

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.08.2016

DELIVERED ON: 26.10.2016

CORAM:

The HON'BLE MR.SANJAY KISHAN KAUL, CHIEF JUSTICE
AND

The HON'BLE MR.JUSTICE R.MAHADEVAN

W.P.Nos.29536 and 29766 of 2014
and 2647 of 2015

W.P.No.29536 of 2014:

Advocates' Forum for Social Justice
rep. by its President, Mr.K.Balu
No.156, Thambu Chetty Street
Chennai – 600 001.

.. Petitioner

Vs.

1. The State of Tamil Nadu
rep. by its Secretary to Government
Department of Law, Secretariat
Chennai – 600 009.
2. The Bar Council of India
rep. by its Chairman/Secretary
No.21, Rouse Avenue
New Delhi – 110 002.
3. The Tamil Nadu Dr.Ambedkar Law University
rep. by its Registrar
"Poompozhi"
No.5, Greenways Road
Chennai – 600 028.
4. The Government of India
rep. by its Secretary
Department of Law and Justice
New Delhi.

.. Respondents

PRAYER: Petition under Article 226 of the Constitution of India for issuance of a writ of Declaration, declaring the Tamil Nadu Establishment of Private Law Colleges (Prohibition) Act, 2014 (Act 13 of 2014) as illegal, unconstitutional and ultra vires the Constitution of India.

W.P.No.29766 of 2014:

S.M.M.Educational Foundation
rep. by its Chairman
"White House"
No.55A, South Main Street
Tiruvarur.

.. Petitioner

Vs.

1. The State of Tamil Nadu
rep. by its Secretary to Government
Department of Law, Secretariat
Chennai – 600 009.
2. The Director of Legal Studies
Purasawalkam High Road
Kilpauk, Chennai – 600 010.
3. The Bar Council of India
rep. by its Chairman/Secretary
No.21, Rouse Avenue
New Delhi – 110 002.
4. The Bar Council of Tamil Nadu
rep. by its Chairman/Secretary
Madras High Court Buildings
Chennai.
5. The Tamil Nadu Dr.Ambedkar Law University
rep. by its Registrar
"Poompozhi"
No.5, Greenways Road
Chennai – 600 028.

6. The Government of India
rep. by its Secretary
Department of Law and Justice
New Delhi.

.. Respondents

PRAYER: Petition under Article 226 of the Constitution of India for issuance of a writ of Declaration, declaring the Tamil Nadu Establishment of Private Law Colleges (Prohibition) Act, 2014 (Act 13 of 2014) as illegal, unconstitutional and ultra vires the Constitution of India.

W.P.No.2647 of 2015

Vanniar Educational Trust
rep. by its Chairmand and Managing Trustee
Dr.S.Ramados, S/o.Sanjeevarayar Gounder
Office at Konerikuppam, Nallathur Post
Tindivanam Taluk, Villupuram District.

.. Petitioner

Vs.

1. The State of Tamil Nadu
rep. by its Secretary to Government
Law Department, Fort St. George
Chennai – 600 009.

2. The Tamil Nadu Dr.Ambedkar Law University
rep. by its Registrar (i/c.)
"Poompozhi"
No.5, DGS Dinakaran Salai
Chennai – 600 028.

3. The Bar Council of India
rep. by its Chairman/Secretary
No.21, Rouse Avenue
New Delhi – 110 002.

.. Respondents

PRAYER: Petition under Article 226 of the Constitution of India for issuance of a writ of Certiorarified Mandamus to call for the records relating to the order made in Lr.No.4331/Regr/ACAD/A3/2014, dated 28.1.2015 issued by the second respondent, to quash the same and forbear the first respondent from interfering with the petitioner's right

(4)

to process its affiliation through the second respondent to commence the law course in "Saraswathi Law College" at Tindivanam in terms of the No Objection Certificate issued by the first respondent in G.O.Ms.No.190, Law (LS) Department, dated 25.2.2013.

For Petitioner in W.P.No.29536 of 2014	: Mr.N.L.Rajah, Senior Counsel for Mr.R.Jothimanian
For Petitioner in W.P.No.29766 of 2014	: Mr.T.V.Ramanujam, Sr. Counsel for Mr.C.Jagadish
For Petitioner in W.P.No.2647 of 2015	: Mr.G.Masilamani, Sr. Counsel for Mr.K.Balu
For 1 st respondent in all writ petitions	: Mr.A.L.Somayaji, Advocate General assisted by Mr.M.K.Subramanian, Government Pleader
For 3 rd respondent in W.P.Nos.29766 of 2014 and W.P.No.2647 of 2015 and 2 nd respondent in W.P.No.29536 of 2014	: Mr.S.R.Rajagopal
For 4 th respondent in W.P.No.29766 of 2014	: Mr.S.Y.Masood
For 5 th respondent in W.P.No.29766 of 2014 and respondents 3 and 4 in W.P.No.29536 of 2014	: Mr.Su.Srinivasan Assistant Solicitor General
For 5 th respondent in W.P.No.29766 of 2015, 3 rd respondent in W.P.No.29536 of 2014 and 2 nd respondent in W.P.No.2647 of 2015	: Mr.M.Nallathambi

COMMON ORDER

THE HON'BLE CHIEF JUSTICE

PROLOGUE

"Scholarliness and Kingship are on no count to be treated as equals, for a King is worshipped only in his kingdom, but a scholar is worshipped the world over" - Chanakya.

2. Education is a source of empowerment – social, economic and general. It is more so in a country like ours with wide diversity. Education is an instrument of training the intellect, refining the heart and disciplining the spirit. It is a means of creative enlightenment, a compassionate culture and goal oriented direction.

3. In a modern democracy like our country, both the State and the private stakeholders play a role in this process of empowerment of education. The problems are myriad. The educational institutions run by the Government often face a challenge of quality education, while the private educational institutions run on a commercial basis seek to create financial burden on those desirous of education. Thus, a balance has to be maintained between providing quality education and that too by not burning the pockets deep. This issue has received

judicial consideration manifold times resulting in various judicial pronouncements.

4. In the present set of matters, we are confronted with such a situation where private legal education is not only sought to be regulated, but completely banned in the State of Tamil Nadu. It is the legality of this absolute ban which is in question, coupled with this is the issue raised by minority institutions as to whether the test applicable for them would be in any manner different. Lastly, a particular educational institution which had knocked the doors of the Court at different levels more than once and obtained permission to establish the college has got its doors shut at the last minute on the question of affiliation, solely based on such absolute ban created by a one section legislation.

THE FACTS

5. In the conspectus of the aforesaid controversy, we now turn to the facts.

W.P.No.2647 of 2015:

6.1. The petitioner – Vanniyar Educational Trust in W.P.No.2647 of 2015 is stated to have been established to provide free education to

students who hail from weaker sections of the society and for their welfare. The trust passed a resolution on 27.6.2007 to start a Law College under the name and style of "Saraswathi Law College" at Tindivanam and an application dated 25.9.2007 was made to the Law Department of the State of Tamil Nadu/first respondent to issue No Objection Certificate for starting the private law college.

6.2. Since there was no response, the petitioner filed W.P.No.27590 of 2008 seeking a writ of mandamus directing the first respondent to issue the said No Objection Certificate and consequent to the same for affiliation to be granted with the Tamil Nadu Dr.Ambedkar Law University and the Bar Council of India. The writ petition was decided on 20.11.2008 issuing a direction to the first respondent to consider the application submitted by the petitioner. On consideration, the first respondent denied the No Objection Certificate by his letter dated 23.1.2009 on the ground that no guidelines were framed for issuing such No Objection Certificate.

6.3. The petitioner then filed W.P.No.2003 of 2009 seeking quashing of the said communication dated 23.1.2009 and for a direction to grant permission/No Objection Certificate for starting the private law college. This writ petition was allowed on 13.8.2010. The

Court framed two questions of law to be examined in this petition as under:

“(1) Whether the present sanctioned strength of law colleges available in the State of Tamil Nadu is sufficient to meet the requirement of the people in Tamil Nadu for getting their legal remedies adjudicated without delay ?

(2)Whether the State Government can take a policy decision not to consider any private law college within the state of Tamil Nadu on any reason based on the seats available in various law Colleges in Tamil Nadu and the number of enrollment of advocates enrolling in the Bar Council of Tamil Nadu ?”

6.4. The learned Single Judge, inter alia, relied on the observations in the Division Bench judgment of this Court in *H.E.T.C. Educational Society v. State of Tamil Nadu, 2003 (3) CTC 1*, where it was held that the desirability to open a college would open itself to subjective considerations and a decision thereon cannot be left to the caprice and whim of the State Government. Such desirability is to be based on objective criteria and it was, however, open to the State Government to prepare a perspective plan for its own guidance for selecting locations for the proposed new colleges. Since the Bar Council of India Rules contemplate obtaining permission/No Objection

Certificate from the State Government, it was opined that the aforesaid observation should be kept in mind. The operative part of the directions are contained in paragraph (24), which reads as under:

“24. In the light of the above findings, the impugned order passed by the first respondent dated 23.1.2009 is set aside and the writ petition is disposed of with direction to the first respondent to consider the application submitted by the petitioner seeking permission/NOC to establish a private law College, namely 'Saraswathy Law College' at Tindivanam, Villupuram District and pass necessary orders, within a period of two months from the date of receipt of copy of this order, so as to enable the petitioner to seek approval from the third respondent and also seek affiliation from the second respondent for commencement of the law course from the academic year 2011-12.”

6.5. The fate of the petitioner was no different thereafter also, as vide letter dated 30.12.2010, the request of the petitioner for grant of permission/No Objection Certificate was rejected. The letter is stated to be issued on the basis of the report of the Director of Legal Studies obtained on inspection. The relevant portion is as under:

“2. The report of the Director of Legal Studies has been carefully examined with reference to the population which the existing law colleges serve and the need for

an additional law college in the proposed location, the area where the institution facilities available, the local need, the desirability and feasibility of the location chosen for the establishment of the institution, the immediate surroundings of the proposed location and other relevant factors. On examination, it is observed that:

(a) The list of ten persons submitted by the Trust, who are willing to be appointed as teaching staff in the proposed law college are not qualified for teaching posts in a law college, as per the recent UGC guidelines.

(b) The Government Law College already functioning at Chengalpattu is sufficient to cater to the needs of the students aspiring for the Law Courses from both Chengalpattu and Tindivanam. Moreover, another Government Law College is already functioning at Vellore. Hence there is no local need for starting a Law College at Tindivanam.”

6.6. The petitioner was once again back in Court and filed W.P.No.7279 of 2011 for quashing of the said order dated 30.12.2010, which was allowed by the learned Single Judge by an order dated 23.9.2011. Incidentally, the said judgment noticed that 4098 students in Three-Year Course and 1938 students in Five-Year course, in all

numbering 6036 students, could not get admission in law colleges in Tamil Nadu in the previous year and, thus, had to migrate to adjacent States like Andhra Pradesh and Karnataka, which then had 37 and 93 colleges respectively, as against 10 colleges functioning in Tamil Nadu. A positive direction was issued this time to grant permission/No Objection Certificate as claimed by the petitioner for starting a private law college in the name and style of "Saraswathi Law College" at Tindivanam, so as to enable the petitioner to approach respondents 2 and 3 for granting affiliation and final approval to the said college. The time period granted was "*preferably within a period of one week*", as the matter required immediate attention in view of the commencement of the academic year coupled with the requirement of affiliation with respondents 2 and 3. We may add that the petitioner claims to have complied with all the defects and requirements indicated by the first respondent by then and that is why such a positive direction was issued.

6.7. The State Government preferred Writ Appeal No.2102 of 2011 before the Division Bench against this order, but the same was dismissed on 25.4.2012, extending the period for the first respondent to do the needful within four weeks from the date of the order.

6.8. Thereafter, the first respondent filed Review Application No.8 of 2013 predicated on a ground of non-production of G.O.Ms.No.194, Law Department, dated 5.3.2012, before the Division Bench. This government order was in respect of proposed norms and guidelines for grant of No Objection Certificate to start self-financing private law colleges, as the Director of Legal Studies while concurring with proposed norms and guidelines, has suggested certain additional requirements and those norms and conditions are set out as Annexure-I and the Form of Application as Annexure-II. On receipt of such an application, inspection was to be carried out and report submitted with recommendations to the Government.

6.9. The review application was dismissed on 29.1.2013. The order noted that on calling for records, it was found that the government order was part of the records before the writ appeal Court. The observations in this context are contained in paragraph (13) of the order, which reads as under:

“13. We have called for the original records in Writ Appeal No.2102 of 2012 and on a perusal of records, it was found that a copy of the Government Order in G.O.Ms.No.194, Law Department, dated 5 March 2012 has already been produced by the Advocate General before the Division Bench. In fact one of us (KKSJ)

was a party to the judgment in Writ Appeal No.2102 of 2011. The learned Advocate General argued the writ appeal only on the basis of the subsequent Government Order. When it was pointed out by the Division Bench that the application in question has to be considered only in the light of the earlier regulations, the learned Advocate General confined his arguments on the merits of the matter, without placing reliance on the revised guidelines. The failure to record the production of revised guidelines issued by the Government in G.O.Ms.No.194, Law Department, dated 5 March 2012 in the judgment in Writ Appeal No.2102 of 2011 is now taken advantage of by the State to file the review petition."

6.10. Despite the aforesaid observation, the Division Bench proceeded to examine whether the requirements of new regulations have been complied with by the petitioner "*only with a view to satisfy ourselves that the earlier direction given to the State to issue No Objection was on the basis of compliance of statutory requirements.*" It was also noticed that the review application had been filed only after initiation of the contempt proceedings and it was opined that the objective of the review application was only to drag on the matter.

6.11. The petitioner states that even prior to filing of the review

application, on issuance of notice of contempt in Contempt Petition No.1129 of 2012 for disobeying the order dated 25.4.2012 made in Writ Appeal No.2102 of 2011, the Court by its order dated 29.1.2013 directed the petitioner to deposit a sum of Rs.25,000/- towards application fee; a sum of Rs.30,00,000/- for creating endowment; and furnish bank guarantee for Rs.20,00,000/- on or before 11.2.2013, with a direction to the first respondent that on compliance of the aforesaid directions, the first respondent shall comply with the direction of the Court dated 25.4.2012 in Writ Appeal No.2102 of 2011 on or before 25.2.2013 and report compliance on 26.2.2013.

6.12. It is only in pursuance thereto that finally the first respondent issued G.O.Ms.No.190, Law (LS) Department, dated 25.2.2013 granting No Objection Certificate for a period of two years from the date of issue of the order and the contempt proceedings were thus closed.

6.13. The petitioner finally armed with this No Objection Certificate, after repeated court battles, submitted an application dated 21.11.2013 to the second respondent for affiliation of the private law college for the academic year 2014-2015. However, once again there was no progress and the petitioner was compelled to file W.P.No.3058

of 2014 seeking a direction for grant of affiliation. On 16.4.2014, directions were issued by the Court to the second respondent to consider the claim of the petitioner and pass appropriate orders within three weeks.

6.14. The petitioner states that all defects pointed out by the first respondent while W.P.No.7279 of 2011 was pending were rectified and this fact was recorded in the order dated 23.9.2011. Thus, there was no impediment for the second respondent to grant affiliation to the law college. Despite this, an Inspection Committee consisting of five eminent persons was appointed, who, after thorough verification, submitted a report on 10.12.2013 recommending that the proposed law college had adequate infrastructure; need in corpus to manage the affairs; recruit academic and administrative staff members on compliance of remarks submitted and on execution of bond as indicated in the revised regulations of 2013. They opined that thereafter the college should be permitted to be started for the first year programme with the sanctioned strength not exceeding 120 students for Five-Year Integrated B.A., B.L. or Three-Year B.L. Degree course. However, the second respondent rejected the application for affiliation vide proceedings dated 27.5.2014.

