution. My Lords, today, for example, I set up a minority institution. It's recognized as a minority institution and I set it up. Will I lose my status, under the present law?

CHIEF JUSTICE D.Y. CHANDRACHUD: Which are the....? Just as a matter of interest, which are the minority universities in the country today?

KAPIL SIBAL: Many state universities. Now, after *Basha*, what has happened is, the states allow a minority institute.... What happens is, I want to set up a minority institution, say, a Sikh institution, or Christian institution, I set it up.

CHIEF JUSTICE D.Y. CHANDRACHUD: We have the Christian Medical College Vellore, for instance. [UNCLEAR]

KAPIL SIBAL: That is an old institution. But I set it up, now. Supposing tomorrow I want to set it up, after *Basha*. Once I set it up, I go to the National Commission For Minority Education. And I apply to them and saying- 'I set it up as a minority institution.' They will ask me for several facts, as to - What is the reason? Why have you set it up? Where is the funding. Are you financially capable? This, that and the other. And then they will grant me the status of a minority.

1 **CHIEF JUSTICE D.Y. CHANDRACHUD:** But you don't get the status of a 'university'
2 under the Act.

3

4 **KAPIL SIBAL:** Np. You do. You do.

5

6 **JUSTICE SANJIV KHANNA:** But before 2010?

7

8 **KAPIL SIBAL:** Before 2010 also.

9

10 **JUSTICE SANJIV KHANNA:** Because the Act is of 2010. The National Committee....

11

12 **KAPIL SIBAL:** No, doesn't matter. Before that also, you do. There are several universities.

13

14 **JUSTICE SANJIV KHANNA:** No, but they must have applied after the 2010.

15

16 **KAPIL SIBAL:** That's right. And deemed universities also. And then the third most
17 important point, My Lord, I'm just broadly telling Your Lordships, the third most important
18 point. My Lords, when *Basha* was decided, the UGC Act was in force, the 1956 Act, the
19 NCMEI was not in force. But the UGC Act was in force. Now, under Section 23 of the UGC Act,
20 nobody can give a degree unless it is through the UGC Act. You can't give a degree. You can't
21 call yourself 'a university.' You are either a 'deemed to be university' or you are a 'university'
22 or you can't use the name. So My Lords, how do I become a university? I mean it's... It's a
23 contradiction in terms. I set up a minority institution.... minority university, which I'm entitled
24 to, and I'll come to that in a minute. And then, the moment I'm registered as a minority
25 institution and I get university status, I become a non-minority institution.

26

27 **JUSTICE SANJIV KHANNA:** Right to Set Up probably is now after *T.M. A Pai*, a Clause
28 from 19 (1) (g) as well as 26.

29

30 **KAPIL SIBAL:** That's the main. I was coming to that. That's the other scheme that I was
31 coming to. Why did *T.M.A Pai* decide what it decided and why did it leave that question open,
32 which was actually referred to it? I tell Your Lordships, why? I argued in *T.M.A Pai*, having
33 opened the argument that - 'Look, both the majority community and the minority community
34 are entitled to set up educational institutions according to me, of their choice. There's no bar.'
35 Court asked me, "Under which provision?" I said, "19(1) (g)." 19(1) (g) talks about occupation.
36 Setting up a university is an occupation. So, the majority community can set it up, the minority
37 community can set it up. Both under 19 (1) (f). But, the minority community has something

1 more than 19(1) (f). 19 (1)(g). Which is Article 30. Now read Article 30 with me. You don't have
2 to read it, My Lords. 'All minority. All minorities, whether.... all minorities are entitled to set
3 up educational... based on religion or language, can set up institutions of their choice.' Right?
4 The choice relates to what? School, college, university. Choice can't be limited under Article
5 30. I can set up a school. I can set up a college. I can set up a university. Now you say - I have
6 a right to set up a university. But if I go to the statute, if I go and get myself, go to the UGC and
7 say, " I'm a university", then I lose my status. It's all un-understandable. The very logic is un-
8 understandable.

9

10 **JUSTICE SANJIV KHANNA:** What was the question where the universities had already
11 been set up before 1956 and were already giving degrees. What is the position under the UGC
12 Act?

13

14 **KAPIL SIBAL:** They were not minority. We are only....

15

16 **JUSTICE SANJIV KHANNA:** Forget about minorities.

17

18 **KAPIL SIBAL:** They were getting degrees, My Lord. And I tell Your Lordships, there...

19

20 **JUSTICE SANJIV KHANNA:** Those degrees continue to be recognized?

21

22 **KAPIL SIBAL:** Yes.

23

24 **JUSTICE SANJIV KHANNA:** So in your case, you were giving degrees prior to that.

25

26 **KAPIL SIBAL:** No.

27

28 **JUSTICE SANJIV KHANNA:** You're giving degrees after 1920.

29

30 **KAPIL SIBAL:** After 1920, yes.

31

32 **JUSTICE SANJIV KHANNA:** So the UGC Act therefore, to that extent, did it prohibit you
33 from giving the degree?

34

35 **KAPIL SIBAL:** No .

36

37 **CHIEF JUSTICE D.Y. CHANDRACHUD:** So you were independently operating..

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37

KAPIL SIBAL: Till *Basha* came, My Lord. It's a very strange situation.

TUSHAR MEHTA: No, even after *Basha*.

KAPIL SIBAL: After 1982 Act also, we were continuing to be a minority institution. Then also. Nobody challenged that Act. I'll tell Your Lordships how it came about. But I'm not into the 19... See, basically, *Basha* says that - Look, you could have set up a university and could have done given degrees. For how could I?

TUSHAR MEHTA: Factually, even after *Basha* degrees are given and can be given.

KAPIL SIBAL: I am on... I request my learned friend. It doesn't matter. Every incorrect statement I make need not be corrected by you. Because every incorrect statement you make, I never correct.

TUSHAR MEHTA: Some incorrect statements are very potent.

