IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE SURESH KUMAR KAIT,
CHIEF JUSTICE
&
HON'BLE SHRI JUSTICE VIVEK JAIN

WRIT PETITION No. 14145 of 2017

H.K. KALCHURI EDUCATIONAL TRUST AND OTHERS

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

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Appearance:

Shri Siddharth Radhe Lal Gupta – Advocate (through V.C.) with Shri Aryan Urmaliya – Advocate for the petitioners.

Shri B.D. Singh – Deputy Advocate General for respondents No. 1 & 4 / State.

Shri Dheerendra Mishra – Advocate for respondent No.5.

Shri Mihir Lunawat – Advocate for respondent No.5.

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O R D E R

(Reserved on : 18 .03.2025)

(Pronounced on : 03.04.2025)

Per*: *Hon'ble Shri Justice Vivek Jain.

The present petition has been filed by a society running private medical college in the State of Madhya Pradesh in the name of L.N. Medical College, Bhopal. The petitioner has put to challenge the validity of **Mukhyamantri Medhavi Vidyarthi Yojna, 2017** (Chief Minister Meritorious Student Scheme, 2017) as amended subsequently vide

amending order dated 30.08.2017 and consequential allotment list issued by the State Government for the session 2017-2018. By way of amendment, the subsequent Scheme known as **Mukhya Mantri Jankalyan Shiksha Protsahan Yojana** (Chief Minister's Public Welfare Education Encouragement Scheme) has been put to challenge that also contains similar provisions. It is not in dispute that the said scheme still continuing till date and therefore, the challenge to the said scheme is stated to be still valid.

2. It is the case of the petitioners that the State of Madhya Pradesh has instituted a scheme Annexure P-1 known as Chief Minister Meritorious students scheme which is originally in Hindi and named as **Mukhyamantri Medhavi Vidyarthi Yojna, 2017** (for short referred to as '**MMMVY Scheme**') as replaced later by **Mukhya Mantri Jankalyan Shiksha Protsahan Yojana (**for short, referred to as "**MMJKY Scheme**"**)**. Learned counsel for the petitioners while pressing the challenge to validity of said schemes submits that the said schemes are a piece of delegated legislation by way of executive instructions issued by the State Government wihout any legal authority and as per the said schemes it has been provided that the student who is original resident of/domicile of Madhya Pradesh and having annual income of his parents/guardian below Rs.6.00 lacs per annum would be covered under the scheme. Different criteria for coverage under the said scheme are laid down for below poverty line students and students of SC/ST category. As per the said schemes the State Government has given guarantee to bear the fees of meritorious students in Government and Private Colleges who are studying in Engineering, Medical and Law streams. So far as the coverage for medical education is concerned, the said schemes provide that those persons who got admission on basis of merit in NEET Examination in any Medical/Dental College run by the Central or State Government within limits of State of Madhya Pradesh or any private college imparting

Medical/Dental education within the limits of State of M.P., then if the annual income of the family falls in the eligibility criteria of the scheme, then the fees shall be borne by the State of M.P. and the student(s) admitted under the said scheme would execute a bond to serve rural area of State of M.P. for a period of two years in case he studies in Government college and five years in case he studies in private college.

3. The learned counsel for the petitioner has vehemently argued that the institution in question is a private unaided non-minority institution imparting medical education. The students admitted in the said institution are charged fees which are not fixed arbitrarily by the institution but as per the fees determined by Admission and Fees Regulatory Committee of the State Government (AFRC for short) established under the M.P. Niji Vyavsayik Shikshan Sansthan Adhiniyam, 2007 (for short 'Adhiniyam of 2007') and therefore it is not the case that any fees is charged by the petitioner institution out of its own sweet will. It already faces regulatory mechanism in the manner of charging of fees and it has a right to admit students which includes a right to refuse admission and therefore, as held by the Constitution Bench of the Supreme Court in the case of **T.M.A. Pai Foundation v. State of Karnataka, (2002) 8 SCC 481**, the institution has independence in the matter of its management and the impugned policy of the State Government forcing students who are otherwise not in financial capacity to pay fees of the petitioner institution, on the petitioner institution amounts to over-regulation and disproportionate legislation which should be set aside on the ground of over regulation and proportionality. It is contended that the institution has right to admit only those students who are having financial means to pay the fees of the institution and the State Government having decided the fees payable to the petitioner institution is sufficient regulatory measure, and cannot now thrust students over the

petitioner institution who though may be meritorious but are not otherwise having any financial capacity to pay the fees of petitioner institution. This will lead to nothing but loss to the petitioner institution in financial terms because the students admitted are otherwise not eligible on basis of their financial means to seek admission in the petitioner institution.

4. It is further argued that the petitioner being a private unaided self financing institution has fundamental right to admit students of its choice and said right is guaranteed under Article 19(1)(g) of the Constitution of India and that though running of education institution may not be business or profession but it is certainly an occupation and carrying out occupation deserves same degree of protection as available to other fundamental rights enshrined under Article 19 of the Constitution of India. It is argued that in the case of **T.M.A. Pai Foundation (supra)**, the Hon'ble Supreme Court has unequivocally held that right to establish and administer a private institution includes right to admit students. Therefore, the restriction which State seeks to impose in the present case should require an objective and rationale procedure of selection of students which is already in place by way of adherence to NEET merit in admissions, or may require compliance of other reasonable conditions. The right to admit students of its choice includes the right not to admit and right to refuse to admit students who do not agree to pay the fees structure of concerned college, and therefore, the petitioner is being forced into an arbitrary regulatory measure.

5. It is contended that in the case of **Modern Dental College & Research Centre v. State of M.P., (2016) 7 SCC 353** it has been held that the fundamental right of colleges to run educational institution includes four specific rights including the right to admit students of their own choice. It is reiterated that the restrictions placed by the impugned MMMVY and

MMJKY Schemes are manifest arbitrary, unreasonable, disproportionate, irrational and discriminatory.

6. It is argued that because of the operation of MMMVY & MMJKY Scheme the majority of seats in general unreserved quota are being allotted to students under MMMVY & MMJKY Schemes who otherwise would not have been interested to participate in admission process of private medical college owing to high fees which is not arbitrary but fixed by a committee of the Government itself. The State Government to implement its public welfare scheme through private sector cannot put the private sector to damage and harm and scuttle the rights of the private medical college and put their financial interests in jeopardy.

7. It is further contended that MMMVY & MMJKY Schemes operate as reservation scheme in favour of EWS category students without any upper ceiling limit on mumbers and is thus, ultravires to the provisions of the Constitution as well as to the Adhiniyam 2007. It is contended that as per Section 8 of the Adhiniyam 2007 the reservation of seats is permissible only for SC, ST and OBC category students and now a different category has been carved out by the impugned scheme.

