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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 7059/2016

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Reserved on : 24th January, 2017

Pronounced on: 30th May, 2017

RAJESH KUMAR RAI & ORS

..... Petitioner

Through: Mr. Joginder Sukhija and Ms. Karuna Chhatwal, Advocates.

Versus

UNION OF INDIA & ORS

..... Respondent

Through: Mr. Anil Soni, CGSC with Mr. Abhishek Khanna and Ms. Priyanka Singh, Advs for the UOI.

Mr. M.J.S. Rupal, Advocate for the Delhi University.

Mr. Preet Pal Singh, Advocate for the BCI.

W.P.(C) 7546/2016

MOHIT DIXIT & ORS.

..... Petitioner

Through Mr. Jai Bansal, Advocate.

Versus

UNION OF INDIA & ORS.

..... Respondent

Through Mr. Anil Soni, CGSC with Mr. Abhishek Khanna and Ms. Priyanka Singh, Advocates for the UOI.

Mr. M.J.S. Rupal, Advocate for the Delhi University.

Mr. Preet Pal Singh, Advocate for the BCI.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE CHANDER SHEKHAR

SANJIV KHANNA, J.

1. This common judgment will dispose of the aforesaid writ petitions.

2. The *primary* challenge in the writ petitions is to the LL.B. admission notice dated 23rd August, 2016 issued by the Head and Dean of the Faculty of Law, University of Delhi, which reads as under:

“23 August, 2016

NOTICE
LL.B. Admission

In pursuance of the decision taken in its meeting held on 20/21 August, 2016 by the legal education committee of the Bar Council of India and the directions given by the Hon’ble High Court of Delhi on 22 August, 2016, it is notified that Admission Process for 1st year LL.B. course, University of Delhi for the session 2016-17 will start from 26th of August, 2016 at 10:30 a.m. for the total number of 2310 seats.

Before coming for Admission, the appellants are required to update the information on the Postgraduate Admission Portal. Those applicants who have already updated the information earlier, are required to update the information again. For the details regarding the schedule, it is requested to kindly check the website www.du.ac.in

Class timing and place of teaching for LL.B. 1st year is as follows at North Campus:

CLC	8:30 a.m. to 2:00 p.m. (Old Law Faculty Building)
LC-I	2:00 p.m. to 7:30 p.m. (New Law Faculty Building)
LC-II	8:00 a.m. to 1:30 p.m. (New Law Faculty Building)

”

3. In the Writ Petition (C)No.7059/2016 filed by Rajesh Kumar Rai and others, the writ petitioners have also prayed for striking down Clause 5

of Schedule-III of Rules of Legal Education 2008 Rules as enacted by the Bar Council of India being arbitrary and violative of the Fundamental Rights. Clause 5 of Schedule-III of the Rules read as under:

“5. General timing for conduction of courses in Academic Building. Classes may be conducted between 8 a.m. to 7 p.m. in an Institution, which is not fully residential. However, the Library may remain open till 10 p.m.”

4. The petitioners, who are Government employees, are aggrieved by the directions issued by the University of Delhi at the behest and on the asking of the Bar Council of India, fixing the timings for LLB Classes in respect of Law Centre-I, from 2:00 p.m. to 7:30 p.m. instead of earlier timings from 5:55 p.m. to 9:35 p.m. The petitioners being Government employees, it is apparent, may not be able to attend classes during the office working hours. Thus, they would possibly not be able to pursue the degree course which entitles them to enroll and practice as an Advocate.
5. The contention of the petitioner is that the timings for the classes have been arbitrarily fixed and the timings so fixed deny and prevent the petitioners of their right to education. The restrictions placed /imposed by the Bar Council is illogical, capricious and arbitrary. The time restriction is not in the nature of professional or educational standard and has nothing to do with the infrastructure requirement. The Rules being in the nature of delegated legislation can only be framed if such power is conferred by the principal Statute or the main enactment. The timings so stipulated have no bearing or connect with the standard of

education. In the alternative, it is submitted that clause 5 of Schedule-III with reference to timings uses the word ‘may’ and therefore, is discretionary and not mandatory. Our attention was also drawn to the affidavit filed by the University in W.P.(C) No.7059/2016 **Rajesh Kumar Rai & Ors Vs. Union Of India & Others**, stating that the said University has reservation on implementation of the Clause 5 of Schedule III as enacted by the Bar Council of India, *albeit* the University was required to implement the condition imposed in the letter dated 23rd August, 2016 issued by the Bar Council of India, copy of which has been enclosed in the said affidavit.

