IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 19.08.2021

CORAM:

THE HONOURABLE MR. JUSTICE N.KIRUBAKARAN

AND

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

WP.Nos.19534/2018, 627/2015, 25691/2014, 20198/2018, 20390/2018, 20391/2018, 20389/2018, 18328/2019, 18347/2019, 18348/2019, 18335/2019, 18341/2019, 18342/2019, 5172/2020, 17929/2019, 24392/2019 & 25218/2019
and
Rev.Appln.No.195/2019 in W.A.No.533 of 2018

WP.No.19534/2018:-

V.Lekha .. Petitioner

Versus

1.The Chairman
University Grants Commission,
Bahadur Shah Zafar Marg
New Delhi 110 002.

2.The Secretary
Law Department
Fort St George,
Chennai 600 009.

3.The Chairman
Teachers Recruitment Board
EVK Sampath Buildings
College Road, Chennai 600 006.

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4.The Director,
Director of Legal Studies
Purasawalkkam High Road
Kilpauk, Chennai 600 010.

5.The Registrar
The Tamil Nadu Dr.Ambedkar
Law University, No.5,
Greenways Road, Chennai 600 028.

6.The Registrar
The Tamil Nadu National law School
Dindigul Main Road,
Navalurkuttappattu
Tiruchirappalli 620 027.

7.The Secretary
Bar Council of India
No.21, Rouse Avenue
Institutional Area
New Delhi 110 002.

8.The Secretary
Bar Council of Tamil Nadu
and Puducherry, Madras High
Court Campus, Chennai 600 104.

9.R.Ghunasekaran
10.D.Bennet Paul Giftson
11.M.Muruganandam
12.M.A.Saleem Ahmed
13.S.Puviyarasan
14.P.Rajeswaran

15.The Bar Council of Tamil Nadu
and Puducherry rep.by its Secretary
Madras High Court campus,
Chennai 600 104.

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16.The Bar Council of India
rep.by its Secretary, No.21, Rouse
Avenue, Institutional Area
New Delhi 110 002. .. Respondents

**RR 9 to 16 impleaded as per order dated 27.01.2020
made in WP.Nos.19534/2018, 25691/2014, 627/2015

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of certiorarified mandamus, calling for the records relating to the impugned Notification No.2/2018 dated 18.07.2018 in Clause [4] Qualifications:Assistant Professor [Pre Law] sub clause [ii] and [iv] issued by the 3rd respondent and quash the same insofar as the petitioner is concerned and consequently direct the 3rd respondent to issue revised notification in respect of educational qualification for the post of Assistant Professor [Pre Law] and to permit the petitioner to participate in the selection process of direct recruitment of Assistant Professors / Assistant Professors [Pre Law] in Government Law Colleges 2017-2018 the details of vacancies as per the G.O.Ms.No.464, Law [LS] Department dated 17.07.2017 by the 2nd respondent.

For Petitioner	:	Mr.G.Murugendran
For R1	:	Mr.P.R.Gopinath
For RR 2 to 4	:	Mr.R.Shanmugasundaram, Advocate General assisted by Mr.P.Balathandayutham, GA
For R5	:	Mr.M.Nallathambi
For R7	:	Mr.S.R.Raghunathan
For R8	:	Mr.S.Prabhakaran, Senior counsel for Mr.Fakkir Mohideen

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WP.No.627/2015:-

V.Lekha .. Petitioner

Versus

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1.The Secretary
Government of India,
Ministry of Human Resources Development
Shastri Bhawan, New Delhi 110 001.

2.The Chairman
University Grants Commission,
Bahadur Shah Zafar Marg,
New Delhi 110 002.

3.The Secretary
Law Department
Fort St George,
Chennai 600 009.

4.The Secretary,
Higher Education Department
Fort St George, Chennai 600 009.

5.The Chairman
Teachers Recruitment Board
EVK Sampath Buildings
College Road, Chennai 600 006.

6.The Director,
Director of Legal Studies
Purasawalkkam High Road
Kilpauk, Chennai 600 010.

7.The Registrar
The Tamil Nadu Dr.Ambedkar
Law University, No.5,
Greenways Road, Chennai 600 028.

8.N.Nishadevi
9.R.Ghunasekaran
10.D.Bennet Paul Giftson
11.M.Muruganandam

HIGH COURT OF JUDICATURE MADRAS
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12.M.A.Saleem Ahmed
13.S.Puviyarasan
14.P.Rajeswaran
15.The Bar Council of Tamil Nadu
and Puducherry rep.by its Secretary
Madras High Court campus, Chennai 600 104.

16.The Bar Council of India
rep.by its Secretary, No.21, Rouse
Avenue, Institutional Area
New Delhi 110 002. .. Respondents

**RR 9 to 16 impleaded as per order dated 27.01.2020
made in WP.Nos.19534/2018, 25691/2014, 627/2015

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of certiorarified mandamus calling for the records relating to the impugned order G.O.Ms.No.264, Law [LS] Department dated 20.12.2005 passed by the 3rd respondent and quash the same insofar as the petitioner is concerned and consequently, direct the 5th respondent to issue revised Notification and Prospectus in respect of educational qualification for the post of Lecturers Senior scale pre-law and to permit the petitioner to participate in the selection process of Assistant Professor post by the 5th respondent.

For Petitioner	:	Mr.G.Murugendran
For R1	:	Mr.N.Ramesh
For R2	:	Mr.P.R.Gopinath
For RR 4 to 6	:	Mr.R.Shanmugasundaram, Advocate General assisted by Mr.P.Balathandayutham, GA
For R7	:	Mr.M.Nallathambi
For R8	:	Mr.K.Rajasekaran
For R14	:	Mr.G.Sankaran
For R15	:	Mr.S.Prabhakaran, Senior counsel for Mr.Fakkir Mohideen
For R16	:	Mr.S.R.Raghunathan

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WP.No.25691/2014:-

V.Lekha .. Petitioner

Versus

1.Teachers Recruitment Board
represented by Member Secretary
4th Floor, EVK Sampath Maligai
DPI compound, College Road,
Chennai 600 006.

2.R.Ghunasekaran
3.D.Bennet Paul Giftson
4.M.Muruganandam
5.M.A.Saleem Ahmed
6.S.Puviyarasan
7.P.Rajeswaran
8.The Bar Council of Tamil Nadu
and Puducherry rep.by its Secretary
Madras High Court campus,
Chennai 600 104.

9.The Bar Council of India
rep.by its Secretary, No.21, Rouse
Avenue, Institutional Area
New Delhi 110 002. .. Respondents

**RR 2 to 9 impleaded as per order dated 27.01.2020
made in WP.Nos.19534/2018, 25691/2014, 627/2015

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of certiorarified mandamus to call for the records in Advertisement No.04/2014 dated 22.07.2014 issued by the respondent published in the newspaper for the post of Lecturer Senior scale pre-law Sl.No.4[ii] Masters Degree in Law in recognised University with not less than 55% marks and a good academic record. provided that candidate belonging to SC/ST shall possess not less than 50% marks provided further that the holders of Ph.D. degree in Law who have passed

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their Masters Degree in Law prior to the 19th September 1991, shall possess not less than 50% of marks in the Master Degree in Law and [iv] must have enrolled as an advocate in the Bar Council and quash the same and consequently appoint the post of Lecturer senior scale pre law only in respect of Serial No.4 sub clause [i] and [iii] of the Advertisement No.4/2014 dated 22.07.2014.

For Petitioner	:	Mr.G.Murugendran
For R1	:	Mr.N.Ramesh
For R8	:	Mr.S.Prabhakaran, Senior counsel assisted by Mr.Fakkir Mohideen
For R9	:	S.R.Raghunathan

WP.No.20198/2018:-

R.Vadivel .. Petitioner

Versus

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

2.The Member Secretary
Teachers' Recruitment Board
4th Floor EVK Sampath maaligai
DPI Compound, College Road
Chennai 600 006.

3.The Registrar
The Tamil Nadu Dr.Ambedkar Law University
Greenways Road, Chennai 600 028.

4.The Director
O/o.Directorate of Legal Studies
Kilpauk, Chennai 600 010.

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5.R.Ghunasekaran
6.D.Bennet Paul Giftson
7.M.Muruganandam
8.M.A.Saleem Ahmed
9.S.Puviyarasan
10.P.Rajeswaran
11.The Bar Council of Tamil Nadu
and Puducherry rep.by its Secretary
Madras High Court campus,
Chennai 600 104.

12.The Bar Council of India
rep.by its Secretary, No.21, Rouse
Avenue, Institutional Area
New Delhi 110 002. .. Respondents

**RR 5 to 12 suo motu impleaded as per order dated 27.01.2020 made in WP.Nos.20198/2018.

Prayer:- Writ Petition filed under Article 226 of the Constitution of India seeking for a writ of certiorarifed mandamus calling for the records in respect of the G.O.Ms.No.464 Law Department, dated 17.07.2017 and Notification Advertisement No.2/2018 dated 18.07.2018 issued by the 2nd respondent and quash the same and consequently, direct the respondents to issue a fresh Notification for recruitment without insisting on law degrees with enrollment for the post of Assistant Professor [pre law] as per the UGC rules and regulations dated 18.07.2018.

For Petitioner	:	Mr.G.Thiagarajan
For RR 1, 2 & 4	:	Mr.R.Shanmugasundaram, Advocate General assisted by Mr.P.Balathandayutham, GA
For R3	:	Mr.M.Nallathambi

WP.No.20390/2018:-

D.Karthik .. Petitioner

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Versus

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

2.The Member Secretary
Teachers' Recruitment Board
4th Floor EVK Sampath maaligai
DPI Compound, College Road
Chennai 600 006.

3.The Registrar
The Tamil Nadu Dr.Ambedkar Law University
Greenways Road, Chennai 600 028.

4.The Director
O/o.Directorate of Legal Studies
Kilpauk, Chennai 600 010.

5.The Bar Council of Tamil Nadu
and Puducherry rep.by its Secretary
Madras High Court campus,
Chennai 600 104.

6.The Bar Council of India
rep.by its Secretary, No.21, Rouse
Avenue, Institutional Area
New Delhi 110 002.

7.R.Ghunasekaran
8.D.Bennet Paul Giftson
9.M.Muruganandam
10.M.A.Saleem Ahmed
11.S.Puviyarasan
12.P.Rajeswaran .. Respondents

**RR 5 to 12 suo motu impleaded as per order dated 27.01.2020

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made in WMP.No.17663/2019 in WP.Nos.20390/2018.

Prayer:- Writ Petition filed under Article 226 of the Constitution of India seeking for a writ of certiorarifed mandamus calling for the records in respect of the G.O.Ms.No.464 Law Department, dated 17.07.2017 and Notification Advertisement No.2/2018 dated 18.07.2018 issued by the 1st respondent and quash the same and consequently, direct the respondents to issue a fresh Notification for recruitment without insisting on law degrees with enrollment for the post of Assistant Professor [pre law] as per the UGC rules and regulations dated 18.07.2018.

For Petitioner	:	Mr.G.Thiagarajan
For RR 1, 2 & 4	:	Mr.R.Shanmugasundaram, Advocate General assisted by Mr.P.Balathandayutham, GA
For R3	:	Mr.M.Nallathambi
For R5	:	Mr.S.Prabharkaran, Senior Counsel for Mr.Fakkir Mohideen
For R6	:	Mr.S.R.Raghunathan
For RR 7 to 12	:	Mr.G.Sankaran

WP.No.20391/2018:-

D.Chinnusamy .. Petitioner

Versus

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

2.The Member Secretary
Teachers' Recruitment Board
4th Floor EVK Sampath maaligai

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DPI Compound, College Road
Chennai 600 006.

3.The Registrar
The Tamil Nadu Dr.Ambedkar Law University
Greenways Road, Chennai 600 028.

4.The Director
O/o.Directorate of Legal Studies
Kilpauk, Chennai 600 010.

5.The Bar Council of Tamil Nadu
and Puducherry rep.by its Secretary
Madras High Court campus,
Chennai 600 104.

6.The Bar Council of India
rep.by its Secretary, No.21, Rouse
Avenue, Institutional Area
New Delhi 110 002. .. Respondents

**RR 5 & 6 suo motu impleaded as per order dated 27.01.2020
made in WP.Nos.20389 to 20391/2018.

Prayer:- Writ Petition filed under Article 226 of the Constitution of India seeking for a writ of certiorarifed mandamus calling for the records in respect of the G.O.Ms.No.464 Law Department, dated 17.07.2017 and Notification Advertisement No.2/2018 dated 18.07.2018 issued by the 1st respondent and quash the same and consequently, direct the respondents to issue a fresh Notification for recruitment without insisting on law degrees with enrollment for the post of Assistant Professor [pre law] as per the UGC rules and regulations dated 18.07.2018.

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For Petitioner	:	Mr.G.Thiagarajan
For RR 1, 2 & 4	:	Mr.R.Shanmugasundaram, Advocate General assisted by

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		Mr.P.Balathandayutham, GA
For R3	:	Mr.M.Nallathambi
For R5	:	Mr.S.Prabharkaran, Senior Counsel for Mr.Fakkir Mohideen
For R6	:	Mr.S.R.Raghunathan

WP.No.20389/2018:-

P.Vinu Prasad .. Petitioner

Versus

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

2.The Member Secretary
Teachers' Recruitment Board
4th Floor EVK Sampath maaligai
DPI Compound, College Road
Chennai 600 006.

3.The Registrar
The Tamil Nadu Dr.Ambedkar Law University
Greenways Road, Chennai 600 028.

4.The Director
O/o.Directorate of Legal Studies
Kilpauk, Chennai 600 010.

5.The Bar Council of Tamil Nadu
and Puducherry rep.by its Secretary
Madras High Court campus,
Chennai 600 104.

6.The Bar Council of India
rep.by its Secretary, No.21, Rouse
Avenue, Institutional Area

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New Delhi 110 002. .. Respondents

**RR 5 & 6 suo motu impleaded as per order dated 27.01.2020 made in WP.Nos.20389 to 20391/2018.

Prayer:- Writ Petition filed under Article 226 of the Constitution of India seeking for a writ of certiorarifed mandamus calling for the records in respect of the G.O.Ms.No.464 Law Department, dated 17.07.2017 and Notification Advertisement No.2/2018 dated 18.07.2018 issued by the 1st respondent and quash the same and consequently, direct the respondents to issue a fresh Notification for recruitment without insisting on law degrees with enrollment for the post of Assistant Professor [pre law] as per the UGC rules and regulations dated 18.07.2018.

For Petitioner	:	Mr.G.Thiagarajan
For RR 1, 2 & 4	:	Mr.R.Shanmugasundaram, Advocate General assisted by Mr.P.Balathandayutham, GA
For R3	:	Mr.M.Nallathambi
For R5	:	Mr.S.Prabharkaran, Senior Counsel for Mr.Fakkir Mohideen
For R6	:	Mr.S.R.Raghunathan

WP.No.18328/2019:-

R.Ghunasekaran .. Petitioner

Versus

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

2.The Director
O/o.Directorate of Legal Studies
Kilpauk, Chennai 600 010.

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3.The Member Secretary
Teachers' Recruitment Board
4th Floor EVK Sampath maaligai
DPI Compound, College Road
Chennai 600 006. .. Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India seeking for a writ of certiorarifed mandamus calling for the records relating to the impugned provisional selection list published through the official website of the 3rd respondent in No.Nil dated 14.05.2019 and to quash the same insofar as declaration of the results for the post of Assistant Professor [Pre Law] in the subject of Economics as 'not available' is concerned and consequently directing the respondents to select and appoint the petitioner [Roll No.18PL17001] to the post of Assistant Professor [Pre Law] in the subject of Economics based on merit in the selection.

For Petitioner : Mr.G.Sankaran
For R1 to R3 : Mr.R.Shanmugasundaram, Advocate General assisted by Mr.P.Balathandayutham, GA

WP.No.18335/2019:-

S.Puviyarasan .. Petitioner

Versus

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

2.The Director
O/o.Directorate of Legal Studies
Kilpauk, Chennai 600 010.

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3.The Member Secretary
Teachers' Recruitment Board
4th Floor EVK Sampath maaligai
DPI Compound, College Road
Chennai 600 006. .. Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India seeking for a writ of certiorarifed mandamus calling for the records relating to the impugned provisional selection list published through the official website of the 3rd respondent in No.Nil dated 14.05.2019 and to quash the same insofar as declaration of the results for the post of Assistant Professor [Pre Law] in the subject of Economics as 'not available' is concerned and consequently directing the respondents to select and appoint the petitioner [Roll No.18PL17002] to the post of Assistant Professor [Pre Law] in the subject of Economics based on merit in the selection.

For Petitioner : Mr.G.Sankaran
For R1 to R3 : Mr.R.Shanmugasundaram, Advocate General assisted by Mr.P.Balathandayutham, GA

WP.No.18341/2019:-

P.Rajeswaran .. Petitioner

Versus

1.The State of Tamil Nadu
rep.by its Secretary to Government
Law Department, Secretariat

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Fort St George, Chennai 600 009.

2.The Director
O/o.Directorate of Legal Studies
Kilpauk, Chennai 600 010.

3.The Member Secretary
Teachers' Recruitment Board
4th Floor EVK Sampath maaligai
DPI Compound, College Road
Chennai 600 006. .. Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India seeking for a writ of certiorarifed mandamus calling for the records relating to the impugned provisional selection list published through the official website of the 3rd respondent in No.Nil dated 14.05.2019 and to quash the same insofar as declaration of the results for the post of Assistant Professor [Pre Law] in the subject of Economics as 'not available' is concerned and consequently directing the respondents to select and appoint the petitioner [Roll No.18PL17004] to the post of Assistant Professor [Pre Law] in the subject of Economics based on merit in the selection.

For Petitioner : Mr.G.Sankaran
For R1 to R3 : Mr.R.Shanmugasundaram, Advocate General assisted by Mr.P.Balathandayutham, GA

WP.No.18342/2019:-

M.Muruganandam .. Petitioner

Versus

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

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2.The Director
O/o.Directorate of Legal Studies
Kilpauk, Chennai 600 010.

3.The Member Secretary
Teachers' Recruitment Board
4th Floor EVK Sampath maaligai
DPI Compound, College Road
Chennai 600 006. .. Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India seeking for a writ of certiorarifed mandamus calling for the records relating to the impugned provisional selection list published through the official website of the 3rd respondent in No.Nil dated 14.05.2019 and to quash the same insofar as declaration of the results for the post of Assistant Professor [Pre Law] in the subject of Economics as 'not available' is concerned and consequently directing the respondents to select and appoint the petitioner [Roll No.18PL15002] to the post of Assistant Professor [Pre Law] in the subject of Economics based on merit in the selection.

For Petitioner : Mr.G.Sankaran
For R1 to R3 : Mr.R.Shanmugasundaram, Advocate General assisted by Mr.P.Balathandayutham, GA

WP.No.18347/2019:-

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M.A.Saleem Ahmed .. Petitioner

Versus

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

2.The Director
O/o.Directorate of Legal Studies
Kilpauk, Chennai 600 010.

3.The Member Secretary
Teachers' Recruitment Board
4th Floor EVK Sampath maaligai
DPI Compound, College Road
Chennai 600 006. .. Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India seeking for a writ of certiorarifed mandamus calling for the records relating to the impugned provisional selection list published through the official website of the 3rd respondent in No.Nil dated 14.05.2019 and to quash the same insofar as declaration of the results for the post of Assistant Professor [Pre Law] in the subject of Economics as 'not available' is concerned and consequently directing the respondents to select and appoint the petitioner [Roll No.18PL14009] to the post of Assistant Professor [Pre Law] in the subject of Economics based on merit in the selection.

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For Petitioner : Mr.G.Sankaran
For R1 to R3 : Mr.R.Shanmugasundaram, Advocate General assisted by Mr.P.Balathandayutham, GA

WP.No.18348/2019:-

D.Bennet Paul Giftson .. Petitioner

Versus

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

2.The Director
O/o.Directorate of Legal Studies
Kilpauk, Chennai 600 010.

3.The Member Secretary
Teachers' Recruitment Board
4th Floor EVK Sampath maaligai
DPI Compound, College Road
Chennai 600 006. .. Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India seeking for a writ of certiorarifed mandamus calling for the records relating to the impugned provisional selection list published through the official website of the 3rd respondent in No.Nil dated 14.05.2019 and to quash the same insofar as declaration of the results for the post of Assistant Professor [Pre Law] in the subject of Economics as 'not available' is concerned and consequently directing the respondents to select and appoint the petitioner [Roll No.18PL16002] to the post of Assistant Professor [Pre Law] in the subject of Economics based on merit in the selection.

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For Petitioner	:	Mr.G.Sankaran
For R1 to R3	:	Mr.R.Shanmugasundaram, Advocate General assisted by Mr.P.Balathandayutham, GA

WP.No.5172/2020:-

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Dr.K.Sangeetha .. Petitioner

Versus

1.The Tamil Nadu Dr.Ambedkar Law University
rep.by its Registrar Incharge, Poompozhil
No.5, Dr.D.G.S.Dinakaran Salai
Chennai 600 028.

2.The Member Secretary
University Grants Commission,
Bahadur Shah Zafar Marg
New Delhi 110 002. .. Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India seeking for a writ of declaration declaring the notification dated 12.01.2020 issued by the 1st respondent/University inviting applications for various posts including post of Associate Professor as illegal, arbitrary and contrary to law insofar as the general instructions imposing a condition that qualifying degree should be through regular mode and that the degrees obtained through open/correspondence/distance education/private study are not eligible and consequently direct the 1st respondent to issue fresh notification prescribing qualification as per the UGC norms.

For Petitioner : Mr.Balan Haridas
For R1 : Mr.V.Vasanthakumar
For R2 : Mr.P.R.Gopinath

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WP.No.17929/2019:-

P.Mohandoss .. Petitioner

Versus

1.The Principal Secretary

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Law Department Secretariat St.George Fort
Chennai -9.

2.The Director of Legal Studies
Directorate of Legal Studies
Pursaiwakkam High Road Kilpauk Chennai -10.

3.The Chairaman
Teachers Recruitment Board (TRB) 4th Floor
EVK Sampath Maaligai DPI Compound College
Road Chennai 600006.

4.The Mother Terasa Womens University
Rep. by its Registrar Kodaikanal,
Dindigual District. .. Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India seeking for a writ of certiorarifed mandamus to Call for the records in connection with the proceedings in the Provisional Selection List of Candidates - in Environmental Law for the Recruitment of Assistant professor of Law 2017 -2018 dated 14/05/2019 of 3rd respondent and quash the same and consequently direct the 3rd respondent to publish the petitioners Interview Result with respect Enviornmental Law for Recruitment of Assistant Professor of Law 2017 -2018 and consequently direct the 1st and 2nd respondents to Appoint the petitioners as Assistant Professor of Law Environmental Law 2017 - 2018 in any of the Government Law Colleges in Tamil Nadu based on the petitioners Representation dated 21/05/2019.

For Petitioner : Mr.R.K.Gandhi
For RR1 to 4 : Mr.R.Shanmugasundaram, Advocate General assisted by Mr.P.Balathandayutham, GA

WP.No.24392/2019:-

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Dr.Gowri Ramesh .. Petitioner

Versus

1 The Secretary to the Government
Law Department Government of Tamil Nadu
Fort St. George Chennai 600 009.

2 The Director of Legal Studies
The Directorate of Legal Studies
Purusaiwalkkam High Road Kilpauk Chennai
600 010.

3 The Member Secretary
Teachers Recruitment Board DPI Compound
College Road Nungambakkam
Chennai 600 034. .. Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India seeking for a writ of mandamus Directing the 1st and 2nd Respondents to redraw the inter-se- seniority list as mentioned in G.O. Ms. No. 170 Law (LS) Dept. dated 22.07.2008 based on the date of acquisition of the qualification for the said posts as prescribed by the UGC in consonance with the date of appointment / regularization / acquisition of the NET qualification and consequently direct the 1st and 2nd Respondents to consider only those persons who possess requisite qualification as prescribed by the UGC in the panel of Associate Professors to be drawn for appointment to the post of Principals.

For Petitioner : Mr.S.Sivashanmugam

For RR1 & 2 : Mr.R.Shanmugasundaram, Advocate General assisted by Mr.P.Balathandayutham, GA

WP.No.25218/2019:-

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V.Sivasankari .. Petitioner

Versus

1 Government of Tamilnadu
Rep by the Secretary to Government Law
Department Secretariat Chennai 9

2 The Director of Legal Studies
Kilpauk Chennai 10

3 The Member Secretary
Teachers Recruitment Board 4th Floor E.V.K.
Sampath Maaligai DPI Campus College Road
Chennai 6

4 The Registrar
The Tamil Nadu Dr.Ambedkar Law University
Taramani Chennai .. Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India seeking for a writ of mandamus directing the respondents 1 to 3 to club the subjects Criminal Law and Criminal Justice Administration and Crime and Torts into one subject and fill up the vacancy with the available shortlisted candidates following the communal roster within the time stipulated by this Court.

For Petitioner : Mr.M.Devaraj
For RR 1 & 2 : Mr.R.Shanmugasundaram, Advocate General assisted by Mr.P.Balathandayutham, GA

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Rev. Appln.195 of 2019 in W.A.No.533 of 2018:-

P.Vinu Prasad ... Petitioner

Versus

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1.The Secretary,
Law Department,
The Secretariat, Fort St. George,
Kamarajar Salai, Chennai - 600 003.

2.The Director of Legal Studies,
Directorate of Legal Studies,
Purusaiwalkkam High Road, Chennai.

3.The Chairman
Teachers Recruitment Board,
4th Floor, EVK Sampath Maligai,
DPI Compound, College Road,
Chennai 600 006.

4.The Secretary,
Education Department,
The Secretariat, Fort St. George,
Kamarajar Salai, Chennai - 600 003.

5.The Secretary
Bar Council of Tamil Nadu,
NSC Bose Road,
Chennai - 600 104.

6.The University Grants Commission,
Rep. by its Secretary,
Bahadur Shah Zafar Marg
New Delhi 110 002.

7.The Tamil Nadu Dr.Ambedkar Law University,
Rep. by its Registrar,
"Poompozhil", Greenways Road,
Adayar, Chennai - 600 028. .. Respondents

Prayer:- Petition filed under Order XLVII Rule (1) & (2) of Civil Procedure Code read with Section 114 of C.P.C. praying to review the

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order passed in W.A.No.533 of 2018 dated 09.03.2018 preferred against the order passed in W.P.No.33145 of 2017 on the file of this Court.

For Review Applicant	:	Mr.Ezhilarasan
For RR1 to 4	:	Mr.R.Shanmugasundaram, Advocate General assisted by Mr.P.Balathandayutham, GA
For R5	:	Mr.S.Prabharkaran, Senior Counsel for Mr.C.K.Chandrashekaran
For R6	:	Mr.P.R.Gopinath
For R7	:	Mr.M.Nallathambi

COMMON ORDER

V.PARTHIBAN, J.,

A batch of writ petitions have been filed by one group of petitioners challenging the Notification issued by the Teachers Recruitment Board [hereinafter referred to as "TRB"] dated 18.07.2018 for recruitment to the post of Assistant Professors [Pre Law] in Government Law Colleges in the State of Tamil Nadu for the year 2017-18. The essence of challenge in the writ petitions is that among the other qualifications, prescription of Masters Degree in Law of any recognized University with not less than 55% of marks and must have enrolled as an Advocate in the Bar Council. These qualifications have been prescribed apart from the main qualification, viz., Post Graduation Degree in the respective subject from

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the Universities in the State of Tamil Nadu with not less than 55% of marks and must have qualified in National Eligibility Test [in short 'NET']. According to the candidates who have set up the challenge in these writ petitions, the qualification of Masters Degree in Law and enrollment as an advocate, are non-essential qualifications which have absolutely no value addition to their appointment, as they are to be recruited only for teaching pre-law courses in the subject concerned.

2 The prescription of qualifications in the subject recruitment is assailed on various grounds as contended by the respective learned counsels appearing for the writ petitioners. The uniform contention of all the learned counsels appearing for the candidates is that no other University or any Colleges, either in the State of Tamil Nadu or in the entire country, prescribe these two qualifications, viz., Masters Degree in Law and enrollment as an advocate, as qualifications for the purpose of appointment to the post of Assistant Professors in pre-law courses. Only in respect of the Government Colleges in the State of Tamil Nadu such qualifications have been prescribed. According to them, qualifications as prescribed above cannot stand the test of validity of Article 14 of the Constitution of India, as the qualifications being thoroughly irrational, unreasonable and arbitrary.

