2020 INSC 374

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL/ APPELLATE JURISDICTION

TRANSFERRED CASE (CIVIL) NO.98 OF 2012

CHRISTIAN MEDICAL COLLEGE
VELLORE ASSOCIATION ... PETITIONER(S)

VERSUS

UNION OF INDIA AND OTHERS ... RESPONDENT(S)

WITH

TRANSFERRED CASE (CIVIL) NO. 102 OF 2012

TRANSFERRED CASE (CIVIL) NO. 104 OF 2012

TRANSFERRED CASE (CIVIL) NO. 105 OF 2012

TRANSFERRED CASE (CIVIL) NO. 107 OF 2012

TRANSFERRED CASE (CIVIL) NO. 108 OF 2012

TRANSFERRED CASE (CIVIL) NO. 99 OF 2012

TRANSFERRED CASE (CIVIL) NO. 119 OF 2012

TRANSFERRED CASE (CIVIL) NO. 120 OF 2012

TRANSFERRED CASE (CIVIL) NOS. 125-127 OF 2012

TRANSFERRED CASE (CIVIL) NO. 110 OF 2012

TRANSFERRED CASE (CIVIL) NO. 111 OF 2012

TRANSFERRED CASE (CIVIL) NO. 112 OF 2012

TRANSFERRED CASE (CIVIL) NOS. 113-114 OF 2012

TRANSFERRED CASE (CIVIL) NOS. 115-116 OF 2012

TRANSFERRED CASE (CIVIL) NOS. 117-118 OF 2012

TRANSFERRED CASE (CIVIL) NOS. 123-124 OF 2012

TRANSFERRED CASE (CIVIL) NOS. 128-130 OF 2012

TRANSFERRED CASE (CIVIL) NO. 131 OF 2012

TRANSFERRED CASE (CIVIL) NOS. 132-134 OF 2012

TRANSFERRED CASE (CIVIL) NOS. 138-139 OF 2012

TRANSFERRED CASE (CIVIL) NO. 144 OF 2012

TRANSFERRED CASE (CIVIL) NO. 145 OF 2012

TRANSFERRED CASE (CIVIL) NO. 142 OF 2012

TRANSFERRED CASE (CIVIL) NOS. 23-24 OF 2013

TRANSFERRED CASE (CIVIL) NO. 5 OF 2013

TRANSFERRED CASE (CIVIL) NO. 7 OF 2013

TRANSFERRED CASE (CIVIL) NO. 1 OF 2013

TRANSFERRED CASE (CIVIL) NO. 2 OF 2013

TRANSFERRED CASE (CIVIL) NO. 3 OF 2013

TRANSFERRED CASE (CIVIL) NO. 4 OF 2013

TRANSFERRED CASE (CIVIL) NO. 11 OF 2013

TRANSFERRED CASE (CIVIL) NOS. 37-38 OF 2013

TRANSFERRED CASE (CIVIL) NO. 59 OF 2013

TRANSFERRED CASE (CIVIL) NO. 8 OF 2013

TRANSFERRED CASE (CIVIL) NO. 9 OF 2013

TRANSFERRED CASE (CIVIL) NO. 10 OF 2013

TRANSFERRED CASE (CIVIL) NOS. 12-13 OF 2013

TRANSFERRED CASE (CIVIL) NO. 16 OF 2013

TRANSFERRED CASE (CIVIL) NO. 17 OF 2013

TRANSFERRED CASE (CIVIL) NO. 18 OF 2013

TRANSFERRED CASE (CIVIL) NOS. 14-15 OF 2013

TRANSFERRED CASE (CIVIL) NO. 19 OF 2013

TRANSFERRED CASE (CIVIL) NO. 20 OF 2013

TRANSFERRED CASE (CIVIL) NOS. 21-22 OF 2013

TRANSFERRED CASE (CIVIL) NO. 25 OF 2013

TRANSFERRED CASE (CIVIL) NOS. 28-29 OF 2013

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TRANSFERRED CASE (CIVIL) NO. 48 OF 2013

TRANSFERRED CASE (CIVIL) NO. 49 OF 2013

TRANSFERRED CASE (CIVIL) NOS. 31-32 OF 2013

TRANSFERRED CASE (CIVIL) NOS. 33-36 OF 2013

TRANSFERRED CASE (CIVIL) NO. 39 OF 2013

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TRANSFERRED CASE (CIVIL) NO. 76 OF 2013

TRANSFERRED CASE (CIVIL) NO. 108 OF 2013

WRIT PETITION (CIVIL) NO. 443 OF 2016

WRIT PETITION (CIVIL) NO. 750 OF 2016

CIVIL APPEAL NO. 2383 OF 2020
(@ SPECIAL LEAVE PETITION (CIVIL) NO. 28223 OF 2016)

AND

TRANSFERRED CASE (CIVIL) NO. 25 OF 2019

J U D G M E N T

ARUN MISHRA, J.

1. Most of the cases have a chequered history. Initially, petitioners have questioned four notifications - two notifications dated 21.12.2010 issued by Medical Council of India (for short, 'the MCI') and other two notifications dated 31.5.2012, issued by Dental Council of India (for short, 'the DCI'). The MCI by virtue of Regulations on Graduate Medical Education (Amendment) 2010, (Part II) notified by the Government of India, amended the Regulations on Graduate Medical Education, 1997. Similarly, the other notification issued by MCI called "Post-Graduate Medical Education (Amendment) Regulation, 2010 (Part-II)" to amend the Post Graduate Medical Education Regulations, 2000. The regulations came into force on their publication in the Official Gazette. The other two notifications dated 31.5.2012 issued by DCI were relating to admission in the BDS and MDS courses.

2. The MCI issued notifications in exercise of power conferred by Section 33 of the Indian Medical Council Act, 1956 (for short, 'the Act of 1956'). The amendments were made in the Regulation on Graduate Medical Education, 1997. The change was made in Clause 5 in Chapter II of the Regulations. Clause 5 provided for procedure for selection thus:

> "6. In Chapter II, Clause 5 under the heading "Procedure for selection to MBBS Course shall be as follows" shall be substituted as under:
>
> (*i*) There shall be a single eligibility-cum-entrance examination, namely, <u>'National Eligibility-cum-Entrance Test for admission to MBBS course'</u> in each academic year. The overall superintendence, direction, and control of the National Eligibility-cum-Entrance Test shall vest with the Medical Council of India. However, the Medical Council of India, with the previous approval of the Central Government, shall select organisation(s) to conduct 'National Eligibility-cum-Entrance Test for admission to MBBS course.
>
> (*ii*) In order to be eligible for admission to MBBS course for a particular academic year, it shall be necessary for a candidate to obtain minimum of 50% (fifty percent) marks in each paper of National Eligibility-cum-Entrance Test held for the said academic year. However, in respect of candidates belonging to the Scheduled Castes, the Scheduled Tribes, and the Other Backward Classes, the minimum percentage shall be 40% (forty percent) in each paper, and in respect of candidates with locomotory disability of lower limbs, the minimum percentage marks shall be 45% (forty-five percent) in each paper of National Eligibility-cum-Entrance Test:
>
> Provided when sufficient number of candidates belonging to respective categories fail to secure minimum marks as prescribed in National Eligibility-cum-Entrance Test in any academic year for admission to MBBS course, the Central Government in consultation with the Medical Council of India may at its discretion lower the minimum marks required for admission to MBBS course for candidates belonging to respective categories and marks so lowered by the Central Government shall be applicable for the said year only.

(*iii*) The reservation of seats in medical colleges for respective categories shall be as per applicable laws prevailing in States/Union Territories. An all India merit list as well as State-wise merit list of the eligible candidates shall be prepared on the basis of the marks obtained in National Eligibility-cum-Entrance Test and candidates shall be admitted to MBBS course from the said lists only.

(*iv*) No candidate who has failed to obtain the minimum eligibility marks as prescribed in sub-clause (*ii*) above shall be admitted to MBBS course in the said academic year.

(*v*) All admissions to MBBS course within the respective categories shall be based solely on marks obtained in the National Eligibility-cum-Entrance Test."

(emphasis supplied)

3. Similarly, amendments to the Post Graduate Medical Education Regulations, 2000 were made. The relevant portion of the amendments made are extracted hereunder:

"No. MCI. 18(1)/2010-Med./49070. — In exercise of the powers conferred by Section 33 of the Indian Medical Council Act, 1956 (102 of 1956), the Medical Council of India with the previous approval of the Central Government hereby makes the following regulations to further amend the 'Postgraduate Medical Education Regulations, 2000', namely:

1. (*i*). These Regulations may be called 'the Postgraduate Medical Education (Amendment) Regulations, 2010 (Part II)'.

(*ii*) They shall come into force from the date of their publication in the Official Gazette.

2. In the 'Postgraduate Medical Education Regulations, 2000', the following additions/ modifications/ deletions/ substitutions, shall be as indicated therein:

3. Clause 9 under the heading 'SELECTION OF POSTGRADUATE STUDENTS' shall be substituted as under:

"9. Procedure for selection of candidate for Postgraduate courses shall be as follows:

(*i*) There shall be a single eligibility-cum-entrance examination, namely, National Eligibility-cum-Entrance Test for admission to Postgraduate Medical Courses in each

> academic year. The overall superintendence, direction and control of National Eligibility-cum-Entrance Test shall vest with Medical Council of India. However, the Medical Council of India, with the previous approval of the Central Government shall select organisation(s) to conduct National Eligibility-cum-Entrance Test for admission to Postgraduate courses"'."

4. Similar notifications were issued by DCI providing for procedure for selection of candidates for MBBS Course and Post-graduate Course and also for BDS and MDS. Thus, National Eligibility-cum-Entrance Test (for short, 'the NEET') for admission to the MBBS course and the Post-graduate course and similarly for BDS and MDS came to be introduced. Now the statutory provisions under Section 10D of the Act of 1956 providing for uniform entrance examination for undergraduate and post-graduate level which came into force on 24.5.2016. Section 10D is extracted hereunder:

> "**10D. Uniform entrance examination for undergraduate and post-graduate level.**— There shall be conducted a uniform entrance examination to all medical educational institutions at the undergraduate level and post-graduate level through such designated authority in Hindi, English and such other languages and in such manner as may be prescribed and the designated authority shall ensure the conduct of uniform entrance examination in the aforesaid manner:
>
> Provided that notwithstanding any judgment or order of any court, the provisions of this section shall not apply, in relation to the uniform entrance examination at the undergraduate level for the academic year 2016-17 conducted in accordance with any regulations made under this Act, in respect of the State Government seats (whether in Government Medical College or in a private Medical College) where such State has not opted for such examination."
>
> (emphasis supplied)

Section 10D of the Dentists Act, 1948, containing similar provisions with respect of uniform entrance examination has also been inserted, same is extracted hereunder:

> "**10D. Uniform entrance examination for undergraduate and post-graduate level**.—There shall be conducted a uniform entrance examination to all dental educational institutions at the undergraduate level and post-graduate level through such designated authority in Hindi, English and such other languages and in such manner as may be prescribed and the designated authority shall ensure the conduct of uniform entrance examination in the aforesaid manner:
>
> Provided that notwithstanding any judgment or order of any court, the provisions of this section shall not apply, in relation to the uniform entrance examination at the undergraduate level for the academic year 2016-17 conducted in accordance with any regulations made under this Act, in respect of the State Government seats (whether in Government Dental College or in a private Dental College) where such State has not opted for such examination."

5. The Regulations on Graduate Medical Education, 1997 have also been amended by Regulations on Graduate Medical Education (Amendment) 2017. The admission to the medical course eligibility criteria has been prescribed by amended Clause 4. Following has been substituted:

> "3. In Clause 4, under the heading Admission to the Medical Course-eligibility criteria, and in sub-clause 4 (1) & (1A), the following shall be substituted:
>
> 4. **Admission to the Medical Course-Eligibility Criteria**: No candidate shall be allowed to be admitted to the Medical Curriculum proper of first Bachelor of Medicine and Bachelor of Surgery course until he /she has qualified the <u>National Eligibility Entrance Test</u>, and he/she shall not be allowed to appear for the National Eligibility-Cum-Entrance Test until:
>
> (1) He/she shall complete the age of 17 years on or before 31st December of the year of admission to the MBBS.

> (1A) He/She has obtained a minimum of marks in National Eligibility-Cum-Entrance Test as prescribed in Clause 5 of Chapter II."
>
> (emphasis supplied)

In Chapter II, Clause 5 under the heading "Procedure for selection to MBBS" has been substituted by MCI in 2017 as under:

> "7. In Chapter-II, Clause 5 under the heading "Procedure for selection to MBBS course shall be as follows" shall be substituted as under:-
>
> **"Procedure for selection to MBBS course shall be as follows:"**
>
> (1) There shall be a uniform entrance examination to all medical educational institutions at the under graduate level namely 'National Eligibility-cum-Entrance Test for admission to MBBS course in each academic year and shall be conducted under overall supervision of the Ministry of Health & Family Welfare, Government of India.
>
> (2) The "designated authority" to conduct the 'National Eligibility-Cum- Entrance Test' shall be the Central Board of Secondary Education or any other body/organization so designated by the Ministry of Health & Family Welfare, Government of India, in consultation with the Medical Council of India.
>
> (3) The language and manner of conducting the 'National Eligibility-Cum-Entrance Test' shall be determined by the "designated authority" in consultation with the Medical Council of India and the Ministry of Health and Family Welfare, Government of India.
>
> (4) In order to be eligible for admission to MBBS Course for a academic year, it shall be necessary for a candidate to obtain minimum of marks at 50th percentile in 'National Eligibility-cum-Entrance Test to MBBS course' held for the said academic year. However, in respect of candidates belonging to Scheduled Castes, Scheduled Tribes, Other Backward Classes, the minimum marks shall be at 40th percentile. In respect of candidates with benchmark disabilities specified under the Rights of Persons with Disabilities Act, 2016, in terms of Clause 4(3) above, the minimum marks shall be at 45th percentile for General Category candidates and 40th percentile for SC/ST/OBC candidates. The percentile shall be determined on the basis of highest marks secured in the All-India common merit list for admission in 'National Eligibility-cum-Entrance Test for admission to MBBS course.

> Provided when sufficient number of candidates in the respective categories fail to secure minimum marks as prescribed in National Eligibility-cum-Entrance Test held for any academic year for admission to MBBS Course, the Central Government in consultation with Medical Council of India may at its discretion lower the minimum marks required for admission to MBBS Course for candidates belonging to respective categories and marks so lowered by the Central Government shall be applicable for the said academic year only.
>
> (5) The reservation of seats in Medical Colleges for respective categories shall be as per applicable laws prevailing in States/Union Territories. An All India merit list as well as State/Union Territory-wise merit list of the eligible candidates shall be prepared on the basis of marks obtained in 'National Eligibility-cum-Entrance Test and candidates shall be admitted to MBBS course from the said lists only.
>
> (6) No candidate who has failed to obtain the minimum eligibility marks as prescribed in Sub-clause (4) above shall be admitted to MBBS course in the said academic year.
>
> (7) No authority/institution shall admit any candidate to the MBBS course in contravention of the criteria/procedure as laid down by these Regulations and/or in violation of the judgments passed by the Hon'ble Supreme Court in respect of admissions. Any candidate admitted in contravention/violation of aforesaid shall be discharged by the Council forthwith. The authority/institution which grants admission to any student in contravention /violation of the Regulations and/or the judgments passed by the Hon'ble Supreme Court, shall also be liable to face such action as may be prescribed by the Council, including surrender of seats equivalent to the extent of such admission made from its sanctioned intake capacity for the succeeding academic year/years.
>
> (8) All admission to MBBS course within the respective categories shall be based solely on the marks obtained in the 'National Eligibility-Cum-Entrance Test."
>
> (emphasis supplied)

6. Initially, the matters filed in 2012-2013 were heard by a Bench of three Judges, and the matters were decided vide judgment and order dated 18.7.2013. As per the majority opinion, the petitions were

allowed. The notifications issued by MCI and DCI providing for NEET were quashed. However, the admissions, which were made, were not interfered with. Review petitions were filed, which were entertained and were ultimately allowed on 11.4.2016, and judgment dated 18.7.2013 was recalled.

7. In Writ Petition (C) No.443 of 2016, prayer has been made to protect the rights of the petitioner-institutions guaranteed under Articles 14, 15, 25, 26 and 30 of the Constitution of India. In Writ Petition (C) No.750 of 2016, prayer is made to direct the respondents to conduct centralized counselling for admission to all Graduate Medical and Dental Courses throughout the country. In Transferred Case (C) No.25 of 2019, it is stated that vires of the provisions of Maharasthra Unaided Private Professional Educational Institution (Regulation of Admissions & Fees) Act, 2015, applying them to Unaided Private Minority Professional Educational Institutions are bad in law. In S.L.P. (C) No.28223 of 2016, provisions have been questioned on the ground that they cannot take away the rights guaranteed under Articles 19(1)(g) and 30 read with Articles 25, 26 and 29(1) of the Constitution of India.

8. Initially, the questions were raised that MCI and DCI could not have introduced NEET as the same offends the fundamental rights

guaranteed under Article19(1)(g) of the Constitution of India and the rights of religious and linguistic minorities to establish and administer educational institutions of their choice as guaranteed under Article 30 Constitution of India. Thus, subordinate legislation could not have overriding effect over the fundamental rights guaranteed under Articles 25, 26, 29(1), and 30 of the Constitution of India. Now the amendment made could not take away or abridge the aforesaid rights of minorities. The right to admit students is one of the fundamental rights, thus, rider of clearing NEET examination could not have been imposed.

9. It was urged on behalf of petitioners that the impugned notifications violate the fundamental rights of an unaided minority institution to "establish and administer educational institutions of their choice" protected under Article 30 read with Articles 25 and 26 of the Constitution of India, which includes the right to admit students of their own choice. The doctrine of limited Government provides that a citizen's liberty and autonomy is the central notion of the Constitution of India and there is an inherent limitation on the State's involvement in matters of admissions of students. The NEET prescribes no alternative to the institution, impinges upon the fundamental rights of an unaided minority institution to establish and administer educational institution of their choice.

10. It was further urged on behalf of petitioners that State has no power to compel an unaided minority institution to admit students through a single centralized national examination such as NEET. The unaided minority professional colleges have the fundamental rights to choose the method and manner in which to admit its students, subject to satisfying the triple test of having a fair, transparent, and non-exploitative process.

11. It was also argued on behalf of petitioners that they have a time-tested admission procedure without any complaints. Their process is fair and transparent, and they have a fundamental right to protect autonomy and reputation by continuing to admit students using their admission process. The NEET cannot be the only parameter to determine the merit of a student. Some of the institutions are providing best medical professional by having their procedure for admission. They have fundamental rights under Articles 19(1)(g) and 30(1) of the Constitution to conduct and manage the affairs of the institution. The State, while imposing reasonable restrictions, can fix the threshold criterion of merit, but cannot restrict the petitioners from having any additional criteria of merit over and above the threshold fixed by the State. The restriction violates the test of proportionality.

12. The petitioners have also referred to the existing position concerning centralised examination for professional courses in India and internationally, to hold entrance examination cannot be compulsion, it has to be voluntarily. They have relied upon Common Law Admission Test (CLAT) - a system of examination for admission in the Law Colleges. Reference has also been made to the admission process followed in Indian Institute of Technology (IITs), National Institute of Technology (NITs) and Indian Institute of Management (IIMs). NEET is the first of its kind, both in India and globally, where all institutions are compelled by the State to follow a single admission procedure. Some of the institutions are having an excellent record. They follow *the gurukul* tradition. With the introduction of NEET in 2016-17, institutions have been compelled to admit students through NEET instead of their method. Some of them have the All India Entrance Test. They have their unique procedure of admission for MBBS as well as Post Graduation. The system of examination of some of the institutions is wider on All India Basis, and they test general ability also, whereas, in NEET, evaluation is based on three subjects, namely, Physics, Biology, and Chemistry. They have an elaborate procedure of the assessment, and they do not admit students only based on their theoretical knowledge. Some of them are the best

medical educational institutions in the country. There is not even a single allegation of maladministration against some of the reputed institutions. The principles, which govern the selection, are eligibility, suitability, and distributive justice. The selection of candidates is an important factor to the medical colleges to suit their requirements in a particular field.

13. There are various issues which have arisen according to the admission given for post-graduate examination after the introduction of NEET. Now, in some of the specialised institutions, they are not getting good doctors to take care of patients, for example, in the Oncology Department. Some of the candidates are not able to bear the burden of the procedure and have expressed their inability to go with very sick patients. Some of them were not able to undertake procedures in a sterile manner to avoid infections. Similar is the position in other super-speciality departments. There are complaints of lack of clinical competence among students admitted to speciality courses like general medicine.

14. The petitioners further submitted that they have a fundamental right to admit students of their own choice under Article 30 of the Constitution. It is submitted that the admission procedure adopted by them passes the triple test, i.e., fair, transparent, and non-

exploitative. Various orders were passed by this Court recognising fair method adopted in individual institutions while admitting students through their admission procedure as apparent from interim orders passed in the years 1993, 1994, 1995, and 1998.