6.15. The petitioner then filed W.P.No.14684 of 2014 questioning the same, in which interim orders were passed on 24.6.2014 recording that the defects pointed out in the order dated 27.5.2014 had been complied with and the petitioner was prepared to file a report to that effect before the Tamil Nadu Dr.Ambedkar Law University before 1.7.2014. The University was asked to report back on the same. The writ petition was disposed of on 8.8.2014 observing that the ends of justice would be met with the following direction:

“It is open to the petitioner to apply for grant of affiliation in terms of Regulation 5.11 of the Tamil Nadu Dr. Ambedkar Law University Affiliation and Approval of Law Colleges, Revised Regulations 2013 during November 2014 to the second respondent, who, on receipt of the same, shall consider the compliance report submitted by the petitioner during the pendency of the writ petition and dispose of the same in accordance with law as expeditiously as possible and not later than one month from the date of submission of the said application.”

6.16. Now, lastly when the issue came up for affiliation with the University, the same was rejected on 28.1.2015 on the sole ground that in the intervening period the Tamil Nadu Establishment of Private Law Colleges (Prohibition) Act, 2014 (hereinafter to be referred to as “*the said Act*”) had come into force with effect from 2.9.2014. The

legislation, in effect, imposed a one section bar to establish law college or institution, as reproduced hereunder:

"Section 3.

(1) No private person shall establish any law college or institution providing any course of study or training in law for admission to the examination for law degrees, diplomas or other academic distinctions of the University.

(2) Notwithstanding anything contained in any other law, judgment or order, no permission or certificate shall be granted by the Government or by the University to any private person to establish any law college or institution providing any course of study or training in law for admission to the examination for law degrees, diplomas or other academic distinctions of the University."

6.17. Writ Petition No.2647 of 2015 has thus been filed seeking quashing of this order predicated on a plea that even if the said Act was a valid piece of legislation, it would in no manner affect the petitioner as the said Act has only prospective application. There is no provision made for any retrospective application. The No Objection Certificate having been issued and the process of affiliation having begun prior to the said Act coming into force, the same could not be nullified by the legislation with retrospective effect.

6.18. At the stage of entertaining the said writ petition interim orders have been passed on 23.3.2015 to the effect that the two year period stipulated in the No Objection Certificate on 25.2.2013 shall deem to have not been lapsed till the writ petition is heard and decided.

W.P.Nos.29536 and 29766 of 2014:

7.1. We may notice that prior to the aforesaid writ petition, on the legislation having come into force, W.P.No.29536 of 2014 was filed by Advocates Forum for Social Justice seeking a declaration that the said Act was unconstitutional and *ultra vires* the Constitution of India.

7.2. Another writ petition filed is W.P.No.29766 of 2014 by S.M.M. Educational Foundation seeking the same relief as aforesaid, but also raising the issue of special rights of minority institutions keeping in mind Article 30(1) of the Constitution of India.

OTHER RELEVANT FACTS:

8.1. The other aspects which may be taken note of in the facts

are some general directions qua Bar Council of India have been issued in these matters on the mushrooming of law colleges in the country. In pursuance thereto, the Bar Council of India has commenced studies to examine the requirement of law colleges in each State, as there was a great imbalance. In Tamil Nadu while there were 7 Government Law Colleges, 3 Deemed Universities and 1 Private Law College, Andhra Pradesh had 37 Law Colleges and Karnataka had 93 Law Colleges.

8.2. In this context, some communications have been addressed by the Bar Council of India vide BCI:LE:Circular No.3/2015, dated 3.9.2015 to all the Registrars of the Universities/all the State Governments to “*restrict the number of granting NOC for coming 3 years*”, which was a subsequent issue.

8.3. The stand of the State Government was that though they were inclined to expand the number of law institutions, they were not agreeable to have any private participation in this behalf on account of alleged high fee structures. Of course, this position was disputed on behalf of the petitioners, since there are Medical and Engineering colleges where such a principle would more apply with excess capacity in Engineering colleges. It was stated that though regulation of private law colleges could not be disputed, there could not be an absolute ban.

8.4. The President of the petitioner association in W.P.No.29536 of 2014 obtained information under the Right to Information Act from the Bar Council of Tamil Nadu and Puducherry on 10.2.2015 qua the number of people enrolled with the Bar Council and how many of them had degrees obtained from Tamil Nadu and Puducherry and how many from other States, the details of which are as under:

<i>Sl.No.</i>	<i>Year</i>	<i>B.L. Degree obtained from Tamil Nadu and Puducherry</i>	<i>L.L.B. Degree obtained from other States</i>	<i>Total</i>
1	2007	2302	979	3281
2	2008	2380	781	3161
3	2009	2214	1182	3396
4	2010	2734	1004	3738
5	2011	3128	937	4065
6	2012	2484	1760	4244
7	2013	1822	1603	3425
8	2014	2191	1631	3822

9. We now turn to the legal challenge made and consider it appropriate to first examine the constitutional validity of the said Act.

A. VALIDITY OF TAMIL NADU ESTABLISHMENT OF PRIVATE LAW COLLEGES (PROHIBITION) ACT, 2014

10.1. The objective of enacting the said Act is apparent from its preamble, which says that it is for prohibiting the establishment of law colleges by private persons in the State of Tamil Nadu. It refers to the spirit of Article 41 of the Constitution of India for the policy decision of the Government to establish adequate number of law colleges in the State in a phased manner to impart legal education at an affordable cost. It also states that past experience revealed that private persons were not able to provide legal education at affordable cost to the economically and socially weaker sections and also not able to continue to run the law colleges.

10.2. In this context, we may note that as far as we understand no law college has been set up post enactment. Insofar as affordability is concerned, undoubtedly the problem is far more aggravated in Engineering and Medical Colleges than for Law. We have already noticed the data showing that there is, in fact, paucity of law colleges in Tamil Nadu to meet the aspirations of those who require legal education, compelling them to go to adjacent States of Andhra Pradesh and Karnataka, which has seen mushrooming of law colleges.

10.3. Be that as it may, we are concerned with the legislation enacted by the Assembly and, thus, the test for its challenge would

have to be within a limited domain permissible of challenge of a legislative enactment.

10.4. In effect, it is a one section legislation where Section 3 prohibits establishment of any law college or institution providing any course of study or training in law for admission to the examination for law degrees, diplomas or other academic distinctions of the University. It is an absolute ban with no limitation of time. Thus, the advisory of the Bar Council, which is a subsequent event in respect of not setting up of new colleges for a period of three years on account of general survey being made as to whether there are surfeit of law colleges or whether there are less than required, really does not come into play. It may be noticed that, undoubtedly, Tamil Nadu would be a State which would be facing inadequacy of colleges for legal education, apart from the fact that the issue qua the facilities in the Government Colleges has itself come into question in judicial proceedings.

11. The learned Senior Counsel for the petitioner, Mr.N.L.Rajah, sought to make a multi-pronged challenge to this legislation:

- (a) The policy decision taken by the State Government was subject matter of adjudication

and was struck down and, therefore, on the same ground there cannot be a legislation to validate it.

(b) It is a colourable exercise of power in view of the facts set out and has been enacted with the sole purpose of somehow ensuring that the college in question was not established, though it seeks to give wider compass to the same.

(c) It is discriminatory in character, as it applies only to the law subject and not to other subjects like Medicine and Engineering, especially when capitation fee is much more in issue in these colleges and there is already excess capacity of seats in Engineering Colleges, which is a matter of public knowledge.

(d) It is violative of Article 19(1)(g) of the Constitution of India.

12.1. On the other hand, the learned Advocate General sought to canvass that quality in legal education at reasonable cost cannot be an objective which could be said to be *ultra vires* any provisions of the

Constitution of India. Since we are concerned with the legislative competence, he submitted that there can be only a two-fold test applied:

- a) It is beyond the competency of the State Legislature; and
- b) It was in violation of fundamental rights enshrined in the Constitution of India.

12.2. The learned Advocate General submitted that in the present case the competency of the Legislature to enact the legislation cannot be doubted. Thus, it is only the second test which would arise in the present case.

12.3. In the aforesaid context, the learned Advocate General relied upon a decision of the Supreme Court in *State of A.P. and others v. McDowell & Co. and others*, (1996) 3 SCC 709, more specifically paragraph (43), to support the twin-test recognized therein. This is in the context that in the United Kingdom, the Parliament was supreme and there was no limitation upon the power of the Parliament and no Court in the United Kingdom could strike down an Act made by the Parliament on any ground. As against this, the United States of America has a Federal Constitution where the power of the Congress and the State Legislatures to make laws is limited in two ways, i.e.,

the division of legislative powers between the States and the Federal Government and the fundamental rights (Bill of Rights) incorporated in the Constitution. In India, the position is similar to the United States of America and that is why the power of the Parliament or the State Legislature is restricted only in two ways. No enactment can be struck down by just saying that it is arbitrary and unreasonable. Some or the other constitutional infirmity has to be found before invalidating an enactment. Mere unjustification of the Act would not be a ground for the Court to strike it down. This is in the larger scheme of the Constitution that the Parliament and the legislatures, composed of the representatives of the people, are supposed to know and be aware of the needs of the people and what is good and bad for them. The Court cannot sit over their wisdom. The principle applicable to strike down an administrative decision cannot be applied to a legislation, i.e., unreasonableness, irrationality, illegality and procedural impropriety, with proportionality being a debatable issue.

12.4. The learned Advocate General also referred to a pronouncement in *State of Kerala and others v. Peoples Union of Civil Liberties, Kerala State Unit and others*, (2009) 8 SCC 46, more specifically paragraph (45), once again setting forth the twin-test in repelling the ground of colourable exercise of power and *mala fides* on

the part of the Legislature.

12.5. The learned Advocate General also sought to derive strength for supporting the legislation from Article 39A of the Constitution of India providing for obligation of the State to ensure equal justice and free legal aid.

12.6. Lastly, the learned Advocate General submitted that it was a ban not in perpetuity, though permanent in character for only the present time. However, on our query, he was not able to show any provision in the enactment where the Legislature intended to do so. Faced with this position, the learned Advocate General submitted that the provisions could always be read down in order to save the legislation and referred to the decision of the Full Bench of the Kerala High Court in *Fr.Mathew Munthiri Chinthiyil Vicar and another v. State of Kerala*, AIR 1978 Ker 227 (FB).

13. As far as the Bar Council of India was concerned, the submission of the counsel was that it had really not much role to play other than the letter dated 3.9.2015 which was circulated to all Registrars of Universities and State Governments recording the General House of Council Meeting Minutes of 6.6.2015 in respect of

Resolution No.192/20158. It is in the form of a request to all State Governments to “*restrict*” the number of grants of No Objection Certificate for coming three years. It also calls upon the Universities of all the States and University Grants Committee to undertake the inspection of institutions imparting legal education very carefully and not in a casual manner, because once affiliation is granted by the University and No Objection Certificate is granted by the State, the Council has no other option but to pass its findings on such reports. As mentioned aforesaid, the objective is not a bar, but a restriction and that too with the objective of not having excess capacity, which is not the case insofar as the State of Tamil Nadu is concerned.

14. Now coming to the twin-test or rather in the given facts of the case the sole test to be applied for violation of Part III of the Constitution of India, which can be the only ground on which the legislation could be struck down and not on the other parameters sought to be canvassed by the learned counsel for the petitioners.

RIGHT TO IMPART EDUCATION – A FUNDAMENTAL RIGHT

15.1. The right to impart education and set up educational

institutions being a fundamental right has been recognized in numerous judicial pronouncements. It is a protected freedom under Article 19(1)(g) of the Constitution of India, of course subject to the check of any reasonable restriction as envisaged under Article 19(6) of the Constitution of India.

15.2. Coming to the history of legal opinions on this behalf, we may observe that, originally, in *Unnikrishnan v. State of A.P.*, (1993) 1 SCC 645, the right to impart education was held not to be a fundamental right and was deemed to be beyond the scope of Article 19(1)(g) of the Constitution of India. In paragraph (72), it was observed that there was no fundamental right under Article 19(1)(g) of the Constitution of India to establish an educational institution, as imparting of education is not and cannot be allowed to become commerce.

15.3. However, the views expressed by the Constitution Bench took a change with the judgment in *T.M.A. Pai v. State of Karnataka*, (2002) 4 SCC 481, where a Eleven-Judge Bench, per majority, referred to a Five-Judge Bench decision in *Sodan Singh v. New Delhi Municipal Committee*, (1989) 4 SCC 155, wherein it was observed that the word "occupation" had a wide meaning as any regular work,

profession, job, principal activity, employment, business or a calling in which an individual is engaged, and the object of using four analogous and overlapping words in Article 19(1)(g) of the Constitution of India was thus held to be a guaranteed right as comprehensive as possible to include all the avenues and modes through which a man may earn his livelihood. We reproduce hereinunder the observations in paragraphs (22) to (25):

"22. A five-Judge Bench in *Sodan Singh v. New Delhi Municipal Committee*, (1989) 4 SCC 155, at p. 174, para 28, observed as follows:

'The word 'occupation' has a wide meaning such as any regular work, profession, job, principal activity, employment, business or a calling in which an individual is engaged. ... The object of using four analogous and overlapping words in Article 19(1)(g) is to make the guaranteed right as comprehensive as possible to include all the avenues and modes through which a man may earn his livelihood. In a nutshell the guarantee takes into its fold any activity carried on by a citizen of India to earn his living.'

23. In *Unni Krishnan case*, (1993) 1 SCC 645, at p. 687, para 63, while referring to education, it was observed as follows:

'It may perhaps fall under the category of occupation provided no recognition is sought from the State or affiliation from the university is asked on the basis that it is a fundamental right.'

24. While the conclusion that 'occupation' comprehends the establishment of educational institutions is correct, the proviso in the aforesaid observation to the effect that this is so provided no recognition is sought from the State or affiliation from the university concerned is, with utmost respect, erroneous. The fundamental right to establish an educational institution cannot be confused with the right to ask for recognition or affiliation. The exercise of a fundamental right may be controlled in a variety of ways. For example, the right to carry on a business does not entail the right to carry on a business at a particular place. The right to carry on a business may be subject to licensing laws so that a denial of the licence prevents a person from carrying on that particular business. The question of whether there is a fundamental right or not cannot be dependent upon whether it can be made the subject-matter of controls.

25. The establishment and running of an educational institution where a large number of persons are employed as teachers or administrative staff, and an activity is carried on that results in the imparting of knowledge to the students, must necessarily be regarded as an occupation, even if there is no element of profit generation. It is difficult to comprehend that education, *per se*, will not fall under any of the four expressions in Article 19(1)(g). 'Occupation' would be

an activity of a person undertaken as a means of livelihood or a mission in life. The abovequoted observations in *Sodan Singh case* correctly interpret the expression 'occupation' in Article 19(1)(g)."

15.4. Among the various questions answered, what is absolutely apposite in the facts of the present case is the answer to the 11th Question and the relevant portion of paragraph (161) is reproduced hereunder:

"161. Q. 11. What is the meaning of the expressions 'education' and 'educational institutions' in various provisions of the Constitution? Is the right to establish and administer educational institutions guaranteed under the Constitution?

A. The expression 'education' in the articles of the Constitution means and includes education at all levels from the primary school level up to the postgraduate level. It includes professional education. The expression 'educational institutions' means institutions that impart education, where 'education' is as understood hereinabove.

The right to establish and administer educational institutions is guaranteed under the Constitution to all citizens under Articles 19(1)(g) and 26, and to minorities specifically under Article 30.

All citizens have a right to establish and administer educational institutions under Articles 19(1)(g) and 26, but this right is subject to the provisions of Articles 19(6) and 26(a). However, minority institutions will have a right to admit students belonging to the minority group, in the manner as discussed in this judgment.”