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3 Mr.G.Murugendran, learned counsel appearing for some of the writ petitioners would, at the outset, submit that there are two Notifications which are the subject matter of challenge in the present batch of writ petitions. One is the Notification issued in the year 2014 prescribing the same qualifications and the other is the Notification issued in the year 2018 dated 18.07.2018. According to the learned counsel, though the candidates he represent, did not have the qualification as prescribed in the Notification, they were however, allowed to participate in the selection in pursuance of the 2018 Notification, by an interim order of this Court in one of the writ petitions in WP.No.19534/2018 dated 31.07.2018. A learned Judge of this Court directed TRB to accept the application and allow the petitioner therein to participate in the selection process and his participation and result, shall be subject to the outcome of the writ petition. The learned Judge has given this direction on a *prima facie* consideration of the issues raised in the writ petition and the participation of such candidates are subject to the final outcome of the pending writ petitions.

4 According to the learned counsel, the candidates who are not

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having M.L., degree and not enrolled as advocates, were allowed to participate in the selection and they were also provisionally selected upto the level of interview and their final results have been withheld in view of the pendency of these writ petitions. As far as the challenge to the 2014 Notification was concerned, a writ petition was filed by one of the candidates challenging the original Government Orders passed in G.O.Ms.No.1349, Education Department dated 19.11.1985 and amended G.O.Ms.No.264, Law Department dated 20.12.2005, originally prescribing the controversial qualification of M.L.Degree and enrollment as an advocate. The learned Judge appeared to have dismissed the writ petition and as against that, WA.No.533/2018 was filed. A Division Bench of this Court, vide judgment dated 09.03.2018, dismissed the writ appeal after extracting the observations of the learned Single Judge. The learned Single Judge has held while dismissing the claim of the candidate, stating that it was always open to the employer to fix higher qualification than one fixed by the University Grants Commission [in short 'UGC'] and also that the Government Orders issued, had been in vogue several years from 1985 and 2005 and the challenge after such a distance of time was found to be unsustainable. The Division Bench which heard the writ appeal, concurred with the legal findings of the learned Single Judge and

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eventually dismissed the writ appeal on 09.03.2018.

5 According to the learned counsel, as against WA.No.533/2018, Rev.Appln.No.195/2019 has been filed and the same is also the subject matter of adjudication before this Court. Learned counsel would submit that one other Division Bench has taken a similar view in response to the challenge to the qualification in WA.No.2484/2018 dated 13.11.2018. The Division Bench, after recording the reasons stated therein and also on consideration of a decision of the Hon'ble Supreme Court of India, did not agree with the grounds raised in the writ appeal. The learned counsel referred to paragraph No.6 onwards of the judgment of the Division Bench which are extracted hereunder:-

> *"**6.**Though, Mr.E.C.Ramesh, learned counsel for the appellant reiterated the grounds stated supra, we are not inclined to entertain the appeal for the following reasons,*
>
> *[1]Examination for filling up of the above said "Assistant Professor [Pre Law]" is stated to be over.*
>
> *[2]Besides, as rightly observed, the appellant has approached this Court after the last date of submission of application is over.*
>
> *[3]Thirdly, it is for the employer to prescribe*

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the required qualifications for any post in the service.

*7. In **P.U.Joshi and others vs. Accountant General Ahmedabad and others** reported in (2003) 2 Supreme Court cases 632, the Hon'ble Supreme Court, held that prescription of educational / other qualifications is purely the prerogative of the Government and that it is not open to the petitioner or any other applicant to suggest what should be the educational or other qualifications required for the post. At paragraph No.10 of the judgement, the Hon'ble Supreme Court held as follows:*

> *10.Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to the fulfilled for such promotions pertain to the field of policy is within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the constitution of India and it is not for the statutory tribunals, at any rate, to direct the Government to have a particular method of recruitment of eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/subtraction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or*

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> *necessitate. Likewise, the State by appropriate rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/categories of service, as may be required from time to time by abolishing the existing cadres/posts and creating new cadres/posts. There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service."*

8. P.U.Joshi's case has been considered in ***Chandigarh Admn. v. Usha Kheterpal Waie,*** *reported in* ***(2011) 9 SCC 645****, wherein at paragraph No.12, the Hon'ble Supreme Court held thus,*

> *"12 .....It is now well settled that it is for the rule-making authority or the appointing authority to prescribe the mode of selection and minimum qualification for any recruitment. Courts and tribunals can neither prescribe the qualifications nor entrench upon the power of the concerned authority so long as the qualifications prescribed by the employer is reasonably relevant and has a rational nexus with the*

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functions and duties attached to the post and are not violative of any provision of Constitution, statute and Rules. ...

9.For the reasons stated supra, instant Writ Appeal is dismissed. No costs. Consequently, the connected civil miscellaneous petition is closed."

6 The learned counsel would proceed to refer certain salient facts and circumstances as to why the prescription of qualification of M.L., Degree and enrollment as advocate, cannot be countenanced both in law and on facts. The learned counsel would premise his entire arguments on the reason that for Assistant Professor to the post of pre-law courses in the Law Colleges, requirement of M.L., Degree or enrollment as an advocate cannot be insisted upon, as the Assistant Professors are not required to take any courses relating to core law subjects. After the introduction of the integrated Five Year Law Course, several non law subjects have been introduced in the curriculum like Economics, Sociology, Philosophy, Commerce, Science, Business Management etc. In order to take classes of these non law subjects, Assistant Professors are being recruited with Post Graduate Degree in the relevant subject with 55% marks and also the clearance of NET. When a candidate satisfies this criterion in the subject concerned, insisting of M.L.Degree in law and enrollment as an advocate as a condition

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precedent for being considered for appointment is *ex-facie* irrational and acquisition of such degrees have no value addition at all in the actual discharge of duties by these Assistant Professors.

7 The learned counsel would draw the attention of this Court to the syllabus framed by the Department of Legal Studies in respect of Five Year B.A.,L.L.B., course. The learned counsel referred to the syllabus taught in Economics as one of the candidates he represented, had applied for the post of Assistant Professor [Economics]. He has drawn the attention of this Court to various subjects listed under the caption "General Principles of Economics", in the First year pre-law course. The various subjects listed under the broad caption Economics relate to and connected with the various branches of Economics. When a candidate is being recruited to take classes for Economics or Sociology, as the case may be, the necessity of mandatory Masters Degree in Law or enrollment, is bereft of any nexus with the job of Assistant Professor in Economics or Sociology. According to him, M.L., degree or enrollment as an advocate, is not a higher qualification, but it is a qualification unconnected with the main qualification.

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8 According to the learned counsel, the Division Bench decisions dismissing the challenge earlier, the prescription was construed as a higher qualification and therefore, the Bench held that it was always open to the State or the University to prescribe higher qualification than what prescribed by the Central Regulating Body, viz., UGC. However, the Division Benches have lost sight of the fact that Masters Degree in Law was not a higher qualification, but a qualification unconnected with the Post Graduate qualification in the relevant subject which alone is essential for effective discharge of duties as Assistant Professor teaching pre-law courses.

9 The learned counsel has also drawn the attention of this Court to various documents stating that how the candidates he represented had been successful in the selection, but finally their results had been withheld in view of the pendency of these writ petitions. He relied on the following decisions, in support of his contentions.

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[a] ***2015 [8] SCC 129 [P.Suseela and others V. University Grants Commission and Others].*** The above said decision has been relied by the learned counsel in order to lay emphasis that prescription of NET/SLET/SET as minimum eligibility condition for appointment as

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Assistant Professor was held to be valid and effective from 30.06.2010 and no exemption is permissible.

[b] On the same line, another decision was relied upon reported in ***2018 [3] SCC 329 [State of Madhya Pradesh and Others Vs. Manoj Sharma and Others]***. The above two decisions may not be strictly relevant for consideration of this Court as the principal dispute to be considered herein is whether the prescription of M.L.Degree and enrollment as an advocate as the qualifications is valid or not in the facts and circumstances of the case.

[c] The learned counsel also relied upon the decision reported in ***2014 [3] SCC 767 [Ganapath Singh Gangaram Singh Rajput Vs. Gulbarga University represented by its Registrar and Others]*** and ***2003 [3] SCC 548 [Yogesh Kumar and Others Vs. Government of NCT, Delhi and Others]***. The former decision is regarding the definition of relevant subject for the post of Lecturer. In the said decision, the Apex Court has held that a cross degree is not eligible and can be considered as relevant subject. This Court feels that this decision does not advance the case of the candidates for whom the learned counsel seek to represent and that may become relevant when this Court considers whether cross

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degree is permissible or not. As far as the latter decision is concerned, it may be relevant to the extent that the present qualifications have been in vogue in the Recruitment Rules for more than three decades, would not mean that such invalid statutory requirements would continue when it is put to challenge.

[d] The last decision relied on by the learned counsel is the decision reported in ***2007 [2] SCC 202 [Bar Council of India V. Board of Management, Dayanand College of Law and Others]***. This is the decision where the Apex Court has held that the Bar Council of India [hereinafter referred to as 'BCI'] has an effective say in prescription of norms for the legal education. In fact, the Apex Court has discountenanced the argument that BCI had no role in prescription of qualifications for legal education. The relevant paragraphs of the judgment would be referred to infra at the appropriate place in the present judgment.

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10 The learned counsel therefore summed up that BCI has, in fact, not prescribed M.L., qualification and enrollment as advocate as part of the eligibility criteria for appointment of Assistant Professor in pre-law courses. As stated above, all Colleges in the entire country and

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Universities which impart legal education, have not chosen to prescribe the qualifications as prescribed by the Directorate of Legal Studies for the Government Law Colleges in the State of Tamil Nadu. In the said circumstances, the learned counsel prayed before this Court to allow the writ petitions by declaring the disputed qualifications as null and void as being patently unreasonable, illegal, irrational and arbitrary.

11 Mr.G.Thyagarajan, learned counsel appearing for few of the writ petitioners with the similar challenge, at the outset, would submit that all the candidates he represent, have obtained both Under Graduate and Post Graduate Degrees in the same subject and have also successfully completed NET in the same subjects. Therefore, all the writ petitioners whom he represent, are fully eligible to be appointed as Assistant Professors in pre-law courses in the respective subjects. According to him, at the time when the Five Year Integrated Law Courses were introduced, there was only one subject and thereafter, over years, several subjects have been introduced. In fact, he has referred to Part-I of the Bar Council of India Rules [in short 'BCI Rules'] which refer to number of pre-law subjects which are being made as part of the curriculum in pre-

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law courses in the country.

12 The learned counsel also referred to the Regulations of Dr.Ambedkar Law University wherein **Regulation 21** states that number of teaching staff shall be appointed as per the norms prescribed by the University/UGC/BCI. The Regulation also further states that no teacher shall be appointed if he has not completely fulfilled the qualifications as laid down by the UGC and the University. The teaching staff shall also be paid as per the pay scale prescribed by UGC. According to the learned counsel, neither UGC nor the University nor BCI prescribed the qualifications which are presently under challenge. He also submitted that as per the Regulations, Assistant Professors [Pre Law] cannot become the Principal of the Law College and they can only reach at the level of the Head of Department [HOD].

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13 Mr.Balan Haridas, learned counsel appearing for the applicant/petitioner in Rev.Appln.No.195/2019 submitted that the judgment rendered by the Division Bench, did not have an opportunity to consider the various important issues that are being raised before this Court. The larger issues which are raised herein question the

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constitutionality of the so-called higher qualifications prescribed by the State Government. Although it is a fact that G.O.Ms.No.1349, Education Department, dated 19.11.1985 followed by G.O.Ms.No.264, Law Department, dated 20.12.2005, had been issued many years ago and have been holding the field very unfortunately, but in the face of the present challenge as to its' legality, delay cannot be put against the petitioners. When the issue of constitutional validity of a particular rule is the subject matter of challenge, the question of delay would not arise at all.

14 The learned counsel further submitted that the Division Benches simply dismissed the writ appeals by extracting the observations of the learned Single Judges, stating that nothing wrong in fixing a higher qualification and also the Government Orders were issued long time ago and hence, no interference was called for. When a specific question has been put to the learned counsels by this Court, whether the arguments before this Court had been canvassed for consideration before those two learned Benches, the response of the learned counsels was simply "No". Therefore, it is not fair on the part of the learned counsels to find fault with the decisions of the Division Benches, in the face of the admission that no arguments were advanced in regard to the constitutionality of the prescription of the controversial qualification.

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15 Be that as it may, as the issues presently raised, assume larger legal significance concerning the qualification of the legal education in the State of Tamil Nadu, this Court is inclined to critically and incisively examine the relevant statutory provisions/Regulations, the legislative competence of the State in terms of Schedule-VII of the Constitution of India and the decisions of the Apex Court and the High Courts on the subject matter.

16 Coming back to the arguments advanced by Mr.Balan Haridas, learned counsel, he has emphasized the fact that thorough arguments have not been advanced before the Division Benches which referred in earlier decisions. However, the observations of the Division Bench that there is nothing wrong in prescription of higher qualification by the Government or the University, may not be correct, as the higher qualification would be a higher proficiency in the subject concerned and not in a completely different subject like Masters Degree in Law. Therefore, the decisions of the Division Benches are misplaced on a wrong and faulty premise, resulting in filing of the Review Petition No.195/2019. One more factor which assumes legal significance in that writ petition in WP.No.33145/2017 which is the subject matter of

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Rev.Petn.No.195/2019, is that the Rules have been challenged and in all other writ petitions, the challenge is only the Notifications by the Recruiting Agency. In fact, there are objections as to the maintainability of the writ petitions challenging the Notification of the Recruiting Agency in respect of the qualification on the ground that the Notification is only a consequence of the Recruitment Rules and in such an event, the writ petitions cannot be held maintainable. In the face of such legal objections to the maintainability of the writ petitions challenging only the Notifications, the adjudication of the Review Petition No.195/2019 becomes a legal necessity.

17 Mr.R.Singaravelan, learned Senior counsel appearing for some of the candidates who satisfied all the qualifications prescribed in the said Notification, i.e., Masters Degree in Law as well as enrollment as a lawyer, would submit that admittedly, the Rule is being followed ever so many Notifications since 1985. Several appointments have been made on the basis of the said qualifications and there is no justification for this Court to revisit the qualification as prescribed, which admittedly stood the test of time.

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18 According to the learned Senior counsel, the disputed qualifications have been prescribed by the Government only after taking into consideration, the unique nature of syllabi that are being taught in the Government Law Colleges in the State of Tamil Nadu. From the first semester onwards, a mixture of subjects is being taught and every Assistant Professor be it in the subject of Economics, Sociology etc., is also expected to have knowledge in law, apart from the relevant subject justifying his appointment as a full-time faculty. The learned Senior Counsel referred to Rules of Legal Education as provided under Part-IV of BCI Rules. He referred to Rule 2[a] and [b] which are extracted hereunder:-

"2.Definitions:-

..

*[iv]"**Centres of Legal Education**" means*

[a]All approved Departments of Law of Universities, Colleges of Law, Constituent Colleges under recognised Universities and affiliated Colleges or Schools of law of recognized Universities so approved.

***Provided** that a Department or College or Institution conducting correspondence courses through Distance Education shall not be included.*

[b]National Law Universities constituted and established by statutes of the Union or States and mandated to start and run Law Courses.

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In the same breadth, the learned counsel also referred to Rules 17, 18, 22 and 23, which are extracted hereunder:-

> "**17.Core Faculty:-** *There shall be sufficient number of full time faculty members in each Centre of Legal Education [i.e., Department, constituent or affiliated College] to teach each subject at all point of time for running courses who can be supported by part time or visiting faculty. Such a core faculty shall in no case be less than six in the first year of the approval with both streams in operation, eight in the second year and ten in the case of third year of law courses. In addition, for the integrated course there shall be adequate faculty in the subjects offered in the liberal educational subjects as part of the course by the institution. These faculties in the liberal educational discipline in Arts, Science, Management, Commerce, Engineering, Technology or any other discipline shall possess qualification as is required under the UGC guideline or under such other standard setting body as the discipline is allotted to by any Act, statute or Rules of the Government of India or of a State.*
>
> *For the Three Year Bachelor of Law degree course only with two sections without the Honour program, there shall be minimum of four core faculty in the first year, six in the second and eight in the third year in addition to the Principal/Head or Dean as the case may be.*
>
> *Provided that an institution intending to run any specialized or Honours course must have at least three faculty in the group in which specialization and Honours courses are offered.*
>
> *Provided further that each full time faculty shall take as many classes in the subject or subjects as may be assigned to them on the basis of*

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standard prescribed by the standard setting institution like UGC.

Provided further, if any institution of a University, which was already affiliated to the University and approved to run professional courses of either scheme or both by the Bar Council of India after inspection of the University, falls short of required full time faculty, the new admission in courses may be required to remain suspended until new required number of faculty is procured. The University shall before starting a new academic session, notify which institutions are only be allowed to admit fresh students.

Provided further that if while inspecting the University it was found that in any institution of the University adequate number of full time faculty was not there in the staff, the Bar council after giving notice to the University might give a public notice directing the University not to admit students in the new academic year in that institution.

18-Minimum weekly class program per subject [paper]-

There shall be for each paper [with 4 credit] Four class hours for one hour duration each and one hour of tutorial / moot Court / Project work per week.

....

22:Salary scale:-*The salary paid to the Principal shall be according to the scales recommended by the UGC from time to time with other benefits. Core Full Time Faculty shall ordinarily be given usual UGC scale.*

An institution may however have faculty whose remuneration is based on contract provided the remuneration is comparable with or more favourable to the faculty in comparison with the

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UGC scale and salary shall be paid through Account Payee cheque.

23:Standard Academic practice:- *The Bar Council of India may issue directives from time to time for maintenance of the standards of legal education. The Centre of Legal Education / University has to follow them as compulsory."*

The learned Senior counsel further referred to the Resolution of BCI dated 14.09.2008 with reference to Faculty Qualification and the same reads thus:-

"Faculty Qualification:-

- *Full-time members of the faculty shall possess atleast Master of Laws [LLM] Degree or as prescribed by the UGC.*
- *Members of the faculty teaching clinicial programme may be drawn from retired judicial officers or from the Bar.*
- *Visiting faculty from the profession, judiciary or academic shall have a minimum experience of 10 years.*
- *There shall be sufficient number of full-time members of the faculty who shall be, if necessary, supported by part-time and visiting faculty.*
- *Members of the faculty shall be paid according to UCC pay scales.*
- *Faculty work station shall be at least 100 sft per workstation."*

The BCI has framed Rules in terms of Section 7[1][h] and [i] of the Advocates Act, 1961 read with Section 24[1][c][iii] and [iiia],

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49[1][af][ag] and [d] of the Advocates act, 1961 made by the Bar Council of India in consultation with Universities and State Bar Councils. The qualification thus prescribed by the two Government Orders aforementioned and also in the Recruitment Notifications, are in consonance with the requirement laid down by the Advocates Act, 1961, read with BCI Legal Education Rules. According to him, if only the Assistant Professor has both Post Graduation in the relevant subject plus Masters Degree in Law, he would be in a position to fulfill the norms of UGC requirements of taking minimum 16 hours classes in a week. BCI Resolutions as extracted above, insisted on full time members of the faculty for the maintenance of good standards of legal education.

19 The learned Senior counsel drew the attention of this Court to the syllabus prescribed by the Department of Legal Studies for the Five Year Law Degree courses and the subjects that are taught during the first two years, comprising four semesters. According to him, from the very first year and from the first semester, apart form the pre-law subjects like political science, economics, sociology etc., law subjects were also taught. For instance, Law of Torts in the first semester, Law of Crimes in the second semester and as the students progress to the 3rd and 4th semesters,

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more number of law subjects relating to Contracts, Family Law, Clinical Course etc., are made part of the curriculum. In the said factual scenario, a person with a mere possession of Post Graduation Degree in the particular subject would not be able to fulfill the norms prescribed by UGC in taking classes of minimum 16 hours a week. In this connection, the learned Senior counsel referred to the relevant UGC Norms/Regulations and as per Appendix – III Table – 1, the direct teaching hours week is mentioned as 16 hours for Assistant Professor and 14 hours for Associate Professor and 14 hours for Professor. In order to fulfill these norms, with a single Post Graduation degree in relevant subject, no Assistant Professor can satisfy the norms and in which case that there cannot be any full time faculty at all. In the absence of full time faculty, the legal education will surely witness fall in standards.

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20 The Government of Tamil Nadu has taken all aspects into consideration, while devising the mixed curriculum right from the first semester onwards and also the fact that unlike the other Law Colleges or the Universities, the Government Colleges does not offer many arts/ science subjects providing scope for adequate hours of work for the pre-law Lecturers. According to him, the Government Law Colleges cannot

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be compared to the National Law School or Ambedkar Law University as they stand on a different footing. The learned Senior counsel further elaborated on the aspect of the subjects being taught in Ambedkar Law University and also in the Government Law Colleges and reiterated that the law subjects are integrated along with the other subjects as a comprehensive course content and only the teachers who are holders of both Post Graduation Degree in the relevant subject and Masters Degree in Law would be in a position to handle the classes.

21 The learned Senior counsel while making the above submissions, has made a frontal attack on the conduct of the candidates who challenge the Notification. According to him, those candidates have no locus standi to challenge, as they have participated in the selection after fully knowing the qualification prescribed in the Notification. Having participated in the selection, it is not open to the candidates to challenge the very prescription of the qualifications and only on the basis of the interim orders granted by this Court, they were permitted to participate in the selection process.

22 The learned Senior counsel has referred to G.O.Ms.No.1349 dated 19.11.1985 and also the other Government Order in

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G.O.Ms.No.264 dated 20.12.2005. Both the Government Orders have statutory force being issued under Article 309 of the Constitution and were issued in pursuance of the Advocates Act, 1961 and the Rules of Legal Education. Moreover the prescription of qualifications is the exclusive domain of the employer and precisely that is what the Division Benches have held while discountenancing the challenge made to the Notification in the earlier round of litigation by the then unqualified candidates. He has also referred to paragraphs Nos.6 to 9 of the Division Bench judgment made in WA.NO.2484/2018 dated 13.11.2018, which have already been extracted supra.

23 The learned Senior counsel in fact relied on the other Division Bench decision made in WA.No.533/2018 dated 09.03.2018, drawing support from the findings of that decision where the challenge was discountenanced. As stated above, Rev.Petn.No.195/2019 is a part of this Court consideration which arose out of the above said Division Bench judgment dated 09.03.2018. He also relied on a Full Bench decision of this Court dated 23.07.2018 made in WP.No.44242/2016 etc., batch, particularly, paragraph Nos.55, 56 and 59, which read thus:-

> "***55.****There is a difference between Open*

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Universities and other Universities and / or Boards, in that some of these Open Universities enable candidates, who do not have the basic qualifications, to obtain higher qualifications straight away. By prosecuting studies through Open Universities, it may be possible for a candidate to obtain a Post Graduate Degree or a Three Year LLB Degree with being a Graduate or to obtain a Graduate degree without having the Senior Secondary School Certificate. In our view, the Bar Council of India, in its wisdom, framed the Legal Education Rules making a Graduate degree upon prosecution of a regular course from a University, whose degree in Law is recognized by the Bar Council of India, a mandatory eligibility criteria.

56.*Had it been the intention of the Bar Council that for admission to Three Year LLB Course, a candidate would be required to obtain all the previous requisite degrees and Certificates, such as the Secondary School Certificate and Senior Secondary School Certificate, by prosecuting a regular course, the Legal Education Rules would have specifically provided so.*

...

59.*In view of the observations above, we hold that candidates who have obtained the Three Year LLB degree from a University established by Statute, recognised by the University Grants Commission approved affiliated Centre of Legal Education / Departments of the recognised University as approved by the Bar Council of India for the purpose of enrollment, after graduating from Universities established by statute by prosecuting regular Bachelor's degree courses, shall not be refused enrollment. Once a degree is found to be authentic, it is not for the Bar Council*

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> *to go behind the degree and enquire into the eligibility of the candidates to take admission in the University."*

24 The learned Senior counsel also referred the decision reported in ***2018 [16] SCC 533 [Abdul Motin Vs. Manisankar Maiti and Others],*** and referred to paragraphs 12, 13 and 14, which are extracted hereunder:-

> *"**12.**Having heard the learned counsel appearing for the parties and having considered the ratio in Annamalai University [Annamalai University v.Information & Tourism Deptt., (2009) 4 SCC 590 : 3 SCEC 532] , we are of the view that the effect of that decision is to the contrary. In Annamalai University [Annamalai University v. Information & Tourism Deptt., (2009) 4 SCC 590 : 3 SCEC 532] , this Court observed that the University Grants Commission Act which was enacted by Parliament under Schedule VII List I Entry 66 to the Constitution of India, was so enacted for effectuating coordination and determination of standards in universities. Its provisions are binding on all universities whether conventional or open and its powers are very broad. The Regulations framed under that Act apply equally to open universities as well as also to formal conventional universities vide paras 40-42 of the said judgment which read as under: (SCC p. 607)*
>
> > *"40. The UGC Act was enacted by Parliament in exercise of its power under Schedule VII List I Entry 66 to the Constitution of India whereas the Open University Act was enacted by Parliament in*

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exercise of its power under Entry 25 of List III thereof. The question of repugnancy of the provisions of the said two Acts, therefore, does not arise. It is true that the Statement of Objects and Reasons of the Open University Act shows that the formal system of education had not been able to provide an effective means to equalise educational opportunities. The system is rigid inter alia in respect of attendance in classrooms. Combinations of subjects are also inflexible.

41. Was the alternative system envisaged under the Open University Act in substitution of the formal system, is the question. In our opinion, in the matter of ensuring the standard of education, it is not. The distinction between a formal system and informal system is in the mode and manner in which education is imparted. The UGC Act was enacted for effectuating coordination and determination of standards in universities. The purport and object for which it was enacted must be given full effect.

42. The provisions of the UGC Act are binding on all universities whether conventional or open. Its powers are very broad. The Regulations framed by it in terms of clauses (e), (f), (g) and (h) of sub-section (1) of Section 26 are of wide amplitude. They apply equally to open universities as also to formal conventional universities. In the matter of higher education, it is necessary to maintain minimum standards of instructions. Such minimum standards of instructions are required to be defined by UGC. The

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> *standards and the coordination of work or facilities in universities must be maintained and for that purpose required to be regulated. The powers of UGC under Sections 26(1)(f) and 26(1)(g) are very broad in nature. Subordinate legislation as is well known when validly made becomes part of the Act. We have noticed hereinabove that the functions of UGC are all-pervasive in respect of the matters specified in clause (d) of sub-section (1) of Section 12-A and clauses (a) and (c) of sub-section (2) thereof."*

13. *We might also take note of communications dated 5-5-2004 and 14-10-2013 made by the University Grants Commission to the Registrar/Director of all Universities, which are as follows:*

"F1-52/2000 (CPP-II)
5-5-2004

The Registrar/Director of
all the Indian Universities (Deemed,
State, Central Universities/Institutions
of National Importance)
Subject : Recognition of Degrees awarded by Open Universities.
Sir/Madam,
…………
…………
…………
…………
May, I therefore request you to treat the Degree/Diploma/Certificates awarded by the Open Universities in conformity with the UGC

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notification on Specification of Degrees as equivalent to the corresponding awards of the traditional Universities in the country.

Yours faithfully,
(Dr [Mrs] Pankaj Mittal)
Joint Secretary
University Grants Commission"

AND

"F. No. UGC/DEB/2013

Dated : 14-10-2013

The Registrar/Director
of all the Indian Universities
(Deemed, State, Central
Universities/Institutions of
National Importance)

Subject : Equivalence of Degree awarded by Open and Distance Learning (ODL) Institutions on a par with Conventional Universities/Institutions.

Sir/Madam,

…………
…………
…………
…………

Accordingly, the Degrees/Diplomas/Certificates awarded for programmes conducted by the ODL institutions, recognised by DEC (erstwhile) and UGC, in conformity with UGC notification on specification of Degrees should be treated as equivalent to the corresponding awards of the Degree/Diploma/Certificate of the traditional Universities/Institutions in the country.

(Vikram Sahay)
Director (Admn.)
University Grants Commission"

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> ***14.****In view of the observations in Annamalai University [Annamalai University v. Information & Tourism Deptt., (2009) 4 SCC 590 : 3 SCEC 532] and the above directive, we are of the view that as a consequence, PhD degree issued by an open university and another PhD degree issued by a formal conventional university must, therefore, be treated on a par having been so issued under the uniform standards prescribed by the University Grants Commission Act. "*

The above decisions have been cited by the learned Senior counsel in relation to the allied issues raised in these batch of writ petitions stating that whether for appointment of a teaching faculty, Post Graduate degree obtained through Open University or Distance Education Programme is valid or not? According to the learned Senior counsel, the decision of the Full Bench of this Court has concluded this issue once and for all that once a recognized Board issues a Certificate, the validity of the same cannot be questioned. The Apex Court has also held that after ***Annamalai University's case***, the degree awarded by the Open University is in conformity with UGC Regulation and is equivalent to the corresponding degrees awarded by the Traditional Universities.