6. The Bar Council of India has contested the said contentions on various grounds and reasons which will be noticed below.
7. We would first examine the statutory provision and whether the Clause 5 of Schedule-III to the Rules or the condition imposed by the Bar Council of India vide letter dated 23rd August, 2016 is justified and valid.
8. The Bar Council of India is a statutory Council constituted under Section 4 and bestowed with the functions under Section 7 of the Advocates Act, 1961(Act, for short). The Bar Council of India is a corporate body having perpetual succession and a common seal.
9. Section 7 of the Act relating to functions of the Bar Council of India reads as under:

“7. Functions of Bar Council of India.— [(1)] The functions of the Bar Council of India shall be—

(b) to lay down standards of professional conduct and etiquette for advocates;

- (c) to lay down the procedure to be followed by its disciplinary committee and the disciplinary committee of each State Bar Council;
- (d) to safeguard the rights, privileges and interests of advocates;
- (e) to promote and support law reform;
- (f) to deal with and dispose of any matter arising under this Act, which may be referred to it by a State Bar Council;
- (g) to exercise general supervision and control over State Bar Councils;
- (h) to promote legal education and to lay down standards of such education in consultation with the Universities in India imparting such education and the State Bar Councils;
- (i) to recognize Universities whose degree in law shall be a qualification for enrolment as an advocate and for that purpose to visit and inspect Universities [or cause the State Bar Councils to visit and inspect Universities in accordance with such directions as it may give in this behalf];
- [(ia) to conduct seminars and organize talks on legal topics by eminent jurists and publish journals and papers of legal interest;
- (ib) to organise legal aid to the poor in the prescribed manner;
- (ic) to recognise on a reciprocal basis foreign qualifications in law obtained outside India for the purpose of admission as an advocate under this Act;]
- (j) to manage and invest the funds of the Bar Council;
- (k) to provide for the election of its members;
- (l) to perform all other functions conferred on it by or under this Act.

(m) to do all other things necessary for discharging the aforesaid functions;”

The aforesaid functions have to be read in the light of the Statement of Objects and Reasons for enacting the Act i.e. The Advocates Act, 1961. This enactment was the result of the report of the Law Commission relating to the Reforms in the Judicial Administration and the recommendations made by the All India Bar Committee. For our purposes, Clauses (h) and (i) to Sub-Section 1 to Section 7 are relevant. The Bar Council of India has been assigned the function to promote legal education and to lay down standards of such education in relation to the universities in India imparting legal education and the State Bar Councils. The Bar Council of India is empowered to recognize universities whose degree in law shall be the qualification for enrolment as an Advocate. For this purpose, the Bar Council is entitled to visit and inspect the university in connection with such direction as may be given in this behalf. Clause (m) to Sub-section (1) of Section 7 states that the Bar Council can do all other things necessary for discharging the aforesaid functions, thereby expanding the scope and ambit of the Bar Council to include connected and ancillary aspects relating to functions specifically stipulated in the earlier clauses.

10. Section 15 of the Act authorizes Bar Council to make rules to carry out the purposes of Chapter II which includes Section 7. Section 29 of the Act states that subject to the provisions of the enactment and the Rules from appointed date only one class of persons are entitled to practice

the profession of law namely, Advocates. Thus, Advocates alone have exclusive right to practice the profession of law.