8. It is further argued that apart from the above the institutions are suffering because inordinate delay in reimbursement and payment of fees either by the State Government or by the concerned student leads to grave financial losses of interest on amount and investment which violates Article 300-A of Constitution of India. It also leads to financial bleeding of the institution by not receiving the fees within time because the institution has to spend the fees while teaching the students but actual reimbursement takes place by the State Government with a time lag of 2 to 2 ½ years and therefore, the manner in which the scheme is being operated, should be a sufficient ground to quash the scheme or in the alternative, to pass

appropriate orders to smoothen out these practical difficulties in the manner in which the scheme is being operated.

9. It is further contended that freedom enshrined under Article 19(1)(g) enjoyed by the petitioner institution can be subjected to or regulated only by a law duly enacted which does not include executive instructions within its ambit and therefore, impugned executive instructions do not fall within the definition of "law" as per Article 13(3)(a) of the Constitution of India. It is further argued that the impugned MMMVY & MMJKY Schemes and the mode of allotment stipulated thereunder of students along with the accompanying conditions pertaining to their fees payment are all unconstitutional and cannot be saved from the vice of unconstitutionality and therefore, the impugned Schemes have to be struck down as a whole and not in parts. It is contended by relying to various clauses of MMMVY & MMJKY Schemes that in what manner the scheme is oppressive towards the private medical colleges and the losses to be faced by the private medical colleges have not been taken into consideration in case the students leave the course mid way.

10. It is contended that the selection criteria under the impugned schemes is arbitrary and unconstitutional because it is based on financial and economic status of the concerned student and therefore, it is opposed to the constitutional grounds of social, educational and caste backwardness whereas economic indicators cannot be a sufficient ground to bring out any such scheme as it was brought into force prior to 103rd amendment of the Constitution of India whereby the State has been empowered to make any special provision for advancement of economically weaker section of the society and exception to Article 19(1)(g) has been carved out by Article 15(6) of the Constitution of India.

11. The counsel for the petitioner had further argued that State is paying the amount under the schemes not to the colleges, but to the account of the students and it is a routine feature that the students do not remit the fees to the account of the institution timely and they go on utilizing the fees and the fees is remitted to the college only at the time of examination after completing the education for the entire session whereas if the fees is remitted to the colleges directly in the account of colleges immediately after admission then there would be timely payment of fees to the college and the unholy practice of students misutilising the fees for their own purposes would be curbed.

12. *Per contra,* it is contended by learned counsel for the State while opposing the petition that the scheme is to achieve the constitutional goals of equality comprised in Article 15(1) and 16(1) of the Constitution of India so also various provisions of the Constitution of India to achieve the objectives of public health. It is contended that the MMMVY Scheme of 2017 was replaced by MMJKY Scheme in 2018 that has also been put to challenge by carrying out amendment and placed on record as Annexure P-21.

13. It is contended that the petitioner's notion of fundamental right to admit students is misconceived as in the judgments of **T.M.A. Pai Foundation (supra)** and **Modern Dental College (supra)** nowhere it has been held that right to admit students includes the right to refuse admission to meritorious students and the impugned schemes only help the meritorious students who are not in a position to afford actual fees of the college. The contention that the State is thrusting students upon the petitioner institution is also misconceived as evident from provisions of the scheme that students are allotted on merit basis through NEET centralized counselling conducted under overall supervision of MCI/NMC and strictly as per merit which is in

accordance with the law settled by the Constitution Bench of Supreme Court in the case of **Modern Dental College (Supra)**.

14. So far as the constitutionality of the scheme is concerned, it is contended that the scheme is for facilitating free higher education for meritorious students under Article 41 of the Constitution of India by giving a chance to the students to pursue medical education by securing rank in NEET and to take admission in College of their choice and not be hampered by economic deprivation. The impugned scheme is stated to be a law in terms of Article 162 of the Constitution of India.

15. It is further contended that the dues of fees of the students are being cleared timely and as soon as the budget of the Stage Government permits, the dues are being cleared without fail and though there may be some delay in payment of the fees but the fees are being paid without fail. Therefore, it is contended that the schemes are absolutely constitutional and legal and with an objective to be achieved and schemes do not suffer from vice of not being proportionate nor from the vice of arbitrariness nor unconstitutionality in any manner. It is denied that the scheme creates a reservation in favour of EWS candidates without any upper ceiling of numbers.

16. So far as the issue of remittance of fees directly in the account of students in place of it being remitted to the account of college is concerned, it is argued by learned counsel for the State that when the fees was being reimbursed to the account of the institution directly then there were various instances where one single student to take admission in various courses in different colleges and get reimbursement of fees or scholarship for all courses parallely pursued by the student and he would draw the scholarship or reimbursement of fees of first year for all such colleges and then pursue with further education in only one of the colleges. If the fees is reimbursed to the account of institution directly then monitoring of such malpractice

would not be possible and it is possible only if the fees is reimbursed directly in the Aadhar linked account of the student so that one student availing more than one scholarships or fees reimbursement can be easily monitored, which is only to save malpractices and not to give any undue benefit to the students, and there is no objective to cause harm or damage to the educational institutions. Therefore, the practice of direct remittance of fees to the account of students has been defended vehemently.

17. Heard learned counsel for the parties.

18. In the present case, initially the State Government came out with MMMY Scheme 2017, which was later on replaced by the consequential Scheme, which placed on record as Annexure P-21 is known as Mukhya Mantri Jankalyan Shiksha Protshahan Yojana (MMJKY) Scheme. It is not in dispute that the provisions of both the Schemes are more or less analogous with only differences being in some fine details.

19. The aforesaid Scheme still in force has been vehemently objected to on the grounds that the said scheme severely curtails the rights of the private medical collages to administer the institution as per their will and is therefore, contrary to the Constitution Bench judgment of the Hon'ble Supreme Court in the case of **T.M.A. Pai (supra)**. Before we embark on examination of the scheme from the said angle, the objectives of the schemes are required to be taken note of. The Schemes in question, i.e. MMMVY and MMJKY Scheme relate to providing financial assistance to those meritorious students, who seek admission in Engineering Colleges on merit basis as per JEE Examination and in Medical Colleges as per NEET Examination and Law Colleges as per CLAT Examination or such other examinations of State or National level, which assess the merits of the students.