25 Mr.R.Singaravelan, learned Senior counsel has referred to

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the latest Rules of Legal Education, 2019, laying down maintenance of standards of legal education issued by the BCI. He has specifically referred to Schedules relating to the academic standards and the courses to be studied including the subjects in liberal discipline in integrated stream. He emphasized the fact that the programme is niche education programme of fact and law, one complementing and supplementing the other. The integrated programme is the study of two degree programmes in tandem like arts and law, science and law, commerce and law, etc. In view of such curriculum design, the M.L., degree is a must for any faculty to fit into the system. However, this Court has been informed that the latest Legal Education Rules, 2019 has not yet been notified. In any event, the learned Senior counsel would submit that it may have a persuasive value in order ot understand as to how the future legal education would be conducted. The learned Senior Counsel relied on several other decisions in support of his contentions and those decisions and relevant paragraphs are extracted hereunder:-

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[a] AIR 1965 SC 491 *[The University of Mysore and Another V. C.D.Govinda Rao and Another];-*

> *"**12.** Before we part with these appeals, however, reference must be made to two other*

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matters. In dealing with the case presented before it by the respondent, the High Court has criticised the report made by the Board and has observed that the circumstances disclosed by the report made it difficult for the High Court to treat the recommendations made by the expert with the respect that they generally deserve. We are unable to see the point of criticism of the High Court in such academic matters. Boards of Appointments are nominated by the Universities and when recommendations made by them and the appointments following on them, are challenged before courts, normally the courts should be slow to interfere with the opinions expressed by the experts. There is no allegation about mala fides against the experts who constituted the present Board; and so, we think, it would normally be wise and safe for the courts to leave the decisions of academic matters to experts who are more familiar with the problems they face than the courts generally can be."

[b] 1990 [2] SCC 746 *[Neelima Misra V. Harinder Kaur Paintal and others] :-*

*"**30.** The order of the Chancellor impugned in this case indicates very clearly that he has considered the recommendation of the Selection Committee and the opinion expressed by the Executive Council. He has stated and in our opinion, very rightly that the appellant possesses the prescribed qualification for appointment as Reader. The decision of the Chancellor gets support from the Statute 11.01 of the First Statute. The Statute 11.01 is in these terms:*

"11.01 (1) In the case of the Faculties of Arts, Commerce and Science, the following shall be the minimum qualifications for the post of Lecturer in

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the University, namely—
(a) A doctorate in the subject of study concerned or a published work of a high standard in that subject; and
(b) Consistently good academic record (that is to say, the overall record of all assessment throughout the academic career of a candidate), with first class or high second class that is to say, with an aggregate of more than 54 per cent marks Master's Degree in the subject concerned or equivalent degree of a foreign University in such subject.
(2) Where the Selection Committee is of the opinion that the research work of a candidate, as evidenced either by his thesis or by his published work, is of a very high standard, it may relax any of the qualifications specified in sub-clause (b) of clause (1).”

31. *The minimum qualification prescribed for the post is a doctorate in the subject of study concerned or a published work of high standard in the subject. The appellant then was found to have an alternate qualification though not a doctorate in the subject. The Selection Committee has accepted the alternate qualification as sufficient and did not relax the essential qualification prescribed for the post. The Executive Council appears to have committed an error in stating that the appellant has lacked the essential qualification and the Selection Committee has relaxed the essential qualification. The Chancellor was, therefore, justified in rejecting the opinion of the Executive Council.*

32. *It is not unimportant to point out that in matters of appointment in the academic field the court generally does not interfere. In the University of Mysore v. C.D. Govinda Rao [(1964) 4 SCR 575: AIR 1965 SC 491] , this Court observed that the*

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courts should be slow to interfere with the opinion expressed by the experts in the absence of mala fide alleged against the experts. When appointments are based on recommendations of experts nominated by the Universities, the High Court has got only to see whether the appointment had contravened any statutory or binding rule or ordinance. The High Court should show due regard to the opinion expressed by the experts constituting the Selection Committee and its recommendation on which the Chancellor has acted. See also the decisions in J.P. Kulshreshtha v. Chancellor, Allahabad University, Raj Bhavan [(1980) 3 SCC 418: 1980 SCC (L&S) 436: (1980) 3 SCR 902, 912] and Dalpat Abasaheb Solunke v. B.S. Mahajan [(1990) 1 SCC 305, 309-10: 1990 SCC (L&S) 80]."

[c] 2011 [6] SCC 597 *[State of Himachal Pradesh and Others V. Himachal Pradesh Vyavsayik Prishikshan kendra Sangh];-*

*"**21.** The High Court has lost sight of the fact that education is a dynamic system and courses/subjects have to keep changing with regard to market demand, employability potential, availability of infrastructure, etc. No institute can have a legitimate right or expectation to run a particular course forever and it is the pervasive power and authority vested in the Government to frame policy and guidelines for progressive and legitimate growth of the society and create balances in the arena inclusive of imparting technical education from time to time. Inasmuch as the institutions found fit were allowed to run other courses except the three mentioned above, the doctrine of legitimate expectation was not disregarded by the State. Inasmuch as ultimately it is the responsibility of the State to provide good*

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education, training and employment, it is best suited to frame a policy or either modify/alter a decision depending on the circumstance based on relevant and acceptable materials. The courts do not substitute their views in the decision of the State Government with regard to policy matters. In fact, the court must refuse to sit as appellate authority or super legislature to weigh the wisdom of legislation or policy decision of the Government unless it runs counter to the mandate of the Constitution."

[d] 2009 [5] SCC 342 *[Grand Kakatiya Sheraton Hotel and Tower Employees and Workers Union Vs. Srinivasa Resorts ltd., and others]:-*

*"**67.** It was argued by the learned counsel for the appellant that there could not have been a comparison between the provisions of the Payment of Gratuity Act and the present provisions while deciding the constitutionality. For this purpose, the learned counsel relied on the law laid down by this Court in State of M.P. v. G.C. Mandawar [AIR 1954 SC 493: (1955) 1 SCR 599] . The following observations in that case were relied upon: (AIR p. 496, para 9)*

"9. ... Article 14 does not authorise the striking down of a law of one State on the ground that in contrast with a law of another State on the same subject its provisions are discriminatory. Nor does it contemplate a law of the Centre or of the State dealing with similar subjects being held to be unconstitutional by a process of comparative study of the provisions of the two enactments. The sources of authority for the two statutes being different,

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Article 14 can have no application.”

68. *It may immediately be clarified that though it is true that both the laws i.e. the Shops Act and the Payment of Gratuity Act have been passed validly under Entry 24 of List III of the VIIth Schedule, it is incorrect to say that the High Court has compared the two provisions. It is one thing to refer to a provision and quite another to compare it with the impugned provision.*

69. *The High Court has actually gone into the concept of gratuity right from its inception and has come to the conclusion that for earning the gratuity, the employee does not have to contribute anything, as in the case of a provident fund. Gratuity is more or less a gratuitous payment by the employer in consideration of long and faithful service by the employee. The concept of gratuity came to be developed firstly in the industrial jurisprudence and was crystallised by the Central legislation by way of an Act, where a provision of five years of minimum service was made for an employee to be entitled for payment of gratuity. However, as has been held in Bakshish Singh v. Darshan Engg. Works [(1994) 1 SCC 9 : 1994 SCC (L&S) 302 : (1994) 26 ATC 483] the length of five years of service could not have been reduced in an absurd manner to a minuscule period of one year or even less than that. The High Court, therefore, found fault that the basic concept of gratuity was being abused by the reduction of the required service to an almost non-existent level. It cannot, therefore, be said that the High Court compared the two provisions. This is apart from the fact that the reduction to a period of six months was already held to be unconstitutional in Suryapet Coop. Mktg. Society Ltd. v. Munsif Magistrate [(1972) 2 An LT 163] which judgment*

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had attained finality.

__70.__ The High Court found that instead of remedying the defects pointed out in Suryapet Coop. Mktg. Society Ltd. v. Munsif Magistrate [(1972) 2 An LT 163] a cosmetic change was made by raising the period of six months to one year. We are, therefore, unable to accept the submission of the learned counsel for the appellant that the High Court proceeded on to decide the constitutionality on the basis of a comparison. We do not, therefore, see how the aforementioned judgment in State of M.P. v. G.C. Mandawar [AIR 1954 SC 493: (1955) 1 SCR 599] can be of any application and help to the present case."

[e] AIR 2011 SC 3470 *[State of Tamil nadu and others Vs. k.Shyam Sunder and others] :-*

"__50.__ In Ajay Hasia v. Khalid Mujib Sehravardi [(1981) 1 SCC 722 : 1981 SCC (L&S) 258 : AIR 1981 SC 487] , this Court held that Article 14 strikes at arbitrariness because an action that is arbitrary, must necessarily involve negation of equality. Whenever therefore, there is arbitrariness in State action, whether it be of the legislature or of the executive, Article 14 immediately springs into action and strikes down such State action. (See also E.P. Royappa v. State of T.N. [(1974) 4 SCC 3 : 1974 SCC (L&S) 165 : AIR 1974 SC 555] and Maneka Gandhi v. Union of India [(1978) 1 SCC 248 : AIR 1978 SC 597] .)

__52.__ In Bombay Dyeing & Mfg. Co. Ltd. (3) v. Bombay Environmental Action Group [(2006) 3 SCC 434 : AIR 2006 SC 1489] , this Court held that: (SCC p. 511, para 205)

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> *"205. Arbitrariness on the part of the legislature so as to make the legislation violative of Article 14 of the Constitution should ordinarily be manifest arbitrariness."*
>
> ***53.*** *In Bidhannagar (Salt Lake) Welfare Assn. v. Central Valuation Board [(2007) 6 SCC 668 : AIR 2007 SC 2276] and Grand Kakatiya Sheraton Hotel and Towers Employees and Workers Union v. Srinivasa Resorts Ltd. [(2009) 5 SCC 342 : (2009) 2 SCC (L&S) 10 : AIR 2009 SC 2337] , this Court held that a law cannot be declared ultra vires on the ground of hardship but can be done so on the ground of total unreasonableness. The legislation can be questioned as arbitrary and ultra vires under Article 14. However, to declare an Act ultra vires under Article 14, the Court must be satisfied in respect of substantive unreasonableness in the statute itself."*

[f] AIR 2006 SC 1489 *[Bombay Dyeing and mfg. Co. Ltd., Vs. Bombay Environmental Action Group and others]:-*

> ***"204.*** *For the purpose of striking down a legislation on the ground of infraction of the constitutional provisions, the court would not exercise its jurisdiction only because the recommendations of the Committees had not been accepted in toto but would do so inter alia on the ground as to whether they otherwise violate the constitutional principles.*
>
> ***205.*** *Arbitrariness on the part of the legislature so as to make the legislation violative of Article 14 of the Constitution should ordinarily be manifest arbitrariness. What would be arbitrary exercise of legislative power would depend upon the provisions of the statute vis-à-vis the purpose*

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and object thereof. (See Sharma Transport v. Govt. of A.P. [(2002) 2 SCC 188] , SCC para 25, Khoday Distilleries Ltd. v. State of Karnataka [(1996) 10 SCC 304] and Otis Elevator Employees' Union S. Reg. v. Union of India [(2003) 12 SCC 68 : 2004 SCC (L&S) 988] , SCC para 17.)"

[g] 2015 [8] SCC 129 *[P.Suseela and Others V. University Grants Commission and Others]*

*"**16.** Similar is the case on facts here. A vested right would arise only if any of the appellants before us had actually been appointed to the post of Lecturer/Assistant Professors. Till that date, there is no vested right in any of the appellants. At the highest, the appellants could only contend that they have a right to be considered for the post of Lecturer/Assistant Professor. This right is always subject to minimum eligibility conditions, and till such time as the appellants are appointed, different conditions may be laid down at different times. Merely because an additional eligibility condition in the form of a NET test is laid down, it does not mean that any vested right of the appellants is affected, nor does it mean that the regulation laying down such minimum eligibility condition would be retrospective in operation. Such condition would only be prospective as it would apply only at the stage of appointment. It is clear, therefore, that the contentions of the private appellants before us must fail.*

...

__19.__ The doctrine of legitimate expectation has been dealt with in two judgments of this Court as follows: in Union of India v. International Trading Co. [(2003) 5 SCC 437] , it was held: (SCC p. 447, para 23).

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"23. Reasonableness of restriction is to be determined in an objective manner and from the standpoint of interests of the general public and not from the standpoint of the interests of persons upon whom the restrictions have been imposed or upon abstract consideration. A restriction cannot be said to be unreasonable merely because in a given case, it operates harshly. In determining whether there is any unfairness involved; 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 condition at the relevant time, enter into judicial verdict. The reasonableness of the legitimate expectation has to be determined with respect to the circumstances relating to the trade or business in question. Canalisation of a particular business in favour of even a specified individual is reasonable where the interests of the country are concerned or where the business affects the economy of the country. (See Parbhani Transport Coop. Society Ltd. v. RTA [AIR 1960 SC 801 : (1960) 62 BOM LR 521] , Shree Meenakshi Mills Ltd. v. Union of India [(1974) 1 SCC 468] , Hari Chand Sarda v. Mizo District Council [AIR 1967 SC 829] and Krishnan Kakkanth v. State of Kerala [(1997) 9 SCC 495] .)"

***20.** Similarly, in Sethi Auto Service Station v. DDA [(2009) 1 SCC 180] , it was held: (SCC p. 191, para 33)*

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"33. It is well settled that the concept of legitimate expectation has no role to play where the State action is as a public policy or in the public interest unless the action taken amounts to an abuse of power. The court must not usurp the discretion of the public authority which is empowered to take the decisions under law and the court is expected to apply an objective standard which leaves to the deciding authority the full range of choice which the legislature is presumed to have intended. Even in a case where the decision is left entirely to the discretion of the deciding authority without any such legal bounds and if the decision is taken fairly and objectively, the court will not interfere on the ground of procedural fairness to a person whose interest based on legitimate expectation might be affected. Therefore, a legitimate expectation can at the most be one of the grounds which may give rise to judicial review but the granting of relief is very much limited. (Vide Hindustan Development Corpn. [Union of India v. Hindustan Development Corpn., (1993) 3 SCC 499])"

***21.** In UGC v. Sadhana Chaudhary [(1996) 10 SCC 536 : 1996 SCC (L&S) 1431] , it is true that in para 22, some of the very appellants before us are referred to as having a legitimate expectation in the matter of appointment to the post of Lecturer in universities/colleges, but that case would have no direct application here. There a challenge was made to exemptions granted at that time to PhD holders and MPhil degree-holders. It was found that such exemption had a rational relation to the object sought to be achieved at that*

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point of time, being based on an intelligible differentia. An Article 14 challenge to the said exemption was, therefore, repelled. Even assuming that the said judgment would continue to apply even after the 2009 Regulations, a legitimate expectation must always yield to the larger public interest. The larger public interest in the present case is nothing less than having highly qualified Assistant Professors to teach in UGC institutions. Even if, therefore, the private appellants before us had a legitimate expectation that given the fact that UGC granted them an exemption from NET and continued to state that such exemption should continue to be granted even after the Government direction of 12-11-2008 would have to yield to the larger public interest of selection of the most meritorious among candidates to teach in institutions governed by the UGC Act."

[h] 2018 [3] SCC 329 *[State of Madhya Pradesh and Others V. Manoj Sharma and Others]*

"16. *It has to be noticed that the amendment as made in the minimum qualification, now provides that the exemption from NET shall be given to the PhD degree-holders, only when PhD degree has been awarded to them in compliance with the 2009 Regulations of UGC (Minimum Standards and Procedure). The above provision thus, made it mandatory that for Lecturers NET qualification is necessary and exemption shall be granted to those PhD degree-holders who have obtained PhD degree in accordance with the 2009 Regulations of UGC (Minimum Standards and Procedure). The purpose and object of the above amendments in both the 2009 Regulations of UGC (Minimum Standards and Procedure) as well as the*

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2009 Regulations of UGC (Minimum Qualifications for Appointment) is not far to seek. There has been challenge to amendments made in the 2009 Regulations of UGC (Minimum Qualifications for Appointment) insofar as it denied the benefit to PhD degree-holders who had obtained PhD prior to 11-7-2009. The writ petitions were filed in different High Courts challenging the Regulations on different grounds including that the Regulations are arbitrary and violative of Article 14 which discriminate the PhD degree-holders who have obtained PhD degree prior to 11-7-2009 and those who obtained the degree after 11-7-2009 in accordance with the 2009 Regulations of UGC (Minimum Standards and Procedure).

***17.** The challenge to the Regulations was repelled by different High Courts whereas the Allahabad High Court vide its judgment dated 6-4-2012 in Ramesh Kumar Yadav v. University of Allahabad [Ramesh Kumar Yadav v. University of Allahabad, 2012 SCC OnLine All 667 : (2013) 4 All LJ 635] has upheld the challenge. The appeals were filed against the judgment of the Rajasthan High Court [Ravindra Singh Shekhawat v. Union of India, 2012 SCC OnLine Raj 2751 : (2013) 4 RLW 3094] , the Delhi High Court [All India Researchers' Coordination Committee v. Union of India, 2010 SCC OnLine Del 4304 : (2011) 121 DRJ 297] and the Madras High Court [P. Suseela v. UGC, 2010 SCC OnLine Mad 6041 : (2011) 2 CTC 593] by the candidates whose writ petitions were dismissed as well as against the judgment of the Allahabad High Court dated 6-4-2012 [Ramesh Kumar Yadav v. University of Allahabad, 2012 SCC OnLine All 667 : (2013) 4 All LJ 635] , upholding the contention of the candidates. This Court decided all the appeals by*

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its judgment in P. Suseela v. UGC [P. Suseela v. UGC, (2015) 8 SCC 129 : (2015) 2 SCC (L&S) 633 : 7 SCEC 333] . This Court upheld the judgment of the High Courts of Rajasthan [Ravindra Singh Shekhawat v. Union of India, 2012 SCC OnLine Raj 2751 : (2013) 4 RLW 3094] , Madras [P. Suseela v. UGC, 2010 SCC OnLine Mad 6041 : (2011) 2 CTC 593] and Delhi [All India Researchers' Coordination Committee v. Union of India, 2010 SCC OnLine Del 4304 : (2011) 121 DRJ 297] and set aside the judgment of the Allahabad High Court dated 6-4-2012 [Ramesh Kumar Yadav v. University of Allahabad, 2012 SCC OnLine All 667 : (2013) 4 All LJ 635] , upholding that the amendments made in the 2009 Regulations of UGC (Minimum Qualifications for Appointment) were valid and there is a valid classification between the candidates who have obtained degree prior to the 2009 Regulations of UGC (Minimum Standards and Procedure) and those who obtained the degree in accordance with the abovesaid Regulation.

***18.** Thus, rejecting the contention of the private respondent, the following was laid down in paras 16, 17 and 18: (P. Suseela case [P. Suseela v. UGC, (2015) 8 SCC 129 : (2015) 2 SCC (L&S) 633 : 7 SCEC 333] , SCC pp. 144-45)*

> *"16. Similar is the case on facts here. A vested right would arise only if any of the appellants before us had actually been appointed to the post of Lecturer/Assistant Professors. Till that date, there is no vested right in any of the appellants. At the highest, the appellants could only contend that they have a right to be considered for the post of Lecturer/Assistant Professor. This right is always subject to minimum*

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eligibility conditions, and till such time as the appellants are appointed, different conditions may be laid down at different times. Merely because an additional eligibility condition in the form of a NET test is laid down, it does not mean that any vested right of the appellants is affected, nor does it mean that the regulation laying down such minimum eligibility condition would be retrospective in operation. Such condition would only be prospective as it would apply only at the stage of appointment. It is clear, therefore, that the contentions of the private appellants before us must fail.

17. One of the learned counsel for the petitioners argued, based on the language of the direction of the Central Government dated 12-11-2008 that all that the Government wanted UGC to do was to "generally" prescribe NET as a qualification. But this did not mean that UGC had to prescribe this qualification without providing for any exemption. We are unable to accede to this argument for the simple reason that the word "generally" precedes the word "compulsory" and it is clear that the language of the direction has been followed both in letter and in spirit by the UGC Regulations of 2009 and 2010.

18. The arguments based on Article 14 equally have to be rejected. It is clear that the object of the directions of the Central Government read with the UGC Regulations of 2009/2010 are to maintain excellence in standards of higher education. Keeping this object in mind, a minimum eligibility condition of passing the national eligibility

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test is laid down. True, there may have been exemptions laid down by UGC in the past, but the Central Government now as a matter of policy feels that any exemption would compromise the excellence of teaching standards in universities/colleges/institutions governed by the UGC. Obviously, there is nothing arbitrary or discriminatory in this — in fact it is a core function of UGC to see that such standards do not get diluted."

***19.** Thus, from the above judgment, it is clear that NET qualification is now minimum qualification for appointment of Lecturer and exemption granted to MPhil degree-holders has been withdrawn and exemption is allowed only to those PhD degree-holders who have obtained the PhD degree in accordance with 11-7-2009 Regulations, namely, the 2009 Regulations of UGC (Minimum Standards and Procedure). Although, this aspect has not been noticed by the High Court but since the learned Single Judge has directed the consideration of the case of the writ petitioner on the basis of MPhil degree which was obtained by them by distance education mode prior to 2009, it is necessary that their eligibility for the post be examined taking into consideration the 2009 Regulations of UGC (Minimum Qualifications for Appointment). The advertisement and selection for Guest Lecturers having been conducted in the year 2012 when both the 2009 Regulations of UGC (Minimum Standards and Procedure) and the 2009 Regulations of UGC (Minimum Qualifications for Appointment) were applicable."*

[i] 2011 [3] SCC 436 *[State of Orissa and Others Vs. Mamata Mohanty]* :-

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*"**29.**Education is the systematic instruction, schooling or training given to the young persons in preparation for the work of life. It also connotes the whole course of scholastic instruction which a person has received. Education connotes the process of training and developing the knowledge, skill, mind and character of students by formal schooling. The excellence of instruction provided by an educational institution mainly depends directly on the excellence of the teaching staff. Therefore, unless they themselves possess a good academic record/minimum qualifications prescribed as an eligibility, it is beyond imagination of anyone that standard of education can be maintained/enhanced.*

"18. ... we have to be very strict in maintaining high academic standards and maintaining academic discipline and academic rigour if our country is to progress.

30. ... Democracy depends for its very life on a high standard of general, vocational and professional education. Dissemination of learning with search for new knowledge with discipline all round must be maintained at all costs."

(Vide Lok Shikshana Trust v. CIT [(1976) 1 SCC 254 : 1976 SCC (Tax) 14 : AIR 1976 SC 10] , Frank Anthony Public School Employees' Assn. v. Union of India [(1986) 4 SCC 707 : (1987) 2 ATC 35 : AIR 1987 SC 311] , Osmania University Teachers' Assn. v. State of A.P. [(1987) 4 SCC 671 : AIR 1987 SC 2034] , SCC at p. 685, para 30 and Dr. Ambedkar Institute of Hotel Management, Nutrition & Catering Technology v. Vaibhav Singh Chauhan [(2009) 1 SCC 59] , SCC at p. 67, para 18.)

***30.** In Meera Massey (Dr.) v. Dr. S.R.*

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Mehrotra [(1998) 3 SCC 88 : 1998 SCC (L&S) 730 : AIR 1998 SC 1153] this Court extensively quoted the Report of the University Education Commission i.e. Radhakrishnan Commission, wherein grave concern was expressed observing that "there is negligence in applying criteria of merit in the selection" of teachers. The Court also quoted from another Report of the Committee on Some Problems of University Administration, 1964 (1967) as: (SCC pp. 104-05, para 26)

"26. ... 'The most important factor in the field of higher education is the type of person entrusted with teaching. Teaching cannot be improved without competent teachers. ... The most critical problem facing the universities is the dwindling supply of good teachers. ... The supply of the right type of teachers assumes, therefore, a vital role in the educational advancement of the country.' "

(emphasis in original)

***31.** The Court in Meera Massey [(1998) 3 SCC 88 : 1998 SCC (L&S) 730 : AIR 1998 SC 1153] further observed as under: (SCC p. 104, para 24)*

"24. University imparts education which lays foundation of wisdom. Future hopes and aspiration of the country depends on this education, hence proper and disciplined functioning of the educational institutions should be the hallmark. If the laws and principles are eroded by such institutions it not only pollutes its functioning, deteriorating its standard but also exhibits to its own students the wrong channel adopted. If that be so, how could such institutions produce good citizens? It is the educational institutions which are the future hope of this country. They lay the seed for the foundation of morality, ethics and discipline. If there is any erosion or descending by

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those who control the activities all expectations and hopes are destroyed.”

(emphasis added)

32. *In Chandigarh Admn. v. Rajni Vali [(2000) 2 SCC 42 : 2000 SCC (L&S) 247 : AIR 2000 SC 634] this Court observed as under: (SCC p. 46, para 6)*

“6. … It is a constitutional mandate that the State shall ensure proper education to the students on whom the future of the society depends. In line with this principle, the State has enacted statutes and framed rules and regulations to control/regulate establishment and running of private schools at different levels. The State Government provides grant-in-aid to private schools with a view to ensure smooth running of the institution and to ensure that the standard of teaching does not suffer on account of paucity of funds. It needs no emphasis that appointment of qualified and efficient teachers is a sine qua non for maintaining high standards of teaching in any educational institution.”

33. *In view of the above, it is evident that education is necessary to develop the personality of a person as a whole and in totality as it provides the process of training and acquiring the knowledge, skills, developing mind and character by formal schooling. Therefore, it is necessary to maintain a high academic standard and academic discipline along with academic rigour for the progress of a nation. Democracy depends for its own survival on a high standard of vocational and professional education. Paucity of funds cannot be a ground for the State not to provide quality education to its future citizens. It is for this reason that in order to maintain the standard of education the State Government provides grant-in-aid to*

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private schools to ensure the smooth running of the institution so that the standard of teaching may not suffer for want of funds.

(emphasis added)

34 [Ed.: Para 34 corrected vide Official Corrigendum No. F.3/Ed.B.J./13/2011 dated 25-2-2011.] . *Article 21-A has been added by amending our Constitution with a view to facilitate the children to get proper and good quality education. However, the quality of education would depend on various factors but the most relevant of them is excellence of teaching staff. In view thereof, quality of teaching staff cannot be compromised. The selection of the most suitable persons is essential in order to maintain excellence and the standard of teaching in the institution. It is not permissible for the State that while controlling the education it may impinge the standard of education. It is, in fact, for this reason that norms of admission in institutions have to be adhered to strictly. Admissions in mid-academic sessions are not permitted to maintain the excellence of education.*

....

56. *It is a settled legal proposition that Article 14 is not meant to perpetuate illegality and it does not envisage negative equality. Thus, even if some other similarly situated persons have been granted some benefit inadvertently or by mistake, such order does not confer any legal right on the petitioner to get the same relief. (Vide Chandigarh Admn. v. Jagjit Singh [(1995) 1 SCC 745 : AIR 1995 SC 705] , Yogesh Kumar v. Govt. of NCT of Delhi [(2003) 3 SCC 548 : 2003 SCC (L&S) 346 : AIR 2003 SC 1241] , Anand Buttons Ltd. v. State of Haryana [(2005) 9 SCC 164 : AIR 2005 SC 565] , K.K. Bhalla v. State of M.P. [(2006) 3 SCC 581 : AIR 2006 SC 898] , Krishan Bhatt v. State of*

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J&K [(2008) 9 SCC 24 : (2008) 2 SCC (L&S) 783] , Upendra Narayan Singh [(2009) 5 SCC 65 : (2009) 1 SCC (L&S) 1019] and Union of India v. Kartick Chandra Mondal [(2010) 2 SCC 422 : (2010) 1 SCC (L&S) 385 : AIR 2010 SC 3455] .)

57. *This principle also applies to judicial pronouncements. Once the court comes to the conclusion that a wrong order has been passed, it becomes the solemn duty of the court to rectify the mistake rather than perpetuate the same. While dealing with a similar issue, this Court in Hotel Balaji v. State of A.P. [1993 Supp (4) SCC 536 : AIR 1993 SC 1048] observed as under: (SCC p. 551, para 12)*

"12. … '2. … To perpetuate an error is no heroism. To rectify it is the compulsion of judicial conscience. In this, we derive comfort and strength from the wise and inspiring words of Justice Bronson in Pierce v. Delameter [1 NY 3 (1847) : A.M.Y. p. 18] at p. 18:

"a Judge ought to be wise enough to know that he is fallible and, therefore, ever ready to learn: great and honest enough to discard all mere pride of opinion and follow truth wherever it may lead: and courageous enough to acknowledge his errors".' [As observed in Distributors (Baroda) (P) Ltd. v. Union of India, (1986) 1 SCC 43, p. 46, para 2.] "

(See also Ministry of Information & Broadcasting, In re [(1995) 3 SCC 619] , Nirmal Jeet Kaur v. State of M.P. [(2004) 7 SCC 558 : 2004 SCC (Cri) 1989] and Mayuram Subramanian Srinivasan v. CBI [(2006) 5 SCC 752 : (2006) 3 SCC (Cri) 83 : AIR 2006 SC 2449] .)