11. Section 49 of the Act relates to the general power of the Bar Council of India to make rules for discharging its functions under the Act. In particular, under Clause (d), the Bar Council of India has the power to prescribe, set conditions and requisites relating to standards of legal education to be observed by the universities in India and inspection of any university for that purpose. For the sake of convenience we reproduce Clause (d) to Section 49(1) of the Act, which reads as under:

“(d) the standards of legal education to be observed by universities in India and the inspection of universities for that purpose”

12. In other words, it cannot be disputed and is beyond challenge that the Parliament while enacting the Act, i.e. the Advocates Act 1961 has conferred the function to promote legal education and to lay down standard of such education on the Bar Council of India. Section 49(1) enables the Bar Council of India to frame rules with regard to the standard of legal education to be observed by the universities and for inspection of the universities for the said purposes. This is notwithstanding that the Parliament in respect of the university education had earlier enacted the University Grants Commission, 1956, (Commission, for short) which enables the said Commission to make provision for coordination and determination of standard in universities. The Commission is empowered to make recommendations to universities for improvement of university education and advise the university regarding action to be taken for the

purpose of implementation of the said recommendation. Pertinently, Clauses (d) to Section 49 authorizes the Bar Council of India to frame standards of legal education to be observed by the universities and inspection of the universities for the said purpose.

13. The Rules i.e. the Bar Council of India Rules 2008 is divided into parts and chapters. Part-IV relates to Rules of Legal Education and in specific terms makes reference to Section 7(1) (h) and (i) of the Act. It also makes reference to Section 24 (1) (c) (iii) on enrolment of Advocates, who have undertaken the degree course from the university which is recognized for the purposes of the Act by the Bar Council of India. Specific reference is also made to Clause (iii) (a) of Section 24(1)(c) and Clauses (af), (ag), (d) and (f) of Section 49. Clause (af) relates to minimum qualifications required for admission to a course of the degree of law from any recognized university.
14. Chapter-I of Part-IV refers to the Rules for Legal Education. Rule 2 is a definition clause and Clause (xxii) to Rule 2 states 'Recognized University' means university, whose degree in law is recognized by the Bar Council of India within the rules. Clause (xxiii) to Rule 2 defines expression 'Regular Course of Study' to mean and include a course which runs for five hours a day continuously with a half hour recess. It states that the said course must be of minimum or not less than 30 hours of working schedule per week. The said Clause i.e. Clause (xxiii) to Rule 2 for the sake of convenience is reproduced below:

(xxiii) "Regular Course of Study" means and includes a course which runs for at least five hours a day continuously with an

additional half an hour recess every day and running not less than thirty hours of working schedule per week.”

15. Rule 3 states that State Bar Council will enroll an Advocate only such candidates who have passed from the recognized university etc.
16. Rule 6 prohibits and states that no student shall register simultaneously for degree of law programme with any graduate or post graduate or certificate course. A short duration part time certificate course in language, computer science, computer application etc. is permissible.
17. Rule 8 deals with ‘standards of courses’ to be maintained by the universities / centers of legal education. It also specifies that there is a need for regular and proper valuation system for the purpose of certification of the students graduating in law.
18. Rule 10 prescribes ‘semester system’, which shall be 15 weeks in the case of a unitary degree course and 18 weeks in the case of a double degree integrated course, with not less than 36 hours of classes per week, that include tutorials, moot court exercises, seminars etc. There is a minimum requirement of 30 hours of lectures per week. There are two provisos which prescribe minimum hours of classes or lectures and weeks in the trimester system.
19. Rule 16 deals with ‘Conditions for a University to affiliate a Centre for Legal Education’. Rule 18 deals with ‘inspection of University’ and Rule 19 prescribes ‘Types of Inspection’. Rule 25 relates to ‘Recommendation of the Legal Education Committee’ and their powers. Rule 26 deals with the ‘Approval’ to the head of the institution and the Registrar of the University by the Bar Council of

India on the recommendation of the Legal Education Committee. Rule 27 deals with the 'Revocation of Approval'.

20. Rule 31 prescribes that the Legal Education Committee may determine the norms of accreditation from time to time, in addition to or in supplementation of the requirements and mandate specified in Sub-clauses (i) to (xi). The aforesaid Rule and the sub-clauses being relevant have been reproduced below:-

"31. Rules for accreditation

The Legal Education Committee may determine the norms of accreditation from time to time in addition to or in supplementation of the following:

- (i) The accreditation and certification shall be made either directly by the Accreditation Committee of the Bar Council of India based on the analytical tools of credit rating system as far as adaptable or the Bar Council of India may cause it done through National Assessment and Accreditation Council based on the analysis made by NAAC.
- (ii) Once the accreditation is done it shall remain valid for a period of five years from the date the certification is communicated to the institution concerned.
- (iii) The performance analysis shall have three components, academic, administration and financial.
- (iv) The study for determining performance rate shall be based on previous five years' data, current contents of the program and the future projection made on the basis of data analysis.
- (v) The Accreditation Committee shall require complete disclosure of performance records, accounting and financial records and procedures of human and other asset management of the institution.