20. The said Scheme relates to provision made by the State Government to reimburse the fees of such students, who otherwise secure admission in Government or private colleges situated within the limits of the State of Madhya Pradesh on merit basis and the students are also domiciled in the State of Madhya Pradesh. The Scheme enables a student not having financial means to attain college education in college of his choice based on his merit. The students who are reimbursed fees are not forced on the college, but are those students, who get the particular college allotted on the basis of their merit in the NEET examination and the scheme in question enables those students to be able to take admission in the college to which they are allotted on the basis of merit in NEET Examination and not to opt for any other college lower in merit or to avoid waiting for one more year or take a drop of one more year and take chance in the next year to get a college charging lesser fees, which may be in their financial capacity.

21. The Scheme in question, therefore, is basically a Scheme enabling candidates having lesser financial means to take admission in colleges with support of financial assistance of the State Government and without financial assistance of the State Government such admissions otherwise could not have been made possible for such meritorious students and they may not have been able to secure admissions at all.

22. Therefore, the Scheme is not a Scheme creating any reservation for economically weaker sections of the society, but enables students otherwise not having means to get admission in a college, which they get as per their merit to have a chance to study in that college and to save merit from being scuttled by financial deprivation. A reservation for economically weaker sections would mean lowering of merits by fixation of a fixed number of seats by way of vertical reservation to candidates having lower or lesser financial means. The impugned Schemes are not so but on the other hand,

the impugned schemes remove a bar for the meritorious students to take admission in the colleges of their choice. The Scheme does not lower the merit for economically weaker sections, but it respects the merit for those candidates who are belonging to economically deprived sections and were being forced to forego the colleges, which they got as per their merit and were either being forced to opt for courses of lesser importance or were being made to take a drop of succeeding year so as to explore chance of securing admission in college charging less fees. Therefore, the Schemes in the question are the Schemes to save merit. Hence, the argument of learning counsel for the petitioners that the schemes create unlimited reservation in favor of EWS category is utterly misconceived and is discarded.

23. So far as the issue of the impugned scheme being not a law under Article 13(3)(a) of the Constitution of India is concerned, the said argument also is misconceived, because Article 13 is as under:-

> ***"13. Laws inconsistent with or in derogation of the fundamental rights –***
>
> *(1) All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Pan, shall, to the extent of such inconsistency, be void.*
>
> *(2) The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void.*
>
> *(3) In this article, unless the context otherwise requires,-*
>
> *(a) "law" includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law;*
>
> *(b) "laws in force" includes laws passed or made by Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or*

> *any part thereof may not be then in operation either at all or in particular areas.*
>
> *(4) Nothing in this article shall apply to any amendment of this Constitution made under article 368."*

24. As per Article 13(3)(a) law includes any ordinance, order, bye laws, rule, notification, regulation, custom etc. The impugned schemes have been issued in the name of the Governor of the State and are undisputedly within the Legislative power of the State. Even it is not the case of the petitioners that these are beyond the legislative power of the State. As per Article 162 of the Constitution of India, the executive power of the State extends to the matters with respect to which the legislature of the State has power to frame laws. The impugned scheme therefore is clearly within the power of the State to frame delegated legislation and is authorized as such under Article 162 of the Constitution of India and therefore is a law in terms of Article 13 of the Constitution of India.

25. So far as the argument raised by the petitioner that the impugned scheme hampers the right of the institution to refuse admissions to those candidates, who otherwise are not having financial means to bear the financial burden of peace of the petitioners college is concerned, the said issue is taken up. Learned council for the petitioner had heavily relied on the judgment of the Supreme Court in the case of **T.M.A. Pai Foundation (supra)**. As per the said judgment, five rights of the private non-minority education institutions were recognized in para 50 as under :-

> *"50. The right to establish and administer broadly comprises the following rights:*
> *(a) to admit students;*
> *(b) to set up a reasonable fee structure;*
> *(c) to constitute a governing body;*
> *(d) to appoint staff (teaching and non-teaching); and*
> *(e) to take action if there is dereliction of duty on the part of any employees."*

26. The Constitutional Bench held that the right to establish an education institution can be regulated, but regulatory measures should be to ensure maintenance of proper academic standards *interalia* with various other conditions as laid down in para 54 as under :-

> *"54. The right to establish an educational institution can be regulated; but such regulatory measures must, in general, be to ensure the maintenance of proper academic standards, atmosphere and infrastructure (including qualified staff) and the prevention of maladministration by those in charge of management. The fixing of a rigid fee structure, dictating the formation and composition of a governing body, compulsory nomination of teachers and staff for appointment or nominating students for admissions would be unacceptable restrictions."*

27. The Constitution Bench further held that the objective of regulatory measures should be to ensure excellence in education by holding in para 57 and 59 as under:-

> *"**57.** We, however, wish to emphasize one point, and that is that inasmuch as the occupation of education is, in a sense, regarded as charitable, the Government can provide regulations that will ensure excellence in education, while forbidding the charging of capitation fee and profiteering by the institution. Since the object of setting up an educational institution is by definition "charitable", it is clear that an educational institution cannot charge such a fee as is not required for the purpose of fulfilling that object. To put it differently, in the establishment of an educational institution, the object should not be to make a profit, inasmuch as education is essentially charitable in nature. There can, however, be a reasonable revenue surplus, which may be generated by the educational institution for the purpose of development of education and expansion of the institution.*
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> ***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."*

28. It is further held in the said judgment that education institutions cannot grant admissions on their whims and fancies and must follow some reasonable methodology of admitting students and the rejection of students must not be whimsical or for extraneous reasons. It is further held that

unaided institutions are entitled to autonomy, but at the same time they should not be allowed to discard the principle of merit and also that the Government can frame regulations to ensure fair, transparent and merit based admissions. The Constitution Bench held as under:-

> *"65. The reputation of an educational institution is established by the quality of its faculty and students, and the educational and other facilities that the college has to offer. The private educational institutions have a personality of their own, and in order to maintain their atmosphere and traditions, it is but necessary that they must have the right to choose and select the students who can be admitted to their courses of studies. It is for this reason that in St. Stephen's College case[1] this Court upheld the scheme whereby a cut-off percentage was fixed for admission, after which the students were interviewed and thereafter selected. While an educational institution cannot grant admission on its whims and fancies, and must follow some identifiable or reasonable methodology of admitting the students, any scheme, rule or regulation that does not give the institution the right to reject candidates who might otherwise be qualified according to, say, their performance in an entrance test, would be an unreasonable restriction under Article 19(6), though appropriate guidelines/modalities can be prescribed for holding the entrance test in a fair manner. Even when students are required to be selected on the basis of merit, the ultimate decision to grant admission to the students who have otherwise qualified for the grant of admission must be left with the educational institution concerned. However, when the institution rejects such students, such rejection must not be whimsical or for extraneous reasons.*
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> *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."*

29. When the impugned schemes are examined in juxtaposition to the aforesaid law laid down by the Constitution Bench of Hon'ble Supreme Court, it is seen that the impugned schemes are with laudable objective of preserving merit and to permit in meritorious student to get admission in a college to which he is allotted as per merit. The private medical colleges in the name of autonomy cannot impugn any scheme, which seeks to preserve merit and to remove hurdles on the basis of economic deprivation, because such a law would be in consonance with the constitution ideals of Articles 16(1) of the Constitution of India, which, as held by the Hon'ble Supreme Court in a series of cases, is in itself a separate provision enabling the State to frame laws to create a equality of opportunity to all citizens. The impugned schemes do create equality of opportunity to the citizens having economic deprivation.

