Christian Medical College, Vellore Vs. Union of India and Ors.

[T.C. (C) No.98 of 2012]

[T.C. (C) No.99//2013]

[T.C. (C) No.101//2013]

[T.C. (C) No.100//2013]

[T.C. (C) No.102//2013]

[T.C. (C) No.103//2013]

[W.P. (C) No.480//2013]

[T.C. (C) No.104//2013]

[T.C. (C) No.105//2013]

[W.P. (C) No.468//2013]

[W.P. (C) No.467//2013]

[W.P. (C) No.478//2013]

[T.C. (C) No.107//2013]

[T.C. (C) No.108//2013]

[W.P. (C) No.481//2013]

[W.P. (C) No.464//2013]

[T.C. (C) No.110//2013]

[T.C. (C) Nos.132-134//2013]

[T.C. (C) Nos.117-118//2013]

[T.C. (C) Nos.115-116//2013]

[T.C. (C) Nos.125-127//2013]

[T.C. (C) Nos.113-114//2013]

[T.C. (C) Nos.128-130//2013]

[T.C. (C) Nos.121-122//2013]

[T.C. (C) No.112//2013]

[T.C. (C) No.131//2013]

[T.C. (C) Nos.123-124//2013]

[T.C. (C) No.111//2013]

[T.C. (C) No.120//2013]

[T.C. (C) No.119//2013]

[T.C. (C) Nos.135-137//2013]

[T.C. (C) Nos.138-139//2013]

[W.P. (C) No.495//2013]

[W.P. (C) No.511//2013]

[W.P. (C) No.512//2013]

[W.P. (C) No.514//2013]

[W.P. (C) No.516//2013]

[W.P. (C) No.519//2013]

[W.P. (C) No.535//2013]

[T.C. (C) No.142//2013] @ T.P. (C) No.364//2013]

[W.P. (C) No.544//2013]

[W.P. (C) No.546//2013]

[W.P. (C) No.547//2013]

[T.C. (C) No.144//2013] @ T.P. (C) No.1524//2013] & 1447//2013]

[T.C. (C) No.145//2013]

[T.C. (C) No.1/2013] @ T.P. (C) No.1527//2013]

[T.C. (C) Nos.14-15/2013] @ T.P. (C) Nos.1672-1673//2013]

[T.C. (C) No.76/2013] @ T.P. (C) No.1702//2013]

[T.C. (C) No.12-13/2013]

[T.C. (C) No.4/2013][T.C. (C) No.11/2013]

[T.C. (C) Nos.21-22/2013] @ T.P. (C) No.1714-1715//2013]

[T.C. (C) No.5/2013] @ T.P. (C) No.1718//2013]

[W.P. (C) No.2/2013]

[W.P. (C) No.1/2013]

[T.C. (C) No.60/2013] @ T.P. (C) No.12/2013]

[W.P. (C) No.13/2013]

[W.P. (C) No.15/2013]

[W.P. (C) No.16/2013]

[W.P. (C) No.20/2013]

[T.C. (C) No...../2013] @ T.P. (C) No.31/2013]

[T.C. (C) No.2/2013] @ T.P. (C) No.1532//2013]

[T.C. (C) No.8/2013]

[T.C. (C) No.3/2013] @ T.P. (C) No.1533//2013]

[W.P. (C) No.24/2013]

[T.C. (C) No.9/2013]

[T.C. (C) No.17/2013] @ T.P. (C) No.1588//2013]

[W.P. (C) No.483//2013]

[W.P. (C) No.501//2013]

[W.P. (C) No.502//2013]

[W.P. (C) No.504//2013]

[W.P. (C) No.507//2013]

[T.C. (C) No.10/2013]

[T.C. (C) No.7/2013] @ T.P. (C) No.1644//2013]

[T.C. (C) No.18/2013] @ T.P. (C) No.1645//2013]

[T.C. (C) No.75/2013] @ T.P. (C) No.1647//2013]

[T.C. (C) No.19/2013] @ T.P. (C) No.1653//2013]

[T.C. (C) No.20/2013] @ T.P. (C) No.1654//2013]

[T.C. (C) No.59/2013] @ T.P. (C) No.1656//2013]

[T.C. (C) No.53/2013] @ T.P. (C) No.1658//2013]

[T.C. (C) No.25/2013] @ T.P. (C) No.1671//2013]

[T.C. (C) No.23-24/2013] @ T.P. (C) No.1697-1698//2013]

[T.C. (C) No.58/2013] @ T.P. (C) No.1/2013]

[W.P. (C) No.27/2013]

[T.C. (C) No.72/2013] @ T.P. (C) No.58/2013]

[T.C. (C) No.16/2013][T.C. (C) No.61/2013]

[T.C. (C) No.73/2013] @ T.P. (C) No.75/2013]

[T.C. (C) No...../2013] @ T.P. (C) No.79/2013]

[T.C. (C) No.62/2013]

[W.P. (C) No.47/2013]

[T.C. (C) No.28-29/2013]

[T.C. (C) No.30/2013]

[T.C. (C) No.31-32/2013]

[T.C. (C) No.33-36/2013]

[T.C. (C) No.37-38/2013]

[T.C. (C) No.39/2013]

[T.C. (C) No.40/2013]

[T.C. (C) No.41/2013]

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[T.C. (C) No.43/2013]

[T.C. (C) No.44/2013]

[T.C. (C) No.45/2013]

[T.C. (C) No.46/2013]

[T.C. (C) No.47/2013]

[T.C. (C) No.48/2013]

[T.C. (C) No.49/2013]

[W.P. (C) No.66/2013]

[W.P. (C) No.76/2013]

[W.P. (C) No.74/2013]

[T.C. (C) Nos.63-65/2013]

[T.C. (C) Nos.66-69/2013]

[T.C. (C) Nos.70-71/2013]

[W.P. (C) No.41/2013]

[W.P. (C) No.228/2013]

ALTAMAS KABIR, CJI.

1. Four notifications, two dated 21.12.2010 and the other two dated 31.5.2012, issued by the Medical Council of India and the Dental Council of India, are the subject matter of challenge in all these matters which have been heard together by us. Notification No. MCI-31(1)/2010-MED/49068 described as "Regulations on Graduate Medical Education (Amendment) 2010,(Part II)" has been published by the Medical Council of India to amend the "Regulations on Graduate Medical Education, 1997". Notification No MCI. 18(1)/2010-MED/49070 described as "Post-graduate Medical Education(Amendment) Regulation, 2010 (Part II)" has been issued by the said Council to amend the "Post Graduate Medical Education Regulations, 2000". Both the Regulations came into force simultaneously on their publication in the Official Gazette. The third and fourth Notifications both bearing No. DE-22-2012 dated 31.5.2012, relating to admission in the BDS and MDS courses published by the Dental Council of India are similar to the notifications published by the MCI.

2. The four aforesaid Notifications have been challenged on several grounds. The major areas of challenge to the aforesaid Notifications are:

i. The powers of the Medical Council of India and the Dental Council of India to regulate the process of admissions into medical colleges and institutions run by the State Governments, private individuals (aided and unaided), educational institutions run by religious and linguistic minorities, in the guise of laying down minimum standards of medical education, as provided for in Section 19A of the Indian Medical Council Act, 1956, and under Entry 66 of List I of the Seventh Schedule to the Constitution.

ii. Whether the introduction of one National Eligibility-cum-Entrance Test (NEET) offends the fundamental right guaranteed to any citizen under Article 19(1)(g) of the Constitution to practise any profession or to carry on any occupation, trade or business?

iii. Whether NEET violates the rights of religious and linguistic minorities to establish and administer educational institutions of their choice, as guaranteed under Article 30 of the Constitution?

iv. Whether subordinate legislation, such as the right to frame Regulations, flowing from a power given under a statute, can have an overriding effect over the fundamental rights guaranteed under Articles 25, 26, 29(1) and 30 of the Constitution?

v. Whether the exclusion of Entry 11 from the State List and the introduction of Entry 25 in the Concurrent List by the Constitution Forty Second (Amendment) Act, 1976, makes any difference as far as the Regulations framed by the Medical Council of India under Section 33 of the 1956 Act and those framed by the Dental Council of India under Section 20 of the Dentists Act, 1948, are concerned, and whether such Regulations would have primacy over State legislation on the same subject?

vi. Whether the aforesaid questions have been adequately answered in T.M.A. Pai Foundation Vs. State of Karnataka [(2002) 8 SCC 481], and in the subsequent decisions in Islamic Academy of Education Vs. State of Karnataka [(2003) 6 SCC 697], P.A. Inamdar Vs. State of Maharashtra [(2005) 6 SCC 537] and Indian Medical Association Vs. Union of India [(2011) 7 SCC 179]? And

vii. Whether the views expressed by the Constitution Bench comprised of Five Judges in Dr. Preeti Srivastava Vs. State of M.P. [(1999) 7 SCC 120] have any impact on the issues raised in this batch of matters?

3. In order to appreciate the challenge thrown to the fournotifications, it is necessary to understand the functions and duties of the Medical Council of India under the Indian Medical Council Act, 1956,and the Dental Council of India constituted under the Dentists Act, 1948.The submissions advanced in regard to the MBBS and Post-graduate courses will apply to the BDS and MDS courses also.

4. The Indian Medical Council Act, 1933, was replaced by the Indian Medical Council Act, 1956, hereinafter referred to as "the 1956 Act", interalia, with the following objects in mind :-

a. "to give representation to licentiate members of the medical profession, a large number of whom are still practicing in the country;

b. (b) to provide for the registration of the names of citizens of India who have obtained foreign medical qualifications which are not at present recognized under the existing Act;

c. to provide for the temporary recognition of medical qualifications granted by medical institutions in countries outside India with which no scheme of reciprocity exists in cases where the medical practitioners concerned are attached for the time being to any medical institution in India for the purpose of teaching or research or for any charitable objects;

d. to provide for the formation of a Committee of Post- graduate Medical Education for the purpose of assisting the Medical Council of India to prescribe standards of post-graduate medical education for the guidance of universities and to advise universities in the matter of securing uniform standards for post-graduate medical education throughout India;

e. To provide for the maintenance of an all-India register by the Medical Council of India, which will contain the names of all the medical practitioners possessing recognized medical qualifications?

5. "The Medical Council of India, hereinafter referred to as "MCI", has been defined in Section 2(b) of the 1956 Act to mean the Medical Council of India constituted under the said Act. The Council was constituted under Section 3 of the Indian Medical Council Act, 1956. Section 6 of the aforesaid Act provides for the incorporation of the Council as a body corporate by the name of Medical Council of India, having perpetual succession and a common seal, with power to acquire and hold property, both movable and immovable, and to contract, and to sue and be sued by the said name.

6. The powers vested in the MCI are essentially recommendatory in nature. Section 10A, which was introduced in the 1956 Act by Amending Act31 of 1993, with effect from 27th August, 1992, inter

alia, provides that notwithstanding anything contained in the Act or any other law for the time being in force:-

a. no person shall establish a medical college; or

b. no medical college shall :-

i. Open a new or higher course of study or training(including a postgraduate course of study or training) which would enable a student of such course or training to qualify himself for the award of any recognised medical qualification; or

ii. Increase its admission capacity in any course of study or training (including a postgraduate course of study or training), except with the previous permission of the Central Government obtained in accordance with the provisions of this section. Under Section 10A the function of the MCI is purely recommendatory for the purpose of grant of permission by the Central Government to establish a new medical college or to introduce a new course of study.

7. Section 19A which was introduced into the 1956 Act by Act 24 of1964 with effect from 16th June, 1964, provides for the Council to prescribe "minimum standards of medical education". Since Section 19A will have some bearing on the judgment itself, the same is extracted herein below in full :-

"19A. Minimum standards of medical education -

(1) The Council may prescribe the minimum standards of medical education required for granting recognised medical qualifications (other than postgraduate medical qualifications) by universities or medical institutions in India.

(ii) Copies of the draft regulations and of all subsequent amendments thereof shall be furnished by the Council to all State Governments and the Council shall before submitting the regulations or any amendment thereof, as the case may be, to the Central Government for sanction, take into consideration the comments of any State Government received within three months from the furnishing of the copies as aforesaid.

(3) The Committee shall from time to time report to the Council on the efficacy of the regulations and may recommend to the Council such amendments thereof as it may think fit.

8. "Section 20 of the 1956 Act, provides for a Post-graduate Medical Education Committee to assist the Medical Council of India to prescribe standards of post-graduate medical education for the guidance of the Universities. For the sake of reference, the relevant portions of Section20 of the 1956 Act with which we are concerned, are also extracted herein below :-

"20. Post-graduate Medical Education Committee for assisting Council in matters relating to post-graduate medical education -

(1) The Council may prescribe standards of Postgraduate Medical Education for the guidance of Universities, and may advise Universities in the matter of securing uniform standards for Postgraduate Medical Education throughout India, and for this purpose the Central Govt. may constitute from among the members of the Council a Postgraduate Medical Education Committee (hereinafter referred to as the Post-graduate Committee).

9. By the first of the two Notifications dated 21st December, 2010,being MCI-31(1)/2010-Med./49068, the Medical Council of India, in purported exercise of the powers conferred by Section 33 of the 1956 Act, made various amendments to the 1997 Regulations on Graduate Medical

Education. The most significant amendment, which is also the subject matter of challenge in some of these writ petitions and transferred cases, is clause5 in Chapter II of the Regulations. The relevant paragraph in the Amendment Notification reads as follows:

"6. In Chapter II, Clause 5 under the heading "Procedure for selection to MBBS Course shall be as follows" shall be substituted as under:-

I. There shall be a single eligibility cum entrance examination namely 'National Eligibility-cum-Entrance Test for admission to MBBS course' in each academic year. The overall superintendence, direction and control of National Eligibility- cum-Entrance Test shall vest with Medical Council of India. However, Medical Council of India with the previous approval of the Central Government shall select organization/s to conduct 'National Eligibility-cum-Entrance Test for admission to MBBS course.

II. In order to be eligible for admission to MBBS course for a particular academic year, it shall be necessary for a candidate to obtain minimum of 50% (Fifty Percent) marks in each paper of National Eligibility-cum-Entrance Test held for the said academic year. However, in respect of candidates belonging to Scheduled Casts, Scheduled Tribes and Other Backward Classes, the minimum percentage shall be 40% (Forty Percent) in each paper and in respect of candidates with locomotors disability of lower limbs, the minimum percentage marks shall be 45% (Forty Five Percent) in each paper of National Eligibility-cum-Entrance Test: Provided when sufficient number of candidates belonging to respective categories fail to secure minimum marks as prescribed in National Eligibility-cum-Entrance Test in any academic year for admission to MBBS Course, the Central Government in consultation with Medical Council of India may at its discretion lower the minimum marks required for admission to MBBS Course for candidates belonging to respective categories and marks so lowered by the Central Government shall be applicable for the said year only.

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

IV. No candidate who has failed to obtain the minimum eligibility marks as prescribed in Sub Clause (ii) above shall be admitted to MBBS Course in the said academic year.