15. This Court on 28.4.2016 passed an order in *Sankalp Charitable Trust and Anr. v. Union of India and Ors.,* (Writ Petition (C) No.261 of 2016), in which it was clarified that order passed in the said matter shall not affect the hearing of the petitions. Most of petitions remained pending after recall of the order earlier passed by this Court. As per appellants, the ratio laid down in *Modern Dental College and Research Centre and Ors. v. State of Madhya Pradesh and Ors.,* (2016) 7 SCC 353, is not applicable. While deciding the said case, this Court did not deal with the rights of unaided minority institutions. A Division Bench of Madras High Court held that the procedure of admission of some of the institutions is fair, transparent and non-exploitative. Reliance has been placed on *the T.M.A. Pai Foundation and Ors. v. State of Karnataka and Ors.,* (2002) 8 SCC 481 to contend that State have minimal interference and if possible, to be made only to maintain academic standards. The right to admit students is one of the fundamental rights recognized by this Court. The challenge in *Modern Dental College and Research Centre* (supra) was to the State level examination, i.e., the Common Entrance Test (CET). The holding

of NEET would not be in the interest of the academic standard of premier medical institutions in the country. The change in admission procedure of students would result in a sharp decline in the current standards of excellence in education maintained at the institution, that would not be in public interest. The admission procedure followed by petitioners is head and shoulders above the NEET. The concept of limited government has also been relied upon by referring to the decisions in *Gobind v. State of Madhya Pradesh and Anr.,* (1975) 2 SCC 148 and *K.S. Puttaswamy v. Union of India,* (2017) 10 SCC 1. Reliance has also been placed on *the Islamic Academy of Education and Ors. v. State of Karnataka and Ors.,* (2003) 6 SCC 697 and *P.A. Inamdar and Ors. v. State of Maharashtra and Ors.,* (2005) 6 SCC 537.

16. It was argued that provisions of the MCI and DCI Acts and regulations which have been amended during the pendency of the petitions cannot take away the right of the institutions to admit their students under Article 30 of the Constitution of India. Thus, the prescription of NEET cannot be said to be permissible for the institutions in question.

17. On behalf of respondents, reliance has been placed on *Sankalp Charitable Trust and Anr. v. Union of India and Ors.,* (2016) 7 SCC 487, *Modern Dental College and Research Centre* (supra) and *P.A. Inamdar*

(supra). It was also argued that Section 10D has been inserted in the Act of 1956 it provides that there shall be a uniform common entrance conducted by the designated authority. The main reasoning of this Court in *Christian Medical College Vellore v. Union of India,* (2014) 2 SCC 305, which decision has been recalled, was that uniform common entrance examination could not be introduced by way of subordinate legislation and under the Act of 1956 and MCI had no power to conduct the said examination. After the introduction of Section 10D, both the said lacunas have been plugged. The introduction of NEET is constitutionally valid. In *Modern Dental College and Research Centre* (supra), the Court considered the question of conduct of examination by private medical colleges in the State of Madhya Pradesh for admitting students in their colleges. In *State of Madhya Pradesh v. Jainarayan Chouksey and Ors.*, (2016) 9 SCC 412, while deciding the contempt petition it was observed that judgment dated 2.5.2016 passed in the case of *Modern Dental College and Research Centre* (supra), held that admission should be made through a centralised procedure to be conducted by the State Government. The Court again in the *State of Maharashtra v. D.Y. Patil Vidyapeeth and Ors.,* (2016) 9 SCC 401, decided on 28.9.2016 reiterated that the decision in *Modern Dental College and Research Centre* (supra) makes it unequivocally clear that centralised counselling is an adjunct and part of the

uniform common entrance test. The notifications were also challenged by minority institutions, deemed Universities, and other private institutions by filing writ petitions in this Court. The Court in the judgment dated 9.5.2017 in *Dar-us-Salam Educational Trust and Ors. v. Medical Council of India and Ors.,* (Writ Petition (C) No.267 of 2017), observed that common counselling did not in any manner affect the right of minority institutions to admit students of their minority community. As such, their right to admit students of their community was fully protected. The institutions were entitled to fill students of minority quota in their respective medical colleges. NEET is a qualifying examination to determine merit and also ensure fair procedure and equality of opportunity that most meritorious candidates get admitted in the medicine and dental courses. Reliance has been placed on *Yatinkumar Jasubhai Patel and Ors. v. State of Gujarat and Ors.,* (2019) 10 SCC 1, in which the Court considered the question of institutional preference/reservation after introduction of NEET, and observed that introduction of NEET did not affect 50% State quota seats in PG medicine course. It may be filled based on institutional reservation.

18. The primary issue is whether by providing centralised examination system – NEET for admission to MBBS, PG, BDS and MDS by virtue of the provisions made in the Act and regulations, there

is violation of fundamental rights guaranteed under Articles 19(1)(g), 25, 26, 29(1) and 30 of the Constitution of India.

19. We first advert to take note that various decisions rendered by this Court in respect of the right of minority as stated under Article 30 of the Constitution of India.

20. *In Re The Kerala Education Bill, 1957*, AIR 1958 SC 956, question arose concerning right of the Government to prescribe qualification to be possessed by the incumbents for appointment as teachers in aided or recognized schools. The State Public Service Commission was empowered to select candidates for appointment as teachers in Government and aided schools. The Court opined that minority cannot ask for the aid or recognition for an educational institution without competent teachers and fair standards. The choice does not necessarily militate against the claim of the State to insist on reasonable regulations to ensure the excellence of the institutions to be aided or even recognized. The Court held thus:

> "(29) Their grievances are thus stated: The gist of the right of administration of a school is the power of appointment, control, and dismissal of teachers and other staff. But under the said Bill such power of management is practically taken away. Thus the manager must submit annual statements (Cl. 5). The fixed assets of the aided schools are frozen and cannot be dealt with except with the permission of the authorised officer (Cl. 6). No educational agency of an aided school can appoint a manager of its choice and the manager is completely under the control of the authorised officer, for he must keep accounts in the manner he is told to do and to give periodical

inspection of them and on the closure of the school the accounts must be made over to the authorised officer (Cl. 7). All fees etc. collected will have to be made over to the Government (Cl. 8(3)). Government will take up the task of paying the teachers and the non-teaching staff (Cl. 9). Government will prescribe the qualification of teachers (Cl. 10). The school authorities cannot appoint a single teacher of their choice, but must appoint persons out of the panel settled by the Public Service Commission (Cl. 11). The school authorities must provide amenities to teachers and cannot dismiss, remove, reduce, or even suspend a teacher without the previous sanction of the authorised officer (Cl. 12). ......

(31) We are thus faced with a problem of considerable complexity apparently difficult of solution. There is, on the one hand the minority rights under Art. 30(1) to establish and administer educational institutions of their choice and the duty of the Government to promote education, there is, on the other side the obligation of the State under Art. 45 to endeavour to introduce free and compulsory education. We have to reconcile between these two conflicting interests and to give effect to both if that is possible and bring about a synthesis between the two. The directive principles cannot ignore or override the fundamental rights but must, as we have said, subserve the fundamental rights. We have already observed that Art. 30(1) gives two rights to the minorities, (1) to establish and (2) to administer educational institutions of their choice. <u>The right to administer cannot obviously include the right to maladminister. The minority cannot surely ask for aid or recognition for an educational institution run by them in unhealthy surroundings, without any competent teachers, possessing any semblance of qualification, and which does not maintain even a fair standard of teaching or which teaches matters subversive of the welfare of the scholars. It stands to reason, then, that the constitutional right to administer an educational institution of their choice does not necessarily militate against the claim of the State to insist that in order to grant aid the State may prescribe reasonable regulations to ensure the excellence of the institutions to be aided. Learned Attorney-General concedes that reasonable regulations may certainly be imposed by the State as a condition for aid or even for recognition...</u> ...Clauses 6, 7, 9, 10, 11, 12, 14, 15, and 20 relate to the management of aided schools. Some of these provisions, e.g., 7, 10, 11(1), 12(1)(2)(3) and (5) may easily be regarded as reasonable regulations or conditions for the grant of aid. Clauses 9, 11(2) and 12(4) are, however, objected to as going much beyond the permissible limit. It is said that by taking over the collections of fees etc., and by undertaking to pay the salaries of the teachers and other staff the Government is in reality confiscating the school fund and taking away the prestige of the school, for none will care for

the school authority. Likewise Cl. 11 takes away an obvious item of management, for the manager cannot appoint any teacher at all except out of the panel to be prepared by the Public Service Commission which, apart from the question of its power of taking up such duties, may not be qualified at all to select teachers who will be acceptable to religious denominations and in particular sub-cl. (2) of that clause is objectionable for it thrusts upon educational institutions of religious minorities teachers of Scheduled Castes who may have no knowledge of the tenets of their religion and may be otherwise weak educationally. Power of dismissal, removal, reduction in rank, or suspension is an index of the right of management, and that is taken away by Cl. 12(4). These are, no doubt, serious inroads on the right of administration and appear perilously near violating that right. But considering that those provisions are applicable to all educational institutions and that the impugned parts of Cls. 9, 11 and 12 are designed to give protection and security to the ill paid teachers who are engaged in rendering service to the nation and protect the backward classes, we are prepared, as at present advised, to treat these clauses 9, 11(2) and 12(4) as permissible regulations which the State may impose on the minorities as a condition for granting aid to their educational institutions. We, however, find it impossible to support Cls. 14 and 15 of the said Bill as mere Regulations. The provisions of those clauses may be totally destructive of the rights under Art. 30(1). It is true that the right to aid is not implicit in Art. 30(1) but the provisions of those clauses, if submitted to on account of their factual compulsion as condition of aid, may easily be violative of Art. 30(1) of the Constitution. Learned Counsel for the State of Kerala recognizes that Cls. 14 and 15 of the Bill may annihilate the minority communities' right to manage educational institutions of their choice but submits that the validity of those clauses is not the subject matter of question 2. But, as already explained, all newly established schools seeking aid or recognition are, by Cl. 3(5), made subject to all the provisions of the Act. Therefore, in a discussion as to the constitutional validity of Cl. 3(5) a discussion of the validity of the other clauses of the Bill becomes relevant, not as and by way of a separate item but in determining the validity of the provisions of Cl. 3(5). In our opinion, sub-cl. 3 of Cl. 8 and Cls. 9, 10, 11, 12 and 13 being merely regulatory do not offend Art. 30(1), but the provisions of sub-cl. (5) of cl. 3 by making the aided educational institutions subject to Cls. 14 and 15 as conditions for the grant of aid do offend against Art. 30(1) of the Constitution."

(emphasis supplied)

21. In *Rev. Sidhajbhai Sabhai and Ors. v. State of Bombay and Anr.,* (1963) 3 SCR 837, the Court again considered the matter and observed that educational institutions cater to the needs of the citizens or section thereof. Regulation made in the real interests of efficiency of instruction, discipline, health, sanitation, morality, public order, and the like may undoubtedly be imposed. Such regulations are not restrictive on the substance of the right, which is guaranteed, they secure the proper functioning of the institution in the matter of education. It was also observed that regulation must satisfy a dual test - the test of reasonableness and that it is regulative of the educational character of the institution and is conducive to making the institution a capable vehicle of education for the minority community or other persons who resort to it. In *Rev. Father W. Proost and Ors. v. State of Bihar and Ors.,* AIR 1969 SC 465, the Court observed thus:

> "**8.** In our opinion, the width of Article 30(1) cannot be cut down by introducing in it considerations on which Article 29(1) is based. The latter article is a general protection which is given to minorities to conserve their language, script, or culture. The former is a special right to minorities to establish educational institutions of their choice. This choice is not limited to institution seeking to conserve language, script, or culture, and the choice is not taken away if the minority community having established an educational institution of its choice also admits members of other communities. That is a circumstance irrelevant for the application of Article 30(1) since no such limitation is expressed and none can be implied. The two articles create two separate rights, although it is possible that they may meet in a given case."

22. In *Ahmedabad St. Xavier's College Society and Anr. v. State of Gujarat and Anr.,* (1974) 1 SCC 717, a college was run by the minority. A Bench of 9-Judges of this Court considered the question whether Sections 40 and 41 of the Gujarat University Act, 1949 violated Section 30, which provided all colleges within the University area would be governed by the statutes of the University which may provide for minimum educational qualifications for teachers and tutorial staff. The University may approve the appointments of teachers to coordinate and regulate the facilities provided and expenditure incurred. The Court opined that regulation which serves the interests of the teachers are of paramount importance in good administration, education should be a great cohesive force in developing integrity of the nation, thus:

> "**19**. The entire controversy centres round the extent of the right of the religious and linguistic minorities to administer their educational institutions. The right to administer is said to consist of four principal matters. First is the right to choose its managing or governing body. It is said that the founders of the minority institution have faith and confidence in their own committee or body consisting of persons elected by them. Second is the right to choose its teachers. It is said that minority institutions want teachers to have compatibility with the ideals, aims, and aspirations of the institution. Third is the right not to be compelled to refuse admission to students. In other words, the minority institutions want to have the right to admit students of their choice subject to reasonable regulations about academic qualifications. Fourth is the right to use its properties and assets for the benefit of its own institution.
>
> **20**. The right conferred on the religious and linguistic minorities to administer educational institutions of their choice is not an absolute right. This right is not free from regulation. Just as regulatory measures are necessary for

maintaining the educational character and content of minority institutions, similarly, regulatory measures are necessary for ensuring orderly, efficient, and sound administration. Das, C.J., in the *Kerala Education Bill case* (supra) 1959 SCR 995: AIR 1958 SC 956, summed up in one sentence the true meaning of the right to administer by saying that the right to administer is not the right to mal-administer.

30. Educational institutions are temples of learning. The virtues of human intelligence are mastered and harmonised by education. Where there is complete harmony between the teacher and the taught, where the teacher imparts and the student receives, where there is complete dedication of the teacher and the taught in learning, where there is discipline between the teacher and the taught, where both are worshippers of learning, no discord or challenge will arise. An educational institution runs smoothly when the teacher and the taught are engaged in the common ideal of pursuit of knowledge. It is, therefore, manifest that the appointment of teachers is an important part in educational institutions. The qualifications and the character of the teachers are really important. The minority institutions have the right to administer institutions. This right implies the obligation and duty of the minority institutions to render the very best to the students. In the right of administration, checks, and balances in the shape of regulatory measures are required to ensure the appointment of good teachers and their conditions of service. The right to administer is to be tempered with regulatory measures to facilitate smooth administration. The best administration will reveal no trace or colour of minority. A minority institution should shine in exemplary eclectism in the administration of the institution. The best compliment that can be paid to a minority institution is that it does not rest on or proclaim its minority character.

31. Regulations which will serve the interests of the students, regulations which will serve the interests of the teachers are of paramount importance in good administration. Regulations in the interest of efficiency of teachers, discipline, and fairness in administration are necessary for preserving harmony among affiliated institutions.

46. The ultimate goal of a minority institution too imparting general secular education is advancement of learning. This Court has consistently held that it is not only permissible but also desirable to regulate everything in educational and academic matters for achieving excellence and uniformity in standards of education.

47. In the field of administration it is not reasonable to claim that minority institutions will have complete autonomy. Checks on the administration may be necessary in order to ensure that the administration is efficient and sound and will serve the academic needs of the institution. The right of a minority to administer its educational institution involves, as part of it, a correlative duty of good administration.

90. We may now deal with the scope and ambit of the right guaranteed by clause (1) of Article 30. The clause confers a right on all minorities, whether they are based on religion or language, to establish and administer educational instructions of their choice. The right conferred by the clause is in absolute terms and is not subject to restrictions, as in the case of rights conferred by Article 19 of the Constitution. The right of the minorities to administer educational institutions does not, however, prevent the making of reasonable regulations in respect of those institutions. The regulations have necessarily to be made in the interest of the institution as a minority educational institution. They have to be so designed as to make it an effective vehicle for imparting education. The right to administer educational institutions can plainly not include the right to maladminister. Regulations can be made to prevent the housing of an educational institution in unhealthy surroundings as also to prevent the setting up or continuation of an educational institution without qualified teachers. The State can prescribe regulations to ensure the excellence of the institution. Prescription of standards for educational institutions does not militate against the right of the minority to administer the institutions. Regulations made in the true interests of efficiency of instruction, discipline, health, sanitation, morality, public order, and the like may undoubtedly be imposed. Such regulations are not restrictions on the substance of the right, which is guaranteed: they secure the proper functioning of the institution, in matters educational [see observations of Shah, J. in *Rev. Sidhajbhai Sabhai* (supra), [(1963 3 SCR 837] p. 850]. Further, as observed by Hidyatullah, C.J. in the case of *Very Rev. Mother Provincial* (supra) [(1971) 1 SCR 734], the standards concern the body politic and are dictated by considerations of the advancement of the country and its people. Therefore, if universities establish syllabi for examinations, they must be followed, subject, however, to special subjects which the institutions may seek to teach, and to a certain extent, the State may also regulate the conditions of employment of teachers and the health and hygiene of students. Such regulations do not bear directly upon management as such, although they may indirectly affect it. Yet the right of the State to regulate education, educational standards, and allied matters cannot be denied. The minority institutions cannot be allowed to fall below the standards of excellence expected of

educational institutions, or under the guise of exclusive right of management, to decline to follow the general pattern. While the management must be left to them, they may be compelled to keep in step with others.

92. A regulation which is designed to prevent maladministration of an educational institution cannot be said to offend Clause (1) of Article 30. At the same time, it has to be ensured that under the power of making regulations, nothing is done as would detract from the character of the institution as a minority educational institution or which would impinge upon the rights of the minorities to establish and administer educational institutions of their choice. The right conferred by Article 30(1) is intended to be real and effective and not a mere pious and abstract sentiment; it is a promise of reality and not a teasing illusion. Such a right cannot be allowed to be whittled down by any measure masquerading as a regulation. As observed by this Court in the case of *Rev. Sidhajbhai Sabhai* (supra) [(1963 3 SCR 837], regulations which may lawfully be imposed either by legislative or executive action as a condition of receiving grant or of recognition must be directed to making the institution while retaining its character as minority institution effective as an educational institution. Such regulation must satisfy a dual test — the test of reasonableness, and the test that it is regulative of the educational character of the institution and is conducive to making the institution an effective vehicle of education for the minority community or other persons who resort to it.

94. If a request is made for the affiliation or recognition of an educational institution, it is implicit in the request that the educational institution would abide by the regulations which are made by the authority granting affiliation or recognition. The said authority can always prescribe regulations and insist that they should be complied with before it would grant affiliation or recognition to an educational institution. To deny the power of making regulations to the authority concerned would result in robbing the concept of affiliation or recognition of its real essence. No institution can claim affiliation or recognition until it conforms to a certain standard. The fact that the institution is of the prescribed standard indeed inheres in the very concept of affiliation or recognition. It is, therefore, permissible for the authority concerned to prescribe regulations which must be complied with before an institution can seek and retain affiliation and recognition. Question then arises whether there is any limitation on the prescription of regulations for minority educational institutions. So far as this aspect is concerned, the authority prescribing the regulations must bear in mind that the Constitution has guaranteed a fundamental right to the minorities for establishing and administering their educational institutions. Regulations made

by the authority concerned should not impinge upon that right. Balance has, therefore, to be kept between the two objectives, that of ensuring the standard of excellence of the institution and that of preserving the right of the minorities to establish and administer their educational institutions. Regulations which embrace and reconcile the two objectives can be considered to be reasonable."

(emphasis supplied)

The Court held that it is permissible for the State to prescribe qualifications for teachers. It observed:

"**176**. Recognition or affiliation is granted on the basis of the excellence of an educational institution, namely, that it has reached the educational standard set up by the university. Recognition or affiliation is sought for the purpose of enabling the students in an educational institution to sit for an examination to be conducted by the university and to obtain a degree conferred by the university. For that purpose, the students should have to be coached in such a manner so as to attain the standard of education prescribed by the university. Recognition or affiliation creates an interest in the university to ensure that the educational institution is maintained for the purpose intended and any regulation which will subserve or advance that purpose will be reasonable and no educational institution established and administered by a religious or linguistic minority can claim recognition or affiliation without submitting to those regulations. That is the price of recognition or affiliation: but this does not mean that it should submit to a regulation stipulating for surrender of a right or freedom guaranteed by the Constitution, which is unrelated to the purpose of recognition or affiliation. In other words, recognition or affiliation is a facility which the university grants to an educational institution, for the purpose of enabling the students there to sit for an examination to be conducted by the university in the prescribed subjects and to obtain the degree conferred by the university, and therefore, it stands to reason to hold that no regulation which is unrelated to the purpose can be imposed. If besides recognition or affiliation, an educational institution conducted by a religious minority is granted aid, further regulations for ensuring that the aid is utilized for the purpose for which it is granted will be permissible. The heart of the matter is that no educational institution established by a religious or linguistic minority can claim total immunity from regulations by the legislature or the university if it wants affiliation or recognition, but the character of the permissible regulations must depend upon their purpose. As we said, such regulations will be permissible if they are relevant to the purpose of securing or promoting the

object of recognition or affiliation. There will be borderline cases where it is difficult to decide whether a regulation really subserves the purpose of recognition or affiliation. But that does not affect the question of principle. In every case, when the reasonableness of a regulation comes up for consideration before the Court, the question to be asked and answered is whether the regulation is calculated to subserve or will in effect subserve the purpose of recognition or affiliation, namely, the excellence of the institution as a vehicle for general secular education to the minority community and to other persons who resort to it. The question whether a regulation is in the general interest of the public has no relevance if it does not advance the excellence of the institution as a vehicle for general secular education as, *ex-hypothesi*, the only permissible regulations are those which secure the effectiveness of the purpose of the facility, namely, the excellence of the educational institutions in respect of their educational standards. This is the reason why this Court has time and again said that the question whether a particular regulation is calculated to advance the general public interest is of no consequence if it is not conducive to the interests of the minority community and those persons who resort to it.