30. It has been held by the Supreme Court in a number of cases that provisions of Article 16(1) are independent of reservation provisions as contained in Article 16 (4), which are now further extended by insertion of Article 16 (6) in the Constitution of India with 103rd amendment.

31. Reservations to candidates belonging to reserved categories under various categories of vertical reservation are contained in Articles 15 (4), (5) & (6) and 16 (4), (5) & (6) of the Constitution of India. The said provisions were earlier considered as exceptions to Articles 15(1) and 16(1) of the Constitution of India, which provide equality of opportunity in the matter of public employment and prohibition of discrimination on the various grounds including on the grounds of caste and race, though later there was shift in

perception as Article 16 (1) was perceived as a separate enabling provision in itself.

32. A Constitution Bench of the Supreme Court as far as back in the year 1976 in the case of ***State of Kerala v. N.M. Thomas, (1976) 2 SCC 310*** has held by majority that Article 16(4) seems to be an Exception to Article 16(1), but in fact, it is not a proviso only to Article 16(1), but covers the whole field of Article 16. It was held therein that granting concessions apart from reservations are in the matter of providing equality of opportunity to all citizens in the matters relating to employment and concessions like further chances for passing a test etc. can only be done under Article 16(1) to provide equality in the matters of employment etc., and the Constitution Bench held as under :-

> "7***8.*** *I agree that Article 16(4) is capable of being interpreted as an exception to Article 16(1) if the equality of opportunity visualized in Article 16(1) is a sterile one, geared to the concept of numerical equality which takes no account of the social, economic, educational background of the members of Scheduled Castes and scheduled tribes. If equality of opportunity guaranteed under Article 16(1) means effective material equality, then Article 16(4) is not an exception to Article 16(1). It is only an emphatic way of putting the extent to which equality of opportunity could be carried viz., even up to the point of making reservation.*
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> ***79.*** *The State can adopt any measure which would ensure the adequate representation in public service of the members of the Scheduled Castes and scheduled tribes and justify it as a compensatory measure to ensure equality of opportunity provided the measure does not dispense with the acquisition of the minimum basic qualification necessary for the efficiency of administration.*
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> ***185.*** *In the first place if we read Article 16(4) as an exception to Article 16(1) then the inescapable conclusion would be that Article 16(1) does not permit any classification at all because an express provision has been made for this in clause (4). This is, however, contrary to the basic concept of equality contained in Article 14 which implicitly permits classification in any form provided certain conditions are fulfilled. Furthermore, if no classification can be made under Article 16(1) except reservation contained in clause (4) then the mandate contained in Article 335 would be defeated.*

> ***186.*** *I have already observed that the fundamental guarantees provided by the Constitution have to be read in harmony with the directive principles contained in Part IV. Again if Article 16(4) is deemed to be the only mode of classification, then it would follow that the Constitution permits only one form of classification, namely, reservation and no other form so far as the services are concerned. This will render the concept of equality nugatory and defeat the very purpose which is sought to be achieved by Article 16(1). Equality of opportunity to all citizens does not mean equality to some and inequality to others. As I have already pointed out that in our country there are a large number of backward classes of citizens who have to be granted certain concessions and facilities in order to be able to compete with others. Does it mean that such citizens should be denied these facilities which may not fall under the term "reservation"? Let us take a few instances. A notification provides that all candidates for a particular post must apply before a specified date. A person belonging to a backward class of citizens living in a very remote area gets information late. The Government, however, in case of such a backward class candidate makes a relaxation and extends the date. Can it be said that this has resulted in violation of Article 16(1) because it does not fall within the reservation contemplated by clause (4) of Article 16? It is obvious that the intention of the Government is merely to help the backward class of citizens to apply for the job along with others by condoning the delay for special reasons. Another instance may be where the State makes a relaxation regarding the age in case of backward classes of citizens in view of the farfetched and distant area to which that class of citizens belongs. Lastly let us take the instance of the present case. The clerks belonging to the scheduled castes and tribes were given a further extension of time to pass the test because of their backwardness. They were not exempted from passing the test. This could only be done under Article 16(1) and not under clause (4) of Article 16."*

33. In the case of ***Indra Sawhney v. Union of India*****, 1992 Supp (3) SCC 217,** it was held by the Constitutional Bench by majority that Article 16(4) is not an exception to Article 16(1).

34. After 103rd amendment in 2019, the newly inserted Article 15 (6) creates an exception to Article 19 (1) (g). The schemes were instituted prior to 103rd amendment. However, even irrespective of Article 15 (6), the constitution has ample provisions enabling the State to frame such schemes and as noted by us above, irrespective of Article 15 (6) and 16 (6), which

create reservation for EWS category candidates, such schemes to bring out equality of opportunity could always be framed by exercising powers under Article 16 (1) of the Constitution of India, which is to achieve constitutional goals as contained *interalia* in the preamble of the Constitution as economic justice and equality of opportunity are the constitutional goals, which are enshrined in the preamble itself, in addition to various other provisions of the Constitution that are being considered *infra*.

35. There are certain other provisions of the Constitution, which may be taken note of here. As per Article 38 of the Constitution of India, it is the duty of the State to secure a social order for promotion of welfare of the people and to minimize the inequalities in income status, facilities and opportunities. As per Article 39(b)(e) the provisions are laid down to ensure proper distribution of resources of the community to ensure common good and to ensure health and strength of workers, men and women and to ensure that citizens are not forced by economic necessity to enter vocations unsuited to their age or strength.