(vi) In so far as the academic part is concerned the following data would form basis of study: (a) faculty student ratio (b) system of detail curriculum development and teaching practice sessions (c) number of working days annually (d) number of working days lost with reasons (e) qualification of the faculty (f) class performances of the students and class records (g) system of clinical program and internship (h) evaluation system and record keeping (ix) student-computer ratio (i) on line library facility (j) capital investment of the institution per student (k) library investment per student (l) residential facility (m) outside the class hour of the faculty advice and interaction per student (n) career counseling opportunities (o) quality of the body of alumni (p) publication by faculty and students in journals (q) laboratory and moot court room exercise facilities (r) per student procurement of books and journals (s) class room environment (t) status of Free Legal Aid centre and legal literacy program run by the Centre of Legal Education and (u) any other information needed by the committee.

(vii) The financial performance data shall depend upon the previous five years annual accounts, annual reports, annual budget, fund raised, financial asset management and deployment, future plan, asset structure and any other financial information as may be required.

(viii) The administrative performance would be assessed on the basis on composition of the management body, observance of regulatory rules, administrative staff ratio, working days loss and any other information that may be required for ascertain the management QC.

(ix) The study shall be based on (a) records, (b) visit, inspection and dialogue of the committee with the management, staff, students and the faculty.

(x) The committee may visit the institution after providing notice or without and can visit if required, more than once.

(xi) Data based analysis shall be communicated to the institution before rating begins for further observation and supplementary information, if required."

21. Schedule-III relates to minimum infrastructural requirements for applying permission to run law course by affiliated Indian university. It has various clauses including requirements relating to academic building, size of a section, library, sports facilities etc. Clause 5 quoted above is a part of Schedule-III.
22. As per Rule 2 (xxiii), a regular course of studies requires at least 5 hours of a day continuously with an additional half an hour of recess every day. Such courses should be of not less than 30 hours of working schedule per week. The said clause is not under challenge. Obviously, they have salutary purpose and object. It ensures that the legal education is of the highest standards and students thoroughly prepare, study, and understand the subject course, and upon enrolment, are capable of undertaking the honourous task of giving a legal opinion, pursue litigation, and appear and argue as an Advocate. Advocates, by virtue of the Act i.e. the Advocates Act, have been given monopoly to practice the profession of law.
23. This exclusivity is based and founded on the tenet that those who have been bestowed with the right to practice the profession of law are skilled and proficient so as to fulfill the need and serve the nescient and untutored laymen. Advocates have to properly handle rights and interests of their clients, give legal advice, appear and address arguments in the courts of law and thus aid and augment administration of justice to resolve conflicts and disputes. They are indispensable part

of our judicial system. The society expects them to be experts in the field of law and thereby benefit the society in maintaining the Rule of Law. This does not mean that we expect a fresh graduate enrolled as an Advocate to have the knowledge and skill possessed by an established Advocate. Nonetheless, it is expected that the fresh graduate should have a fair knowledge and understanding of the ordinary and basic skills required to join the legal profession so as to justify his enrolment and ability to serve the adjudicatory system and the society. No society or system of justice can function by mere increase in the rate of induction of Advocates, which compromises on quality. Excellence and calibre is of significant importance as in all professions. It is in this context that we have to interpret the Rules and give them a purposive and meaningful interpretation.