KAPIL SIBAL: Incorrect statement you make I never correct because I believe you will always make correct statements. So, what is the point that I am making that you can't lose your status as a minority institution the moment the UGC grants you the status of a university. When Article 30 entitles you to set up a university. You can't say now Article 30 doesn't entitle you. So, *Sidhajbhai* when it says and this is really the other confusion. *Sidhajbhai* when it says that Article 30 is an absolute right, is absolutely right when it says that. That absolute right with reference... is reference to the choice. That absolute right is not with reference to regulation. Which is why *T.M.A. Pai* later says you will be regulated. You can't say that you will not keep your sanitary standards. You can't say that you not keep this standard, that standard. That comes from where? From 19(6). So every university, whether minority university will be regulated in public interest under 19(6). Right? But it has the right to set it up under 30. Regulation is nothing to do with the establishment. Regulation is to ensure that you keep the standards of education, excellence of education, and without any doubt, Aligarh Muslim University is... The other day I was in Riyadh giving a lecture. Almost all the doctors are from Aligarh Muslim University, serving the Royalty there. I was in Doha. All the Chartered Accountants from Aligarh Muslim University are Chartered Accountants. All Muslims, because many of them said we can't get a job in India. We are forced to come out. We love our country. We'd love to come back. And I want to ask myself a question and to you too - What is the right that a minority has today? What is the right? I have to comply with all standard. I

1 can't appoint a teacher without an appropriate qualification. All universities are entitled to
2 appoint teachers of that qualification. Majority has that right. Minority has that right. I must
3 comply with the student-teacher ratio. My courses of study must be consistent with the
4 university courses of study otherwise I won't get recognition. What is it that this Article gives
5 me? Just a bit of reservation, no? Or is there anything else? Institutions that I have established,
6 I just want a little reservation. You want to deny that also. Is there nothing else My Lord?
7 Nothing else? Now, if My Lords, there is undue interference in the function of my university,
8 then it is my right to challenge it and say you can't do it. But the administration of the
9 university may not be in minority hands. I have the right to administer.

10

11 I may say, "You do it for me." It is my choice. But if you unduly interfere in my administration,
12 I, under 30, will challenge it and say, "You can't do it." If it's 180 members and they are
13 tomorrow interfering and they are packed with people who are not in the interest. I will
14 challenge it then. It's not the other way around. Administration by outsiders doesn't destroy
15 the minority character of my university. I can challenge it. That's not the test of Article 30. So
16 if you look at it historically, I have nothing else. I don't have reservation. Very few people in
17 the community are... and My Lords, let's be clear on it. And these are factual matters, which is
18 a matter of public discourse, My Lords. We are under Scheduled Caste, we are even below
19 them in terms of education. So, we have not empowered enough. The only way to empower
20 our children is through education. The only... and it is higher education. May I just tell Your
21 Lordships, that in all these courses in Aligarh Muslim University, like MD courses, MS courses,
22 engineering courses, the minority students are not around. Most of them are majority. Why?
23 Because they have not been empowered from school. The only places where they have in
24 majority is Theology, Religion, because the majority community doesn't want to be part of
25 that. So one, we are not empowered. Two, we want to be empowered. The only way to empower
26 is ourselves is to allow us these universities, give us that right. Give us the right to be called a
27 university. Allow the Muslim community students, to get a higher degree, let them get jobs
28 and you say, "No. This is not minority." Why? Because you have been recognized by a statute.
29 That's **Basha** My Lords. So, then the question that arises is, if the grant of the status or
30 recognition of a degree, is not the indicia of establishment, what is the indicia of
31 establishment? Then you come to that question. And My Lords, when the Central Legislative
32 Council, when this University was set up at that time there were certain debates that took
33 place. Would My Lordships, be kind enough to turn to that? Volume 4(c), PDF 40. And
34 remember, My Lords.... I'm sorry. My mistake. If I have the choice to establish, I have the
35 choice to administer.

36

1 **CHIEF JUSTICE D.Y. CHANDRACHUD:** No. You don't have the choice to establish or
2 the choice to administer. It says - 'All minorities, whether religious or linguistic, will be entitled
3 to establish and administer educational institutions of their choice.' 'Of their choice' qualifies
4 education institutions. So, you can set up and administer educational institutions of your
5 choice. Now, once the choice in setting up the educational institution is recognized, once the
6 choice *qua* the education institution is recognized, the choice is yours, as a minority, you have
7 to establish it yourself if you have to get the benefit of Article 30. If someone else wants to
8 administer your institution, you can challenge that provision.

9

10 **KAPIL SIBAL:** That's what I'm saying, My Lord.

11

12 **CHIEF JUSTICE D.Y. CHANDRACHUD:** But to the extent to which you want to see the
13 right of administration to others, is your choice again.

14

15 **KAPIL SIBAL:** Again, my choice. That's what I said.

16

17 **CHIEF JUSTICE D.Y. CHANDRACHUD:** That's what your argument is. You are not
18 compelled, at the cost of your minority status, to be required to administer it 100% yourself.

19

20 **KAPIL SIBAL:** That's right. Therefore, I can establish an institution of my choice, and I can
21 administer to the extent that I want. It's my choice. It's as simple as that, in very simple terms.
22 Why My Lords? Because, what Your Lordships have held, right from *Kerala* right to *T.M.A*
23 *Pai*, that the Government cannot interfere in your administration to the extent that it whittles
24 down or destroys the right under 30. Therefore, it's the non-interference, which is protected,
25 by virtue of the fact that I'm granted the right to administer. I hope I've made myself clear. I
26 have the right to administer. That right is mine. If you say, for example, now...

27

28 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Can you say Mr. Sibal, that - I have a right, I
29 have a choice to establish. Instead of establishing it myself, I will delegate the power to
30 establish to someone else?

31

32 **KAPIL SIBAL:** No, no.

33

34 **CHIEF JUSTICE D.Y. CHANDRACHUD:** You can't do that.

35

36 **KAPIL SIBAL:** Of course I can't do that, My Lord.

37

1 **CHIEF JUSTICE D.Y. CHANDRACHUD:** You have to establish it yourself.

2

3 **KAPIL SIBAL:** That's right. And I am right to administer it also. But if supposing,
4 Government says, "Look, in your select committee, we will have a nominee of the UGC."

5

6 **CHIEF JUSTICE D.Y. CHANDRACHUD:** You can challenge that.

7

8 **KAPIL SIBAL:** I can challenge that, but I can also accept it. It doesn't matter. I will also
9 accept it. Now, if I accept it doesn't mean that I've given up my rightfulness. That I'm not
10 administering it. That's how... Ultimately everything else is controlled. There's nothing left. So
11 what is given to the majority community under 19(g) is regulated. What is given to the minority
12 community is also regulated, and it's regulated under the same statute. So, there's no
13 difference. I don't get a higher right; they don't get any superior right. So, what is the right
14 under 30 that is left? What is left is just some reservation. Why? Because my community is not
15 educated enough. Now they say, "No. You are an institution of national importance, so you've
16 lost that right." It would be bizarre. I mean, you will destroy the very conscience of Article 30,
17 the very leitmotif of that Article. Then you might as well get rid of 30. Then why have 30 at all?

18

19 **CHIEF JUSTICE D.Y. CHANDRACHUD:** The only thing which we'll have to consider is
20 this, that at the birth of the Constitution itself... We are now not looking into the broader
21 aspects of the right of a minority to establish and administer. At the birth of the Constitution,
22 Aligarh Muslim University was referred to *Eo Nomine*. There are only two institutions which
23 are referred to *Eo Nomine*, Banaras Hindu University and Aligarh Muslim University. Once
24 these are recognized, *Eo Nomine* in 1963 of List 1 and placed at par with institutions of national
25 importance, as it calls.