36. Further by Article 41, the State is under obligation to make effective provisions of right to work, right to education and public assistance subject to limits of its economic capacity and further by virtue of Article 47 the duty of the State is to raise the level of nutrition and to improve public health. The relevant provisions are as under :-

> ***"38. State to secure a social order for the promotion of welfare of the people.—***
>
> *(1)] The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.*
>
> *[(2) The State shall, in particular, strive to minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.]*
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> ***39. Certain principles of policy to be followed by the State.—The State shall, in particular, direct its policy towards securing—***
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> *(a) that the citizens, men and women equally, have the right to an adequate means of livelihood;*

> ***(b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;***
> *(c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;*
> *(d) that there is equal pay for equal work for both men and women;*
> ***(e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength***
> *(f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.*
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> ***41. Right to work, to education and to public assistance in certain cases.—*** *The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.*
>
> ***47. Duty of the State to raise the level of nutrition and the standard of living and to improve public health.—*** *The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health."*

37. The schemes when examined from the aforesaid perspective lead to a conclusion that the schemes are having twin objectives, both of which are laudable and within limits of Constitutional powers and to achieve Constitutional goals. Firstly, to preserve merit, enabling meritorious economically deprived students to take admission in colleges as per their merit and to achieve equality of opportunity and economic justice, and secondly to ensure that meritorious students take admission in medical colleges so that the society would have better doctors and the meritorious persons being able to take admissions would only lead to betterment of standard of public health. Therefore, the twin objectives would be achieved by operation of the said schemes.

38. The schemes when considered from the aforesaid prospective do not lead to any conclusion that the aforesaid schemes are amounting to any

disproportionate limitations on constitutional rights. It is well settled that democracy is based on balance between public interest in constitutional rights and the State having power and competence to balance constitutional rights in public interest, which has been upheld in the case of **Modern Dental College (supra)**, which we will discuss infra.

39. So far as the argument raised by the petitioners that by operation of the scheme, those students would take admission, who are otherwise not financially competent to take admission and in case of dropouts after one or two years, the colleges will face loss of fees of those students. The aforesaid argument though is very attractive in the first flush, but has no basis in law and on facts. If a lesser meritorious student takes admission in a college having high fees and is having to pay fees out of his own pocket, then the probabilities of dropouts would be more in case he is unable to cope up with academic pressure. However, if a meritorious student takes admission and not having to pay fees from his own pocket, the possibility and probability of drop-out would be less.

40. When a meritorious student, who is not having to pay fees out of his own pocket and looking to his economic deprivation, the State is bearing his fees, then the only natural consequence would be that the said meritorious student would be having better probability to complete the course, because there will be lesser chances of failing the examination and higher chances of completing the course. Therefore, the argument that the impugned scheme would lead to more dropouts has to be rejected. At the time of arguments, we put a query to learned counsel for the petitioner that how many dropouts have taken place in this manner of the students, who are admitted under the impugned scheme, then learned counsel for the petitioner was unable to answer this query and also unable to answer whether there is a difference between dropout rates of students admitted under this scheme or students

admitted outside this scheme. Therefore, this argument is only to be discarded.

41. The other arguments, which were raised to impugn the constitutionality of the scheme have been considered in detail by the Constitution Bench of the Supreme Court, which we will discuss below.

42. Initially the view of the Hon'ble Supreme Court was in favour of greater autonomy of Medical Education Institutes and even the validity of NEET examination was negated in the case of **Christian Medical College vs. Union of India, reported in (2014) 2 SCC 305**. The Hon'ble Supreme Court held that it amounts to over regulation and disproportionate restriction on the rights of private medical institution.

43. Later on the said judgment was recalled in the case of **Medical Council of India v. Christian Medical College, reported in (2016) 4 SCC 342** and ultimately the entire law was reconsidered by Constitution Bench in the case of **Modern Dental College & Research Centre v. State of M.P., reported in (2016) 7 SCC 353**.

44. In the case of **Modern Dental College (supra)** the concept of permissible limitations and constitutional rights was considered in paragraph 62 and it was held that democracy is based on balance between public interest and constitutional rights. It was held that though certain guarantees are laid down under Article 19(1) of the Constitution of India but at the same time Constitution empowers the State to impose reasonable restrictions on those freedoms in public interest under Articles 19(2) to 19(6) of the Constitution which accepts the modern theory that constitutional rights are related. It is further held in the aforesaid judgment that the right to admit students does not mean that there can be whims and fancies of the institution concerned and though management of private institution may be an occupation but it certainly not business or profession and that admission has

to be on merits only and a great thrust was made for preserving merit. The Constitution Bench also considered the judgment of earlier constitution Bench in the case of **T.M.A. Pai (supra)** and upheld the theory that when it comes to higher education i.e. professional institutions then merits has to be the sole criteria as laid down in para-58 in the case of **T.M.A. Pai (supra)**. The constitutional Bench further held that merit is to be adjudged suitably and appropriately, the admission process should be so devised, which satisfies the triple test of being fair, transparent and non-exploitative. The constitution Bench further went on to hold that merit cannot be compromised and that State run admission test as being conducted by the State of M.P. were held valid. The matter was examined from the angle of proportionality and held that extent of restriction has to be viewed keeping in view the factors in the larger interest of welfare of student community and to promote merit, and aid excellence among other needs. It was held that extent of restriction has to be viewed keeping in view all these factors and the impugned provisions were held not amounting to restriction on the right of the Colleges to carry out the occupation and were held to have satisfied the test of proportionality. The Constitution Bench held as under:-

> ***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 [T.M.A. Pai Foundation v. State of Karnataka, (2002) 8 SCC 481 : 2 SCEC 1] , which includes holding of CET. It is to be ensured

39. *Having recognised it as an "occupation" and giving the status of a fundamental right, the Court delineated four specific rights which encompass right to occupation, namely:*

(i) a right to admit students;

(ii) a right to set up a reasonable fee structure;

(iii) a right to appoint staff (teaching and non-teaching); and

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

In view of the aforesaid recognition of the right to admit the students and a right to set up a reasonable fee structure treating as part of occupation which is recognised as fundamental right under Article 19(1)(g) of the Constitution, the appellants have easily crossed the initial hurdle. Here comes the second facet of this issue viz. — what is the scope of this right of occupation?

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 [T.M.A. Pai Foundation v. State of Karnataka, (2002) 8 SCC 481 : 2 SCEC 1] . 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.*

41. *Ms Vibha Datta Makhija is right in her submission that the significant feature of T.M.A. Pai Foundation [T.M.A. Pai Foundation v. State of Karnataka, (2002) 8 SCC 481 : 2 SCEC 1] is that it expounded on the nature and extent of its control on the basis of level of education. When it comes to higher education, that too in professional institutions, merit has to be the sole criteria. This is so explained in para 58 of the judgment which reads as under: (SCC pp. 545-46)*

"58. For admission into any professional institution, merit must play an important role. While it may not be normally possible to judge the merit of the applicant who seeks admission into a school, while seeking admission to a professional institution and to become a competent professional, it is necessary that meritorious candidates are not unfairly treated or put at a disadvantage by preferences shown to less meritorious but more influential applicants. Excellence in professional education would require that greater emphasis be laid on the merit of a student seeking admission. Appropriate regulations for this purpose may be made keeping in view the other observations made in this judgment in the context of admissions to unaided institutions."