58. *We are fully alive of the object and purpose of according recognition and affiliation to educational institutions. It is the educational*

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authorities of the State which grant recognition to a Committee of Management for opening or running an educational institution. Affiliation is granted by the particular university or Board for undertaking the examination of the students of that college for awarding degrees and certificates. Therefore, while granting the recognition and affiliation even for non-governmental and non-aided private colleges, it is mandatory to adhere to the conditions imposed by them, which also include the minimum eligibility for appointment of teaching staff. The authority at the time of granting approval has to apply its mind to find out whether a person possessing the minimum eligibility has been appointed. In the instant case, it appears to be a clear-cut case of arbitrariness which cannot be approved."

[j] AIR 2007 SC 1342 : 2007 [2] SCC 202 *[Bar Council of India Vs. Board of Management, Dayanand College of Law and Others]*

"11. *Rule 17(1) stipulates that no college after the coming into force of the Rules shall impart instruction in a course of study in law for enrolment as an advocate unless its affiliation has been approved by the Bar Council of India. Thus, though the Bar Council of India may not have been entrusted with direct control of legal education in the sense in which the same is entrusted to a university, still, the Bar Council of India retains adequate power to control the course of studies in law, the power of inspection, the power of recognition of degrees and the power to deny enrolment to law degree-holders, unless the university from which they pass out is recognised by the Bar Council of India.*

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***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*

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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*

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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 enrollment 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

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> *do not call for an answer in this case in the light of the view we have adopted."*

The relevance and application of the above decisions relied on by the learned Senior counsel will be considered after adverting to all the submissions, governing rules, legislative competence etc., towards the end.

26 There were objections by the candidates who are challenging the Notification contending that some of the candidates who have been selected, are found to be qualified having M.L., degree in Law, but in fact, they had obtained their Post Graduation degree in the relevant subject through Distance Education mode. The issue whether the Post Graduate Degree obtained through Distance Education is valid enough to be appointed as a teaching faculty in the pre-law course or another connected issue as to whether a cross degree obtained by the candidate is valid for appointment as an Assistant Professor in the pre-law course or not, is also to be taken up for consideration by this Court. This Court during the course of hearing of these writ petitions, was informed that some candidates have done their Under Graduate Courses majoring in

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subjects other than the subject of their Post Graduate degree and appeared to have responded to the Notification and found eligible for appointment only on the basis of the Post Graduate qualification. These two facets of the dispute would also be dealt with appropriately, after answering the main controversy.

27 Mr.G.Sankaran, learned counsel appearing for some of the candidates / writ petitioners, made the following submissions in support of the qualification prescribed in the Notification in terms of the original Government Orders dated 19.11.1985 and 20.12.2005. He began by arguing that in the Government Law Colleges in the State of Tamil Nadu, the syllabi have been formulated by adopting inter-disciplinary oriented approach. According to him, there is a fine mixture of law and arts and science subjects like Economics, Sociology etc. The learned counsel vehemently submitted that the writ petitions need to be dismissed on the short ground that the qualifications prescribed in the Notification alone is under challenge and not the Rules. The learned counsel referred to the said Notification, impugned herein, dated 18.07.2018 and drew the attention of this Court to 'Note' below the qualification prescribed for Assistant Professor pre-law course. According to the 'Note', the

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candidates who have obtained their Post Graduate degree in law through Correspondence course, are not eligible to apply. All the candidates, he represent, therefore are qualified in regular stream [M.L.] and not obtained their Post Graduate degree in law through Correspondence.

28 According to the learned counsel, the Rules framed towards prescription of qualification are framed under Article 309 of the Constitution of India and the same have not been declared as illegal and the selection which had already been concluded cannot be reopened at the instance of the unqualified candidates. According to him, there are two legal impediments for this Court to consider the case of challenge being made to the qualifications, viz., one, the Rules are not challenged and two, the selection was already over. He referred to the counter affidavit on behalf of the State Government as well as the Director of Legal Studies filed in WP.No.18328/2019 and particularly referred to paragraph No.12 which reads thus:-

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> *"**12.**It is respectfully submitted that pursuant to the Notification No.02/2018 dated 18.07.2018 of the Teachers Recruitment Board, the petitioner herein has applied for the post of Assistant Professor Pre Law in the subject "Economics". It is further submitted that the petitioner herein does not possess an Under Graduate Degree in*

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> *Economics but had obtained his Post Graduate Degree in Economics directly through Distance Education Mode without studying the Three Year Under Graduate Course in Economics. Therefore, he is not qualified for the post of Assistant Professor [Pre Law] in the Government Law Colleges as per Section 25 of the Tamil Nadu Government Servants [Conditions of Service] Act, 2016 [Tamil Nadu Act 14 of 2016] which defines that a Post Graduate Degree obtained after completion of SSLC, Higher Secondary Course and a Degree [10+2+3+2 or3] shall be recognized as a Post Graduate Degree for appointment to the State Services."*

29 According to him, the respondents on a mistaken impression that the petitioner therein had obtained Post Graduate degree in Economics directly through Distance Education mode without obtaining the basic three year degree have come up with the above statement. This statement in the counter affidavit is incorrect. The petitioner therein had studied regular under graduate course and then had obtained Post Graduate degree by Distance Education mode. In the said circumstances, reference to Section 25 of the Tamil Nadu Government Servants [Conditions of Service] Act, 2016, is misplaced and misconceived. That section deals with cases where a degree being obtained from the Distance

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Education Mode or from the Open University without completion of 10+2+3 in the regular stream. Therefore, the very rejection of that petitioner's candidature is on an erroneous ground and liable to be interfered with by this Court.

30 He also referred to the educational qualification in G.O.Ms.No.264 dated 20.12.2005. What is prescribed therein is M.A. degree in the subject. In tune with the statutory requirement, the Notification also prescribed only M.A., degree in the particular subject. Therefore, what is to be seen is whether the candidate concerned has obtained his M.A., degree after going through the regular Under Graduate course or not and what subject he has studied in the Under Graduate course. In any event, the statement in the counter affidavit for rejecting the candidature of the writ petitioner therein, cannot be countenanced both in law and on facts and therefore, the decision taken in that matter is liable to be interfered with.

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31 According to the learned counsel, the dispute started pursuant to the order passed by the learned Judge of this Court in WMP.Nos.22979 & 22980/2018 in WP.No.19534/2018 dated

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24.04.2019. It was an interim order, wherein the learned Judge has made the following observations:-

> *"**4.**So also the candidates, who studied in the correspondence courses and not attended the regular colleges are not eligible for appointment to the http://www.judis.nic.in 11 teaching faculty. Teaching is a noble profession wherein the skill of teaching is of paramount importance. The person who has not studied in the regular course in the college in the pattern prescribed by the UGC is undoubtedly, not eligible for appointment to the post of Assistant Professor (pre-law).*
>
> ***5**.This apart, the Teachers Eligibility Test and National Eligibility Test must have been completed in the relevant subject for which the appointments are to be made. The candidates who have completed the TET and NET in the concerned subjects alone to be appointed to the post of Assistant Professor (pre-law) in Government Law colleges and Law University. It is needless to state that these are all the minimum educational qualification prescribed by the University Grants Commission in its regulations. It is a surprise that the officials competent, who all are well versed with the regulations of UGC as well as the State Act are recruiting candidates, who all are not qualified in accordance with the UGC regulations and as per the State Act."*

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Problem started therein which probably impelled the official respondents from rejecting the candidature of the petitioner therein.

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32 In support of his various contentions, Mr.G.Sankaran, learned counsel has placed reliance on the following decisions with relevant paragraphs:-

[a] ***1990 [1] SCC 411 [P.Mahendran and Others V. State of Karnataka and Others] :-***

> *"**4.** There is no dispute that under the Recruitment Rules as well as under the advertisement dated October 6, 1983 issued by the Public Service Commission, holders of Diploma in Mechanical Engineering were eligible for appointment to the post of Motor Vehicle Inspectors alongwith holders of Diploma in Automobile Engineering. On receipt of the applications from the candidates the Commission commenced the process of selection as it scrutinised the applications and issued letters for interview to the respective candidates. In fact the Commission commenced the interviews on August 1984 and it had almost completed the process of selection but the selection could not be completed on account of interim orders issued by the High Court at the instance of candidates seeking reservation for local candidates. The Commission completed the interviews of all the candidates and it finalised the list of selected candidates by June 2, 1987 and the result was published in the State Gazette on July 23, 1987. In addition to that the selected candidates were intimated by the Commission by separate letters. In view of these facts the sole question for consideration is as to whether the amendment made in the Rules on May 14, 1987 rendered the selection illegal. Admittedly the amending Rules do not contain any provision*

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enforcing the amended Rules with retrospective effect. In the absence of any express provision contained in the amending Rules it must be held to be prospective in nature. The Rules which are prospective in nature cannot take away or impair the right of candidates holding Diploma in Mechanical Engineering as on the date of making appointment as well as on the date of scrutiny by the Commission they were qualified for selection and appointment. In fact the entire selection in the normal course would have been finalised much before the amendment of Rules, but for the interim orders of the High Court. If there had been no interim orders, the selected candidates would have been appointed much before the amendment of Rules. Since the process of selection had commenced and it could not be completed on account of the interim orders of the High Court, the appellants' right to selection and appointment could not be defeated by subsequent amendment of Rules.

5. *It is well settled rule of construction that every statute or statutory rule is prospective unless it is expressly or by necessary implication made to have retrospective effect. Unless there are words in the statute or in the Rules showing the intention to affect existing rights the rule must be held to be prospective. If a rule is expressed in language which is fairly capable of either interpretation it ought to be construed as prospective only. In the absence of any express provision or necessary intendment the rule cannot be given retrospective effect except in matter of procedure. The amending Rules of 1987 do not contain any express provision giving the amendment retrospective effect nor there is anything therein showing the necessary intendment for enforcing the rule with retrospective*

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effect. Since the amending Rules were not retrospective, it could not adversely affect the right of those candidates who were qualified for selection and appointment on the date they applied for the post, moreover as the process of selection had already commenced when the amending Rules came into force, the amended Rules could not affect the existing rights of those candidates who were being considered for selection as they possessed the requisite qualifications prescribed by the Rules before its amendment moreover construction of amending Rules should be made in a reasonable manner to avoid unnecessary hardship to those who have no control over the subject matter.

...

***11.** We would now consider the view taken by this Court in I.J. Divakar v. Government of Andhra Pradesh [(1982) 3 SCC 341 : 1983 SCC (L&S) 14] , as the Tribunal has placed strong reliance on the observations made in that decision in setting aside the selection made by the Public Service Commission. It is necessary to ascertain the facts involved in Divakar case [(1982) 3 SCC 341 : 1983 SCC (L&S) 14] . The Andhra Pradesh Public Service Commission invited applications for filling posts of Junior Engineers. In response to the advertisement several candidates applied for the said post and appeared at the viva voce test. While the Commission was in process of finalising the select list, the Government of Andhra Pradesh issued a government order under the proviso to Article 320(3) of the Constitution excluding the posts of Junior Engineers from the purview of the Public Service Commission. The government regularised the services of all those who were appointed by direct recruitment to the post of ad-*

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hoc Junior Engineers and were continuing in service on August 9, 1979 without subjecting them to any test written or oral. The candidates who had applied in response to the advertisement issued by the Commission challenged validity of the government order excluding the post of Junior Engineers from the purview of the Commission and also the validity of the decision by the government to regularise the services of temporary employees. Before this Court the government's power of framing regulations excluding any post from the purview of the Commission under the proviso to Article 320(3) was conceded. It was, however, urged that since the advertisement had been issued by the Commission inviting applications for the posts of Junior Engineers and as the Commission was in process of selecting candidates the power under the proviso to clause (3) of Article 320 of the Constitution could not be exercised. This Court rejected the contention with the following observations: (SCC p. 344, para 4)

"The only contention urged was that at the time when the advertisement was issued the post of Junior Engineer was within the purview of the Commission and even if at a later date the post was withdrawn from the purview of the Commission it could not have any retrospective effect. There is no merit in this contention and we are broadly in agreement with the view of the Tribunal that inviting the applications for a post does not by itself create any right to the post in the candidate who in response to the advertisement makes an application. He only offers himself to be considered for the post. His application only makes him eligible for being considered for the post. It does not create any right in the candidate to the post."

After making the aforesaid observations the court

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further held that the relevant service Rules conferred power on the government to fill emergently the vacancies to the post borne in the cadre of service otherwise than in accordance with the rules and therefore the government had power to regularise temporary appointments made without the consultation of the Public Service Commission. Even after upholding the government order, the court directed the Commission to consider the case of all those candidates who had applied for the post of Junior Engineers in response to the advertisement issued by the Commission and to finalise the select list on the basis of viva voce test and to forward the same to the government. The court further directed the government to make appointments from the select list before any outsider was appointed to the post of Junior Engineers. Thus, the observations made by this Court as quoted earlier were made in the special facts and circumstances of the case, which do not apply to the facts of the instant case. In Divakar *case [(1982) 3 SCC 341 : 1983 SCC (L&S) 14] since the jurisdiction of the Public Service Commission had been denuded by the government in exercise of its constitutional power the Commission had no jurisdiction to conduct selection or prepare select list. In this background the court made observations that a candidate merely by making applications does not acquire any right to the post. It is true that a candidate does not get any right to the post by merely making an application for the same, but a right is created in his favour for being considered for the post in accordance with the terms and conditions of the advertisement and the existing recruitment rules. If a candidate applies for a post in response to advertisement issued by Public Service Commission in accordance with recruitment Rules he acquires*

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> *right to be considered for selection in accordance with the then existing Rules. This right cannot be affected by amendment of any rule unless the amending rule is retrospective in nature. In the instant case the Commission had acted in accordance with the then existing rules and there is no dispute that the appellants were eligible for appointment, their selection was not in violation of the recruitment Rules. The Tribunal in our opinion was in error in setting aside the select list prepared by the Commission."*

The above decision of the Apex Court laid down the principle that any amendment to the Rule, will have prospective application and cannot be retrospectively applied. According to the learned counsel, even if the qualifications prescribed in the present selection were to be interfered with, the selection which had already been concluded on the basis of the existing qualifications, is not liable to be interfered with.

[b] ***2009 [4] SCC 555 [Mohd. Sohrab Khan Vs. Aligarh Muslim University and Others]***. Learned counsel has drawn the attention of this Court to paragraphs No.24, 25, 27 to 29 and 33 which are extracted hereunder:-

> ***"24.*** *According to us, the Selection Committee as also the University changed the rule in the midstream which was not permissible. The University can always have a person as a Lecturer in a particular discipline that it desires to have, but*

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the same must be specifically stated in the advertisement itself, so that there is no confusion and all persons who could be intending candidates, should know as to what is the subject which the person is required to teach and what essential qualification the person must possess to be suitable for making application for filling up the said post.

***25.** We are not disputing the fact that in the matter of selection of candidates, opinion of the Selection Committee should be final, but at the same time, the Selection Committee cannot act arbitrarily and cannot change the criteria/qualification in the selection process during its midstream. Merajuddin Ahmad did not possess a degree in Pure Chemistry and therefore, it was rightly held by the High Court that he did not possess the minimum qualification required for filling up the post of Lecturer in Chemistry, for Pure Chemistry and Industrial Chemistry are two different subjects.*

..

***27.** The Selection Committee during the stage of selection, which is midway could not have changed the essential qualification laid down in the advertisement and at that stage held that a Master's degree-holder in Industrial Chemistry would be better suited for manning the said post without there being any specific advertisement in that regard. The very fact that the University is now manning the said post by having a person from the discipline of Pure Chemistry also leads to the conclusion that the said post at that stage when it was advertised was meant to be filled up by a person belonging to Pure Chemistry stream.*

***28.** In A.P. Public Service Commission v. B. Swapna [(2005) 4 SCC 154 : 2005 SCC (L&S) 452] , at para 14 it was held by this Court that norms of selection cannot be altered after commencement of selection process and the rules regarding*

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qualification for appointment, if amended, during continuation of the process of selection do not affect the same.

***29.** Further at para 15 of B. Swapna case% [(2005) 4 SCC 154 : 2005 SCC (L&S) 452] it was held that the power to relax the eligibility condition, if any, to the selection must be clearly spelt out and cannot be otherwise exercised. The said observations are extracted herein below: (SCC pp. 159-60, paras 14-15)*

> *"14. The High Court has committed an error in holding that the amended rule was operative. As has been fairly conceded by learned counsel for Respondent 1 applicant it was the unamended rule which was applicable. Once a process of selection starts, the prescribed selection criteria cannot be changed. The logic behind the same is based on fair play. A person who did not apply because a certain criterion e.g. minimum percentage of marks can make a legitimate grievance, in case the same is lowered, that he could have applied because he possessed the said percentage. Rules regarding qualification for appointment if amended during continuance of the process of selection do not affect the same. That is because every statute or statutory rule is prospective unless it is expressly or by necessary implication made to have retrospective effect. Unless there are words in the statute or in the rules showing the intention to affect existing rights the rule must be held to be prospective. If the rule is expressed in a language which is fairly capable of either interpretation it ought to be considered as*

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> *prospective only. (See P. Mahendran v. State of Karnataka [(1990) 1 SCC 411 : 1990 SCC (L&S) 163 : (1990) 12 ATC 727] and Gopal Krushna Rath v. M.A.A. Baig [(1999) 1 SCC 544 : 1999 SCC (L&S) 325] .)*
>
> *15. Another aspect which this Court has highlighted is scope for relaxation of norms. Although the Court must look with respect upon the performance of duties by experts in the respective fields, it cannot abdicate its functions of ushering in a society based on the rule of law. Once it is most satisfactorily established that the Selection Committee did not have the power to relax essential qualification, the entire process of selection so far as the selected candidate is concerned gets vitiated. In P.K. Ramachandra Iyer v. Union of India [(1984) 2 SCC 141 : 1984 SCC (L&S) 214] this Court held that once it is established that there is no power to relax essential qualification, the entire process of selection of the candidate was in contravention of the established norms prescribed by advertisement. The power to relax must be clearly spelt out and cannot otherwise be exercised."*

...

33. *We, therefore, uphold the order passed by the High Court giving liberty to the University to lay down the qualification necessary for filling up the aforesaid post. The University shall now advertise the said post by laying down exact essential qualification indicating the particular subject and subjects-stream which is required to be possessed for making an application to fill up the*

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> *said post and therefore proceed to appoint a Lecturer suitable for the aforesaid post."*

The above decision was primarily relied upon in order to emphasis the legal position that the Selection Committee cannot state the criteria / qualification in the selection process during its midstream. In this case, the challenge itself is post selection and any challenge to the in qualification or removal of existing qualifications, can be applied only prospectively.

[c] ***2011 [4] SCC 606 [Visveswaraiah Technological University and Another Vs. Krishnendu Halder and Others]***. The following paragraphs were relied upon by the learned counsel:-

> *"**14.** The respondents (colleges and the students) submitted that in that particular year (2007-2008) nearly 5000 engineering seats remained unfilled. They contended that whenever a large number of seats remained unfilled, on account of non-availability of adequate candidates, paras 41(v) and (vi) of Adhiyaman [(1995) 4 SCC 104] would come into play and automatically the lower minimum standards prescribed by AICTE alone would apply. This contention is liable to be rejected in view of the principles laid down in the Constitution Bench decision in Preeti Srivastava (Dr.) [(1999) 7 SCC 120] and the decision of the larger Bench in S.V. Bratheep [(2004) 4 SCC 513] which explains the observations in Adhiyaman [(1995) 4 SCC 104] in the correct perspective. We summarise below the*

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position, emerging from these decisions:

(i) While prescribing the eligibility criteria for admission to institutions of higher education, the State/University cannot adversely affect the standards laid down by the central body/AICTE. The term "adversely affect the standards" refers to lowering of the norms laid down by the central body/AICTE. Prescribing higher standards for admission by laying down qualifications in addition to or higher than those prescribed by AICTE, consistent with the object of promoting higher standards and excellence in higher education, will not be considered as adversely affecting the standards laid down by the central body/AICTE.

(ii) The observation in para 41(vi) of Adhiyaman [(1995) 4 SCC 104] to the effect that where seats remain unfilled, the State authorities cannot deny admission to any student satisfying the minimum standards laid down by AICTE, even though he is not qualified according to its standards, is not good law.

..

***17.** No student or college, in the teeth of the existing and prevalent rules of the State and the University can say that such rules should be ignored, whenever there are unfilled vacancies in colleges. In fact the State/University, may, in spite of vacancies, continue with the higher eligibility criteria to maintain better standards of higher education in the State or in the colleges affiliated to the University. Determination of such standards, being part of the academic policy of the University, are beyond the purview of judicial review, unless it is established that such standards are arbitrary or "adversely affect" the standards, if any, fixed by the central body under a Central enactment. The order of the Division Bench is therefore*

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unsustainable."

In the above case, the Apex Court has held that even in the case of unfilled vacancies, after conclusion of the selection, there cannot be any relaxation in the qualification in order to fill up the vacancies. The State or the University in spite of vacancies, to continue with higher eligibility criteria to maintain better standards of higher education.

[d] ***2019 [6] SCC 362 [Maharashtra Public Service Commission through its Secretary Vs. Sandeep Sriram Warade and Others].*** This Court's attention has been drawn to paragraphs No.9 and 10, which are extracted hereunder:-

> *"**9.** The essential qualifications for appointment to a post are for the employer to decide. The employer may prescribe additional or desirable qualifications, including any grant of preference. It is the employer who is best suited to decide the requirements a candidate must possess according to the needs of the employer and the nature of work. The court cannot lay down the conditions of eligibility, much less can it delve into the issue with regard to desirable qualifications being on a par with the essential eligibility by an interpretive re-writing of the advertisement. Questions of equivalence will also fall outside the domain of judicial review. If the language of the advertisement and the rules are clear, the court cannot sit in judgment over the same. If there is an ambiguity in the advertisement or it is contrary to any rules or law the matter has to go back to the*

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> *appointing authority after appropriate orders, to proceed in accordance with law. In no case can the court, in the garb of judicial review, sit in the chair of the appointing authority to decide what is best for the employer and interpret the conditions of the advertisement contrary to the plain language of the same.*
>
> ***10.*** *The fact that an expert committee may have been constituted and which examined the documents before calling the candidates for interview cannot operate as an estoppel against the clear terms of the advertisement to render an ineligible candidate eligible for appointment."*

The above decision relates to the settled legal principle that essential qualification for appointment to a post is for the employer to decide and it is always open to the employer to prescribe additional or desirable qualification.

33 The learned counsel, drawing support from the above decisions, submitted that taking into the nature of the curriculum being prescribed in the pre-law course to be taught in the Government Colleges in the State of Tamil Nadu, additional qualifications have been prescribed, viz., Masters Degree in Law and enrollment as an advocate. If it is not to be construed as higher qualification, it can at least be construed as an additional essential qualification. The learned counsel,

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lastly relied on the decision of the latest Apex Court decision reported in ***2021 [2] SCC 564 [A.P.J.Abdul Kalam Technological University and Another Vs. Jai Bharath College of Mangement and Engineering Technology and Others].*** This Court's attention has been drawn to paragraphs No.47, 48, 54, 57 and 58:-

> *"**47.** That even the State Government can prescribe higher standards than those prescribed by AICTE was recognised by a three-member Bench of this Court in State of T.N. v. S.V. Bratheep [State of T.N. v. S.V. Bratheep, (2004) 4 SCC 513 : 2 SCEC 547] . This principle was later applied in the case of universities in Visveswaraiah Technological University v. Krishnendu Halder [Visveswaraiah Technological University v. Krishnendu Halder, (2011) 4 SCC 606 : 4 SCEC 148] where this Court considered the previous decisions and summarised the legal position emerging therefrom as follows: (Visveswaraiah Technological University case [Visveswaraiah Technological University v. Krishnendu Halder, (2011) 4 SCC 606 : 4 SCEC 148] , SCC pp. 614-15, para 14).*
>
> > *"14. ... (i) While prescribing the eligibility criteria for admission to institutions of higher education, the State/University cannot adversely affect the standards laid down by the Central Body/AICTE. The term "adversely affect the standards" refers to lowering of the norms laid down by the Central Body/AICTE. Prescribing higher standards for admission by laying down qualifications in addition to or higher than those prescribed by AICTE, consistent with*

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the object of promoting higher standards and excellence in higher education, will not be considered as adversely affecting the standards laid down by the Central Body/AICTE.

(ii) The observation in para 41(vi) of Adhiyaman [State of T.N. v. Adhiyaman Educational & Research Institute, (1995) 4 SCC 104] to the effect that where seats remain unfilled, the State authorities cannot deny admission to any student satisfying the minimum standards laid down by AICTE, even though he is not qualified according to its standards, is not good law.

(iii) The fact that there are unfilled seats in a particular year, does not mean that in that year, the eligibility criteria fixed by the State/University would cease to apply or that the minimum eligibility criteria suggested by AICTE alone would apply. Unless and until the State or the University chooses to modify the eligibility criteria fixed by them, they will continue to apply in spite of the fact that there are vacancies or unfilled seats in any year. The main object of prescribing eligibility criteria is not to ensure that all seats in colleges are filled, but to ensure that excellence in standards of higher education is maintained.

(iv) The State/University (as also AICTE) should periodically (at such intervals as they deem fit) review the prescription of eligibility criteria for admissions, keeping in balance, the need to maintain excellence and high standard in higher education on the one hand, and the need to maintain a healthy ratio between the total number of seats available in the State and the number

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of students seeking admission, on the other. If necessary, they may revise the eligibility criteria so as to continue excellence in education and at the same time being realistic about the attainable standards of marks in the qualifying examinations."

48. *Visveswaraiah [Visveswaraiah Technological University v. Krishnendu Halder, (2011) 4 SCC 606 : 4 SCEC 148] principles were reiterated in Mahatma Gandhi University v. Jikku Paul [Mahatma Gandhi University v. Jikku Paul, (2011) 15 SCC 242 : 6 SCEC 18] . The legal position summarised in para 14 of the Report in Visveswaraiah [Visveswaraiah Technological University v. Krishnendu Halder, (2011) 4 SCC 606 : 4 SCEC 148] (extracted above) were quoted with approval by the Constitution Bench in Modern Dental College & Research Centre v. State of M.P. [Modern Dental College & Research Centre v. State of M.P., (2016) 7 SCC 353 : 7 SCEC 1] In Modern Dental College [Modern Dental College & Research Centre v. State of M.P., (2016) 7 SCC 353 : 7 SCEC 1] , Issue IV framed for consideration by the Constitution Bench (as reflected in the opinion of the majority) was as to "whether the legislation in question was beyond the legislative competence of the State of Madhya Pradesh". While answering this issue, the opinion of the majority was to the effect:*

48.1. *That the decision in Preeti Srivastava v. State of M.P. [Preeti Srivastava v. State of M.P., (1999) 7 SCC 120 : 1 SCEC 742] did not exclude the role of the States altogether from admissions.*

48.2. *That the observations in Bharati Vidyapeeth v. State of Maharashtra [Bharati Vidyapeeth v. State of Maharashtra, (2004) 11 SCC*

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755 : 2 SCEC 535] as though the entire gamut of admissions was covered by Entry 66 of List I, has to be overruled.

48.3. *In the concurring and supplementing opinion rendered by R. Banumathi, J., in Modern Dental College [Modern Dental College & Research Centre v. State of M.P., (2016) 7 SCC 353 : 7 SCEC 1] , the legal position enunciated in Visveswaraiah [Visveswaraiah Technological University v. Krishnendu Halder, (2011) 4 SCC 606 : 4 SCEC 148] were extracted and followed.*

...

54. *Quite unfortunately AICTE has filed a counter-affidavit before this Court supporting the case of the first respondent College and branding the fixation of additional norms and conditions by the University as unwarranted. Such a stand on the part of AICTE has compelled us to take note of certain developments that have taken place after 2012 on AICTE front.*

..