26

27 **KAPIL SIBAL:** Fair enough. We get some funding that's all. We got some extra funding. You
28 point out what is that everything. You're already taking... trying to take everything from us.
29 What do we get? Some extra funding is institutions of national.. What are the... IITs are all
30 institutions of national importance under 64. What do they get My Lords? The funding. All
31 right, let's go back on this. If you look at the development of education in India as opposed to
32 other parts of the world. Take, for example, Stanford. Stanford was set up by a magnet, who
33 used to run locomotives. Made billions of rupees or dollars and his son died. So he set up
34 Stanford University. There was no regulation of standard university. It grew, and started
35 awarding degrees. Yale was set up by Puritans, 500 Puritans with Anti Anglican... the Anglican
36 Church came and set up the university, gave its own degree.. Harvard was set up by 1700
37 Puritans. Cambridge... how was Cambridge set up? What happened was that at Oxford two

1 people were convicted, which the Cambridge scholars thought were innocent. And the King
2 supported that, their conviction and their death sentence. They were hanged. So, My Lords,
3 about 60, 70 scholars ran to Cambridge and set up Cambridge University, gave their own
4 degrees. We are regulated. We are regulated. Why? Because we don't have the wherewithal to
5 set up a university. The Minorities, the Dalits, the Scheduled Caste, the Scheduled Tribes, the
6 Backward, very few of them have the capacity to set up university. We're a poor nation, My
7 Lords. Today, our per capita income is \$2,000 per person, which is what? Rs. 230 per month.
8 Lesser Per Capita. 800 million people are earning Rs. 500- Rs. 5,000 a month. Where are you
9 going to get universities and whatever little we have, you want to take that away also. Let's look
10 at the context in which all this is being done. All niceties of law are fine but what's the heart of
11 the matter? Heart of the matter is the only thing we get is a bit of reservation, you want to take
12 that away also by some strange logic. Sophistry. Now, just see My Lords, kindly come to
13 Volume 4(a) for a minute. Page 203. Now, this is the UGC Act, which was there in 1956. So,
14 **Basha** was decided when UGC Act was in force. Now kindly see the definition, 2(f),
15 'University' means. At page 203, My Lords have that?

16

17 **JUSTICE SURYA KANT:** Mr. Sibal, after examining 2(f), read with 22(1).

18

19 **KAPIL SIBAL:** 23.

20

21 **JUSTICE SURYA KANT:** 22(1) of UGC.

22

23 **KAPIL SIBAL:** Yes.

24

25 **JUSTICE SURYA KANT:** Then probably you have to answer.

26

27 **KAPIL SIBAL:** Yes.

28

29 **JUSTICE SURYA KANT:** Your problem is created because of **Basha** or because of these
30 provisions under the UGC Act?

31

32 **KAPIL SIBAL:** **Basha** decides UGC.

33

34 **JUSTICE SURYA KANT:** Just examine.

35

36 **KAPIL SIBAL:** All right.

37

1 **JUSTICE SURYA KANT:** Maybe that you have to respond to.

2

3 **KAPIL SIBAL:** Your Lordships are asking me the question, whether our problem is because
4 of *Basha* or because of this Act?

5

6 **JUSTICE SURYA KANT:** This Act. 2(f) read with 22(1).

7

8 **KAPIL SIBAL:** All right, let me just. Let me...

9

10 **JUSTICE SURYA KANT:** And see the opening statement of the activities, referable to Entry
11 63 of List 1.

12

13 **KAPIL SIBAL:** Correct. That's right, My Lords. 214, 22(1) is -'The right of conferring or
14 granting shall be exercised only by university establishment cooperated under the Central Act
15 or Provincial Act or a State Act or an Institution deemed to be under Section 3 or an institution,
16 especially empowered by an Act, correct. Because otherwise, I can't just set it up.

17

18 **JUSTICE SURYA KANT:** Because of this provision.

19

20 **KAPIL SIBAL:** Because of this provision. And see 23, that's the other thing. Please see 23. -
21 'No institution, no institution, whether a corporate body or not, other than a university
22 established or incorporated by or under a Central Act, a Provincial Act or a State Act, shall be
23 entitled to have the word 'university' associated with its name, in any manner whatsoever.
24 Provided that nothing in this section shall for a period of two years...' and we are not concerned
25 with that. Then there's a big problem My Lords.

26

27 **JUSTICE SURYA KANT:** So, the right to establish a university, which is competent to award
28 degree, is restricted in terms of the provisions under the UGC Act, not on account of the
29 judgment as such and if you read in abstract...

30

31 **KAPIL SIBAL:** But My Lords, 1956 was there when *Basha* was... My problem is that in 1956
32 was there when *Basha* was established, and *Basha* then says -'You could have set up a
33 university and awarded degrees.' Your Lordships, will remember. That's what *Basha* says,
34 that you could have set up a university.

35

36 **JUSTICE SURYA KANT:** In 1921 [UNCLEAR] was not there.

37

1 **KAPIL SIBAL:** I agree. But even in 1920, there was no such statute. Even in 1920.

2

3 **JUSTICE SURYA KANT:** It is only '56.

4

5 **KAPIL SIBAL:** He just said something. He just said it My Lord. There was no statute under
6 which I could have been called a university. It was not there then, it is not there today. And
7 **Basha** doesn't say that it was there then. So the moment you say, "Because UGC now came
8 into the picture and UGC recognizes your degree." It doesn't recognize the establishment.
9 Kindly see, the recognition is for a degree.

10

11 **JUSTICE SURYA KANT:** No. Degree is recognized by a university, not by UGC.

12

13 **KAPIL SIBAL:** I'm talking about university My Lords. Yes, It is recognized... UGC, My
14 Lords...

15 I can't call myself for university. Then the guidelines [NO AUDIO] (are there. Then that
16 degree is recognized. Under the guidelines for us, then I can award because I'm a university,
17 because I must. Comply with the regulations under 1906 not under 30. There are no
18 regulations under 30 so it is an erroneous legal proposition to say) [END OF NO AUDIO]

19

20 **CHIEF JUSTICE D.Y. CHANDRACHUD:**at the moment, an entity is a university.