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 [T.M.A. Pai Foundation v. State of Karnataka, (2002) 8 SCC 481 : 2 SCEC 1] , 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.

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.

53. *After referring to paras 136 and 137 in P.A. Inamdar [P.A. Inamdar v. State of Maharashtra, (2005) 6 SCC 537 : 2 SCEC 745] , it was observed: (Assn. of Private Dental case [Assn. of Private Dental and Medical Colleges v. State of M.P., 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 [P.A. Inamdar v. State of Maharashtra, (2005) 6 SCC 537 : 2 SCEC 745] , 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 [T.M.A. Pai Foundation v. State of Karnataka, (2002) 8 SCC 481 : 2 SCEC 1] and P.A. Inamdar [P.A. Inamdar v. State of Maharashtra, (2005) 6 SCC 537 : 2 SCEC 745] , 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 [T.M.A. Pai Foundation v. State of Karnataka, (2002) 8 SCC 481 : 2 SCEC 1] and P.A. Inamdar [P.A. Inamdar v. State of Maharashtra, (2005) 6 SCC 537 : 2 SCEC 745] , 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."

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 [T.M.A. Pai Foundation v. State of Karnataka, (2002) 8 SCC 481 : 2 SCEC 1] . 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 [T.M.A. Pai Foundation v. State of Karnataka, (2002) 8 SCC 481 : 2 SCEC 1] itself, as a measure of "reasonable restriction on the said right". Islamic Academy of Education [Islamic Academy of Education v. State of Karnataka, (2003) 6 SCC 697 : 2 SCEC 339] further clarified the contour of such function of the State while interpreting T.M.A. Pai Foundation [T.M.A. Pai Foundation v. State of Karnataka, (2002) 8 SCC 481 : 2 SCEC 1] 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 [P.A. Inamdar v. State of Maharashtra, (2005) 6 SCC 537 : 2 SCEC 745] 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.*
>
> ***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.*

45. The constitution Bench further considered the judgment in the case of **P.A. Inamdar v. State of Maharashtra, reported in (2005) 6 SCC 537** and held that such rights can be regulated to ensure maintenance of proper

academic standards, atmosphere etc. In the present case the impugned schemes are with a laudable purpose to enable meritorious students to get admission in colleges as per choice and as per the merits of the student concerned.

46. The aforesaid judgment was considered further by the Supreme Court in the case of **Christian Medical College Vellore vs. Union Of India reported in (2020) 8 SCC 705**. In the aforesaid case it was held that merit based selection is in national interest and even if private unaided institutions have right to administer the institutions, it cannot be done in such way that will defeat merit. It was held that reasonable restriction can be imposed in that education is not a trade nor a profession and reasonableness of provisions of restriction can be assessed by the Court. However, as we have already noted above in the present case even no restrictions are placed on the education institution but only merit is being preserved by reimbursing the entire fees of those students which will be by the State Government and the institution shall be getting the entire fees that is fixed by the Admission and Fees Regulatory Committee, not putting it to any loss or prejudice whatsoever.

47. It is further held by the Supreme Court in the case of **Christian Medical College (supra)** that it is duty of the State to provide health care and improve public health so as to ensure doctors with professional excellence enter the society which is in the larger interest of the nation which is more important then rights of private medical colleges in the name of autonomy. It is further held that the concept of limited government and least interference is welcome but national interest would always have priority over such a right.

> ***"21.*** *In Kerala Education Bill, 1957, In re [Kerala Education Bill, 1957, In re, AIR 1958 SC 956 : 1959 SCR 995] , question*

arose concerning right of the Government to prescribe qualification to be possessed by the incumbents for appointment as teachers in aided or recognised 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 recognised. The Court held thus: (AIR pp. 981-84, paras 29 & 31)

"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 (Clause 5). The fixed assets of the aided schools are frozen and cannot be dealt with except with the permission of the authorised officer (Clause 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 (Clause 7). All fees, etc. collected will have to be made over to the Government [Clause 8(3)]. Government will take up the task of paying the teachers and the non-teaching staff (Clause 9). Government will prescribe the qualification of teachers (Clause 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 (Clause 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 (Clause 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 Article 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 Article 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 Article 30(1) gives two rights to the minorities, (1) to establish and (2) to administer educational institutions of their choice. 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. ... Clauses 6, 7, 9, 10, 11, 12, 14, 15, and 20 relate to the management of aided schools. Some of these provisions e.g. Clauses 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 Clause 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-clause (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 Clause 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 Clauses 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 Clauses 14 and 15 of the said Bill as mere regulations. The provisions of those clauses may be totally destructive of the rights under Article 30(1). It is true that the right to aid is not implicit in Article 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 Article 30(1) of the Constitution. The learned counsel for the State of Kerala recognises that Clauses 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 Clause 3(5), made subject to all the provisions of the Act. Therefore, in a discussion as to the constitutional validity of Clause 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 Clause 3(5). In our opinion, sub-clause (3) of Clause 8 and Clauses 9, 10, 11, 12 and 13 being merely regulatory do not offend Article 30(1), but the provisions of sub-clause (5) of Clause 3 by making the aided educational institutions subject to Clauses 14 and 15 as conditions for the grant of aid do offend against Article 30(1) of the Constitution."

22. *In Sidhrajbhai Sabbai v. State of Gujarat [Sidhrajbhai Sabbai v. State of Gujarat, (1963) 3 SCR 837 : AIR 1963 SC 540] , 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 W. Proost v. State of Bihar [W. Proost v. State of Bihar, AIR 1969 SC 465 : (1969) 2 SCR 73] , the Court observed thus: (AIR pp. 468-69, para 8)*

"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."

32. *In T.M.A. Pai Foundation [T.M.A. Pai Foundation v. State of Karnataka, (2002) 8 SCC 481 : 2 SCEC 1] , 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) are 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/bodies concerned to frame regulations with respect to affiliation and recognition, to provide a proper academic atmosphere. While answering Question 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.*

33. *In Brahmo Samaj Education Society v. State of W.B. [Brahmo Samaj Education Society v. State of W.B., (2004) 6 SCC 224 : 2 SCEC 618] , the Court opined that the 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 [T.M.A. Pai Foundation v. State of Karnataka, (2002) 8 SCC 481 : 2 SCEC 1] 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 [Brahmo Samaj Education Society v. State of W.B., (2004) 6 SCC 224 : 2 SCEC 618] , 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.