15.5. If we may say so, the view in *T.M.A. Pai case, supra*, thus, left really nothing in doubt over the fundamental question of the right of professional education being protected under Article 19(1)(g) of the Constitution of India.

15.6. We may note that certain questions were raised qua the aspects which emerged from *T.M.A. Pai case, supra*, and certain other judgments have also dealt with the issue. We may refer to them as under with the relevant portions extracted.

(A) In *Islamic Academy of Education v. State of Karnataka, (2003) 6 SCC 697*, Five-Judge Bench of the Supreme Court held as under:

“25. Privately managed educational institutions imparting professional education in the fields of

medicine, dentistry and engineering have spurted in the last few decades. The right of the minorities to establish an institution of their own choice in terms of clause (1) of Article 30 of the Constitution of India is recognized; so is the right of a citizen who intends to establish an institution under Article 19(1)(g) thereof. However, the fundamental right of a citizen to establish an educational institution and in particular a professional institution is not absolute. These rights are subject to regulations and laws imposing reasonable restrictions. Such reasonable restrictions in public interest can be imposed under clause (6) of Article 19 and regulations under Article 30 of the Constitution of India. The right to establish an educational institution, although guaranteed under the Constitution, recognition or affiliation is not. Recognition or affiliation of professional institutions must be in terms of the statute.

....

65. The Bench, however, overruled the dicta in *Unni Krishnan case*, (1993) 1 SCC 645, that education is not a 'business' or 'occupation' within the meaning of Article 19(1)(g) of the Constitution of India, wherein referring to *State of Gujarat v. R.M.D. Chamarbaugwala*, AIR 1957 SC 699 and incorporating the doctrine of *res extra commercium*, the Court in T.M.A. Pai case, supra, had observed: (SCC pp. 534-35, paragraph 24)

'24. While the conclusion that 'occupation'

comprehends the establishment of educational institutions is correct, the proviso in the aforesaid observation to the effect that this is so provided no recognition is sought from the State or affiliation from the concerned university is, with utmost respect, erroneous. The fundamental right to establish an educational institution cannot be confused with the right to ask for recognition or affiliation."

(B) In *Modern School v. Union of India*, (2004) 5 SCC 583, a Three-Judge Bench of the Supreme Court held as under:

"41. Establishment of a private educational institution has been held to be a fundamental right by this Court in *T.M.A. Pai Foundation v. State of Karnataka*, (2002) 8 SCC 481. The fundamental right to establish educational institution as contained in Article 19(1)(g) of the Constitution of India would, however, be subject only to the reasonable restrictions which may be imposed by any law in terms of clause (6) thereof."

(C) In *P.A.Inamdar v. State of Maharashtra*, (2005) 6 SCC 537, a Seven-Judge Bench of the Supreme Court held as under:

"92. As an occupation, right to impart education is a fundamental right under Article 19(1)(g) and, therefore, subject to control by clause (6) of Article 19. This right is available to all citizens without drawing a distinction between minority and non-minority. Such a right is, generally speaking, subject to the laws imposing reasonable restrictions in the interest of the general public. In particular, laws may be enacted on

the following subjects: (i) the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business; (ii) the carrying on by the State, or by a corporation owned or controlled by the State of any trade, business, industry or service whether to the exclusion, complete or partial of citizens or otherwise. Care is taken of minorities, religious or linguistic, by protecting their right to establish and administer educational institutions of their choice under Article 30. To some extent, what may be permissible by way of restriction under Article 19(6) may fall foul of Article 30. This is the additional protection which Article 30(1) grants to the minorities."

(D) In *Society for Unaided Private Schools of Rajasthan v. Union of India*, (2012) 6 SCC 1, a Three-Judge Bench of the Supreme Court held as under:

"36.3. Thirdly, the right to establish an educational institution has now been recognised as a fundamental right within the meaning of Article 19(1)(g). This view is enforced by the opinion of this Court in *T.M.A. Pai Foundation case, supra*, and *P.A. Inamdar case, supra*, that all citizens have a right to establish and administer educational institutions under Articles 19(1)(g) and 26 but that right is subject to the provisions of Articles 19(6) and 26(a). The constitutional obligation of the State to provide for free and compulsory education to the specified category of children is coextensive with

the fundamental right guaranteed under Article 19(1)(g) to establish an educational institution.

....

251. Right to establish and administer and run a private unaided educational institution is the very openness of personal freedom and opportunity which is constitutionally protected, which right cannot be robbed of or coerced against his will at the threat of non-recognition or non-affiliation. Right to establish a private unaided educational institution and to make reasonable profit is recognised by Article 19(1)(g) so as to achieve economic security and stability even if it is for charity.

252. Rights protected under Article 19(1)(g) are fundamental in nature, inherent and are sacred and valuable rights of citizens which can be abridged only to the extent that is necessary to ensure public peace, health, morality, etc. and to the extent of the constitutional limitation provided in that article.”

15.7. By virtue of the law enunciated in the decisions, supra, it is beyond any cavil that the right to impart education is a fundamental right protected under Article 19(1)(g) of the Constitution of India.

STORMING THE BOUNDARIES OF REASONABLE RESTRICTIONS
– AN ABSOLUTE BAN

16.1. The law having been enunciated on the issue of the Constitutional right to establish educational institutions, we have to evaluate the scope of the restrictions as may be envisaged under Article 19(6) of the Constitution of India qua educational institutions in the light of the law declared by the Supreme Court.

(A) It was observed in paragraphs (50) and (54) of *T.M.A. Pai case*, supra, as under:

“50. The right to establish and administer broadly comprises the following rights:

- (a) to admit students;
- (b) to set up a reasonable fee structure;
- (c) to constitute a governing body;
- (d) to appoint staff (teaching and non-teaching); and
- (e) to take action if there is dereliction of duty on the part of any employees.

....

54. The right to establish an educational institution can be regulated; but such regulatory measures must, in general, be to ensure the maintenance of proper academic standards, atmosphere and infrastructure (including qualified staff) and the prevention of maladministration by those in charge of management. The fixing of a rigid fee structure, dictating the formation and composition of a governing body,

compulsory nomination of teachers and staff for appointment or nominating students for admissions would be unacceptable restrictions.”

(B) In *P.A.Inamdar v. State of Maharashtra*, (2005) 6 SCC 537, a Seven-Judge Bench of the Supreme Court held as under:

“94. Aid and affiliation or recognition, both by the State, bring in some amount of regulation as a condition of receiving grant or recognition. The scope of such regulations, as spelt out by a six-Judge Bench decision in *Rev. Sidhajbhai Sabhai v. State of Gujarat*, (1963) 3 SCR 837, and a nine-Judge Bench case in *Ahmedabad St. Xavier’s College Society v. State of Gujarat*, (1974) 1 SCC 717, must satisfy the following tests: (a) the regulation is reasonable and rational; (b) it is regulative of the essential character of the institution and is conducive to making the institution an effective vehicle of education for the minority community or other persons who resort to it; (c) it is directed towards maintaining excellence of education and efficiency of administration so as to prevent it from falling in standards. These tests have met the approval of *Pai Foundation*, (2002) 8 SCC 481. However, *Rev. Sidhajbhai case*, *supra*, and *St. Xavier’s case*, *supra*, go on to say that no regulation can be cast in “the interest of the nation” if it does not serve the interest of the minority as well. This proposition (except when it is read in the light of the opinion of Quadri, J.) stands

overruled in *Pai Foundation case, supra*, where Kirpal, C.J., speaking for the majority has ruled (vide SCC p. 563, para 107)—

“Any regulation framed in the national interest must necessarily apply to all educational institutions, whether run by the majority or the minority. Such a limitation must necessarily be read into Article 30. The right under Article 30(1) cannot be such as to override the national interest or to prevent the Government from framing regulations in that behalf.”

(C) In *Society for Unaided Private Schools of Rajasthan v. Union of India*, (2012) 6 SCC 1, a Three-Judge Bench of the Supreme Court held as under:

36.4. Lastly, the fundamental right to establish an educational institution cannot be confused with the right to ask for recognition or affiliation. The exercise of a fundamental right to establish and administer an educational institution can be controlled in a number of ways. Indeed, matters relating to the right to grant of recognition and/or affiliation are covered within the realm of statutory right, which, however, will have to satisfy the test of reasonable restrictions [see Article 19(6)].

(D) In a recent decision in *Modern Dental College and Research Centre v. State of Madhya Pradesh*, (2016) 7 SCC 353, a Five-Judge Bench of the Supreme Court held as under:

“57. It is well settled that the right under Article 19(1)(g) is not absolute in terms but is subject to reasonable restrictions under clause (6). Reasonableness has to be determined having regard to the nature of right alleged to be infringed, purpose of the restriction, extent of restriction and other relevant factors. In applying these factors, one cannot lose sight of the directive principles of State policy. The Court has to try to strike a just balance between the fundamental rights and the larger interest of the society. The Court interferes with a statute if it clearly violates the fundamental rights. The Court proceeds on the footing that the legislature understands the needs of the people. The Constitution is primarily for the common man. Larger interest and welfare of student community to promote merit, achieve excellence and curb malpractices, fee and admissions can certainly be regulated.”

16.2. A distinction was made between the restrictions which could be imposed in a private unaided professional college as against an aided institution. In that context, it was observed that a college or a professional educational institution has to get recognition from the University concerned, which may prescribe certain prerequisites for

such recognition to ensure uniformity, efficiency and excellence in education. In fact, such restrictions have been held not even to violate Article 30 of the Constitution of India, something which we will advert to later while dealing with the minority institution issue. Yet, simultaneously, it has been observed that the conditions laid down for granting recognition should not be such as may lead to governmental control of the administration of the private educational institutions.

16.3. Turning to the matter at hand, we may note at the threshold itself that such a ban as imposed by the impugned legislation is absolute in character and not restricted to any time period. However, the endeavour of the learned Advocate General to save the legislation with an alternative plea of reading down the same is something which cannot be accepted for the reason that the Legislature in its wisdom never thought it proper to provide anything in the legislation which would say so or even give a hint that it was to be restricted to any time period. This position is quite unambiguous and the question of reading down in case of ambiguity would thus not arise.

16.4. It is no doubt true that the Court may avoid striking down a statutory provision which is apparently wide enough to come within

the mischief of a constitutional prohibition by interpreting the provision, if possible, in a narrow sense so that it may not violate or transgress the line of action prohibited by the Constitution, vide *Kedar Nath Singh v. State of Bihar*, AIR 1962 SC 955.

16.5. The rule of reading down is a rule of harmonious construction in a different manner, but it is not open to the Court to read in words and expressions not found in the provision or statute, vide *Union of India v. India Swift Laboratories*, (2011) 4 SCC 635.

16.6. The Treatise of D.D.Basu on Constitution of India, 9th Edition, Vol-2, page 1111, notices that the rule of narrow construction, wherever possible, applies not merely to a question of legislative vires, but also to a question of contravention of other constitutional limitations, and would not be applied where the allegation is that it constitutes an unreasonable restriction upon a right guaranteed under Article 19(1) of the Constitution of India. The restriction can be upheld as valid only where it is covered by any of the purposes specified in Clauses (2) to (6) of the said Article.

16.7. Further, the letter dated 3.9.2015 of the Bar Council of India has nothing to do with this legislation, which is a subsequent

development, and it is only a “request” to all State Governments to restrict the number of granting No Objection Certificate for the coming 3 years – the objective being to have some kind of a study for the requirement of law colleges for each State. This being the position, certainly this is not the letter in mind when the legislation was made and thus one cannot read into the legislation a limitation of time period – whether of three years or less or more.

JUDICIAL REVIEW OF THE LEGISLATION

17.1. Having thus observed that the nature and application of the ban sought to be imposed by the impugned legislation seemingly storms the boundaries of reasonable restrictions, we are of the considered view that this legislation deserves judicial scrutiny.

17.2. We may begin the concept of Judicial Review of the legislation with the fundamental principle laid down by eminent Jurist Kelsen in respect of hierarchy of legal norms, headed by what is called as the “*Grundnorm*” (the basic norm). The grundnorm in the Indian context is the Constitution of India and, thus, stands above any statutory law made by the Parliament or the State Legislature. The hierarchy of these would be as under:

- i. The Constitution of India;

- ii. Statutory law, which may be either law made by the Parliament or by the State Legislature;
- iii. Delegated legislation, which may be in the form of rules made under the statute, regulations made under the statute, etc;
- iv. Purely executive orders not made under any statute.

17.3. The power to declare a statute unconstitutional was recognized by the US Supreme Court in *Marbury v. Madison*, 5 US (1 Cr) 137 (1803). The same principle applies in our country. The power is restricted by the twin-test because judicial review is a counter-majoritarian force, since the Supreme Court declares unconstitutional a legislative Act or the Act of an elected executive and, thus, thwarts the will of the representatives of the people. Thus, it exercises control not on behalf of the prevailing majority, but against it [See: *American Jurist Alexander Bickel's The Least Dangerous Branch*].

17.4. The test has also been discussed in the classic essay of Prof. James Bradley Thayer, Professor of Law, Harvard Law School, titled "*The Origin and Scope of the American Doctrine of Constitutional Law*." He states that the legislation could be held unconstitutional only when those who have the right to make laws have not merely made a

mistake (in the sense of apparently breaching a constitutional provision), but have made a very clear one, so clear that it is not open to rational question. The view would be declared unconstitutional only when that is the only possible view not open to rational question.

17.5. In *State of Bihar v. Bihar distillery Ltd.*, (1997) 2 SCC 453, it was opined that the courts must start with the presumption of constitutionality and would strike down the enactment only when it is not possible to sustain it. The approach should not be one to pick holes or to search for defects of drafting, much less inexactitude of language employed.

17.6. The Privy Council in *Shell Co. of Australia v. Federal Commissioner of Taxation*, 1931 AC 275 : 1930 All ER Rep 671 (PC), opined that unless it became clear beyond reasonable doubt that the legislation in question transgresses the limits laid down by the organic law of the Constitution, it will be allowed to stand as the true expression of the national will.

17.7. In *Society for Unaided Private Schools of Rajasthan v. Union of India*, (2012) 6 SCC 1, a Three-Judge Bench of the Supreme Court held as under:

"260. The Constitution of India has expressly conferred the power of judicial review on courts and the legislature cannot disobey the constitutional mandate or the constitutional principle laid down by the courts under the guise of social inclusiveness. Smaller inroad like Section 12(1)(c) may lead to larger inroad, ultimately resulting in total prohibition of the rights guaranteed under Articles 19(1)(g), 29(2) and 30(1) as interpreted by *Pai Foundation case, supra*, and *Inamdar case, supra*. The courts, in such situations, owe a duty to lift the veil of the form and appearance to discover the true character and nature of the legislation and if it has the effect of bypassing or ignoring the constitutional principles laid down by the constitutional courts and violate fundamental rights, the same has to be nullified.

261. *Pai Foundation case* and *Inamdar case, supra*, have not laid down any new constitutional principle, but only declared what the law is. The constitutional principles laid down by the Courts get assimilated in Articles 19(1)(g), 29(2) and 30(1) and can be undone not by legislation, but only by constitutional amendments. The object to be achieved by the legislation may be laudable, but if it is secured by a method which offends fundamental rights and constitutional principles, the law must be struck down as unconstitutional.

262. The constitutional provision like Article 19(1)(g) is a check on the exercise of legislative power and it is the duty of the constitutional court to protect the constitutional rights of the citizens against any encroachment, as it is often said, "smaller inroad may lead to larger inroad and ultimately resulting into nationalisation or even total prohibition". Section 12(1)(c), if upheld would resurrect *Unni Krishnan case, supra*, scheme which was nullified by *Pai Foundation case* and *Inamdar case, supra*."