21

22 **KAPIL SIBAL:** I lose my status as 'a minority institution.' That's what it is. Because, I can't
23 say, "I have established it", according to **Basha**. A degree to be recognized.... Ultimately, why
24 is a degree given? It is given for the purposes of seeking employment. Let's be clear. Nobody
25 gets a degree for the sake of having a degree. If it's Medicine, for the profession, medical
26 profession. If it's Engineering, for engineering. If it's Chartered Accountants, Law, it is only
27 for employment. You have a BA degree, there is the minimum threshold for getting a job. You
28 have to M.A. Doctorate, you will get a teaching profession. So, there is no degree, which is
29 unrelated to employment. That's another fundamental basis on the basis of which you must
30 appreciate the whole case. So, the degree is only a recognition of your attaining a certain
31 expertise, academic expertise, to be to enable you to be part of the workforce of this country.
32 It has nothing to do with establishment of the institution. Without it, it is of no value. No
33 degree is of any value. Supposing, I want to set up a Design Institute, a minority institution.
34 Can I be stopped? I can't. Now, but I'll be regulated by the Act. Now, the moment I'm regulated
35 by the Act and I... The minority says, "Look, I want to set up a Design Institute." I am regulated
36 by the Act. The moment they give me the status of a university, I will lose my right to establish.
37 Therefore, I'll not be able to serve them... The community for which I'm putting in money, for

1 which I've given land. And in most of these cases, the land is given by the community itself.
2 There's a disjunct. Complete disjunct, in the 'concept of establishment' and the 'concept of
3 recognition.' Complete disjunct. Recognition is for the purposes of being part of the workforce
4 of this country. Establishment is for the purpose of ensuring that people of your community
5 can be part of the workforce of this country. Are enabled to be part of the workforce of this
6 country, are empowered to be part of the workforce of this country. It's a vehicle for
7 empowerment, not a vehicle for destroying the very concept of setting up or establishing a
8 minority institution. So, assuming now it's not a minority institution, what will happen? If it's
9 not a minority institution, they will pack it, with their own people. Not that they have done it.
10 I'm not, I'm not saying that they are biased against us or that they will do. They have the right.
11 We have to run it like any other institution of their choice. 'Of their choice.' So, they can have
12 their own faculty. They can decide on how it is... how people are to be recruited? They can
13 decide all that. I can't even choose the courses I want to study. That has to be also cleared. So,
14 once I have established this fact, then the question arises, what then? As I said, what are the
15 indicia for establishment? And I just want to take Your Lordships to Volume 4(c), PDF 40.
16 Yes. PDF 40. Aligarh Muslim University Bill. Volume 4(a),PDF 40. 4(c).

17

18 **CHIEF JUSTICE D.Y. CHANDRACHUD:** 4(c).

19

20 **KAPIL SIBAL:** 4(c). What is it? 'Sir, having after a careful study of the Indian Political
21 Conditions, arrived at the conclusion that the backness of his community was due to their
22 neglect of modern education. That selfless patriot Syed Ahmed, organized the committee to
23 divide means for the educational regeneration of Indian *Musalman*s. This devoted band of
24 Muslim workers held a series of meetings, the last of which took place on 15th of April 1872,
25 in which it was decided to establish a Muhammadan College, and on the 12th of May that year,
26 the society called the Musalman Anglo Oriental College Fund Committee was started for
27 collecting subscriptions for the realization of that end. The result of their patriotic activities
28 was the establishment of a school, the opening ceremony of which took place in 1875 on the
29 birthday of late Majesty Queen Victoria, 24th May. The school classes being actually started
30 on the 1st June. His Excellence, the Earl of Northbrook was then at the helm of the Indian
31 Government, demonstrated his generous interest in the welfare of that infant institution by
32 subscribing a sum of 10,000 from his own pocket towards the fund. In 1876, high school
33 classes were open.' It goes on like that. That's the Genesis. Now, let's kindly come to the bottom
34 of page 41. The last seven lines starting with the sentence, 'Meanwhile..' My Lord have that?
35 'Meanwhile, the movement for the establishment of a Muslim university continued to gather
36 strength. Resolutions in that behalf were carried at several meetings of All India
37 Muhammadan Educational Conference, and finally, having ascertained informally that in

1 addition to the existing valuable assets of the college, a large endowment fund would be
2 required as a guarantee of its stability before Government would agree to the establishment
3 of a Muslim University.' Exactly what the UGC does now. 'His Highness, the Agha Khan took
4 the lead and headed a deputation, which early in the year 1911, visited the various Indian
5 centres in order to collect the necessary endowment fund. Such was a generous response of
6 the Muslim community throughout India. Flat within a few months, the deputation secured
7 realization of promises for a necessary fund of 30 lakhs.' And remember My Lords, that 30
8 lakhs became then the endowment when the Government decided that - 'Look, you can...' yes..
9 under the 1920 Act. None of this is discussed in *Basha*. None of this. 'On the 10th of June
10 1911, the Government of India communicated to the Secretary of State the desire of the Muslim
11 community and recommended that sanction might be given to the establishment.' I'm sorry. I
12 don't stand here for Aligarh Muslim University. My Lords, I stand here for the diversity of the
13 Constitutional ethos of this country. And I plead to Your Lordships, don't allow that to be
14 destroyed. There's no such thing as one size fits all, especially in the field of education. I have
15 some idea as to how educational institutions are set up, My Lords. They are not set up by a
16 statute just like that. My Lords, somebody says... some representative says - I will just give
17 Your Lordships the reality - Some representatives say, "I don't have any school in my area. You
18 know, my people have to actually rush 25 km. My girls have to go 25 km to go to a school or 40
19 km or 50 km. There are no teachers. We need a school here.' And then representations are
20 made to public representatives. Then the matter resolutions are passed. Then the matter
21 comes to the minister concerned. Then the minister looks at all this. The minister then says,
22 "Look, let's find out whether at all it's feasible to have a school there or not." Then ultimately
23 a decision is taken, then the file moves from the UDC to the LDC, to the Director, to the Joint
24 Secretary, to the Additional Secretary, to the Secretary then a cabinet note is prepared. The
25 cabinet note is circulated. Then discussion is with the Finance Ministry, who is going to finance
26 it. This is how My Lords, institutions are set up. Not by a statute. The statute is the end product
27 of the establishment process which starts on the ground. And this is that establishment process
28 that I am inviting My Lords' attention to. It is at the heart of establishment. Statute happens
29 to be a vehicle, for the purposes of recognising the establishment. It is not the establishment
30 itself. It can never be as a matter of law. My land, my money, my community, my desire, my
31 infrastructure. But moment I say that - 'Look the statute recognises.' I lose everything. I am
32 nobody. And why is it an institution of national importance? Because there was no other
33 university, minority university at that point in time. Needed help also. Non-Muslims also
34 ultimately gave funds to it. We also stand here and defend it, My Lords, because we stand for
35 that ethos.
36

1 **CHIEF JUSTICE D.Y. CHANDRACHUD:** In fact, in this particular debate, the debate in
2 the Legislature refers to the fact, refers to the Banaras Hindu University....

3

4 **KAPIL SIBAL:** Yes.

5

6 **CHIEF JUSTICE D.Y. CHANDRACHUD:** And at page 42 -'Meanwhile the Hindu leaders
7 who too had their in turn, approached the Government of India with a scheme for the
8 establishment of a Hindu University at Benares, guided by that practical spirit, which is one
9 by characteristics, accepted the conditions laid down by the Secretary of State, with the results
10 that a Bill for the establishment of the Banaras Hindu University was prepared, etc.' Then they
11 say - 'The Legislation regarding the Banaras University, was framed in consonance in that
12 scheme of things. The Bill, that is this AMU Bill. Is in its essential, founded on the Banaras
13 Hindu University Act, recognizing the All India character of the Banaras and Aligarh
14 Universities. The rules framed under the new Government of India Act have now proposed,
15 that these two universities, should be a central subject and the responsibility in connection
16 therewith will thenceforth be rest on the shoulders of the Government of India.'