24. The petitioners are correct that Clause 5 of Schedule-III of the Rules 2008 uses the word 'may' and not 'shall' but there are decisions that state that whether these words are used to mean optional/discretionary acts or mandatory command would depend on the context. The word 'may' normally denoted discretion, albeit when used in reference to the high status of the authority on whom power and the obligation are intended to be conferred and imposed, it may be mandatory (*State of U.P. Vs. Jogendra Singh* AIR 1963 SC 1618). Similarly in *Shri Rangaswami, Textile Commissioner and Ors. Vs. Sagar Textile Mills (P) Ltd. and Anr.* (1977) 2 SCC 578, the word 'may' was held as a command after referring to the nature of the power conferred on the Textile Commissioner coupled with the duty to specify the period for which direction shall be operative. This was also necessary for the

manufacturers to know. In ***Sub-Committee on Judicial Accountability Vs. Union of India and Ors.*** (1991) 4 SCC 699, the Constitution Bench has observed that the word 'may' would ordinarily indicate choice of action and not a command but sometimes this word must be understood in its imperative sense, as mandatory. The Supreme Court held that the word 'may' can be interpreted as 'shall', depending upon the intention of the legislation. In ***Dinesh Chandra Pandey Vs. High Court of M.P. & Anr.*** (2010) 11 SCC 500, while referring to the use of the word 'may' or 'shall' in the subordinate / delegated legislation, it was observed that the selection would depend upon conjunctive reading of the relevant rules, the purpose sought to be achieved and the object behind the rules. The intent of the rules should not be frustrated.

25. In the context of Clause 5 to the Schedule-III of the Rules, we would accept the submission of the petitioners that the prescription of timings for classes from 8:00 a.m. to 7:00 p.m. is indicative and recommendatory, and not mandatory. However, this would not make any difference for the universities/institutions that have been granted permission and recognition by the Bar Council of India, should normally adhere and follow to the aforesaid timings. The timings stipulated give a wide discretion and ensure that the classes are held at appropriate hours and not at odd and peculiar hours, continuously for the entire course term, as this would not be conducive (in fact an impairment and detriment) to learning and teaching for both the taught and the teachers. Consequently, the level and quality of legal education would suffer and falter. Night classes on regular basis day after day, past the normal hours of 7:00 am to 8:00 pm compromises on attention

and prowess of the students to learn and understand nuances of the first principles and basic concepts in the diverse and difficult field of law. The recipients and learners being tired and inattentive due to fatigue, wait and want to leave and return home to prepare and get ready for the office or other activities the next morning. This is not the correct and proper way to impart professional education to those who aspire to be enrolled as Advocates and serve the society. The practice devalues the course and adversely affects the profession.

26. Rule 2 (xxiii) mandates 'regular course of study' at least 5 hours a day continuous study or lectures with the stipulation of half an hour of recess. It is also stipulated that there would be not less than 30 hours of working schedule per week. This Rule is not under challenge or question. The Rules also prescribe the subjects and papers of law common to both three years and five years courses. There are stipulations with regard to the semester system and holding of exams etc. These provisions are not to be read in isolation, but keeping in mind the object and purpose of the professional course of study i.e. to have high quality of study, create a system and establish institutions which provide good professional legal education, catering to the needs and requirements of those entering the legal field with the object of pursuing legal career. Rules should dissuade and discourage those who do not have the aim and objective of pursuing law as a profession and drift into law courses as the second or third choice or because it is perceived as an easy course which does not require hard-work and study.

27. It is in this context that we would uphold and accept the direction issued by the Bar Council of India to the University of Delhi to hold classes between 2:00 to 7:30 p.m. It is apparent that holding classes between 5:55 p.m. or 6:00 p.m. to 9:35 p.m. would not meet the mandate of clause (xxiii) to Rule 2, of five hours a day with half an hour recess for at least thirty hours a week. Holding classes at such hours was been done with the intent to bend and maneuver the provisions and somehow meet the requirements of the statute. This would not be conducive to the object and purpose of infusing knowledge and providing a healthy and congenial atmosphere and infrastructure necessary for study and education in the field of law. Law cannot be treated as a part time course. The study of law as a professional course, with entitlement to enrolment as an Advocate cannot be taken up as a part time course, merely because a person wants to study the said subject. Study of law by those who want to take it up as a part time course is not barred or prohibited by the Rules. The Rules apply when a person wants to study law with the intention to carry on the profession of law as an Advocate and not otherwise. There are law courses and even degree can be awarded by universities which would not entitle the qualifier to enroll and practice law as a professional.
28. We would grant and accept that there can be exceptions and indeed there have been students, who have studied at night or late evenings, and have excelled in different fields including the legal profession. However, such exceptions cannot be a ground to strike down Clause 5 of Schedule-III or issue direction to the University of Delhi to hold

classes up to 9:30 p.m. Exceptions do not make the Rule. Taking a cue from a miniscule number, would not be justify an order that would enable grant of legal degrees to practice law to hundreds of others who would join such courses. The effect of any such order or direction is not confined and restricted to the University of Delhi but would be a license and certification to universities all over the country. The impact would be far-reaching and hazardous.