197. On the second question, I have nothing significant to add to what has fallen from My Lord the Chief Justice. I am in entire agreement with the view that, although, Articles 29 and 30 may supplement each other so far as certain rights of minorities are concerned, yet, Article 29 of the Constitution does not, in any way, impose a limit on the kind or character of education which a minority may choose to impart through its Institution to the children of its own members or to those of others who may choose to send their children to its schools. In other words, it has a right to impart a general secular education. I would, however, like to point out that, as rights and duties are correlative, it follows, from the extent of this wider right of a minority under Article 30(1) to impart even general or non-denominational secular education to those who may not follow its culture or subscribe to its beliefs, that, when a minority Institution decides to enter this wider educational sphere of national education, it, by reason of this free choice itself, could be deemed to opt to adhere to the needs of the general pattern of such education in the country, at least whenever that choice is made in accordance with statutory provisions. Its choice to impart an education intended to give a secular orientation or character to its education necessarily entails its assent to the imperative needs of the choice made by the State about the kind of “secular” education which promotes national integration or the elevating objectives set out in the preamble to our Constitution, and the best way of giving it. If it is part of a minority's rights to make such a choice, it should also be part of its obligations, which necessarily follow from the choice to adhere to the general

pattern. The logical basis of such a choice is that the particular minority Institution, which chooses to impart such general secular education, prefers that higher range of freedom where, according to the poet Rabindranath Tagore, "the narrow domestic walls" which constitute barriers between various sections of the nation will crumble and fall. It may refuse to accept the choice made by the State of the kind of secular education the State wants or of the way in which it should be given. But, in that event, should it not be prepared to forego the benefits of recognition by the State? The State is bound to permit and protect the choice of the minority Institution, whatever that might be. But, can it be compelled to give it a treatment different from that given to other Institutions making such a choice?

221. Evidently, what was meant was that the right to exclusive management of the institution is separable from the right to determine the character of education and its standards. This may explain why "standards" of education were spoken as "not part of management" at all. It meant that the right to manage, having been conferred in absolute terms, could not be interfered with at all although the object of that management could be determined by a general pattern to be laid down by the State, which could prescribe the syllabi and standards of education. Speaking for myself, I find it very difficult to separate the objects and standards of teaching from a right to determine who should teach and what their qualifications should be. Moreover, if the “standards of education” are not part of management, it is difficult to see how they are exceptions to the principle of freedom of management from control. Again, if what is aimed at directly is to be distinguished from an indirect effect of it, the security of tenure of teachers and provisions intended to ensure fair and equitable treatment for them by the management of an institution would also not be directly aimed at interference with its management. They could more properly be viewed as designed to improve and ensure the excellence of teachers available at the institution, and, therefore, to raise the general standard of education. I think that it is enough for us to distinguish this case on the ground that the provisions to be interpreted by us are different, although, speaking for myself, I feel bound to say, with great respect, that I am unable to accept every proposition found stated there as correct. In that case, the provisions of the Kerala University Act 9 of 1969, considered there were inescapable for the minority institutions which claimed the right to be free from their operation. As I have already observed, in the case before us, Section 38-B of the Act provides the petitioning College before us with a practically certain mode of escape from the compulsiveness of provisions other than Sections 5, 40, and 41 of the Act if claims made on its behalf are correct.

> **232**. Even if Article 30(1) of the Constitution is held to confer absolute and unfettered rights of management upon minority institutions, subject only to absolutely minimal and negative controls in the interests of health and law and order, it could not be meant to exclude a greater degree of regulation and control when a minority institution enters the wider sphere of general secular and non-denominational education, largely employs teachers who are not members of the particular minority concerned, and when it derives large parts of its income from the fees paid by those who are not members of the particular minority in question. Such greater degree of control could be justified by the need to secure the interests of those who are affected by the management of the minority institution and the education it imparts but who are not members of the minority in management. In other words, the degree of reasonably permissible control must vary from situation to situation. For the reasons already given above, I think that, apart from Sections 5, 40 and 41 of the Act, which directly and unreasonably impinge upon the rights of the petitioning minority managed college, protected by Article 30(1) of the Constitution, I do not think that the other provisions have that effect. On the situation under consideration before us, the minority institution affected by the enactment has, upon the claims put forward on its behalf, a means of escape from the impugned provisions other than Sections 5, 40 and 41 of the Act by resorting to Section 38B of the Act."
>
> (emphasis supplied)

23. In *The Gandhi Faiz-e-am College, Shahjahanpur v. University of Agra and Anr.,* (1975) 2 SCC 283, the Court considered whether statute framed by University of Agra infringed fundamental rights of the minority community and observed thus:

> "**16.** The discussion throws us back to a closer study of Statute 14-A to see if it cuts into the flesh of the management's right or merely tones up its health and habits. The two requirements the University asks for are that the managing body (whatever its name) must take in (*a*) the Principal of the College; (*b*) its seniormost teacher. Is this desideratum dismissible as biting into the autonomy of management or tenable as ensuring the excellence of the institution without injuring the essence of the right? On a careful reflection and conscious of the constitutional dilemma, we are inclined to the view that this case falls on the valid side of the delicate line. Regulation which restricts is bad, but regulation which facilitates is good. Where does this fine distinction lie? No rigid formula is possible, but a flexible test is feasible. Where the

> object and effect is to improve the tone and temper of the administration without forcing on it a stranger, however superb his virtues be, where the directive is not to restructure the governing body but to better its performance by a marginal catalytic induction, where no external authority's fiat or approval or outside nominee is made compulsory to validate the Management Board but inclusion of an internal key functionary appointed by the autonomous management alone is asked for, the provision is salutary and saved, being not a diktat eroding the freedom of the freedom."
>
> (emphasis supplied)

The majority negated the challenge. It was held that regulation which restricts is bad, but provision which facilitates is good.

24. In *Frank Anthony Public School Employees' Association v. Union of India and others*, (1986) 4 SCC 707, question arose whether teachers and other employees working in an unaided school were entitled to same pay-scale, allowances, and benefits. The Court allowed the petition and opined thus:

> "**16.** The excellence of the instruction provided by an institution would depend directly on the excellence of the teaching staff, and in turn, that would depend on the quality and the contentment of the teachers. Conditions of service pertaining to minimum qualifications of teachers, their salaries, allowances and other conditions of service which ensure security, contentment and decent living standards to teachers and which will consequently enable them to render better service to the institution and the pupils cannot surely be said to be violative of the fundamental right guaranteed by Article 30(1) of the Constitution. The management of a minority Educational Institution cannot be permitted under the guise of the fundamental right guaranteed by Article 30(1) of the Constitution, to oppress or exploit its employees any more than any other private employee. Oppression or exploitation of the teaching staff of an educational institution is bound to lead, inevitably, to discontent and deterioration of the standard of instruction imparted in the institution affecting adversely the object of making the institution an effective vehicle of education for the minority community or other persons who resort to it. The management of minority institution cannot complain of invasion of the fundamental

> right to administer the institution when it denies the members of its staff the opportunity to achieve the very object of Article 30(1) which is to make the institution an effective vehicle of education."
>
> (emphasis supplied)

25. In *Bihar State Madarasa Education Board, Patna v. Madarasa Hanfia Arabic College, Jamalia and others*, (1990) 1 SCC 428, the Court held that minorities have the right to establish and administer educational institution of their own choice. Still, they have no right to maladminister, and the State has the power to regulate the management and administration of such institutions in the interest of educational need and discipline of the institution. The Court held thus:

> "**6.** The question which arises for consideration is whether Section 7(2)(*n*) which confers power on the Board to dissolve the Managing Committee of an aided and recognised Madarasa institution violates the minorities constitutional right to administer its educational institution according to their choice. This Court has all along held that though the minorities have right to establish and administer educational institution of their own choice but they have no right to maladminister and the State has power to regulate management and administration of such institutions in the interest of educational need and discipline of the institution. Such regulation may have indirect effect on the absolute right of minorities but that would not violate Article 30(1) of the Constitution as it is the duty of the State to ensure efficiency in educational institutions. The State has, however, no power to completely take over the management of a minority institution. Under the guise of regulating the educational standards to secure efficiency in institution, the State is not entitled to frame rules or regulations compelling the management to surrender its right of administration. In *State of Kerala* v. *Very Rev. Mother Provincial*, (1970) 2 SCC 417, Section 63(1) of the Kerala University Act, 1969 which conferred power on the government to take over the management of a minority institution on its default in carrying out the directions of the State Government was declared ultra

vires on the ground that the provisions interfered with the constitutional right of a minority to administer its institution. Minority institutions cannot be allowed to fall below the standard of excellence on the pretext of their exclusive right of management but at the same time their constitutional right to administer their institutions cannot be completely taken away by superseding or dissolving Managing Committee or by appointing ad hoc committees in place thereof. In the instant case Section 7(2)(*n*) is clearly violative of constitutional right of minorities under Article 30(1) of the Constitution insofar as it provides for dissolution of Managing Committee of a Madarasa. We agree with the view taken by the High Court."

(emphasis supplied)

26. In *St. Stephen's College v. University of Delhi,* (1992) 1 SCC 558, concerning admission process adopted by aided minority institutions, various questions were raised thus:

"**41.** It was contended that St. Stephen's College after being affiliated to the Delhi University has lost its minority character. The argument was based on some of the provisions in the Delhi University Act and the Ordinances made thereunder. It was said that the students are admitted to the University and not to the College as such. But we find no substance in the contention. In the first place, it may be stated that the State or any instrumentality of the State cannot deprive the character of the institution, founded by a minority community by compulsory affiliation since Article 30(1) is a special right to minorities to establish educational institutions of their choice. The minority institution has a distinct identity and the right to administer with continuance of such identity cannot be denied by coercive action. Any such coercive action would be void being contrary to the constitutional guarantee. The right to administer is the right to conduct and manage the affairs of the institution. This right is exercised by a body of persons in whom the founders have faith and confidence. Such a management body of the institution cannot be displaced or reorganised if the right is to be recognised and maintained. Reasonable regulations however, are permissible but regulations should be of regulatory nature and not of abridgment of the right guaranteed under Article 30(1).

60. The right to select students for admission is a part of administration. It is indeed an important facet of administration. This power also could be regulated but the regulation must be reasonable just like any other regulation. It should be conducive to the welfare of the minority institution

or for the betterment of those who resort to it. The Bombay Government order which prevented the schools using English as the medium of instruction from admitting students who have a mother tongue other than English was held to be invalid since it restricted the admission pattern of the schools [*State of Bombay v. Bombay Education Society,* (1955) 1 SCR 568]. The Gujarat Government direction to the minority run college to reserve 80 per cent of seats for government selected candidates with a threat to withdraw the grant-in-aid and recognition was struck down as infringing the fundamental right guaranteed to minorities under Article 30(1) of the Constitution [*Sidhajbhai Sabhai v. State of Bombay,* (1963) 3 SCR 837]. In *Rt. Rev. Magr. Mark Netto* v. *State of Kerala*, (1979) 1 SCC 23, the denial of permission to the management of a minority school to admit girl students was held to be bad. The Regional Deputy Director in that case refused to give sanction for admission of girl students on two grounds: (*i*) that the school was not opened as a mixed school and that the school has been run purely as a boys school for 25 years; and (*ii*) that there was facility for the education of girls of the locality in a nearby girls school which was established by the Muslims and was also a minority institution. This Court noted that the Christian community in the locality wanted their girls also to receive education in the school maintained specially by their own community. They did not think it in their interest to send their children to the Muslim girls school run by the other minority community. The withholding of permission for admission of girl students in the boys minority school was violative of Article 30(1). It was also observed that the rule sanctioning such refusal of permission crosses the barrier of regulatory measures and comes in the region of interference with the administration of the institution, a right which is guaranteed to the minority under Article 30(1). The Court restricted the operation of the rule and made it inapplicable to the minority educational institution. In *Director of School Education, Government of T.N.* v. *Rev. Brother G. Arogiasamy*, AIR 1971 Mad 440, the Madras High Court had an occasion to consider the validity of an uniform procedure prescribed by the State Government for admission of candidates to the aided training schools. The government directed that the candidates should be selected by the school authorities by interviewing every candidate eligible for admission and assessing and awarding marks in the interview. The marks awarded to each candidate in the interview will be added to the marks secured by the candidate in the SSLC public examination. On the basis of the aggregate of marks in the SSLC examination and those obtained at the interview the selection was to be made without any further discretion. The High Court held that the method of selection placed serious restrictions on the freedom of the minority institution to admit their own students. It was found that the students of the minority community could not compete with the students belonging to other communities.

The applications of students from other communities could not be restricted under law. The result was that the students of minority community for whose benefit the institution was founded, had little chance of getting admission. The High Court held that the government order prescribing the uniform method of selection could not be applied to minority institutions.

78. Having set the scene, we can deal with the provisions of Articles 29(1) and 30(1) relatively quickly. Under Article 29(1) every section of the citizens having a distinct language, script or culture of its own has the right to conserve the same. Under Article 29(1), the minorities — religious or linguistic — are entitled to establish and administer educational institutions to conserve their distinct language, script or culture. However, it has been consistently held by the courts that the right to establish an educational institution is not confined to purposes of conservation of language, script or culture. The rights in Article 30(1) are of wider amplitude. The width of Article 30(1) cannot be cut down by the considerations on which Article 29(1) is based. The words "of their choice" in Article 30(1) leave vast options to the minorities in selecting the type of educational institutions which they wish to establish. They can establish institutions to conserve their distinct language, script or culture or for imparting general secular education or for both the purposes. (See: *Father W. Proost* v. *State of Bihar,* (1969) 2 SCR 73, *Ahmedabad St. Xavier's College* v. *State of Gujarat*, (1974) 1 SCC 717; and *Kerala Education Bill case*, 1959 SCR 995.)"

(emphasis supplied)

The decision in *St. Stephen's College* (supra) has been analysed by my esteemed brother Lalit, J. in *Sk. Md. Rafique v. Managing Committee, Contai Rahamania High Madrasah and Ors.,* 2020 (1) SCALE 345, thus:

"**28.** In *St. Stephen's College vs. University of Delhi*, (1992) 1 SCC 558 a Bench of five Judges of this Court had an occasion to consider the admission process adopted by two aided minority institutions viz. St. Stephen's College at Delhi and Allahabad Agricultural Institute at Naini. The factual context as summed-up in the majority judgment authored by Shetty, J., was as under:

"68. It is not in dispute that St. Stephen's College and Allahabad Agricultural Institute are receiving grant-in-aid

from the government. St. Stephen's College gives preference to Christian students. The Allahabad Agricultural Institute reserves 50 per cent of the seats for Christian students. The Christian students admitted by preference or against the quota reserved are having less merit in the qualifying examination than the other candidates. The other candidates with more merit are denied admission on the ground that they are not Christians.

69. It was argued for the University and the Students Union that since both the institutions are receiving State aid, the institutional preference for admission based on religion is violative of Article 29(2) of the Constitution. The institutions shall not prefer or deny admission to candidates on ground of religion. For institutions, on the other hand, it was claimed that any preference given to the religious minority candidates in their own institutions cannot be a discrimination falling under Article 29(2). The institutions are established for the benefit of their community and if they are prevented from admitting their community candidates, the purpose of establishing the institutions would be defeated. The minorities are entitled to admit their candidates by preference or by reservation. They are also entitled to admit them to the exclusion of all others and that right flows from the right to establish and administer educational institutions guaranteed under Article 30(1)."

28.1. The majority judgment dealt with the submissions raised by the institution as under:

"80. Equally, it would be difficult to accept the second submission that the minorities are entitled to establish and administer educational institutions for their exclusive benefit. The choice of institution provided in Article 30(1) does not mean that the minorities could establish educational institution for the benefit of their own community people. Indeed, they cannot. It was pointed out in *Re, Kerala Education Bill* that the minorities cannot establish educational institution only for the benefit of their community. If such was the aim, Article 30(1) would have been differently worded and it would have contained the words "for their own community". In the absence of such words it is legally impermissible to construe the article as conferring the right on the minorities to establish educational institution for their own benefit.

81. Even in practice, such claims are likely to be met with considerable hostility. It may not be conducive to have a relatively homogeneous society. It may lead to religious bigotry which is the bane of mankind. In the nation building with secular character sectarian schools or colleges, segregated faculties or universities for imparting general secular education are undesirable and they may

undermine secular democracy. They would be inconsistent with the central concept of secularism and equality embedded in the Constitution. Every educational institution irrespective of community to which it belongs is a 'melting pot' in our national life. The students and teachers are the critical ingredients. It is there they develop respect for, and tolerance of, the cultures and beliefs of others. It is essential therefore, that there should be proper mix of students of different communities in all educational institutions."

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28.3. The majority Judgment, then, considered the matter from the perspective of *"Rights of Minorities and Balancing Interest"* and observed:

"101. Laws carving out the rights of minorities in Article 30(1) however, must not be arbitrary, invidious or unjustified; they must have a reasonable relation between the aim and the means employed. The individual rights will necessarily have to be balanced with competing minority interests. In *Sidhajbhai case* (1963) 3 SCR 837 the government order directing the minority run college to reserve 80 per cent of seats for government nominees and permitting only 20 per cent of seats for the management with a threat to withhold the grant-in-aid and recognition was struck down by the Court as infringing the fundamental freedom guaranteed by Article 30(1). Attention may also be drawn to Article 337 of the Constitution which provided a special concession to Anglo-Indian community for ten years from the commencement of the Constitution. Unlike Article 30(2) it conferred a positive right on the Anglo-Indian community to get grants from the government for their educational institutions, but subject to the condition that at least 40 per cent of annual admission were made available to members of other communities.

102. In the light of all these principles and factors, and in view of the importance which the Constitution attaches to protective measures to minorities under Article 30(1), the minority aided educational institutions are entitled to prefer their community candidates to maintain the minority character of the institutions subject of course to conformity with the University standard. The State may regulate the intake in this category with due regard to the need of the community in the area which the institution is intended to serve. But in no case such intake shall exceed 50 per cent of the annual admission. The minority institutions shall make available at least 50 per cent of the annual admission to members of communities other than the minority

community. The admission of other community candidates shall be done purely on the basis of merit."

28.4. It was also observed that regulations which serve the interest of students and teachers and preserve the uniformity in standards of education amongst the affiliated institutions could validly be made. The relevant discussion in para 59 was as under:

"59. The need for a detailed study on this aspect is indeed not necessary. The right to minorities whether religious or linguistic, to administer educational institutions and the power of the State to regulate academic matters and management is now fairly well settled. The right to administer does not include the right to maladminister. The State being the controlling authority has right and duty to regulate all academic matters. Regulations which will serve the interests of students and teachers, and to preserve the uniformity in standards of education among the affiliated institutions could be made. The minority institutions cannot claim immunity against such general pattern and standard or against general laws such as laws relating to law and order, health, hygiene, labour relations, social welfare legislations, contracts, torts etc. which are applicable to all communities. So long as the basic right of minorities to manage educational institution is not taken away, the State is competent to make regulatory legislation. Regulations, however, shall not have the effect of depriving the right of minorities to educate their children in their own institution. That is a privilege which is implied in the right conferred by Article 30(1)."

28.5. The dissenting opinion of Kasliwal, J. quoted a passage from the Constituent Assembly Debates (CAD) touching upon the matter in issue as under:-

"137. These were Articles 23(1) on the one hand and 23(3)(a) and 23(3)(b) on the other hand in the Draft Constitution. Firstly, Dr. B.R. Ambedkar said in relation to draft Article 23(2) corresponding to the present Article 28 of the Constitution that even in relation to Articles 30 and 29 the State was completely free to give or not to give aid to the educational institutions of the religious or linguistic minorities. He said:

"Now, with regard to the second clause I think it has not been sufficiently well understood. We have tried to reconcile the claim of a community which has started educational institutions for the advancement of its own children either in education or in cultural matters, to permit to give religious instruction in such institutions; notwithstanding the fact that it receives certain aid from the State. The State, of course, is free to give aid, is free not to give aid; the only limitation we have placed is this, that the State

> shall not debar the institution from claiming aid under its grant-in-aid code merely on the ground that it is run and maintained by a community and not maintained by a public body. We have there provided also a further qualification, that while it is free to give religious instruction in the institution and the grant made by the State shall not be a bar to the giving of such instruction, it shall not give instruction to, or make it compulsory upon, the children belonging to other communities unless and until they obtain the consent of the parents of these children. That, I think, is a salutary provision. It performs two functions…

Shri *H.V. Kamath*: On a point of clarification what about institutions and schools run by a community or a minority for its own pupils — not a school where all communities are mixed but a school run by the community for its own pupils?

The Hon'ble Dr. B.R. Ambedkar: If my friend, Mr. Kamath will read the other article he will see that once an institution, whether maintained by the community or not, gets a grant, the condition is that it shall keep the school open to all communities. That provision he has not read.”