17.8. Simultaneously, we take note of the importance of preserving the constitutional rights as enunciated in *Trop v. Dulles*, (1957) 356 US 86, where Chief Justice Earl Warren of the American Supreme Court said:

"We are oath-bound to defend the Constitution. This obligation requires that congressional enactments be judged by the standards of the Constitution. The Judiciary has the duty of implementing the constitutional safeguards that protect individual rights. When the Government acts to take away the fundamental right of citizenship, the safeguards of the Constitution should be examined with special diligence.

The provisions of the Constitution are not time-worn adages or hollow shibboleths. They are vital, living principles that authorize and limit governmental powers

in our Nation. They are the rules of government. When the constitutionality of an Act of Congress is challenged in this Court, we must apply those rules. If we do not, the words of the Constitution become little more than good advice.

When it appears that an Act of Congress conflicts with one of these provisions, we have no choice but to enforce the paramount commands of the Constitution. We are sworn to do no less. We cannot push back the limits of the Constitution merely to accommodate challenged legislation. We must apply those limits as the Constitution prescribes them, bearing in mind both the broad scope of legislative discretion and the ultimate responsibility of constitutional adjudication.”

17.9. When the Hon'ble Chief Justice of India, Patanjali Sastri, stated that the Court has been assigned the role of a *sentinel on the qui vive*, in our considered view, he meant that in a democratic polity, which is governed by a written Constitution and where the Rule of Law is paramount, the Courts should not only protect the fundamental rights of the citizens, but also ensure that the democratic values as enshrined in the Constitution are respected and the faith and hope of the people in the constitutional system are not on the wane.

17.10. Bearing in mind the above mentioned principles, we now proceed to consider the various tests laid down by the Supreme Court qua testing the constitutionality of a legislation.

WHEN IS A LEGISLATION TO BE STRUCK DOWN?

18.1. Anent the constitutional validity of legislations, the various tests laid down by the Supreme Court are as under:

(A) In *Chintaman Rao v. State of Madhya Pradesh*, AIR 1951 SC 118, a Five-Judge Bench of the Supreme Court held as under:

“5. The question for decision is whether the statute under the guise of protecting public interests arbitrarily interferes with private business and imposes unreasonable and unnecessarily restrictive regulations upon lawful occupation; in other words, whether the total prohibition of carrying on the business of manufacture of bidis within the agricultural season amounts to a reasonable restriction on the fundamental rights mentioned in article 19(1)(g) of the Constitution. Unless it is shown that there is a reasonable relation of the provisions of the Act to the purpose in view, the right of freedom of occupation and business cannot be curtailed by it.

6. The phrase "reasonable restriction" connotes that the limitation imposed on a person in enjoyment of the right should not be arbitrary or of an excessive nature, beyond what is required in the interests of the public. The word "reasonable" implies intelligent care and deliberation, that is, the choice of a course which reason dictates. Legislation which arbitrarily or excessively invades the right cannot be said to contain the quality of reasonableness and unless it strikes a proper balance between the freedom guaranteed in Article 19(1)(g) and the social control permitted by clause (6) of Article 19, it must be held to be wanting in that quality.

7. Clause (6) in the concluding paragraph particularizes certain instances of the nature of the restrictions that were in the mind of the constitution-makers and which have the quality of reasonableness. They afford a guide to the interpretation of the clause and illustrate the extent and nature of the restrictions which according to the statute could be imposed on the freedom guaranteed in clause (g). The statute in substance and effect suspends altogether the right mentioned in Article 19(1)(g) during the agricultural seasons and such suspension may lead to such dislocation of the industry as to prove its ultimate ruin. The object of the statute is to provide measures for the supply of the adequate labour for agricultural purposes in bidi manufacturing areas of the Province and it could well

be achieved by legislation restraining the employment of agricultural labour in the manufacture of bidis during the agricultural season. Even in point of time a restriction may well have been reasonable if it amounted to a regulation of the hours of work in the business. Such legislation though it would limit the field for recruiting persons for the manufacture of bidis and regulate the hours of the working of the industry, would not have amounted to a complete stoppage of the business of manufacture and might well have been within the ambit of clause (6). The effect of the provisions of the Act, however, has no reasonable relation to the object in view but is so drastic in scope that it goes much in excess of that object. Not only are the provisions of the statute in excess of the requirements of the case but the language employed prohibits a manufacturer of bidis from employing any person in his business, no matter wherever that person may be residing. In other words, a manufacturer of bidis residing in this area cannot import labour from neighbouring places in the district or province or from outside the province. Such a prohibition on the face of it is of an arbitrary nature inasmuch as it has no relation whatsoever to the object which the legislation seeks to achieve and as such cannot be said to be a reasonable restriction on the exercise of the right. Further the statute seeks to prohibit all persons residing in the notified villages during the agricultural season from engaging themselves in the manufacture

of bidis. It cannot be denied that there would be a number of infirm and disabled persons, a number of children, old women and petty shop keepers residing in these villages who are incapable of being used for agricultural labour. All such persons are prohibited by law from engaging themselves in the manufacture of bidis; and are thus being deprived of earning their livelihood. It is a matter of common knowledge that there are certain classes of persons residing in every village who do not engage in agricultural operations. They and their womenfolk and children in their leisure hours supplement their income by engaging themselves in bidi business. There seems no reason for prohibiting them from carrying on this occupation. The statute as it stands, not only compels those who can be engaged in agricultural work from not taking to other avocations, but it also prohibits persons who have no connection or relation to agricultural operations from engaging in the business of bidi making and thus earning their livelihood. These provisions of the statute, in our opinion, cannot be said to amount to reasonable restrictions on the right of the applicants and that being so, the statute is not in conformity with the provisions of Part III of the Constitution. The law even to the extent that it could be said to authorize the imposition of restrictions in regard to agricultural labour cannot be held valid because the language employed is wide enough to cover restrictions both within and without the limits of constitutionally permissible legislative

acting affecting the right. So long as the possibility of its being applied for purposes not sanctioned by the Constitution cannot be ruled out, it must be held to be wholly void."

(B) In *State of Madras v. V.G.Row*, AIR 1952 SC 196, a Five-Judge Bench of the Supreme Court held as under:

"13. Before proceeding to consider this question we think it right to point out, what is sometimes overlooked, that our Constitution contains express provisions for judicial review of legislation as to its conformity with the constitution unlike as in America where the Supreme Court has assumed extensive power of reviewing legislative acts under cover of the widely interpreted "due process" clause in the Fifth and Fourteenth Amendments. If, then, the courts in this country face up to such important and none too easy task, it is not out of any desire to tilt at legislative authority in a crusader's spirit, but in discharge of a duty plainly laid upon them by the Constitution. This is especially true as regards the "fundamental rights" as to which this Court has been assigned the role of a sentinel on the qui vive. While the Court naturally attaches great weight to the legislative judgment, it cannot desert its own duty to determine finally the constitutionality of an impugned statute. We have ventured on these obvious remarks because it appears to have been suggested in some quarters that the courts in the new set up are out to seek clashes with

the legislatures in the country.

....

15. This Court had occasion in *Dr. N.B. Khare vs. The State of Delhi*, (1950) S.C.R. 519 to define the scope of the judicial review under clause (5) of article 19 where the phrase "imposing reasonable restriction on the exercise of the right" also occurs and four out of the five Judges participating in the decision expressed the view (the other Judge leaving the question open) that both the substantive and the procedural aspects of the impugned restrictive law should be examined from the point of view of reasonableness; that is to say, the Court should consider not only factors such as the duration and the extent of the restrictions, but also the circumstances under which and the manner in which their imposition has been authorised. It is important in this context to bear in mind that the test of reasonableness, where ever prescribed, should be applied to each, individual statute impugned and no abstract standard, or general pattern of reasonableness can be maid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restriction imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial verdict. In evaluating such elusive factors and forming their own conception of what is

reasonable, in all the circumstances of a given case, it is inevitable that the social philosophy and the scale of values of the judges participating in the decision should play an important part, and the limit to their interference with legislative judgment in such cases can only be dictated by their sense of responsibility and self-restrict and the sobering reflection that the Constitution is meant not only for people of their way of thinking but for all, and that the majority of the elected representatives of the people have, in authorising the imposition of the restrictions, considered them to be reasonable."

(C) In *Arunachala Nadar v. State of Madras*, AIR 1959 SC 300, a Five-Judge Bench of the Supreme Court held as under:

"5. Before we scrutinize the provisions of the Act, the law on the subject may be briefly noticed. Under Article 19(1)(g) of the Constitution of India all persons have the right to practise any profession, or to carry on any occupation, trade or business. Clause (6) of that article enables the State to make any law imposing in the interest of general public reasonable restrictions on the exercise of the right conferred by sub-clause (g) of clause (1). It has been held that in order to be reasonable, a restriction must have a rational relation to the object which the legislature seeks to achieve and must not go in excess of that object (See *Chintaman Rao v. State of Madhya Pradesh* [(1950) SCR 759]).

The mode of approach to ascertain the reasonableness of a restriction has been succinctly stated by Patanjali Sastry, C.J., in *State of Madras v. V.G. Row* [(1952) SCR 597, 607] thus:

'It is important in this context to bear in mind that the test of reasonableness, wherever prescribed, should be applied to each individual statute impugned, and no abstract standard, or general pattern of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial verdict.'

(D) In *Peerless General Finance and Investment Co. Ltd. v. Reserve Bank of India*, (1992) 2 SCC 343, a Two-Judge Bench of the Supreme Court held as under:

"47. Wherever a statute is challenged as violative of the fundamental rights, its real effect or operation on the fundamental rights is of primary importance. It is the duty of the Court to be watchful to protect the constitutional rights of a citizen as against any encroachment gradually or stealthily thereon. When a law has imposed restrictions on the fundamental rights, what the Court has to examine is the substance of the legislation without being beguiled by the mere appearance of the legislation. The legislature cannot disobey the constitutional mandate by employing an indirect method. The Court must consider not merely

the purpose of the law but also the means how it is sought to be secured or how it is to be administered. The object of the legislation is not conclusive as to the validity of the legislation. This does not mean the constitutionality of the law shall be determined with reference to the manner in which it has actually been administered or operated or probably been administered or operated by those who are charged with its implementation. The Court cannot question the wisdom, the need or desirability of the regulation. The State can regulate the exercise of the fundamental right to save the public from a substantive evil. The existence of the evil as well as the means adopted to check it are the matters for the legislative judgment. But the Court is entitled to consider whether the degree and mode of the regulation is in excess of the requirement or is imposed in an arbitrary manner. The Court has to see whether the measure adopted is relevant or appropriate to the power exercised by the authority or whether it overstepped the limits of social legislation. Smaller inroads may lead to larger inroads and ultimately result in total prohibition by indirect method. If it directly transgresses or substantially and inevitably affects the fundamental right, it becomes unconstitutional, but not where the impact is only remotely possible or incidental. The Court must lift the veil of the form and appearance to discover the true character and the nature of the legislation, and every endeavour should be made to have the efficacy of

fundamental right maintained and the legislature is not invested with unbounded power. The Court has, therefore, always to guard against the gradual encroachments and strike down a restriction as soon as it reaches that magnitude of total annihilation of the right.

48. However, there is presumption of constitutionality of every statute and its validity is not to be determined by artificial standards. The Court has to examine with some strictness the substance of the legislation to find what actually and really the legislature has done. The Court would not be over persuaded by the mere presence of the legislation. In adjudging the reasonableness of the law, the Court will necessarily ask the question whether the measure or scheme is just, fair, reasonable and appropriate or is it unreasonable, unnecessary and arbitrarily interferes with the exercise of the right guaranteed in Part III of the Constitution.

49. Once it is established that the statute is prima facie unconstitutional, the State has to establish that the restrictions imposed are reasonable and the objective test which the Court is to employ is whether the restriction bears reasonable relation to the authorised purpose or is an arbitrary encroachment under the garb of any of the exceptions envisaged in Part III. The reasonableness is to the necessity to impose restriction; the means adopted to secure that end as well as the procedure to be adopted to that end.

50. The Court has to maintain delicate balance between the public interest envisaged in the impugned provision and the individual's right; taking into account, the nature of his right said to be infringed; the underlying purpose of the impugned restriction; the extent and urgency of the evil sought to be remedied thereby; the disproportion of the restriction imposed, the prevailing conditions at the time, the surrounding circumstances; the larger public interest which the law seeks to achieve and all other relevant factors germane for the purpose. All these factors should enter into the zone of consideration to find the reasonableness of the impugned restriction. The Court weighs in each case which of the two conflicting public or private interest demands greater protection and if it finds that the restriction imposed is appropriate, fair and reasonable, it would uphold the restriction. The Court would not uphold a restriction which is not germane to achieve the purpose of the statute or is arbitrary or out of its limits."

(E) In *Dharam Dutt v. Union of India*, (2004) 1 SCC 712, a Two-Judge Bench of the Supreme Court held as under:

"37. The Court, confronted with a challenge to the constitutional validity of any legislative enactment by reference to Article 19 of the Constitution, shall first ask what is the sweep of the fundamental right guaranteed by the relevant sub-clause out of sub-clauses (a) to (g) of clause (1). If the right canvassed

falls within the sweep and expanse of any of the sub-clauses of clause (1), then the next question to be asked would be, whether the impugned law imposes a reasonable restriction falling within the scope of clauses (2) to (6) respectively. However, if the right sought to be canvassed does not fall within the sweep of the fundamental rights but is a mere concomitant or adjunct or expansion or incidence of that right, then the validity thereof is not to be tested by reference to clauses (2) to (6). The test which it would be required to satisfy for its constitutional validity is one of reasonableness, as propounded in the case of *V.G. Row* [AIR 1952 SC 196 : 1952 SCR 597 : 1952 Cri LJ 966] or if it comes into conflict with any other provision of the Constitution.

....

49. In spite of there being a general presumption in favour of the constitutionality of the legislation, in a challenge laid to the validity of any legislation allegedly violating any right or freedom guaranteed by clause (1) of Article 19 of the Constitution, on a prima facie case of such violation having been made out, the onus would shift upon the respondent State to show that the legislation comes within the permissible limits of the most relevant out of clauses (2) to (6) of Article 19 of the Constitution, and that the restriction is reasonable. The Constitutional Court would expect the State to place before it sufficient material justifying the restriction and its reasonability. On the State

succeeding in bringing the restriction within the scope of any of the permissible restrictions, such as, the sovereignty and integrity of India or public order, decency or morality etc. the onus of showing that restriction is unreasonable would shift back to the petitioner. Where the restriction on its face appears to be unreasonable, nothing more would be required to substantiate the plea of unreasonability. Thus the onus of proof in such like cases is an ongoing shifting process to be consciously observed by the Court called upon to decide the constitutional validity of a legislation by reference to Article 19 of the Constitution. The questions: (i) whether the right claimed is a fundamental right, (ii) whether the restriction is one contemplated by any of clauses (2) to (6) of Article 19, and (iii) whether the restriction is reasonable or unreasonable, are all questions which shall have to be decided by keeping in view the substance of the legislation and not by being beguiled by the mere appearance of the legislation.”

(F) In yet another decision in *Namit Sharma v. Union of India*, (2013)

1 SCC 745, a Two-Judge Bench of the Supreme Court held as under:

“8. The Constitution of India expressly confers upon the courts the power of judicial review. The courts, as regards the fundamental rights, have been assigned the role of *sentinel on the qui vive* under Article 13 of the Constitution. Our courts have exercised the power of judicial review, beyond legislative competence, but

within the specified limitations. While the court gives immense weightage to the legislative judgment, still it cannot deviate from its own duties to determine the constitutionality of an impugned statute. Every law has to pass through the test of constitutionality which is stated to be nothing but a formal test of rationality.

9. The foundation of this power of judicial review, as explained by a nine-Judge Bench in *Supreme Court Advocates-on-Record Assn. v. Union of India* [(1993) 4 SCC 441], is the theory that the Constitution which is the fundamental law of the land, is the “will” of the “people”, while a statute is only the creation of the elected representatives of the people; when, therefore, the “will” of the legislature as declared in the statute, stands in opposition to that of the people as declared in the Constitution—the “will” of the people must prevail.