V. All admissions to MBBS course within the respective categories shall be based solely on marks obtained in the National Eligibility-cum-Entrance Test. (Dr. P. Prasannaraj) Additional Secretary Medical Council of India"

10. Similarly, by virtue of Notification No. MCI.18(1)/2010-Med./49070,in purported exercise of the powers conferred by Section 33 of the 1956Act, the Medical Council of India, with the previous approval of the Central Government, made similar amendments to the Postgraduate Medical Education Regulations, 2000, providing for a single eligibility cum entrance examination. For the sake of reference, the portion of the notification which is relevant for our purpose is extracted here in below: "No. MCI.18 (1)/2010-Med./49070. - In exercise of the powers conferred by Section 33 of the Indian Medical Council Act, 1956(102 of 1956), the Medical Council of India with the previous approval of the Central Government hereby makes the following regulations to further amend the "Postgraduate Medical Education Regulations, 2000", namely:-

1.

(i) These Regulations may be called the Postgraduate Medical Education (Amendment) Regulations, 2010 (Part-II)".

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

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

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

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

I. There shall be a single eligibility cum entrance examination namely 'National Eligibility-cum-Entrance Test for admission to Postgraduate Medical Courses; in each academic year. The overall superintendence, direction and control of National Eligibility-cum-Entrance Test shall vest with Medical Council of India. However, Medical Council of India with the previous approval of the Central Government shall select organization/s to conduct 'National Eligibility-cum-Entrance Test for admission to Postgraduate courses;." Two similar Notifications both bearing No.DE-22-2012 dated31.5.2012, were published by the Dental Council of India for the same purpose.

11. The challenge to these Notifications has thrown up various issues, which include the powers of the Central and the State Governments to legislate on matters relating to education under Entry 66 of List I of the Seventh Schedule to the Constitution and Entry 25 of List III which was introduced by way of the Constitution (Forty-second Amendment) Act, 1976,having particular regard to the fact that the previous Entry No. 11 in the State List, was omitted by the said amendment, doing away with education as a State subject and denuding the State of its powers to legislate on matters relating to education except in accordance with Entry 25 of the Concurrent List. In fact, what has been pointed out on behalf of some of the parties is that by omitting Entry 11 from the State List and including Entry 25 in the Concurrent List of the Seventh Schedule, the Union Government acquired the authority to also legislate on matters relating to education, which it did not have previously.

12. Another common submission, which is of great significance as far as these matters are concerned, was with regard to the adverse impact of the single entrance examination on the fundamental right guaranteed to all citizens under Article 19(1)(g) of the Constitution to practise any profession, or to carry on any occupation, trade or business. The provisions of Article 30, preserving the right of both religious and linguistic minorities, to establish and administer educational institutions of their choice, were also highlighted by learned counsel for some of the Petitioners.

13. The major challenge, however, was with regard to the MCI's attempt to regulate admissions to the M.B.B.S. and Post-graduate Courses in all medical colleges and medical institutions in the country run by the different State Governments and by private agencies falling within the ambit of Article 19(1)(g) and in some cases Article 30 of the Constitution as well by introducing NEET. One of the facets of such challenge was the inter-play of Article 29(2) and Article 30(1), as also Article 30(2) of the Constitution. Various authorities have been cited on behalf of the different parties, harking back to the Presidential Reference in the Kerala Education Bill case [(1959] S.C.R. 995], and the subsequent views, which have been expressed on most of the aforesaid issues by various combinations of Judges, which include combinations of Eleven-Judges, Nine-Judges, Seven-Judges, Five-Judges and Three-Judges, of this Court.

While most of the decisions touch upon the main theme in these matters regarding the right of either the Central Government or the State Government or the MCI to regulate admissions into medical colleges, the issue raised before us concerning the authority of the MCI and the DCI to conduct an All India Entrance Examination, which will form the basis of admissions into the M.B.B.S. as well as Post-graduate Courses in all medical colleges and institutions all over the country, could not be considered in the earlier judgments.

As a result, after the introduction of NEET, admissions to the M.B.B.S. and Post-graduate courses and the BDS and MDS courses can be made only on the basis of the Select List prepared in accordance with the results of the All India Entrance Test, which would not only eliminate a large number of applicants from admission to the medical colleges, but would also destroy the very essence of Articles 25, 26, 29(1) and 30 of the Constitution, since admission is one of the more important functions of an institution.

14. The submissions in these cases were commenced by Mr. Harish Salve, learned senior counsel appearing for the Christian Medical College, Vellore, and the Christian Medical College, Ludhiana, the Petitioners in Transferred Cases (C) Nos. 98-99 OF 2012]. Mr. Salve's submissions were supplemented by Mr. K. Parasaran, Dr. Rajiv Dhawan, Mr. K.K. Venugopal andMr. R. Venkataramani, learned senior counsel, and several others appearing for some of the religious and linguistic minorities referred to in Article30 of the Constitution.

15. Mr. Salve submitted that the two Notifications both dated 21stDecember, 2010, incorporating amendments in the Regulations on Graduate Medical Education, 1997 and the Post-Graduate Medical Education Regulations, 2000, and introducing a single National Eligibility-cum-Entrance Test (NEET) for admission to the MBBS course and the Post-graduate course in each academic year throughout the country, had been challenged by the Petitioners before the Madras High Court, in Writ Petition Nos.24109 of2011 and 24110 of 2011.

Mr. Salve urged that the said amendments stifled and stultified the fundamental rights guaranteed to religious minorities under Articles 25, 26, 29(1) and 30 of the Constitution of India. Mr. Salve submitted that Article 25 secures to every person, subject to public order, health and morality and to the other provisions of Part-III of the Constitution, freedom of conscience and the right freely to profess, practise and propagate religion. The said right guarantees to every person freedom not only to entertain such religious belief, but also to exhibit his belief in such outward acts as he thought proper and to propagate or disseminate his ideas for the edification of others. Mr. Salve urged that this proposition was settled by this Court as far back as in 1954 by a Bench of Seven-Judges in Commr., H.R.E. Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt [1954 SCR 1005].

16. Mr. Salve submitted that subject to public order, morality and health, Article 26 of the Constitution guarantees to every religious denomination or a section thereof, the right to establish and maintain institutions for religious and charitable purposes and to manage its own affairs in matters of religion. Mr. Salve urged that in regard to affairs in matters of religion, the right of management given to a religious body is a guaranteed fundamental right which no legislation can take away. Mr. Salve submitted that Article 30(1) of the Constitution gives religious and linguistic minorities the right to establish and to administer educational institutions of their choice, which was reiterated and emphasised in T.M.A. Pai Foundation Vs. State of Karnataka [(2002) 8 SCC 481], decided by a Bench of Eleven Judges.

17. Mr. Salve submitted that the Christian Medical College, Vellore, hereinafter referred to as "CMC Vellore", was established 113 years ago as a one-bed clinic by one Dr. Ida Sophia Scudder, the daughter of an American Medical Missionary. She started training Compounders (Health Assistants) in1903 and Nurses in 1909, and was able to establish a Missionary Medical School for women leading to the Licentiate in Medical Practice in 1918which was upgraded to the MBBS course affiliated to the Madras University. Admission was thrown open to men for the MBBS course in 1947.

As the college grew, from 1948 it started admitting students by an All-India Entrance Examination, followed by an in-depth interview. By 1950, the affiliation to the University was confirmed and the intake was increased to60 under-graduate MBBS students in 1964, which has now increased to 100MBBS students. To meet the needs of the local population, a large number of Higher Specialty Courses, Post-graduate Medical Courses, Allied Health Sciences Courses and Courses in Nursing, have also been developed over the years.

18. Currently, there are 11 Post-graduate Medical Diploma Courses, 23Post-graduate Medical Degree Courses and 17 Higher Specialty Courses approved by the Medical Council of India and affiliated to the Tamil Nadu Dr. MGR Medical University. Today, the CMC Vellore, a minority, unaided, non-capitation fee educational institution, is run by the Petitioner Association comprised of 53 Christian Churches and Christian Organizations belonging to the Protestant and Orthodox traditions. The stated object of the Petitioner Association, as mentioned in its Memorandum of Association, Constitution and the Bye-laws is "the establishment, maintenance and development of a Christian Medical College and Hospitals, in India, where women and men shall receive education of the highest grade in the art and science of medicine and of nursing, or in one or other of the related professions, to equip them in the spirit of Christ for service in the relief of suffering and the promotion of health".

19. Out of 100 seats available for the under-graduate MBBS Course, 84are reserved for candidates from the Christian community and the remaining are available for selection in the open category with reservation for candidates belonging to the Scheduled Castes and Scheduled Tribes. Similarly, 50% of the Post-graduate seats are reserved for Christian candidates and the remaining 50% are available for open selection on an All-India basis. Mr. Salve submitted that all students selected for the MBBS course are required to sign a bond agreeing to serve for a period of two years in areas of need, upon completion of their courses. Similarly, Post-graduate students selected in the Christian minority category have also to give a similar undertaking.

20. Mr. Salve submitted that the Medical Colleges and institutions run by the Writ Petitioners charge fees which are subsidised and are even lower than the fees charged by Government Medical Colleges. Liberal scholarships are given by the College to those who have difficulty in making the payments, which include boarding, lodging and University charges(which are considerably higher). Learned counsel submitted that the institution was established by a Christian minority doctor in response to her religious beliefs and the command of Jesus Christ exhorting His disciples and followers to heal the sick and has evolved an admission process for both its undergraduate and post graduate courses in order to ensure that the selected candidates are suitable for being trained according to the ideology professed at Vellore. Mr. Salve urged that the selection process is comprised of an All India Entrance Test followed by a searching interview and special test devised in 1948. Such process has been improved and fine-tuned over the years so that the candidates are not only trained as health professionals, but to also serve in areas of need in difficult circumstances.

21. It was pointed out that this system of admission resorted to by the Petitioner has successfully reflected the ideals with which the medical college was founded and a survey conducted in 1992 established the fact that the majority of graduates and post-graduates, who have passed out from the college, have been working in India for more than 10 years after their graduation and the majority among them were working in non-metropolitan areas of the country. This evaluation remained the same, even during surveys conducted in 2002 and 2010, and is in striking contrast to similar surveys carried out by other medical institutions of equal standard, where only a small number of graduates have been working in non-metropolitan areas.

22. Mr. Salve submitted that in 1993, an attempt was made by the Government of Tamil Nadu to interfere with the admission process in the institution by a letter dated 7th May, 1993, directing the Petitioner to implement the scheme framed by this Court in the case of Unni Krishnan Vs. State of U.P. [(1993) 1 SCC 645], insofar as the undergraduate course in Nursing was concerned. The Petitioner-institution filed Writ PetitionNo.482 of 1993 before this Court challenging the State Government's attempts to interfere with the admission process of the institution as being contrary to and in violation of the rights guaranteed to it under Article 30 of the Constitution.

In the pending Writ Petition, various interim orders were passed by the Constitution Bench of this Court permitting the institution to take resort to its own admission procedure for the undergraduate course in the same manner in which it had been doing in the past. The said Writ Petition was heard in 2002, along with the T.M.A. Pai Foundation case (supra), wherein eleven questions had been framed.

While hearing the matters, the Chief Justice formulated five issues to encompass all the eleven questions, on the basis of which the hearing was conducted, and the same are extracted below:

"1. Is there a fundamental right to set up educational institutions and, if so, under which provision?

2. Does Unni Krishnan case [(1993) 4 SCC 111] require reconsideration?

3. In case of private institutions (unaided and aided), can there be government regulations and, if so, to what extent?

4. In order to determine the existence of a religious or linguistic minority in relation to Article 30, what is to be the unit - the State or the country as a whole?

5. To what extent can the rights of aided private minority institutions to administer be regulated?" Out of the eleven questions framed by the Bench, Questions 3(b), 4and 5(a) are extremely relevant for deciding the questions raised in the Writ Petition filed by the Petitioner-institution. For the sake of reference, the said three Questions are extracted herein below: "Q3(b). To what extent can professional education be treated as a matter coming under minorities rights under Article 30? Q4. Whether the admission of students to minority educational institutions, whether aided or unaided, can be regulated by the State Government or by the University to which the institution is affiliated? Q5(a). Whether the minority's rights to establish and administer educational institutions of their choice will include the procedure and method of admission and selection of students?

23. "Mr. Salve submitted that the answer given by the Eleven-Judge Bench to the first Question is that Article 30(1) re-emphasises the right of religious and linguistic minorities to establish and administer educational institutions of their choice. The use of the words "of their choice "indicates that even professional educational institutions would be covered by Article 30.

24. The answer to the second Question is that, except for providing the qualifications and minimum conditions of eligibility in the interest of academic standards, admission of students to unaided minority educational institutions cannot be regulated by the State or University concerned. Mr. Salve pointed out that a note of caution was, however, introduced and it was observed that the right to administer, not being an absolute right, there could be regulatory measures for ensuring proper educational standards and maintaining the excellence thereof, particularly in regard to admissions to professional institutions.

It was further held that a minority institution does not cease to be so, when it receives grant-in-aid and it would, therefore, be entitled to have a right to admit students belonging to the minority group, but at the same time it would be required to admit a reasonable number of non-minority students so that rights under Article 30(1) were not substantially impaired and the rights of a citizen under Article 29(2) of the Constitution were not infringed. However, the concerned State Governments would have to notify the percentage of non-minority students to be admitted in the institution. Amongst students to be admitted from the minority group, inter se merit would have to be ensured and, in the case of aided professional institutions, it could also be submitted that in regard to the seats relating to non-minority students, admission should normally be on the basis of the common entrance test held by the State agency, followed by counselling wherever it exists.

25. In reply to the third Question, it was held that a minority institution may have its own procedure and method of admission as well as selection of students, but such a procedure would have to be fair and transparent and the selection of students in professional and higher educational colleges should be on the basis of merit. The procedure selected for admission by the minority institution ought not to ignore the merit of students for admission while exercising the right to admit students by the colleges aforesaid, as in that event, the institution will fail to achieve excellence. The said procedure should not amount to mal administration.

26. Some of the issues decided in the T.M.A. Pai Foundation case came up for clarification in the Islamic Academy of Education case (supra) and for further interpretation in P.A. Inamdar's case (supra), before a Bench of Seven-Judges, wherein the Petitioner-Association was duly represented. The Hon'ble Judges reiterated the views expressed in the T.M.A. Pai Foundation case that there cannot be any reservation in private unaided institutions, which had the right to have their own admission process, if the same was fair, transparent, non-exploitative and based on merit. Mr. Salve referred to paragraph 125 of the judgment in P.A. Inamdar's case(supra), which is relevant for our purpose, and reads as follows:

"125. As per our understanding, neither in the judgment of Pai Foundation [(2002) 8 SCC 481] nor in the Constitution Bench decision in Kerala Education Bill [1959 SCR 995] which was approved by Pai Foundation, is there anything which would allow the State to regulate or control admissions in the unaided professional educational institutions so as to compel them to give up a share of the available seats to the candidates chosen by the State, as if it was filling the seats available to be filled up at its discretion in such private institutions. This would amount to nationalisation of seats which has been specifically disapproved in Pai Foundation [(2002) 8 SCC 481]. Such imposition of quota of State seats or enforcing reservation policy of the State on available seats in unaided professional institutions are acts constituting serious encroachment on the right and autonomy of private professional educational institutions.

Such appropriation of seats can also not be held to be a regulatory measure in the interest of the minority within the meaning of Article 30(1) or a reasonable restriction within the meaning of Article 19(6) of the Constitution of India. Merely because the resources of the State in providing professional education are limited, private educational institutions, which intend to provide better professional education, cannot be forced by the State to make admissions available on the basis of reservation policy to less meritorious candidates. Unaided institutions, as they are not deriving any aid from State funds, can have their own admissions if fair, transparent, non-exploitative and based on merit.