17

18 **KAPIL SIBAL:** Yes. Therefore, they couldn't be in list 2. They had to be in list 1. And My
19 Lord's list 1 is only fields of Legislation, that's all that there is. And so, if in that field of
20 Legislation, you do something which interferes in my administration, I can challenge you.
21 Even in the 1990 Government... '19 Government of India Act and the 1935 Act, they were in
22 list 1. So, we did not... our Constitution did no different. Then come to 45, My Lords. Kindly
23 see at a glance. Kindly come to 43 bottom. I'm sorry for not 40, 43 bottom. It is in quotes - 'A
24 glance at Section 6(2), 17(5), 18(5), statutes 8(1), 10(1), and 19(1) of the BHU Act will make it
25 clear to honourable members of the visitors, the Lieutenant Governor of the United Provinces,
26 is the main agency of control in the case of the Banaras University, in the present Bill in
27 consonance with the central nature of the subject, much of that control is transferred to the
28 Governor General in council, an authority which, under the Government of India Act will
29 hence forward include three Indian members, under the Banaras Hindu University Act, all
30 new statutes or additions to statutes or amendments or appeals to statutes other than those
31 providing for the instruction of Hindu students, in Hindu religion, require the previous
32 approval of the Lieutenant Governor.' And Your Lordships will notice that the court under the
33 BHU Act, consisted all of Hindus, which was also amended later. This can't be done, just as all
34 Muslim court was also amended in 1951. Then come to 45. My Lords, this is honourable Khan
35 Bahadur Mir Asad Ali Khan, second paragraph. 'By the introduction of this Bill, we are adding
36 today one more university of a teaching of residential type. University education on modern
37 lines will prove to be a great boon to the Indian-Muslim community. The Aligarh University

1 when it ushered into existence, will undoubtedly be an epoch-making event in the history of
2 the progress of Indian-Muslim education. With the door of universal knowledge wide open to
3 the Muslim young men in a university of their own, the intellectual progress of the Muslim
4 community is assured. With the imparting of Muslim religious education in Muslim young
5 men and direct and encouragement of Oriental and Islamic studies, their moral and spiritual
6 progress is assured. In one important respect, the proposed university at Aligarh, will differ
7 from the existing university's over teaching and residential type in that, it will not, as
8 recommended by the Calcutta University Commission, include intermediate classes, though
9 greater concentration will be given to the development of cultural aid of higher liberal
10 education.' So here is a, here is a minority institution wanting to concentrate on liberal
11 education. Now can this being ignored My Lords? Kindly see Sarbadhikari - 'Sir, I
12 congratulate' - page 46 - 'my Muslim fellows subjects upon the appointed time, having arrived
13 upon the approaching materialization of an educational organization of their own, for which
14 they have long been waiting.' Materialization, this is establishment.

15

16 **CHIEF JUSTICE D.Y. CHANDRACHUD:** I was reading a little differently. Did you read
17 that passage at page 45 from Khan Bahadur Mir Asad Ali Khan's speech? By the introduction
18 of this Bill.

19

20 **KAPIL SIBAL:** Yes. I just read it. I just finished reading. It is for the empowerment of the
21 Muslim community, that's all. And that's also in liberal education. All this My Lords, **Basha**,
22 doesn't deal with, doesn't talk about. My Lord, it goes only on one, thematic.... and actually, I
23 have.... And I'll give this to Your Lordships, tomorrow morning. I'll finish early morning
24 tomorrow. I have analysed the various provisions of the Aligarh Muslim University Act, My
25 Lords. All of that, **Basha** refers to, are matters of administration. I'll tell Your Lordships, the
26 mistake that was committed by the petitioners in **Basha's** case. When they found that the
27 judge was not agreeable to the fact that it was established by the Muslim community, they
28 started arguing, "Doesn't matter. Even it was not established, it was administered." Which is
29 contrary to 30. So, therefore, the reference you will find established or administered. Why?
30 Because, they argued, "I am a minority institution even if I am not established as a minority,
31 but I have administered it." Aligarh Muslim University was not there before the court. That's
32 why that reference was made to that 'Or' . Because the genesis of which is the following, I will
33 just briefly, in a few minutes, tell Your Lordships, the genesis. This happened in 1920. Then
34 The UGC Act comes. I'm a minority institution. Then the 1951 amendment happened. **Basha**
35 says - 'Irrelevant. That amendment is irrelevant. Doesn't take us anywhere.' Then the '65
36 amendment comes. Like... that '65 amendment, **Chagla** and Parliament said - 'This is a
37 temporary measure.' I'll give that passage. So, My Lords, nobody agitated. A PIL petition was

1 filed challenging the '65. I didn't file it. Aligarh Muslim University, in fact, PIL petition was
2 filed. Came **Basha's** judgment in 1968. Despite **Basha's** judgment in 1968, My Lords,
3 nothing really happened. The university continued as it was. Muslims... Everything, 100%. All
4 that. All that happened. Then My Lords, what happened was that in November, Justice Fazal
5 Ali with referenced to **Anjuman**.

6 **Anjuman-e-Rahmania**, My Lord, said that somebody relied on **Basha**, said that- 'This
7 needs reconsideration.' This is in November 1981. The amendment came in December 1981.
8 31st December 1981. Immediately thereafter. Then came the '82 Act. '81 Act. Again minority.
9 Nothing happened. It continued like that. Then in 2005, I'm just giving you just a conspectus
10 of what happened... in 2005, now, till that time, Aligarh Muslim University was not involved
11 in this litigation at all. In 2005... So it is of the east and the west and serving the cause of the
12 Muslim community. So, page 46, My Lords, Sarbadhikari - 'Sir, I congratulate my Muslim
13 fellow subjects.... 'So, My Lords, this goes on. I mean, I can go on *ad nauseam*, but I don't want
14 to waste Your Lordship's time. Then come to 51, Raja of Mahmudabad - 'Sir, on behalf of the
15 Muslim community, I beg leave to offer a grateful thanks to His Excellency, The Viceroy and
16 the Honourable and the Muslim University at Aligarh a tangible shape for giving to the
17 proposal for the establishment of a Muslim community. Sir, even ever since the days of the
18 foundation of the Aligarh College, it has been the heartfelt desire of the Muhammadan
19 community to found a university centre.' My Lords, as my learned friend Dr. Dhavan talked
20 about founding. So, it's really... it is the meeting of minds of the community for the purposes
21 of taking forward the idea which then ultimately results in a university being set up, is what
22 establishment is.