57. *Though AICTE has reserved to itself the power to conduct inspections and take penal action against colleges for false declarations, such penal action does not mean anything and does not serve any purpose for the students who get admitted to colleges which have necessary infrastructure only on paper and not on site. The Regulations of the AICTE are silent as to how the students will get compensated, when penal action is taken against colleges which host false information online in their applications to AICTE. Ultimately, it is the universities which are obliged to issue degrees and whose reputation is inextricably intertwined with the fate and performance of the students, that may have to face the music and hence their role cannot*

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be belittled. Today, even the universities are being ranked according to the quality of standards maintained by them. The Ministry of Human Resources Development of the Government of India launched an initiative in September 2015, known as National Institutional Ranking Framework ("NIRF"), for ranking institutions including universities in India. The ranking is based on certain parameters such as:

(i) Teaching, learning and resources;

(ii) Research and professional practice;

(iii) Graduation outcomes;

(iv) Outreach and inclusivity; and

(v) Peer perception.

No State run university can afford to have a laid-back attitude today, when their own performance is being measured by international standards. Therefore, the power of the universities to prescribe enhanced norms and standards, cannot be doubted.

***58.** In such circumstances, we are of the considered view that the view taken by the Kerala High Court in paras 33 to 35 of the impugned judgment [Jai Bharath College of Management & Engg. Technology v. State of Kerala, 2020 SCC OnLine Ker 4034] on Issue 2, is unsustainable. At the cost of repetition, we point out that while universities cannot dilute the standards prescribed by AICTE, they certainly have the power to stipulate enhanced norms and standards."*

In the detailed judgment, the Apex Court has ultimately held *inter-alia* that the University or the State can certainly have the power to stipulate

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enhanced norms and standards. The qualifications as prescribed by UGC or any other Regulating Body has to be followed as the minimum standards, but prescription of an additional higher qualification is always rest with the employer concerned which is ultimately held to be valid by the Apex Court.

34 Drawing cumulative support from the above decisions, the learned counsel submitted that unless the qualifications are unreasonable and arbitrary having no nexus to the object which are sought to be achieved, the same is not liable to be interfered with by this Court. He also submitted that in a policy matter where a conscious decision has been taken by the Government to prescribe the qualifications, after taking into consideration, the nature of subjects being taught in the pre-law courses and also the job assignment and the teaching scope as provided and such policy decision is not open for interference of this Court.

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35 Mr.S.Prabakaran, learned Senior counsel chipped in with his arguments saying that the qualifications as prescribed for the Government Law Colleges is a time tested qualification since 1985 and 2005 and therefore, the same does not call for any interference. The learned Senior

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counsel also referred to the syllabus as prescribed by the State Government. According to him, the syllabus as prescribed, required the prescribed qualifications and he also emphasized that the qualifications cannot be changed after the selection was over. As far as the correspondence course degree is concerned, the learned Senior counsel referred to the Notification and the Note appended therein stating that correspondence degree in Law was not acceptable. The learned Senior counsel, in substance supported the case of Mr.G.Sankaran and Mr.R.Singaravelan, learned counsels.

36 Mr.S.R.Ragunathan, learned counsel appearing for the BCI, at the outset, submitted that the stand of BCI is very clear, viz., for teachers post in pre-law courses, no law qualification is required at all. According to the learned counsel, all over the country, no such qualification has been prescribed by any other States/Universities/Colleges. The qualifications of M.L.Degree and enrollment as advocate, are prescribed peculiarly only in the State of Tamil Nadu, that too, only for the Government run Law Colleges. Even the State Ambedkar Law Univeristy and other Colleges affiliated to the University, do not prescribe such qualifications for appointment of

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teachers to take pre-law courses.

37 The learned counsel also concurred with the submission that as far as teachers in the pre-law courses, they are required to take minimum 16 hours a week in terms of the UGC Regulations. At the same time, it is not desirable to have part-time faculty for taking pre-law courses as the same would dilute the standards of legal education. In facts, BCI insisted that there should be full time faculty in order maintain the standards of legal education in the country. He also relied on Rule 17 of the Rules of Legal Education which insisted on full time faculty members in each Centre of Legal Education to teach each subject for all points of time for running the courses. He would submit that the contention on behalf of Mr.R.Singaravelan, learned Senior counsel on the aspect of lack of adequate hours of work for full time pre-law lecturers in all Centres, if they were to be engaged, he would submit that such issues are entirely within the internal management of the University or the State. It is incumbent upon the State Government or the Univeristy to device programmes for full time employment of pre-law course Assistant Professor. Any other arrangement like employment of part time faculty would certainly dilute the standards of legal education and that is

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impermissible in terms of the Rules framed by the BCI and the UGC regulations.

38 The learned counsel, more importantly would submit that the source of laying down the controversial policy decisions, viz., G.O.Ms.No.1349 dated 19.11.1985 and G.O.Ms.No.264 dated 20.12.2005, are *per se* unconstitutional and to be declared as void *ab initio*. In this regard, he would submit that the prescription of qualification by the State suffers from lack of legislative competence. In order to bolster his argument as above, the learned counsel would draw attention of this Court to Seventh Schedule in the Constitution of India. He would draw reference to Entry 25 in Concurrence List – III, which reads as under:-

> *"25:- Education, including technical education, medical education and Universities, subject to the provisions of entries 63, 64, 65 and 66 of List I : Vocational and Technical training of labour."*

He also referred to Entry 66 of the Union List – I in the same Schedule, which reads thus:-

> ***"Entry 66:-****Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions."*

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As per this Entry, Section 7 [1][h] was incorporated in the Advocates' Act, 1961. According to the said provision, the power is given to the BCI to promote legal education and lay down standard for legal education in consultation with the Universities in India imparting such education and the State Bar Councils. In terms of the above provision, the Bar Council alone is entitled to prescribe qualification in the field of legal education, not even the UGC.

39 The learned counsel would thereafter refer to the Rules of Legal Education given in Part IV of the BCI Rules. He would assert that the BCI has not prescribed the qualification of M.L., or enrollment as advocate for teaching faculty of pre-law courses. In the absence of any such prescription by the competent Body, viz., the BCI, which has the exclusive domain over such matters, the State Government laying down unconnected qualifications, is unwarranted and also contrary to the Legal Education Rules and to the legal principles laid down by the Apex Court holding that BCI has the predominant say in the prescription of standards of legal education, including qualifications.

40 In regard to the submission of legislative competence, the

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learned counsel would elaborate that though the education is a subject included in the Concurrent List, a specific entry is made [Entry 66] in the Union List under Seventh Schedule of the Constitution of India. The same alone will prevail in terms of the scheme of the Constitution, by applying Doctrine of Pith and Substance. The prescription of different qualifications is therefore are contrary to the qualifications laid down by the BCI. Any action taken not in terms of Entry 66, tracing the power to Section 7[1][h] of the Advocates' Act, 1961, has to be necessarily declared as unconstitutional, illegal as they repugnant to the Central legislation.

41 Regarding the principal role of the BCI in the matters of laying down the norms and qualifications for the legal education in the country, the learned counsel would refer to a decision reported in ***2007 [2] SCC 202 [Bar Council of India V. Board of Management, Dayanand College of Law and Others].*** Paragraph No.14 of the said decision has been referred to which reads thus:-

> *"**14.**It is clear from the decision of the Constitution Bench in **O.N. Mohindroo vs. The Bar Council of Delhi & Ors.** (supra) that in pith and substance, the Advocates Act falls under Entries 77*

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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 concerned University has been left to a Higher Education Services Commission and respondent No. 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 in the Recommending Authority or in the State Government recognizing 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 jeopardized by the action of the Government in appointing a Principal to 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

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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."

In the above ruling, the Apex Court has categorically held that the State Government and the Recommending Authority are expected to ensure that the requirements set down by the BCI is also complied with. The Apex Court has also observed that as the apex Professional Body, BCI is concerned with the standards of the legal education and the equipment of those who seek entry into that profession. While making such succinct observations, the Apex Court has also referred to the Advocates' Act, 1961 being an enactment that fell out of Entries 77 and 78 of List I of the

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Seventh Schedule. When the qualifications are prescribed by the BCI in terms of the source of power to prescribe as such traceable to the Advocates' Act, 1961 which enactment had roots in Entry 77 and 78 of List I of the Seventh Schedule, as held by the Constitution Bench of the Apex Court in ***O.N.Mohindroo Vs. The Bar Council of Delhi and Others*** reported in ***AIR 1968 SC 888,*** the prescription of unconnected qualifications under the pretext of introducing higher qualification, cannot be countenanced both in law and on facts.

42 The learned counsel, apart from the above decision, has also placed reliance on the following decisions:-

[a] ***AIR 1953 SC 375 [C.Gajapati Narayan Deo and Others V. The State of Orissa]***, wherein paragraph No.9 has been referred to and the same is extracted hereunder:-

> *"**9.**It may be made clear at the outset that the doctrine of colourable legislation does not involve any question of bona fides or mala fides on the part of the legislature. The whole doctrine resolves itself into the question of competency of a particular legislature to enact a particular law. If the legislature is competent to pass a particular law, the motives which impelled it to act are really irrelevant. On the other hand, if the legislature lacks competency, the question of motive does not*

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arise at all. Whether a statute is constitutional or not is thus always a question of power [Vide Cooley's Constitutional Limitations, Vol 1 p 379] . A distinction, however, exists between a legislature which is legally omnipotent like the British Parliament and the laws promulgated by it which could not be challenged on the ground of incompetence, and a legislature which enjoys only a limited or a qualified jurisdiction. If the Constitution of a State distributes the legislative powers amongst different bodies, which have to act within their respective spheres marked out by specific legislative entries, or if there are limitations on the legislative authority in the shape of fundamental rights, questions do arise as to whether the legislature in a particular case has or has not, in respect to the subject-matter of the statute or in the method of enacting it, transgressed the limits of its constitutional powers. Such transgression may be patent, manifest or direct, but it may also be disguised, covert and indirect and it is to this latter class of cases that the expression "colourable legislation" has been applied in certain judicial pronouncements. The idea conveyed by the expression is that although apparently a legislature in passing a statute purported to act within the limits of its powers, yet in substance and in reality it transgressed these powers, the transgression being veiled by what appears, on proper examination, to be a mere pretence or disguise. As was said by Duff, J. in Attorney-General for Ontario v. Reciprocal Insurers [1924 AC 328 at 337] :

> *"Where the law making authority is of a limited or qualified character it may be necessary to examine with some strictness the substance of the legislation for the*

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purpose of determining what is that the legislature is really doing."

In other words, it is the substance of the Act that is material and not merely the form or outward appearance, and if the subject-matter in substance is something which is beyond the powers of that legislature to legislate upon, the form in which the law is clothed would not save it from condemnation. The legislature cannot violate the constitutional prohibitions by employing an indirect method. In cases like these, the enquiry must always be as to the true nature and character of the challenged legislation and it is the result of such investigation and not the form alone that will determine as to whether or not it relates to a subject which is within the power of the legislative authority [Vide Attorney-General for Ontario v. Reciprocal Insurers, 1924 AC 328 at 337] . For the purpose of this investigation the court could certainly examine the effect of the legislation and take into consideration its object, purpose or design [Vide Attorney-General for Alberta v. Attorney-General for Canada, 1939 AC 117 at 130] . But these are only relevant for the purpose of ascertaining the true character and substance of the enactment and the class of subjects of legislation to which it really belongs and not for finding out the motives which induced the legislature to exercise its powers. It is said by Lefroy in his well known work on Canadian Constitution that even if the legislature avows on the face of an Act that it intends thereby to legislate in reference to a subject over which it has no

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> *jurisdiction; yet if the enacting clauses of the Act bring the legislation within its powers, the Act cannot be considered ultra vires."*

The above decision was relied on for the purpose of highlighting the legal position that if the subject matter in substance which is something beyond powers of the legislature to legislate upon, the same is to be declared as unconstitutional. The Apex Court has emphasized that the substance is more important than the form of legislation. In this case, the learned counsel would submit that the form of the Government Orders appear to be prescribing higher qualification but in substance, it is beyond the legislative competence of the State Legislature and therefore, prescription of these qualifications amounted to a colourable exercise of power.

[b] ***AIR 1968 SC 888 [O.N.Mohindroo Vs. The Bar Council of Delhi and Others]***. It is a Constitution Bench decision of the Apex Court and the learned counsel referred to paragraphs 3, 4, 5 and 7, which are extracted hereunder:-

> ***"3.*** *At the hearing of his writ petition, the appellant, inter alia, contended that Section 38 of the Act was ultra vires Article 138(2) of the Constitution inasmuch as the appellate jurisdiction conferred on this Court by Section 38 fell under Entry 26 in List III and that there being no special*

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agreement between the Government of India and the Government of any State as required by clause 2 of Article 138 Section 38 was invalidly enacted. He also contended that Order 5 Rule 7 of the Supreme Court Rules under which the appeal was placed for preliminary hearing was ultra vires Section 38 as the said rule cut down and impaired his right of appeal under Section 38. Lastly, he contended that the decision of the Bar Council of India was bad for the several grounds alleged by him in his writ petition. The learned Single Judge who heard the writ petition rejected these contentions and dismissed it. As regards the first contention he held that clause 2 of Article 138 did not apply and that it was clause 1 of that Article which was applicable as the subject-matter of the Advocates Act fell under Entry 77 of the Union List. As to the other two contentions he held that Rule 7 of the Order 5 was valid and did not contravene Section 38; that the Bench before which the appeal came up for preliminary hearing had heard the appellant's counsel and in addition had called for production of a document desired by him. There was no affidavit by Counsel appearing for him that he was not heard on any point which he desired to contend. He also held that the appellant had specifically raised the contention as to the vires of the said rule in his review petition and that that contention having been rejected, the appellant could not reagitate it in the writ petition. He also held that the appellant was similarly not entitled to reagitate the question as to the merits of the said order of suspension, the same having been considered and rejected at the time of the preliminary hearing of his appeal. Aggrieved by the order of the learned Single Judge, the appellant filed a Letters Patent Appeal. At the hearing of that appeal the appellant's counsel conceded that he

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could not raise any contention on the merits of the case in view of this Court having disposed of those very contentions and that therefore he would confine his arguments only to the question of the vires of Section 38. The learned Judges, who heard that appeal were of the view (1) that the Act was a composite piece of legislation that it did not, as held by the learned Single Judge, fall exclusively under Entries 77 and 78 of List I but that it fell partly under those entries and partly under Entry 26 of List III; (2) that Article 138 had no application as the jurisdiction to entertain and try appeals under Section 38 was not 'further jurisdiction' within the meaning of that Article; that the jurisdiction to hear such appeals was already vested in this Court under Article 136 even without Section 38 as the Bar Councils of Delhi and of India were quasi-judicial tribunals and that therefore this Court had jurisdiction to entertain and try appeals against their orders; and (3) that the only effect of Section 38 was that by providing for an appeal Parliament removed the hurdle of an appellant having to obtain special leave under Article 136. On this reasoning the learned Judges dismissed the contention as to the vires of Section 38. Dismissing the appeal the learned Judges observed:

> *"There is no bar to the Parliament legislating with respect to jurisdiction and powers of the Supreme Court subject to the express provisions of the Constitution like Articles 132 and 134. When a provision for appeal to the Supreme Court is made in a statute, within the sphere covered by Articles 132 to 136 it is not conferment of 'further' power and jurisdiction as envisaged by Article 138, such power would*

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be exercisable by reason of Entry 77 of List I.”

In this appeal the appellant challenges the correctness of this view.

***4.** The question which falls for consideration is one of interpretation of Entries 77 and 78 of List I and Entry 26 of List III. If it is held that it is Entry 26 of List III under which the Act was enacted, clause 2 of Article 138 would apply and in that case a special agreement with the State Government becomes a condition precedent to the enactment of Section 38 of the Act. In that case the difficulty would be to reconcile Entries 77 and 78 of List I with Entry 26 of the List III.*

***5.** It is a well recognised rule of construction that the Court while construing entries must assume that the distribution of legislative powers in the three Lists could not have been intended to be in conflict with one another. A general power ought not to be so construed as to make a nullity of a particular power conferred by the same instrument and operating in the same field when by reading the former in a more restricted sense, effect can be given to the latter in its ordinary and natural meaning. It is, therefore, right to consider whether a fair reconciliation cannot be effected by giving to the language of an entry in one List the meaning which, if less wide than it might in other context bear, is yet one that can properly be given to it and equally giving to the language of another entry in another List a meaning which it can properly bear. Where there is a seeming conflict between one entry in one List and another entry in another List, an attempt should always be made to avoid to see whether the two entries can be harmonised to avoid such a conflict of jurisdiction. (C.P. & Berar Sales of Motor Spirit and Lubricants Taxation Act,*

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1938 [(1938) FCR 18] ; Citizens Insurance Company of Canada v. Parsons [(1881) 7 AC 96] , Bhola Prasad v. Emperor [(1942) FCR 17] ; Governor General-in-Council v. Province of Madras [(1945) 72 IA 91] , and State of Bombay v. Balsara [(1951) SCR 682] .

.....

7. This being the scheme with regard to the constitution and organisation of courts and their jurisdiction and powers let us next proceed to examine Entry 26 in List III. Entry 26, which is analogous to Item 16 in List III of the Seventh Schedule to the 1935 Act, deals with legal, medical and other professions but is not concerned with the constitution and organisation of courts or their jurisdiction and powers. These, as already stated, are dealt with by Entries 77, 78 and 95 in List I, Entries 3 and 65 in List II and Entry 46 in List III. Enactments such as the Indian Medical Council Act, 1956, the Indian Nursing Council Act, 1947, the Dentists Act, 1948, the Chartered Accountants Act, 1949 and the Pharmacy Act, 1948, all Central Acts, would fall under the power to deal with professions under Entry 26 of List III in the Seventh Schedule to the Constitution and Item 16 of List III of 1935 Act. It will, however, be noticed that Entries 77 and 78 in List I are composite entries and deal not only with the constitution and organisation of the Supreme Court and the High Courts but also with persons entitled to practise before the Supreme Court and the High Courts. The only difference between these two entries is that whereas the jurisdiction and powers of the Supreme Court are dealt with in Entry 77, the jurisdiction and powers of the High Courts are dealt with not by Entry 78 of List I but by other entries. Entries 77 and 78 in List I apart from dealing with the

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constitution and organisation of the Supreme Court and the High Courts also deal with persons entitled to practise before the Supreme Court and the High Courts. This part of the two entries shows that to the extent that the persons entitled to practise before the Supreme Court and the High Court are concerned, the power to legislate in regard to them is carved out from the general power relating to the professions in Entry 26 in List III and is made the exclusive field for Parliament. The power to legislate in regard to persons entitled to practise before the Supreme Court and the High Courts is thus excluded from Entry 26 in List III and is made the exclusive field for legislation by Parliament only (Re: Lily Isabel Thomas [(1964) 6 SCR 229, 236] and also Durgeshwar v. Secretary, Bar Council, Allahabad [AIR 954 All 728]). Baring those entitled to practise in the Supreme Court; and the High Courts, the power to legislate with respect to the rest of the practitioners would still seem to be retained under Entry 26 of List III. To what extent the power to legislate in regard to the legal profession still remains within the field of Entry 26 is not the question at present before us and therefore it is not necessary to go into it in this appeal."

सत्यमेव जयते

The above decision of the Constitution Bench of the Apex Court has declared while dealing with Entry 26 of List III and Entries 77 and 78 of List I in the Seventh Schedule, viz., that the power to legislate in regard to persons entitled to practice before the Hon'ble Supreme Court of India or the High Courts, is the exclusive field of the Parliament. The Constitution Bench has held that the general power relating to the professions in Entry

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26 in List III cannot include the exclusive power of legislation in regard to the persons who are entitled to practice before the Supreme Court and the High Courts. In substance, the Apex Court has held that from the general power enjoined upon the State Legislature in Entry 26 in List III, a specific power has been carved out in terms of Entries 77 and 78 of the Union List of the Seventh Schedule. Drawing instance form this Constitution Bench decision, the learned counsel submitted that in the field of legal education, the State Government may not have any say at all, at least in the realm of prescription of qualifications.

[c] The learned counsel also referred to various paragraphs from yet another decision of the Apex Court, which is a landmark decision/judgment, reported in ***2009 [4] SCC 590 [Annamalai University rep.by its Registrar V.Secretary to Government, Information and Tourism Department, Fort St George, Chennai and Others]*** and the same are extracted hereunder:-

> *"**40.** The UGC Act was enacted by Parliament in exercise of its power under Entry 66 of List I of the Seventh Schedule to the Constitution of India whereas the Open University Act was enacted by Parliament in exercise of its power under Entry 25 of List III thereof. The question of*

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repugnancy of the provisions of the said two Acts, therefore, does not arise. It is true that the Statement of Objects and Reasons of the Open University Act shows that the formal system of education had not been able to provide an effective means to equalise educational opportunities. The system is rigid inter alia in respect of attendance in classrooms. Combinations of subjects are also inflexible.

***41.** Was the alternative system envisaged under the Open University Act in substitution of the formal system, is the question. In our opinion, in the matter of ensuring the standard of education, it is not. The distinction between a formal system and an informal system is in the mode and manner in which education is imparted. The UGC Act was enacted for effectuating coordination and determination of standards in universities. The purport and object for which it was enacted must be given full effect.*

***45.** The amplitude of the provisions of the UGC Act vis-à-vis the universities constituted under the State Universities Acts which would include within its purview a university made by Parliament also is now no longer res integra.*

***46.** In Prem Chand Jain v. R.K. Chhabra [(1984) 2 SCC 302 : 1984 SCC (Cri) 233 : (1984) 2 SCR 883] this Court held: (SCC pp. 308-09, para 8)*

> *"8. ... The legal position is well settled that the entries incorporated in the lists covered by Schedule VII are not powers of legislation but 'fields' of legislation. (Harakchand Ratanchand Banthia v. Union of India [(1969) 2 SCC 166 : (1970) 1 SCR 479] SCR at p. 489.) In State of*

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Bihar v. Kameshwar Singh [AIR 1952 SC 252: 1952 SCR 889] this Court has indicated that such entries are mere legislative heads and are of an enabling character. This Court has clearly ruled that the language of the entries should be given the widest scope or amplitude. (Navinchandra Mafatlal v. CIT [AIR 1955 SC 58: (1955) 1 SCR 829] SCR at p. 836.) Each general word has been asked to be extended to all ancillary or subsidiary matters which can fairly and reasonably be comprehended. [See State of Madras v. Gannon Dunkerley & Co. (Madras) Ltd. [AIR 1958 SC 560: 1959 SCR 379] SCR at p. 391.] It has also been held by this Court in Check Post Officer v. K.P. Abdulla and Bros. [(1970) 3 SCC 355 : AIR 1971 SC 792: (1971) 2 SCR 817] that an entry confers power upon the legislature to legislate for matters ancillary or incidental, including provision for avoiding the law. As long as the legislation is within the permissible field in pith and substance, objection would not be entertained merely on the ground that while enacting legislation, provision has been made for a matter which though germane for the purpose for which competent legislation is made it covers an aspect beyond it. In a series of decisions this Court has opined that if an enactment substantially falls within the powers expressly conferred by the Constitution upon the legislature enacting it, it cannot be held to be invalid merely because it incidentally encroaches on matters assigned to another legislature."

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47. *In University of Delhi v. Raj Singh [1994 Supp (3) SCC 516 : 1995 SCC (L&S) 118 : (1994) 28 ATC 541] this Court held: (SCC pp. 526-27, para 13)*

> *"13. ... By reason of Entry 66, Parliament was invested with the power to legislate on 'coordination and determination of standards in institutions for higher education, or research and scientific and technical institutions'. Item 25 of List III conferred power upon Parliament and the State Legislatures to enact legislation with respect to 'vocational and technical training of labour'. A six-Judge Bench of this Court [**Ed.**: The reference is to Gujarat University v. Krishna Ranganath Mudholkar, AIR 1963 SC 703.] observed that the validity of the State legislation on the subjects of university education and education in technical and scientific institutions falling outside Entry 64 of List I as it then read (that is to say, institutions for scientific or technical education other than those financed by the Government of India wholly or in part and declared by Parliament by law to be institutions of national importance) had to be judged having regard to whether it impinged on the field reserved for the Union under Entry 66. In other words, the validity of the State legislation depended upon whether it prejudicially affected the coordination and determination of standards. It did not depend upon the actual existence of the Union legislation in respect of coordination and determination of standards which had, in any event, paramount importance by virtue of the first part of Article 254(1)."*

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***48.** In State of T.N. v. Adhiyaman Educational and Research Institute [(1995) 4 SCC 104] this Court laid down the law in the following terms: (SCC pp. 134-35, para 41)*

> *"41. What emerges from the above discussion is as follows:*
>
> *(i) The expression 'coordination' used in Entry 66 of the Union List of the Seventh Schedule to the Constitution does not merely mean evaluation. It means harmonisation with a view to forge a uniform pattern for a concerted action according to a certain design, scheme or plan of development. It, therefore, includes action not only for removal of disparities in standards but also for preventing the occurrence of such disparities. It would, therefore, also include power to do all things which are necessary to prevent what would make 'coordination' either impossible or difficult. This power is absolute and unconditional and in the absence of any valid compelling reasons, it must be given its full effect according to its plain and express intention.*
>
> *(ii) To the extent that the State legislation is in conflict with the Central legislation though the former is purported to have been made under Entry 25 of the Concurrent List but in effect encroaches upon legislation including subordinate legislation made by the Centre under Entry 25 of the Concurrent List or to give effect to Entry 66 of the Union List, it would be void and inoperative.*
>
> *(iii) If there is a conflict between the two legislations, unless the State legislation is*

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saved by the provisions of the main part of clause (2) of Article 254, the State legislation being repugnant to the Central legislation, the same would be inoperative.

(iv) Whether the State law encroaches upon Entry 66 of the Union List or is repugnant to the law made by the Centre under Entry 25 of the Concurrent List, will have to be determined by the examination of the two laws and will depend upon the facts of each case.

(v) When there are more applicants than the available situations/seats, the State authority is not prevented from laying down higher standards or qualifications than those laid down by the Centre or the Central authority to shortlist the applicants. When the State authority does so, it does not encroach upon Entry 66 of the Union List or make a law which is repugnant to the Central law.

(vi) However, when the situations/seats are available and the State authorities deny an applicant the same on the ground that the applicant is not qualified according to its standards or qualifications, as the case may be, although the applicant satisfies the standards or qualifications laid down by the Central law, they act unconstitutionally. So also when the State authorities derecognise or disaffiliate an institution for not satisfying the standards or requirement laid down by them, although it satisfied the norms and requirements laid down by the Central authority, the State authorities act illegally."

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49. In State of A.P. v. K. Purushotham Reddy [(2003) 9 SCC 564] this Court held: (SCC p. 572, para 19)

> *"19. The conflict in legislative competence of Parliament and the State Legislatures having regard to Article 246 of the Constitution of India must be viewed in the light of the decisions of this Court which in no uncertain terms state that each entry has to be interpreted in a broad manner. Both the parliamentary legislation as also the State legislation must be considered in such a manner so as to uphold both of them and only in a case where it is found that both cannot coexist, the State Act may be declared ultra vires. Clause (1) of Article 246 of the Constitution of India does not provide for the competence of Parliament or the State Legislatures as is ordinarily understood but merely provides for the respective legislative fields. Furthermore, the courts should proceed to construe a statute with a view to uphold its constitutionality." (emphasis supplied)*

It was observed: (Purushotham Reddy case [(2003) 9 SCC 564] , SCC p. 573, para 20)

> *"20. Entry 66 of List I provides for coordination and determination of standards inter alia for higher education. Entry 25 of List III deals with broader subject, namely, education. On a conjoint reading of both the entries there cannot be any doubt whatsoever that although the State has a wide legislative field to cover the same is subject to Entries 63, 64, 65 and 66 of List I. Once, thus, it is found that any State legislation does not entrench upon the*

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> *legislative field set apart by Entry 66, List I of the Seventh Schedule of the Constitution of India, the State Act cannot be invalidated."*

***50.** The UGC Act, thus, having been enacted by Parliament in terms of Entry 66 of List I of the Seventh Schedule to the Constitution of India would prevail over the Open University Act.*

***51.** With respect, it is difficult to accept the submissions of the learned Solicitor General that the two Acts operate in different fields, namely, conventional university and open university. The UGC Act, indisputably, governs open universities also. In fact, it has been accepted by IGNOU itself. It has also been accepted by the appellant University.*

...

***54.** This Court in Osmania University Teachers' Assn. v. State of A.P. [(1987) 4 SCC 671] held as under: (SCC pp. 676 and 685, paras 14-15 and 30)*

> *"14. Entry 25, List III relating to education including technical education, medical education and universities has been made subject to the power of Parliament to legislate under Entries 63 to 66 of List I. Entry 66, List I and Entry 25, List III should, therefore, be read together. Entry 66 gives power to Union to see that a required standard of higher education in the country is maintained. The standard of higher education including scientific and technical should not be lowered at the hands of any particular State or States. Secondly, it is the exclusive responsibility of the Central Government to coordinate and determine the standards for higher*

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education. That power includes the power to evaluate, harmonise and secure proper relationship to any project of national importance. It is needless to state that such a coordinate action in higher education with proper standards, is of paramount importance to national progress. It is in this national interest, the legislative field in regard to 'education' has been distributed between List I and List III of the Seventh Schedule.