27. "Mr. Salve submitted that after this decision, the Petitioner Institution continued to admit students to its various graduate and post-graduate courses by following its own admission procedure, as it had been doing for the last several decades. Mr. Salve submitted that the Committee set up by the Government of Tamil Nadu has permitted the Institution to follow its own admission procedure for undergraduate M.B.B.S. course for the academic year 2012-2013.

28. While matters were thus poised, the Medical Council of India framed the impugned amended Regulations, which, according to Mr. Salve, not only violated the fundamental rights guaranteed under Articles 25, 26 and 30 of the Constitution to minority run institutions, but if implemented, would destroy the very objective with which the hospital had been set up in response to Christ's mission of healing the sick. Mr. Salve submitted that the impugned Notifications were inconsistent with the law laid down by the Supreme Court in its various decisions dealing with the rights of unaided, non-capitation fee minority institutions to admit students of their choice.

29. Mr. Salve submitted that right from the decision in Unni Krishnan's case (supra), when the State Government first sought to interfere with the admission process adopted by the Petitioner Institution, this Court has, by virtue of different interim and final orders, held that there could be no reservation of seats in institutions like the ones run by the Petitioner, which are wholly unaided and have always been permitted to admit students of their choice, in keeping with their status as minority unaided professional institutions. It was urged that Clause 9(vi) of the Post-Graduate Notification, which provides for reservation, is ultra vires the provisions of Article 30(1) of the Constitution. Furthermore, when the State Government tried to reserve 50% of the seats in the Under-graduate courses, this Court granted a stay which continues to be operative.

30. Mr. Salve submitted that the question of reservation of seats in minority institutions, which has been introduced by the impugned amendments, both in respect of the Under-graduate and the Post-

Graduate courses, does violence to the rights conferred on minorities under Article30(1) of the Constitution of India, as interpreted by this Court in various judgments starting from 1957 till 2002, when the question was finally decided by an Eleven-Judge Bench in the T.M.A. Pai Foundation case (supra). Even the reservation created for NRIs in Unni Krishnan's case (supra) case was declared to be ultra vires the Constitution of India.

31. It was urged that in a recent decision of this Court in the Indian Medical Association case (supra), it has, inter alia, been held that the level of regulation that the State could impose under Article 19(6) on the freedoms enjoyed pursuant to Sub-Clause (g) of Clause (1) of Article 19 by non-minority educational institutions, would be greater than what could be imposed on minority institutions under Article 30(1) thereof, which continued to maintain their minority status by admitting students mostly belonging to the minority community to which the minority institutions claim to belong, except for a sprinkling of non-minority students, an expression which has been used in P.A. Inamdar's case and earlier cases as well. Mr. Salve contended that the Petitioner Institution, from its very inception reserved up to 85% of its seats in the Under-graduate courses and50% of the Post-Graduate seats for Christian students exclusively. In the remaining 15% of the seats in the Under-graduate courses, reservations have been made for Scheduled Castes and Scheduled Tribes candidates.

32. Mr. Salve contended that the impugned Notifications and the amendments to the MCI Regulations sought to be introduced thereby are contrary to the judgments delivered by the Constitution Bench. Learned counsel submitted that till the amendments were introduced, the concerned institutions had been conducting their own All India Entrance Tests for admission to the MBBS and Post-Graduate medical courses. Mr. Salve urged that there has been no complaint of maladministration as far as the institutions run by the Petitioner Association are concerned.

33. It was further submitted that all the Petitioners in this batch of cases are either religious minority educational institutions or linguistic minority institutions; non-minority self-financing colleges, self-financing "Deemed to be Universities" under Section 3 of the University Grants Commission Act and the State Governments which run State medical colleges. However, it is the Christian Medical College, Vellore, which is among the very few institutions that fall in the first category. The learned counsel urged that without demur, the Christian Medical College, Vellore, has been consistently rated among the top ten medical colleges in the country and usually ranked first or second.

The excellence of patient care and academic training has been recognised, both at the national and international levels, and its contribution to health research has also been recognised as pioneering work by both national and international research funding agencies. Mr. Salve submitted that a part of the teachings of Jesus Christ, as documented in the Gospels, which form part of the New Testament, was to reach out to and to heal the sick, which command has been institutionalised by the Petitioner ever since it was established as a one-bed mission clinic-cum-hospital in 1900. Mr. Salve submitted that the activities of the Petitioner Institution clearly attract the provisions of Article 25 of the Constitution and through the Christian Medical College, Vellore, its activities are designed to achieve the avowed objective of providing human resources for the healing ministry of the Church.

The activity of running medical courses and allied health sciences and nursing courses, in order to ensure constant supply of doctors and other para-medical staff to those hospitals, engaged in the healing of the sick, are acts performed by the Petitioner in furtherance of its religious faith and beliefs. It was submitted that in the decision of the Constitution Bench of Seven Hon'ble Judges in the case of Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt(1954 SCR 1005), this Court held that Article 25 of the Constitution, protects not only the freedom of religious opinion, but also acts done in pursuance of religious beliefs, as is clear from the expression "practice of religion".

34. Mr. Salve also referred to the decision in the case of Ratilal Panachand Gandhi Vs. The State of Bombay & others, reported in 1954 SCR1055, which was also a decision rendered by a Constitution

Bench of this Court relying upon the decision in the Shirur Mutt case (supra), where in similar sentiments were expressed. Various other decisions on the same issue were also referred to, which, however, need not detain us.

35. Mr. Salve further urged that the Petitioner Institution is still one of the largest tertiary care hospitals in the country, where patients come from all over India for expert treatment. The medical college combines both medical treatment and education which, besides being a religious activity, is also a charitable activity, thereby bringing it within the ambit of Article 26(a) and (b) of the Constitution.

Mr. Salve submitted that, in fact, the said activities had been recognised by this Court in the T.M.A. Pai Foundation case (supra), wherein in paragraph 26, it was held as follows :- "26. The right to establish and maintain educational institutions may also be sourced to Article 26(a), which grants, in positive terms, the right to every religious denomination or any section thereof to establish and maintain institutions for religious and charitable purposes, subject to public order, morality and health. Education is a recognised head of charity. Therefore, religious denominations or sections thereof, which do not fall within the special categories carved out in Article 29(1) and 30(1), have the right to establish and maintain religious and educational institutions.

36. "Today the Petitioner has in place a selection process for admission to its Under-graduate and Post-graduate courses, by which it seeks to select candidates imbibed in the spirit of Christ for the purpose of healing the sick and to dedicate their lives to serve the needy, both in the Petitioner Institution and also in far flung areas, where people have no ready access to medical care, through the Christian Mission Hospitals run by the members of the Petitioner Association. Mr. Salve submitted that the doctors, who are the product of the Petitioner Institution, are not only well-trained in medicine, but have also been imparted with values in the treatment of the sick and the needy in keeping with the teachings of Christ, who looked on everybody with compassion.

Mr. Salve urged that the admission process has proved to be highly successful and effective, and in the case of St. Stephen's College Vs. University of Delhi [(1992) 1 SCC558], this Court upheld the same as it was found to meet the objectives for which the Institution itself had been established, despite the fact that it was an aided minority institution. Mr. Salve pointed out that in paragraph54 of the judgment, this Court had occasion to deal with the expression" management of the affairs of the institution" and it was held that this management must be free from control so that the founder or their nominees could mould the Institution as they thought fit and in accordance with the ideas of how the interests of the community in general and the institution in particular could be served.

37. As far as unaided, non-capitation fee, religious minority institutions are concerned, Mr. Salve submitted that so long as the admission procedure adopted is fair, transparent and non-exploitative and there is no complaint of maladministration, it would be grossly unjust and unconstitutional to interfere with the administration of such an institution, in complete violence of the freedoms guaranteed under Articles25, 26 and 30 of the Constitution. Mr. Salve submitted that if the National Eligibility-cum-Entrance Test was to be applied and followed in the case of minority institutions protected under Article 30 of the Constitution, it would result in complete denudation of the freedoms and rights guaranteed to such institutions under the Constitution, as it would run counter to the very principles on which admissions in such institutions are undertaken.

38. Mr. Salve submitted that neither Section 10A nor Section 19A of the1956 Act, which were inserted in the principal Statute by amendment, contemplate that the MCI would itself be entitled to conduct entrance tests for admission into different medical colleges and hospitals in India. Learned counsel submitted that the main purpose of constituting the MCI was to ensure excellence in the field of medical education and for the said purpose, to regulate the standards of teaching and the infrastructure available for establishment of a new medical college or to introduce a new course of study in an existing college.

What is made clear from Section10A is that no new medical college could be established and recognised by the Central Government without the recommendation of the Medical Council of India. Such recognition would be dependent upon inspection and satisfaction that the proposed new medical college satisfied all the conditions stipulated by the Medical Council of India for starting a new medical college. Section 19A, which was inserted into the principal Act much before Section 10A, speaks of the minimum standards of medical education, other than post-graduate medical qualification, which the Medical Council of India may prescribe as being required for grant of recognition to medical institutions in India.

39. Mr. Salve urged that while Section 33 of the 1956 Act empowered the Council, with the previous sanction of the Central Government, to make Regulations to carry out the purposes of the Act and clause (l) empowered the Council to make Regulations with regard to the conduct of professional examinations, qualifications of examiners and the conditions of admission to such examinations, the same did not empower the Council to actually conduct the examinations, which continues to be the prerogative of the institution concerned.

40. Mr. Salve submitted that in State of A.P. Vs. Lavu Narendranath[(1971) 1 SCC 607], this Court had considered the validity of a test held by the State Government for admission to medical colleges in the State of Andhra Pradesh and had held that although the Andhra University Act, 1926, prescribed the minimum qualification of passing HSC, PUC, ISC examinations for entry into a higher course of study, owing to the limited number of seats, the Government, which ran the medical colleges, had aright to select students out of the large number of candidates who had passed the entrance examination prescribed by it.

It was also held that merely because the Government had supplemented the eligibility rules by a written test in the subjects with which the candidates were already familiar, there was nothing unfair in the test prescribed nor did it militate against the powers of the Parliament under Entry 66 of List I, which is not relatable to a screening test prescribed by the Government or by a University for selection of students out of a large number of students applying for admission to a particular course of study. This Court held that such a test necessarily partakes of the character of an eligibility test as also a screening test. Mr. Salve urged that in such a situation, minimum qualifying marks were necessary, but the said question has not been addressed at all in Lavu Narendranath's case (supra), since it did not arise in that case.

41. Mr. Salve submitted that the Petitioner Institution has been supplementing the primary duty enjoined on the State under Articles 21 and47 of the Constitution in providing health care to the people in different parts of the country, including the rural and remote areas, through the several hospitals run by Christian Churches and organizations. Any interference with the manner in which these minority institutions are being administered, except where the standards of excellence are compromised, would not only strike at the very reason for their existence, but would disturb the health care services being provided by them.

Mr. Salve submitted that the MCI, which is a creature of Statute, cannot travel beyond the powers vested in it by the Statute and its attempt to regulate and control the manner in which admissions are to be undertaken in these institutions, by introducing a single entrance examination, goes against the very grain of the fundamental rights vested in the religious and linguistic minorities to establish and administer educational institutions of their choice and to impart their religious values therein, so long as the same was not against the peace and security of the State.

42. Mr. Salve urged that the amended provisions of the MCI Regulations as impugned, were liable to be struck down as being contrary to the provisions of Articles 25, 26 and 30 of the Constitution, read with Sections 10A and 19A of the Indian Medical Council Act, 1956.

43. Having heard Mr. Harish Salve on the rights claimed by religious minority medical institution enjoying the protection of Articles 25, 26,29(1) and 30 of the Constitution, we may now turn to the submissions made by Mr. K. Parasaran, learned Senior Advocate, appearing on behalf of the Vinayaka Missions University, run by a linguistic minority, also enjoying the rights guaranteed under Article 19(1)(g) and the protection of Article30 of the Constitution.

44. Mr. Parasaran began by reiterating Mr. Salve's submission that while minority institutions enjoyed the fundamental rights guaranteed to any other individual or institution under Article 19(1)(g) of the Constitution, in addition, linguistic minorities, like religious minorities, enjoy the special protection afforded under Article 30 of the Constitution. Mr. Parasaran submitted that just as in the case of religious minorities, linguistic minorities also have the right to establish and administer educational institutions of their choice, which included the right to admit students therein.

45. Mr. Parasaran submitted that the impugned Regulations are ultravires, unconstitutional and violative of Article 19(1)(g) of the Constitution, not only in respect of institutions run by minorities, but also to all institutions covered by NEET. Mr. Parasaran submitted that if the Indian Medical Council Act, 1956, is to be understood to empower the MCI to nominate the students for admission, it would be invalid, since the said Act and the amendments to the Act, which are relevant for the present cases, were enacted before the 42nd Constitution Amendment, whereby Entry11 was removed from List II of the Seventh Schedule and was relocated as Entry 25 in List III of the said Schedule, came into force on 3rd January,1977.

46. Mr. Parasaran also urged that as was held by this Court in Indian Express Newspapers Vs. Union of India [(1985) 1 SCC 641], even if the Regulations are accepted to be subordinate legislation, the same were also open to challenge:

a. on the ground on which plenary legislation is questioned.

b. on the ground that it does not conform to the statute under which it is made.

c. on the ground that it is contrary to some other statute as it should yield to plenary legislation, and/or

d. that it is manifestly unreasonable.

47. Mr. Parasaran submitted that in Deep Chand Vs. State of Uttar Pradesh and Others [(1959) Suppl. 2 SCR 8] wherein the validity of certain provisions of the Uttar Pradesh Transport Service (Development) Act, 1955,came to be considered on the passing of the Motor Vehicles (Amendment) Act,1956, the majority view was that the entire Act did not become wholly void under Article 254(1) of the Constitution, but continued to be valid in so far as it supported the Scheme already framed under the U.P. Act.

48. Mr. Parasaran contended that a standard must have general application and inter se merit does not relate to standards, but is a comparison of an assessment of merit among the eligible candidates.

49. Mr. Parasaran submitted that the legislative power under Entry 11of List II stood transferred to List III only by virtue of the Forty-second Amendment with effect from 3rd January, 1977 and the power so acquired by virtue of the amendment, could not validate an Act enacted before the acquisition of such power. Mr. Parasaran urged that while the Indian Medical Council Act was enacted in 1956, Section 19A on which great reliance was placed by Mr. Nidhesh Gupta, learned Advocate appearing for the MCI, was brought into the Statute Book on 16th June, 1964.Consequently the 1956 Act, as also the Regulations, are ultra vires, except to the extent covered by Entry 66 of List I, which is confined to "co-ordination and determination of standards".

50. Referring to the decision of this Court in State of Orissa Vs. M.A. Tulloch & Co. [(1964) 4 SCR 461], Mr. Parasaran contended that as the State's powers of legislation are subject to Parliamentary legislation under Entry 66 of List I, when Parliament legislates, to that extent alone the State is denuded of its legislative power. A denudation of the power of the State legislature can be effected only by a plenary legislation and not by subordinate legislation. The Regulations, which are not plenary in character, but have the effect of denuding the power of the State legislature, are, therefore, ultra vires.