10. In determining the constitutionality or validity of a constitutional provision, the court must weigh the real impact and effect thereof, on the fundamental rights. The Court would not allow the legislature to overlook a constitutional provision by employing indirect methods. In *Minerva Mills Ltd. v. Union of India* [(1980) 3 SCC 625] this Court mandated without ambiguity, that it is the Constitution which is supreme in India and not Parliament. Parliament cannot damage the Constitution, to which it owes its existence, with unlimited amending power.

.....

21. In order to examine the constitutionality or otherwise of a statute or any of its provisions, one of the most relevant considerations is the object and reasons as well as the legislative history of the statute. It would help the court in arriving at a more objective and just approach. It would be necessary for the court to examine the reasons of enactment of a particular provision so as to find out its ultimate impact vis-à-vis the constitutional provisions.

.....

45. In *Maneka Gandhi v. Union of India* [(1978) 1 SCC 248] and *Charan Lal Sahu v. Union of India* [(1990) 1 SCC 613] , the Court has taken the view that when the constitutionality of a law is challenged on the ground that it infringes a fundamental right, what the Court has to consider is the “direct and inevitable effect” of such law. A matter within the legislative competence of the legislature has to be left to the discretion and wisdom of the framers, so long as it does not infringe any constitutional provision or violate any fundamental right. The law has to be just, fair and reasonable.”

DOCTRINE OF PROPORTIONALITY

18.2. Now turning to the Doctrine of Proportionality, in *State of A.P. and others v. McDowell & Co. and others*, supra, the applicability of Doctrine of Proportionality even to the administrative sphere was

observed to be "*yet a debatable issue*". However, in a number of European countries, there is a principle of proportionality ordaining that administrative measures must not be more drastic than is necessary for attaining the desired result. The discussion on this principle in H.W.R.Wade's "*Administrative Law*", Eleventh Edition, may be usefully extracted as under:

"Under the 'structured test' there are four questions which the decision-maker must address. The questions are cumulative in that every one must be satisfactorily answered if the decision is to survive scrutiny. The questions are:

1. Whether the legislative objective is sufficiently important to justify limiting a fundamental right.
2. Whether the measures designed to meet the legislative objective are rationally connected to it.
3. Whether the means used to impair the right or freedom are no more than is necessary to accomplish the objective. (This is the 'necessity question'.)
4. Whether a fair balance has been struck between the rights of the individual and the interests of the community which is inherent in the whole of the Convention. (This is sometimes called 'narrow proportionality'.)

Applying the test is plainly not a mechanical task since each element requires the making of a judgment by the primary decision-maker. But the decision-maker (or the judicial review court when his decision is challenged) cannot avoid these difficult substantive judgments by taking refuge in procedure. The relevant articles of the Convention, Lord Hoffmann has said, are 'concerned with substance, not procedure. [The Convention] confers no right to have a decision [made] in a particular way. What matters is the result'. This shows the extent to which the principle of proportionality departs from classical judicial review where the emphasis falls upon process rather than outcome."

18.3. The Australian Law Reforms Commission in its ALRC Report No.129 on "Traditional Rights and Freedoms – Encroachments by Commonwealth Laws" of 2nd March, 2016 [See: <https://www.alrc.gov.au/publications/freedoms-alrc129>] has called proportionality the "*most important doctrinal tool in constitutional rights law around the world for decades*" and "*the orienting idea in contemporary human rights law and scholarship*" and that it has been received into the constitutional doctrine of courts in continental Europe, the United Kingdom, Canada, New Zealand, Israel, and South Africa.

18.4. This test has been expounded and applied in a recent judgment of the Supreme Court in *Modern Dental College and Research Centre*, *supra*, as under:

"59. Undoubtedly, the right to establish and manage the educational institutions is a fundamental right recognised under Article 19(1)(g) of the Act. It also cannot be denied that this right is not "*absolute*" and is subject to limitations i.e. "*reasonable restrictions*" that can be imposed by law on the exercise of the rights that are conferred under clause (1) of Article 19. Those restrictions, however, have to be reasonable. Further, such restrictions should be "*in the interest of general public*", which conditions are stipulated in clause (6) of Article 19, as under:

'19.(6) Nothing in sub-clause (g) of the said clause shall affect the operation of any existing law insofar as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause, and, in particular, nothing in the said sub-clause shall affect the operation of any existing law insofar as it relates to, or prevent the State from making any law relating to—

(i) the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business, or

(ii) the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise."

60. Another significant feature which can be noticed from the reading of the aforesaid clause is that the State is empowered to make any law relating to the professional or technical qualifications necessary for practising any profession or carrying on any occupation or trade or business. Thus, while examining as to whether the impugned provisions of the statute and rules amount to reasonable restrictions and are brought out in the interest of the general public, the exercise that is required to be undertaken is the balancing of fundamental right to carry on occupation on the one hand and the restrictions imposed on the other hand. This is what is known as "*doctrine of proportionality*". Jurisprudentially, "*proportionality*" can be defined as the set of rules determining the necessary and sufficient conditions for limitation of a constitutionally protected right by a law to be constitutionally permissible. According to Aharon Barak (former Chief Justice, Supreme Court of Israel), there are four sub-components of proportionality which need to be satisfied [Aharon Barak, *Proportionality: Constitutional Rights and Their Limitation* (Cambridge University Press 2012).], a limitation of a constitutional right will be constitutionally permissible if:

- (i) it is designated for a proper purpose;
- (ii) the measures undertaken to effectuate such a limitation are rationally connected to the fulfilment of that purpose;

(iii) the measures undertaken are necessary in that there are no alternative measures that may similarly achieve that same purpose with a lesser degree of limitation; and finally

(iv) there needs to be a proper relation ("*proportionality stricto sensu*" or "*balancing*") between the importance of achieving the proper purpose and the social importance of preventing the limitation on the constitutional right.

61. Modern theory of constitutional rights draws a fundamental distinction between the scope of the constitutional rights, and the extent of its protection. Insofar as the scope of constitutional rights is concerned, it marks the outer boundaries of the said rights and defines its contents. The extent of its protection prescribes the limitations on the exercises of the rights within its scope. In that sense, it defines the justification for limitations that can be imposed on such a right.

62. It is now almost accepted that there are no absolute constitutional rights [Though, debate on this vexed issue still continues and some constitutional experts claim that there are certain rights, albeit very few, which can still be treated as "absolute". Examples given are: (a) Right to human dignity which is inviolable, (b) Right not to be subjected to torture or to inhuman or degrading treatment or punishment. Even in respect of

such rights, there is a thinking that in larger public interest, the extent of their protection can be diminished. However, so far such attempts of the States have been thwarted by the judiciary.] and all such rights are related. As per the analysis of Aharon Barak [Aharon Barak, *Proportionality: Constitutional Rights and Their Limitation* (Cambridge University Press 2012).], two key elements in developing the modern constitutional theory of recognising positive constitutional rights along with its limitations are the notions of democracy and the rule of law. Thus, the requirement of proportional limitations of constitutional rights by a sub-constitutional law i.e. the statute, is derived from an interpretation of the notion of democracy itself. Insofar as the Indian Constitution is concerned, democracy is treated as the basic feature of the Constitution and is specifically accorded a constitutional status that is recognised in the Preamble of the Constitution itself. It is also unerringly accepted that this notion of democracy includes human rights which is the cornerstone of Indian democracy. Once we accept the aforesaid theory (and there cannot be any denial thereof), as a fortiori, it has also to be accepted that democracy is based on a balance between constitutional rights and the public interests. In fact, such a provision in Article 19 itself on the one hand guarantees some certain freedoms in clause (1) of Article 19 and at the same time empowers the State to impose reasonable restrictions on those freedoms in

public interest. This notion accepts the modern constitutional theory that the constitutional rights are related. This relativity means that a constitutional licence to limit those rights is granted where such a limitation will be justified to protect public interest or the rights of others. This phenomenon—of both the right and its limitation in the Constitution—exemplifies the inherent tension between democracy's two fundamental elements. On the one hand is the right's element, which constitutes a fundamental component of substantive democracy; on the other hand is the people element, limiting those very rights through their representatives. These two constitute a fundamental component of the notion of democracy, though this time in its formal aspect. How can this tension be resolved? The answer is that this tension is not resolved by eliminating the “*losing*” facet from the Constitution. Rather, the tension is resolved by way of a proper balancing of the competing principles. This is one of the expressions of the multi-faceted nature of democracy. Indeed, the inherent tension between democracy's different facets is a “*constructive tension*”. It enables each facet to develop while harmoniously coexisting with the others. The best way to achieve this peaceful coexistence is through balancing between the competing interests. Such balancing enables each facet to develop alongside the other facets, not in their place. This tension between the two fundamental aspects—rights on the one hand and its limitation on

the other hand—is to be resolved by balancing the two so that they harmoniously coexist with each other. This balancing is to be done keeping in mind the relative social values of each competitive aspects when considered in proper context.

63. In this direction, the next question that arises is as to what criteria is to be adopted for a proper balance between the two facets viz. the rights and limitations imposed upon it by a statute. Here comes the concept of “*proportionality*”, which is a proper criterion. To put it pithily, when a law limits a constitutional right, such a limitation is constitutional if it is proportional. The law imposing restrictions will be treated as proportional if it is meant to achieve a proper purpose, and if the measures taken to achieve such a purpose are rationally connected to the purpose, and such measures are necessary. This essence of doctrine of proportionality is beautifully captured by Dickson, C.J. of Canada in *R. v. Oakes* [*R. v. Oakes*, (1986) 1 SCR 103 (Can SC)] , in the following words (at p. 138):

“To establish that a limit is reasonable and demonstrably justified in a free and democratic society, two central criteria must be satisfied. First, the objective, which the measures, responsible for a limit on a Charter right or freedom are designed to serve, must be “of” sufficient importance to warrant overriding a constitutional protected right or freedom ... Second ... the party invoking Section 1 must show that the means chosen are reasonable and demonstrably justified. This involves “a form of proportionality test...” Although the

nature of the proportionality test will vary depending on the circumstances, in each case courts will be required to balance the interests of society with those of individuals and groups. There are, in my view, three important components of a proportionality test. First, the measures adopted must be ... rationally connected to the objective. Second, the means ... should impair "as little as possible" the right or freedom in question ... Third, there must be a proportionality between the effects of the measures which are responsible for limiting the Charter right or freedom, and the objective which has been identified as of "sufficient importance". The more severe the deleterious effects of a measure, the more important the objective must be if the measure is to be reasonable and demonstrably justified in a free and democratic society."

64. The exercise which, therefore, is to be taken is to find out as to whether the limitation of constitutional rights is for a purpose that is reasonable and necessary in a democratic society and such an exercise involves the weighing up of competitive values, and ultimately an assessment based on proportionality i.e. balancing of different interests.

65. We may unhesitatingly remark that this doctrine of proportionality, explained hereinabove in brief, is enshrined in Article 19 itself when we read clause (1) along with clause (6) thereof. While defining as to what constitutes a reasonable restriction, this Court in a plethora of judgments has held that the expression "*reasonable restriction*" seeks to strike a balance between the freedom guaranteed by any of the sub-

clauses of clause (1) of Article 19 and the social control permitted by any of the clauses (2) to (6). It is held that the expression "*reasonable*" connotes that the limitation imposed on a person in the enjoyment of the right should not be arbitrary or of an excessive nature beyond what is required in the interests of public. Further, in order to be reasonable, the restriction must have a reasonable relation to the object which the legislation seeks to achieve, and must not go in excess of that object (see *P.P. Enterprises v. Union of India* [*P.P. Enterprises v. Union of India*, (1982) 2 SCC 33 : 1982 SCC (Cri) 341]). At the same time, reasonableness of a restriction has to be determined in an objective manner and from the standpoint of the interests of the general public and not from the point of view of the persons upon whom the restrictions are imposed or upon abstract considerations (see *Mohd. Hanif Quareshiv. State of Bihar*, AIR 1958 SC 731). In *M.R.F. Ltd. v. State of Kerala*, (1998) 8 SCC 227, this Court held that in examining the reasonableness of a statutory provision one has to keep in mind the following factors:

- (1) The directive principles of State policy.
- (2) Restrictions must not be arbitrary or of an excessive nature so as to go beyond the requirement of the interest of the general public.
- (3) In order to judge the reasonableness of the restrictions, no abstract or general pattern or a fixed principle can be laid down so as to be of universal

application and the same will vary from case to case as also with regard to changing conditions, values of human life, social philosophy of the Constitution, prevailing conditions and the surrounding circumstances.

(4) A just balance has to be struck between the restrictions imposed and the social control envisaged by Article 19(6).

(5) Prevailing social values as also social needs which are intended to be satisfied by the restrictions.

(6) There must be a direct and proximate nexus or reasonable connection between the restrictions imposed and the object sought to be achieved. If there is a direct nexus between the restrictions, and the object of the Act, then a strong presumption in favour of the constitutionality of the Act will naturally arise.”

18.5. Thus, now the applicability of the Doctrine of Proportionality into the Constitutional scheme of our country, more specifically enshrined in Article 19 of the Constitution of India, is no more *res integra*. The restriction if reasonable must have a reasonable relationship to the object to which the legislation seeks to achieve.

18.6. Even if the objective with which the legislation was made is examined, as set out in its preamble, it is to provide legal education at

reasonable cost. Nothing prevents the State Government from setting up educational institutions in requisite numbers and the students would thus have the right to choose the educational institutions. No private educational institution would survive unless it gives quality education and better than what is available at less cost. They will only result in excess capacity as in the case of Engineering Colleges in Tamil Nadu. That is not what is sought to be achieved. It is an absolute ban for all times to come which is imposed and only if there is repeal of the enactment would this ban go. Similarly, if it was to be restricted for a certain number of years, then the legislation should have incorporated the same in itself.

18.7. If we turn to the test of proportionality as enunciated aforesaid, the only answer would be that such a blanket prohibition, in fact, does not even subserve the object for which the legislation was enacted and cannot be construed as a reasonable restriction. This is not a case where the majoritarian concept of "*will of the people*" would apply, as it infringes the valuable rights conferred under Part-III of the Constitution of India, which is the grundnorm. We fail to see as to how such a legislation can be saved by any endeavour to read into it what is clearly not within it, i.e., neither a restriction or regulation, but an absolute ban and that too for unlimited time period. Judiciary has to

thus step in to protect the constitutional safeguards given.

TEST OF DIRECT & INEVITABLE EFFECT

18.8. We may now advert to the test of Direct and inevitable effect while testing the validity of a statute or a statutory provision on the touchstone of constitutional validity and whether it violates the rights conferred under Part III of the Constitution of India.