29. There are a number of studies and most experts acknowledge the need to upgrade and improve standard of legal education. This desideratum is not new and was voiced as early as 1950s. More than half a century later, efforts to refine and improve legal education, correct deficiencies and faults to achieve better standards should not be abnegated and spurned. Concessions required and justified in the past now hinder qualitative learning and undermine the course. Late evening and night classes for the study of law which were introduced and earlier accepted, must be reviewed and abandoned in the present day context. The profession has undergone a change. Earlier it was not uncommon for students to drift into law on not securing admission in the discipline of their choice. This invariably resulted in liberal marking in examinations, for the consequences of failure in large numbers has repercussions on the name and bearing of the university. Possibly those then joining evening classes were the brightest and best, for they were already settled. Efforts in the last four decades to improve quality of legal education, particularly setting up of the National Law Universities with the 5 year integrated program, have yielded results and positive effect. Today bright and discerning, study law as a subject

and course of first choice and to join the legal profession. However, there is a growing disparity and difference in the proficiency and competency of fresh graduates *inter se*, largely on account of the level and quality of education being imparted and also dedication, commitment, and interest of the students. Frequently questions are still raised about the quality of education as well as the commitment of students joining the law course. There are mechanisms and systems to help and assist those who face economic constraints and want to peruse law. It is in this context that we have examined the mandate issued by the Bar Council of India.

30. In ***V. Sudeer Vs. Bar Council of India and Anr.*** (1999) 3 SCC 176, the Supreme Court referred to history of the provisions relating to pre-enrolment training and examination, noticed deletion of Section 24(1) (d) and the fact that the State Bar Councils were deprived of their powers to prescribe a course of pre-enrolment training in Law and examination to be undergone by law graduates who were seeking enrolment as “Advocates” on the State Roll after 31st January, 1974, and had struck down the attempt by the Bar Council of India to prescribe any pre-enrolment training or examination to be undertaken by prospective professional, who would be entitled to enroll once he satisfies the requirement. It was held this power cannot be read into clause (h) of Section 7(1) of the Act. *Albeit* it was observed that concept of legal education is not confined to class room lecture or theoretical studies and the function of promoting legal education would include laying down standards of such education in relation to respective universities, who have been entrusted with the task of

imparting legal education. The Bar Council of India can suggest ways and means to improve legal education and for that purpose lay down the standard and syllabus in relation to the universities etc.

31. Earlier in ***Bar Council of India and Anr. Vs. Aparna Basu Mallick & Ors.***, (1994) 2 SCC 104, referring to the right and power of the Bar Council of India to recognize the universities whose degree shall qualify for enrolment as an Advocate and power to visit and inspect all such universities, the Supreme Court upheld the stipulation with regard to attendance of lectures, tutorials, and moot court. Alluding to the statutory provisions, including Sections 24 and 49 of the Act, it was observed that if acquisition of a degree in law is essential for being qualified to be admitted as an Advocate on a State roll, then it is obvious that the Bar Council of India must have the authority to prescribe standards of legal education to be observed by the Universities. Therefore, the Rule, it was held, was not inconsistent with the provisions of the Act. Pertinently, the Supreme Court referred to the earlier decision in the case of ***Baldev Raj Sharma Vs. Bar Council of India and Ors.*** 1989 Suppl. (2) SCC 91, to point out difference between course of study pursued by a regular student and course of study pursued by a private candidate. The Rule emphasizes and mandates regular attendance of the law classes and if a student does not pursue the regular course of study, be it lectures, tutorials or moot court, they would not comply with the requirement for enrolment.
32. More pertinent are the observations of the Supreme Court in the ***Bar Council of India Vs. Board of Management, Dayanand College of***