51. Another interesting submission urged by Mr. Parasaran was that the principle of "Rag Bag" legislation, as was explained by this Court in Ujagar Prints etc. Vs. Union of India [(1989) 3 SCC 488], cannot be invoked by combining the Entries in List I and List III in cases where the field of legislation in List III is expressly made subject to an Entry in List I.In such cases, while enacting a legislation on a subject in List III, Parliament is also subject to the Entry in List I in the same way as the State legislature, as the field of legislation in the Concurrent List is the same as far as the Parliament and the State legislatures for admission of students to professional courses, are concerned.

Mr. Parasaran urged that the decision in Preeti Srivastava's case (supra) has to be interpreted harmoniously with the decision in M.A. Tulloch's case (supra), Ishwari Khetan Vs. State of U.P. [(1980) 4 SCC 136] and Deep Chand's case (supra),as otherwise the findings in Preeti Srivastava's case (supra) would be rendered per in curiam for not taking note of the fact that the power of Parliament under Entry 25 of List III was an after acquired power. Mr. Parasaran emphasised the fact that the reasoning in Preeti Srivastava's case (supra) related only to the question of the State's power to prescribe different admission criteria to the Post-graduate courses in Engineering and medicine and cannot be held to govern the admission of students to the said courses.

Learned counsel submitted that the decision in Preeti Srivastava's case (supra) has to be confined only to eligibility standards for admission and not to issues relating to admission itself. Mr. Parasaran also pointed out that in Preeti Srivastava's case (supra), the decision in Deep Chand's case (supra) had not been considered and the fact that Parliament had no power to legislate with regard to matters which were then in Entry 11 of List II had been overlooked. The Court, therefore, erroneously proceeded on the basis of the powers given to Parliament by virtue of Entry 25 of List III by the Forty-second Amendment. Mr. Parasaran urged that to the extent it is inconsistent with the decision inthe T.M.A. Pai Foundation case (supra), as to the right of admission by private institutions, the decision in Preeti Srivastava's case (supra) will have to yield to the principles laid down by the larger Bench in the T. M.A. Pai Foundation case (supra).

Mr. Parasaran submitted that the effect of the impugned Regulations in the context of the prevailing law is that private institutions may establish educational institutions at huge costs and provide for teaching and lectures, but without any right, power or discretion to run the college, even to the extent of admitting students therein. Mr. Parasaran contended that by the introduction of NEET the States and Universities in States stand completely deprived of the right to deal with admissions, which has the effect of destroying the federal structure of the Constitution.

52. Mr. Parasaran urged that the executive power of the State, which is co-extensive with the legislative power with regard to matters in the Concurrent List, cannot be taken away except as expressly provided by the Constitution or by any law made by Parliament. It was urged that the power of subordinate legislation or statutory power conferred by a Parliamentary legislation cannot be exercised to take away the legislative power of the State legislature, which could only be done by plenary legislation under Article 73 of the Constitution. Mr. Parasaran submitted that the impugned Regulations, not being plenary legislation, are unconstitutional and ultravires the Constitution.

53. Mr. Parasaran submitted that the impugned Regulations provide that if sufficient number of candidates in the respective categories fail to secure minimum marks as prescribed in NEET, held both for Post-graduate and graduate courses, the Central Government, in consultation with the

Medical Council of India, may at its discretion lower the minimum marks for admission, which itself indicates that the Regulations are concerned not with determination of standards, but with admissions.

54. Mr. Parasaran further submitted that the Scheme framed in Unni Krishnan's case (supra) completely excluded the discretion of the institution to admit students and the same was, therefore, overruled in theT. M.A. Pai Foundation case as having the effect of nationalising education in respect of important features viz. right of a private unaided institution to give admission and to fix the fees. Mr. Parasaran submitted that the impugned Regulations suffer from the same vice of a complete take-over of the process of admission, which rendered the impugned Regulations unconstitutional.

55. Mr. Parasaran further urged that minorities, whether based on religion or language, also have a fundamental right under Article 19(1)(g),like any other citizen, to practise any profession, or to carry on any occupation, trade or business in the interest of the general public, but subject to reasonable restrictions that may be imposed by the State on the exercise of such rights. In addition, minorities have the right guaranteed under Article 30 to establish and administer educational institutions of their choice. Considering the right of both minority and non-minority citizens to establish and administer educational institutions, this Court had in the T.M.A. Pai Foundation case (supra) held that the said right includes the right to admit students and to nominate students for admission and 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 said purpose, must be left with the educational institutions concerned. Mr. Parasaran submitted that in the T.M.A. Pai Foundation case (supra), this Court, inter alia, observed that the fixing of a rigid fee structure, compulsory nomination of teachers and staff for appointment or nominating students for admission would be unreasonable restrictions.

56. Mr. Parasaran also urged that the right of minority institutions under Article 30 is in the national interest and as indicated in the decision in Unni Krishnan's case (supra), the hard reality that emerges is that private educational institutions are a necessity in the present-day circumstances. It is not possible today without them because the Governments are in no position to meet the demand, particularly in the sectors of medical and technical education, which call for substantial investments and expenses. Mr. Parasaran submitted that the impugned Regulations were not in the national interest and would only discourage good private institutions being established by people dedicated to the cause of providing health care to all sections of the citizens of this country and, in particular, the marginalized sections in the metropolitan and rural areas.

57. Mr. Parasaran then urged that 50% of the total seats available, as per Clause VI of the Post-Graduate Medical Education Regulations, were to be filled up by the State Governments or the Authorities appointed by them. The remaining 50% seats are to be filled up by the concerned medical colleges and institutions on the basis of the merit list prepared according to the marks obtained in NEET. Mr. Parasaran submitted that there is a similar provision in the 1997 Regulations applicable to the Graduate M.B.B.S. course. Noticing the same, this Court in P.A. Inamdar's case(supra) categorically indicated that nowhere in the T.M.A. Pai Foundation case (supra), either in the majority or in the minority views, could any justification be found for imposing seat sharing quota by the State on unaided private professional educational institutions. Clarifying the position this Court observed that fixation of percentage of quota are to be read and understood as consensual arrangements which may be reached between unaided private professional institutions and the State. Mr. Parasaran urged that the Regulations providing for a quota of 50% are, therefore, invalid.

58. Mr. Parasaran urged that in P.A. Inamdar's case (supra), this Court had held that private institutions could follow an admission procedure if the same satisfied the triple test of being fair, transparent and non-exploitative. It is only when an institution failed the triple test, could the State interfere and substitute its own fair and transparent procedure, but the same cannot become a procedure by destroying the very right of the private institutions to hold their own test in the first instance. Mr. Parasaran urged that the purpose of a common entrance testis to compute the equivalence between different kinds of qualifications and to ensure that those seeking entry into a

medical institute did not have to appear for multiple tests, but it could not justify the extinguishing of the right to admit and to reject candidates on a fair, transparent and non-exploitative basis from out of the eligible candidates under NEET. Mr. Parasaran reiterated that ultimately it is the institutions which must have the right to decide the admission of candidates.

59. Mr. Parasaran submitted that in Pradeep Jain Vs. Union of India[(1984) 3 SCC 654], this Court has held that university-wise distribution of seats is valid. The learned Judges fully considered the mandate of equality and pointed out the need to take into account different considerations relating to differing levels of social, economic and educational development of different regions, disparity in the number of seats available in different States and the difficulties that may be faced by students from one region, if they get a seat in another region. This Court held that an All India Entrance Examination would only create a mirage of equality of opportunity and would, in reality, deprive large sections of underprivileged students from pursuing higher education. Though attractive at first blush, an All India Entrance Examination would actually be detrimental to the interests of the students hoping for admission to the M.B.B.S. and Post-graduate courses.

60. Mr. Parasaran submitted that since all judgments on the subject were by Benches which were of lesser strength as compared to the T.M.A. Pai Foundation case (supra), all other decisions of this Court, both before and after the decision in the T.M.A. Pai Foundation case (supra), would, therefore, have to be read harmoniously with the principles enunciated in the T.M.A. Pai Foundation case (supra). In case some of the cases cannot be harmoniously read, then the principles laid down in the T.M.A. Pai Foundation case (supra) will have primacy and will have to be followed. Mr. Parasaran submitted that the observations as to standard and merit in Preeti Srivsatava's case (supra) and in P.A. Inamdar's case (supra), have to be understood as conforming to the decision in the T.M.A. Pai Foundation case (supra). Mr. Parasaran submitted that the flourish of language in the judgments of Benches of lesser strength cannot be read so as to dilute the ratio of the decision of Benches of larger strength. Mr. Parasaran urged that consequently the right to admit students by unaided private institutions, both aided and unaided minority institutions, as part of their right to administer the institution, as guaranteed under Articles19(1)(g), 25, 26, 29(1) and 30 of the Constitution, cannot be taken away even by way of plenary jurisdiction, which the impugned Regulations are not.

61. Mr. Parasaran submitted that in the case of aided non-minority institutions, the State may by Regulation provide for a larger role for the State in relation to matters of admission. Mr. Parasaran urged that the impugned Regulations being only regulatory in character, they cannot destroy the right itself.

62. Dr. Rajiv Dhawan, learned senior counsel, who appeared on behalf of Yenepoya University in Transferred Case Nos. 135-137 OF 2012] and also for the Karnataka Religious and Linguistic Minority Professional Colleges Association in Transferred Case Nos. 121-122 OF 2012], submitted that although the issues involved in the said cases have already been argued in extenso by Mr. Salve and Mr. Parasaran, as part of the main issue, it has to be decided whether NEET violates the fundamental right guaranteed to minorities, both religious and linguistic, to impart medical education, as explained in the T.M.A. Pai Foundation case (supra) and other subsequent decisions and even if found to be intra vires, is it manifestly unjust and arbitrary? It was further urged that it would also have to be decided whether the doctrine of severability, reading down and proportionality, could be effected to the impugned Regulations.

63. Dr. Dhawan urged that the T.M.A. Pai Foundation case (supra)resolved several issues where there was still some doubt on account of decisions rendered in different cases. Dr. Dhawan urged that it was held that the decision in the Unni Krishnan's case (supra) was wrong to the extent that "free seats" were to go to the privileged and that education was being nationalised which took over the autonomy of institutions. It was also observed that the expanding needs of education entailed a combined use of resources both of the Government and the private sector, since the imparting of education was too large a portfolio for the Government alone to manage.

64. Dr. Dhawan urged that the other issue of importance, which was also decided, was the right of autonomy of institutions which were protected under Article 30 of the Constitution, which, inter alia, included the right to admit students. It was also settled that unaided institutions were to have maximum autonomy while aided institutions were to have a lesser autonomy, but not to be treated as "departmentally run by government".

65. Dr. Dhawan submitted that the decision in the T.M.A. Pai Foundation case (supra) also settled the issue that affiliation and recognition has to be available to every institution that fulfills the conditions for grant of such affiliation and recognition. Learned Senior Counsel submitted that surrendering the total process of selection to the State was unreasonable, as was sought to be done in the Scheme formulated in Unni Krishnan's case (supra). The said trend of the decisions was sought to be corrected in the T.M.A. Pai Foundation case (supra) where it was categorically held that minority institutions had the right to "mould the institution as they think fit", bearing in mind that "minority institutions have a personality of their own, and in order to maintain their atmosphere and traditions, it is but necessary that they must have a right to choose and select the students who can be admitted in their course of study.

"It is for this reason that in the St. Stephen's College case(supra), this Court upheld the Scheme whereby a cut-off percentage was fixed for admission after which the students were interviewed and, thereafter, selected. It was also laid down that while the educational institutions cannot grant admission on its whims and fancies and must follow some identifiable or reasonable methodology of admitting 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 always be prescribed for holding the entrance test in a fair and transparent manner.

66. Again in paragraphs 158 and 159 of the judgment in the T.M.A. Pai Foundation case (supra), it has been very picturesquely expressed that India is a kaleidoscope of different peoples of different cultures and that all pieces of mosaic had to be in harmony in order to give a whole picture of India which would otherwise be scarred. Their Lordships very poetically indicated that each piece, like a citizen of India, plays an important part in the making of the whole. The variations of the colours as well as different shades of the same colour in a map are the result of these small pieces of different shades and colours or marble, but even when one small piece of marble is removed, the whole map would be disfigured, and the beauty of the mosaic would be lost.

67. Referring to the separate decision rendered by Ruma Pal, J., in the T.M.A. Pai Foundation case (supra), Dr. Dhawan submitted that the learned Judge had also artistically distinguished Indian secularism from American secularism by calling Indian secularism "a salad bowl" and not a "melting pot".

68. Dr. Dhawan urged that a combined reading of the decision in Islamic Academy's case (supra) and P.A. Inamdar's case (supra) suggests that (i) no unaided institutions can be compelled to accept reservations made by the State, except by voluntary agreement; and (ii) the right to (a) admit and select students of their choice by pursuing individual or associational tests and (b) fix fees on a non-profit basis is a right available to all educational institutions, but the admissions were to be made on a fair, transparent and non exploitative method, based on merit.

69. On Article 15(5) of the Constitution, Dr. Dhawan contended that the same was included in the Constitution by the Constitution (93rdAmendment) Act, with the object of overturning the decision in P.A. Inamdar's case (supra) on voluntary reservations. Dr. Dhawan submitted that the said provision would make it clear that the State reservations do not apply to "minority institutions" enjoying the protection of Article 30and it is on such basis that in the Society for Unaided Private Schools of Rajasthan Vs. Union of India [(2012) 6 SCC 1], this Court held that a minority institution could not be forced to accept the statutory reservation also. Dr. Dhawan urged that the impact of the T.M.A. Pai

Foundation case (supra) and subsequent decisions is that all institutions, and especially minority institutions, have the constitutional right to select and admit students of their choice and conduct their own tests, subject to minimum standards which could be enhanced but not lowered by the States.

70. Dr. Dhawan also referred to the issue of equivalence between various Boards and uniformity and convenience. Learned counsel submitted that the distinction was recognized in the case of Rajan Purohit Vs. Rajasthan University of Health Sciences [(2012) 10 SCC 770], wherein it was observed that the problem of equivalence could be resolved by the collegeor group of colleges, either by finding a method of equivalence to reconcile difference of standards between various Boards, or by the college or group of colleges evolving a Common Entrance Test to overcome the problem of equivalence. Dr. Dhawan submitted that the said issue had been addressed in the T.M.A. Pai Foundation (supra), which continues to hold the field in respect of common issues. Dr. Dhawan urged that consistent with the views expressed in the T.M.A. Pai Foundation case (supra) and the importance of autonomy and voluntarism, the same could not be impinged upon by nationalizing the process of admission itself for both the purposes of eligibility and selection, unless a college failed to abide by the triple requirements laid down in P.A. Inamdar's case (supra).

71. In regard to the decision in Lavu Narendranath's case (supra),which had been relied upon by Mr. K. Parasaran, Dr. Dhawan contended that the same was based upon the understanding that Entry 66 of List I had no relation with tests for screening and selecting students prescribed by the States or Universities for admission, but only to coordinate standards. The scope of the said Entry did not deal with the method of admission, which was within the constitutional powers of the State and the Universities. Dr. Dhawan submitted that the decision rendered in Preeti Srivastava's case (supra) also expressed similar views regarding laying down of standards for admission into the Post-graduate medical courses, which meant that government and universities had exclusive control over admission tests and the criteria of selection in higher education, subject to minimum standards laid down by the Union, unless Union legislation, relatable to Entry 25 of List III, was passed to override the States' endeavours in this regard.