15. Parliament has exclusive power to legislate with respect to matters included in List I. The State has no power at all in regard to such matters. If the State legislates on the subject falling within List I that will be void, inoperative and unenforceable.

***

30. The Constitution of India vests Parliament with exclusive authority in regard to coordination and determination of standards in institutions for higher education. Parliament has enacted the UGC Act for that purpose. The University Grants Commission has, therefore, a greater role to play in shaping the academic life of the country. It shall not falter or fail in its duty to maintain a high standard in the universities. Democracy depends for its very life on a high standard of general, vocational and professional education. Dissemination of learning with search for new knowledge with discipline all round must be maintained at all costs. It is hoped that University Grants Commission will duly discharge its responsibility to the nation

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and play an increasing role to bring about the needed transformation in the academic life of the universities."

57. *Relaxation, in our opinion, furthermore cannot be granted in regard to the basic things necessary for conferment of a degree. When a mandatory provision of a statute has not been complied with by an administrative authority, it would be void. Such a void order cannot be validated by inaction.*

58. *The only point which survives for our consideration is as to whether the purported post facto approval granted to the appellant University of programmes offered through distance modes is valid. DEC may be an authority under the Act, but its orders ordinarily would only have a prospective effect. It having accepted in its letter dated 5-5-2004 that the appellant University had no jurisdiction to confer such degrees, in our opinion, could not have validated an invalid act. The degrees become invalidated in terms of the provisions of the UGC Act. When mandatory requirements have been violated in terms of the provisions of one Act, an authority under another Act could not have validated the same and that too with a retrospective effect.*

59. *The provisions of the UGC Act are not in conflict with the provisions of the Open University Act. It is beyond any cavil of doubt that the UGC Act shall prevail over the Open University Act. It has, however, been argued that the Open University Act is a later Act. But we have noticed*

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hereinbefore that the nodal Ministry knew of the provisions of both the Acts. The Regulations were framed almost at the same time after passing of the Open University Act. The Regulations were framed at a later point of time. Indisputably, the Regulations embrace within its fold the matters covered under the Open University Act also.

60. *Submission of Mr K. Parasaran that in terms of sub-section (2) of Section 5 of the Open University Act a non obstante clause has been created and, thus, would prevail over the earlier Act cannot also be accepted. Apart from the fact that in this case repugnancy of the two Acts is not in question (in fact cannot be in question having (sic not) been enacted by Parliament and a State in terms of the provisions of the Concurrent List) the non obstante clause contained in the Open University Act will be attracted provided the statutes operate in the same field. The UGC Act, as noticed hereinbefore, operates in different field. It was enacted so as to make provision for the coordination and determination of standards in universities and for that purpose, to establish a University Grants Commission. Its directions being binding on IGNOU, sub-section (2) of Section 5 of the Open University Act would not make the legal position otherwise."*

According to the learned counsel ,the Apex Court has held in the said decision that the Central Regulating Body like the UGC alone is competent to prescribe the qualification and all Universities are bound by

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the minimum standards of the qualification that are prescribed by UGC. The Apex Court has taken a view that the uniform standards may be maintained in the higher education across the country and it is not open to State Government or any University to water down the minimum standards set forth by the Central Regulating Body.

[d] The learned counsel also referred to various paragraphs in the decision reported in ***2020 SCC Online SC 699 [Tamil Nadu Medical Officers' Association and Others V. Union of India and Others]*** which read thus:-

> *"**4**The present batch of cases came up for hearing before another Bench of three Judges. The Bench was of the opinion that the present batch of cases require consideration by a larger Bench and that is how the present batch of cases are referred to a larger Bench. On the basis of the submissions made, the following reasons were mentioned:*
>
> **...**
>
> *(ii) The main contention of the petitioners is that while coordination and determination of standards in institutions for higher education falls within the exclusive domain of the Union (Entry 66 List I), medical education is a subject in the Concurrent List (Entry 25 List III). Though, Entry 25 of List III is subject to Entry 66 of List I, the State is not denuded of its power to legislate on the manner and method of making admissions to postgraduate medical courses;*
>
> ...
>
> ***11.** The moot question is whether the State*

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Government is competent to provide for a reservation for candidates who are already serving the Government. Such reservation is made for Post-graduate seats in the different medical colleges in the State. The competence of the State Government is traceable to Article 245 r/w Entry 25 List III of the 7th schedule to the Constitution. It cannot be said that there has to be a legislature made law to provide for such reservation. The Government can in exercise of its power as an Executive under Article 154 provide for such reservation and it has been so provided as well.

.....

***102.** Therefore, the following issues arise for consideration and determination of this Court in the present batch of writ petitions/appeals:*

1. What is the scope and ambit of Entry 66 of List I?

2. What will be the impact/effect of MCI Regulations, 2000 framed by the Medical Council of India in exercise of its powers under Section 33 of the Indian Medical Council Act, 1956?

3. Whether in view of Entry 66 of List I, the State is denuded of its power to legislate on the manner and method of the postgraduate medical courses, more particularly, making special provisions for in-service candidates in the postgraduate degree/diploma courses?

4. Whether Regulation 9 of MCI Regulations, 2000, more particularly, Regulation 9(IV) and 9(VII) takes away the power of the States under Entry 25 of List III to provide for a separate source of entry for in-service candidates seeking admission to postgraduate medical courses?

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5. Whether Regulation 9 of MCI Regulations, 2000 is understood to not allow for the States to provide for a separate source of entry for in-service candidates seeking admission to postgraduate degree courses, the same is arbitrary, discriminatory and violative of Articles 14 and 19(1) (g) of the Constitution of India, and also ultra vires of the provisions of the Indian Medical Council Act, 1956?

6. Whether Regulation 9 is a complete code in itself, as observed by this Court in the case of Dinesh Singh Chauhan (supra) affecting the rights/authority of the States to provide for reservation and/or separate source of entry for in-service candidates seeking admission to postgraduate degree courses?

....

***104.** In the case of Modern Dental College & Research Centre (supra), a Constitution Bench of this Court again had an occasion to deal with and consider Entry 66 List I and Entry 25 List III. After considering catena of decisions of this Court, more particularly, the decisions of this Court in the cases of Gujarat University (supra); R. Chitralekha (supra); Preeti Srivastava (supra); and Bharati Vidyapeeth v. State of Maharashtra17, it is held by this Court that Entry 66 in List I is a specific entry having a very specific and limited scope. It is further observed by this Court that it deals with "coordination and determination of standards" in institution of higher education or research as well as scientific and technical institutions. The words "coordination and determination of standards" would mean laying down the said standards. It is observed that thus, when it comes to prescribing the standards for such*

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institutions of higher learning, exclusive domain is given to the Union. The relevant observations are in paragraphs 101 to 105, which read as under:

> *"**101.** To our mind, Entry 66 in List I is a specific entry having a very specific and limited scope. It deals with coordination and determination of standards in institution of higher education or research as well as scientific and technical institutions. The words "coordination and determination of standards" would mean laying down the said standards. Thus, when it comes to prescribing the standards for such institutions of higher learning, exclusive domain is given to the Union. However, that would not include conducting of examination, etc. and admission of students to such institutions or prescribing the fee in these institutions of higher education, etc. In fact, such coordination and determination of standards, insofar as medical education is concerned, is achieved by parliamentary legislation in the form of the Indian Medical Council Act, 1956 and by creating the statutory body like Medical Council of India (for short "MCI") therein. The functions that are assigned to MCI include within its sweep determination of standards in a medical institution as well as coordination of standards and that of educational institutions. When it comes to regulating "education" as such, which includes even medical education as well as universities (which are imparting higher education), that is prescribed in List III Entry 25, thereby giving concurrent powers to both Union as well as States. It is*

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*significant to note that earlier education, including universities, was the subject-matter of List II Entry 11 [“**11. “Education**” including universities, subject to the provisions of Entries 63, 64, 65 and 66 of List I and Entry 25 of List III”]. Thus, power to this extent was given to the State Legislatures. However, this entry was omitted by the Constitution (Forty-second Amendment) Act, 1976 with effect from 3-7-1977 and at the same time List II Entry 25 was amended [Unamended Entry 25 in List III read as:“Vocational and technical training of labour”]. Education, including university education, was thus transferred to the Concurrent List and in the process technical and medical education was also added. Thus, if the argument of the appellants is accepted, it may render Entry 25 completely otiose. When two entries relating to education, one in the Union List and the other in the Concurrent List, coexist, they have to be read harmoniously. Reading in this manner, it would become manifest that when it comes to coordination and laying down of standards in the higher education or research and scientific and technical institutions, power rests with the Union/Parliament to the exclusion of the State Legislatures. However, other facets of education, including technical and medical education, as well as governance of universities is concerned, even State Legislatures are given power by virtue of Entry 25. The field covered by List III Entry 25 is wide enough and as circumscribed to the limited extent of it being subject to List I Entries 63, 64, 65 and 66.*

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102. Most educational activities, including admissions, have two aspects : the first deals with the adoption and setting up the minimum standards of education. The objective in prescribing minimum standards is to provide a benchmark of the calibre and quality of education being imparted by various educational institutions in the entire country. Additionally, the coordination of the standards of education determined nationwide is ancillary to the very determination of standards. Realising the vast diversity of the nation wherein levels of education fluctuated from lack of even basic primary education, to institutions of high excellence, it was thought desirable to determine and prescribe basic minimum standards of education at various levels, particularly at the level of research institutions, higher education and technical education institutions. As such, while balancing the needs of States to impart education as per the needs and requirements of local and regional levels, it was essential to lay down a uniform minimum standard for the nation. Consequently, the Constitution-makers provided for List I Entry 66 with the objective of maintaining uniform standards of education in fields of research, higher education and technical education.

103. The second/other aspect of education is with regard to the implementation of the standards of education determined by Parliament, and the regulation of the complete activity of education. This activity necessarily entails the application of the

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standards determined by Parliament in all educational institutions in accordance with the local and regional needs. Thus, while List I Entry 66 dealt with determination and coordination of standards, on the other hand, the original List II Entry 11 granted the States the exclusive power to legislate with respect to all other aspects of education, except the determination of minimum standards and coordination which was in national interest. Subsequently, vide the Constitution (Forty-second Amendment) Act, 1976, the exclusive legislative field of the State Legislature with regard to education was removed and deleted, and the same was replaced by amending List III Entry 25 granting concurrent powers to both Parliament and State Legislature the power to legislate with respect to all other aspects of education, except that which was specifically covered by List I Entries 63 to 66.

104. No doubt, in Bharati Vidyapeeth [Bharati Vidyapeeth v. State of Maharashtra, (2004) 11 SCC 755 : 2 SCEC 535] it has been observed that the entire gamut of admission falls under List I Entry 66. The said judgment by a Bench of two Judges is, however, contrary to law laid down in earlier larger Bench decisions. In Gujarat University [Gujarat University v. Krishna Ranganath Mudholkar, AIR 1963 SC 703 : 1963 Supp (1) SCR 112], a Bench of five Judges examined the scope of List II Entry 11 (which is now List III Entry 25) with reference to List I Entry 66. It was held that

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the power of the State to legislate in respect of education to the extent it is entrusted to Parliament, is deemed to be restricted. Coordination and determination of standards was in the purview of List I and power of the State was subject to power of the Union on the said subject. It was held that the two entries overlapped to some extent and to the extent of overlapping the power conferred by List I Entry 66 must prevail over power of the State. Validity of a State legislation depends upon whether it prejudicially affects "coordination or determination of standards", even in absence of a Union legislation. In R. Chitralekha v. State of Mysore [R. Chitralekha v. State of Mysore, AIR 1964 SC 1823 : (1964) 6 SCR 368], the same issue was again considered. It was observed that if the impact of the State law is heavy or devastating as to wipe out or abridge the Central field, it may be struck down. In State of T.N. v. Adhiyaman Educational & Research Institute [State of T.N. v. Adhiyaman Educational & Research Institute, (1995) 4 SCC 104 : 1 SCEC 682], it was observed that to the extent that State legislation is in conflict with the Central legislation under Entry 25, it would be void and inoperative. To the same effect is the view taken in Preeti Srivastava [Preeti Srivastava v. State of M.P., (1999) 7 SCC 120 : 1 SCEC 742] and State of Maharashtra v. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya [State of Maharashtra v. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya, (2006) 9 SCC 1 : 5 SCEC 637]. Though the view

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taken in State of M.P. v. Nivedita Jain [State of M.P. v. Nivedita Jain, (1981) 4 SCC 296] and Ajay Kumar Singh v. State of Bihar [Ajay Kumar Singh v. State of Bihar, (1994) 4 SCC 401] to the effect that admission standards covered by List I Entry 66 could apply only post admissions was overruled in Preeti Srivastava [Preeti Srivastava v. State of M.P., (1999) 7 SCC 120 : 1 SCEC 742], it was not held that the entire gamut of admissions was covered by List I as wrongly assumed in Bharati Vidyapeeth [Bharati Vidyapeeth v. State of Maharashtra, (2004) 11 SCC 755 : 2 SCEC 535].

105. We do not find any ground for holding that Preeti Srivastava [Preeti Srivastava v. State of M.P., (1999) 7 SCC 120 : 1 SCEC 742] excludes the role of States altogether from admissions. Thus, observations in Bharati Vidyapeeth [Bharati Vidyapeeth v. State of Maharashtra, (2004) 11 SCC 755 : 2 SCEC 535] that entire gamut of admissions was covered by List I Entry 66 cannot be upheld and overruled to that extent. No doubt, List III Entry 25 is subject to List I Entry 66, it is not possible to exclude the entire gamut of admissions from List III Entry 25. However, exercise of any power under List III Entry 25 has to be subject to a Central law referable to Entry 25."
(emphasis supplied)

105. *In the concurring judgment, Bhanumati, J. in paragraphs 131 to 134 and 147 to 149, has held as under:*

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*"**131.** In order to answer the concern of other Constitution Framers, Dr Ambedkar went on to clarify the limited scope of List I Entry 66 (as in the present form), as proposed by him in the following words : (CAD Vol. 9, p. 796)*

"Entry 57-A merely deals with the maintenance of certain standards in certain classes of institutions, namely, institutions imparting higher education, scientific and technical institutions, institutions for research, etc. You may ask, "why this entry?" I shall show why it is necessary. Take for instance, the BA Degree examination which is conducted by the different universities in India. Now, most provinces and the Centre, when advertising for candidates, merely say that the candidate should be a graduate of a university. Now, suppose the Madras University says that a candidate at the BA Examination, if he obtained 15% of the total marks shall be deemed to have passed that examination; and suppose the Bihar University says that a candidate who has obtained 20% of marks shall be deemed to have passed the BA degree examination; and some other university fixes some other standard, then it would be quite a chaotic condition, and the expression that is usually used, that the candidate should be a graduate, I think, would be meaningless. Similarly, there are certain research institutes, on the results of which so many activities of the Central and Provincial Governments depend. Obviously, you cannot permit the results of these technical

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and scientific institutes to deteriorate from the normal standard and yet allow them to be recognised either for the Central purposes, for all-India purposes or the purposes of the State."

132. The intent of our Constitution Framers while introducing Entry 66 of the Union List was thus limited only to empowering the Union to lay down a uniform standard of higher education throughout the country and not to bereft the State Legislature of its entire power to legislate in relation to "education" and organising its own common entrance examination.

133. If we consider the ambit of the present Entry 66 of the Union List; no doubt the field of legislation is of very wide import and determination of standards in institutions for higher education. In the federal structure of India, as there are many States, it is for the Union to coordinate between the States to cause them to work in the field of higher education in their respective States as per the standards determined by the Union. Entry 25 in the Concurrent List is available both to the Centre and the States. However, power of the State is subject to the provisions of Entries 63, 64, 65, and 66 of the Union List; while the State is competent to legislate on the education including technical education, medical education and universities, it should be as per the standards set by the Union.

134. The words "coordination" and "determination of the standards in higher

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education" are the preserve of Parliament and are exclusively covered by Entry 66 of the Union List. The word "coordination" means harmonisation with a view to forge a uniform pattern for concerted action. The term "fixing of standards of institutions for higher education" is for the purpose of harmonising coordination of the various institutions for higher education across the country. Looking at the present distribution of legislative powers between the Union and the States with regard to the field of "education", that State's power to legislate in relation to "education, including technical education, medical education and universities" is analogous to that of the Union. However, such power is subject to Entries 63, 64, 65 and 66 of the Union List, as laid down in Entry 25 of the Concurrent List. It is the responsibility of the Central Government to determine the standards of higher education and the same should not be lowered at the hands of any particular State.

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147. Another argument that has been put forth is that the power to enact laws laying down process of admission in universities, etc. vests in both Central and State Governments under Entry 25 of the Concurrent List only. Under Entry 25 of the Concurrent List and erstwhile Entry 11 of the State List, the State Government has enacted various legislations that inter alia regulate admission process in various institutions. For instance, Jawaharlal Nehru Krishi Vishwavidyalaya Adhiniyam, Rajiv

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Gandhi Prodyogiki Vishwavidyalaya Adhiniyam, Rashtriya Vidhi Sansathan Vishwavidyalaya Adhiniyam, etc. were established by the State Government in exercise of power under Entry 25 of the Concurrent List. Similarly, the Central Government has also enacted various legislations relating to higher education under Entry 25 of the Concurrent List pertaining to Centrally funded universities such as the Babasaheb Bhimrao Ambedkar University Act, 1994, the Maulana Azad National Urdu University Act, 1996, the Indira Gandhi National Tribal University Act, 2007, etc. The Central Government may have the power to regulate the admission process for Centrally funded institutions like IITs, NIT, JIPMER, etc. but not in respect of other institutions running in the State.

148. In view of the above discussion, it can be clearly laid down that power of the Union under Entry 66 of the Union List is limited to prescribing standards of higher education to bring about uniformity in the level of education imparted throughout the country. Thus, the scope of Entry 66 must be construed limited to its actual sense of "determining the standards of higher education" and not of laying down admission process. In no case is the State denuded of its power to legislate under List III Entry 25. More so, pertaining to the admission process in universities imparting higher education.

149. I have no hesitation in upholding the vires of the impugned legislation which

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empowers the State Government to regulate admission process in institutions imparting higher education within the State. In fact, the State being responsible for welfare and development of the people of the State, ought to take necessary steps for welfare of its student community. The field of "higher education" being one such field which directly affects the growth and development of the State, it becomes prerogative of the State to take such steps which further the welfare of the people and in particular pursuing higher education. In fact, the State Government should be the sole entity to lay down the procedure for admission and fee, etc. governing the institutions running in that particular State except the Centrally funded institutions like IIT, NIT, etc. because no one can be a better judge of the requirements and inequalities-in-opportunity of the people of a particular State than that State itself. Only the State legislation can create equal level playing field for the students who are coming out from the State Board and other streams."

(emphasis supplied)

106. *Thus, as held by the Constitution Bench of this Court in the case of Modern Dental College (supra), in which this Court considered catena of earlier decisions of this Court dealing with the scope and ambit of Entry 66 List I, Entry 66 of List I is a specific entry having a very specific and limited scope; it deals with "Coordination and Determination of Standards" in institutions of higher education or research as well as scientific and technical institutions. It is further observed that the words "Coordination and Determination of*

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Standards" would mean laying down the said standards and therefore when it comes to prescribe the standards for such institutions of higher learning, exclusive domain is given to the Union. It is specifically further observed that that would not include conducting of examination etc. and admission of students to such institutions or prescribing the fee in these institutions of higher education, etc. Thus, in exercise of powers under Entry 66 List I, the Union cannot provide for anything with respect to reservation/percentage of reservation and/or even mode of admission within the State quota, which powers are conferred upon the States under Entry 25 of List III. In exercise of powers under Entry 25 List III, the States have power to make provision for mode of admissions, looking to the requirements and/or need in the concerned State.

…

***145.** The sum and substance of the above discussion and conjoint reading of the decisions referred to and discussed hereinabove, our conclusions are as under:*

1) that Entry 66 List I is a specific entry having a very limited scope;

2) it deals with "coordination and determination of standards" in higher education;

3) the words "coordination and determination of standards would mean laying down the said standards;

4) the Medical Council of India which has been constituted under the provisions of the Indian Medical Council Act, 1956 is the creature of the statute in exercise of

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powers under Entry 66 List I and has no power to make any provision for reservation, more particularly, for in-service candidates by the concerned States, in exercise of powers under Entry 25 List III;

5) that Regulation 9 of MCI Regulations, 2000 does not deal with and/or make provisions for reservation and/or affect the legislative competence and authority of the concerned States to make reservation and/or make special provision like the provision providing for a separate source of entry for in-service candidates seeking admission to postgraduate degree courses and therefore the concerned States to be within their authority and/or legislative competence to provide for a separate source of entry for in-service candidates seeking admission to postgraduate degree courses in exercise of powers under Entry 25 of List III;

6) if it is held that Regulation 9, more particularly, Regulation 9(IV) deals with reservation for in-service candidates, in that case, it will be ultra vires of the Indian Medical Council Act, 1956 and it will be beyond the legislative competence under Entry 66 List I.;

7) Regulation 9 of MCI Regulations, 2000 to the extent tinkering with reservation provided by the State for in-service candidates is ultra vires on the ground that it is arbitrary, discriminatory and violative of Articles 14 and 21 of the Constitution of India;

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> ***8) that the State has the legislative competence and/or authority to provide for a separate source of entry for in-service candidates seeking admission to postgraduate degree/diploma courses, in exercise of powers under Entry 25, List III. However, it is observed that policy must provide that subsequent to obtaining the postgraduate degree by the concerned in-service doctors obtaining entry in degree courses through such separate channel serve the State in the rural, tribal and hilly areas at least for five years after obtaining the degree/diploma and for that they will execute bonds for such sum the respective States may consider fit and proper; and***
>
> ***9) it is specifically observed and clarified that the present decision shall operate prospectively and any admissions given earlier taking a contrary view shall not be affected by this judgment."***

The above decision has been referred to by the learned counsel in order to highlight certain observations of the Apex Court made in the context of the clash of legislative powers exercisable under Union List and the State List, particularly, Entry 66 in List I and Entry 25 in List III. While interpreting the legislative power, the Constitution Bench has laid down certain principles as to how it should be understood in the context of the purpose for which those entries have been incorporated in the

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Constitution. One relating to the exclusive domain and the other relating to the general power and the Courts would always need to strike a balance and construct the entries harmoniously. He would submit that though the above decision stated that the State still has a space for bringing in certain regulations relating to the field of medical education, despite Entry 66 in List I, yet the highlight of the decision is that there is a specific power of laying down standards in higher education being traceable only to Entry 66 and the State Government is completely denuded of its jurisdiction in such matters. He would therefore, submit that the standards of legal education are prescribed only by the BCI in terms of the provisions of the Advocates Act, 1961. Therefore, there cannot be any justification in prescription of M.L., degree and enrollment as advocate for a faculty to teach pre-law courses, which in no way would enhance the standards or improve the legal education.

43 He would sum up his argument saying that as far as the stand of the BCI is concerned, the qualifications as prescribed by the State Government only in respect of the Law Colleges which come under its control, is completely unwarranted and therefore, the same are liable to be declared as illegal and arbitrary.

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44 Mr.P.R.Gopinath, learned counsel appearing for the University Grants Commission [UGC] submitted that UGC lays down minimum qualifications for the Universities and Colleges to follow. It also prescribes inter-disciplinary subject and also the nomenclature of the post. The Commission also regulates teachers-students ratio. As far as prescription of minimum qualification is concerned, the Government Law Colleges in the State are affiliated to Dr.Ambedkar Law University which is a recognized State University under Section 2[f] of the UGC Act. According to him, it is always open to the Universities or State Government to prescribe higher qualification and there is no prohibition at all. Learned counsel also referred to minimum qualification prescribed by UGC Regulations, 2010. He has referred to the post of Assistant Professor at paragraph 4.4.0. He would particularly draw reference to the qualifications prescribed in 4.4.1, which reads thus :-

> ***"4.4.0-Assistant Professor***
> ***4.4.1:-Arts, Humanities, Sciences, Social Sciences, Commerce, Education, Languages, Law, Journalism and Mass Communication.***
>
> i. *Good academic record as defined by the concerned University with at least 55% marks [or an equivalent grade in a point*

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scale wherever grading system is followed] at the Masters Degree level in a relevant subject from an Indian University, or an equivalent degree from an accredited foreign University.

ii. Besides fulfilling the above qualifications, the candidate must have cleared the National Eligibility Test [NET] conducted by the UGC, CSIR or similar test accredited by the UGC like SLET/SET."

According to him, what is prescribed there is only Masters Degree in the relevant subject from an Indian University besides clearance of NET/SLET etc. He also referred to the prescription of inter-disciplinary subject under UGC Regulations. The inter-disciplinary nature of subject, according to UGC Guidelines, is required to be decided by the concerned University / Appointing Authority. As far as the Teacher-students ratio is concerned the learned counsel referred to the relevant Regulation. He also referred to the minimum hours of work as per the UGC guidelines. According to him, the minimum 16 hours per week is prescribed for the Assistant Professor. As far as nomenclature is concerned, the learned counsel submits that the latest Regulation prescribes only 3 posts in teaching faculty in the higher education, viz., Assistant Professor, Associate Professor and Professor.

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45 Ms.Sudha, one other learned counsel appearing for the UGC would submit that Ph.D., qualification is recognized by UGC only when the same has been obtained on a regular mode. She also referred to 2016 Amendment and also the subsequent amendments in the years 2018 and 2021. The Commission has framed guidelines for recognition of Ph.D., degree only if such degrees are conferred on a regular mode. In effect, the learned counsel attempted to impress upon this Court that generally when degrees are obtained through regular mode, such degrees alone are to be recognized; but not the degrees obtained otherwise.

46 Mr.G.Murugendran, learned counsel, as a matter of clarification in regard to the number of hours which are required to be taken by the Assistant Professor, in terms of UGC Regulation, has referred to a Chart and according to him, the Chart has been approved by a Principal of a Government Law College. In terms of the Chart, the pre-law Assistant Professor as on date is required to take 18 hours per week. Therefore, it is not correct on the part of the opposing counsel to say that mere Post Graduation qualification in the relevant subject would not provide any scope for full time engagement in terms of the UGC Regulations.

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47 The learned counsel further submitted that the teacher-students ratio as per the norms of the UGC is 1:30. In many Government Colleges the faculties are required to take classes having strength of 90 and above in one section. In tune with the ratio of the UGC, the Colleges can create that many sections on the basis of the actual students strength and by such arrangement, quality of education would also improve and the services of the pre-law faculty will also be utilised fully and they could be made to work in terms of the minimum hours as prescribed by the UGC. In any event, as on date, these pre-law faculties are performing more than the minimum hours prescribed by UGC and the contention contrary to that, is contrary to the facts.

48 The learned counsels who are aggrieved by the 'additional' qualification prescribed in the Notification, uniformly submitted that these qualifications do not provide any value addition and would any way help the legal education achieve higher standards. On the other hand, the extra qualifications as prescribed, suffer from grave irrationality without any iota of any quality being added to the Post Graduation qualification in the relevant subject. The learned counsels have also submitted that

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some of the persons with existing M.L., qualification and enrolled as advocates, have obtained their Post Graduate Degrees through Open University mode and some of them are in possession of cross degrees, viz., Under Graduate in non relevant subject and Post Graduate in the relevant subject. These candidates who are merely in possession of Post Graduate Degree in the relevant subject would certainly not be a quality faculty as the relevant subject they have learnt is only for two years in the Post Graduate course, which would not be sufficient for taking classes effectively. They would also not be endowed with basic academic skills in the relevant subject in the absence of the basic qualification being different. The candidate with such qualification cannot be certainly called as proper faculty.

49 The learned counsels therefore, submitted that there appear to be serious infirmities in the prescription of qualifications on one hand and on the other, lack of clarity on how the qualifications as prescribed, to be acquired. In the overall circumstances of the case, the Notifications issued in terms of the original Government Orders No.1349 and 264 dated 19.11.1985 and 20.12.2005, are liable to be declared as illegal, arbitrary, irrational and unreasonable.

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50 Mr.R.Shanmugasundaram, learned Advocate General has appeared and argued on behalf of the State Government in the batch of writ petitions. The learned Advocate General has made detailed submissions touching upon all the facts as argued above by the respective learned counsels for the writ petitioners. According to the learned Advocate General, the prescription of the additional qualifications are required for the kind of subjects that are required to be taught even at the level of the pre-law courses. Therefore, the Government felt the necessity for having the faculty who are qualified both in the relevant subjects [pre-law] and also M.L., qualification for attending to the additional requirements of the students even during their study at the pre-law level.