18.9. The jurisprudential history of this test is set out in a judgment of the Supreme Court in *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248, where a 7-Judge Bench in paragraph (18) observed as under:

"18. The first was the decision in *Express Newspapers (P) Ltd. v. Union of India*, AIR 1958 SC 578, where N.H. Bhagwati, J., speaking on behalf of the Court, referred to the observations of Kania, C.J., in *A.K. Gopalan case*, AIR 1950 SC 27 and the decision in *Ram Singh case*, (1971) 3 SCC 864, but ultimately formulated the test of direct and inevitable effect for the purpose of adjudging whether a statute offends a particular fundamental right. The learned Judge pointed out that all the consequences suggested on behalf of the petitioners as flowing out of the *Working Journalists (Conditions of Service) and Miscellaneous Act, 1955*, namely, 'the tendency to curtail circulation and thereby

narrow the scope of dissemination of information, fetters on the petitioners' freedom to choose the means of exercising the right, likelihood of the independence of the press being undermined by having to seek government aid, the imposition of penalty on the petitioners' right to choose the instruments for exercising the freedom or compelling them to seek alternative media etc.', would be remote and depend upon various factors which may or may not come into play. 'Unless these were the direct or inevitable consequences of the measures enacted in the impugned Act', said the learned Judge, 'it would not be possible to strike down the legislation as having that effect and operation. A possible eventuality of this type would not necessarily be the consequence which could be in the contemplation of the legislature while enacting a measure of this type for the benefit of the workmen concerned'. Then again, the learned Judge observed, '.... if the intention or the proximate effect and operation of the Act was such as to bring it within the mischief of Article 19(1)(a), it would certainly be liable to be struck down. The real difficulty, however, in the way of the petitioners is that neither the intention nor the effect and operation of the impugned Act is to take away or abridge the right of freedom of speech and expression enjoyed by the petitioners'. Here we find the germ of the doctrine of direct and inevitable effect, which necessarily must be effect intended by the legislature, or in other words, what may conveniently

and appropriately be described as the doctrine of intended and real effect. So also in *Sakal Papers (P) Ltd. v. Union of India*, AIR 1962 SC 305 while considering the constitutional validity of the Newspaper (Price and Page) Act, 1956 and Daily Newspaper (Price and Page) Order, 1960, this Court applied the test of direct and immediate effect. This Court, relying upon the decision in *Dwarkadas Shrinivas v. Sholapur Spinning & Weaving Co. Ltd.*, AIR 1954 SC 119, pointed out that 'it is the substance and the practical result of the act of the State that should be considered rather than its purely legal aspect' and 'the correct approach in such cases should be to enquire as to what in substance is the loss or injury caused to the citizen and not merely what manner and method has been adopted by the State in placing the restriction'. Since 'the direct and immediate effect of the order' would be to restrain a newspaper from publishing any number of pages for carrying its news and views, which it has a fundamental right under Article 19(1)(a) to do, unless it raises the selling price as provided in the Schedule to the Order, it was held by this Court that the order was violative of the right of the newspapers guaranteed by Article 19(1)(a). Here again, the emphasis was on the direct and inevitable effect, of the impugned action of the State rather than on its object and form or subject-matter."

18.10. The aforesaid test was also noticed in a 5-Judge Bench

decision of the Supreme Court in *Bachan Singh v. State of Punjab*, (1982) 3 SCC 24 in the following words:

“83. It is sufficient for me to state that the ‘object and form test’ or the ‘pith and substance rule’ has been completely discarded by the decisions in *R.C. Cooper v. Union of India*, AIR 1970 SC 564 and *Maneka Gandhi case*, AIR 1978 SC 597 and it is now settled law that in order to locate the fundamental right violated by a statute, the court must consider what is the direct and inevitable consequence of the statute. The impugned statute may in its direct and inevitable effect invade more than one fundamental right and merely because it satisfies the requirement of one fundamental right, it is not freed from the obligation to meet the challenge of another applicable fundamental right.”

18.11. The direct and inevitable effect of the present legislation is the resultant prohibition of opening of any law college for all period of future time, thus, directly impinging the rights conferred under Article 19(1)(g) of the Constitution of India. At the cost of repetition, we may say that the objective is not in furtherance of what the Bar Council of India subsequently envisaged, i.e., a hiatus period to reorganize the system, where the mushrooming law colleges had no link to the requirements of the legal profession. The Bar Council of

India is, in fact, exploring as to where there is excess capacity and where there is less capacity of legal education, keeping in mind the requirements of the students wanting to study law as also the need of the profession.

18.12. As observed in *Peerless General Finance and Investment Co. Ltd. case*, supra, “*smaller inroads may lead to larger inroads and ultimately result in total prohibition by indirect method.*” The present legislation is not a “*smaller inroad*”, but, as already opined, a total prohibition and, thus, directly transgresses or substantially and inevitably affects the fundamental right guaranteed under Article 19(1)(g) of the Constitution of India.

18.13. If one may say, the Eleven-Judge Bench judgment in *T.M.A. Pai case*, supra, really left nothing in doubt insofar as this aspect is concerned opining that the right to establish educational institutions is a fundamental right only subject to reasonable restrictions. In what context the reasonable restriction could be provided has also been set forth before us and we would not repeat the same. Suffice to say that there is a difference between restriction or regulation and absolute ban. It is the latter, and that too for an

indefinite period, which, in our considered view, would make this single object one section legislation invalid, as being *ultra vires* the Constitution of India, more specifically Article 19(1)(g).

18.14. In fact, it was such total prohibition in the context of even business of manufacture of bidis within the agricultural season, which was held to be invalid and unconstitutional in *Chintaman Rao case*, supra. Thus, there cannot be, in our considered view, an absolute ban to opening of private educational institutions in view of the plethora of the law discussed aforesaid.

18.15. We are afraid that the plea of achieving the goal set forth in Articles 41 and 39A of the Constitution of India, being Directive Principles forming Part-IV of the Constitution of India, cannot be used to violate the rights conferred under Part-III of the Constitution of India.

18.16. In *State of Madras v. Champakam Dorairajan*, AIR 1951 SC 226, a Seven-Judge Bench of the Supreme Court dealing with this issue opined that the Directive Principles of State Policy, which by Article 37 are made unenforceable by the Court, cannot override the provisions found in Part III of the Constitution of India, which,

notwithstanding other provisions, are expressly made enforceable by appropriate Writs, Orders or directions under Articles 32 and 226 of the Constitution of India. The Chapter of Fundamental Rights is sacrosanct and not liable to be abridged by any Legislative or Executive act or order, except to the extent provided in the appropriate Articles in Part III. Thus, the Directive Principles of State policy have to conform to and run as subsidiary to the Chapter of Fundamental Rights.

18.17. We are, thus, unhesitatingly of the view that the legislation in question cannot be saved and must be struck down as unconstitutional, being violative of the valuable right conferred under Article 19(1)(g) of the Constitution of India and unprotected by the concept of reasonable restriction under Article 19(6) of the Constitution of India.

B. ALLEGATION OF VIOLATION OF RIGHTS OF MINORITIES:

19.1. The petitioner in W.P.No.29766 of 2014, S.S.M.Educational Foundation, is a public trust stated to be constituted under a registered declaration dated 18.8.2014 and administered by persons belonging to the Muslim community with the primary object to establish a Law

College for the benefit of women in general and particularly, women belonging to the minority community. The petitioner trust claims to be a religious minority trust and, thus, seeks protection of their constitutional right guaranteed under Article 30(1) of the Constitution of India, which reads as under:

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

(1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.”

19.2. The petitioner claims to have created infrastructure for running the law college and applied for No Objection Certificate to establish the private self-financing law college at Tiruvarur. This application was, however, returned on account of the enactment of the said Act.

19.3. The challenge laid by the petitioner is of infringement of the rights of minorities to establish an educational institution and, thus, it is the plea of the petitioner that Section 3 of the said Act is *ultra vires* Article 30(1) of the Constitution of India. The petitioner further submits that free legal aid and equal justice are guaranteed as constitutional rights under Article 39-A of the Constitution of India.

19.4. On the factual aspect, the relevant portion is to the extent that states that 4098 students in Three-Year Course and 1938 students in Five-Year course, in all numbering 6036 students, could not get admission in law colleges in Tamil Nadu in the previous year and, thus, had to migrate to adjacent States like Andhra Pradesh and Karnataka, where 37 and 93 colleges exist respectively. The petitioner claims that more than 700 Engineering Colleges are functioning in State of Tamil Nadu, but there are only 10 Law Colleges.

19.5. The challenge is based on the touchstone of Articles 14, 21 and 39-A of the Constitution of India.

20.1. Mr.T.V.Ramanujam, learned Senior counsel, canvassing the case of the petitioner, while in essence adopting the arguments made in W.P.No.2647 of 2015, sought to claim special privilege as a minority institution. We may, however, note that this petition is solely based on violation of the minority rights and we do not find the necessary pleadings in a larger sense, except mere mention of the Articles.

20.2. The learned Senior Counsel submitted that the right to

establish and administer an educational institution of their choice is a valuable right under Article 30(1) of the Constitution of India. He further referred to Article 41 of the Constitution of India forming part of Part-IV of the Directive Principles, which reads as under:

“Article 41: Right to work, to education and to public assistance in certain cases:

The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.”

20.3. His submission thus was that what is contemplated is a right of regulation within the meaning of Article 41 of the Constitution of India, but the right itself cannot be taken away – distinction being between regulation and prohibition.

20.4. The learned Senior Counsel sought to rely upon the judgment of *T.M.A Pai case*, supra, more specifically paragraph (161). The Supreme Court emphasized the essence of secularism being the recognition and preservation of the different types of people with diverse languages and different beliefs and opined that Articles 29 and 30 of the Constitution of India do not more than seek to preserve the

differences that exist and at the same time, unite the people to form one strong nation. In answer to the eleven questions which had been posed by the Supreme Court, the relevant ones relied upon are reproduced hereunder:

“161.

Q. 3. (b) To what extent can professional education be treated as a matter coming under minorities’ rights under Article 30?

A. Article 30(1) gives religious and linguistic minorities the right to establish and administer educational institutions of their choice. The use of the words “of their choice” indicates that even professional educational institutions would be covered by Article 30.

....

Q. 5. (a) Whether the minorities’ rights to establish and administer educational institutions of their choice will include the procedure and method of admission and selection of students?

A. A minority institution may have its own procedure and method of admission as well as selection of students, but such a procedure must be fair and transparent, and the selection of students in professional and higher education colleges should be on the basis of merit. The procedure adopted or selection made should not be tantamount to maladministration. Even an unaided minority institution ought not to ignore the merit of the students for admission, while exercising its right to admit students to the colleges

aforesaid, as in that event, the institution will fail to achieve excellence.

Q. 5. (b) Whether the minority institutions' right of admission of students and to lay down procedure and method of admission, if any, would be affected in any way by the receipt of State aid?

A. While giving aid to professional institutions, it would be permissible for the authority giving aid to prescribe bye-rules or regulations, the conditions on the basis of which admission will be granted to different aided colleges by virtue of merit, coupled with the reservation policy of the State *qua* non-minority students. The merit may be determined either through a common entrance test conducted by the university or the Government concerned followed by counselling, or on the basis of an entrance test conducted by individual institutions — the method to be followed is for the university or the Government to decide. The authority may also devise other means to ensure that admission is granted to an aided professional institution on the basis of merit. In the case of such institutions, it will be permissible for the Government or the university to provide that consideration should be shown to the weaker sections of the society.

Q. 5. (c) Whether the statutory provisions which regulate the facets of administration like control over educational agencies, control over governing bodies,

conditions of affiliation including recognition/withdrawal thereof, and appointment of staff, employees, teachers and principals including their service conditions and regulation of fees, etc. would interfere with the right of administration of minorities?

A. So far as the statutory provisions regulating the facets of administration are concerned, in case of an unaided minority educational institution, the regulatory measure of control should be minimal and the conditions of recognition as well as the conditions of affiliation to a university or board have to be complied with, but in the matter of day-to-day management, like the appointment of staff, teaching and non-teaching, and administrative control over them, the management should have the freedom and there should not be any external controlling agency. However, a rational procedure for the selection of teaching staff and for taking disciplinary action has to be evolved by the management itself.

For redressing the grievances of employees of aided and unaided institutions who are subjected to punishment or termination from service, a mechanism will have to be evolved, and in our opinion, appropriate tribunals could be constituted, and till then, such tribunals could be presided over by a judicial officer of the rank of District Judge.

The State or other controlling authorities, however, can always prescribe the minimum qualification, experience and other conditions bearing on the merit of an

individual for being appointed as a teacher or a principal of any educational institution.

Regulations can be framed governing service conditions for teaching and other staff for whom aid is provided by the State, without interfering with the overall administrative control of the management over the staff.

Fees to be charged by unaided institutions cannot be regulated but no institution should charge capitation fee.”

20.5. The learned Senior Counsel also referred to the decision of the Supreme Court in *Shivaji University v. Bharti Vidyapeeth*, (1999) 3 SCC 224. The factual matrix shows that the educational institution was desirous of setting up a law college and in that context, the factor relevant was held to be not the existence or non-existence of law college in the district concerned, but rather the population which the existing law college served and the need, if any, for an additional college to be taken into consideration. The refusal by the University to permit the educational institution to start the new college on the ground of existence of a law college was, thus, held to be illegal.

21.1. On the other hand, the learned Advocate General contended that the principle is of equality and not some better right for

the minority institutions and in that behalf referred to the judgment of the Supreme Court in *Ahmedabad St. Xavier's College Society v. State of Gujarat*, (1974) 1 SCC 717, more particularly, paragraph (9), which reads as under:

"9. Every section of the public, the majority as well as minority has rights in respect of religion as contemplated in Articles 25 and 26 and rights in respect of language, script, culture as contemplated in Article 29. The whole object of conferring the right on minorities under Article 30 is to ensure that there will be equality between the majority and the minority. If the minorities do not have such special protection they will be denied equality."

21.2. He also made a reference to the judgment in *T.M.A. Pai case*, supra, more specifically paragraph (138), which reads as under:

"138. As we look at it, Article 30(1) is a sort of guarantee or assurance to the linguistic and religious minority institutions of their right to establish and administer educational institutions of their choice. Secularism and equality being two of the basic features of the Constitution, Article 30(1) ensures protection to the linguistic and religious minorities, thereby preserving the secularism of the country. Furthermore,

the principles of equality must necessarily apply to the enjoyment of such rights. No law can be framed that will discriminate against such minorities with regard to the establishment and administration of educational institutions vis-à-vis other educational institutions. Any law or rule or regulation that would put the educational institutions run by the minorities at a disadvantage when compared to the institutions run by the others will have to be struck down. At the same time, there also cannot be any reverse discrimination. It was observed in *St. Xavier's College case, (1974) 1 SCC 717*, at SCC p. 743, para 9

'The whole object of conferring the right on minorities under Article 30 is to ensure that there will be equality between the majority and the minority. If the minorities do not have such special protection they will be denied equality.'

In other words, the essence of Article 30(1) is to ensure equal treatment between the majority and the minority institutions. No one type or category of institution should be disfavoured or, for that matter, receive more favourable treatment than another. Laws of the land, including rules and regulations, must apply equally to the majority institutions as well as to the minority institutions. The minority institutions must be allowed to do what the non-minority institutions are permitted to do."

21.3. The learned Advocate General also made a reference to

the judgment of the Supreme Court in *Islamic Academy of Education case*, supra, more specifically paragraphs (105) and (118), which read as under:

“105. The statement of law contained in paragraphs 138 and 139 is absolutely clear and unambiguous and no exception can be taken thereto. The doubt, if any, that the minorities have a higher right in terms of Article 30(1) of the Constitution of India may be dispelled in clearest terms inasmuch as the right of the minorities and non-minorities is equal. Only certain additional protection has been conferred under Article 30(1) of the Constitution of India to bring the minorities on the same platform as that of non-minorities as regards the right to establish and administer an educational institution for the purpose of imparting education to the members of their own community whether based on religion or language.

....

118. Human history would show that the struggle of man for democratic polity was inspired by a desire to achieve equality among them. Indeed, some of the world constitutions in their preamble abhor inequality and proclaim to achieve equality in all respects. Whatever may be the power and jurisdiction of the State and State authorities to make a special provision in favour of the backward and the downtrodden, when the court tests the reasonableness of such distinctive State action, it should be done by posing a question

whether such State action to ameliorate social, economic and political poverty; whatever be the reason, delays the journey towards the proclaimed goal of equality. If a measure tends to perpetuate inequality and makes the goal of equality a mirage, such measure should not receive the approval of the Court. The Court, in such circumstances, has to mould the relief by indicating what would be the reasonable measure or action which furthers the object of achieving equality. The concept of equality is not a doctrinaire approach. It is a binding thread which runs through the entire constitutional text. An affirmative action may, therefore, be constitutionally valid by reason of Articles 15(4) and 16(4) and various directive principles of State policy, but the Court cannot ignore the constitutional morality [Ed.: For usage of the term 'constitutional morality' in earlier decisions of the Supreme Court see (1973) 4 SCC 225 (paras 747, 1112 and 1423); 1981 Supp SCC 87 (para 1077); (1993) 4 SCC 97 (para 9) and (2001) 7 SCC 231 (para 8)] which embraces in itself the doctrine of equality. It would be constitutionally immoral to perpetuate inequality among majority people of the country in the guise of protecting the constitutional rights of minorities and constitutional rights of the backward and downtrodden. All the rights of these groups are part of the right to social development which cannot render national interest and public interest subservient to right of an individual or right of a community."