138. He reaffirmed the freedom of the State to give or not to give aid to these schools when directly referring to draft Article 23 which is the precursor of the present Articles 29 and 30 as follows (VII CAD 923):

> “I think another thing which has to be borne in reading Article 23 is that it does not impose any obligation or burden upon the State. It does not say that, when for instance the Madras people come to Bombay, the Bombay Government shall be required by law to finance any project of giving education either in Tamil language or in Andhra language or any other language. There is no burden cast upon the State. The only limitation that is imposed by Article 23 is that if there is a cultural minority which wants to preserve its language, its script and its culture, the State shall not by law impose upon it any other culture which may be either local or otherwise.”

And, went on to observe that once an institution was receiving aid, "it must abide by the rigor of Article 29(2) in the matter of admission of students in the college" and "as already held by me, St. Stephen's College and Allahabad Agricultural Institute are not entitled to claim any preferential right or reservation in favour of students of Christian community as they are getting grant-in-aid and as such I do not consider it necessary to labour any more on the question of deciding as to what percentage can be considered as reasonable.”

(emphasis supplied)

The Court held that the choice of institution does not mean that the minorities could establish educational institution for the benefit of their own community people. *In Re The Kerala Education Bill* (supra), it was considered and observed that the minorities cannot establish educational institution only for the benefit of their community. Every educational institution, irrespective of community to which it belongs, is a 'melting pot' in our national life and that there should be mixing up of students of different communities in all educational institutions. The intake for the community cannot exceed 50% of the annual admission, which is to be provided to other than the minority community. The admission should be made purely on the basis of merit.

27. In *T.M.A. Pai Foundation* (supra), decided by Bench of 11 Judges of the Court, on consideration of the rights under Article 30 of the Constitution of India, held thus:

> "**3.** The hearing of these cases has had a chequered history. Writ Petition No. 350 of 1993 filed by the Islamic Academy of Education and connected petitions were placed before a Bench of five Judges. As the Bench was prima facie of the opinion that Article 30 did not clothe a minority educational institution with the power to adopt its own method of selection and the correctness of the decision of this Court in *St. Stephen's College v. University of Delhi*, (1992) 1 SCC 558, was doubted, it was directed that the questions that arose should be authoritatively answered by a larger Bench. These cases were then placed before a Bench of seven Judges. The questions framed were recast and on 6-2-1997, the Court directed that the matter be placed before a Bench of at least eleven Judges, as it was felt that in view of the Forty-second Amendment to the Constitution, whereby "education" had been included in

Entry 25 of List III of Seventh Schedule, the question of who would be regarded as a "minority" was required to be considered because the earlier case-law related to the pre-amendment era, when education was only in the State List. When the cases came up for hearing before an eleven-Judge Bench, during the course of hearing on 19-3-1997, the following order was passed:

> "Since a doubt has arisen during the course of our arguments as to whether this Bench would feel itself bound by the ratio propounded in — *Kerala Education Bill, 1957, In Re*, AIR 1958 SC 956 and *Ahmedabad St. Xavier's College Society v. State of Gujarat,* (1974) 1 SCC 717 it is clarified that this sized Bench would not feel itself inhibited by the views expressed in those cases since the present endeavour is to discern the true scope and interpretation of Article 30(1) of the Constitution, which being the dominant question would require examination in its pristine purity. The factum is recorded.""

38. The scheme in *Unni Krishnan case*, (1993) 1 SCC 645 has the effect of nationalizing education in respect of important features viz. the right of a private unaided institution to give admission and to fix the fee. By framing this scheme, which has led to the State Governments legislating in conformity with the scheme, the private institutions are indistinguishable from the government institutions; curtailing all the essential features of the right of administration of a private unaided educational institution can neither be called fair nor reasonable. Even in the decision in *Unni Krishnan case* it has been observed by Jeevan Reddy, J., at p. 749, para 194, as follows:

> "194. The hard reality that emerges is that private educational institutions are a necessity in the present-day context. It is not possible to do without them because the governments are in no position to meet the demand — particularly in the sector of medical and technical education which call for substantial outlays. While education is one of the most important functions of the Indian State it has no monopoly therein. Private educational institutions — including minority educational institutions — too have a role to play."

40. <u>Any system of student selection would be unreasonable if it deprives the private unaided institution of the right of rational selection, which it devised for itself, subject to the minimum qualification that may be prescribed and to some system of computing the equivalence between different kinds of qualifications, like a common entrance test. Such a system</u>

<u>of selection can involve both written and oral tests for selection, based on principle of fairness.</u>

45. In view of the discussion hereinabove, we hold that the decision in *Unni Krishnan case*, (1993) 1 SCC 645 insofar as it framed the scheme relating to the grant of admission and the fixing of the fee, was not correct, and to that extent, the said decision and the consequent directions given to UGC, AICTE, the Medical Council of India, the Central and State Governments etc. are overruled.

50. <u>The right to establish and administer broadly comprises the following rights:</u>

<u>(a) to admit students;</u>

(b) to set up a reasonable fee structure;

(c) to constitute a governing body;

(d) to appoint staff (teaching and non-teaching); and

(e) to take action if there is dereliction of duty on the part of any employees.

53. With regard to the core components of the rights under Articles 19 and 26(a), it must be held that while the State has the right to prescribe qualifications necessary for admission, private unaided colleges have the right to admit students of their choice, subject to an objective and rational procedure of selection and the compliance with conditions, if any, requiring admission of a small percentage of students belonging to weaker sections of the society by granting them freeships or scholarships, if not granted by the Government. Furthermore, in setting up a reasonable fee structure, the element of profiteering is not as yet accepted in Indian conditions. The fee structure must take into consideration the need to generate funds to be utilized for the betterment and growth of the educational institution, the betterment of education in that institution and to provide facilities necessary for the benefit of the students. In any event, a private institution will have the right to constitute its own governing body, for which qualifications may be prescribed by the State or the university concerned. It will, however, be objectionable if the State retains the power to nominate specific individuals on governing bodies. Nomination by the State, which could be on a political basis, will be an inhibiting factor for private enterprise to embark upon the occupation of establishing and administering educational institutions. For the same reasons, nomination of teachers either directly by the department or through a service commission will be an unreasonable inroad and an unreasonable restriction on the autonomy of the private unaided educational institution.

68. It would be unfair to apply the same rules and regulations regulating admission to both aided and unaided professional institutions. It must be borne in mind that unaided professional institutions are entitled to autonomy in their administration while, at the same time, they do not forego or discard the principle of merit. It would, therefore, be permissible for the university or the Government, at the time of granting recognition, to require a private unaided institution to provide for merit-based selection while, at the same time, giving the management sufficient discretion in admitting students. This can be done through various methods. For instance, a certain percentage of the seats can be reserved for admission by the management out of those students who have passed the common entrance test held by itself or by the State/university and have applied to the college concerned for admission, while the rest of the seats may be filled up on the basis of counselling by the State agency. This will incidentally take care of poorer and backward sections of the society. The prescription of percentage for this purpose has to be done by the Government according to the local needs and different percentages can be fixed for minority unaided and non-minority unaided and professional colleges. The same principles may be applied to other non-professional but unaided educational institutions viz. graduation and postgraduation non-professional colleges or institutes.

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

90. In the exercise of this right to conserve the language, script or culture, that section of the society can set up educational institutions. The right to establish and maintain educational institutions of its choice is a necessary concomitant to the right conferred by Article 30. The right under Article 30 is not absolute. Article 29(2) provides that, where any educational institution is maintained by the State or receives aid out of State funds, no citizen shall be denied

admission on the grounds only of religion, race, caste, language or any of them. The use of the expression "any educational institution" in Article 29(2) would (sic not) refer to any educational institution established by anyone, but which is maintained by the State or receives aid out of State funds. In other words, on a plain reading, State-maintained or aided educational institutions, whether established by the Government or the majority or a minority community cannot deny admission to a citizen on the grounds only of religion, race, caste or language.

93. Can Article 30(1) be so read as to mean that it contains an absolute right of the minorities, whether based on religion or language, to establish and administer educational institutions in any manner they desire, and without being obliged to comply with the provisions of any law? Does Article 30(1) give the religious or linguistic minorities a right to establish an educational institution that propagates religious or racial bigotry or ill will amongst the people? Can the right under Article 30(1) be so exercised that it is opposed to public morality or health? In the exercise of its right, would the minority while establishing educational institutions not be bound by town planning rules and regulations? Can they construct and maintain buildings in any manner they desire without complying with the provisions of the building bye-laws or health regulations?

105. In *Rev. Sidhajbhai Sabhai* v. *State of Bombay*, (1963) 3 SCR 837, this Court had to consider the validity of an order issued by the Government of Bombay whereby from the academic year 1955-56, 80% of the seats in the training colleges for teachers in non-government training colleges were to be reserved for the teachers nominated by the Government. The petitioners, who belonged to the minority community, were, *inter alia*, running a training college for teachers, as also primary schools. The said primary schools and college were conducted for the benefit of the religious denomination of the United Church of Northern India and Indian Christians generally, though admission was not denied to students belonging to other communities. The petitioners challenged the government order requiring 80% of the seats to be filled by nominees of the Government, *inter alia*, on the ground that the petitioners were members of a religious denomination and that they constituted a religious minority, and that the educational institutions had been established primarily for the benefit of the Christian community. It was the case of the petitioners that the decision of the Government violated their fundamental rights guaranteed by Articles 30(1), 26(a), (*b*), (*c*) and (*d*), and 19(1)(*f*) and (*g*). While interpreting Article 30, it was observed by this Court at SCR pp. 849-50 as under:

> "All minorities, linguistic or religious have by Article 30(1) an absolute right to establish and administer educational institutions of their choice; and any law or executive direction which seeks to infringe the substance of that right under Article 30(1) would to that extent be void. This, however, is not to say that it is not open to the State to impose regulations upon the exercise of this right. The fundamental freedom is to establish and to administer educational institutions: it is a right to establish and administer what are in truth educational institutions, institutions which cater to the educational needs of the citizens, or sections thereof. Regulation made in the true interests of efficiency of instruction, discipline, health, sanitation, morality, public order and the like may undoubtedly be imposed. Such Regulations are not restrictions on the substance of the right which is guaranteed: they secure the proper functioning of the institution, in matters educational."

106. While coming to the conclusion that the right of the private training colleges to admit students of their choice was severely restricted, this Court referred to the opinion in *Kerala Education Bill, 1957 case*, 1959 SCR 995, but distinguished it by observing that the Court did not, in that case, lay down any test of reasonableness of the regulation. No general principle on which the reasonableness of a regulation may be tested was sought to be laid down in *Kerala Education Bill, 1957 case,* 1959 SCR 995 and, therefore, it was held in *Sidhajbhai Sabhai case,* (1963) 3 SCR 837 that the opinion in that case was not an authority for the proposition that all regulative measures, which were not destructive or annihilative of the character of the institution established by the minority, provided the regulations were in the national or public interest, were valid. In this connection it was further held at SCR pp. 856-57, as follows:

> "The right established by Article 30(1) is a fundamental right declared in terms absolute. Unlike the fundamental freedoms guaranteed by Article 19, it is not subject to reasonable restrictions. It is intended to be a real right for the protection of the minorities in the matter of setting up of educational institutions of their own choice. The right is intended to be effective and is not to be whittled down by so-called regulative measures conceived in the interest not of the minority educational institution, but of the public or the nation as a whole. If every order which while maintaining the formal character of a minority institution destroys the power of administration is

held justifiable because it is in the public or national interest, though not in its interest as an educational institution, the right guaranteed by Article 30(1) will be but a 'teasing illusion', a promise of unreality. Regulations which may lawfully be imposed either by legislative or executive action as a condition of receiving grant or of recognition must be directed to making the institution while retaining its character as a minority institution effective as an educational institution. Such regulation must satisfy a dual test -- the test of reasonableness, and the test that it is regulative of the educational character of the institution and is conducive to making the institution an effective vehicle of education for the minority community or other persons who resort to it."

107. The aforesaid decision does indicate that the right under Article 30(1) is not so absolute as to prevent the Government from making any regulation whatsoever. As already noted hereinabove, in *Sidhajbhai Sabhai case,* (1963) 3 SCR 837, it was laid down that regulations made in the true interests of efficiency of instruction, discipline, health, sanitation, morality and public order could be imposed. If this is so, it is difficult to appreciate how the Government can be prevented from framing regulations that are in the national interest, as it seems to be indicated in the passage quoted hereinabove. Any regulation framed in the national interest must necessarily apply to all educational institutions, whether run by the majority or the minority. Such a limitation must necessarily be read into Article 30. The right under Article 30(1) cannot be such as to override the national interest or to prevent the Government from framing regulations in that behalf. It is, of course, true that government regulations cannot destroy the minority character of the institution or make the right to establish and administer a mere illusion; but the right under Article 30 is not so absolute as to be above the law. It will further be seen that in *Sidhajbhai Sabhai case,* (1963) 3 SCR 837, no reference was made to Article 29(2) of the Constitution. This decision, therefore, cannot be an authority for the proposition canvassed before us.

119. In a concurrent judgment, while noting (at SCC p. 770, para 73) that "clause (2) of Article 29 forbids the denial of admission to citizens into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them", Khanna, J. then examined Article 30, and observed at SCR p. 222, as follows: (SCC p. 770, para 74)

"*74.* Clause (1) of Article 30 gives right to all minorities, whether based on religion or language, to establish and administer educational institutions of

their choice. Analysing that clause it would follow that the right which has been conferred by the clause is on two types of minorities. Those minorities may be based either on religion or on language. The right conferred upon the said minorities is to establish and administer educational institutions of their choice. The word 'establish' indicates the right to bring into existence, while the right to administer an institution means the right to effectively manage and conduct the affairs of the institution. Administration connotes management of the affairs of the institution. The management must be free of control so that the founders or their nominees can mould the institution as they think fit and in accordance with their ideas of how the interest of the community in general and the institution in particular will be best served. The words 'of their choice' qualify the educational institutions and show that the educational institutions established and administered by the minorities need not be of some particular class; the minorities have the right and freedom to establish and administer such educational institutions as they choose. Clause (2) of Article 30 prevents the State from making discrimination in the matter of grant of aid to any educational institution on the ground that the institution is under the management of a minority, whether based on religion or language."

120. Explaining the rationale behind Article 30, it was observed at SCR p. 224, as follows: (SCC p. 772, para 77)

"*77.* The idea of giving some special rights to the minorities is not to have a kind of a privileged or pampered section of the population but to give to the minorities a sense of security and a feeling of confidence. The great leaders of India since time immemorial had preached the doctrine of tolerance and catholicity of outlook. Those noble ideas were enshrined in the Constitution. Special rights for minorities were designed not to create inequality. Their real effect was to bring about equality by ensuring the preservation of the minority institutions and by guaranteeing to the minorities autonomy in the matter of the administration of those institutions. The differential treatment for the minorities by giving them special rights is intended to bring about an equilibrium, so that the ideal of equality may not be reduced to a mere abstract idea but should become a living reality and result in true, genuine equality, an equality not merely in theory but also in fact."

121. While advocating that provisions of the Constitution should be construed according to the liberal, generous and sympathetic approach, and after considering the principles which could be discerned by him from the earlier decisions of this Court, Khanna, J., observed at SCR p. 234, as follows: (SCC p. 781, para 89)

> "The minorities are as much children of the soil as the majority and the approach has been to ensure that nothing should be done as might deprive the minorities of a sense of belonging, of a feeling of security, of a consciousness of equality and of the awareness that the conservation of their religion, culture, language and script as also the protection of their educational institutions is a fundamental right enshrined in the Constitution. The same generous, liberal and sympathetic approach should weigh with the courts in construing Articles 29 and 30 as marked the deliberations of the Constitution-makers in drafting those articles and making them part of the fundamental rights. The safeguarding of the interest of the minorities amongst sections of population is as important as the protection of the interest amongst individuals of persons who are below the age of majority or are otherwise suffering from some kind of infirmity. The Constitution and the laws made by civilized nations, therefore, generally contain provisions for the protection of those interests. It can, indeed, be said to be an index of the level of civilization and catholicity of a nation as to how far their minorities feel secure and are not subject to any discrimination or suppression."

122. The learned Judge then observed that the right of the minorities to administer educational institutions did not prevent the making of reasonable regulations in respect of these institutions. Recognizing that the right to administer educational institutions could not include the right to maladminister, it was held that regulations could be lawfully imposed, for the receiving of grants and recognition, while permitting the institution to retain its character as a minority institution. The regulation "must satisfy a dual test — the test of reasonableness, and the test that it is regulative of the educational character of the institution and is conducive to making the institution an effective vehicle of education for the minority community or other persons who resort to it". (SCC p. 783, para 92) It was permissible for the authorities to prescribe regulations, which must be complied with, before a minority institution could seek or retain affiliation and recognition. But it was also stated that the regulations made by the authority

should not impinge upon the minority character of the institution. Therefore, a balance has to be kept between the two objectives — that of ensuring the standard of excellence of the institution, and that of preserving the right of the minorities to establish and administer their educational institutions. Regulations that embraced and reconciled the two objectives could be considered to be reasonable. This, in our view, is the correct approach to the problem.

123. After referring to the earlier cases in relation to the appointment of teachers, it was noted by Khanna, J., that the conclusion which followed was that a law which interfered with a minority's choice of qualified teachers, or its disciplinary control over teachers and other members of the staff of the institution, was void, as it was violative of Article 30(1). While it was permissible for the State and its educational authorities to prescribe the qualifications of teachers, it was held that once the teachers possessing the requisite qualifications were selected by the minorities for their educational institutions, the State would have no right to veto the selection of those teachers. The selection and appointment of teachers for an educational institution was regarded as one of the essential ingredients under Article 30(1). The Court's attention was drawn to the fact that in *Kerala Education Bill, 1957 case*, 1959 SCR 995, this Court had opined that clauses 11 and 12 made it obligatory for all aided schools to select teachers from a panel selected from each district by the Public Service Commission and that no teacher of an aided school could be dismissed, removed or reduced in rank without the previous sanction of the authorized officer. At SCR p.245, Khanna, J., observed that in cases subsequent to the opinion in *Kerala Education Bill, 1957* case, (1959) SCR 995 this Court had held similar provisions as clause 11 and clause 12 to be violative of Article 30(1) of the minority institutions. He then observed as follows: (SCC p. 792, para 109).

> "The opinion expressed by this Court in *Re Kerala Education Bill, 1957*, 1959 SCR 995, was of an advisory character and though great weight should be attached to it because of its persuasive value, the said opinion cannot override the opinion subsequently expressed by this Court in contested cases. It is the law declared by this Court in the subsequent contested cases which would have a binding effect. The words 'as at present advised' as well as the preceding sentence indicate that the view expressed by this Court in *Re Kerala Education Bill, 1957* in this respect was hesitant and tentative and not a final view in the matter."

135. We agree with the contention of the learned Solicitor-General that the Constitution in Part III does not contain or give any absolute right. All rights conferred in Part III of the Constitution are subject to at least other provisions of the said Part. It is difficult to comprehend that the framers of the Constitution would have given such an absolute right to the religious or linguistic minorities, which would enable them to establish and administer educational institutions in a manner so as to be in conflict with the other Parts of the Constitution. We find it difficult to accept that in the establishment and administration of educational institutions by the religious and linguistic minorities, no law of the land, even the Constitution, is to apply to them.

136. Decisions of this Court have held that the right to administer does not include the right to maladminister. It has also been held that the right to administer is not absolute, but must be subject to reasonable regulations for the benefit of the institutions as the vehicle of education, consistent with national interest. General laws of the land applicable to all persons have been held to be applicable to the minority institutions also — for example, laws relating to taxation, sanitation, social welfare, economic regulation, public order and morality.

137. It follows from the aforesaid decisions that even though the words of Article 30(1) are unqualified, this Court has held that at least certain other laws of the land pertaining to health, morality and standards of education apply. The right under Article 30(1) has, therefore, not been held to be absolute or above other provisions of the law, and we reiterate the same. By the same analogy, there is no reason why regulations or conditions concerning, generally, the welfare of students and teachers should not be made applicable in order to provide a proper academic atmosphere, as such provisions do not in any way interfere with the right of administration or management under Article 30(1).

138. As we look at it, Article 30(1) is a sort of guarantee or assurance to the linguistic and religious minority institutions of their right to establish and administer educational institutions of their choice. Secularism and equality being two of the basic features of the Constitution, Article 30(1) ensures protection to the linguistic and religious minorities, thereby preserving the secularism of the country. Furthermore, the principles of equality must necessarily apply to the enjoyment of such rights. No law can be framed that will discriminate against such minorities with regard to the establishment and administration of educational institutions vis-a-vis other educational institutions. Any law or rule or regulation that would put

the educational institutions run by the minorities at a disadvantage when compared to the institutions run by the others will have to be struck down. At the same time, there also cannot be any reverse discrimination. It was observed in *St. Xavier's College case*, (1975) 1 SCR 173 at SCR p. 192 that: (SCC p. 743, para 9)

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

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

139. Like any other private unaided institutions, similar unaided educational institutions administered by linguistic or religious minorities are assured maximum autonomy in relation thereto; e.g. method of recruitment of teachers, charging of fees and admission of students. They will have to comply with the conditions of recognition, which cannot be such as to whittle down the right under Article 30.