23

24 **JUSTICE SANJIV KHANNA:** What you're really saying is object and purpose has to be
25 taken into consideration when we examine the word 'established'.

26

27 **KAPIL SIBAL:** The Genesis.

28

29 **JUSTICE SANJIV KHANNA:** What is the purpose of establishment?

30

31 **KAPIL SIBAL:** Yes, the whole idea. The Genesis of why it was done, that's the basis, My
32 Lords. That's what 'established' means. The rest is on recognition only.

33

34 **JUSTICE SANJIV KHANNA:** Legal establishment has to be in terms of Law.

35

36 **KAPIL SIBAL:** Exactly.

37

1 **JUSTICE SANJIV KHANNA:** What is that policy? As stipulated in...

2

3 **KAPIL SIBAL:** But that's not the expression establishment in Article 30. It is not legal. Your
4 Lordship, I think, Your Lordship has put it very well. This is not the statutory recognition
5 which is at the heart of establishment. That's a legal interpretation. Legally, it can't be
6 established any other way; can't be set up any other way.

7

8 **JUSTICE SANJIV KHANNA:** You know society will have to be registered under...

9

10 **KAPIL SIBAL:** Exactly... Exactly. So, *Basha* loses sight of all this completely. This is not the
11 only thing. If I... I mean I... Just give, Your Lordships. Just give me one second. Kindly see this
12 Volume of 3(C). Because every speech is exactly the same, congratulating the Muslim
13 community and their efforts. Now come My Lords to Volume 3(C).

14

15 **CHIEF JUSTICE D.Y. CHANDRACHUD:** In fact, it's called the second denominational
16 university.

17

18 **KAPIL SIBAL:** It's a denominational university.

19

20 **CHIEF JUSTICE D.Y. CHANDRACHUD:** You'll find that at page 51.

21

22 **KAPIL SIBAL:** That's correct. That's right.

23

24 **CHIEF JUSTICE D.Y. CHANDRACHUD:** That is a speech of the Raja...

25

26 **KAPIL SIBAL:** That's a *qua* of Banaras Hindu University also. It applies to both.

27

28 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Yes.

29

30 **KAPIL SIBAL:** Now My Lords, kindly come to, because I can go on and on. There's no point.
31 I've just given to Your Lordship, a flavour as to how the genesis ultimately reflects itself in
32 what was happening in that point in time. But, kindly see much before that in 1872, there's a
33 letter from the Viceroy to Sir Syed, which Your Lordships will find in Volume 3(C) at PDF page
34 56. This is the private secretary to the Viceroy, writing to Sir Syed. This is Volume 3(C), page
35 56, PDF 56. Kindly come to that letter. This is the secretary to the Viceroy to Sir Syed. Kindly
36 come to the second paragraph. Did you find that? Kindly come to the second paragraph, My
37 Lords, middle of the paragraph. 'But I am desired to inform you...' Your Lordship has that?

1 'But I'm desired to inform you, that if the committee succeeds in establishing the college, if the
2 institution, when established, shows a reasonable prospect of divisibility and general success,
3 and if the course of instruction is such, as to convince His Excellency that a really *bona fide*
4 effort is being made, to afford such sound secular instruction, he is prepared to devote Rs.
5 10,000 to the perpetual establishment of a scholarship, in some branch of European literature
6 or science, should this scholarship be ultimately established, the details connected.' Then My
7 Lords, kindly come now to page 64, same Volume page 64. From Sir Syed to Sir Elliot, in reply
8 to that letter that I just read to Your Lordship, at page 64 and second paragraph. And My
9 Lords, let's not forget the fact that **Basha** says - 'Because you're not established, nothing else
10 arises.' That's what **Basha** says. So we don't have to go into anything else. He says - 'You've
11 not been able to prove that you established because there's a statute. Therefore, you are not a
12 minority institution. So nothing else arises.' Then comes the argument, I think completely
13 erroneous, that even if we are not a Muslim university or established as a Muslim university
14 we are administering it. Wholly irrelevant. But My Lords, kindly see the response, at page 64,
15 2nd paragraph. 'Certain Muhammadan gentlemen, who were desirous to see the education of
16 their core religionists, placed on a better and sound of footing, organized a committee on 26th
17 December '70, designated the committee for the better diffusion and advancement of learning
18 among Muhammadans of India, with a view to ascertain, why the Muhammadans of India do
19 not avail themselves of the Government system of education and to suggest means for the
20 removal of obstacles, if any and also find out why the study of western sciences, did not gain
21 favour with them.' So they were trying to move out of the Madrassa culture, that's what Sir
22 Syed was trying My Lords. See the patience of that man. We are talking about the 19th century.
23 'To elucidate the points above alluded to, the committee invited essays offering as an incentive
24 to competition. Three prizes of 500, 300 each for three best essays. The above sums have been
25 previously collected by subscriptions raised for the purpose.' And then My Lords, page 65. The
26 paragraph starting 'The proposal of the select committee has set forth above, with the approval
27 of the central committee and the latter passed a resolution in the meeting held on 12th May
28 '72, to the following effect, that a committee be appointed to raise funds for the establishment
29 of a college in the NWFP for the Muhammadans, which would meet all their requirements and
30 the committee be designated the Muhammadan Anglo-Oriental College Fund Committee.
31 Subscriptions have already been set on foot and rules for the safe custody of the sums thus
32 raised from framed by the committee, a copy of these rules having thus, most deferentially
33 represented the main facts. The committee hopes that their efforts may meet the approbation
34 of the Government and takes this opportunity to express or hope that the Government will be
35 graciously pleased to afford that help.' And then kindly see, the next, the very next page, 66.
36 'The deplorable state of ignorance into which the masses of the Muhammadan community of
37 India had of late fallen, having attracted the attention of some of the enlightened

1 Muhammadan gentlemen of the country and the committee was formed about a year ago to
2 consider upon the best means to diffuse useful knowledge amongst the masses and to direct
3 their attention towards their own amelioration, so that, they may be unable to keep pace with
4 the rising age. The said committee, after full consideration after long debate carried out a
5 thorough... out several meetings, have now resolved to establish a college in the aid for the
6 special education of Muhammadans.' Kindly have a look at page 87. PDF page 230? 87. Very
7 interesting. They decided to set up a college, and see the courses of study. Page 87.

8

9 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Where does that document begin?

10

11 **KAPIL SIBAL:** It begins at page 77. It says....

12

13 **CHIEF JUSTICE D.Y. CHANDRACHUD:** It says 'The scheme for the proposed
14 Muhammadan...'