51 According to the learned Advocate General, there is nothing wrong in prescribing additional qualifications as it would be a value addition for the students who are ultimately to be trained as Advocates to be enrolled at the Bar. Further, for a teaching faculty, career progression is possible only upto the level of Principal and above only when a person is credited with Post Graduate degree in law. If a person merely in possession of a Post Graduate Degree in any relevant subject cannot aspire to go beyond the level of Head of Department [HOD]. Therefore,

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both from the perspective of the students interest as well as the faculty's interest, such qualifications have been prescribed and the same cannot be legally faulted with. The learned Advocate General therefore summed up that there is no legal or constitutional infirmity in the prescription of the additional qualifications and he therefore prays for dismissal of the writ petitions challenging the qualifications.

52 This Court heard the arguments advanced by Mr.R.Shanmugasundaram, learned Advocate General appearing for the State ; Mr.S.Prabhakaran, learned Senior counsel ; Mr.R.Singaravelan, learned Senior Counsel, Mr.G.Murugendran, Mr.Thiyagarajan, Mr.G.Sankaran, Mr.Balan Haridas, respective learned counsels appearing for the writ petitioners and Mr.Gopinath and Ms.Sudha, learned counsels appearing for UGC.

53 After elaborate arguments of all the counsels on board, there are at least three principal issues that emerge for consideration of this Court, viz.,

(1) Whether the additional qualifications prescribed in the impugned Notification, viz., Masters Degree in Law and enrollment as an Advocate in the Bar Council, apart from

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the qualification of Post Graduate Degree in the relevant subject and the National Eligibility Test [NET] or an accredited test, are rationale, reasonable free from the vice of arbitrariness and as a corollary, whether the qualifications as prescribed by the State authority can pass the constitutional test of legislative competence or not?

(2) Whether the Post Graduate Degree in the relevant subject is obtained through the Distance Education mode and not through the regular stream, is valid for the purpose of appointment as a faculty to teach pre-law courses or not? ; and

(3) Whether the possession of Postgraduate Degree in the relevant subject was obtained through regular stream or through Distance Education Mode, but the Under Graduate Degree in a different subject, which is known as 'cross degree', is a valid qualification or not?

54 Out of the three issues as outlined above, the most cardinal of the same is the challenge to the qualifications as prescribed in the impugned Notification dated 18.07.2018, calling for recruitment to the post of Assistant Professors [pre-law] in Government Law Colleges in the State of Tamil Nadu for the year 2017-2018.

55 Elaborate arguments have been advanced assailing the

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prescription of the additional qualifications by the learned counsels placing reliance on several materials, relevant rules and regulations and also various decisions, legal principles laid down by the Courts over the years.

56 On the other side of the spectrum, the challenge has been resisted that no legal or constitutional infirmity could be found in the prescription of the additional qualifications, as such qualifications are very much required with reference to the curriculum formulated in the pre-law courses in the Government Colleges in the State of Tamil Nadu . On their part also, several decisions have been cited and relied upon and in the course of the judicial discourse, the same shall be discussed hereunder.

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57 Before this Court embarks upon unraveling the core issues with reference to the competing contentions, there are certain preliminary issues raised objecting to the very maintainability of the writ petitions, the same shall be dealt with first in order to clear the obstacles to the quest for answers on the essence of the challenge.

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58 One of the objections to the challenge that without challenging the statutory rules, as laid down in the Tamil Nadu Legal Education Service, the writ petitioners assail only the consequential incorporation of the qualifications in the recruitment Notification of the years 2014 and 2018. In fact, detailed arguments have been advanced drawing reference to two important Government Orders under the Legal Education Service, viz., G.O.Ms.No.1349 dated 19.11.1985 and G.O.Ms.No.264 dated 20.12.2005. The qualifications as prescribed in the Notifications under challenge could be traced to these two Government Orders and in the said circumstances, a mere challenge to the qualification prescribed in the Notifications without actually challenging the rules, is unsustainable and liable to be dismissed on that ground alone. According to the learned counsels, the Government Orders have been issued in furtherance of the rule making power under Article 309 of the Constitution of India.

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59 The further objection is the qualifications prescribed, have stood the test of time from 1985 and several recruitments have taken place for more than three decades and the candidates appointed with the said qualification. In support of this contention, the learned counsels who

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are opposed to the challenge, have relied on various decisions and relevant observations rendered by the Courts which have been extracted supra.

60 Countering the above arguments, it has been contended that when the Notification was issued on 22.07.2014, both the Government Orders, in G.O.Ms.No.1349 dated 19.11.1985 and G.O.Ms.No.264 dated 20.12.2005, had been put to challenge in WP.No.33145/2014 and the challenge was discountenanced by a learned Single Judge and as against that, a writ appeal was preferred in WA.No.533/2018 and a Division Bench of this Court had dismissed the said writ appeal vide it's judgment dated 09.03.2018. As against dismissal of the writ appeal, Rev.Appln.No.195/2019 has been filed and the same is also tagged along with this batch of writ petitions and the writ appeals. The answer to the objection therefore is that challenge to the relevant rules is also before this Court.

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61 This Court's attention has been drawn to the earlier judgments of the Division Benches made in WA.No.533/2018 dated 09.03.2018 and WA.No.2484/2018 dated 13.11.2018, wherein the

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learned Division Benches had negatived the challenge against prescription of additional qualifications. This Court has gone through the said judgments, but eventually finds that elaborate submissions and arguments made by the respective learned counsels in this batch of writ petitions, had not been canvassed for consideration before the Division Benches. The Division Benches did not have the benefit of these arguments. In the opinion of this Court, the issues raised in this batch require a very incisive and critical examination, in view of the seminal stakes involved in the field of legal education in the State of Tamil Nadu.

62 Both the learned Division Benches, had premised its' views on the notion that the higher qualifications fixed by the employer than fixed by the Central Regulating Agency like UGC, cannot said to be improper and invalid. The learned Division Benches have also reasonsed that the relevant Government Orders had stood the test of time from 1985 and 2005 onwards and it was too late in the day to challenge the same. Further, one learned Division Bench, had dismissed WA.No.2484/2018, vide judgment dated 09.03.2018 on the ground that it was always open to the employer to prescribe the required qualification for any post in service. In this regard, the Bench had relied upon a decision of the Hon'ble Supreme Court of India reported in ***2003 [2] SCC 632***

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[P.U.Joshi and Others V. Accountant General, Ahmedabad and Others]. The learned Division Bench had also dismissed the said writ appeal on the facts of that case that the written examination for selection was stated to be over and the aggrieved candidates approached the Court after the last date of submission of the applications. This Court, being the coordinate Bench, cannot make any remarks or express any opinion, as the reasons which formed the basis of the conclusion by the Division Benches are in consonance with the settled legal principles on the subject matter.

63 However, inasmuch as being a Coordinate Bench, it is not proper for this Court to differ, at the same time, in view of the submissions as to the constitutionality of the prescription of the additional qualifications and also pendency of the aforementioned Review Application, this Court is inclined to take a comprehensive call on the merits of the challenge without adopting a pedantic approach. Further, considering the importance of the issues concerning the legal education in the State of Tamil Nadu, this Court cannot afford to abdicate its constitutional jurisdiction in preference to technicalities. Moreover, as rightly contended by one of the learned counsels, that any offending provision or rule can always be subjected to challenge, when rights of

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candidates being infringed upon due to the application of the offending rule. It is always open to this Court to consider the constitutionality issue, notwithstanding the earlier decisions of this Court which admittedly, did not have an opportunity to deal with issues as raised herein. This Court is in agreement with the submissions of the learned counsels that the power of judicial review by the Constitutional Courts cannot stand ousted because of the fact that the offending provision or rule stood the test of time.

64 The other aspect of objection is that it is not open to the candidates to challenge the qualifications prescribed after their participation in the selection process. The learned counsels in support of their contention, relied on some case laws. This Court cannot have any quarrel on the consistent legal principles laid down by the Courts and it is not open to the candidates to set up a challenge to the Regulations or the Notifications, after their participation in the subject selection. Having chosen to participate in the selection without demur, the candidates were estopped from challenging the prescription in the Notification or in the Rules. However, what calls for adjudication herein is not simple run off the mill contestation *qua* parties, but it is about the interplay of powers in

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the shared legislative field as between the Central and the State authorities in the framework of the constitutional scheme.

65 This Court is also conscious of the settled legal principle that unless and until the qualifications are declared illegal, arbitrary and void, the same are valid and applicable. In the said circumstances, the qualification as prescribed in the impugned Notifications in terms of the statutory Rules, cannot be thrown upon to challenge by the candidates, who had participated in the selection only by virtue of the interim orders obtained by them from this Court. It is needless to state that their participation in the selection process did not give them any right to get selected or appointed as their participation was always subject to the final outcome in the writ petitions.

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66 There are two possible situations which may arise in regard to the present objection. Firstly, these writ petitions by the candidates who participated in the selection without any protest, can be simply dismissed on the basis of the settled legal position in terms of the case laws cited. Secondly, these writ petitions can be disposed of by a simple decision that the selection process was already over long time ago and in

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the event of this Court holding that the prescription of additional qualification is unconstitutional and illegal, the same could have only a prospective application. In such scenario, the exercise would become only academic in respect of the writ petitioners herein as the candidates have already been selected provisionally, in terms of the present qualifications, as any ruling of the Court cannot be detrimental to the accrued rights of the qualified participants as their participation in the selection cannot be set at nought by this Court, by retrospective ruling.

67 The arguments advanced on behalf of the qualified candidates in terms of the prescription in the Notification is that this is not the case where unqualified candidates are sought to be selected, but it is a strange case where the qualified candidates are sought to be prevented from being selected at the instance of the unqualified candidates. This submission though valid and meaningful, yet when interference of this Court is called for on the ground of constitutionality of the policy action of the Government, the individual rights are subject to the ultimate decision of this Court in the matter.

68 The above contentions seem to be having a considerable

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force in favour of the provisionally selected "qualified" candidates. But once again looking at the larger picture of serious pitfalls being noticed in the qualification aspects, even in respect of the qualified candidates, this Court has to necessarily deal with the challenge from all dimensions for the reasons set forth below.

69 Apart from the objections as above, a new twist has been introduced in the batch in respect of the qualifications possessed by some of the qualified candidates who appeared to have been in possession of cross major degrees and not having both Under Graduate and Post Graduate degree in the same relevant subject. Further, the Post Graduate degrees had been obtained by some candidates through Distance Education mode. According to the counsels, behind the objections, both type of qualifications are not valid for being appointed as Assistant Professor in the pre-law course. Although no particular rule or regulation or any material has been brought to the notice of this Court, this Court finds the objections are extremely important and relevant for consideration of this Court. When standards of the legal education in the State is the subject matter of examination of this Court, how the qualifications had been acquired by the "qualified candidates" need to be

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looked into beyond the realm of their possession of paper degrees. In fact, this Court, during the Court during the course of arguments by the learned counsels and also browsing through various judgments cited supra, did not come across any judgments of the Apex Court on two aspects, viz., cross major qualifications and qualification by Distance Education mode with specific reference to appointment to teaching posts. The decisions cited at the Bar relate to the legal validity of the cross major and degrees obtained through Distance Education mode, as those degrees have been finally held to be valid.

70 But what is troubling this Court in the present adjudication is whether these degrees are valid or fair enough for the purpose of appointing the candidates with such degrees in the teaching profession and in this case, Assistant Professors for pre-law courses. These objections have contemporaneous relevance, when there is a hue and cry of fall in standard in the legal education, particularly imparted by the Government run institutions. Unfortunately there is no satisfactory clarification, either from the State Government or from the Central Regulating Body on these vital aspects. In the absence of clear principles laid down on these aspects, the exercise of the power of judicial review of this Court becomes all the more a constitutional imperative of ensuring

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that the system of higher learning is not infused with the mediocrity. This Court nonetheless is conscious of the legal position that judicial review on academic matters is limited and circumscribed by the legal precedents as laid down by the Apex Court, yet when the Courts find that there is complete absence of clarity on the qualifications prescribed, the Constitutional Court cannot be a mute spectator and be a witness to the appointments of teachers who are under equipped and half baked with the present unclear eligibility criteria.

71 In the said circumstances, this Court has to be certainly step in with a view of ensure that the present policies of the Government need a re-look so that unneeded qualifications are weeded out in the overall interest of the institutional growth. With this conclusion, this Court hasten to proceed further with the main challenge in the writ petition, viz., additional qualifications.

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72 As far as the additional qualifications are concerned, the principal justification comes from the plea that the syllabus for the Five Year Integrated Law Courses has been designed with the mixture of subjects like arts, science, commerce, management and with law. The

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students in the integrated courses are to be taught various branches of law even from the first semester onwards along with a chosen pre-law course. This Court's attention has been drawn to the factum of syllabus prescribed by the Government and made applicable to the Government Law Colleges in the State.

73 This Court has repeatedly encountered the advocates to demonstrate as to how the syllabus prescribed for the Government Law Colleges is materially and qualitatively different from the other curricula that are made applicable to all the Universities and Colleges in the country or even within the State like Dr.Ambedkar Law University. However, no satisfactory submission was forth coming nor any clinching materials were shown in support of the prescription of post graduate degree in law and more particularly, enrollment as advocate. The teaching of subjects relating to law may commence even from the first semester onwards in the integrated programme, as seen in the syllabus but it does not mean that those classes need to be handled by the Assistant Professors who are principally recruited to handle pre-law courses in various subjects relating to arts, science, commerce etc. The learned counsels who argued so vehemently stating that the course

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content required a degree in law, have miserably failed to demonstrate before this Court as to what exactly the course content which is so unique and singular and that unless a person with post graduate degree in law the pre-law courses cannot be handled by a post graduate degree holder in the relevant subject. The entire arguments in this regard, have been in the realm of conjecture and supposition.

74 Although references have been made to various documents showing the contents of the syllabus, this Court is not convinced and unable to persuade itself in accepting the submission of the counsels, with cast iron conviction. Firstly, the syllabus that is made applicable as between the Government Colleges and other institutions affiliated to Dr.Ambedkar Law University in the State, this Court did not find any palpable or material difference at all. Despite the painstaking efforts by the counsels, the arguments and submissions of the counsels failed to impress upon this Court authoritatively. Secondly, when Mr.R.Singaravelan, learned Senior counsel referred to the latest Legal Education Rules, 2019, though yet to be notified, under Paragraph 4 of Schedule II, which deals with academic standards and courses to be studied, and it is stated as under:-

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> ***"4:Total Subjects in Liberal discipline in Integrated Stream:-***
>
> ***....***
>
> ***[a]Matters of fact education:-***
>
> *Subjects in social science, science, commerce, management, technology and medicine provide the education on matters of fact which are studies in B.A./B.Sc./B.B.A./B.Com/B.Tech etc. The syllabus of this part has to be comparable to the syllabus prescribed by leading Universities in India in three/four year Bachelor Degree program in B.A., B.Sc., B.Com., B.B.A., B.Tech etc., taking into account the standard prescribed by the UGC/AICTE or any other respective authority for any stream of education."*

From the above, it could be well gathered without any iota of doubt that the syllabus for pre-law courses, like, B.A., B.Sc., B.Com., B.Tech etc., has to be comparable to the syllabus as that of the leading Universities in the country in three or four year degree programme. Therefore, in the face of such requirement, the contention of the learned counsels supporting the qualifications is completely out of tune with the reality of the academic requirement of the course study in the integrated programme of 5 year law degree.

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75 The Legal Education Rules, 2019, which is yet to be notified, what is envisaged therein is very much discernible and appreciable. The offer to students various options of study in Arts, Science, Commerce or Technology, does not mean that the subjects are to be taught at a cursory or superficial level. The new rules presumably only reinforce the obvious. In a higher education programme, when any subject is prescribed as a specialization, the same cannot be treated as an auxillary and make the students learn the peripheries of the subject. Thus, the additional qualifications prescribed cannot said to be drawing definite support from such slippery assertion or contention.

76 In the above backdrop, this Court has to approach the issue whether the M.L., degree and also enrollment as advocate are essential qualifications for the faculty whose recruitment is only with regard to their appointments as pre-law teacher. In fact, initially the learned counsels on a mistaken or misplaced notion, contended that the Central Regulating Body like the UGC sets only the minimum standards to be followed in the University education and that it is always open to the University or the State Government concerned, to prescribe higher

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qualifications. This contention viewed in isolation, cannot be faulted with at all as the Courts have consistently held so. Some decisions have also been cited and relied upon by the counsels and this Court has also drawn reference to the same. However, the issue herein is not the prescription of higher qualification, but prescription of additional qualifications unconnected to the main qualification. At best it can said to be supernumerary qualifications. In fact, the earlier decisions of the Division Benches which have been referred to supra, had premised its views only on the basis of the settled legal principle that there is no bar in prescription of higher qualification by the University or the State Government concerned. However, when the controversy herein is probed profoundly, it could be seen that the disputed qualifications may not have adjunct value to the teaching faculty solely employed for taking pre-law courses. On the other hand, with the additional qualifications, particularly regular ML degree and enrollment as advocate, unlike the core postgraduate degrees in the relevant subject, the focus of teaching is forced to gravitate towards law from the pre-law level, thus defeating the very concept of the integrated legal programme formulated by the academia.

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77 In order to become eligible for appointment as Assistant Professor [pre-law], in terms of the present qualifications, one needs to have post graduate qualification in the relevant subject, plus M.L., degree and enrollment as advocate. The time spent on acquiring the minimum qualification is 10+2 at the school level, 3+2, acquiring qualification in the relevant subject and 3+2, Bachelor of Law and Master of Law, which means that a candidate is required to undergo a minimum of 10 years in higher education to acquire the basic qualification after school final. The emphasis of the policy makers is more on the achievement of competency in law than the relevant subject concerned at the pre level. Needless to mention that one cannot qualify himself/herself with M.L., degree unless he/she qualify as an under graduate in law. Unfortunately, this is not so, in the subject concerned where a candidate who acquires his/her post graduate qualification in the relevant subjects like economics, commerce, sociology etc., need not required to possess under graduate degree in the same subjects. Incongruity is writ large on the prescription of the qualifications as such. Such, prescription for pre-law teachers appear to be ex facie lopsided and asymmetrical relegating the specialization like Arts, Science, Commerce, Technology, etc., as a secondary and collateral subject.

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78 When a candidate is to be appointed to teach pre-law courses, the stress must be that the person selected to teach a particular subject must be intellectually equipped to handle classes for the students in the subject of specialisation of the candidate concerned, in terms of his/her post graduate degree. Requiring more qualifications, not connected to to the main qualification in the finer discharge of duties, the teacher concerned would inevitably be a person of mediocre knowledge of not excelling in the relevant subject or in law, either. This Court is also at a loss to understand and perplexed that more than prescription of M.L., degree, the insistence of enrollment as advocate. How far enrollment as advocate is going to be of any academic use in the discharge of duties by the Assistant Professor, is a conundrum, as no definite or plausible answers are to be found. In fact, from the entirety of arguments by the learned counsels, this aspect has not been addressed at all. Hence, the enrollment as advocate whether could bring any value addition to the pre-law teacher is a knotty question and till the conclusion of the argument, the question remained conspicuously unanswered.

79 In fact, the requirement of enrollment as advocate would

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have other consequences. There is every possibility that a candidate with M.L., degree and enrolled as advocate, may always weighing his/her options to join the profession, as he is trained and tuned to be a lawyer, midstream. The possession of law degree and enrollment at the Bar would invariably act as a catalyst and inducement for the teacher of pre-law to leave the job of teaching anytime, he/she chooses to leave as per his/her convenience. This contingency cannot be ruled out at all, in practical times of today's context. On the other hand, if a candidate with only post graduate qualification in the relevant subject, which means the same subject, both at the under graduate and post graduate levels, such candidate unalloyed focus could only be on the subject of his teaching. When a candidate tied to the teaching, he/she is bound to make a qualitative difference in the long run. The teachers with a specialized degree without the law degree, would be fully focused into teaching and probably, research too benefiting the students. If the standards of the legal education is to be protected or improved, the quality of the dedicated teachers is a *sine qua non* for its betterment.

80 There are other arguments advanced in regard to the scope of full time employment of pre-law courses faculty. It was also

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demonstrated before this Court that even as on date, they are required to work for more than 16 hours which is the minimum hours per week fixed by the regulations of the UGC. Even assuming that as on date, there is no scope for the pre-law courses faculty work 16 hours, as contended by Mr.R.Singaravelan, learned Senior counsel, in the Government Law Colleges in the State of Tamil Nadu, it is always open to the administration to divide classes, sections and device methods to increase the hours of work as per the requirement of the UGC regulations. This Court has been informed that in Government Colleges as many as 90 students are bunched together in a single section. In such circumstances, the classes could be divided with less number of students in the teacher-student ratio as per the guidelines of the UGS. In any event, as rightly contended by Mr.Ragunathan, learned counsel for the BCI, these matters are internal management of the Colleges or the University concerned. Moreover, the Rules of Legal Education issued under the provisions of the Advocates' Act, 1961, mandate employment of full time faculty members in core faculty as per Rule 17. This apart, the BCI has reinforced the mandate of employment of full time faculty members in pre-law courses by its resolution No.110/2018 dated 14.09.2008, while approving the Rules as Standards of Legal Education. Therefore, the

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contention as to the scope of work for the pre-law Assistant Professor is to be discountenanced both on facts and in law.

81 The disputed qualifications when construed not higher qualifications providing any value addition towards maintaining or improving the standards of pre law courses, prescription of such qualifications by the State therefore suffers from the vice of colourable legislation. No doubt, laying down educational criteria, eligibility and qualifications for appointment as Assistant Professor etc., are in the exclusive domain of the State Government or the University concerned. But, when the policy of the Government is under serious attack, this Court hardly finds any attempt being made on behalf of the Government to justify the qualifications prescribed for the pre-law courses in the Government colleges in the State of Tamil Nadu. Despite several opportunities afforded and yet no sincere efforts spared in persuading this Court as to the qualifications prescribed by them. This Court finds a lackadaisical approach of the Government throughout the hearings of the case on several occasions. Ultimately, the policies of the State Government have been left to be defended by the candidates concerned.

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82 In any event, the candidates who have in possession of the prescribed qualifications as per the Notifications under challenge have elaborately made submissions through their learned counsels justifying their qualifications with reference to the posts they are sought to be recruited. But the fact of the matter is that the objects and reasons behind the policy decisions need to be explained and justified when the same come under attack before this Court by the policy makers and not by the candidates. This Court even otherwise is of the view that having gone through all the materials and the respective pleadings, no amount of justification could gain legal acceptance for the following reasons.

83 Now, coming to the pivotal contention, namely the legislative competence of the State Government to come up with the disputed qualifications is what ultimately to be examined by this Court in realm of the constitutional governance, distribution of powers as between the Centre and the constituent States.

84 In this regard, Mr.Ragunathan, learned counsel for the BCI has forcefully and pointedly contended that the disputed qualifications are liable to be declared as unconstitutional and void *ab* initio as the

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qualifications are repugnant to the BCI Rules of Legal Education, 2008. He has referred to few decisions and the relevant paragraphs, which had already been extracted supra, in the earlier part of this decision. The learned counsel referred to five decisions in all, touching on the nucleus of the controversy. According to the learned counsel, the BCI has a predominant role in prescribing qualifications for legal education and this position is not open to any debate. The learned counsel particularly referred to paragraph No.14 of the decision reported in ***2007 [2] SCC 202*** which has been extracted supra. The Hon'ble Supreme Court of India, in that decision has held that being the Apex Professional Body, the BCI is concerned with the standards of the legal profession and the equipment of those who seek entry into that profession. When the BCI itself has not thought fit to prescribe post graduate degree in law for pre-law courses, in terms of the Legal Education Rules, 2008, the justification for prescribing supernumerary qualifications hardly carry any conviction with this Court. In fact, the learned counsel has stated that after the enactment of the Advocates' Act, 1961, the jurisdiction for laying down standards and norms for the legal education had been carved from the UGC and conferred on the BCI, which is a Body created under the Advocates' Act, 1961.

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85 In regard to the focal issue of legislative competence, the learned counsel for the BCI has referred to the Entries in the Seventh Schedule to the Constitution of India. Entry 66 of List – I in the Union List and Entry 25 of List III in the Concurrent List.

> ***"Entry 25:-*** *Education, including technical education, medical education and Universities, subject to the provisions of entries 63, 64, 65 and 66 of List I : Vocational and Technical training of labour."*
>
> ***"Entry 66:-*** *Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions."*

In this regard, the learned counsel has relied on a recent decision reported in ***2020 SCC Online SC 699 [cited supra].*** The Constitution Bench in the said decision referred to the observation of the other Constitutional Bench decision ***[Modern Dental College case]*** "that the expression used in Entry 66, *"coordination and determination of standards"* would mean laying down the standards and therefore, when it comes to prescribing the standards for institutions of higher learning, the

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exclusive domain is given to the Union".

86 In this case, admittedly, the BCI under the Legal Education Rules, has not prescribed the disputed qualifications at all. But, at the same time, the Constitutional Courts have also held that in a shared legislative field, there is always a space for enacting laws on the subjects falling both in the Union List as well as in the Concurrent List. In such situations, the Courts have held doctrine of Pith and Substance need to be applied, in order to uphold the validity of the legislation. In fact, the learned counsel for the BCI emphasized this constitutional position when he relied on paragraph No.9 in the decision of the Apex Court reported in ***AIR 1953 SC 375 [cited supra].*** The said paragraph has been extracted supra. In the said decision, the Apex Court has observed that it is the substance of the Act that is material and not merely the form or outward appearance, and if the subject-matter in substance is something which is beyond the powers of that legislature to legislate upon, the form in which the law is clothed would not save it from condemnation. The Hon'ble Supreme Court also observed that the legislature cannot violate the constitutional prohibitions by employing an indirect method. As far as the present disputation is concerned, the minimum standard prescribed

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by the Central Regulating Body has been retained. Therefore, to that extent, it cannot be held that there is a direct conflict by the State Legislation encroaching upon the field of legislation as provided in Entry 66 of the Union List.

87 Be that as it may, what is to be seen in the exceptional circumstances of the present case is not the action *per se* in prescription of the minimum qualification by the State Government, but in prescription of additional qualifications unconnected to the main qualifications. When the disputed qualifications are construed to be unconnected and supernumerary qualifications, the same are to be declared irrational, unreasonable and arbitrary. Indisputably, there is no bar in prescription of higher qualifications by the appointing authorities, particularly, in a shared legislative field like the present one where there is an interplay of Entry 66 of List I and Entry 25 of List III of the Seventh Schedule to the Constitution. But, the expression of higher qualification must be necessarily relate to the qualifications as prescribed by the BCI. Admittedly, the Legal Education Rules of the BCI prescribed post graduate degree in the relevant subject as the minimum educational qualification for the faculty in pre-law courses. Any prescription of

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higher qualification like M.Phil., Ph.D., in the subject concerned is certainly desirable for enhancing the standards of teaching. In that case, any statutory provision laying down higher academic norms cannot attract constitutional controversy. But, unfortunately under the impression of prescribing higher qualifications, unneeded qualifications have been prescribed focussing more on law than in the subjects like Economics, Commerce, Technology etc., in the integrated degree programme.

88 The qualification post graduate degree in the relevant subject has been prescribed by the BCI in its Legal Education Rules and the source of power for such prescription could be traced to Section 7[1][h][i] of the Advocates' Act, 1961. The relevant provisions of the Advocates' Act, 1961, as well as the BCI Rules, have also been extracted supra. The Advocates' Act, 1961 is a fall out of Entries 77 and 78 of List-I. When prescription of qualification owes its origination in the Entries in List-I, any further prescription of qualifications not in connection with the said qualifications will have to be declared as unconstitutional as the State authority is prohibited from laying down different qualification in terms of the constitutional scheme of distribution of fields of legislation and restriction of the power of the State in the shared legislative space.

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89 As a matter of illustration, when a candidate who is qualified in terms of the minimum qualification laid down by the Central Regulating Body, in this case, the BCI, yet he/she becomes disqualified not because any higher qualification prescribed, but because of prescription of unconnected qualifications. The observations of the latest Constitution Bench of the Hon'ble Supreme Court reported in ***2020 SCC Online SC 699 [cited supra],*** in paragraphs 102 to 106, clarifies the limitation of power while interpreting Entry 66 of the List-I and Entry 25 of List III, which read thus:-

> *"**102.** Therefore, the following issues arise for consideration and determination of this Court in the present batch of writ petitions/appeals:*
>
> *1. What is the scope and ambit of Entry 66 of List I?*
>
> *2. What will be the impact/effect of MCI Regulations, 2000 framed by the Medical Council of India in exercise of its powers under Section 33 of the Indian Medical Council Act, 1956?*
>
> *3. Whether in view of Entry 66 of List I, the State is denuded of its power to legislate on the manner and method of the postgraduate medical courses, more particularly, making special provisions for in-service candidates in the postgraduate degree/diploma courses?*
>
> *4. Whether Regulation 9 of MCI Regulations, 2000, more particularly, Regulation 9(IV) and 9(VII)*

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takes away the power of the States under Entry 25 of List III to provide for a separate source of entry for in-service candidates seeking admission to postgraduate medical courses?