144. It cannot be argued that no conditions can be imposed while giving aid to a minority institution. Whether it is an institution run by the majority or the minority, all conditions that have relevance to the proper utilization of the grant-in-aid by an educational institution can be imposed. All that Article 30(2) states is that on the ground that an institution is under the management of a minority, whether based on religion or language, grant of aid to that educational institution cannot be discriminated against, if other educational institutions are entitled to receive aid. The conditions for grant or non-grant of aid to educational institutions have to be uniformly applied, whether it is a majority-run institution or a minority-run institution. As in the case of a majority-run institution, the moment a minority institution obtains a grant of aid, Article 28 of the Constitution comes into play. When an educational institution is maintained out of State funds, no religious instruction can be provided therein. Article 28(1) does not state that it applies only to educational institutions that are not established or maintained by religious or linguistic minorities. Furthermore, upon the receipt of aid, the provisions of Article 28(3) would apply to all educational institutions whether run by the minorities or the non-

minorities. Article 28(3) is the right of a person studying in a State-recognized institution or in an educational institution receiving aid from State funds, not to take part in any religious instruction, if imparted by such institution, without his/her consent (or his/her guardian's consent if such a person is a minor). Just as Articles 28(1) and (3) become applicable the moment any educational institution takes aid, likewise, Article 29(2) would also be attracted and become applicable to an educational institution maintained by the State or receiving aid out of State funds. It was strenuously contended that the right to give admission is one of the essential ingredients of the right to administer conferred on the religious or linguistic minority, and that this right should not be curtailed in any manner. It is difficult to accept this contention. If Articles 28(1) and (3) apply to a minority institution that receives aid out of State funds, there is nothing in the language of Article 30 that would make the provisions of Article 29(2) inapplicable. Like Article 28(1) and Article 28(3), Article 29(2) refers to "any educational institution maintained by the State or receiving aid out of State funds". A minority institution would fall within the ambit of Article 29(2) in the same manner in which Article 28(1) and Article 28(3) would be applicable to an aided minority institution. It is true that one of the rights to administer an educational institution is to grant admission to the students. As long as an educational institution, whether belonging to the minority or the majority community, does not receive aid, it would, in our opinion, be its right and discretion to grant admission to such students as it chooses or selects subject to what has been clarified before. Out of the various rights that the minority institution has in the administration of the institution, Article 29(2) curtails the right to grant admission to a certain extent. By virtue of Article 29(2), no citizen can be denied admission by an aided minority institution on the grounds only of religion, race, caste, language or any of them. It is no doubt true that Article 29(2) does curtail one of the powers of the minority institution, but on receiving aid, some of the rights that an unaided minority institution has, are also curtailed by Articles 28(1) and 28(3). A minority educational institution has a right to impart religious instruction — this right is taken away by Article 28(1), if that minority institution is maintained wholly out of State funds. Similarly on receiving aid out of State funds or on being recognized by the State, the absolute right of a minority institution requiring a student to attend religious instruction is curtailed by Article 28(3). If the curtailment of the right to administer a minority institution on receiving aid or being wholly maintained out of State funds as provided by Article 28 is valid, there is no reason why Article 29(2) should not be

held to be applicable. There is nothing in the language of Articles 28(1) and (3), Article 29(2) and Article 30 to suggest that, on receiving aid, Articles 28(1) and (3) will apply, but Article 29(2) will not. Therefore, the contention that the institutions covered by Article 30 are outside the injunction of Article 29(2) cannot be accepted.

151. The right of the aided minority institution to preferably admit students of its community, when Article 29(2) was applicable, has been clarified by this Court over a decade ago in *St. Stephen's College case*, (1992) 1 SCC 558. While upholding the procedure for admitting students, this Court also held that aided minority educational institutions were entitled to preferably admit their community candidates so as to maintain the minority character of the institution, and that the State may regulate the intake in this category with due regard to the area that the institution was intended to serve, but that this intake should not be more than 50% in any case. Thus, *St. Stephen's* endeavoured to strike a balance between the two articles. Though we accept the ratio of *St. Stephen's* which has held the field for over a decade, we have compelling reservations in accepting the rigid percentage stipulated therein. As Article 29 and Article 30 apply not only to institutions of higher education but also to schools, a ceiling of 50% would not be proper. It will be more appropriate that, depending upon the level of the institution, whether it be a primary or secondary or high school or a college, professional or otherwise, and on the population and educational needs of the area in which the institution is to be located, the State properly balances the interests of all by providing for such a percentage of students of the minority community to be admitted, so as to adequately serve the interest of the community for which the institution was established.

152. At the same time, the admissions to aided institutions, whether awarded to minority or non-minority students, cannot be at the absolute sweet will and pleasure of the management of minority educational institutions. As the regulations to promote academic excellence and standards do not encroach upon the guaranteed rights Under Article 30, the aided minority educational institutions can be required to observe *inter se* merit amongst the eligible minority applicants and passage of common entrance test by the candidates, where there is one, with regard to admissions in professional and non-professional colleges. If there is no such test, a rational method of assessing comparative merit has to be evolved. As regards the non-minority segment, admission may be on the basis of the common entrance test and counselling by a State agency. In the courses for which such a test and counselling are not in vogue, admission can be on the basis of relevant criteria for

the determination of merit. It would be open to the State authorities to insist on allocating a certain percentage of seats to those belonging to weaker sections of society, from amongst the non-minority seats.

Answers to eleven questions

Q. 1. ***

A. ***

Q. 2. ***

A. ***

Q. 3. **(*a*)** ***

A. ***

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

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

Q. 4. Whether the admission of students to minority educational institution, whether aided or unaided, can be regulated by the State Government or by the university to which the institution is affiliated?

A. Admission of students to unaided minority educational institutions viz. schools and undergraduate colleges where the scope for merit-based selection is practically nil, cannot be regulated by the State or university concerned, except for providing the qualifications and minimum conditions of eligibility in the interest of academic standards.

The right to admit students being an essential facet of the right to administer educational institutions of their choice, as contemplated under Article 30 of the Constitution, the State Government or the university may not be entitled to interfere with that right, so long as the admission to the unaided educational institutions is on a transparent basis and the merit is adequately taken care of. The right to administer, not being absolute, there could be regulatory measures for ensuring educational standards and maintaining excellence thereof, and it is more so in the matter of admissions to professional institutions.

…

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

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

Q.5.(b) ***

A. ***

Q.5. (c) Whether the statutory provisions which regulate the facets of administration like control over educational agencies, control over governing bodies, conditions of affiliation including recognition/withdrawal thereof, and appointment of staff, employees, teachers and principals including their service conditions and regulation of fees, etc. would interfere with the right of administration of minorities?

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

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

The State or other controlling authorities, however, can always prescribe the minimum qualification, experience and other conditions bearing on the merit of an individual for being appointed as a teacher or a principal of any educational institution.

> Regulations can be framed governing service conditions for teaching and other staff for whom aid is provided by the State, without interfering with the overall administrative control of the management over the staff.
>
> Fees to be charged by unaided institutions cannot be regulated but no institution should charge capitation fee."
>
> (emphasis supplied)

In *T.M.A. Pai Foundation* (supra), the Court held that some system of computing equivalence between different kinds of qualifications like a common entrance test, would not be in violation of the rights conferred. The unaided minority institutions under Article 30(1) of the Constitution of India have the right to admit students, but the merit may be determined by common entrance test and the rights under Article 30(1) is not absolute so as to prevent the Government from making any regulations. The Government cannot be prevented from framing regulations that are in national interest. However, the safeguard is that the Government cannot discriminate any minority institution and put them in a disadvantageous position vis-à-vis to other educational institutions and has to maintain the concept of equality in real sense. The minority institutions must be allowed to do what non-minority institutions are permitted. It is open to State/concerned bodies to frame regulations with respect to affiliation and recognition, to provide a proper academic atmosphere. While answering question no.4, it was held that the Government or the University can lay down the regulatory measures ensuring educational

standards and maintaining excellence and more so, in the matter of admission to the professional institutions. It may not interfere with the rights so long as the admissions to the unaided minority institutions are on transparent basis and the merit is adequately taken care of.

28. In *Brahmo Samaj Education Society v. State of West Bengal,* (2004) 6 SCC 224, the Court opined that State can impose such conditions as are necessary for the proper maintenance of standards of education and to check maladministration. The decision of *T.M.A. Pai Foundation* (supra) was followed in which it was observed that the State could regulate the method of selection and appointment of teachers after prescribing requisite qualifications for the same. In *Brahmo Samaj Education Society* (supra), it was further opined that the State could very well provide the basic qualification for teachers. The equal standard of teachers has been maintained by the NET / SLET.

29. This Court in *P.A. Inamdar* (supra) also considered the difference between professional and non-professional educational institutions, thus:

> "**104.** Article 30(1) speaks of "educational institutions" generally and so does Article 29(2). These articles do not draw any distinction between an educational institution dispensing theological education or professional or non-professional

education. However, the terrain of thought as has developed through successive judicial pronouncements culminating in *Pai Foundation*, (2002) 8 SCC 481, is that looking at the concept of education, in the backdrop of the constitutional provisions, professional educational institutions constitute a class by themselves as distinguished from educational institutions imparting non-professional education. It is not necessary for us to go deep into this aspect of the issue posed before us inasmuch as *Pai Foundation,* (2002) 8 SCC 481, has clarified that merit and excellence assume special significance in the context of professional studies. Though merit and excellence are not anathema to non-professional education, yet at that level and due to the nature of education which is more general, the need for merit and excellence therein is not of the degree as is called for in the context of professional education.

105. Dealing with unaided minority educational institutions, *Pai Foundation,* (2002) 8 SCC 481, holds that Article 30 does not come in the way of the State stepping in for the purpose of securing transparency and recognition of merit in the matter of admissions. Regulatory measures for ensuring educational standards and maintaining excellence thereof are no anathema to the protection conferred by Article 30(1). However, a distinction is to be drawn between unaided minority educational institution of the level of schools and undergraduate colleges on the one side and institutions of higher education, in particular, those imparting professional education, on the other side. In the former, the scope for merit-based selection is practically nil and hence may not call for regulation. But in the case of the latter, transparency and merit have to be unavoidably taken care of and cannot be compromised. There could be regulatory measures for ensuring educational standards and maintaining excellence thereof. (See para 161, answer to Question 4, in *Pai Foundation,* (2002) 8 SCC 481.) The source of this distinction between two types of educational institutions referred to hereinabove is to be found in the principle that right to administer does not include a right to maladminister.

106. S.B. Sinha, J. has, in his separate opinion in *Islamic Academy*, (2003) 6 SCC 697, described (in para 199) the situation as a pyramid-like situation and suggested the right of minority to be read along with the fundamental duty. Higher the level of education, lesser are the seats and higher weighs the consideration for merit. It will, necessarily, call for more State intervention and lesser say for the minority.

107. Educational institutions imparting higher education i.e. graduate level and above and in particular specialised education such as technical or professional, constitute a separate class. While embarking upon resolving issues of

> constitutional significance, where the letter of the Constitution is not clear, we have to keep in view the spirit of the Constitution, as spelt out by its entire scheme. Education aimed at imparting professional or technical qualifications stands on a different footing from other educational instruction. Apart from other provisions, Article 19(6) is a clear indicator and so are clauses (*h*) and (*j*) of Article 51-A. Education up to the undergraduate level aims at imparting knowledge just to enrich the mind and shape the personality of a student. Graduate-level study is a doorway to admissions in educational institutions imparting professional or technical or other higher education and, therefore, at that level, the considerations akin to those relevant for professional or technical educational institutions step in and become relevant. This is in the national interest and strengthening the national wealth, education included. Education up to the undergraduate level on the one hand and education at the graduate and postgraduate levels and in professional and technical institutions on the other are to be treated on different levels inviting not identical considerations, is a proposition not open to any more debate after *Pai Foundation,* (2002) 8 SCC 481. A number of legislations occupying the field of education whose constitutional validity has been tested and accepted suggest that while recognition or affiliation may not be a must for education up to undergraduate level or, even if required, may be granted as a matter of routine, recognition or affiliation is a must and subject to rigorous scrutiny when it comes to educational institutions awarding degrees, graduate or postgraduate, postgraduate diplomas and degrees in technical or professional disciplines. Some such legislations are found referred in paras 81 and 82 of S.B. Sinha, J.'s opinion in *Islamic Academy*, (2003) 6 SCC 697."

Dealing with unaided minority educational institutions in *T.M.A. Pai Foundation* (supra), the court observed that Article 30 does not come in the way of the State stepping in to secure transparency and recognition of merit in the matter of admissions. Regulatory measures for ensuring educational standards can be framed. In the case of professional education, transparency and merit have to be unavoidably taken care of and cannot be compromised.

30. In *Sindhi Education Society and Anr. v. Chief Secretary, Government of NCT of Delhi and Ors.,* (2010) 8 SCC 49, the Court opined that measures to regulate the courses of study, qualifications, and appointment of teachers, the conditions of employment are germane to the affiliation of minority institutions. The Court held thus:

> "**47.** Still another seven-Judge Bench of this Court, in *Ahmedabad St. Xavier's College Society,* (1974) 1 SCC 717, was primarily concerned with the scope of Articles 29 and 30 of the Constitution, relating to the rights of minorities to impart general education and applicability of the concept of affiliation to such institutions. Of course, the Court held that there was no fundamental right of a minority institution to get affiliation from a university. When a minority institution applies to a university to be affiliated, it expresses its choice to participate in the system of general education and courses of instructions prescribed by that university, and it agrees to follow the uniform courses of study. Therefore, measures which will regulate the courses of study, the qualifications and appointment of teachers, the conditions of employment of teachers, the health, hygiene of students and the other facilities are germane to affiliation of minority institutions.
>
> **55.** The respondents have placed reliance upon the law stated by the Bench that any regulation framed in the national interest must necessarily apply to all educational institutions, whether run by majority or the minority. Such a limitation must be read into Article 30. The rule under Article 30(1) cannot be such as to override the national interest or to prevent the Government from framing regulations in that behalf. It is, of course, true that government regulations cannot destroy the minority character of the institution or make a right to establish and administer a mere illusion; but the right under Article 30 is not so absolute as to be above the law.
>
> **56.** The appellant also seeks to derive benefit from the view that the courts have also held that the right to administer is not absolute and is subject to reasonable regulations for the benefit of the institutions as the vehicle of education consistent with the national interest. Such general laws of the land would also be applicable to the minority institutions as well. There is no reason why regulations or conditions

concerning generally the welfare of the students and teachers should not be made applicable in order to provide a proper academic atmosphere. As such, the provisions do not, in any way, interfere with the right of administration or management under Article 30(1). Any law, rule or regulation, that would put the educational institutions run by the minorities at a disadvantage, when compared to the institutions run by the others, will have to be struck down. At the same time, there may not be any reverse discrimination.

92. The right under clause (1) of Article 30 is not absolute but subject to reasonable restrictions which, inter alia, may be framed having regard to the public interest and national interest of the country. Regulation can also be framed to prevent maladministration as well as for laying down standards of education, teaching, maintenance of discipline, public order, health, morality, etc. It is also well settled that a minority institution does not cease to be so, the moment grant-in-aid is received by the institution. An aided minority educational institution, therefore, would be entitled to have the right of admission of students belonging to the minority group and, at the same time, would be required to admit a reasonable extent of non-minority students, to the extent, that the right in Article 30(1) is not substantially impaired and further, the citizen's right under Article 29(2) is not infringed."

In *Chandana Das (Malakar) v. State of West Bengal and Ors.*, (2015) 12 SCC 140, the Court observed that the Government can frame the conditions of eligibility for appointment of such teachers, thus:

"**21.** It is unnecessary to multiply decisions on the subject for the legal position is well settled. Linguistic institution and religious are entitled to establish and administer their institutions. Such right of administration includes the right of appointing teachers of its choice but does not denude the State of its power to frame regulations that may prescribe the conditions of eligibility for appointment of such teachers. The regulations can also prescribe measures to ensure that the institution is run efficiently for the right to administer does not include the right to maladministration. While grant-in-aid is not included in the guarantee contained in the Constitution to linguistic and religious minorities for establishing and running their educational institutions, such grant cannot be denied to such institutions only because the institutions are established by linguistic or religious minority. Grant of aid cannot, however, be made subservient to conditions which deprive the

> institution of their substantive right of administering such institutions. Suffice it to say that once Respondent 4 Institution is held to be a minority institution entitled to the protection of Articles 26 and 30 of the Constitution of India the right to appoint teachers of its choice who satisfy the conditions of eligibility prescribed for such appointments under the relevant rules is implicit in their rights to administer such institutions. Such rights cannot then be diluted by the State or its functionaries insisting that the appointment should be made only with the approval of the Director or by following the mechanism generally prescribed for institutions that do not enjoy the minority status."

31. In *Modern Dental College and Research Centre* (supra), the Constitution Bench of this Court considered the provisions of Articles 19(1)(g), 19(6), 26 and 30 in relation to the right to freedom of occupation of private unaided minority and non-minority educational institutions. This Court observed that the activity of education is neither trade nor profession, *i.e.*, commercialisation and profiteering cannot be permitted. It is open to impose reasonable restrictions in the interest of general public. The education cannot be allowed to be a purely economic activity; it is a welfare activity aimed at achieving more egalitarian and prosperous society to bring out social transformation and upliftment of the nation.

(a) This Court further opined that private unaided minority and non-minority institutions have a right to occupation under Article 19(1), the said right is not absolute and subject to reasonable restriction in larger public interest of students community to promote merit, achieve excellence and curb malpractices by holding common

entrance test for admission and fee structure can undoubtedly be regulated in such institutions.

(b) This Court in *Modern Dental College and Research Centre* (supra) also held that unless the admission procedure and fixation of fees are regulated and controlled at the initial stage, the evil of unfair practice of granting admission on available seats guided by the paying capacity of the candidates would be impossible to curb. The Court also noted the menace of the fee prevailing in the various educational professional institutions and in the context of Articles 19(1)(g), 19(6), 30, 41 and 47, and considering the Schedule VII, Entry 25 of List III and Entry 63-66 of List I, this Court held that concerning "professional unaided minority" and "non-minority institutions", common entrance test has to be conducted by the State and regulation of the fee structure by it is permissible. The Court took note of the large-scale malpractices, exploitation of students, profiteering, and commercialisation and entrance examination held by various institutions failing the triple test of having fair, transparent, and non-exploitative process. The Court held that reasonable restriction can be imposed to regulate admission and fee structure. The Court also observed about statutory functioning of the healthcare system in the country and the poor functioning of the MCI.

(c) The Court further considered the criteria of proportionality and emphasised for proper balance between the two facets viz. the rights and limitations imposed upon it by a statute. The concept of proportionality is an appropriate criterion. The law imposing restrictions will be treated as proportional if it is meant to achieve a proper purpose. If the measures taken to achieve such a goal are rationally connected to the object, such steps are necessary. The Court considered the concept of proportionality thus:

> "**57.** It is well settled that the right under Article 19(1)(*g*) is not absolute in terms but is subject to reasonable restrictions under clause (6). Reasonableness has to be determined having regard to the nature of right alleged to be infringed, purpose of the restriction, extent of restriction and other relevant factors. In applying these factors, one cannot lose sight of the directive principles of State policy. The Court has to try to strike a just balance between the fundamental rights and the larger interest of the society. The Court interferes with a statute if it clearly violates the fundamental rights. The Court proceeds on the footing that the legislature understands the needs of the people. The Constitution is primarily for the common man. Larger interest and welfare of student community to promote merit, achieve excellence and curb malpractices, fee and admissions can certainly be regulated.
>
> **58.** Let us carry out this discussion in some more detail as this is the central issue raised by the appellants.
>
> ***Doctrine of proportionality explained and applied***
>
> **59.** Undoubtedly, the right to establish and manage the educational institutions is a fundamental right recognised under Article 19(1)(*g*) of the Act. It also cannot be denied that this right is not "absolute" and is subject to limitations i.e. "reasonable restrictions" that can be imposed by law on the exercise of the rights that are conferred under clause (1) of Article 19. Those restrictions, however, have to be reasonable. Further, such restrictions should be "in the interest of general public", which conditions are stipulated in clause (6) of Article 19, as under:
>
> > "**19. (6)** Nothing in sub-clause (g) of the said clause shall affect the operation of any existing law insofar as it

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

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

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

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

(i) it is designated for a proper purpose;

(ii) the measures undertaken to effectuate such a limitation are rationally connected to the fulfilment of that purpose;

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

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

61. Modern theory of constitutional rights draws a fundamental distinction between the scope of the

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

62. It is now almost accepted that there are no absolute constitutional rights and all such rights are related. As per the analysis of Aharon Barak, two key elements in developing the modern constitutional theory of recognising positive constitutional rights along with its limitations are the notions of democracy and the rule of law. Thus, the requirement of proportional limitations of constitutional rights by a sub-constitutional law i.e. the statute, is derived from an interpretation of the notion of democracy itself. Insofar as the Indian Constitution is concerned, democracy is treated as the basic feature of the Constitution and is specifically accorded a constitutional status that is recognised in the Preamble of the Constitution itself. It is also unerringly accepted that this notion of democracy includes human rights which is the cornerstone of Indian democracy. Once we accept the aforesaid theory (and there cannot be any denial thereof), as a fortiori, it has also to be accepted that democracy is based on a balance between constitutional rights and the public interests. In fact, such a provision in Article 19 itself on the one hand guarantees some certain freedoms in clause (1) of Article 19 and at the same time empowers the State to impose reasonable restrictions on those freedoms in public interest. This notion accepts the modern constitutional theory that the constitutional rights are related. This relativity means that a constitutional licence to limit those rights is granted where such a limitation will be justified to protect public interest or the rights of others. This phenomenon—of both the right and its limitation in the Constitution—exemplifies the inherent tension between democracy's two fundamental elements. On the one hand is the right's element, which constitutes a fundamental component of substantive democracy; on the other hand is the people element, limiting those very rights through their representatives. These two constitute a fundamental component of the notion of democracy, though this time in its formal aspect. How can this tension be resolved? The answer is that this tension is not resolved by eliminating the "losing" facet from the Constitution. Rather, the tension is resolved by way of a proper balancing of the competing principles. This is one of the expressions of the multi-faceted nature of democracy. Indeed, the inherent tension between democracy's different facets is a "constructive tension". It enables each facet to develop while harmoniously coexisting with the others. The best way to achieve this peaceful coexistence is through balancing between the

competing interests. Such balancing enables each facet to develop alongside the other facets, not in their place. This tension between the two fundamental aspects—rights on the one hand and its limitation on the other hand—is to be resolved by balancing the two so that they harmoniously coexist with each other. This balancing is to be done keeping in mind the relative social values of each competitive aspects when considered in proper context.