15

16 **KAPIL SIBAL:** It's very interesting. I can go on reading, but let's just give Your Lordships,
17 say, a bird's eye view of the mind of Sir Syed. What was he looking at? If you look at page 84,
18 it says -'The school course is to extend over 5 years and will include Persian language -
19 Literature and composition, Arithmetic, Algebra, Elements of Euclid, History of India,
20 Geography, English, Religious instructions and Arabic, which was voluntary.' And then you
21 will find. 'Boarding students will have to observe discipline which the headmaster may think
22 proper. And the staff of teachers may consist of headmaster, teacher of English, teacher of
23 Arabic and Muhammadan theology, teacher of Mathematics, Persian. History and Geography,
24 handwriting.' And then you will find most interesting, page 87. 'Course of study for the lower
25 department of the college will be Arabic, English, Sanskrit, Latin and Greek. Mathematics will
26 be theory of equations, algebra, plain trigonometry, spherical trigonometry, conics, solid
27 geometry, differential calculus, integral calculus.' This is how it has become an institution of
28 excellence. I mean, when I went to Cairo, on several occasions, it is talked off all over the world.
29 Their Al-Azhar University, full of people. Now, why do you want to destroy this legacy? I just
30 did it. I know that. Why do you want to destroy it? And I have a legal issue, which I am really
31 concerned about. I assume that that Act, 81 Act is bad. But it is still a Parliamentary Statute.
32 It's void. Fine. Can a Government ever make a waiver submission to the court, contrary to a
33 Parliamentary Statute, even if it is declared to be void? It must support it. An executive cannot
34 go against a Parliamentary Statute, even if it is struck down. My Lords. It is struck down every
35 day. My Lord, statutes are struck down every day by the High Courts. Can the Government
36 say, "I will go against the statute?" This is the first time it has arisen. Having otherwise
37 supported it, they say, "the executive can change its mind." Of course it can change its mind.

1 *Qua* an executive decision. But it can't change its mind *qua* a Statute, which Parliament has
2 passed and say, "Look, I will argue against the Statute."

3

4 **KAPIL SIBAL:** This is not a very serious issue, My Lords. No, I'm not saying you decide or
5 not decide. There is a parliamentary Act.

6

7 **TUSHAR MEHTA:** I'm ready to answer this. Let '81 amendment be decided. I will argue
8 against '81 amendment. How can you get it? You can't say, " Don't touch '81 and still...
9 [UNCLEAR]"

10

11 **KAPIL SIBAL:** I mean, I have... how can you argue against the amendment? This is an
12 amendment of Parliament. You cannot argue against the amendment. An executive cannot
13 argue against the statute which is passed by Parliament.

14

15 **TUSHAR MEHTA:** In a Constitution bench, it is the duty of the Government to assist the
16 Court in the correct possible manner. If it is struck down by the High Court. I can always
17 support the High Court's will. But then you can't say... don't permit arguments on '81...

18

19 **JUSTICE SANJIV KHANNA:** We have agreed to that argument. It was also flagged by Dr.
20 Dhavan. It was flagged by Dr. Dhavan.

21

22 **KAPIL SIBAL:** No. He talked about the... I am talking about...

23

24 **JUSTICE SANJIV KHANNA:** He flagged it. But he said, "After they raise the plea, then I'll..
25 in rebuttal I'll take it up.'

26

27 **KAPIL SIBAL:** Yeah. I'm just saying, this is the mind of these great people in the 19th
28 century. This is what they were looking at, and that's how the whole thing came into being and
29 that is why was established by the Mohammedan community for the purposes of empowering
30 them to be part of the workforce of this Country in various disciplines. And all that we get from
31 it is a certain amount of reservation, beyond that, we are all subject to the control. So My Lords,
32 that's on 'established'. Now My Lords, I just want to take Your Lordships.... Kindly see Kerala
33 Education Bill PDF 62, My Lords. My learned friend has read everything, so I'm not going to
34 unnecessarily waste Your Lordship's time. Volume 5(A) PDF 62. Your Lordships has that?

35

36 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Dr. Dhavan has shown us the judgement Mr.
37 Sibal. We can just look at them and you can formulate your point.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37

KAPIL SIBAL: No, I'll just show one sentence. I'm not going to read the judgment. Just one sentence. Kindly see...

CHIEF JUSTICE D.Y. CHANDRACHUD: Volume 5(A)? Right?

KAPIL SIBAL: Yes, 5(A) page 62, 'The key to the understanding...' My Lords, this is the paragraph about towards the lower half... sentence starting. 'The key to the understanding is the true meaning and implication of the article under consideration are the words 'of their choice.' My lord has that?

CHIEF JUSTICE D.Y. CHANDRACHUD: Yes.

KAPIL SIBAL: Now, see, this is the next sentence. 'It is said that the dominant word is 'choice' and the content of that Article is as wide as the choice of the particular community, minority community may make it ' Sorry My Lord, it is at page... I'm sorry.

CHIEF JUSTICE D.Y. CHANDRACHUD: Page 62, 'The key to the understanding of the true meaning...' Ten lines from the bottom.

KAPIL SIBAL: Yes. 'It is said that the dominant word is 'choice' and the content of that Article is as wide as the choice of the particular minority community may make of it.'

CHIEF JUSTICE D.Y. CHANDRACHUD: Yes, we read this.

KAPIL SIBAL: Yes, but I am....

CHIEF JUSTICE D.Y. CHANDRACHUD: Flagging it again.

KAPIL SIBAL: Yes. I'm flagging it for the reason. It's what I started with. That 'choice is mine. It is as wide as the content as I would like to have it.' It is true for 'establishment', it is true for 'administration'. 'The ambit of the rights conferred...' - the next line - 'The ambit of the rights conferred under Article 30(1), has therefore to be determined on a consideration of the matter from the points of view of the educational institutions themselves.' So, how do you view that right? You view that right through the eyes of the educational institution. What is that right? It is as wide as the content, the choice is as wide as the content of the Article, and that choice cannot... Subject My Lord, I cannot do something for an illegal objective, I cannot do

1 something that is otherwise prohibited by law. That is obvious, My Lords, I will not, my choice
2 will not extend to that. My choice is only extend... but within the framework of the law, the
3 choice is mine and within the framework of the law, I can set up a university. Therefore, that
4 is absolute. What is not absolute is that I can be controlled through regulation, which flows
5 from 19(6), which is the public interest argument. That is why... Sorry. Therefore, My Lords,
6 what I'm saying is now, in the Education Bill was in year? 80...?

7

8 **CHIEF JUSTICE D.Y. CHANDRACHUD:** 58, Kerala Education Bill.

9

10 **KAPIL SIBAL:** That's Kerala Education...58... right? Now kindly see, so the law was already
11 there. Kindly see *Sidhajibhai* now. Just again, I'm not going to read the judgement, just one
12 or two lines at 106. *Sidhajibhai* explains what that absolute right means, My Lords, which
13 has not been understood so far. It's says at the end, at page 106, last five lines. 'Unlike Article
14 19...' Your Lordship sees that? 'Unlike Article 19, the fundamental freedom...' My Lords, I'm
15 sorry, My Lord, the Chief Justice has that?