law and Ors. (2007) 2 SCC 202, wherein several provisions of the Act were elucidated and interpreted to hold that the Bar Council may not have been entrusted with direct control of legal education in the sense in which the same is entrusted to universities, but the Bar Council of India retains adequate power to control the course of study in law, has the power of inspection, the power of recognition of degree and the power to deny enrolment to law degree holder unless the university from which the student has passed out is recognized by the Bar Council of India. In the said case, two principals had been appointed in exercise of provisions of Uttar Pradesh States Universities Act, 1973, though they did not have the prescribed qualifications fixed by the Bar Council of India. It was held that the Act, i.e. The Advocates Act, 1961 falls in entries 77 and 78 in the first Schedule i.e. the Central List. On the question of disparity of the eligibility requirements fixed by the Bar Council of India and the State Bar Councils, and the power of the State Government, it was observed as under:

“13. The aim of most of the students who enter the law college, is to get enrolled as advocates and practise law in the country. To do that, they necessarily have to have a degree from a university that is recognised by the Bar Council of India. Therefore, the court, in a situation like the present one, has to ask itself whether it could not harmoniously construe the relevant provisions and reach a conclusion consistent with the main aim of seeking or imparting legal education. So approached, nothing stands in the way of the court coming to the conclusion that though under the relevant statute of the University as amended, theoretically it may be possible to appoint a Doctor of Philosophy or a Doctor of Science as the Principal of a law college, taking into account the

requirements of the Advocates Act, the Rules of the Bar Council of India and the main purpose of legal education, the court would be justified in holding that as regards the post of the Principal of a law college, it would be necessary for the proposed incumbent also to satisfy the requirements of the Rules of the Bar Council of India. Such a harmonious understanding of the position recognising the realities of the situation, would justify the conclusion that a doctorate-holder in any of the law subjects could alone be appointed as the Principal of a law college. The High Court, in our view, made an error in not trying to reconcile the relevant provisions and in not making an attempt to harmoniously construe the relevant provisions so as to give efficacy to all of them. A harmonious understanding could lead to the position that the Principal of a law college has to be appointed after a process of selection by the body constituted in that behalf, under the University Act, but while nominating from the list prepared, and while appointing him, it must be borne in mind that he should fulfil the requirements of the Rules of the Bar Council of India framed under the Advocates Act and it be ensured that he holds doctorate in any one of the branches of law taught in the law college. We do not see anything in the University Act or the Statutes framed thereunder, which stand in the way of the adopting of such a course. Therefore, when a request is made for selection of a Principal of a law college, the university and the Selection Committee has to ensure that applications are invited from those who are qualified to be Principals of a law college in terms of the Rules of the Bar Council and from the list prepared, a person possessing the requisite qualification, is nominated and appointed as the Principal of a law college.

14. It is clear from the decision of the Constitution Bench in *O.N. Mohindroo v. Bar Council of Delhi* [(1968) 2 SCR 709 : AIR 1968 SC 888] that in pith and substance, the Advocates Act falls under Entries 77 and 78 of List I of the Seventh Schedule. That apart, it is not necessary to

postulate a conflict of legislation in this case as we have indicated earlier. It is true that under the University Act, the selection of a Principal of a college affiliated to the university concerned has been left to the Higher Education Services Commission and Respondent 5 was included in the panel of selected candidates pursuant to a due selection by that Commission. It is also true that theoretically the State Government on the recommendation of the Director of Higher Education could appoint any one from that list as Principal of any college including a law college. But when concerned with the appointment of a Principal of the law college, there cannot be any difficulty either for the recommending authority or for the State Government in recognising the fact that a person duly qualified in law is required to be the Principal of that law college in the interests of the students coming out of that college in the light of the Advocates Act, 1961 and the Rules framed by the Bar Council of India governing enrolment of advocates and their practice. It must be the endeavour of the State and the recommending authority to ensure that the students coming out of the college are not put to any difficulty and to ensure that their career as professionals is in no way jeopardised by the action of the Government in appointing a Principal of a law college. Therefore, even while adhering to its process of selection of a Principal, it behoves the State to ensure that the appointment it makes is also consistent with the Advocates Act and the Rules framed by the Bar Council of India. It may not be correct to say that the Bar Council of India is totally unconcerned with the legal education, though primarily legal education may also be within the province of the universities. But, as the apex professional body, the Bar Council of India is concerned with the standards of the legal profession and the equipment of those who seek entry into that profession. The Bar Council of India is also thus concerned with the legal education in the country. Therefore, instead of taking a pedantic view of the