34. *This Court in P.A. Inamdar [P.A. Inamdar v. State of Maharashtra, (2005) 6 SCC 537 : 2 SCEC 745] also considered the difference between professional and non-professional educational institutions, thus: (SCC pp. 594-96, paras 104-107)*

"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 [T.M.A. Pai Foundation v. State of Karnataka, (2002) 8 SCC 481 : 2 SCEC 1] , 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 [T.M.A. Pai Foundation v. State of Karnataka, (2002) 8 SCC 481 : 2 SCEC 1] , 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 [T.M.A. Pai Foundation v. State of Karnataka, (2002) 8 SCC 481 : 2 SCEC 1] , 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 [T.M.A. Pai Foundation v. State of Karnataka, (2002) 8 SCC 481 : 2 SCEC 1] .) 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 [Islamic Academy of Education v. State of Karnataka, (2003) 6 SCC 697 : 2 SCEC 339] , 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 [T.M.A. Pai Foundation v. State of

Karnataka, (2002) 8 SCC 481 : 2 SCEC 1] . 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 [Islamic Academy of Education v. State of Karnataka, (2003) 6 SCC 697 : 2 SCEC 339] ."

35. *Dealing with unaided minority educational institutions in T.M.A. Pai Foundation [T.M.A. Pai Foundation v. State of Karnataka, (2002) 8 SCC 481 : 2 SCEC 1] , 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.*

36. *In Sindhi Education Society v. State (NCT of Delhi) [Sindhi Education Society v. State (NCT of Delhi), (2010) 8 SCC 49 : (2010) 2 SCC (L&S) 522 : 3 SCEC 743] , 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: (SCC pp. 73, 76-77 & 100-101, paras 47, 55-56 & 92)*

"47. Still another seven-Judge Bench of this Court, in Ahmedabad St. Xavier's College Society [Ahmedabad St. Xavier's College Society v. State of Gujarat, (1974) 1 SCC 717 : 1 SCEC 125] , 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.

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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.

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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."

37. *In Chandana Das v. State of W.B. [Chandana Das v. State of W.B., (2015) 12 SCC 140 : 7 SCEC 248] , the Court observed that the Government can frame the conditions of eligibility for appointment of such teachers, thus: (SCC p. 155, para 21)*

"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."

38. *In Modern Dental College & Research Centre [Modern Dental College & Research Centre v. State of M.P., (2016) 7 SCC 353 : 7 SCEC 1] , 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 about social transformation and upliftment of the nation****.*

38.1. *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.*

38.3. *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: (Modern Dental College & Research Centre case [Modern Dental College & Research Centre v. State of M.P., (2016) 7 SCC 353 : 7 SCEC 1] , SCC pp. 411-15, paras 57-64)*

"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 [Per Sikri, J.— Though, debate on this vexed issue still continues and some constitutional experts claim that there are certain rights, albeit very few, which can still be treated as "absolute". Examples given are: (a) Right to human dignity which is inviolable, (b) Right not to be subjected to torture or to inhuman or degrading treatment or punishment. Even in respect of such rights, there is a thinking that in larger public interest, the extent of their protection can be diminished. However, so far such attempts of the States have been thwarted by the judiciary.] and all such rights are related. As per the analysis of Aharon Barak [Aharon Barak, Proportionality: Constitutional Rights and Their Limitation (Cambridge University Press, 2012).] , two key elements in developing the modern constitutional theory of recognising positive constitutional rights along with its limitations are the notions of democracy and the rule of law. Thus, the requirement of proportional limitations of constitutional rights by a sub-constitutional law i.e. the statute, is derived from an interpretation of the notion of democracy itself. Insofar as the Indian Constitution is concerned, democracy is treated as the basic feature of the Constitution and is specifically accorded a constitutional status that is recognised in the Preamble of the Constitution itself. It is also unerringly accepted that this notion of democracy includes human rights which is the cornerstone of Indian democracy. Once we accept the aforesaid theory (and there cannot be any denial thereof), as a fortiori, it has also to be accepted that democracy is based on a balance between constitutional rights and the public interests. In fact, such a provision in Article 19 itself on the one hand guarantees some

certain freedoms in clause (1) of Article 19 and at the same time empowers the State to impose reasonable restrictions on those freedoms in public interest. This notion accepts the modern constitutional theory that the constitutional rights are related. This relativity means that a constitutional licence to limit those rights is granted where such a limitation will be justified to protect public interest or the rights of others. This phenomenon—of both the right and its limitation in the Constitution—exemplifies the inherent tension between democracy's two fundamental elements. On the one hand is the right's element, which constitutes a fundamental component of substantive democracy; on the other hand is the people element, limiting those very rights through their representatives. These two constitute a fundamental component of the notion of democracy, though this time in its formal aspect. How can this tension be resolved? The answer is that this tension is not resolved by eliminating the "losing" facet from the Constitution. Rather, the tension is resolved by way of a proper balancing of the competing principles. This is one of the expressions of the multi-faceted nature of democracy. Indeed, the inherent tension between democracy's different facets is a "constructive tension". It enables each facet to develop while harmoniously coexisting with the others. The best way to achieve this peaceful coexistence is through balancing between the competing interests. Such balancing enables each facet to develop alongside the other facets, not in their place. This tension between the two fundamental aspects—rights on the one hand and its limitation on the other hand—is to be resolved by balancing the two so that they harmoniously coexist with each other. This balancing is to be done keeping in mind the relative social values of each competitive aspect when considered in proper context.

63. In this direction, the next question that arises is as to what criteria is to be adopted for a proper balance between the two facets viz. the rights and limitations imposed upon it by a statute. Here comes the concept of "proportionality", which is a proper criterion. To put it pithily, when a law limits a constitutional right, such a limitation is constitutional if it is proportional. The law imposing restrictions will be treated as proportional if it is meant to achieve a proper purpose, and if the measures taken to achieve such a purpose are rationally connected to the purpose, and such measures are necessary. This essence of doctrine of proportionality is beautifully captured by Dickson, C.J. of Canada in R. v. Oakes [R. v. Oakes, 1986 SCC OnLine Can SC 6

: (1986) 1 SCR 103] in the following words (at p. 138): (SCC OnLine Can SC paras 69-71)

69. 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 ...

70. 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".

71. ... 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."