72. Dr. Dhawan contended that the demarcation sought to be made in Lavu Narendranath's case (supra) found favour in subsequent cases, such as in the case of State of M.P. Vs. Nivedita Jain [(1981) 4 SCC 296], wherein a Bench of Three Judges took the view that Entry 66 of List I of the Seventh Schedule to the Constitution relates to "coordination and determination of standards in institutions for higher education or research and scientific and technical institutions". The said sentiments were reiterated by this Court in Ajay Kumar Singh Vs. State of Bihar [(1994) 4 SCC 401]. However, in Preeti Srivastava's case (supra), the Constitution Bench overruled the decision in the said two cases. But, as urged by Dr. Dhawan, by holding that Entry 66 of List I was not relatable to a screening test prescribed by the Government or by a University for selection of students from out of a large number for admission to any particular course of study, the Constitution Bench also accepted that the powers of the MCI under List I, Entry 66, did not extend to selection of students. Dr. Dhawan urged that although Preeti Srivastava's case (supra) had been confined to its facts, it went beyond the same on account of interpretation of the scope of List I, Entry 66 and extending the same to the admission process, simply because admission also related to standards and upon holding that the Union Parliament also had the power to legislate for the MCI in the matter of admission criteria under Entry 25, List III. Dr. Dhawan submitted that the two aforesaid issues had the potentiality of denuding the States and the private institutions, including minority institutions enjoying the protection of Article 30, of their powers over the admission process and in the bargain upset the Federal balance.

73. The validity of the impugned Regulations was also questioned by Dr. Dhawan on the ground that Sections 19A and 20 of the 1956 Act authorizes the MCI to prescribe the minimum standards of medical education required for granting recognised medical qualifications in India, but copies of the draft regulations and of all subsequent amendments thereof are required to be furnished by the Council to all State Governments and the Council, before submitting the Regulations or any amendment thereto to the Central Government for sanction, is required to take into consideration the

comments of any State Government received within three months from the furnishing of copies of the said Regulations. Dr. Dhawan submitted that such consultation was never undertaken by the MCI before the Regulations were amended, which has rendered the said Regulations invalid and by virtue of the decisions rendered in Lavu Narendranath's case (supra) and Preeti Srivastava's case (supra), they cannot be reinstated by virtue of Entry 25 List III.

74. Dr. Dhawan urged that while the power of the MCI to frame Regulations is under Section 33 of the 1956 Act, the role of the MCI is limited to that of a recommending or a consulting body to provide standards which are required to be maintained for the purpose of running the medical institution, and would not include admission of students to the Under-graduate and the Post-graduate courses. Dr. Dhawan urged that the said powers could not have been extended to controlling admissions in the medical colleges and medical institutions run by the State and private authorities. Dr. Dhawan submitted that as was held by this Court in State of Karnataka Vs. H. Ganesh Kamath [(1983) 2 SCC 402], "It is a well-settled principle of interpretation of statutes that the conferment of rule-making power by an Act does not enable the rule-making authority to make a rule which travels beyond the scope of the enabling Act or which is in consistent there with or repugnant thereto." While accepting that delegated legislation is necessary, Dr. Dhawan urged that it must remain within the contours of the rule or regulation-making power and the purpose for which it is given, as was held by this Court in St. John's Teachers Training Institute Vs. Regional Director, National Council for Teacher Education[(2003) 3 SCC 321].

75. Dr. Dhawan also questioned the vires of the amended provisions of the MCI Rules on the ground of unreasonableness and arbitrariness and urged that in both cases the Court would be justified in invoking the doctrine of proportionality, as was observed by this Court in Om Prakash Vs. State of U.P. [(2004) 3 SCC 402]. Dr. Dhawan submitted that the only way in which the impugned Regulations could possibly be saved is by reading them down to bring them in conformity with the constitutional legislation and the law laid down by the Supreme Court.

76. Dr. Dhawan urged that admission of students in all the medical institutions in India on the basis of a single eligibility-cum-entrance examination, was not only beyond the scope of the powers vested in the Medical Council of India to make Regulations under Section 33 of the 1956Act, but the same were also arbitrary and unreasonable, not having been framed in consultation with the States and without obtaining their response in respect thereof. Moreover, the same runs counter to the decision of this Court in the T.M.A. Pai Foundation case (supra) making it clear that the MCI was only a regulatory and/or advisory body having the power to lay down the standards in the curricula, but not to interfere with the process of admission, which would be the obvious fall-out of a single NEET conducted by the MCI. Dr. Dhawan concluded on the note that uniformity for its own sake is of little use when the end result does not achieve the objects for which the Regulations have been introduced.

77. Appearing for Sri Ramachandra University in Transferred Case Nos.1& 3 of 2013, Mr. Ajit Kumar Sinha, learned Senior Advocate, questioned the vires of the impugned regulations more or less on the same grounds as canvassed by Mr. Salve, Mr. K. Parasaran and Dr. Dhawan. Mr. Sinha also reiterated the fact that in Preeti Srivastava's case (supra), this Court did not notice the decision in Deep Chand's case (supra) and overlooked the fact that Parliament had no power to legislate with regard to matters which were then in Entry 11 of List II of the Seventh Schedule. Mr. Sinha submitted that the decision in Preeti Srivastava's case (supra) must, therefore, be held to be per in curiam.

78. Mr. Sinha urged that neither Section 19A nor Section 2(h) contemplates the holding of a pre-medical entrance test for admission into all medical institutions in the country, irrespective of who had established such institutions and were administering the same. Mr. Sinha urged that the impugned Regulations were liable to be struck down on such ground as well, as it sought to unlawfully curtail the powers of the persons running such medical institutions in the country.

79. Mr. P.P. Rao, learned Senior Advocate, who initially appeared for the State of Andhra Pradesh in Transferred Case No.102 OF 2012], submitted that as far as the State of Andhra Pradesh is concerned, admission into educational institutions was governed by a Presidential Order dated 10thMay, 1979, issued under Article 371D of the Constitution, inter alia, providing for minimum educational qualifications and conditions of eligibility for admission to the MBBS, B.Sc. Course, etc. Mr. Rao submitted that being a special provision it prevails in the State of Andhra Pradesh over other similar legislations.

80. Subsequently, Mr. L. Nageshwara Rao, learned Senior Advocate, appeared for the State of Andhra Pradesh in the said Transferred Case and also in Transferred Cases Nos.100 and 101 OF 2012], 103 OF 2012], Transfer Petition (C) Nos.1671 and 1645 OF 2012] and Writ Petition (C) No.464 of2012. In addition, Mr. Nageswara Rao also appeared for the State of TamilNadu in Transferred Case Nos.110 and 111 OF 2012] and for the Tamil Nadu Deemed University Association in Transferred Cases Nos. 356 and 357 OF 2012]and Writ Petition (C) No.27 of 2013.

81. Continuing from where Mr. P.P. Rao left off, Mr. Nageswara Rao submitted that in conformity with the aforesaid Presidential Order, the State of Andhra Pradesh enacted the A.P. Educational Institutions(Regulation of Admissions and Prohibition of Capitation Fee) Act, 1983,defining, inter alia, "local area", "local candidate", "educational institutions" and "relevant qualifying examinations". Mr. Rao pointed out that Section 5 of the Act provides for reservation in non-State- Wide Universities and Education Institutions in favour of local candidates while Section 6 provides for reservation in State-wide Universities and State-wide Educational Institutions for local candidates. Mr. Rao submitted that the impugned Notification of the Medical Council of India cannot be given effect to in view of the Presidential Order made under Article 371D of the Constitution and the 1983 Act enacted in pursuance of the said Order.

82. Mr. Rao submitted that if the Medical Council of India could or should hold a National Eligibility-cum-Entrance Test, it would have the effect of denuding the State and the educational institutions of their right to establish and administer educational institutions which enjoy the protection of Articles 19(1)(g), 25, 26 and 30 of the Constitution.

83. With regard to the State of Tamil Nadu and the Deemed University Association, Mr. Rao confined his submissions to Entry 25 of List III, in relation to Entry 66 of List I. Mr. Rao reiterated the submissions made earlier that the subject matter of Entry 66 of List I is for "coordination and determination of standards" in institutions for higher education and that the determination of standards also falls within Entry 25 of List III only when coordination and determination of standards are dealt together with the State enactment made subject to legislation under Entry 66 of List I. Mr. Rao submitted that the denudation of the legislative power of the State Legislature could only be by plenary legislation made under Entry 66of List I read with Article 246 of the Constitution and not by subordinate legislation which renders the impugned regulations ultra vires the aforesaid provisions of the Constitution.

84. While dealing with the aforesaid questions, Mr. Rao also submitted that the Notification contemplates the conducting of a common entrance test for all the dental colleges throughout India, without considering the different streams of education prevalent in India such as CBSE, ICSE, State Boards, etc., prevailing in different States. The different standards of education prevalent in different States had not been taken into consideration and in such factual background, the holding of a Single Common Entrance Test for admission to the B.D.S. and the M.D.S. courses in all the dental colleges throughout India, would lead to violation of Article 14 of the Constitution, since there is no intelligible object sought to be achieved by such amended regulations.

85. Mr. Rao also questioned the provision made by the amendment dated15th February, 2012, to the Notification dated 21st December, 2010,reserving admission to Post-graduate Diploma Courses for Medical Officers in the Government Service, who acquired 30% marks, as being wholly unrelated to

merit in the entrance examination and, therefore, making such reservation arbitrary and irrational. Mr. Rao submitted that there is no rationale in giving this benefit only to those who are serving in Government/public authorities with regard to service in remote/difficult areas. Mr. Rao urged that the Government of Tamil Nadu has consistently opposed the proposal to apply the National Eligibility-cum-Entrance Test to determine admission to different medical colleges and institutions. Mr. Rao submitted that when the Notification was first issued on 27th December, 2010, the Government of Tamil Nadu challenged the same by way of Writ Petition No. 342 of 2011 and in the said Writ Petition, the High Court stayed the operation of the Notification for UG NEET Entrance Examination in so far as it related to the State of Tamil Nadu, and the stay continues to be in force. Mr. Rao urged that in respect of Tamil Nadu there are many constitutional issues, as Tamil Nadu had abolished the Common Entrance Test based on the Tamil Nadu Admission in Professional Educational Institutions Act, 2006, which was given effect to after receiving the President's assent under Article 254(2) of the Constitution.

86. Mr. Rao submitted that the introduction of NEET by virtue of the amended Regulations would run counter to the policy of the State Government which has enacted the aforesaid Act by abolishing the practice of holding an All India Entrance Test for admission to the professional courses in the State. Mr. Rao submitted that the decision regarding admission to the Post-graduate Medical and Dental Examinations would be the same as that for admission in Under-graduate courses.

87. Mr. Rao contended that the MCI had no jurisdiction to issue the impugned Notifications as the Council lacks the competence to amend the State Act which had been enacted in 2006 and the validity whereof has been upheld by the High Court. Mr. Rao repeated and reiterated the submissions earlier made with regard to the vires of the impugned Regulations and prayed for proper directions to be issued to allow the State of Tamil Nadu to continue its existing system of admission to both Under-graduate and Post-graduate courses.

88. Learned senior counsel, Mr. R. Venkataramani, appearing for the Government of Puducherry, in T.C. No. 17 of 2013, adopted the submissions made by Mr. Salve, Mr. Parasaran and Dr. Dhawan. Mr. Venkataramani submitted that the Notifications, whereby the impugned Regulations were sought to be introduced by the Medical Council of India, were beyond the scope of the powers conferred under Section 33 of the 1956 Act, rendering them ultra vires and invalid. Mr. Venkataramani submitted that the failure of the MCI to consult the Government of Puducherry, as was required under Sections 19A and 20 of the 1956 Act, before amending the Regulations and notifying the same, rendered the same invalid. Mr. Venkataramani also reiterated the submission made earlier that there are different streams of education prevailing in different States, having different syllabi, curriculum, Board of Examinations and awarding of marks and it would be unreasonable to conduct a single examination by taking recourse to a particular stream of education which would have the effect of depriving effective participation of other students educated in different streams.

89. Mr. Venkataramani submitted that this Court had consistently held that unaided educational institutions are free to devise their own admission procedures and that the impugned Regulations were against social justice and would impinge on the rights of unaided educational institutions as well as the institutions enjoying the protection of Article 30 of the Constitution in the Union Territory of Puducherry.

90. Appearing for the Karnataka Private Medical and Dental Colleges' Association consisting of Minority and Non-Minority private unaided Medical Colleges and educational institutions in the State of Karnataka, Mr. K.K. Venugopal, learned Senior Advocate, submitted that the Association had filed several Writ Petitions before the Karnataka High Court challenging the validity of the Notifications dated 21.12.2010 and 5.2.2012, by which the Medical Council of India has attempted to foist a Common Entrance Test(NEET) on all medical institutions in the country, which have been transferred to this Court for consideration along with other similar matters where the issues were common.

91. Mr. Venugopal reiterated that the imposition of NEET was contrary to the decisions of this Court in the T.M.A. Pai Foundation case (supra) and in P.A. Inamdar's case (supra). Mr. Venugopal contended that the right of the Members of the Association to carry on the business and vocation of imparting medical education had been upheld not only in the two aforesaid cases, but also in the Islamic Academy of Education case (supra) and in T. Varghese George Vs. Kora K. George [(2012) 1 SCC 369], Society for Unaided Private Schools of Rajasthan case (supra) and Rajan Purohit's case(supra). Mr. Venugopal urged that the aforesaid right has been based on the fact that a non-minority professional college has the same fundament alright which is also possessed by a minority institution under Article19(1)(g) of the Constitution, but is subject to reasonable restrictions under Article 19(6) of the Constitution.

92. Mr. Venugopal also voiced the issues common to all these cases as to whether it would be open to the Government or the MCI, a creature of the Indian Medical Council Act, 1956, to regulate the admission of students to all medical colleges and institutions. Mr. Venugopal urged that since the question had been troubling the Courts in the country for a considerable period of time, a Bench of Eleven (11) Judges was constituted to settle the above issues and other connected issues and to put a quietus to the same. The said Bench heard a number of matters in which the issue had been raised and it delivered its verdict in what is referred to as the T.M.A. Pai Foundation case (supra), answering all the questions raised. Certain common issues contained in the judgment came up for consideration later and were subsequently referred to a Bench of Seven Judges in P.A. Inamdar's case (supra) where the issue was finally put to rest.

93. Mr. Venugopal firmly urged that in dealing with the issues raised in these matters, none of the decisions rendered by this Court in the past were required to be re-opened and the said issues will have to be considered and decided by this Court by merely testing their validity against the ratio of the earlier judgments, and, in particular, the decision in the T.M.A. Pai Foundation case (supra).

94. Mr. Venugopal's next submission was with regard to the provisions of the Karnataka Professional Educational Institutions (Regulation of Admission and Fixation of Fee) (Special Provisions) Act, 2011, hereinafter referred to as the "Karnataka Act of 2011", which provides for a consensual arrangement between the State Government and the Petitioner Association for filling up the seats in the unaided medical colleges being taken over by the State Government to the extent agreed upon between the parties. The said Act also regulates the fees to be charged in these private institutions. Mr. Venugopal urged that the said Act still holds the field, since its validity has not been challenged. As a result, the impugned Regulation, now made by the Medical Council of India, purportedly under Section 33 of the 1956 Act, cannot prevail over the State law. Mr. Venugopal submitted that the impugned Regulations are, therefore, of no effect in the State of Karnataka.