situation, the State Government and the recommending authority are expected to ensure that the requirement set down by the Bar Council of India is also complied with. We are of the view that the High Court was not correct in its approach in postulating a conflict between the two laws and in resolving it based on Article 254(2) of the Constitution. Of course, the question whether the assent to the Act would also extend to the statute framed under it and that too to an amendment made subsequent to the assent are questions that do not call for an answer in this case in the light of the view we have adopted.”

33. Recently in *Archana Girish Sabnis Vs. BCI & Ors.* (2015) 4 SCC 498 the Supreme Court observed that the Bar Council of India has independent power to recognize any equivalent qualification to graduate degree for purpose of admission in law course. Distinction was drawn between pursuing law as a course of study and practicing law, which are two different things. One could pursue law, but for obtaining a licence for practice law as a profession, the requirements stipulated by the Bar Council of India must be fulfilled. Thus the Bar Council of India has the power to deny the licence to practice in case law degree is obtained without possessing a prior graduate degree or recognized equivalent qualifications.
34. Reliance placed by the petitioners on the decision of the Punjab and Haryana High Court in *Gopal Krishan Chatrath Vs. Bar Council of India* AIR 2001, P&H 41 (Full Bench), would not be apposite. The Bar Council of India had sought closure of law colleges exclusively running evening sessions, which was to be effective from the academic session 2000-01 and those not adhering would suffer non-approval of affiliation. The said dictum was set aside for there was no consultation

with the Punjab University, Universities in the country, or the State Bar Councils. This is not the position with reference to the Rules i.e. the Rules of Legal Education 2008, as has been explained by the Bar Council of India in their affidavit filed in the W.P. (C)No.7059/2016 ***Rajesh Kumar Rai & Ors Vs. Union Of India & Others.*** In the counter affidavit verified on 26th August, 2016, the entire consultative process, as well as the recommendations made from time to time, have been elucidated and set out. The draft rules were published and circulated to all the Universities and State Bar Councils, pursuant to the meeting of the Legal Education Committee held on 4th May, 2007. Reminders and other communications were also sent and thereafter upon the consideration received, the aforesaid Rules were notified. Thereafter, the Bar Council of India vide letter dated 24th December, 2008 had circulated to the Universities that the new set of Rules in the curriculum will be implemented from the academic year 2009 -2010.

35. It was asserted by the petitioners that the timings prescribed by the Bar Council of India should not be implemented from the academic session 2016-17 for the students had taken admission in the first year, the academic session 2016-17. We would not accept the said contention for the several reasons, including the University of Delhi's acceptance of the direction issued by the Bar Council of India. Further, the said direction was issued on 23rd August, 2016. However, the Rules have been in force from the academic year of 2009-2010. Another contention raised by the petitioners is that there are other universities which are offering evening courses in law. The Bar Council of India has filed their affidavit in W.P. (C)No.7546/2016 ***Mohit Dixit & Ors.***

Vs. Union Of India & Ors., stating that they have forwarded vide e-mail dated 1st December, 2016, the decision of the Legal Education Committee. Letter dated 30th November, 2016, has also been sent to the universities. We do not think that in view of the aforesaid position, the irregularities or illegalities committed by some universities by holding late evening or night classes for the study of law can be a ground to justify the prayer of the petitioners.

36. The aforesaid discussion has no connect with the question of upper age limit for taking admission to a recognized law course. We have not commented or expressed any opinion on the said aspect and indeed there is a thought that upper age limits to study any professional course, like medicine, law etc. may not be conducive as it curtails the desire and right of an individual to study a particular field. The question raised in the petitions is different. It does not relate to age eligibility, but is directly linked and connected with the mode and manner of study. Nothing stated in this judgment would be held as an expression of opinion on the question of maximum age for admission.
37. In view of the aforesaid discussion, we do not find any merit in the present writ petitions and the same are dismissed with no order as to costs.

SANJIV KHANNA, J
Sd/

CHANDER SHEKHAR, J
Sd/

MAY 30, 2017

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