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

> "To establish that a limit is reasonable and demonstrably justified in a free and democratic society, two central criteria must be satisfied. First, the objective, which the measures, responsible for a limit on a Charter right or freedom are designed to serve, must be "of" sufficient importance to warrant overriding a constitutional protected right or freedom … Second … the party invoking Section 1 must show that the means chosen are reasonable and demonstrably justified. This involves "a form of proportionality test…" Although the nature of the proportionality test will vary depending on the circumstances, in each case courts will be required to balance the interests of society with those of individuals and groups. There are, in my view, three important components of a proportionality test. First, the measures adopted must be … rationally connected to the objective. Second, the means … should impair "as little as possible" the right or freedom in question … Third, there must be a proportionality between the effects of the measures which are responsible for limiting the Charter right or freedom, and the objective which has been identified as of "sufficient importance". The more severe the deleterious effects of a measure, the more important the objective must be if the measure is to be reasonable and demonstrably justified in a free and democratic society."

64. The exercise which, therefore, is to be taken is to find out as to whether the limitation of constitutional rights is for a purpose that is reasonable and necessary in a democratic

> society and such an exercise involves the weighing up of competitive values, and ultimately an assessment based on proportionality i.e. balancing of different interests."

(d) In *Modern Dental College and Research Centre* (supra), the Court, while dealing with reasonable restriction on rights under Article 19 observed:

> "**65.** We may unhesitatingly remark that this doctrine of proportionality, explained hereinabove in brief, is enshrined in Article 19 itself when we read clause (1) along with clause (6) thereof. While defining as to what constitutes a reasonable restriction, this Court in a plethora of judgments has held that the expression "*reasonable restriction*" seeks to strike a balance between the freedom guaranteed by any of the sub-clauses of clause (1) of Article 19 and the social control permitted by any of the clauses (2) to (6). It is held that the expression "*reasonable*" connotes that the limitation imposed on a person in the enjoyment of the right should not be arbitrary or of an excessive nature beyond what is required in the interests of public. Further, in order to be reasonable, the restriction must have a reasonable relation to the object which the legislation seeks to achieve, and must not go in excess of that object (see *P.P. Enterprises* v. *Union of India,* (1982) 2 SCC 33). At the same time, reasonableness of a restriction has to be determined in an objective manner and from the standpoint of the interests of the general public and not from the point of view of the persons upon whom the restrictions are imposed or upon abstract considerations (see *Mohd. Hanif Quareshi* v. *State of Bihar*, AIR 1958 SC 731). In *M.R.F. Ltd.* v. *State of Kerala*, (1998) 8 SCC 227, this Court held that in examining the reasonableness of a statutory provision one has to keep in mind the following factors:
>
> (1) The directive principles of State policy.
>
> (2) Restrictions must not be arbitrary or of an excessive nature so as to go beyond the requirement of the interest of the general public.
>
> (3) In order to judge the reasonableness of the restrictions, no abstract or general pattern or a fixed principle can be laid down so as to be of universal application and the same will vary from case to case as also with regard to changing conditions, values of human life, social philosophy of the Constitution, prevailing conditions and the surrounding circumstances.
>
> (4) A just balance has to be struck between the restrictions imposed and the social control envisaged by Article 19(6).

> (5) Prevailing social values as also social needs which are intended to be satisfied by the restrictions.
>
> (6) There must be a direct and proximate nexus or reasonable connection between the restrictions imposed and the object sought to be achieved. If there is a direct nexus between the restrictions, and the object of the Act, then a strong presumption in favour of the constitutionality of the Act will naturally arise."

(e) Concerning necessity of regulatory framework, the Court opined:

> "**85.** No doubt, we have entered into an era of liberalisation of the economy, famously termed as "globalisation" as well. In such an economy, private players are undoubtedly given much more freedom in economic activities, as the recognition has drawn to the realities that the economic activities, including profession, business, occupation, etc. are not normal forte of the State and the State should have minimal role therein. It is for this reason, many sectors which were hitherto State monopolies, like telecom, power, insurance, civil aviation, etc. have now opened up for private enterprise. Even in the field of education the State/Government was playing a dominant role inasmuch as it was thought desirable that in a welfare State it is the fundamental duty, as a component of directive principles, to impart education to the masses and commoners as well as weaker sections of the society, at affordable rates. It was almost treated as solemn duty of the Government to establish adequate number of educational institutions at all levels i.e. from primary level to higher education and in all fields including technical, scientific and professional, to cater to the varied sections of the society, particularly, when one-third of the population of the country is poverty-stricken with large percentage as illiterate. With liberalisation, the Government has encouraged establishments of privately managed institutions. It is done with the hope that the private sector will play vital role in the field of education with philanthropic approach/ideals in mind as this activity is not to be taken for the purpose of profiteering, but more as a societal welfare.
>
> **86.** It is, therefore, to be borne in mind that the occupation of education cannot be treated on a par with other economic activities. In this field, the State cannot remain a mute spectator and has to necessarily step in in order to prevent exploitation, privatisation and commercialisation by the private sector. It would be pertinent to mention that even in respect of those economic activities which are undertaken by the private sector essentially with the objective of profit-making (and there is nothing bad about it), while throwing open such kind of business activities in the hands of private

sector, the State has introduced regulatory regime as well by providing regulations under the relevant statutes.

89. With the advent of globalisation and liberalisation, though the market economy is restored, at the same time, it is also felt that market economies should not exist in pure form. Some regulation of the various industries is required rather than allowing self-regulation by market forces. This intervention through regulatory bodies, particularly in pricing, is considered necessary for the welfare of the society and the economists point out that such regulatory economy does not rob the character of a market economy which still remains a market economy. Justification for regulatory bodies even in such industries managed by private sector lies in the welfare of people. Regulatory measures are felt necessary to promote basic well being for individuals in need. It is because of this reason that we find regulatory bodies in all vital industries like, insurance, electricity and power, telecommunications, etc.

90. Thus, it is felt that in any welfare economy, even for private industries, there is a need for regulatory body and such a regulatory framework for education sector becomes all the more necessary. It would be more so when, unlike other industries, commercialisation of education is not permitted as mandated by the Constitution of India, backed by various judgments of this Court to the effect that profiteering in the education is to be avoided."

(f) The Court held that the regulatory mechanism for centralised examination is legal and constitutional and does not infringe on the fundamental rights of the minority or non-minority to establish and administer educational institutions. It observed:

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

Larger interest and welfare of student community to promote merit, achieve excellence and curb malpractices, fee and admissions can certainly be regulated.

"**97.** The very object of setting up institutions for the State is a welfare function, for the purpose of excelling in educational standards. On the other hand, the primary motivation for private parties is profit motive or philanthropy. When the primary motivation for institutions is profit motive, it is natural that many means to achieve the same shall be adopted by the private institutions which leads to a large degree of secrecy and corruption. As such, the mechanism of regulations as envisaged under the impugned laws is legal, constitutional, fair, transparent and uphold the primary criteria of merit. The same does not infringe on the fundamental rights of either the minorities or the non-minorities to establish and administer educational institutions and must as such be upheld as valid."

(g) The Court also took note of prevailing situation of corruption in the field of education and commercialisation of education thus:

"**68.** We are of the view that the larger public interest warrants such a measure. Having regard to the malpractices which are noticed in the CET conducted by such private institutions themselves, for which plethora of material is produced, it is, undoubtedly, in the larger interest and welfare of the student community to promote merit, add excellence and curb malpractices. The extent of restriction has to be viewed keeping in view all these factors and, therefore, we feel that the impugned provisions which may amount to "restrictions" on the right of the appellants to carry on their "occupation", are clearly "reasonable" and satisfied the test of proportionality."

86. It is, therefore, to be borne in mind that the occupation of education cannot be treated on a par with other economic activities. In this field, the State cannot remain a mute spectator and has to necessarily step in in order to prevent exploitation, privatisation and commercialisation by the private sector. It would be pertinent to mention that even in respect of those economic activities which are undertaken by the private sector essentially with the objective of profit-making (and there is nothing bad about it), while throwing open such kind of business activities in the hands of private sector, the State has introduced regulatory regime as well by providing regulations under the relevant statutes.

96. As is evident from the facts mentioned by the State of Madhya Pradesh in its reply filed in IA No. 83 of 2015, the Association of Private Colleges has failed to hold their CETs in a fair, transparent and rational manner. The accountability and transparency in State actions is much higher than in private actions. It is needless to say that the incidents of corruption in the State machinery were brought in the public eye immediately and have been addressed expeditiously. The same could never have been done in case of private actions. Even on a keel of comparative efficiency, it is more than evident that the State process is far more transparent and fair than one that is devised by the private colleges which have no mechanism of any checks and balances. The State agencies are subject to the Right to Information Act, audit, State Legislature, anti-corruption agencies, Lokayukta, etc.

172. Maintenance and improvement of public health and to provide health care and medical services is the constitutional obligation of the State. To discharge this constitutional obligation, the State must have the doctors with professional excellence and commitment who are ready to give medical advice and services to the public at large. The State can satisfactorily discharge its constitutional obligation only when the aspiring students enter into the profession based on merit. None of these lofty ideals can be achieved without having good and committed medical professionals.

190. For the foregoing discussion, I hold that the State has the legislative competence to enact the impugned legislation—the 2007 Act to hold common entrance test for admission to professional educational institutions and to determine the fee and the High Court has rightly upheld the validity of the impugned legislation. Regulations sought to be imposed by the impugned legislation on admission by common entrance test conducted by the State and determination of fee are in compliance of the directions and observations in *T.M.A. Pai*, (2002) 8 SCC 481, *Islamic Academy of Education*, (2003) 6 SCC 697 and *P.A. Inamdar*, (2005) 6 SCC 537. Regulations on admission process are necessary in the larger public interest and welfare of the student community to ensure fairness and transparency in the admission and to promote merit and excellence. Regulation on fixation of fee is to protect the rights of the students in having access to higher education without being subjected to exploitation in the form of profiteering. With the above reasonings, I concur with the majority view in upholding the validity of the impugned legislation and affirm the well-merited decision of the High Court."

(h) The Court in *Modern Dental College and Research Centre* (supra) while considering the decision in *T.M.A. Pai Foundation* (supra) opined that Court did not give complete freedom to admit the students and also as to fixation of fee. Admission has to be based on merit, particularly in professional educational institutions. This Court observed thus:

> "**34.** In the modern age, therefore, particularly after the policy of liberalisation adopted by the State, educational institutions by private bodies are allowed to be established. There is a paradigm shift over from the era of complete government control over education (like other economic and commercial activities) to a situation where private players are allowed to mushroom. But at the same time, regulatory mechanism is provided thereby ensuring that such private institutions work within such regulatory regime. When it comes to education, it is expected that unaided private institutions provide quality education and at the same time they are given "freedom in joints" with minimal Government interference, except what comes under regulatory regime. Though education is now treated as an "occupation" and, thus, has become a fundamental right guaranteed under Article 19(1)(g) of the Constitution, at the same time shackles are put insofar as this particular occupation is concerned which is termed as "noble". Therefore, profiteering and commercialisation are not permitted and no capitation fee can be charged. The admission of students has to be on merit and not at the whims and fancies of the educational institutions. Merit can be tested by adopting some methodology and few such methods are suggested in *T.M.A. Pai Foundation*, (2002) 8 SCC 481, which includes holding of CET. It is to be ensured that this admission process meets the triple test of transparency, fairness and non-exploitativeness.
>
> **37.** Insofar as the first part of the question is concerned, it does not pose any problem and the answer goes in favour of the appellants. We may recapitulate here that Article 26 of the Constitution gives freedom to every religious denomination or any section thereof by conferring certain rights which include right to establish and maintain institutions for religious and charitable purposes. Thus, insofar as religious denominations or any section thereof are concerned, they were given right to establish and maintain institutions for religious and charitable purposes making it a fundamental right. Likewise, Article 30

confers upon minorities fundamental right to establish and administer educational institutions. Insofar as Article 26 is concerned, it comes under the caption "*Right to Freedom of Religion*". As far as Article 30 is concerned, it is under the heading "*Cultural and Educational Rights*". Thus, rights of the minorities to establish and administer educational institutions were always recognised as fundamental rights. Further, the right of private unaided professional institutions to establish and manage educational institutions was not clearly recognised as a fundamental right covered under Article 19(1)(*g*) and categorically rejected by the Constitution Bench of this Court comprising of five Judges in *Unni Krishnan,* (1993) 1 SCC 645. It was held in para 198 of the judgment that: (SCC p. 752)

> "*198.* [w]e are, therefore, of the opinion, adopting the line of reasoning in *State of Bombay* v. *R.M.D. Chamarbaugwala*, AIR 1957 SC 699, that imparting education cannot be treated as a trade or business. Education cannot be allowed to be converted into commerce nor can petitioners seek to obtain the said result by relying upon the wider meaning of "occupation"."

38. In *Unni Krishnan case*, (1993) 1 SCC 645, this Court also rejected the argument that the said activity could be classified as a "*profession*". However, the right of professional institutions to establish and manage educational institutions was finally regarded as an "*occupation*" befitting the recognition of this right as a fundamental right under Article 19(1)(*g*) in *T.M.A. Pai Foundation,* (2002) 8 SCC 481, in the following words: (SCC p. 535, para 25)

> "*25.* The establishment and running of an educational institution where a large number of persons are employed as teachers or administrative staff, and an activity is carried on that results in the imparting of knowledge to the students, must necessarily be regarded as an occupation, even if there is no element of profit generation. It is difficult to comprehend that education, per se, will not fall under any of the four expressions in Article 19(1)(*g*). "Occupation" would be an activity of a person undertaken as a means of livelihood or a mission in life. The abovequoted observations in *Sodan Singh case*, (1989) 4 SCC 155, correctly interpret the expression "occupation" in Article 19(1)(*g*)."

40. It becomes necessary to point out that while treating the managing of educational institution as an "*occupation*", the Court was categorical that this activity could not be treated as "*business*" or "*profession*". This right to carry on the occupation that education is, the same is not put on a par with other occupations or business activities or even other professions. It is a category apart which was carved out by this Court in *T.M.A. Pai Foundation*, (2002) 8 SCC 481. There was a

specific purpose for not doing so. Education is treated as a noble "*occupation*" on "*no profit no loss*" basis. Thus, those who establish and are managing the educational institutions are not expected to indulge in profiteering or commercialising this noble activity. Keeping this objective in mind, the Court did not give complete freedom to the educational institutions in respect of right to admit the students and also with regard to fixation of fee. As far as admission of students is concerned, the Court was categorical that such admissions have to be on the basis of merit when it comes to higher education, particularly in professional institutions."

(i) In *Modern Dental College and Research Centre* (supra), the Court considered decision in *T.M.A. Pai Foundation* (supra), and observed that Government is permitted to frame regulations for unaided private professional educational institutions, thus:

"**42.** In order to see that merit is adjudged suitably and appropriately, the Court candidly laid down that the procedure for admission should be so devised which satisfies the triple test of being fair, transparent and non-exploitative. The next question was as to how the aforesaid objective could be achieved? For determining such merit, the Court showed the path in para 59 by observing that such merit should be determined either by the marks that students obtained at qualifying examination or at CET conducted by the institutions or in the case of professional colleges, by government agencies. Para 59 suggesting these modes reads as under: (*T.M.A. Pai Foundation case*, (2002) 8 SCC 481, SCC p. 546)

"*59*. Merit is usually determined, for admission to professional and higher education colleges, by either the marks that the student obtains at the qualifying examination or school leaving certificate stage followed by the interview, or by a common entrance test conducted by the institution, or in the case of professional colleges, by government agencies."

This paragraph very specifically authorises CET to be conducted by government agencies in the case of professional colleges.

43. In order to ensure that the said CET is fair, transparent and merit-based, *T.M.A. Pai Foundation,* (2002) 8 SCC 481, also permitted the Government to frame regulations for unaided private professional educational institutions. Paras 67

and 68 which permit framing of such regulations are reproduced below: (SCC p. 549)

> "*67.* We now come to the regulations that can be framed relating to private unaided professional institutions.
>
> *68.* It would be unfair to apply the same rules and regulations regulating admission to both aided and unaided professional institutions. It must be borne in mind that unaided professional institutions are entitled to autonomy in their administration while, at the same time, they do not forego or discard the principle of merit. It would, therefore, be permissible for the university or the Government, at the time of granting recognition, to require a private unaided institution to provide for merit-based selection while, at the same time, giving the management sufficient discretion in admitting students. This can be done through various methods. For instance, a certain percentage of the seats can be reserved for admission by the management out of those students who have passed the common entrance test held by itself or by the State/university and have applied to the college concerned for admission, while the rest of the seats may be filled up on the basis of counselling by the State agency. This will incidentally take care of poorer and backward sections of the society. The prescription of percentage for this purpose has to be done by the Government according to the local needs and different percentages can be fixed for minority unaided and non-minority unaided and professional colleges. The same principles may be applied to other non-professional but unaided educational institutions viz. graduation and postgraduation non-professional colleges or institutes."

44. A plea was raised by the appellants that by exercising the power to frame regulations, the State could not usurp the very function of conducting this admission test by the educational institutions. It was argued that it only meant that such a CET is to be conducted by the educational institutions themselves and the Government could only frame the regulations to regulate such admission tests to be conducted by the educational institutions and could not take away the function of holding CET.

45. This argument has to be rejected in view of the unambiguous and categorical interpretation given by the Supreme Court in *P.A. Inamdar*, (2005) 6 SCC 537, with respect to certain observations, particularly in para 68 in *T.M.A. Pai Foundation,* (2002) 8 SCC 481. In this behalf, we would like to recapitulate that in *T.M.A. Pai Foundation*, (2002) 8 SCC 481, a Bench of eleven Judges dealt with the issues of scope of right to set up educational institutions by private aided or unaided, minority or non-minority institutions and the extent of government regulation of the said right. It was

held that the right to establish and administer an institution included the right to admit students and to set up a reasonable fee structure. But the said right could be regulated to ensure maintenance of proper academic standards, atmosphere and infrastructure. Fixing of rigid fee structure, dictating the formation and composition of a governing body, compulsory nomination of teachers and staff for appointment or nominating students for admissions would be unacceptable restrictions. However, occupation of education was not business but profession involving charitable activity. The State can forbid charging of capitation fee and profiteering. The object of setting up educational institution is not to make profit. There could, however, be a reasonable revenue surplus for development of education. For admission, merit must play an important role. The State or the University could require private unaided institution to provide for merit-based selection while giving sufficient discretion in admitting students. Certain percentage of seats could be reserved for admission by management out of students who have passed CET held by the institution or by the State/University. Interpretation of certain observations in para 68 of the judgment in *T.M.A. Pai Foundation*, (2002) 8 SCC 481, has been a matter of debate to which we will advert to in detail hereinafter.

48. The matter was then considered by a larger Bench of seven Judges in *P.A. Inamdar,* (2005) 6 SCC 537. It was held that the two committees for monitoring admission procedure and determining fee structure as per the judgment in *Islamic Academy of Education*, (2003) 6 SCC 697, were permissible as regulatory measures aimed at protecting the student community as a whole as also the minority themselves in maintaining required standards of professional education on non-exploitative terms. This did not violate Article 30(1) or Article 19(1)(*g*). It was observed that: (*P.A. Inamdar case*, (2005) 6 SCC 537, SCC p. 607, para 145)

> "*145. … Unless the admission procedure and fixation of fees is regulated and controlled at the initial stage, the evil of unfair practice of granting admission on available seats guided by the paying capacity of the candidates would be impossible to curb.*"

(emphasis supplied)

On this ground, suggestion of the institutions to achieve the purpose for which committees had been set up by post-audit checks after the institutions adopted their own admission procedure and fee structure was rejected. The committees were, thus, allowed to continue for regulating the admissions and the fee structure until a suitable legislation or regulations were framed by the States. It was left to the Central Government and the State Governments to come out with a detailed well-thought out legislation setting up a suitable

> mechanism for regulating admission procedure and fee structure. Para 68 in *T.M.A. Pai Foundation case*, (2002) 8 SCC 481, was explained by stating that observations permitting the management to reserve certain seats were meant for poorer and backward sections as per local needs. It did not mean to ignore the merit. It was also held that CET could be held, otherwise, merit becomes a casualty. There is, thus, no bar to CET being held by a State agency when the law so provides."