95. Mr. Venugopal also urged that having regard to the decision of this Court in the T.M.A. Pai Foundation case (supra) and the other decisions referred to hereinabove, the impugned Notifications imposing NEET as a special vehicle for admission into medical colleges denuding the State and the private medical institutions from regulating their own procedure, must be held to be ultra vires Section 33 of the 1956 Act.

96. Mr. Venugopal reiterated the submissions made on behalf of the other Petitioners and concluded on the observations made in paragraph 3 of the decision of this Court in State of Karnataka Vs. Dr. T.M.A. Pai Foundation& Ors. [(2003) 6 SCC 790], which made it clear that all statutory enactments, orders, schemes, regulations would have to be brought inconformity with the decision of the Constitution Bench in the T.M.A. Pai Foundation case (supra), decided on 31.10.2002. Mr. Venugopal submitted that it, therefore, follows that the Regulations of 2000, 2010 and 2012, to the extent that they are inconsistent with the decision in the T.M.A. Pai Foundation case (supra), would be void and would have to be struck down.

97. Mr. G.S. Kannur, learned Advocate, who appeared in support of the application for intervention, being I.A. No.3, in Transferred Case No.3 of 2013, repeated the submissions made by Mr. K. Parasaran, Dr. Dhawan and Mr.L. Nageshwar Rao, that the existence of various Boards in a particular State is bound to cause inequality and discrimination if the Common Entrance Test was introduced as the only criteria for admission into any medical college or institution in the country.

98. Appearing for the Christian Medical College Ludhiana Society and the medical institutions being run by it, Mr. V. Giri, learned Senior Advocate, reiterated the submissions made by Mr. Harish Salve, on behalf of the Christian Medical College Vellore Association, but added a new dimension to the submissions made by submitting that the impugned Regulations had been issued by the Board of Governors, which had been in office pursuant to the supersession of the Medical Council, under Section 3A of the 1956 Act. Mr. Giri submitted that the Board of Governors, which was only an ad hoc body brought into existence to exercise the powers and perform the functions of the Council under the Act pending its reconstitution, was not competent as an Ad hoc body to exercise the delegated legislative power under Section 33of the said Act and to discharge the functions of the Medical Council, as contemplated under Section 3 of the 1956 Act.

99. Mr. Giri urged that though Section 33 of the 1956 Act confers power on the Medical Council of India to make Regulations generally for carrying out the purposes of the Act, it also enumerates the different functions of the Council and its powers and duties which are referable to the substantial provisions of the Act itself. Learned counsel pointed out that clause (l)deals with the conduct of professional examinations, qualification of examiners and conditions of admission to such examinations. Mr. Giri urged that Sections 16 to 18 of the above Act deals with the substantive power available to the Medical Council of India to require of every University or Medical Institution information as to the courses of study and examinations and if necessary, to take steps for inspecting the same. Accordingly, the Regulation-making power contemplated under Section 33 of the 1956 Act is preferable to the substantive functions to be discharged by the Council under Sections 16 to 18 of the Act. Mr. Giri contended that no provision in the Act contemplates that the Council may actually conduct the examinations. Relying on the views expressed in the T.M.A. Pai Foundation case (supra), Mr. Giri urged that the impugned Regulations were in direct violation of the rights guaranteed to a minority educational institutions under Article 19(1)(g) read with Articles 25, 26, 29(1) and 30 of the Constitution.

100. Mr. Giri submitted that the Petitioner is a minority educational institution admitting students from the minority community in a fair, transparent and non-exploitative manner, based on inter se merit, and cannot be subjected to the NEET for the purposes of admission to the Under-graduate MBBS and Post-graduate degrees in medicine. Reemphasising Mr. Salve's submissions, Mr. Giri submitted that the activity of running medical, allied health sciences and nursing courses, in order to ensure constant supply of doctors and other para-medical staff to the hospitals and other facilities engaged in the healing of the sick, are acts done in furtherance of the Petitioner's religious faith, which stand protected under Articles 25, 26 and 30 of the Constitution.

101. Mr. Giri submitted that the Government of Punjab, in its Department of Medical Education and Research, vide its Notification No.5/7/07.3HBITI/2457 dated 21.05.2007, for admission to MBBS, BDS, BAMS and BHMS courses and vide Notification No. 5/8/2007-3HB3/1334 dated 21.03.2007,for admission in Post-graduate Degree/ Diploma courses in the State of Punjab, excluded the Christian Medical College and Christian Dental College, Ludhiana, from the admission process conducted by Baba Farid University of Health Sciences, Farid kot, on behalf of the State Government for various Under-graduate and Post-graduate Medical Degree courses. Mr. Giri submitted that the impugned Regulations, being ultra vires the provisions of Articles 19(1)(g) and Articles 25, 26, 29(1) and 30 of the Constitution, having been promulgated by an ad hoc body, were liable to be struck down.

102. Mr. K. Radhakrishnan, learned Senior Advocate, appeared for the Annoor Dental College and Hospital, situated in the State of Kerala, adopted the submissions made by the other counsel and urged that the submissions advanced, as far as medical colleges and institutions are concerned, apply equally to dental colleges, which are under the authority of the Dental Council of India and is governed by the Dentists Act, 1948. Mr. Radhakrishnan submitted that the impugned Regulations were also ultra vires the Dentists Act, 1948, Section 20 whereof empowers the Dental Council of India to prescribe conditions for admission to the courses for training of dentists and dental hygienists, but does not authorize the Dental Council of India or any agency appointed by it to conduct admission tests for selection of students for the BDS and MDS courses. Mr. Radha krishnan also urged that the impugned Regulations which attempted to enforce NEET were ultra vires the provisions of the Dentists Act, 1948, as also the relevant provisions of the Constitution and are, therefore, liable to be struck down.

103. Transferred Case No.8 of 2013 which arises out of Writ PetitionNo.5939 (M/S) OF 2012], was filed by the U.P. Unaided Medical Colleges Welfare Association and Others. Appearing for the said Association, Mr. Guru Krishnakumar, learned Senior Advocate, while adopting the submissions already made, reiterated that the functional autonomy of institutes is an integral right under Article 19(1)(g) of the Constitution, as clearly setout in the decision rendered in the T.M.A. Pai Foundation case (supra).Learned Senior counsel submitted that the fundamental right guaranteed under Article 19(1)(g) includes the right to admit students in the privately run professional colleges, including medical, dental and engineering colleges, and viewed from any angle, the impugned Regulations were impracticable, besides causing violence to Article 19(1)(g) of the Constitution. Mr. Guru Krishna kumar submitted that the impugned Regulations and the Notifications promulgating the same were liable to be struck down.

104. Mr. C.S.N. Mohan Rao, learned Advocate, who appeared for the Writ Petitioner, Vigyan Bharti Charitable Trust in Writ Petition (C) No.15 of2013, submitted that the Petitioner was a registered charitable trust running two medical colleges and a dental college in the State of Odisha. The various submissions made by Mr. Rao were a repetition of the submissions already made by Mr. Harish Salve and others. Mr. Rao, however, referred to a Two-Judge Bench decision of this Court in Dr. Dinesh Kumar Vs. Motilal Nehru Medical Colleges, Allahabad & Ors. [(1985) 3 SCC 727],wherein, while considering the question of admission to medical colleges and the All India Entrance Examination, it was, inter alia, held that its hould be left to the different States to either adopt or reject the National Eligibility Entrance Test proposed to be conducted by the Medical Council of India. Mr. Rao submitted that as stated by Justice V. KrishnaIyer in the case of Jagdish Sharan & Ors. Vs. Union of India & Ors. [(1980)2 SCC 768], merit cannot be measured in terms of marks alone, but human sympathies are equally important. The heart is as much a factor as the head in assessing the social value of a member of the medical profession.

105. In Writ Petition (Civil) No.535 OF 2012], Saveetha Institute of Medical and Technical Sciences, a Deemed University, declared as such under Section 3 of the University Grants Commission Act, 1956, has questioned the impugned Notifications and the amended Clauses of the MCI Regulations on the same grounds as in the earlier cases. Mr. Jayanth Muth Raj, learned Advocate appearing for the Petitioner, repeated and reiterated the submissions made earlier in regard to the law as laid down in the T.M.A. Pai Foundation case (supra) and in P.A. Inamdar's case (supra) and urged that the impugned Notifications had been issued in violation of the decisions rendered in the said two cases and in other subsequent cases indicating that private institutions had the right to evaluate their admission procedure based on principles of fairness, transparency and non-exploitation. Mr. Muth Raj submitted that in the absence of any consensual arrangement in the case of the Petitioner, the MCI or the Dental Council of India could not compel the Petitioner to accept the National Eligibility-cum-Entrance Test on the basis of the impugned Regulations. Learned counsel submitted that to that extent, the impugned amended Regulations and the Notifications issued to enforce the same were ultra vires Articles 14, 19(1) (g) and 26 of the Constitution and were liable to be struck down.

106. Writ Petition (Civil) No.495 OF 2012] and Transferred Case No.108 of2012 involve common questions regarding the conducting of NEET in English and Hindi in the State of Gujarat, where the medium of instructions under the Gujarat Board of Secondary Education is Gujarati. The submissions made both on the behalf of the Petitioners and the State of Gujarat were ad idem to the extent that Entry 66 of List I restricts the legislative powers of the Central Government to "co-ordination and determination of standards of education". Thus, as long as the Common Entrance Examination held by the State or the other private institutions did not impinge upon the standards laid down by Parliament, it is the State which can, in terms of Entry 25 of List III, prescribe such a Common Entrance Test in the absence of any Central Legislation relatable to Entry 25 of List III. Mr. K.K. Trivedi, learned Advocate, appearing for the Petitioners submitted that the impugned Regulations and Notifications were, ultra vires Section 33 of the 1956 Act, since prescribing a Common Entrance Test is not one of the stated purposes of the Act and were, therefore, liable to be struck down.

107. Appearing for the Medical Council of India, Mr. Nidhesh Gupta, learned Senior Advocate, submitted that the Medical Council of India Act,1956, is traceable to Entry 66 of List I, as was held in MCI Vs. State of Karnataka [(1998) 6 SCC 131]. In paragraph 24 of the said decision it was categorically indicated that the Indian Medical Council Act being relatable to Entry 66 of List I, prevails over any State enactment to the extent the State enactment is repugnant to the provisions of the Act, even though the State Acts may be relatable to Entry 25 or 26 of the Concurrent List.

108. Mr. Gupta submitted that Entry 66 in List I empowers the Central Government to enact laws for coordination and determination of standards in institutions for higher education or research and scientific and technical institutions. Learned counsel also urged that Section 19-A (1) of the Indian Medical Council Act, 1956, provides that the Council may prescribe the minimum standards of medical education required for granting recognized medical qualifications (other than postgraduate medical qualifications) by universities or medical institutions in India. Mr. Gupta submitted that Section 20 relating to post-graduate medical education could also prescribe similar standards of Postgraduate Medical Education for the guidance of Universities. Mr. Gupta submitted that Section 33 of the 1956 Act, empowers the Medical Council of India, with the previous approval of the Central Government to make Regulations, and provides that the Council may make Regulations generally to carry out the purposes of the Act, and, without prejudice to the generality of this power, such Regulations may provide for "any other matter for which under the Act provision may be made by Regulations". Mr. Gupta urged that it is the accepted position that standards of education are to be determined by the MCI. The questions which have been posed on behalf of the Petitioners in these various matters, challenging the vires of the Regulations, are whether the power of determination of standards of education includes the power to regulate the admission process and determine the admission criteria, and whether the determination of standards of education also includes the power to conduct the examinations.

109. Responding to the two questions, Mr. Gupta submitted that once the 1997 Regulations were accepted by the various Medical Colleges and Institutions as being in accordance with law and the powers vested under Entry 66 of List I, the first issue stands conceded, since the 1997Regulations prescribing the eligibility criteria for admission in medical courses had been accepted and acted upon by the medical institutions. In addition to the above, Mr. Gupta contended that Section 33(l) of the 1956Act vested the MCI with powers to frame regulations to provide for the conduct of professional examinations, qualifications of examiners and the conditions of admission to such examinations. Mr. Gupta submitted that, under the said provision, it can be said that the MCI was within its rights to conduct the NEET and stipulate the qualifications of examiners and the conditions of admission to such examinations.

110. Mr. Gupta submitted that it would be incorrect to say that standards of education can have no direct impact on norms of admission. Learned senior counsel pointed out that in paragraph 36 of the judgment in Preeti Srivastava's case (supra), it had been indicated that the standards of education are impacted by the caliber of students admitted to the institution and that the process of selection and the

criteria for selection of candidates has an impact on the standards of medical education. Mr. Gupta submitted that the views expressed by this Court in the decisions rendered in Nivedita Jain's case (supra) and that of Ajay Kumar Singh's case (supra), which had taken a contrary view, were overruled in Preeti Srivastava's case (supra). Mr. Gupta also relied on the decision of this Court in Bharati Vidyapeeth (Deemed University) and Ors. Vs. State of Maharashtra & Anr. [(2004) 11 SCC 755], wherein while following the decision in Preeti Srivastava's case (supra), it was reiterated that prescribing standards would include the process of admission. Mr. Gupta submitted that the said decision had, thereafter, been followed in Prof. Yashpal Vs. State of Chhattisgarh [(2005) 5 SCC420]; State of M.P. Vs. Gopal D. Teerthani [(2003) 7 SCC 83], Harish VermaVs. Rajesh Srivastava [(2003) 8 SCC 69] and in Medical Council of India Vs. Rama Medical College Hospital & Research Centre [(2012) 8 SCC 80]. Learned senior counsel urged that the expression "standard" used in Entry 66 of List I has been given a very wide meaning by this Court in Gujarat University, Ahemadabad Vs. Krishna Ranganath Mudholkar [(1963) Supp. 1 SCR112] and accordingly anything concerned with standards of education would be included within Entry 66 of List I and would be deemed to be excluded from other Lists. Mr. Gupta also placed reliance on MCI Vs. State of Karnataka [1998 (6) SCC 131], wherein it was held that it was settled law that while considering the amplitude of the entries in Schedule VII of the Constitution, the widest amplitude is to be given to the language of such Entries. Mr. Gupta urged that without prejudice to the contention that Entry 66 of List I directly permits the admission process and the examination itself being regulated and/or conducted by the MCI, even if the Entries did not directly so permit, the MCI was entitled to regulate the said functions since even matters which are not directly covered by the Entries, but are ancillary thereto, can be regulated. Mr. Gupta submitted that in Krishna Ranganath Mudholkar's case (supra), it was held that power to legislate on a subject should normally be held to extend to all ancillary or subsidiary matters, which can fairly and reasonably be said to be comprehended in that subject. Reference was also made to the decisions of this Court in Harakchand Ratanchand Banthia Vs. Union of India [(1969) 2SCC 166]; ITC Vs. Agricultural Produce Market Committee [(2002) 9 SCC 232];and Banarasi Dass Vs. WTO [1965 (2) SCR 355], wherein the same principle has been reiterated. Mr. Gupta submitted that Regulations validly made become a part of the Statute itself, as was indicated in State of PunjabVs. Devans Modern Breweries Ltd. [(2004) 11 SCC 26]; Annamalai University Vs. Information & Tourism Department [(2009) 4 SCC 590] U.P. Power Corporation Vs. NTPC Ltd. [(2009) 6 SCC 235] and the St. Johns Teachers Training Institute case (supra). According to Mr. Gupta, the NEET Regulations having been validly made and the requisite legislation being available in Sections 19A, 20 and 23 of the Indian Medical Council Act,1956, the NEET Regulations must be deemed to be part of the Act itself.