21.4. The learned Advocate General submitted that minority institutions cannot claim immunity from preserving uniformity in education and referred to a Full Bench decision of the Andhra Pradesh High Court in *Society of St. Ann's and the Rayalaseema Navodaya Minorities Christian Educational Society v. The Secretary to Government, Education Department and others*, MANU/AP/0411/1993. In the said judgment the following questions of law were framed for consideration:

“(1) Whether it is open to an educational agency to apply for permission to establish an institution in the absence of the competent authority under Section 20 (1) of the Act, notifying in the prescribed manner, calling for applications from the educational agencies desirous of establishing educational institutions?

(2) Whether the need of the entire State of Andhra Pradesh or the locality in the context of a particular area, has to be taken into consideration in determining the need of the locality under sub-section 3 (a) of Section 20 of the A. P. Education Act, 1982?

(3) While considering the application under Section 20 of the Act, the provisions of the Act, as amended in 1987, have to be applied?

(4) To what extent judicial review is permissible with regard to the policy decision of the Government?"

The relevant discussion with the conclusion is contained in paragraphs (28), (37), (56), (57) and (65), which read as under:

"28. Granting of permission for the establishment of educational institutions is governed by Section 20. The Section has been amended by Act No. 27 of 1987. On and from the commencement of the Amending Act, 1987, no educational institutions shall be established except in accordance with the provisions of the act. The State Government is authorised to appoint by notification a competent authority for such area or for such purposes as may be specified in the notification. It appears that the State Government may appoint for different areas in the State, different competent authorities and if it so desires, there is nothing in the Act that precludes the State Government from appointing one competent authority for the entire State. Sub-section (1) of Section 20 provides that the competent authority appointed by the State Government shall from time to time conduct a survey for the purpose of identifying the educational needs of the locality under its jurisdiction. Thereafter it shall issue a notification through the local newspapers calling for applications from the educational agencies desirous of establishing educational institutions. Educational agency means any body of persons including that of

religious or linguistic minority, entrusted with the establishment and maintenance of a private educational institution of a minority educational institution, as the case may be. In pursuance of the notification issued under sub-section (1) of Section 20 any educational agency intending to establish an educational institution may make an application for the grant of permission therefor to such authority as may be notified by the State Government. Before permission is granted, any educational agency applying for permission shall satisfy the concerned authority that there is need for providing educational facilities to the people in the locality. There are some other requirements mentioned in sub-section (3) of Section 20 that have to be fulfilled by any educational agency applying for permission for establishing an educational institution and for the purpose of this reference, it is not necessary to deal with those other requirements.

...

37. IT is submitted by the learned Advocate General appearing for the State government that the State Government had taken a policy decision, on the basis of all the relevant considerations such as the nature of education, the population, the educational needs of the entire State, the educational standards to be maintained and the unemployment problem faced by the trained B. Ed, graduates, that no new college of education shall be permitted to be established in the State for the time being. He has stated that the State

Government wants to weed out the sub-standard colleges of education in the State. In the counter affidavit filed by the Secretary to Government of Andhra Pradesh, Education Department, it has been mentioned that in the year 1988 the State Government had taken a policy decision of granting permission to new B. Ed. colleges only after weeding out unauthorised substandard institutions and also keeping in view of the need and unemployment problem. It has been further mentioned that the same policy decision has been extended thereafter even for the academic year 1990- 91. In the order rejecting the application of the writ petitioner it has been stated :

'The Government did not grant permission of any new colleges after 1988, though more than 130 applications are still pending with the Government. The present intake capacity as fixed by the Government for a college is 160. If permission is granted for all the 130 applicants, the State will be creating more than additional 20,000 seats in the State in B. Ed., sector. This is certainly not in the interest of the unemployed B. Ed., graduates who are already knocking at the doors of the Government for absorption.

The Government is aware of the seriousness and the cabinet laid down its policy on opening of new B. Ed, colleges in August, 1990, after a detailed review of existing facilities. The new

policy of the Government did not permit the opening of new B. Ed, colleges in the State. . . . For the present there is no need and the application of St. Ann's is therefore rejected.'

....

56. Regulations which serve the interests of the students and teachers and preserve uniformity in general pattern and standards of education are held to be valid. Even a minority institution cannot claim immunity from preserving such uniformity in general pattern and standards of education and following the general laws of the land. The provisions of the Act and the rules made thereunder relating to the establishment of educational institutions are designed to ensure that an institution which is permitted to be established serves the educational needs of a locality or area or of the entire State, as the case may be, and is well equipped to serve the need. The right to establish and run an educational institution with the State's recognition arises only on the State permitting the establishment of an educational institution pursuant to its policy decision and fulfillment of the statutory conditions.

57. Any regulation made for achieving the goal of making the institution an effective vehicle of education for the minority community or other persons who resort to it cannot be considered as the one impinging upon the right guaranteed under Article 30 (1) of the

Constitution. If on an overall assessment of the educational needs of the State in respect of college education for teachers and in the interest of the students and the trained teachers, the maintenance of uniformity in the pattern and the standards of education, the State as controlling authority in the matter of education has taken a policy decision that no college of education shall be permitted to be established, such a policy decision binds not only the non-minorities but also the minorities as well. Otherwise, it will create an imbalance in the society and the power of the State of regulate education will lose its purpose and significance. An educational institution which does not effectively serve any educational need cannot be described as an effective vehicle of education whether it be an institution of the minorities or of the non-minorities. The educational needs either of a locality or of an area or of the entire State are determined more from the point of view of the effective utility of the educational institutions themselves rather than the general societal interest. Therefore, if it is insisted that any educational agency including a minority community which is desirous of establishing an educational institution, shall satisfy the concerned authority before permission is granted that there is need for providing educational facilities to the people, such a pre-condition cannot be said to be invalid. It can be construed as a regulatory measure which is outside the mischief of Article 30 (1). When the State

Government has taken a policy decision after taking into account all relevant considerations that there is no need to establish an institution for imparting a particular kind of education, the State Government cannot be compelled to grant recognition for such an institution under Section 21, even if such an institution is established by a religious or linguistic minority. In the absence of recognition, an institution established even by a religious or linguistic minority cannot effectively function and it will not be able to serve the interests of even the minorities. Therefore, the very establishment of the institution will be an empty formality. Viewed in this background, it is difficult to say that the right guaranteed under Article 30 (1) has been violated, even according to the wider interpretation given in some of the decisions.

....

65. Therefore, questions 1, 2, 3, and 4 are answered as follows:

(1) Even in the absence of a notification issued by a competent authority under sub-section (1) of Section 20 of Andhra Pradesh Education Act, 1982 calling for applications from the educational agencies desirous of establishing educational institutions, it is open to any educational agency including a religious or linguistic minority, to make an application to the State Government for the grant of permission for establishing an educational

institution.

(2) It is for the State Government to decide whether the educational needs of a locality or area or of the entire State shall be taken into account in considering the applications. Even in a case where the educational needs of a locality have been identified by a competent authority under sub-section (1) of Section 20 of the Act, the need for providing educational facilities to the people in the locality contemplated under sub-clause (i) of clause (a) of sub-section (3) of Section 20 of the Act, shall be subject to the policy decision, if any, taken by the State Government in that regard in exercise of its power under Section 18 of the Act.

(3) All applications submitted by the educational agencies for the grant of permission for establishing educational institutions and pending on the date the Amending Act No. 27 of 1987 came into force, shall be considered and disposed of in accordance with law in force on the date of consideration of such applications including the policy decision, if any, taken by the State Government in that regard and in force on the date of such consideration.

(4) If the State Government takes a policy decision in the exercise of statutory power

vested in it under Section 18 as regards the establishment of educational institutions in the State, on the basis of the relevant considerations referred to in the judgment, and such a policy decision is not opposed to either fundamental rights or principles of natural justice and is not found otherwise unreasonable or arbitrary, such a policy decision shall not generally be interfered with by the courts. It will not be possible to lay down precise principles for testing the validity of a policy decision taken by the State Government. It depends upon the facts and circumstances of each case, subject to the general principles referred to by us.”

21.5. The aforesaid judgment also referred to the earlier Full Bench decision of the Kerala High Court in *Fr.Mathew Munthiri Chinthiyil Vicar*, supra, more specifically paragraph (6), which reads as under:

“6. The argument is attractive; but we are afraid, should break down on an analysis. That the right is not absolute and unqualified, but one capable of regulation in the method and manner of its exercise, is now beyond dispute. In the course, of the argument, we had asked the petitioner's counsel whether the minorities would claim a right to establish educational institutions whenever and wherever demanded.

Although with hesitation, petitioner's counsel was obliged to admit that his extreme right cannot be maintained. We think too, that such an extreme position entitling the minority to ask, and to be given, the educational institutions, wherever it wants to establish, at any moment when the cry is raised is not the scope and the content of Article 30. Regulation of the right in time as well as in space, must, it appears, be permissible. Rule 2 seems to provide for nothing more than such a regulation. It provides for the assessment of the educational needs of the locality by a competent authority after taking into account the relevant considerations. In weighing the educational needs of the locality, the authority, we have no doubt, is bound to consider, and will indeed consider, the requirements of the minority communities in establishing educational institutions of their choice. Before finalising the list of Schools to be opened in any locality, applications are to be invited, objections are to be received, and only after consideration of these, is the list to be finalised. The minority community therefore gets abundant opportunity of urging and putting forward its needs for serving the cause of education in a locality. Quite apart from the opportunity that it gets, the authorities are themselves bound to consider on their own the educational needs of the locality from the point of view of the interests of the minority community. We cannot, therefore, in the nature of things, regard R. 2 as passing beyond the

pale of permissible regulations and trenched on the offending sphere of restrictions on the fundamental right. We are of the opinion, that the Rule is well within the borderland of regulation of the right sanctioned by judicial decisions. Rules 2-A, 9, 11 and 17 are merely consequential on R.2, and further amplify the said rule. As realised by the petitioner's counsel, they stand or fall along with R.2. We see no reason to strike down any of these Rules.”

22. On consideration of these aspects, we find that the question raised is really no more *res integra*. The doctrine is one of equality and not inequality in favour of the minority under the guise of protection of constitutional rights of minorities, as observed in *Islamic Academy of Education* case, *supra*. The judgment in *T.M.A. Pai case*, *supra*, also makes it abundantly clear that Article 30(1) of the Constitution of India is a sort of guarantee or assurance to the linguistic and religious minority institutions to establish and administer educational institutions of their choice and not to put the educational institutions run by the minorities at any disadvantage.

23. It is in the aforesaid context that the Full Bench of the Andhra Pradesh High Court in *Society of St. Ann's* case, *supra*, emphasized that the special rights for minorities is intended to bring

about equilibrium and, thus, where a policy decision was taken after all relevant considerations not to establish institutions for imparting a particular kind of education, the minority institutions would have no better right in that behalf. To the same effect has been the Full Bench decision of the Kerala High Court in *Fr.Mathew Munthiri Chinthiyil Vicar* case, supra.

24. It is clear from the above judgments that the minority institutions cannot bypass the statutory requirements and will have to be treated equally and on a par with non-minority institutions. We are, thus, of the view that the claim in this writ petition (W.P.No.29766 of 2014) based on some special rights for minority institution in the face of a statutory bar under the said Act cannot be sustained. However, the institution would get the benefit of the said Act itself being quashed while deciding the first issue and, thus, the petition would succeed on that account and the application submitted by the petitioner institution would be liable to be considered as for any other institution, on merits, de hors the said Act which has been struck down. Though not specifically prayed, the effect would be that the order dated 26.9.2014 of the Director of Legal Studies/second respondent would be set aside.

C. WHETHER THE LEGISLATION HAS PROSPECTIVE OR RETROSPECTIVE EFFECT:

25.1. The writ petition in W.P.No.2647 of 2015, as stated supra, is preferred by Vanniar Educational Trust seeking quashing of the order dated 28.1.2015 passed by the Tamil Nadu Dr. Ambedkar Law University/second respondent, which order was predicated on the ground that the said Act had come into force with effect from 2.9.2014.

25.2. To say the least, the institution has battled from one forum to the other to establish the law college and practically succeeded repeatedly in different forums, though on certain matters the request was returned for analyzing the meeting of certain norms. We are not once again repeating the facts in this behalf, which we have set out in the beginning of the judgment itself. We may also note that in view of the said Act being held *ultra vires* the Constitution of India and being quashed, the necessity for deciding the issue really does not arise. But considering the fact that this is a challenge based even assuming the said Act would be valid, we would like to go into the issue.

25.3. The No Objection Certificate was issued in the present case by the State of Tamil Nadu on 25.2.2013 and remains in force. The

matter was pending with the Tamil Nadu Dr.Ambedkar Law University/ second respondent for affiliation when the said Act came into force. The condition imposed under G.O. (Ms.) No.190, dated 25.2.2013 was that the petitioner has to commence the course within two years from the issue of the said order, which would expire on 24.2.2015. This is the reason why the learned Single Judge in terms of the order dated 23.2.2015 opined that the time period could not be held to have lapsed in view of the pendency of the petition. We must say that any other view as an interim measure would have been a travesty of justice.

25.4. It is the plea of the petitioner that there can be no retrospective application of the said Act and it is not so provided and, thus, the provisions of the said Act would have no application to the institution of the petitioner. Both the No Objection Certificate and the process of affiliation had already commenced prior to the enactment of the said Act. In fact, the plea is that the said Act was a tailor-made legislation to somehow prevent the effect of the judicial pronouncements to come into force, apart from the plea of promissory estoppel. The petitioner, in fact, claims that there have been eight

rounds of litigation from time to time only to set up the law college. There is also a prayer made for commencement of the Law College in the academic year 2015-2016, of course on the petitioner's succeeding now it will only be the academic session 2017-2018.

25.5. Mr.G.Masilamani, learned Senior Counsel for the petitioner referred to the judgment of a Five-Judge Bench of the Supreme Court in *K.S.Paripoornan v. State of Kerala and others*, (1994) 5 SCC 593. In the said decision, the question raised was as to whether Section 23(1-A) as inserted by the Land Acquisition (Amendment) Act, 1984 would have retrospective applicability. The discussion on the retrospectivity issue is contained in the paragraphs (62) to (65), which read as under:

“62. In view of the submissions that have been advanced the first question which needs to be examined is whether sub-section (1-A) of Section 23 has been correctly construed in *Union of India v. Zora Singh case*, (1992) 1 SCC 673 to apply on its own force to matters in which acquisition proceedings were initiated prior to the commencement of the amending Act and were pending on the date of said commencement.

63. *Zora Singh* proceeds on the basis, and rightly so, that Section 23(1-A) deals with substantive rights and

it confers a substantive right to claim additional amount calculated as set out in the said sub-section in the circumstances set out therein. The applicability of the said provisions to proceedings for acquisition which were pending on the date of coming into force of the said provisions has, therefore, to be examined keeping in view the aforesaid nature of the provisions.