(j) The Court held that entrance examination is a regulatory measure and does not infringe on the rights of the institutions. It opined:

> "**49.** Thus, the contention raised on behalf of the appellants that the private medical colleges had absolute right to make admissions or to fix fee is not consistent with the earlier decisions of this Court. Neither merit could be compromised in admissions to professional institutions nor capitation fee could be permitted. To achieve these objects it is open to the State to introduce regulatory measures. We are unable to accept the submission that the State could intervene only after proving that merit was compromised or capitation fee was being charged. As observed in the earlier decisions of this Court, post-audit measures would not meet the regulatory requirements. Control was required at the initial stage itself. Therefore, our answer to the first question is that though "occupation" is a fundamental right, which gives right to the educational institutions to admit the students and also fix the fee, at the same time, scope of such rights has been discussed and limitations imposed thereupon by the aforesaid judgments themselves explaining the nature of limitations on these rights.
>
> **55.** It would be necessary to clarify the position in respect of educational institutions run by minorities. Having regard to the pronouncement in *T.M.A. Pai Foundation*, (2002) 8 SCC 481, with lucid clarifications to the said judgment given by this Court in *P.A. Inamdar*, (2005) 6 SCC 537, it becomes clear that insofar as such regulatory measures are concerned, the same can be adopted by the State in respect of minority-run institutions as well. Reliance placed by the appellants in *St. Stephen's College* v. *University of Delhi*, (1992) 1 SCC 558, may not be of much help as that case did not concern with professional educational institutions.
>
> **67.** Undoubtedly, right to establish and administer educational institutions is treated as a fundamental right as it is termed "*occupation*", which is one of the freedoms guaranteed under Article 19(1)(*g*). It was so recognised for the first time in *T.M.A. Pai Foundation,* (2002) 8 SCC 481. Even while doing so, this right came with certain clutches and

shackles. The Court made it clear that it is a noble occupation which would not permit commercialisation or profiteering and, therefore, such educational institutions are to be run on "*no profit no loss basis*". While explaining the scope of this right, right to admit students and right to fix fee was accepted as facets of this right, the Court again added caution thereto by mandating that admissions to the educational institutions imparting higher education, and in particular professional education, have to admit the students based on merit. For judging the merit, the Court indicated that there can be a CET. While doing so, it also specifically stated that in case of admission to professional courses such a CET can be conducted by the State. If such a power is exercised by the State assuming the function of CET, this was so recognised in *T.M.A. Pai Foundation,* (2002) 8 SCC 481 itself, as a measure of "*reasonable restriction on the said right*". *Islamic Academy of Education,* (2003) 6 SCC 697, further clarified the contour of such function of the State while interpreting *T.M.A. Pai Foundation,* (2002) 8 SCC 481, itself wherein it was held that there can be committees constituted to supervise conducting of such CET. This process of interpretative balancing and constitutional balancing was remarkably achieved in *P.A. Inamdar,* (2005) 6 SCC 537, by not only giving its premature to deholding (*sic* imprimatur to the holding) of CET but it went further to hold that agency conducting the CET must be the one which enjoys the utmost credibility and expertise in the matter to achieve fulfilment of twin objectives of transparency and merit and for that purpose it permitted the State to provide a procedure of holding a CET in the interest of securing fair and merit-based admissions and preventing maladministration."

This Court also considered the balancing of rights even if there is a violation of fundamental rights of the appellants to admit students by Central Examination Test by State. It held as under:

"**92.** In this sense, when imparting of quality education to cross-section of the society, particularly, the weaker section and when such private educational institutions are to rub shoulders with the State managed educational institution to meet the challenge of the implementing ambitious constitutional promises, the matter is to be examined in a different hue. It is this spirit which we have kept in mind while balancing the right of these educational institutions given to them under Article 19(1)(*g*) on the one hand and reasonableness of the restrictions which have been imposed by the impugned legislation. The right to admission or right to fix

the fee guaranteed to these appellants is not taken away completely, as feared. *T.M.A. Pai Foundation*, (2002) 8 SCC 481, gives autonomy to such institutions which remains intact. Holding of CET under the control of the State does not impinge on this autonomy. Admission is still in the hands of these institutions. Once it is even conceded by the appellants that in admission of students "*triple test*" is to be met, the impugned legislation aims at that. After all, the sole purpose of holding CET is to adjudge merit and to ensure that admissions which are done by the educational institutions, are strictly on merit. This is again to ensure larger public interest. It is beyond comprehension that merely by assuming the power to hold CET, fundamental right of the appellants to admit the students is taken away. Likewise, when it comes to fixation of fee, as already dealt with in detail, the main purpose is that the State acts as a regulator and satisfies itself that the fee which is proposed by the educational institution does not have the element of profiteering and also that no capitation fee, etc. is charged. In fact, this dual function of regulatory nature is going to advance the public interest inasmuch as those students who are otherwise meritorious but are not in a position to meet unreasonable demands of capitation fee, etc. are not deprived of getting admissions. The impugned provisions, therefore, are aimed at seeking laudable objectives in larger public interest. Law is not static, it has to change with changing times and changing social/societal conditions."

(k) The Court held that MCI Act and the rules prescribed reasonable restrictions under Article 19(6), thus:

"**53.** After referring to paras 136 and 137 in *P.A. Inamdar*, (2005) 6 SCC 537, it was observed: (*Assn. of Private Dental case*, 2009 SCC OnLine MP 760, SCC OnLine MP paras 34 & 37)

"*34.* It will be thus clear from paras 136 and 137 of the judgment in *P.A. Inamdar*, (2005) 6 SCC 537, quoted above, that admissions to private unaided professional educational institutions can be made on the basis of merit of candidates determined in the common entrance test followed by centralised counselling by the institutions imparting same or similar professional education together or by the State or by an agency which must enjoy utmost credibility and expertise and that the common entrance test followed by centralised counselling must satisfy the triple test of being fair, transparent and non-exploitative. Thus, the judgments of the Supreme Court in *T.M.A. Pai Foundation*, (2002) 8 SCC 481 and *P.A. Inamdar*, (2005) 6 SCC 537, permit holding of a common entrance test for determination of merit for admission to private unaided professional educational institutions by the State as well as any agency

> which enjoy utmost credibility and expertise in the matter and which should ensure transparency in merit.
>
> * * *
>
> *37*. Sections 3(*d*), 6 and 7 of the 2007 Act by providing that the common entrance test for determining merit for admissions in the private unaided professional educational institutions by a common entrance test to be conducted by the State or by an agency authorised by the State do not interfere with the autonomy of private unaided professional educational institutions, as such private professional educational institutions are entitled to collect the fees from the students admitted to the institutions on the basis of merit, appoint their own staff (teaching and non-teaching), discipline and remove the staff, provide infrastructure and other facilities for students and do all such other things as are necessary to impart professional education to the students. Sections 3(*d*), 6 and 7 of the 2007 Act, therefore, do not impinge on the fundamental right to carry on the occupation of establishing and administering professional educational institutions as an occupation. The only purpose of Sections 3(*d*), 6 and 7 of the 2007 Act is to ensure that students of excellence are selected on the basis of a common entrance test conducted by the State or an agency authorised by the State and that students without excellence and merit do not make entry into these professional educational institutions through malpractices and influence. As has been held both in the judgments in *T.M.A. Pai Foundation,* (2002) 8 SCC 481 and *P.A. Inamdar*, (2005) 6 SCC 537, the right of private unaided professional educational institutions to admit students of their choice is subject to selection of students on the basis of their merit through a transparent, fair and non-exploitative procedure. In our considered opinion therefore, Sections 3(*d*), 6 and 7 of the 2007 Act do not in any way violate the fundamental right of citizens guaranteed under Article 19(1)(*g*) of the Constitution. In view of this conclusion, it is not necessary for us to decide whether the provisions of Sections 3(*d*), 6 and 7 of the 2007 Act are saved by Article 15(5) of the Constitution or by the second limb of Article 19(6) of the Constitution relating to the power of the State to make a law for creation of monopoly in its favour in respect of any service.""

32. In *Sankalp Charitable Trust* (supra), various orders passed by this Court on different dates have been reported. This Court noted that NEET has been restored by judgment dated 11.4.2016 by which

the judgment and order in *Christian Medical College, Vellore and others* was recalled. The respondents were directed to hold examination for admission to MBBS and BDS courses for the academic year 2016-17. The Court passed following order dated 28.4.2016:

> "**10.** In view of the submissions made on behalf of the respondents, we record that NEET shall be held as stated by the respondents. We further clarify that notwithstanding any order passed by any court earlier with regard to not holding NEET, this order shall operate. Therefore, no further order is required to be passed at this stage.
>
> **11.** It may be mentioned here that some learned counsel representing those who are not parties to this petition have made submissions that in view of the judgment passed in *Christian Medical College, Vellore* v. *Union of India*, it would not be proper to hold NEET and this order should not affect pending matters.
>
> **12.** We do not agree with the first submission for the reason that the said judgment has already been recalled on 11-4-2016 and therefore, the Notifications dated 21-12-2010 are in operation as on today."

On 6.5.2016, the Court directed that no examination shall be permitted to be held for admission to MBBS or BDS studies by any private college or association or any private/deemed university. Relevant portion is extracted hereunder:

> "**23.** In view of the request made by the learned Solicitor General, hearing is adjourned to 9-5-2016. However, it is clarified that no examination shall be permitted to be held for admission to MBBS or BDS studies by any private college or association or any private/deemed university.
>
> **24.** The issue with regard to those students, who had appeared or who are due to appear in examinations conducted

> by the States in accordance with their State laws, shall be decided after hearing the learned Solicitor General."

On 9.5.2016, in the aforesaid matter, the Court considered various applications filed by private medical colleges seeking clarification of order dated 28.4.2016. This Court directed as under:

> "**29.** Medical Council of India (MCI) and Dental Council of India (DCI) issued Notifications dated 21-12-2010, amending the existing statutory regulations to provide for a single National Eligibility-cum-Entrance Test (NEET) for admission to the MBBS/BDS course. The said Notifications were struck down in *Christian Medical College, Vellore* v. *Union of India*, (2014) 2 SCC 305. The said judgment stands recalled vide order dated 11-4-2016 in *Medical Council of India* v. *Christian Medical College, Vellore*, (2016) 4 SCC 342.
>
> **32.** In a recent Constitution Bench judgment dated 2-5-2016, in *Modern Dental College & Research Centre* v. *State of M.P.*, (2016) 7 SCC 353, the stand of the private medical colleges (including minorities) that conducting of entrance test by the State violated the right of autonomy of the said colleges, has been rejected. The State law providing for conducting of entrance test was upheld, rejecting the contention that the State had no legislative competence on the subject. At the same time, it was held that the admission involved two aspects. First, the adoption of setting up of minimum standards of education and coordination of such standards which aspect was covered exclusively by List I Entry 66. The second aspect is with regard to implementation of the said standards which was covered by List III Entry 25. On the said aspect, the State could also legislate. The two entries overlap to some extent and to that extent List I Entry 66 prevailed over the subject covered by Entry 25.
>
> **33.** Prima facie, we do not find any infirmity in the NEET regulation on the ground that it affects the rights of the States or the private institutions. Special provisions for reservation of any category are not subject-matter of NEET nor are the rights of minority in any manner affected by NEET. NEET only provides for conducting entrance test for eligibility for admission to the MBBS/BDS course.
>
> **34.** We thus, do not find any merit in the applications seeking modification of the order dated 28-4-2016."

33. In *Jainarayan Chouksey* (supra), the Court followed the decision in *Modern Dental College and Research Centre* (supra) and opined that the said decision encompasses not only the State-conducted centralised test but also State-conducted centralised counselling. This Court issued a mandate for both the purposes, i.e., examination as well as counselling and held:

> "**5.** We have heard the learned counsel for the parties at length. We observe that mandate of our judgment was to hold centralised entrance test followed by centralised State counselling by the State to make it a one composite process. We, therefore, direct that admission to all medical seats shall be conducted by centralised counselling only by the State Government and none else.
>
> **6.** If any counselling has been done by any college or university and any admission to any medical seat has been given so far, such admission shall stand cancelled forthwith and admission shall be given only as per centralised counselling done by the State Government."

34. In *D.Y. Patil Vidyapeeth* (supra), the Court again clarified that the decision in *Modern Dental College and Research Centre* (supra) encompasses not only centralised State-conducted test but also centralised State-conducted counselling.

35. The MCI amended vide notification dated 10.3.2017 the Regulation on Graduate Medical Education, 1997 and Post Graduate Medical Education Regulations, 2000 providing for common counselling for admission to MBBS and post-graduate medicine

courses on the basis of NEET. The said notifications were challenged by minority institutions, deemed universities, and other private institutions by filing a writ petition before this Court. The Court vide order dated 9.5.2017 in *Dar-us-Salam Educational Trust and Ors. v. Medical Council of India and Ors.,* (Writ Petition (C) No.267 of 2017) opined that common counselling does not in any manner affect the right of minority institutions to admit students of their own minority community. The Court held thus:

> "10. Common counselling conducted by the DGHS/State Government will not in any manner affect the rights of minority institutions to admit students of their respective minority community. The minority quota seats, if any, in institutions run by minorities will be filled up by minority students only. Therefore, the rights of minority institutions are fully protected. Needless to say this arrangement will not apply to the States of Andhra Pradesh, Telangana and Jammu & Kashmir. As far as the other States are concerned, needless to say, this arrangement shall apply to all the colleges unless this Court has passed any different or separate order."

36. In *Yatinkumar Jasubhai Patel* (supra), the Court held that introduction of NEET does not affect the 50% State quota seat in PG medicine course. The Court also considered Section 10D of the Act of 1956 and regulations as amended by MCI. It opined as under:

> "**9.4.** However, it is the case on behalf of the petitioners that in view of the introduction of the NEET Scheme and in view of Section 10-D of the MCI Act, by which admissions are to be given on the basis of merit in the NEET, such an "institutional preference" would not be permissible. It is required .to be noted that introduction of the NEET has, as such, nothing to do with any preference/institutional preference, more particularly the "institutional preference" as approved by this Court time and again. The purpose and object of the introduction of NEET was to conduct a uniform entrance examination for all medical

educational institutions at the undergraduate level or postgraduate level and admissions at the undergraduate level and postgraduate level are to be given solely on the basis of the merits and/or marks obtained in the NEET examination only. It is required to be noted that earlier the respective universities including Gujarat University used to hold examination for postgraduate admission to medical courses and now instead of such tests by Gujarat University/universities concerned, merit is to be determined on the basis of the NEET examination results only and admissions are required to be given on the basis of such merits or marks obtained in NEET. The only obligation by virtue of introduction of NEET is that, once centralised admission test is conducted, the State, its agencies, universities and institutions cannot hold any separate test for the purpose of admission to postgraduate and PG and diploma courses and such seats are to be filled up by the State agencies, universities/institutions for preparing merit list as per the score obtained by the applicants in NEET examination and therefore by introduction of NEET, Section 10-D of the MCI Act has been amended, consequently amendment to the Post-Graduate Education Regulations, 2000, admission to postgraduate courses are made providing for solely on the basis of the score secured by the candidates seeking admission based on centralised examination i.e. NEET.

9.5. Even while giving admissions in the State quota/institutional reservation quota, still the admissions are required to be given on the basis of the merits determined on the basis of the NEET examination results. Under the circumstances, introduction of the NEET Scheme, as such, has nothing to do with the "institutional preference". Therefore, the change by introduction of the NEET Scheme shall not affect the institutional preference/reservation as approved by this Court from time to time in a catena of decisions, more particularly the decisions referred to hereinabove. Under the guise of introduction of the NEET Scheme, the petitioners cannot be permitted to re-agitate and/or reopen the issue with respect to institutional preference which has been approved and settled by this Court in a catena of decisions, more particularly the decisions referred to hereinabove."

37. The notifications, which are questioned in the matters and the amendment made to Section 10D as introduced in the Act of 1956 and regulations as amended by the MCI and similar provisions inserted in

the Dentists Act & Regulations, cannot be said to be taking away the rights of the unaided minority institutions or private institutions of making admission in any manner as it is permissible to provide regulatory mechanism at the national level and the entrance test applies even to All India Institute of Medical Science (AIIMS) – the most reputed Institute of India. It is open to provide the regulatory mechanism for admission for such courses as held in *T.M.A. Pai Foundation* (supra) the qualification and conditions of eligibility in the interest of academic standards can be provided, and there could be regulatory measures for ensuring educational standards and maintaining excellence in the matter of professional institution. Thus, the decision in *T.M.A. Pai Foundation* (supra) rendered by 11-Judge Bench is juxtaposed to the submission raised on behalf of petitioners.

38. In *P.A. Inamdar* (supra), the Court laid down the triple test of a fair, transparent and non-exploitative mechanism and if the admission procedure adopted by private institution does not satisfy all or any of the triple tests, it held that the admission procedure can be taken over by the State substituting its process. This aspect was gauged in *Modern Dental College and Research Centre* (supra) in a broader perspective considering prevailing situation of capitation fee and education becoming saleable commodity. A decision has been taken to regulate admission in professional colleges on national basis so as

to wipe out the corruption and various evils from the system. Even, the NEET has been made applicable to such premier institution like All India Institute of Medical Sciences (AIIMS) and so many others. The decision has been taken considering the overall national scenario, there cannot be any exemption, otherwise, there would be no end to such claims and multiple examinations. It would not be possible to eradicate evils. We cannot restore overall derogatory situation which prevailed before introduction of NEET. Still, there are several loopholes, which are to be plugged in the admission procedure. Unscrupulous practices are being adopted by private colleges of not admitting students sponsored by centralised counselling committee. The minority and private institutions have to admit students based on merit in the permissible category, based on NEET as per procedure prescribed under the Act and Regulations.

39. In *Faculty Association of All India Institute of Medical Sciences v. Union of India and Ors.,* (2013) 11 SCC 246, concerning issue of reservation in super-speciality, the Court opined:

> "**22.** Although the matter has been argued at some length, the main issue raised regarding reservation at the superspeciality level has already been considered in *Indra Sawhney case*, 1992 Supp (3) SCC 217, by a nine-Judge Bench of this Court. Having regard to such decision, we are not inclined to take any view other than the view expressed by the nine-Judge Bench on the issue. Apart from the decisions rendered by this Court in *Jagadish Saran case*, (1980) 2 SCC 768 and *Pradeep Jain case*, (1984) 3 SCC 654, the issue also fell for consideration in *Preeti Srivastava case*, (1999) 7 SCC 120, which was also

decided by a Bench of five Judges. While in *Jagadish Saran case*, (1980) 2 SCC 768 and in *Pradeep Jain case*, (1984) 3 SCC 654, it was categorically held that there could be no compromise with merit at the superspeciality stage, the same sentiments were also expressed in *Preeti Srivastava case*, (1999) 7 SCC 120, as well.

23. In *Preeti Srivastava case*, (1999) 7 SCC 120, the Constitution Bench had an occasion to consider Regulation 27 of the Post Graduate Institute of Medical Education and Research, Chandigarh Regulations, 1967, whereby 20% of seats in every course of study in the institute was to be reserved for candidates belonging to the Scheduled Castes, Scheduled Tribes or other categories of persons, in accordance with the general rules of the Central Government promulgated from time to time. The Constitution Bench came to the conclusion that Regulation 27 could not have any application at the highest level of superspeciality as this would defeat the very object of imparting the best possible training to selected meritorious candidates, who could contribute to the advancement of knowledge in the field of medical research and its applications. Their Lordships ultimately went on to hold that there could not be any type of relaxation at the superspeciality level.

24. In para 836 of the judgment in *Indra Sawhney case*, 1992 Supp (3) SCC 217, it was observed that while the relevance and significance of merit at the stage of initial recruitment cannot be ignored, it cannot also be ignored that the same idea of reservation implies selection of a less meritorious person. It was also observed that at the same time such a price would have to be paid if the constitutional promise of social justice was to be redeemed. However, after making such suggestions, a note of caution was introduced in the very next paragraph in the light of Article 15 of the Constitution. A distinction was, however, made with regard to the provisions of Article 16 and it was held that Article 335 would be relevant and it would not be permissible not to prescribe any minimum standard at all. Of course, the said observation was made in the context of admission to medical colleges and reference was also made to the decision in *State of M.P.* v. *Nivedita Jain*, (1981) 4 SCC 296, where admission to medical courses was regulated by an entrance test. It was held that in the matter of appointment of medical officers, the Government or the Public Service Commission would not be entitled to say that there would not be minimum qualifying marks for Scheduled Castes/Scheduled Tribes candidates while prescribing a minimum for others. In the very next paragraph, the nine-Judge Bench while discussing the provisions of Article 335 also observed that there were certain services and posts where either on account of the nature of duties attached to them or

> the level in the hierarchy at which they stood, merit alone counts. In such situations, it cannot be advised to provide for reservations. In the paragraph following, the position was made even more clear when Their Lordships observed that they were of the opinion that in certain services in respect of certain posts, application of rule of reservation may not be advisable in regard to various technical posts including posts in superspeciality in medicine, engineering and other scientific and technical posts."
>
> (emphasis supplied)

The Court directed the Union of India to take appropriate steps in accordance with views expressed in the case of *Dr. Preeti Srivastava and Anr. v. State of M.P. and Ors.* (1999) 7 SCC 120.