111. Regarding the MCI's power to conduct the NEET, Mr. Gupta urged that once it had been held in Preeti Srivastava's case (supra) that the standard of education is impacted by the process of selection, the power to determine the said process of selection is implicit. In fact, Mr. Gupta submitted that the aforesaid question stands concluded by the judgment of this Court in Veterinary Council of India Vs. Indian Council of Agricultural Research [(2000) 1 SCC 750], wherein, while considering the provisions of the Veterinary Council of India Act which were materially the same as those of the Indian Medical Council Act, it was held relying on the judgment in Preeti Srivastava's case (supra) that the Veterinary Council of India was competent to and had the requisite powers to hold the All India Entrance Examination.

112. Mr. Gupta urged that this Court had repeatedly emphasised how profiteering and capitation fee and other malpractices have entered the field of medical admissions, which adversely affect the standards of education in the country. Such malpractices strike at the core of the admission process and if allowed to continue, the admission process will be reduced to a farce. It was to put an end to such malpractices that the MCI introduced NEET and was within its powers to do so.

113. On the necessity of furnishing draft Regulations to the State Governments, as stipulated under Section 19A(2) and for Committees under Section 20, Mr. Gupta urged that the same was merely directory and not mandatory. Referring to the decision of this Court in State of U.P. Vs. Manbodhan

Lal Srivastava [1958 SCR 533], learned counsel submitted that this Court while considering the provisions of Article 320(3) of the Constitution, which provides for consultation with the Union Public Service Commission or the State Public Service Commission, held that the said requirement in the Constitution was merely directory and not mandatory. Drawing a parallel to the facts of the said case with the facts of the present set of cases, Mr. Gupta urged that the provisions of Section 19A(2)must be held to be directory and not mandatory and its non-compliance could not adversely affect the amended Regulations and the Notifications issued in pursuance thereof. Mr. Gupta submitted that before amending the Regulations, detailed interaction had been undertaken with the State Governments at various stages. Learned counsel submitted that as far back as on 14.9.2009,5.2.2010 and 4.8.2010, letters had been written to various State Governments and the responses received were considered. There were joint meetings between the various State representatives and the other concerned parties and the concerns of most of the State Governments were fully addressed.

114. On the question of federalism and the powers of the State under Article 254 of the Constitution, Mr. Gupta contended that since the MCI derived its authority from Entry 66 of List I, it is a subject which is exclusively within the domain of the Union. Mr. Gupta submitted that all the arguments advanced on behalf of the Petitioners were on the erroneous assumption that the Regulations had been made under Entry 25 of List III. Mr. Gupta pointed out that in paragraph 52 of the judgment in Preeti Srivastava's case (supra), this Court had held that the impugned Regulations had been framed under Entry 66, List I and that the Regulations framed by the MCI are binding and the States cannot in exercise of powers under Entry 25 of List III make Rules and Regulations which are in conflict with or adversely impinge upon the Regulations framed by the MCI for Post-graduate medical education. Mr. Gupta urged that since the standards laid down by the MCI are in exercise of powers conferred by Entry 66 of List I, the same would prevail over all State laws on the same subject.

115. Mr. Gupta also urged that the ratio of Lavu Narendranath's case(supra) had been misunderstood on behalf of the Petitioners and the arguments raised on behalf of Yenepoya University was based on the ratio that Entry 66 of List I is not relatable to a screening test prescribed by the Government or by a University for selection of students from out of a large number applying for admission to a particular course of study. Mr. Gupta pointed out that the ratio of the decision in Preeti Srivastava's case (supra) and in Lavu Narendranath's case (supra) show that the Government which ran the colleges had the right to make a selection out of a large number of candidates and for this purpose they could prescribe a test of their own which was not contrary to any law. It was urged that in the said case, there was no Central legislation occupying the field. Mr. Gupta urged that NEET is not a mere screening test, but an eligibility test which forms the basis of selection. Mr. Gupta submitted that any test which might be prescribed by a State Government would be against the law in the present case, being in the teeth of the NEET Regulations.

116. With regard to the submissions made on behalf of the minority institutions enjoying the protection of Article 30, Mr. Gupta contended that reliance placed on behalf of CMC, Vellore, on the judgment in the Ahmedabad St. Xavier's College Society Vs. State of Gujarat [(1974) 1 SCC717], was entirely misplaced, and, in fact, the said judgment supports a test such as NEET. Mr. Gupta submitted that on a proper analysis of the said judgment and in particular the judgment delivered by Chief Justice Ray, (as His Lordship then was), it would be evident that even in the said judgment the right of religious and linguistic minorities to establish and administer educational institutions of the choice of the minorities had been duly recognised. Chief Justice Ray also observed that if the scope of Article 30(1) is made an extension of the right under Article 29(1) as a right to establish and administer educational institutions for giving religious instruction or for imparting education in their religious teachings or tenets, the fundamental right of minorities to establish and administer educational institutions of their choice would be taken away. It was also observed in the judgment that every section of the public, the majority as well as minority, has rights in respect of religion as contemplated in Articles 25 and 26 of the Constitution. Mr. Gupta urged that the whole object of conferring the right on minorities under Article30 is to ensure that there would be equality between

the majority and the minority. It was urged that it is for the aforesaid reason that whenever the majority community conferred upon itself a special power to overrule or interfere with the administration and management of the minority institutions, the Supreme Court struck down the said power. Mr. Gupt a submitted that whenever an attempt was made to interfere with the rights guaranteed to religious and linguistic minorities, as in the St. Xavier's case (supra), the same being arbitrary and unreasonable, was struck down. Reliance was also placed on the decision in the case of Rev. Father W. Proost, and in the case of Rt. Rev. Bishop S.K. Patro, where the impugned order of the Secretary to the Government dated 22nd May, 1967, set aside the order passed by the President of the Board of Secondary Education. Mr. Gupta urged that in the very initial stage of judicial consideration in these matters, in State of Kerala Vs. Very Rev. Mother Provincial [(1970)2 SCC 417], the impugned provisions required nominees of the University and the Government to be included in the Governing Body. The same being a direct infringement on the rights of the minorities to establish and administer institutions of their choice, the impugned provision was struck down.

117. Mr. Gupta submitted that in each of the aforesaid cases, an attempt was made by the majority to take over the management and to impose its substantive views. Learned counsel submitted that NEET does nothing of the sort, since it did not infringe any of the rights guaranteed either under Article 19(1)(g) or Articles 25, 26, 29 and 30 of the Constitution. Mr. Gupta urged that the various questions raised on behalf of the Petitioners herein have been fully answered in P.A. Inamdar's case (supra). They also meet the tests prescribed in the St. Xavier's case (supra) as well. Mr. Gupta urged that Justice Khanna in paragraph 105 of the judgment observed that Regulations which are calculated to safeguard the interests of teachers would result in security of tenure and would attract competent persons for the posts of teachers and are, therefore, in the interest of minority educational institutions, and would not violate Article 30(1) of the Constitution. Mr. Gupta urged that by the same reasoning, Regulations which are in the interest of the students and will attract the most meritorious students, are necessarily in the interest of the minority institutions and do not, therefore, violate their rights under Article30(1) of the Constitution.

118. Mr. Gupta submitted that in the St. Xavier's case (supra), Justice Khanna had indicated in his separate judgment the dual tests of reasonableness and of making the institution an effective vehicle of education for the minority community and others who resort to it. Mr. Gupta submitted that NEET meets the test of reasonableness and fully assists in making the institution an effective vehicle of education, since it ensures admission for the most meritorious students and also negates any possibility of admissions being made for reasons other than merit within each category. Mr. Gupta submitted that, in fact, in paragraph 92 of the judgment, Justice Khanna had observed that "a regulation which is designed to prevent maladministration of an educational institution cannot be said to offend Clause (1) of Article 30". Mr. Gupta re-emphasized that NEET was not in any way against the rights vested in educational institutions, being run by the minorities, but it was in the interest of such minorities to have their most meritorious students in the best institutes.

119. Dealing with the various tests referred to on behalf of the Petitioners in the different cases, Mr. Gupta submitted that the ratio in the T.M.A. Pai Foundation case (supra) also supports the NEET Regulations. Mr. Gupta contended that the right of minority institutions to admit students was not being denied, inasmuch as, the concerned institutes could admit students of their own community, but from the list of successful candidates who appear for the NEET. Mr. Gupta submitted that in the aforesaid judgment it was also observed that merit is usually determined by a common entrance test conducted by the institution or in case of professional colleges, by government agencies. Mr. Gupta submitted that it had also been emphasized that Regulations in national interest are to apply to all educational institutions, whether run by a minority or non-minorities and that an exception to the right under Article 30 is the power of the State to regulate education, educational standards and allied matters. Mr. Gupta submitted that in the T.M.A. Pai Foundation case (supra), it had been indicated that regulatory measures for ensuring educational standards and maintaining excellence thereof are no anathema to the protection conferred by Article 30(1).

120. Mr. Gupta submitted that the admission process followed by CMC, Vellore, failed to meet any of the tests relating to transparency and fairness and lack of arbitrariness. Mr. Gupta pointed out that, in the case of a candidate for admission in the Under-graduate or Post-graduate courses in the said institution, a candidate cannot be selected unless he is sponsored by the Diocese and the competition is limited to the particular candidates, who had been sponsored by a particular Diocese, which Mr. Gupta submitted is violative of Article 14 of the Constitution and also the principles of merit. Mr. Gupta urged that as far as the application of Articles 25 and26 of the Constitution in matters relating to establishment and administration of educational institutions is concerned, the same has to be read in relation to matters of religion and with respect to religious practices which form an essential and integral part of religion. Learned counsel submitted that the rights protected under Articles 25 and 26 are available to individuals and not to organized bodies, such as CMC, Vellore, or other minority run institutions, as had been held by this Court in Sardar Vs. State of Bombay [1962 Supp. (2) SCR 496], wherein it was observed that the right guaranteed by Article 25 is an individual right. The said view was subsequently endorsed in Sri Sri Sri Lakshmana Yatendrulu Vs. State of A.P. [(196) 8 SCC 705]. Mr. Gupta submitted that, having regard to the above, the various associations and minorities, which had challenged the impugned Regulations, were not entitled to do so and their applications were liable to be dismissed.

121. Mr. Gupta submitted that the impugned Regulations would apply equally to "Deemed Universities", declared to be so under Section 3 of the University Grants Commission Act, 1956, hereinafter referred to as the "UGC Act", since it cannot be argued that the Deemed University will not follow any rules at all. Mr. Gupta pointed out that in the Bharati Vidyapeeth's case (supra), this Court had held that the standards prescribed by statutory authorities, such as the Medical Council of India, governed by Entry 66 of List I of the Seventh Schedule to the Constitution, must be applied, particularly when the Deemed Universities seek recognition of the medical courses taught by them, under the provisions of the 1956 Act. Mr. Gupta submitted that the Deemed Universities cannot take the benefit of recognition under the 1956 Act, but refuse to follow the norms prescribed therein. Mr. Gupta pointed out that it had inter alia been indicated in paragraph 24 of the affidavit filed on behalf of the Commission that the Commission was also of the view that all the constituent medical colleges of "Deemed Universities" may be asked to comply with the Notification dated21.12.2010, issued by the Medical Council of India, in view of Article 6.1in the UGC (Institutions Deemed to be Universities) Regulations, 2010,which states that: "Admission of students to all deemed to be universities, public or private, shall be made strictly on merit based on an All India examination as prescribed by the Regulations and in consistence with the national policy in this behalf, from time to time.

122. "On the percentile system of grading, which had been touched upon by Dr. Dhawan, it was submitted that the said system of ranking/ grading was being followed internationally in many of the premier institutions around the globe.

123. Adverting to the submissions made by Mr. L. Nageshwara Rao, on behalf of the States of Andhra Pradesh and Tamil Nadu, regarding the enactment of the A.P. Educational Institutions (Regulation of Admissions and Prohibition of Capitation Fee) Act, 1983, on the basis of the Presidential Order dated 10th May, 1979, made under Article 371-D of the Constitution, Mr. Gupta submitted that neither the said Article nor the Presidential Order was concerned with standards of education. Mr. Gupta urged that a reading of Sub-clause (1) of Article 371-D of the Constitution makes it clear that it confers powers on the President to make an Order with regard to the State of Andhra Pradesh "for equitable opportunities and facilities for the people belonging to different parts of the State". Mr. Gupta urged that the State legislation providing for State level entrance examination is not relatable to Article 371-D and, as such, the State legislation had to yield to the Union legislation, which Mr. Gupta urged had been the consistent view taken in Govt. of A.P. Vs. Mohd. Ghouse Mohinuddin [(2001) 8 SCC 416]; V. Jaganadha Rao Vs. State of A.P. [(2001)10 SCC 401]; and NTR University of Health Sciences Vs. G. Babu Rajendra Prasad [(2003) 5 SCC 350].

124. As to the weight age of marks being given up to a maximum of 30%,to government servants serving in remote areas, Mr. Gupta said that the same had been upheld by this Court in State of M.P. Vs. Gopal D. Tirthani[(2003) 7 SCC 83].

125. Replying to the submissions made on behalf of some of the other Petitioners and, in particular, on behalf of the Christian Medical College, Ludhiana, in Writ Petition No. 20 OF 2012], Mr. Gupta urged that Section 3B of the 1956 Act empowers the Board of Governors to exercise the powers and discharge the functions of the Council and, accordingly, even if the appointment of the members of the Board of Governors was ad hoc in nature, it made no difference to their working and discharging the functions of the Council.

126. Mr. Gupta urged that private bodies and religious and linguistic minorities have a fundamental right to establish and administer medical institutions or other institutions of their choice under Articles19(1)(g) and 30 of the Constitution, but such right was not unfettered and did not include the right to mal administer the respective institutions. Learned counsel urged that in the name of protection under Articles 25, 26and 30 of the Constitution, an institution run by a religious or linguistic minority did not have the right to lower the standards of education set by the Medical Council of India or to recruit staff, who were not properly qualified, or to deprive the students of the necessary infrastructure to run such courses. Accordingly, the MCI was within its jurisdiction to lay down proper standards and to also conduct an All-India Entrance Examination to eliminate any possibility of malpractice. Mr. Gupta urged that the several Writ Petitions filed on behalf of both States and private individuals and religious and linguistic minorities are, therefore, liable to be dismissed with appropriate costs.

127. Mr. Sidharth Luthra, learned Additional Solicitor General, appearing for the Union of India, in the Ministry of Health and Family Welfare, at the very outset, submitted that the Union of India fully supported the stand of the MCI. Mr. Luthra urged that the impugned Notifications amending the Regulations in regard to the introduction of NEET for both graduate medical education and post-graduate medical education had been validly made under powers conferred upon the MCI under Section 33 of the 1956 Act, upon obtaining the previous sanction of the Central Government, as required under the said Section. Mr. Luthra submitted that there was a definite rationale behind holding a single examination. The learned ASG urged that the NEET Regulations had been framed by the MCI, after due deliberations with the Central Government and, broadly speaking, the logic behind enacting the said Regulations were to introduce uniformity of standards, merit and transparency and to lessen the hardship of aspiring students. Mr. Luthra urged that the NEET and the amending Regulations, which had been impugned, were not ultra vires since the 1956 Act is relatable to Entry 66 of the Union List and prevails over any State enactment, even though the State Acts may be relatable to Entry25 or 26 of the Concurrent List, to the extent the provisions of the State Acts were repugnant to the Central legislation. Mr. Luthra urged that Regulations framed under Section 33 of the 1956 Act, with the previous sanction of the Central Government, have statutory status and the said Regulations were framed to carry out the purposes of the said Act.