16

17 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Yes.

18

19 **KAPIL SIBAL:** 'Unlike Article 19, the fundamental freedom under Clause 1 of 30, is absolute
20 in terms, it is not made subject to any reasonable instructions of the nature, the fundamental
21 freedom enunciated in 19, may be subjected to, all minorities, linguistic or religious, have by
22 Article 30 an absolute right to establish an administer education... and any law or executive
23 direction which seeks to, infringe the substance of that right would be the extent, to that extent,
24 be void.' Now My Lords, I just came to what My Lord put to me. That right in yours, in me, I
25 can challenge interference. I can say this structure is fine. You can have a doctorate, you can
26 have a UGC representative. I have no problems with that. But I should have that grievance,
27 where the right is mine. But, under 19, that right is subject to the regulations under 19, because
28 it's an occupation. And for that occupation, I am subject to Government regulations, either
29 through the UGC or even otherwise. Next sentence.

30

31 'This is not to... This, however, is not to say that, it is not open to the State to impose regulations
32 upon the exercise of this right.' There it is. The right is absolute, subject to regulations. 'The
33 fundamental freedom is to establish and to administer educational institutions. It is the right
34 to establish an administer which are, in truth, educational institutions, institutions which cater
35 to the education needs of citizens or sections. Regulation made in the two interests of efficiency
36 of instruction, discipline, health, sanitation, morality, public order and the like may
37 undoubtedly be imposed. Such regulations are not restrictions on the substance of the right

1 which is guaranteed. There they secure the proper functioning of the institution in educational
2 matters.' So, Your Lordships, now see the correlation between 19(6) and 30. The absolute right
3 under 30, subject to regulation under 19(6). That is for efficient standards. And the dual test
4 for excellence is set out here, as my learned friend in **Sidhajibhai**. That's page 114. He says -
5 'Making the institution effective a vehicle of education for the minority community or other
6 persons.' So, I've done with **Sidhajibhai**. Then you come to **T.M.A Pai**. This is very
7 important. Kindly come to several parts have been read of **T.M.A Pai**, but kindly come.
8 Kindly come, to page 650. I'll come with that later. Paragraph 138. Very important.

9

10 **JUSTICE SANJIV KHANNA:** 650?

11

12 **CHIEF JUSTICE D.Y. CHANDRACHUD:** 6-1-5.

13

14 **KAPIL SIBAL:** 6-4-9. 649, Para 138.

15

16 **JUSTICE SANJIV KHANNA:** These are all read.

17

18 **KAPIL SIBAL:** He read it, My Lord, but I just want to. Because it fits into the initial
19 submissions, I'm making. That's why I'm reading it. It says - 'as we look at Article 30, 30 is a
20 sort of guarantee or assurance to the linguistic and religious minority institutions of their right
21 to establish an administer the institution of their choice. Secularism and...' - forget the
22 secularism part. Now, My Lords, kindly see last sentence - 'Any law or rule or regulation that
23 would put the educational institution run by minorities at a disadvantage, when compared to
24 the institutions run by others, will have to be struck down.' So you can't discriminate. Two -
25 'At the same time, there also cannot be any reverse discrimination. It was observed in St.
26 Xavier's, the whole object of conferring the Right on minorities under Article 30 is to ensure
27 that there will be equality between the majority and the minority. If the minorities do not have
28 such special protection, they will be denied equality.' This is now confirmed by 11 judge bench.

29

30 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Yes.

31

32 **KAPIL SIBAL:** So, that protection is essential. That's the heart of 30. 'In other words, the
33 essence of 30 is to ensure equal treatment between...' and how do you get that equal treatment?
34 'By virtue of 30.'

35

36 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Yes.

37

1 **KAPIL SIBAL:** Otherwise, you'll not be protected. Minorities will not be. If that's true for
2 other also, My Lord, I'm not saying that. Why did I ask myself the question? Parliament
3 amended the Constitution included weaker sections of the community, EWS. Why did they do
4 that? Because, many members of the forward community, of the advanced communities, were
5 still poor. They had no access and therefore, the special reservation was given. I was against
6 it, but that's another matter. Special reservation was given because the Constitution only talks
7 about 'classes of people'. So, that's... we are not concerned with that. So, this is then what
8 happened. So, if you do not interpret 30 in this fashion, and say that- 'Look, you have lost your
9 right to establish.' What you are doing is, you are in fact, violating the right to equality, which
10 is a violation of 14 in fact. Some other parts of education. This... Para 18. Yes, that's very
11 important, My Lord. Para 20, actually. It starts at 18. This is the submission that was made at
12 page 604.

13

14 **CHIEF JUSTICE D.Y. CHANDRACHUD:** At page?

15

16 **KAPIL SIBAL:** Page 604. I'm sorry. My Lords have that?

17

18 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Yes.

19

20 **KAPIL SIBAL:** 'With regard to the establishment of educational institutions, three Articles
21 of the Constitution came into play. Article 19(1)(g) gives the right to all citizens to practice any
22 profession or to carry on any occupation, trade, or business. This right is subject to restrictions
23 that may be placed under 19(6). Then 26 gives the right to every religious...' We are not
24 concerned with religious denomination for religious purposes. 19... 'Then Article 19(1)(g) and
25 26 therefore, confer rights on all citizen religious denominations to establish and maintain
26 educational institutions. There was no serious dispute that the majority community as well as
27 the linguist and religious minorities would have a right under 19(1)(g).' This is the point I was
28 trying to make, which is what I argued in *TMA Pai*. I said, " They have equal rights." 'And 26
29 to establish education. In addition, 30(1) in no uncertain terms, give the right to the religious
30 and linguist minority establish and administer educational institution.' So, it is a right under
31 19(1)(g). There is an additional right under 30(1), which protects the minority community, it
32 seek to empowerment. Why? Because otherwise, if we don't give them that right, it will result
33 in Article violation of 40. So *St. Xavier's* is affirmed by 11 judge bench. My Lords, I have
34 basically done everything. I am not going to waste Your Lordship's time.

35

1 **CHIEF JUSTICE D.Y. CHANDRACHUD:** After that Mr. Farasat? Half an hour and then
2 we will call upon... who will commence from the... Mr. Sibal. Then Mr. Salman Khurshid. And
3 then Mr. Farasat. Give us a one page set of submissions. So that we will upload it.

4

5 **KAPIL SIBAL:** My Lords, there is another item that I won't upload it, only giving the sections
6 of the Act and all that. We've already given it to My Lord that to be done.

7

8 **CHIEF JUSTICE D.Y. CHANDRACHUD:** So a little before I lunch. I think by 12:15 or
9 12:30 we'll be calling upon the other side.

10

11 **KAPIL SIBAL:** Yes, that shouldn't be a problem. Deeply obliged. Deeply obliged.

12

13

14

15

END OF DAY'S PROCEEDINGS