***38.4.** In Modern Dental College & Research Centre [Modern Dental College & Research Centre v. State of M.P., (2016) 7 SCC 353 : 7 SCEC 1] , the Court, while dealing with reasonable restriction on rights under Article 19 observed: (SCC pp. 415-16, para 65)*

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

between the freedom guaranteed by any of the sub-clauses of clause (1) of Article 19 and the social control permitted by any of the clauses (2) to (6). It is held that the expression "reasonable" connotes that the limitation imposed on a person in the enjoyment of the right should not be arbitrary or of an excessive nature beyond what is required in the interests of public. Further, in order to be reasonable, the restriction must have a reasonable relation to the object which the legislation seeks to achieve, and must not go in excess of that object (see P.P. Enterprises v. Union of India [P.P. Enterprises v. Union of India, (1982) 2 SCC 33 : 1982 SCC (Cri) 341]). At the same time, reasonableness of a restriction has to be determined in an objective manner and from the standpoint of the interests of the general public and not from the point of view of the persons upon whom the restrictions are imposed or upon abstract considerations (see Mohd. Hanif Quareshi v. State of Bihar [Mohd. Hanif Quareshi v. State of Bihar, AIR 1958 SC 731]). In MRF Ltd. v. State of Kerala [MRF Ltd. v. State of Kerala, (1998) 8 SCC 227 : 1999 SCC (L&S) 1] , 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."

38.7. *The Court also took note of prevailing situation of corruption in the field of education and commercialisation of education thus: (Modern Dental College & Research Centre case [Modern Dental College & Research Centre v. State of M.P., (2016) 7 SCC 353 : 7 SCEC 1] , SCC pp. 416-17, 425, 428, 465 & 473, paras 68, 86, 96, 172 & 190)*

"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.

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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.*

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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.

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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.***

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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 with the directions and observations in T.M.A. Pai [T.M.A. Pai Foundation v. State of Karnataka, (2002) 8 SCC 481 : 2 SCEC 1], Islamic Academy of Education [Islamic Academy of Education v. State of Karnataka, (2003) 6 SCC 697 : 2 SCEC 339] and P.A. Inamdar [P.A. Inamdar v. State of Maharashtra, (2005) 6 SCC 537 : 2 SCEC 745] . 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 [Assn. of Private Dental & Medical Colleges v. State of M.P., 2009 SCC OnLine MP 760] .”

54. *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 & Research Centre [Modern Dental College & Research Centre v. State of M.P., (2016) 7 SCC 353 : 7 SCEC 1] . What has been held therein for State-level examination holds good for NEET also.*
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> (Emphasis supplied)

Apart from the above, in para-31, the Constitutional Bench also dealt with the consideration on all relevant issues made by the 11-judges Constitution Bench in **T.M.A. Pai (supra)** in detail in paragraphs 3, 38, 40, 45, 50, 53, 68, 71, 90, 93, 105 to 107, 119-23, 135-39, 144, 151 to 152 & 161 thereof.

48. In view of the above, we have no hesitation in upholding the constitutionality of the impugned schemes which are framed with a laudable objective of promoting merit in medical colleges in the State, have a rational nexus with a lawful and Constitutional object, and are not found disproportionate in any manner.

49. Now coming to the alternative argument of the counsel for the petitioner that there are some provisions in the scheme that are creating hurdles for the medical colleges and also that the State is not timely reimbursing the fees, we embark on consideration on those aspects.

50. So far as the issue of direct remittance of fee in the account of educational institution is concerned, it has been explained by the State that

there were various instances which were being detected when earlier fees were being reimbursed directly to the account of the colleges and there uses to be instances when students used to take admissions in number of Colleges as per their qualification in examination of class-12 and then draw scholarship of first year or fees reimbursement of first year in all those colleges and then continue education only in one of the colleges for the succeeding year. By paying the fees directly to the college, monitoring of such type of malpractices is not possible and the consistent practice now is to remit fees to the accounts of students which is in case of remittance of fee or even in case of scholarship, both to ensure prevention of malpractices of one student drawing multiple reimbursement for scholarship. We do not find any illegality in the said clause of the scheme which provides for reimbursement of fees directly in the account of the students.

51. However, there seems to some force in the contention of the petitioner that the fees when remitted to the account of the students, most often it is utilized by the students for its own purposes and is remitted only at the time of examination when the college has no option but to withhold admit cards for want of payment of fees. However, no instance was pointed out to this Court where students in private medical college of the petitioner have pocketed the fees and not deposited to the College at all, all that was argued that the fees was paid by student with delay. However, this would require some directions in the matter.

52. The other issue raised was that as per clause 4.1 of the MMJKY Scheme-2018 if a student fails in a single year he would be out of purview of the scheme. We cannot lose sight of the fact that there may be genuine contingencies like a student falling ill at the time of admission, meeting with an accident at the time of admission or any other contingencies on account

of which either he cannot take the examination or fails in the examination though he may be meritorious. Otherwise there is no reason why a student having merit would leave course in mid way even when he is being funded by the State Government and does not have to bear the fees itself. Therefore, some directions are needed on this issue also.

53. The third issue raised was matter of late remittance of fees. It is brought on record that there have been late remittances of fees since a long time and it is admitted by counsel for State before us that in case of petitioner even on 17.02.2025 for the session 2023-24 almost 40% of the fees is balance to be paid and no amount has been paid at all for the session 2024-25. We note that the private medical colleges have to bear their expenses from their own resources and late payment of fees would harm and damage their interest to some extent and some directions needs to be issued in that matter also.

54. Therefore, while dismissing the petition as to legality of Schemes i.e. MMMVY and MMJKY Schemes, we issue the following directions:-

(i) The students would not come out of purview of the scheme as per clause 4.1 automatically and once the student passes the next examination, the State would be required to take note of the representation to be submitted by the students through the college mentioning the reasons on account of which he failed in a particular examination and if the reasons are found to be genuine like accident, illness or death in the family etc. or the like unforeseen situations, then his coverage under the Scheme shall be continued.

(ii) The State shall ensure remittance of first year fees within three months of close of admission for that particular year

and ensure remittance of fees of succeeding years within three months of declaration of result of having passed previous year and having received information from the college concerned about the student having started to attend classes of the next year.

(iii) So far as the issue of fees being remitted directly in the bank account of the students is concerned, the aforesaid system has already been upheld as to be reasonable. However, to smoothen out the difficulties faced in application of the said scheme, we direct that the fees would be remitted in a joint account to be opened by the students alongwith the institution which would be e-Aadhar verified (of the student) and debits from the said account would not be permitted to the students but only be permitted to the institution and the said account would not be enabled for online transactions and UPI transactions, nor issued with ATM/Debit cards.

55. With the aforesaid directions, upholding the validity of the impugned Schemes, the petition is **disposed of.**

(SURESH KUMAR KAIT)
CHIEF JUSTICE

(VIVEK JAIN)
JUDGE

Nks/ /RJ/ MISHRA