5. Whether Regulation 9 of MCI Regulations, 2000 is understood to not allow for the States to provide for a separate source of entry for in-service candidates seeking admission to postgraduate degree courses, the same is arbitrary, discriminatory and violative of Articles 14 and 19(1) (g) of the Constitution of India, and also ultra vires of the provisions of the Indian Medical Council Act, 1956?

6. Whether Regulation 9 is a complete code in itself, as observed by this Court in the case of Dinesh Singh Chauhan (supra) affecting the rights/authority of the States to provide for reservation and/or separate source of entry for in-service candidates seeking admission to postgraduate degree courses?

***103.** While considering the aforesaid issues, let us first consider the scope and ambit of Entry 66 of List I - legislative competence of the Union in exercise of powers under Entry 66, List I of Schedule VII of the Constitution of India.*

***104.** In the case of Modern Dental College & Research Centre (supra), a Constitution Bench of this Court again had an occasion to deal with and consider Entry 66 List I and Entry 25 List III. After considering catena of decisions of this Court, more particularly, the decisions of this Court in the cases of Gujarat University (supra); R. Chitralekha (supra); Preeti Srivastava (supra); and Bharati Vidyapeeth v. State of Maharashtra[17], it is held by this Court that Entry 66 in List I is a specific entry having a very specific and limited*

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scope. It is further observed by this Court that it deals with "coordination and determination of standards" in institution of higher education or research as well as scientific and technical institutions. The words "coordination and determination of standards" would mean laying down the said standards. It is observed that thus, when it comes to prescribing the standards for such institutions of higher learning, exclusive domain is given to the Union. The relevant observations are in paragraphs 101 to 105, which read as under:

*"**101.** To our mind, Entry 66 in List I is a specific entry having a very specific and limited scope. It deals with coordination and determination of standards in institution of higher education or research as well as scientific and technical institutions. The words "coordination and determination of standards" would mean laying down the said standards. Thus, when it comes to prescribing the standards for such institutions of higher learning, exclusive domain is given to the Union. However, that would not include conducting of examination, etc. and admission of students to such institutions or prescribing the fee in these institutions of higher education, etc. In fact, such coordination and determination of standards, insofar as medical education is concerned, is achieved by parliamentary legislation in the form of the Indian Medical Council Act, 1956 and by creating the statutory body like Medical Council of India (for short "MCI") therein. The functions that are assigned to MCI include within its sweep determination of standards in a medical institution as well as coordination of standards and that of educational institutions. When it comes to regulating "education" as such, which includes even medical education as well as universities*

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*(which are imparting higher education), that is prescribed in List III Entry 25, thereby giving concurrent powers to both Union as well as States. It is significant to note that earlier education, including universities, was the subject-matter of List II Entry 11 [“**11.** “**Education**” including universities, subject to the provisions of Entries 63, 64, 65 and 66 of List I and Entry 25 of List III”]. Thus, power to this extent was given to the State Legislatures. However, this entry was omitted by the Constitution (Forty-second Amendment) Act, 1976 with effect from 3-7-1977 and at the same time List II Entry 25 was amended [Unamended Entry 25 in List III read as:“Vocational and technical training of labour”]. Education, including university education, was thus transferred to the Concurrent List and in the process technical and medical education was also added. Thus, if the argument of the appellants is accepted, it may render Entry 25 completely otiose. When two entries relating to education, one in the Union List and the other in the Concurrent List, coexist, they have to be read harmoniously. Reading in this manner, it would become manifest that when it comes to coordination and laying down of standards in the higher education or research and scientific and technical institutions, power rests with the Union/Parliament to the exclusion of the State Legislatures. However, other facets of education, including technical and medical education, as well as governance of universities is concerned, even State Legislatures are given power by virtue of Entry 25. The field covered by List III Entry 25 is wide enough and as circumscribed to the limited extent of it being subject to List I Entries 63, 64, 65 and 66.*

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102. Most educational activities, including admissions, have two aspects : the first deals with the adoption and setting up the minimum standards of education. The objective in prescribing minimum standards is to provide a benchmark of the calibre and quality of education being imparted by various educational institutions in the entire country. Additionally, the coordination of the standards of education determined nationwide is ancillary to the very determination of standards. Realising the vast diversity of the nation wherein levels of education fluctuated from lack of even basic primary education, to institutions of high excellence, it was thought desirable to determine and prescribe basic minimum standards of education at various levels, particularly at the level of research institutions, higher education and technical education institutions. As such, while balancing the needs of States to impart education as per the needs and requirements of local and regional levels, it was essential to lay down a uniform minimum standard for the nation. Consequently, the Constitution-makers provided for List I Entry 66 with the objective of maintaining uniform standards of education in fields of research, higher education and technical education.

103. The second/other aspect of education is with regard to the implementation of the standards of education determined by Parliament, and the regulation of the complete activity of education. This activity necessarily entails the application of the standards determined by Parliament in all educational institutions in accordance with the local and regional needs. Thus, while List I Entry 66 dealt with determination and coordination of standards, on the other hand, the original List II Entry 11 granted the States the exclusive power to

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legislate with respect to all other aspects of education, except the determination of minimum standards and coordination which was in national interest. Subsequently, vide the Constitution (Forty-second Amendment) Act, 1976, the exclusive legislative field of the State Legislature with regard to education was removed and deleted, and the same was replaced by amending List III Entry 25 granting concurrent powers to both Parliament and State Legislature the power to legislate with respect to all other aspects of education, except that which was specifically covered by List I Entries 63 to 66.

104. No doubt, in Bharati Vidyapeeth [Bharati Vidyapeeth v. State of Maharashtra, (2004) 11 SCC 755 : 2 SCEC 535] it has been observed that the entire gamut of admission falls under List I Entry 66. The said judgment by a Bench of two Judges is, however, contrary to law laid down in earlier larger Bench decisions. In Gujarat University [Gujarat University v. Krishna Ranganath Mudholkar, AIR 1963 SC 703 : 1963 Supp (1) SCR 112], a Bench of five Judges examined the scope of List II Entry 11 (which is now List III Entry 25) with reference to List I Entry 66. It was held that the power of the State to legislate in respect of education to the extent it is entrusted to Parliament, is deemed to be restricted. Coordination and determination of standards was in the purview of List I and power of the State was subject to power of the Union on the said subject. It was held that the two entries overlapped to some extent and to the extent of overlapping the power conferred by List I Entry 66 must prevail over power of the State. Validity of a State legislation depends upon whether it prejudicially affects "coordination or determination of standards", even in absence of a Union legislation. In R. Chitralekha v. State of

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Mysore [R. Chitralekha v. State of Mysore, AIR 1964 SC 1823 : (1964) 6 SCR 368], the same issue was again considered. It was observed that if the impact of the State law is heavy or devastating as to wipe out or abridge the Central field, it may be struck down. In State of T.N. v. Adhiyaman Educational & Research Institute [State of T.N. v. Adhiyaman Educational & Research Institute, (1995) 4 SCC 104 : 1 SCEC 682], it was observed that to the extent that State legislation is in conflict with the Central legislation under Entry 25, it would be void and inoperative. To the same effect is the view taken in Preeti Srivastava [Preeti Srivastava v. State of M.P., (1999) 7 SCC 120 : 1 SCEC 742] and State of Maharashtra v. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya [State of Maharashtra v. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya, (2006) 9 SCC 1 : 5 SCEC 637]. Though the view taken in State of M.P. v. Nivedita Jain [State of M.P. v. Nivedita Jain, (1981) 4 SCC 296] and Ajay Kumar Singh v. State of Bihar [Ajay Kumar Singh v. State of Bihar, (1994) 4 SCC 401] to the effect that admission standards covered by List I Entry 66 could apply only post admissions was overruled in Preeti Srivastava [Preeti Srivastava v. State of M.P., (1999) 7 SCC 120 : 1 SCEC 742], it was not held that the entire gamut of admissions was covered by List I as wrongly assumed in Bharati Vidyapeeth [Bharati Vidyapeeth v. State of Maharashtra, (2004) 11 SCC 755 : 2 SCEC 535].

105. We do not find any ground for holding that Preeti Srivastava [Preeti Srivastava v. State of M.P., (1999) 7 SCC 120 : 1 SCEC 742] excludes the role of States altogether from admissions. Thus, observations in Bharati Vidyapeeth [Bharati

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Vidyapeeth v. State of Maharashtra, (2004) 11 SCC 755 : 2 SCEC 535] that entire gamut of admissions was covered by List I Entry 66 cannot be upheld and overruled to that extent. No doubt, List III Entry 25 is subject to List I Entry 66, it is not possible to exclude the entire gamut of admissions from List III Entry 25. However, exercise of any power under List III Entry 25 has to be subject to a Central law referable to Entry 25."

(emphasis supplied)

***105.** In the concurring judgment, Bhanumati, J. in paragraphs 131 to 134 and 147 to 149, has held as under:*

*"**131.** In order to answer the concern of other Constitution Framers, Dr Ambedkar went on to clarify the limited scope of List I Entry 66 (as in the present form), as proposed by him in the following words : (CAD Vol. 9, p. 796)*

"Entry 57-A merely deals with the maintenance of certain standards in certain classes of institutions, namely, institutions imparting higher education, scientific and technical institutions, institutions for research, etc. You may ask, "why this entry?" I shall show why it is necessary. Take for instance, the BA Degree examination which is conducted by the different universities in India. Now, most provinces and the Centre, when advertising for candidates, merely say that the candidate should be a graduate of a university. Now, suppose the Madras University says that a candidate at the BA Examination, if he obtained 15% of the total marks shall be deemed to have passed that examination; and suppose the Bihar University says that a candidate who has obtained 20% of marks shall be deemed to have passed the BA degree examination; and some other university fixes some other

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standard, then it would be quite a chaotic condition, and the expression that is usually used, that the candidate should be a graduate, I think, would be meaningless. Similarly, there are certain research institutes, on the results of which so many activities of the Central and Provincial Governments depend. Obviously, you cannot permit the results of these technical and scientific institutes to deteriorate from the normal standard and yet allow them to be recognised either for the Central purposes, for all-India purposes or the purposes of the State."

132. The intent of our Constitution Framers while introducing Entry 66 of the Union List was thus limited only to empowering the Union to lay down a uniform standard of higher education throughout the country and not to bereft the State Legislature of its entire power to legislate in relation to "education" and organising its own common entrance examination.

133. If we consider the ambit of the present Entry 66 of the Union List; no doubt the field of legislation is of very wide import and determination of standards in institutions for higher education. In the federal structure of India, as there are many States, it is for the Union to coordinate between the States to cause them to work in the field of higher education in their respective States as per the standards determined by the Union. Entry 25 in the Concurrent List is available both to the Centre and the States. However, power of the State is subject to the provisions of Entries 63, 64, 65, and 66 of the Union List; while the State is competent to legislate on the education including technical education, medical education and universities, it should be as per the standards set by the Union.

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134. The words "coordination" and "determination of the standards in higher education" are the preserve of Parliament and are exclusively covered by Entry 66 of the Union List. The word "coordination" means harmonisation with a view to forge a uniform pattern for concerted action. The term "fixing of standards of institutions for higher education" is for the purpose of harmonising coordination of the various institutions for higher education across the country. Looking at the present distribution of legislative powers between the Union and the States with regard to the field of "education", that State's power to legislate in relation to "education, including technical education, medical education and universities" is analogous to that of the Union. However, such power is subject to Entries 63, 64, 65 and 66 of the Union List, as laid down in Entry 25 of the Concurrent List. It is the responsibility of the Central Government to determine the standards of higher education and the same should not be lowered at the hands of any particular State.

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147. Another argument that has been put forth is that the power to enact laws laying down process of admission in universities, etc. vests in both Central and State Governments under Entry 25 of the Concurrent List only. Under Entry 25 of the Concurrent List and erstwhile Entry 11 of the State List, the State Government has enacted various legislations that inter alia regulate admission process in various institutions. For instance, Jawaharlal Nehru Krishi Vishwavidyalaya Adhiniyam, Rajiv Gandhi Prodyogiki Vishwavidyalaya Adhiniyam, Rashtriya Vidhi Sansathan Vishwavidyalaya Adhiniyam, etc. were established by the State Government in exercise of

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power under Entry 25 of the Concurrent List. Similarly, the Central Government has also enacted various legislations relating to higher education under Entry 25 of the Concurrent List pertaining to Centrally funded universities such as the Babasaheb Bhimrao Ambedkar University Act, 1994, the Maulana Azad National Urdu University Act, 1996, the Indira Gandhi National Tribal University Act, 2007, etc. The Central Government may have the power to regulate the admission process for Centrally funded institutions like IITs, NIT, JIPMER, etc. but not in respect of other institutions running in the State.

148. In view of the above discussion, it can be clearly laid down that power of the Union under Entry 66 of the Union List is limited to prescribing standards of higher education to bring about uniformity in the level of education imparted throughout the country. Thus, the scope of Entry 66 must be construed limited to its actual sense of "determining the standards of higher education" and not of laying down admission process. In no case is the State denuded of its power to legislate under List III Entry 25. More so, pertaining to the admission process in universities imparting higher education.

149. I have no hesitation in upholding the vires of the impugned legislation which empowers the State Government to regulate admission process in institutions imparting higher education within the State. In fact, the State being responsible for welfare and development of the people of the State, ought to take necessary steps for welfare of its student community. The field of "higher education" being one such field which directly affects the growth and development of the State, it becomes prerogative of the State to take such steps which

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further the welfare of the people and in particular pursuing higher education. In fact, the State Government should be the sole entity to lay down the procedure for admission and fee, etc. governing the institutions running in that particular State except the Centrally funded institutions like IIT, NIT, etc. because no one can be a better judge of the requirements and inequalities-in-opportunity of the people of a particular State than that State itself. Only the State legislation can create equal level playing field for the students who are coming out from the State Board and other streams."

(emphasis supplied)

106. *Thus, as held by the Constitution Bench of this Court in the case of Modern Dental College (supra), in which this Court considered catena of earlier decisions of this Court dealing with the scope and ambit of Entry 66 List I, Entry 66 of List I is a specific entry having a very specific and limited scope; it deals with "Coordination and Determination of Standards" in institutions of higher education or research as well as scientific and technical institutions. It is further observed that the words "Coordination and Determination of Standards" would mean laying down the said standards and therefore when it comes to prescribe the standards for such institutions of higher learning, exclusive domain is given to the Union. It is specifically further observed that that would not include conducting of examination etc. and admission of students to such institutions or prescribing the fee in these institutions of higher education, etc. Thus, in exercise of powers under Entry 66 List I, the Union cannot provide for anything with respect to reservation/percentage of reservation and/or even mode of admission within the State quota, which powers are conferred upon*

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the States under Entry 25 of List III. In exercise of powers under Entry 25 List III, the States have power to make provision for mode of admissions, looking to the requirements and/or need in the concerned State."

90 From the above, it could be seen that the power of the State Legislature is not altogether excluded, but it is restricted and circumscribed to the Central enactment. The emphasis highlighted by the Apex Court is the determination of uniform minimum standards in higher education nationwide.

91 When the above ruling is to be applied in this case, the requirement of the minimum qualification of ML Degree and enrollment as advocate is a clear instance of varying the minimum standards fixed by the Central body. In that view of the matter and to that extent, the two Government Orders, viz., G.O.Ms.No.1349 dated 19.11.1985 and G.O.Ms.No.264 dated 20.12.2005, are to be necessarily held as invalid as it originated from colourable legislation.

92 As a matter of fact, the learned counsel for the BCI has very rightly and importantly cited three Constitution Bench decisions apart

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from two other decisions of the Hon'ble Supreme Court. The decisions cited are, [1] ***AIR 1953 SC 375 [CB] ;*** [2] ***AIR 1968 SC 888 [CB] ;*** [3] ***2007 [2] SCC 202 ;*** [4] ***2009 [4] SCC 590 ;*** and [5] ***2020 SCC Online SC 699 [CB].*** The relevant paragraphs of the decision have been extracted supra. From the cumulative reading of the decisions of the Hon'ble Supreme Court of India and the relevant Constitutional Entries in the Seventh Schedule of the Constitution and the Doctrine of Pith and Substance in terms of Article 246 of the Constitution of India, this Court has to come to an inexorable conclusion that the prescription of additional qualifications, viz., M.L.Degree, and enrollment as advocate, suffers from lack of legislative competence.

93 The qualifications prescribed by the State authority may appear to be in addition to minimum standards laid down by the Central Regulating body, but the qualifications being *ex facie* irrational, arbitrary and unreasonable are in reality in conflict with the minimum standard fixed by the Central Regulating Body nationally. Further, irrationality and arbitrariness would also result in exclusion of the whole lot of candidates from even consideration or participation in the recruitment process, even though they are qualified in terms of the Central Regulating Body. This

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Court has to necessarily conclude that the additional qualifications prescribed, run afoul of the qualifications prescribed by the Central Regulating Authority. viz., the BCI and the qualifications thus, are repugnant to the Central Legislation and cannot pass the test of constitutional scrutiny.

94 The trajectory of the main judicial discourse thus for is with regard to the main challenge in the writ petitions. As outlined in the earlier portion of the decision, there are two other issues that need to be decided in the paramount interest of maintaining exemplary standard in the field of legal education. There are two worrying scenarios that are portrayed in the course of submissions by the learned counsels. Some of the candidates have obtained their post graduate degree, though in the relevant subject as per the Notification, but had obtained their degrees through Distance Education mode. This Court, of course, cannot have any quarrel, as degrees obtained through Distance Education mode, are recognised, as held by the Apex Court as well as the Full Bench of this Court referred to supra. Despite the recognition of the degrees, this Court has a strong misgiving as to the suitability of such candidates for appointment as faculty members. Although the validity of a degree is

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beyond the pale of any doubt, and yet the appointments as faculty with degrees obtained through Distance Education mode or correspondence required to be clarified.

95 Any recruitment to a post of teaching faculty in higher education or any other education for that matter is not intended to provide job opportunities to the potential candidates who apply for consideration. The purpose of appointments of teaching faculty is towards fulfillment of achieving higher academic standards in any field of education. In this case, the focus is on the quality of the legal education. The quality of education could only be measured through the type of teachers who are appointed to handle the academics. If persons with no experience in campus life having not studied and earned their degrees in the regular institutions/Colleges, may not said to have experienced the institutional academic culture and the expectation of the present generation of student community. Further, if such candidates are appointed as regular faculty in a College campus, he/she would, in all probability, unable to come to terms with the expectations of the student community.

96 Moreover, whatever be the course content of the degrees

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obtained through the Distance Education mode, in the absence of regular class attendance and listening to lectures of the regular Assistant Professors / Associate Professors as the case may be, interaction with fellow students the knowledge gained from regular campus education cannot be the same as to the knowledge gained through independent study, in isolation, of materials through Distance Education mode. Although this Court is conscious of the fact that the Distance Education mode or correspondence degrees have become social imperatives, considering the lack of access to regular education by the vast majority of the disadvantaged class, yet in the larger interest of institutional growth of higher education, the degrees obtained through Distance Education mode or correspondence cannot be considered as a valid degree for the purpose of appointment to the post of Assistant Professors in pre law course.

97 It is needless to mention that the regular campus education shapes the students' character and intellectuality towards acquiring better cognitive skills. The campus life provides a plenty of opportunities of interaction with the fellow students, lecturers and may at times provide life changing opportunities of shaping the academic orientation of many students. However, the degree holders from Distance Education mode

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would certainly but unfortunately suffer disadvantage on this account. There may be exceptions to these rules but the fixation of eligibility criteria are not to be influenced by the exception to the rule.

98 In the realm of maintaining high standard in Legal Education, how the postgraduate degree holders from Distant Education mode can be an effective faculty member for taking regular classes in the campus, a pertinent doubt but not dispelled to the satisfaction of this Court. For such candidate, the campus atmosphere is an alien experience and may lead to diffidence. In such scenario, it is too much to expect great quality of pedagogical disposition from such faculty. On one hand, there is a hue and cry for minimum standards in higher education and on the other, paradoxically appointments are sought to be made with candidates qualified through distance education mode. In fact, invariably such degrees are earned only for the purpose of furthering their job prospects in the employment market. Such degree holders, principally look upon the appointment as a job opportunity as they go about discharging their duties perfunctorily with little passion towards achieving academic excellence.

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99 In regard to above important issue, this Court finds that none of the decisions cited and relied upon by the learned counsels supporting the existing qualifications touch upon this aspect. Although the degrees obtained through distance education mode is considered to be recognised and valid, in terms of the rulings of the Courts, it is still open to the appointing authority to prescribe the mode of study for appointment as faculty members and this Court does not see any bar on the power of the appointing authority in laying down the requirement. Thus the postgraduate degree obtained through distance education mode or through correspondence may not be valid enough for appointment as faculty in the pre law courses.

100 The other crucial aspect is the cross major degrees. This aspect is more serious than the earlier one. When the Notification prescribed postgraduate degree in the relevant subject as the minimum qualification, it is to be implicitly understood that the undergraduate degree should also be in the same subject as that of the postgraduate degree. Mr.G.Sankaran, learned counsel appearing for some of the candidates who are in possession of cross major degrees contended that

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what is prescribed in the subject Notifications or the Rules is only postgraduate degree in the relevant subject and that requirement is fulfilled by the candidates concerned. This Court considers the submission as a specious argument. When a postgraduate degree is the minimum qualification for a teaching faculty, obtaining only postgraduate degree in the relevant subject and claiming eligibility on that account is a clear attempt to hoodwink and get around the system due to lack of clarity on the issue. This Court simply cannot comprehend the quality of the teacher if he/she has two degrees in two different subjects and get appointed as Assistant Professors for taking classes in major subjects like Economics, Commerce, Technology, Business Administration, etc.

101 It is needless to mention that a person with a two year postgraduate degree alone in the relevant subject, cannot claim to have the depth of knowledge as in the case of person studied both undergraduate and postgraduate degrees in the same subject. The candidates with two degrees in different subjects at undergraduate and postgraduate levels, could only said to be having fragmented knowledge in two different subjects with no profound development of their cognitive function in any particular subject. By all means, such candidates with

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cross degrees ought to have been not included as eligible persons in the Notification. It is unfortunate that such an important issue has not been clarified in the Notifications. Whether the omission is deliberate or inadvertent is again not clarified on behalf of the State Government. But, in any event, the cross degrees obtained by the candidates, in the considered view of this Court, cannot said to be a valid qualification and hence, such of those candidates who have such cross major viz., undergraduate degree in different subject than the subject of study at the postgraduate level are not to be considered as eligible for the subject appointments. In order to save the existing standards and also to ensure improvement in the standards of legal education in future, it must be ensured that persons with degrees obtained through distance education mode and with cross major degrees are to be declared as not qualified, particularly in the total absence of any clarification or justification emanating from the Government.

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102 Further, when the Central Regulating Body prescribed the postgraduate qualification in the relevant subjects, it is to be peremptorily understood that degree at the undergraduate level ought to be in the same subject.

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103 Finally, coming back to the main challenge, when a candidate is mandated to have two disjointed degrees, the adverse impact of such insistence would not reflect on the quality and the depth of knowledge of the candidate with such degrees. In all probability, the degree holders in the relevant subject as well as in law, will suffer deflection of their intellectual growth, lacking single dedicated direction. They will also have the opportunity in pursuing two avenues of prospects diluting their energy, focus and enthusiasm towards a particular specialization. Only a focused specialization in a particular subject would benefit the student community, as the purpose of education is to open the windows of the minds as the saying goes. Moreover, the candidates with two different qualifications are like a a proverbial jack of

all trades and Master of none. The job of a pedagogue is too important to trifled with. It would be a travesty if persons with unsure academic credentials are considered as qualified and eligible for appointment in teaching posts, merely on the basis of the paper degrees obtained by them.

104 As far as the case laws cited on behalf of the counsels,

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particularly Mr.R.Singaravelan, learned Senior Counsel, the decisions are no doubt authoritative pronouncements on various subjects like what is arbitrariness, the concept of legitimate expectation, prospective overruling, bar against negative equality and more importantly the power of Courts in interfering in academic matters etc. But all the decisions are to be held not applicable, as the Court eventually finds at the end of the our quest that the action of the State authority which gave rise to the controversy is a transgression of power vested, in terms of the scheme of the Constitution.

105 For all the above said reasons, the qualifications, viz., M.L., degree and enrollment as advocate, as prescribed in the impugned Notifications, in addition to the postgraduate degree in the relevant subject for appointment to the post of Assistant Professor for pre law course in the Government Law Colleges in the State of Tamil Nadu are declared as illegal, as the same suffer from patent irrationality, unreasonableness and arbitrariness.

106 More importantly, the disputed qualifications are in effect inconsistent with the Legal Education Rules, 2008 which have been

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framed by the Bar Council of India in terms of the powers of the Advocates Act, 1961 and therefore, the Government Orders, viz., G.O.Ms.No.1349 and G.O.Ms.No.264 dated 19.11.1985 and 20.12.2005, are hereby declared as illegal and unconstitutional as the same are repugnant to the minimum standards laid down by the BCI in the Legal Education Rules, 2008, in terms of Section 7(1)(h)(i) read with Section 49(af) and (d) of the Advocates Act, 1961.

107 The candidates who have obtained their Masters degree through Distance Education mode or by Correspondence are declared as ineligible for appointment as Assistant Professors [Pre Law], and so also the candidates with cross major degrees. It is however made clear that appointment of candidates, if any, already made, pursuant to the impugned Notifications of the year 2014 and 2017-2018, the same shall not be affected by this ruling.

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108 The State authorities are directed to revisit the entire eligibility criteria for appointment to the post of Assistant Professor or any other post in the teaching faculty in respect of the Government Law Colleges in the State of Tamil Nadu. The State authorities are directed to

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conform to the minimum standards fixed by the BCI and expedite the process of recruitment, in order to avoid any academic dislocation.

109 All the writ petitions and the review petition stand disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

[N.K.K., J.] [V.P.N., J.]
19.08.2021

Index : Yes
Internet : Yes
Speaking Order : Yes
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N.KIRUBAKARAN, J.,
AND
V.PARTHIBAN, J.,

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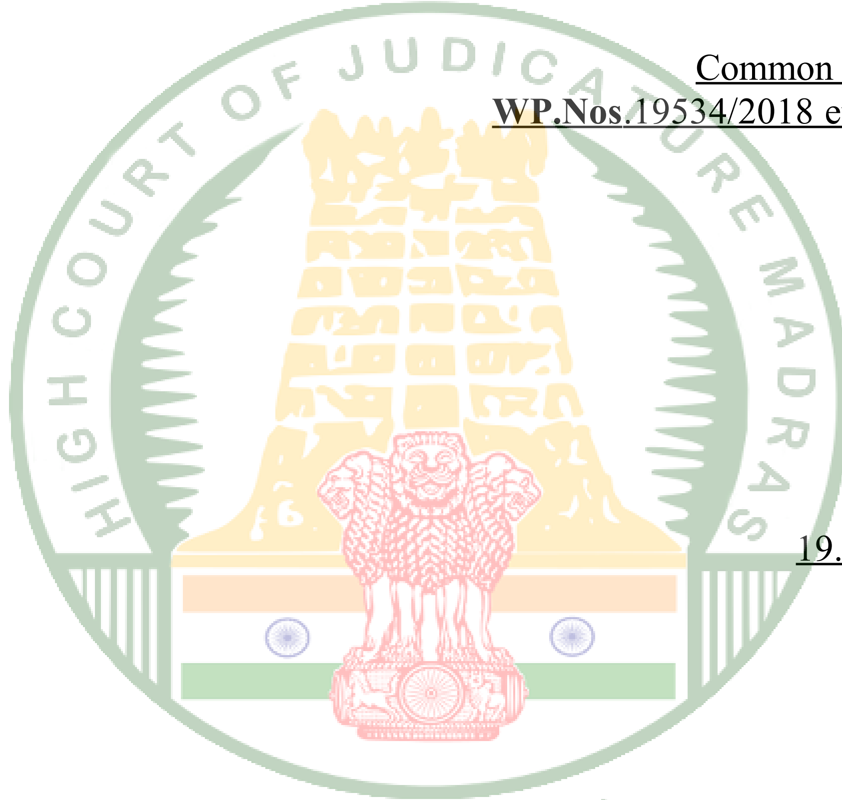

Common Order in
WP.Nos.19534/2018 etc batch.

19.08.2021

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