40. *In Re The Kerala Education Bill* (supra), it was opined that minority could not ask for aid and recognition of educational institution, when such institutions are recognized it would be open to make the institution retaining its character as effective as an educational institution without destroying its minority character for the purpose as enshrined in Article 30. The institution has to be an effective vehicle of education for all concerned.

41. In *Gandhi Faiz-e-am College, Shahjahanpur* (supra), it was opined that regulation which imposes restrictions is bad; but regulation which facilitates is good. We find that in *Frank Anthony Public School Employees' Association* (supra) it has been observed that institution has to be an effective vehicle of education for the minority community or other persons who resort to it. There cannot be any

complaint of invasion of the fundamental right to administer the institution when it denies the members of its staff the opportunity to achieve the very object. The Court observed that minorities have no right to maladminister. The notifications issued, amendment made to Section 10D of the Act of 1956 and regulations framed by MCI and similar provisions for dental courses providing for NEET cannot be said to be impinging upon the rights of the minority and the provisions of the Act and regulations framed by MCI under the Act of 1956, in DCI Act and regulations are required to be observed by each and every institution. The regulatory measures under the Act/ Regulations cannot be said to be averse to the interest of such institutions, and such reasonable measures can be carved out. They do not impinge upon the rights of institutions guaranteed under Articles 14, 19(1)(g), 25 and 30 of the Constitution of India.

42. In *T.M.A. Pai Foundation* (supra), this Court opined that State maintained or aided educational institutions, whether established by the Government or the majority or a minority community cannot deny admission to a citizen on the grounds only of religion, race, caste or language. While considering the issue *In Re The Kerala Education Bill* (supra), it was observed that the right of the private training colleges to admit students of their choice was severely restricted. It further observed that the right under Article 30(1) is not so absolute as to

prevent the State from making any regulation whatsoever. The Government cannot be prevented from framing regulations that are in the national interest. This Court observed that it is difficult to comprehend that right to the religious or linguistic minorities are given by the Constitution, which would enable them to establish and administer educational institutions in a manner to conflict with the other Parts of the Constitution. There is no reason why conditions for the welfare of students and teachers should not be made, but any law or rule or regulation that would put the educational institutions run by the minorities at a disadvantage when compared to the institutions run by the others will have to be struck down. The law of the land includes rules and regulations that must apply equally to the majority as well as minority institutions. The minority institutions must be allowed to do what non-minority is permitted to do. They have to comply with the conditions of recognition, which cannot be such as to whittle down the right guaranteed under Article 30 of the Constitution.

43. In *Brahmo Samaj Education Society* (supra), it was held that State could impose necessary conditions for proper maintenance of standards of education and to check maladministration.

44. On behalf of the appellants, it was submitted that individual autonomy is the concern of any Government. There should not be interference to defeat the rights conferred by the Constitution. Reliance has been placed on *Gobind v. State of Madhya Pradesh* (supra) in which this Court held:

> "**20**. There can be no doubt that the makers of our Constitution wanted to ensure conditions favourable to the pursuit of happiness. They certainly realized as Brandeis, J. said in his dissent in *Olmstead v. United States*, 277 US 438, 471, the significance of man's spiritual nature, of his feelings and of his intellect and that only a part of the pain, pleasure, satisfaction of life can be found in material things and therefore they must be deemed to have conferred upon the individual as against the Government a sphere where he should be let alone.
>
> **21**. "The liberal individualist tradition has stressed, in particular, three personal ideals, to each of which corresponds a range of 'private affairs'. The first is the ideal of personal relations; the second, the Lockean ideal of the politically free man in a minimally regulated society; the third, the Kantian ideal of the morally autonomous man, acting on principles that he accepts as rational. [See Benn, "Privacy, Freedom and Respect for Persons" in J. Pennock & J. Chapman. Eds., Privacy, Nomos XIII, 1, 15-16]."
>
> **23**. Individual autonomy, perhaps the central concern of any system of limited Government, is protected in part under our Constitution by explicit constitutional guarantees. In the application of the Constitution our contemplation cannot only be of what has been but what may be. Time works changes and brings into existence new conditions. Subtler and far reaching means of invading privacy will make it possible to be heard in the street what is whispered in the closet. Yet, too broad a definition of privacy raises serious questions about the propriety of judicial reliance on a right that is not explicit in the Constitution. Of course, privacy primarily concerns the individual. It therefore relates to and overlaps with the concept of liberty. The most serious advocate of privacy must confess that there are serious problems of defining the essence and scope of the right. Privacy interest in autonomy must also be placed in the context of other rights and values.
>
> **24**. Any right to privacy must encompass and protect the personal intimacies of the home, the family, marriage, motherhood, procreation and child rearing. This catalogue approach to the

question is obviously not as instructive as it does not give analytical picture of the distinctive characteristics of the right of privacy. Perhaps, the only suggestion that can be offered as unifying principle underlying the concept has been the assertion that a claimed right must be a fundamental right implicit in the concept of ordered liberty.

25. Rights and freedoms of citizens are set forth in the Constitution in order to guarantee that the individual, his personality, and those things stamped with his personality shall be free from official interference except where a reasonable basis for intrusion exists. "Liberty against Government" a phrase coined by Professor Corwin expresses this idea forcefully. In this sense, many of the fundamental rights of citizens can be described as contributing to the right to privacy.

26. As Ely says:
There is nothing to prevent one from using the word 'privacy' to mean the freedom to live one's life without governmental interference. But the Court obviously does not so use the term. Nor could it, for such a right is at stake in every case. [See The Wage of Crying Wolf: A Comment on Roe v. Wade, 82 Yale LJ 920, 932]."

45. The reliance has also been placed on *K.S. Puttaswamy and Anr. v. Union of India and Ors.*, 2017 (10) SCC 1, the decision relating to privacy in which this Court held:

"**351**. The Constitution of any country reflects the aspirations and goals of the people of that country voiced through the language of the few chosen individuals entrusted with the responsibility of framing its Constitution. Such aspirations and goals depend upon the history of that society. History invariably is a product of various forces emanating from religious, economic, and political events[1]. The degree of refinement of the Constitution depends upon the wisdom of the people entrusted with the responsibility of framing the Constitution. The constitution is not merely a document signed by 284 Members of the Constituent Assembly. It is a politically sacred instrument created by men and women who risked lives and sacrificed their liberties to fight alien rulers and secured freedom for our people, not only of their generation but

1 However, various forced which go into the making of history are dynamic. Those who are entrusted with the responsibility of the working of the Constitution must necessarily keep track of the dynamics of such forces. Evolution of science and growth of technology is another major factor in the modern world which is equally a factor to be kept in mind to successfully work the Constitution.

> generations to follow. The Constitution cannot be seen as a document written in ink to replace one legal regime by another. It is a testament created for securing the goals professed in Preamble[2]. Part III of the Constitution is incorporated to ensure the achievement of the objects contained in the Preamble[3]. "We the People" of this country are the intended beneficiaries[4] of the Constitution. It must be seen as a document written in the blood of innumerable martyrs of Jalianwala Bagh and the like. Man is not a creature of the State. Life and liberty are not granted by the Constitution. Constitution only stipulates the limitations on the power of the State to interfere with our life and liberty. Law is essential to enjoy the fruits of liberty; it is not the source of liberty and emphatically not the exclusive source."

46. It was argued that certain colleges have produced doctors of renowned fame, and they are an asset for India. There is no doubt about it that doctors of international fame have been produced by various institutions. They are an asset not only for India but also for the entire humanity. They are pioneers in various fields of medical science such as Oncology, Surgery, and other branches of medical science. But, when it comes to the eradication of the malpractices that have crept into the system, we have to take into consideration larger interest of the education countrywide. The NEET has been

2 *Kesavananda Bharati v. State of Kerala,* (1973) 4 SCC 225.
"*91. ...* Our Preamble outlines the objectives of the whole Constitution. It expresses "what we had thought of dreamt for so long"." (SCC p.323, para 91).

3 *Kerala Education Bill, 1957, In re,* AIR 1958 SC 956
"*5. ...* To implement and fortify these supreme purposes set forth in the Preamble, Part III of our Constitution has provided for us certain fundamental rights." (AIR p. 965, para 5).

4 *Bidi Supply Co. v. Union of India,* AIR 1956 SC 479
"23. After all, for whose benefit was the Constitution enacted? What was the point of making all this bother about fundamental rights? I am clear that the Constitution is not for the exclusive benefit of governments and States; it is only for lawyers and politicians and officials and those highly placed. It also exists for the common man, for the poor and the humble, for those who have businesses at stake, for the "butcher, the baker and the candlestick maker". It lays down for this land "a rule of law" as understood in the free democracies of the world. It constitutes India into a Sovereign Republic and guarantees in every page rights and freedom to the side by side and consistent with the overriding power of the State to act for the common good of all." (AIR p.487, para 23)

[For convenience, citations have been renumbered.]

prescribed by the Legislature in the larger public interest that has to prevail. We find the provisions to be reasonable conditions of recognition/ affiliation are binding for the very existence of all such institution whether they are run by majority or minority failing which they cannot exists and impart education. The conditions are reasonable and cannot be said to be taking away any of the constitutional rights of minority institutions, they are reasonable, fair and intended to bring transparency in the professional education imparted by institutions. They are applicable for all institutions alike minorities are not placed on a disadvantageous platform.

47. There is no doubt as to the concept of limited Government and least interference is welcomed, but in which field and to what extent balancing with the larger public and national interest is required. The individual autonomy, rights, and obligations are to be free from official interference except where the rational basis for intrusion exists. The Constitution provides a limitation on the power of the State to interfere with life, liberty, and rights, however, the concept of limited government cannot be extended to a level when it defeats the very national interest. The maladies with which professional education suffers in this country are writ large. The regulatory framework created by the MCI/ DCI is concomitant of conditions, affiliation and recognition, and providing central examination in the form of NEET

cannot be said to be violative of the rights under Articles 19(1)(g) and 30. The regulatory framework is not restrictive, but caters to the effective enjoyment of the rights conferred under the aforesaid provisions. The provisions qualify the doctrine of proportionality considered in *Modern Dental College and Research Centre* (supra). What has been held therein for State level examination holds good for NEET also.

48. The *prescription* of NEET is definitely in order to improve the medical education, co-related to the improvement of public health, thus, it is a step-in furtherance of the duty of the State enshrined in the Directive Principles of the State Policy contained in Article 47 of the Constitution of India. Similarly, Article 46 aims at promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes, and other weaker sections. By prescription of one equivalence examination of NEET, the interest of their merit is also equally protected and its aims of preventing various malpractices, which crept into system and prevent economic exploitation by selling seats with which malady the professional medical education system suffered. Article 51A(j) deals with the duty to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement. For that purpose, recognition of merit is necessary, and one has to be

given a full opportunity in pursuit of his/her aim. The prescription of NEET is to provide equal opportunity and level launching platform to an individual to perform his duty as enshrined under Article 51A(j). Thus, we find that there is no violation of the aforesaid provisions as argued by appellants, rather action is in furtherance of the constitutional aims and directions to achieve intendment of Article 51A(j) and is in the national interest.

49. In *Secretary, Malankara Syrian Catholic College v. T. Jose and Ors.,* (*2007*) 1 SCC 386, Court considered *T.M.A. Pai Foundation* (supra), and held that all laws made by the State to regulate the administration of educational institutions and grant of aid will apply to minority educational institutions also, but dilution of right under Article 30 is not permissible. The right under Article 30 is not above the law. The regulations or conditions concerning the welfare of the students and teachers should be made applicable to provide a proper academic atmosphere.

50. In *P.A. Inamdar* (supra), the court opined that activities of education are charitable. The educational institutions, both of a non-minority and minority character, can be regulated and controlled so that they do not indulge in selling seats of learning to make money. They can be allowed to generate such funds as would be reasonably required to run the institute and for its further growth. In *P.A.*

Inamdar (supra), this Court noted the difference between professional and non-professional educational institutions. It observed that professional educational institutions constitute a class by themselves and are distinguished from educational institutions imparting non-professional education. With respect to unaided minority educational institutions, Article 30 of the Constitution does not come in the way of the State stepping in for the purpose of securing transparency and recognition of merit in the matter of admissions, and the conditions of recognition are binding on such institutions. In *P.A. Inamdar* (supra), the Court opined that the admissions based on merit were in the national interest and strengthening the national welfare.

51. In *Ahmedabad St. Xavier's College Society* (supra), the Court held that minority institutions have a right to admit students of their choice subject to reasonable restriction for the academic qualification and the regulation, which will serve the interest of the students, can be imposed for ensuring efficiency and fairness. Education is vital for the nation; it develops the ethos of the nation. Regulations are necessary to see that there are no divisive or disintegrating forces in administration. It observed that it is not reasonable to claim that minority institutions will have complete autonomy. Some checks may be necessary and will serve the academic needs of the institution. A correlative duty of good administration is attached to the right to

administer educational institution. It was also opined in *Ahmedabad St. Xavier's College Society* (supra) in paragraph 19 quoted above that the State can prescribe regulations to ensure the excellence of the institution that does not militate against the right of the minority to administer the institutions. Such Regulations are not restrictions on the substance of the right, which is guaranteed; they secure the proper functioning of the institution. The institution cannot be allowed to fall below the standards of excellence under the guise of the exclusive right of the management. Minorities are as much part of the nation as the majority, and anything that impinges upon national interest must necessarily in its ultimate operation affect the interests of all.

52. It was further opined in *Ahmedabad St. Xavier's College Society* (supra) in paragraph 94 quoted above that there are conditions of affiliation or recognition of an educational institution, it is implicit in the request for grant thereof that the educational institution would abide by the regulations which are made by the authority granting affiliation or recognition. When Government and MCI/DCI or concerned Universities grant affiliation and recognition, the institutions are bound by the conditions prescribed for affiliation and recognition. It has also been observed that recognition or affiliation creates an interest in the university to ensure that the educational

institution is maintained for the purpose intended and any Regulation which will subserve or advance that purpose will be reasonable and no minority institution established and administered by a religious or linguistic minority can claim recognition or affiliation without submitting to those regulations.

53. In view of the law laid down in *T.M.A. Pai Foundation* (supra), it is apparent that NEET/common entrance test is a devise to standardise and computing equivalence between different kinds of qualifications. It does not interfere with the rights of the unaided minority institutions as it has been imposed in national interest considering the malpractices of granting illegal admission by virtually selling the seats in derogation to rights of meritorious students. The charitable activity of education became a saleable commodity and prerogative of wealthy persons and poor students were forced to get education funded from Banks making it difficult for them to come out of tentacular octave of interest. They are exploited in bud before they bloom into flower. The ill-reputation developed by MCI forced to change its entire structure. The national interest requires further improvement in the system to eradicate evils from the system. The situation is still grim and require to be dealt with firm hand and steely determination.

54. In *Dr. Preeti Srivastava and Anr. v. State of M.P. and Ors.* (supra), it was opined that at super speciality level there cannot be any reservation or lowering of the minimum qualifying marks. In *Modern Dental College and Research Centre* (supra), considering various malpractices, it was observed that education is being used as exploitative financial device. Education is not a commodity to be purchased by money power and deserving one as per merit cannot be deprived of the right to obtain it. The State cannot remain a mute spectator, and it must step in to prevent exploitation.

55. Thus, it is apparent that the provisions in question which have been incorporated in the Act relating to Medical/Dental education, the Government, MCI and DCI cannot be said to be an invasion of the fundamental rights. The intendment is to ensure fairness in the selection, recognition of merit, and the interests of the students. In the national interest, educational institutions are basically for a charitable purpose. By and large, at present education is devoid of its real character of charity, it has become a commodity. To weed out evils from the system, which were eating away fairness in admission process, defeating merit and aspiration of the common incumbent with no means, the State has the right to frame regulatory regime for aided/ unaided minority/ private institutions as mandated by

Directives Principles, Articles 14 and 21 of the Constitution. The first step has been taken to weed out the evils from the system, and it would not be in the national interest to step back considering the overall scenario. If we revert to the old system, posterity is not going to forgive us. Still, complaints are galore that merit is being ignored by private institutions; there is still a flood of litigation. It seems that unfettered by a large number of regulatory measures, unscrupulous methods and malpractices are yet being adopted. Building the nation is the main aspect of education, which could not be ignored and overlooked. They have to cater to national interest first, then their interest, more so, when such conditions can be prescribed for recognition, particularly in the matter of professional education.

56. In *St. Stephen's College v. University of Delhi* (supra), it was held that there has to be balancing of interest of rights of minorities. It was observed that 50% of the annual admission has to be given to the members of communities other than the minority community on the basis of merit. Regulations that serve the interest in standards of education amongst the recognised institutions could validly be made. Such general patterns and standards are the need, and such regulation shall not have the effect of depriving the right of minorities to educate their children in their own institution.

57. The learned counsel argued that it is open to some of the institutions to impose higher standards of merit. Firstly, conditions of affiliation are binding apart from that, we find that when it comes to national standards and the objects sought to be achieved by NEET, to conduct individual examinations by some institutions cannot be permitted. The system is not yet out of clutches of unscrupulous devices and dubious means are adopted to defeat merit, the interest of education would further suffer and very purpose of centralised examination would be defeated. It is not possible to prescribe further examination over and above NEET that cannot be said to be workable, no exemption can be granted from NEET, considering the objective with which it has been introduced. We find that the uniform Entrance Examination cannot be said to be unreasonable regulatory framework. Considering the terms and conditions for affiliation and recognition for professional medical and such other professional courses are binding, and no relaxation can be permitted in the conditions.

58. Thus, we are of the opinion that rights under Articles 19(1)(g) and 30 read with Articles 25, 26 and 29(1) of the Constitution of India do not come in the way of securing transparency and recognition of merits in the matter of admissions. It is open to regulating the course of study, qualifications for ensuring educational standards. It is open to imposing reasonable restrictions in the national and public interest.

The rights under Article 19(1)(g) are not absolute and are subject to reasonable restriction in the interest of the student's community to promote merit, recognition of excellence, and to curb the malpractices. Uniform Entrance Test qualifies the test of proportionality and is reasonable. The same is intended to check several maladies which crept into medical education, to prevent capitation fee by admitting students which are lower in merit and to prevent exploitation, profiteering, and commercialisation of education. The institution has to be a capable vehicle of education. The minority institutions are equally bound to comply with the conditions imposed under the relevant Acts and Regulations to enjoy affiliation and recognition, which apply to all institutions. In case they have to impart education, they are bound to comply with the conditions which are equally applicable to all. The regulations are necessary, and they are not divisive or disintegrative. Such regulatory measures enable institutions to administer them efficiently. There is no right given to maladminister the education derogatory to the national interest. The quality of medical education is imperative to sub-serve the national interest, and the merit cannot be compromised. The Government has the right for providing regulatory measures that are in the national interest, more so in view of Article 19(6) of the Constitution of India.

59. The rights of the religious or linguistic minorities under Article 30 are not in conflict with other parts of the Constitution. Balancing the rights is constitutional intendment in the national and more enormous public interest. Regulatory measures cannot be said to be exceeding the concept of limited governance. The regulatory measures in question are for the improvement of the public health and is a step, in furtherance of the directive principles enshrined in Articles 47 and 51(A)(j) and enable the individual by providing full opportunity in pursuance of his objective to excel in his pursuit. The rights to administer an institution under Article 30 of the Constitution are not above the law and other Constitutional provisions. Reasonable regulatory measures can be provided without violating such rights available under Article 30 of the Constitution to administer an institution. Professional educational institutions constitute a class by themselves. Specific measures to make the administration of such institutions transparent can be imposed. The rights available under Article 30 are not violated by provisions carved out in Section 10D of the MCI Act and the Dentists Act and Regulations framed by MCI/DCI. The regulatory measures are intended for the proper functioning of institutions and to ensure that the standard of education is maintained and does not fall low under the guise of an exclusive right of management to the extent of maladministration. The

regulatory measures by prescribing NEET is to bring the education within the realm of charity which character it has lost. It intends to weed out evils from the system and various malpractices which decayed the system. The regulatory measures in no way interfere with the rights to administer the institution by the religious or linguistic minorities.

60. Resultantly, we hold that there is no violation of the rights of the unaided/aided minority to administer institutions under Articles 19(1)(g) and 30 read with Articles 25, 26 and 29(1) of the Constitution of India by prescribing the uniform examination of NEET for admissions in the graduate and postgraduate professional courses of medical as well as dental science. The provisions of the Act and regulation cannot be said to be *ultra vires* or taking away the rights guaranteed under the Constitution of India under Article 30(1) read with Articles 19(1)(g), 14, 25, 26 and 29(1). Accordingly, the transferred cases, appeal, and writ petitions are disposed of.

No costs.

................................J.
[ARUN MISHRA]

................................J.
[VINEET SARAN]

................................J.
[M.R. SHAH]

NEW DELHI;
APRIL 29, 2020.