64. A statute dealing with substantive rights differs from a statute which relates to procedure or evidence or is declaratory in nature inasmuch as while a statute dealing with substantive rights is prima facie prospective unless it is expressly or by necessary implication made to have retrospective effect, a statute concerned mainly with matters of procedure or evidence or which is declaratory in nature has to be construed as retrospective unless there is a clear indication that such was not the intention of the legislature. A statute is regarded as retrospective if it operates on cases or facts coming into existence before its commencement in the sense that it affects, even if for the future only, the character or consequences of transactions previously entered into or of other past conduct. By virtue of the presumption against retrospective applicability of laws dealing with substantive rights transactions are neither invalidated by reason of their failure to comply with formal requirements subsequently imposed, nor open to attack under powers of avoidance subsequently

conferred. They are also not rendered valid by subsequent relaxations of the law, whether relating to form or to substance. Similarly, provisions in which a contrary intention does not appear neither impose new liabilities in respect of events taking place before their commencement, nor relieve persons from liabilities then existing, and the view that existing obligations were not intended to be affected has been taken in varying degrees even of provisions expressly prohibiting proceedings. (See *Halsbury's Laws of England*, 4th Edn., Vol. 44, paras 921, 922, 925 and 926.)

65. These principles are equally applicable to amendatory statutes. According to Crawford:

'Amendatory statutes are subject to the general principles ... relative to retroactive operation. Like original statutes, they will not be given retroactive construction, unless the language clearly makes such construction necessary. In other words, the amendment will usually take effect only from the date of its enactment and will have no application to prior transactions, in the absence of an expressed intent or an intent clearly implied to the contrary. Indeed there is a presumption that an amendment shall operate prospectively.'

(See *Crawford's Statutory Construction*, pp. 622-23)"

25.6. The learned Senior Counsel referred to G.O.(Ms) No.194, dated 5.3.2012 setting out the guidelines for grant of No Objection Certificate to start Self-Financing Private Law College to contend that

the application was already submitted, inspection carried out, report obtained and, therefore, in view of G.O.Ms.No.190, Law (LS) Department, dated 25.2.2013, the college already stood established, and, in fact, paragraph (2) of the said government order reports that the petitioner has complied with all the directions of the High Court and, thus, permission has been granted to establish the private law college. Paragraphs (2) and (3) of G.O.Ms.No.190, Law (LS) Department, dated 25.2.2013, read as under:

“2. The Vanniyar Educational Trust in the references 2nd and 4th read above, has complied with the aforesaid directions of the High Court of Madras.

3. In the said circumstances, the Government, after careful consideration, have decided to grant permission to the Vanniyar Educational Trust to establish a private law college in the name and style of 'Saraswathi Law College' at Tindivanam, Villupuram district and accordingly grants permission, subject to the following conditions, namely:-

- i. Affiliation from the Tamil Nadu Dr. Ambedkar Law University and Approval from the Bar Council of India shall be obtained before commencement of the Course.
- ii. The Trust shall follow the communal reservation policy of the Government in the admission of students in the law college.
- iii. The Trust shall also follow the Orders in regard to

admission of students to private law colleges issued by the Government from time to time.

- iv. Tuition fee including special fee shall be collected from the students only at the rates prescribed by the Government from time to time.
- v. Capitation fee or any other fee in the form of donation shall not be collected from the students.
- vi. The Trust shall commence the course within a period of 2 years from the date of issue of this order."

The aforesaid, it was submitted, thus required only the affiliation process to go through with the Tamil Nadu Dr. Ambedkar Law University, as the other aspects only dealt with the nature of reservation policy to be followed, admission process, tuition fee and capitation fee. The last requirement was for commencement of course within a period of two years from the date of issue of the order, which in turn was to require affiliation, as without the same the college could not commence the course. It was submitted that there was no doubt that the legislation was prospective in nature and would apply to establishment of law colleges in the future.

25.7. Lastly, the learned Senior Counsel turned to the Tamil Nadu Dr. Ambedkar Law University Affiliation and Approval of Law Colleges Revised Regulations, 2013, more specifically Clause 2.1 which

defines "affiliation" as under:

"2.1. 'affiliation' together with its grammatical variations, includes, in relation to a college, affiliation of such college by, association of such college with, and admission of such college to the privileges of the Tamil Nadu Dr. Ambedkar Law University."

It was, thus, contended that the establishment of law college and its affiliation are two different aspects.

26.1. The learned Advocate General, though could not really contend that the legislation was retrospective in application, sought to contend that the process of establishment of the college was three-fold process. The first was the No Objection Certificate to be granted by the State Government, which had in fact been granted vide G.O.Ms.No.190, Law (LS) Department, dated 25.2.2013. The second was the requirement of affiliation from the Tamil Nadu Dr. Ambedkar Law University and the third would be recognition by the Bar Council of India. Thus, the submission was that the college had not been established.

26.2. His further submission was that the law prevailing as on the date of consideration of the application by the University would apply and referred to certain judicial pronouncements.

(i) In *Sulekhan Singh and Company and others v. State of U.P. and others*, (2016) 4 SCC 663, the issue dealt with was with regard to the Mines and Mineral (Development and Regulation) Act, 1957. The government order in question related to a change of policy. The change of policy was in the context of State largesse to be distributed by non arbitrary method consistent with Article 14 of the Constitution of India. The relevant observations are contained in paragraph (13), which reads as under:

"13. In spite of the said judgment of the High Court, certain leases were granted in violation of G.O. dated 31st May, 2012 which came to be challenged before the High Court. Reiterating its view, in its judgment dated 12th September, 2014 in *Sukhan Singh v. State of U.P.*, 2014 (11) ADJ 89, it was held that no pending application as on 31st May, 2012 could be taken cognizance of. It was held that:

'19. The basic position of law is that the mere filing of an application either for the grant of a lease or for the renewal of a lease does not confer a vested right for the grant or renewal of a lease and, an application has to be disposed of on the basis of the rules as they stand on the date of the disposal of the application.

20. This being the clear position in law which has been enunciated in the judgment of the

Supreme Court in *State of Tamil Nadu v. Hind Stone and others*, (1981) 2 SCC 205, it would be impermissible to accept the contention of the fourth respondent that its applications were liable to be disposed of, not on the basis of the provisions of Chapter IV but under Chapter II of the Rules. Besides, the acceptance of any such submission would be contrary to the law laid down by a Division Bench of this Court in *Nar Narain Mishra v. State of U.P.*, 2013 (2) ADJ 166, which follows the decision of the Supreme Court."

(ii) The learned Advocate General also referred to a decision of the Supreme Court in *State of Tamil Nadu v. Hind Stone and Others*, (1981) 2 SCC 205, once again dealing with the mining issue qua lease under Rule 8 of the Tamil Nadu Minor Mineral Concession Rules, 1959. The relevant paragraph (13) reads as under:

"13. Another submission of the learned counsel in connection with the consideration of applications for renewal was that applications made sixty days or more before the date of GOMs No. 1312 (December 2, 1977) should be dealt with as if Rule 8-C had not come into force. It was also contended that even applications for grant of leases made long before the date of GOMs No. 1312 should be dealt with as if Rule 8-C had not come into force. The submission was that it was not open to

the government to keep applications for the grant of leases and applications for renewal pending for a long time and then to reject them on the basis of Rule 8-C notwithstanding the fact that the applications had been made long prior to the date on which Rule 8-C came into force. While it is true that such applications should be dealt with within a reasonable time, it cannot on that account be said that the right to have an application disposed of in a reasonable time clothes an applicant for a lease with a right to have the application disposed of on the basis of the rules in force at the time of the making of the application. No one has a vested right to the grant or renewal of a lease and none can claim a vested right to have an application for the grant or renewal of a lease dealt with in a particular way, by applying particular provisions. In the absence of any vested rights in anyone, an application for a lease has necessarily to be dealt with according to the rules in force on the date of the disposal of the application despite the fact that there is a long delay since the making of the application. We are, therefore, unable to accept the submission of the learned counsel that applications for the grant or renewal of leases made long prior to the date of GOMs No. 1312 should be dealt with as if Rule 8-C did not exist."

27. Now turning to our conclusion of the aforesaid submissions, we are of the view that there can hardly be any doubt that the said Act would not have retrospective application. The law in this regard has

been clearly set out hereinbefore. The difference between the statute dealing with substantive rights from a statute relating to procedure or evidence has been explained in *K.S.Paripoornan case*, supra, opining that a statute dealing with substantive rights is prima facie prospective unless it is expressly or by necessary implication made to have retrospective effect, contrary to matters of procedure or evidence or declaration which have to be construed as retrospective, unless there is a clear indication that such was not the intention of the legislature. In fact, amendments to a statute also do not have a retrospective effect in the aforesaid context. In the present case, there is nothing to even remotely suggest that there is any express provision or implication that this legislation would have retrospective effect and rightly so.

28. The gravamen of the submission of the learned Advocate General was that if a change of law takes place, then it will come into force from the law so changing and since the application of the petitioner to set up the law college had not gone through the complete process, the ban under the said Act would apply. The two judgments referred to by the learned Advocate General dealing with mining matters are also towards this effect.

29. In the aforesaid context, what we have to consider is whether it can be said that the process which the petitioner had to go through to set up the college was incomplete and, thus, the ban came into force. In our view, the answer has to be in favour of the petitioner. There were impediments put from time to time by the State Government, as discussed in the factual matrix at the inception of the judgment, and in each of these cases the petitioner succeeded in the judicial process. The petitioner had to institute multifarious processes to come to the stage where finally the State Government was left with no option but to issue G.O.Ms.No.190, dated 25.2.2013, to comply with the judicial verdicts. That was the end of the matter insofar as the establishment of the college was concerned. Thus, the college having already been established, there was nothing more required to be done which could in any manner be prevented by the said Act. The clock could not be put back.

30. The further action of affiliation to the Tamil Nadu Dr.Ambedkar Law University, though in furtherance of recognition by the Bar Council of India, are completely different aspects. The college may be established, but may or may not get affiliation. That right is not a fundamental right, but would depend on complying with the norms for affiliation. Similarly, whether the Bar Council of India gives

recognition or not would be again another aspect. The Tamil Nadu Dr.Ambedkar Law University/second respondent, thus, fell into a complete error while issuing the impugned letter dated 28.1.2015 intimating the petitioner that in view of the bar under the said Act, affiliation process could not be completed. The Tamil Nadu Dr.Ambedkar Law University was only required to see that the Tamil Nadu Dr. Ambedkar Law University Affiliation and Approval of Law Colleges Revised Regulations, 2013 were complied with and the issues that had been raised in support of the same have been stated to be complied with by the petitioner. That compliance alone had to be considered by the University. We have already observed that the letter dated 3.9.2015 of the Bar Council of India would, thus, not be an impediment in this case.

31. The result of the aforesaid discussion is that this writ petition in W.P.No.2647 of 2015 is allowed and the impugned order dated 28.1.2015 is quashed and the matter remitted to the second respondent/Tamil Nadu Dr.Ambedkar Law University to process the case of the petitioner for affiliation in terms of the Tamil Nadu Dr. Ambedkar Law University Affiliation and Approval of Law Colleges Revised Regulations, 2013 on merits within a maximum period of four weeks of the receipt of the order.

EPILOGUE

32. We would like to add a note in the end arising from the general directions we had issued while considering these petitions arising from our concern about legal education and the number of law students being turned out. It is in this context on 31.8.2015 we had observed that the Bar Council of India should report to us whether any study has been carried out about the requirement of the number of lawyers each year, keeping in mind the pending litigation and the expected flow of litigation. This was an important facet as it would have an impact on how many law colleges would be required and whether there is already excess capacity. We had observed that a cue can be taken from the way the Institution of Chartered Accountants works. The other aspect vide the same order we had observed was in the context of the imbalance in the number of law colleges, i.e., Tamil Nadu has only 7 Government Law colleges, 3 Deemed Universities and 1 Private Law College, as compared to 37 Law Colleges in Andhra Pradesh and 93 Law Colleges in Karnataka.

33. The Bar Council of India informed us that the Legal Education Committee was examining the whole issue with a detailed

study to be conducted to have a uniform growth of colleges in various States keeping in mind the mushrooming of colleges in various States qua which a resolution was passed on 3.9.2015. The letter dated 3.9.2015, in fact, refers to a resolution of the General Council dated 6.6.2015 requesting the State Governments to restrict the number of No Object Certificates to be granted for coming three years. We may observe that the word used is "*restrict*". Inspection of institutions was envisaged so that there could be verification whether the existing institutions also are working in a proper manner or not.

34. On 14.6.2016, we were informed that the Bar Council of India, after the meeting of its Council, has requested the Chairman to take appropriate steps to obtain directions from the Hon'ble Chief Justice of India for making a request for nomination of the Chairpersons of the Committees substantively to deal with the issue of the number of law colleges which need to exist for each State and the letter sent on 5.5.2016 is awaiting response.

35. We may note that an endeavour was made that these petitions should not be set down for hearing in view of these developments, but we did not agree with these submissions in view of the stand of the learned counsel for the petitioners that there is a

distinction between regulation and ban – rightly so, and the other limb of the argument that where No Objection Certificate has been issued whether the legislation imposing ban would be an impediment or not, will have to be examined.

36. We may say that as per the submission of the learned counsel for the Bar Council of India, the complete ambit of legal education is receiving attention now – setting up of institutions, quality of education, number of lawyers joining the profession, the need of the profession, etc. and the Hon'ble Supreme Court is seized of certain aspects of the matter, apart from the Law Commission of India.

37. Education must go on – but from and to the right people and of quality, for it is said that:

**“????????????????????????????????????
????????????????????.”**

*(Knowledge is the greatest of riches, for it is permanent &
imperishable)*

- Thirukural : 400

CONCLUSION

38. Now turning to the conclusion, in view of what we have observed and concluded aforesaid, the result is as under:

- i. W.P.No.29536 of 2014 is allowed and the Tamil Nadu Establishment of Private Law Colleges (Prohibition) Act, 2014 is quashed as *ultra vires* the Constitution of India.
- ii. W.P.No.29766 of 2014 is partly allowed. In view of the striking down of the said Act, the application submitted by the petitioner institution would be liable to be considered as for any other institution, on merits, and consequently, the order dated 26.9.2014 of the Director of Legal Studies is set aside.
- iii. W.P.No.2647 of 2015 is allowed and the order dated 28.1.2015 passed by the Tamil Nadu Dr.Ambedkar Law University/second respondent is quashed with a direction to the Tamil Nadu Dr.Ambedkar Law University/second respondent to examine the case of the petitioner in terms of the Tamil Nadu Dr. Ambedkar Law University Affiliation and Approval of Law Colleges Revised Regulations, 2013 and take a decision on the same, keeping in mind the compliances already referred to, within a maximum period of four weeks from the date of receipt of the order. G.O.Ms.No.190, Law (LS) Department, dated 25.2.2013, continues to hold good even though stated to be for two years, on account of

the pending litigation and the wrongful and belated rejection by the Tamil Nadu Dr.Ambedkar Law University/second respondent, specifically in view of the interim order dated 23.2.2015 of the learned Single Judge.

iv. In the given facts of the case, the petitioner in W.P.No.2647 of 2015 is entitled to costs from the respondent/State Government quantified at Rs.20,000/- (Rupees Twenty Thousand only).

(S.K.K., CJ.) (R.M.D., J.)
26.10.2016

Index : Yes
Internet : Yes

sasi

To:

1. The Secretary to Government
State of Tamil Nadu
Department of Law, Secretariat
Chennai – 600 009.
2. The Chairman/Secretary
Bar Council of India
No.21, Rouse Avenue
New Delhi – 110 002.
3. The Registrar
Tamil Nadu Dr.Ambedkar Law University
“Poompozhi”
No.5, Greenways Road
Chennai – 600 028.
4. The Secretary
Government of India
Department of Law and Justice
New Delhi.
5. The Director of Legal Studies
Purasawalkam High Road
Kilpauk, Chennai – 600 010.

(126)

THE HON'BLE CHIEF JUSTICE
AND
R.MAHADEVAN,J.

(sasi)

W.P.Nos.29536 and 29766 of 2014
and 2647 of 2015

26.10.2016