128. Mr. Luthra repeated Mr. Gupta's submission that the rights of the minorities preserved under Article 30 were not adversely affected or prejudiced in any way, as had been explained in P.A. Inamdar's case(supra). The learned ASG submitted that NEET had been introduced in the national interest to ensure that meritorious students did not suffer the problem of appearing in multiple examinations conducted by various agencies which also resulted in different standards for admission, which had the effect of compromising merit. Mr. Luthra urged that the earlier system of multiple examinations was neither in the national interest nor in the interest of maintaining the standards of medical education, nor did it serve the interest of poor/middle class students who had to buy forms of several examinations and travel across the country to appear in multiple examinations. It was urged that any Regulation framed in the national interest must necessarily apply to all educational institutions, whether run by the majority or the minority groups. It was also urged that such a Regulation must necessarily be read into Article 30 of the Constitution. Mr. Luthra referred to the

views expressed in that behalf in Paragraph 107of the judgment in the T.M.A. Pai Foundation case (supra). The learned ASG submitted that the amended Regulations do not restrict or in any manner take away the rights of the minority institutions under Articles 19(1) (g)and 30 of the Constitution to admit students from their community.

129. Mr. Luthra reiterated the submissions made by Mr. Gupta that the right conferred on the religious and linguistic minorities to administer educational institutions of their choice, is not an absolute right and maybe regulated in certain special circumstances.

130. The learned ASG also urged that the merit list to be published on the results of the NEET, will contain all the details of each candidate, including the State, category, minority status, caste and tribal status in front of his/her name and rank so that there would be no hindrance whatsoever in implementing the constitutional principles of reservation and minority rights and merit. Furthermore, the transparency in the process of admission would also be fully achieved.

131. On the question of different mediums of instruction in schools throughout the country, Mr. Luthra submitted that the NEET - UG would be conducted in multiple languages, such as English, Hindi, Telegu, Assamese, Gujarati, Marathi, Tamil and Bengali, and hence, the submissions made that NEET was not being conducted in the regional languages, is misleading.

132. One other important aspect touched upon by Mr. Luthra is with regard to the syllabus for NEET, which would be based on the CBSE syllabus. The learned ASG submitted that the syllabus for NEET had been prepared by the MCI, after obtaining feedback from different stake-holders, including the National Board and State Boards, across the country. Mr. Luthra submitted that the Regulations have been amended to implement the provisions of the Act so as to meet the difficulties, which had been raised by some of the States. The learned ASG submitted that the NEET Regulations were clearly within the competence and jurisdiction of the Medical Council in the discharge of its obligations to carry out the purposes of the Act, as had been enjoined in the different decisions of this Court and, in particular, in Preeti Srivastava's case (supra). The learned ASG urged that the objections which had been sought to be taken on behalf of the various Petitioners, including the State Governments, with regard to the holding of the NEET examination, were wholly misconceived and were liable to be rejected.

133. Various issues of singular importance, some of which have been considered earlier, arise out of the submissions made on behalf of the respective parties questioning the vires of the amended regulations relating to Under-graduate and Post-graduate medical education, namely,

i. The validity of the MCI Regulations and the DCI Regulations and the amendments effected therein with regard to Under-graduate and Post-graduate courses of medicine in medical and dental colleges and institutions in the light of Section 19A(2) of the Indian Medical Council Act, 1956, and the corresponding provisions in the Dentists Act, 1948.

ii. The jurisdiction and authority of the MCI and the DCI to conduct a single National Eligibility-cum-Entrance Test for admission to the M.B.B.S., B.D.S. and Post-graduate courses in both the disciplines.

iii. The rights of the States and private institutions to establish and administer educational institutions and to admit students to their M.B.B.S., B.D.S. and Post-graduate courses;

iv. The impact of NEET on the rights guaranteed to religious and linguistic minorities under Article 30 of the Constitution.

v. Do the impugned Regulations come within the ambit of Entry 66, List I, of the Seventh Schedule to the Constitution?;

vi. The effect of Presidential orders made under Article 371D of the Constitution of India.

134. Despite the various issues raised in this batch of cases, the central issue relates to the validity of the amended Regulations and the right of the MCI and the DCI there under to introduce and enforce a common entrance test, which has the effect of denuding the State and private institutions, both aided and unaided, some enjoying the protection of Article 30, of their powers to admit students in the M.B.B.S., B.D.S. and the Post-graduate Courses conducted by them. There is little doubt that the impugned Notifications dated 21.12.2010 and 31.5.2012, respectively, and the amended Regulations directly affect the right of private institutions to admit students of their choice by conducting their own entrance examinations, as they have been doing all along. Attractive though it seems, the decision taken by the MCI and the DCI to hold a single National Eligibility-cum-Entrance Test to the M.B.B.S., B.D.S. and the Post-graduate courses in medicine and dentistry, purportedly with the intention of maintaining high standards in medical education, is fraught with difficulties, not the least of which is the competence of the MCI and the DCI to frame and notify such Regulations. The ancillary issues which arise in regard to the main issue, relate to the rights guaranteed to citizens under Article 19(1)(g) and to religious and linguistic minorities under Article 30 of the Constitution, to establish and administer educational institutions of their choice.

135. Doubts have been raised regarding the competence of the MCI and the DCI to amend the 1997 and 2000 Regulations, or the 2007 Regulation and to issue the impugned Notifications to cover all the medical institutions in the country, which have their own procedures relating to admissions to the M.B.B.S., B.D.S. and Post-graduate Courses which passed the triple test indicated in P.A. Inamdar's case (supra). The validity of the MCI Regulations of 1997 and 2000 and the DCI Regulations of 2007 and the amendments effected therein has been questioned with reference to Sections19A(2) and 20 of the 1956 Act and Section 20 of the 1948 Act. While empowering the MCI and the DCI to prescribe minimum standards of medical education required for granting recognised medical qualifications, it has also been stipulated that the copies of the draft Regulations and all subsequent amendments thereof are to be furnished by the Council to all the State Governments and the Council shall, before submitting the Regulations or any amendment thereof, as the case may be, to the Central Government for sanction, take into consideration the comments of any State Government received within three months from the furnishing of such copies. The said provisions do not appear to have been complied with by the MCI or the DCI, which rendered the Regulations and the amendments thereto invalid. On behalf of the MCI an attempt was made to justify the omission by urging that the directions were only directory and not mandatory. In support of such a contention reliance was placed on Manbodhan Lal Srivastava's case (supra), wherein the provisions of Article 320(3) of the Constitution providing for consultation with the Union Public Service Commission or the State Public Service Commission, were held to be directory and not mandatory. A submission was also made that before the Regulations were amended, MCI had interacted with the State Governments and letters had also been exchanged in this regard and the responses were taken into account by the Council while amending the Regulations.

136. We are afraid that the said analogy would not be applicable to the facts of these cases. The direction contained in Sub-section (2) of Section 19A of the 1956 Act makes it a pre-condition for the Regulations and all subsequent amendments to be submitted to the Central Government for sanction. The Council is required to take into consideration the comments of any State Government within three months from the furnishing of copies of the draft Regulations and/or subsequent amendments thereto. There is nothing to show that the MCI ever sent the draft amended Regulations to the different State Governments for their views. The submission of the draft Regulations and all subsequent amendments thereto cannot be said to be directory, since upon furnishing of the draft Regulations and all subsequent amendments thereto by the Council to all the State Governments, the Council has to take into consideration the comments, if any, received from any State Government in respect thereof, before submitting the same to the Central Government for sanction.

137. The fact situation in Manbodhan Lal Srivastava's case (supra) was different from the fact situation in this batch of cases. Article 320(3) of the Constitution provides for consultation by the Central or State Government with regard to the matters enumerated therein. In the instant case, it is not a case of consultation, but a case of inputs being provided by the State Governments in regard to the Regulations to be framed by the MCI or the DCI. Realising the difficulty, Mr. Gupta had argued that since the 1997 and 2000 Regulations had been acted upon by the concerned parties, the same must be held to have been accepted and the validity thereof was no longer open to challenge.

138. Mr. Gupta's aforesaid submissions cannot be accepted, inasmuch as, an invalid provision cannot be validated simply by acting on the basis thereof.

139. Mr. Gupta has also urged that the MCI derived its authority for framing the Regulations and/or effecting amendments thereto from Entry 66, List I, which is within the domain of the Central Government. Accordingly, the same would have primacy over all State laws on the subject.

140. Mr. Gupta's said submission finds support in Preeti Srivastava's case(supra), wherein it has been held that the Regulations framed by the MCI is binding upon the States having been framed under Entry 66, List I of the Seventh Schedule to the Constitution. But, where does it take us as far as these cases are concerned which derive their rights and status under Articles 19(1)(g), 25, 26, 29(1) and 30 of the Constitution? Can the rights guaranteed to individuals and also religious and linguistic minorities under the said provisions of the Constitution, be interfered with by legislation and that too by way of delegated legislation?

141. The four impugned Notifications dated 21.12.2010 and 31.5.2012 make it clear, in no uncertain terms, that all admissions to the M.B.B.S. and the B.D.S. courses and their respective Post-graduate courses, shall have to be made solely on the basis of the results of the respective NEET, thereby preventing the States and their authorities and privately-run institutions from conducting any separate examination for admitting students to the courses run by them. Although, Article 19(6) of the Constitution recognizes and permits reasonable restrictions on the right guaranteed under Article19(1)(g), the course of action adopted by the MCI and the DCI would not, in our view, qualify as a reasonable restriction, but would amount to interference with the rights guaranteed under Article 19(1)(g) and, more particularly, Article 30, which is not subject to any restriction similar to Article 19(6) of the Constitution. Of course, over the years this Court has repeatedly observed that the right guaranteed under Article 30, gives religious and linguistic minorities the right to establish and administer educational institutions of their choice, but not to mal administer them and that the concerned authorities could impose conditions for maintaining high standards of education, such as laying down the qualification of teachers to be appointed in such institutions and also the curriculum to be followed therein. The question, however, is whether such measures would also include the right to regulate the admissions of students in the said institutions.

142. The first, second, third and fourth issues referred to hereinabove in paragraph 133, are intermingled and are taken up together for the sake of convenience. The aforesaid issues have been considered and answered by this Court in the Ahmedabad St. Xavier's College Society case (supra), St. Stephen's College case (supra), Islamic Academy case (supra), P.A. Inamdar's case (supra) and exhaustively in the T.M.A. Pai Foundation case (supra). Can, therefore, by purporting to take measures to maintain high educational standards to prevent maladministration, the MCI and the DCI resort to the amended MCI and DCI Regulations to circumvent the judicial pronouncements in this regard? The answer to such question would obviously have to be in the negative.

143. The Supreme Court has consistently held that the right to administer an educational institution would also include the right to admit students, which right, in our view, could not be taken away on the basis of Notifications issued by the MCI and the DCI which had no authority, either under the 1956 Act or the 1948 Act, to do so. The MCI and the DCI are creatures of Statute, having been constituted under the Indian Medical Council Act, 1956, and the Dentists Act, 1948, and have,

therefore, to exercise the jurisdiction vested in them by the Statutes and they cannot wander beyond the same. Of course, under Section 33 of the 1956 Act and Section 20 of the 1948 Act, power has been reserved to the two Councils to frame Regulations to carry out the purposes of their respective Acts. It is pursuant to such power that the MCI and the DCI has framed the Regulations of 1997, 2000 and 2007, which set the standards for maintaining excellence of medical education in India. The right of the MCI and the DCI to prescribe such standards has been duly recognised by the Courts. However, such right cannot be extended to controlling all admissions to the M.B.B.S., the B.D.S. and the Post-graduate Courses being run by different medical institutions in the country. At best, a certain degree of control may be exercised in regard to aided institutions, where on account of the funds being provided by the Government, it may have a say in the affairs of such institutions.

144. These questions have already been considered and decided in the T.M.A. Pai Foundation case (supra), wherein, it was categorically held that the right to admit students being an essential facet of the right of a private medical institution, and, in particular, minority institutions which were unaided, non-capitation fee educational institutions, so long as the process of admission to such institutions was transparent and merit was adequately taken care of, such right could not be interfered with. Even with regard to aided minority educational institutions it was indicated that such institutions would also have the same right to admit students belonging to their community, but, at the same time, it should also admit a reasonable number of non-minority students which has been referred to as the "sprinkling effect" in the Kerala Education Bill case (supra).

145. The rights of private individuals to establish and administer educational institutions under Article 19(1)(g) of the Constitution are now well-established and do not require further elucidation. The rights of unaided and aided religious and linguistic minorities to establish and administer educational institutions of their choice under Article 19(1)(g),read with Article 30 of the Constitution, have come to be cry stalised in the various decisions of this Court referred to hereinabove, which have settled the law that the right to admit students in the different educational and medical institutions is an integral part of the right to administer and cannot be interfered with except in cases of maladministration or lack of transparency. The impugned Regulations, which are in the nature of delegated legislation, will have to make way for the Constitutional provisions. The freedom and rights guaranteed under Articles 19(1)(g), 25, 26 and 30 of the Constitution to all citizens to practise any trade or profession and to religious minorities to freedom of conscience and the right freely to profess, practise and propagate religion, subject to public order, morality and health and to the other provisions of Part III of the Constitution, and further to maintain institutions for religious and charitable purposes as guaranteed under Articles 25 and 26 of the Constitution, read with the rights guaranteed under Article 30 of the Constitution, are also well-established by various pronouncements of this Court. Over and above the aforesaid freedoms and rights is the right of citizens having a distinct language, script or culture of their own, to conserve the same under Article 29(1) of the Constitution.

146. Nowhere in the 1956 Act nor in the MCI Regulations, has the Council been vested with any authority to either conduct examinations or to direct that all admissions into different medical colleges and institutions in India would have to be on the basis of one common National Eligibility-cum-Entrance Test, thereby effectively taking away the right of the different medical colleges and institutions, including those run by religious and linguistic minorities, to make admissions on the basis of their own rules and procedures. Although, Mr. Gupta has contended that Section 33(l) of the 1956 Act entitles the MCI to make regulations regarding the conduct of professional examinations, the same, in our view, does not empower the MCI to actually hold the entrance examination, as has been purported to be done by the holding of the NEET. The power to frame regulations for the conduct of professional examinations is a far cry from actually holding the examinations and the two cannot be equated, as suggested by Mr. Gupta.

147. Although, the controversy has been extended to include the amendments made to the Entries in the Second and Third Lists of the Seventh Schedule to the Constitution and the deletion of Entry 11 from the State List and the introduction of Entry 25 in the Concurrent List, on behalf of the MCI it has

been reiterated that the impugned Notifications and amended Regulations had been made under Entry 66 of List I by the MCI acting on its delegated authority and would, therefore, have an overriding effect over any State law on the subject. As already indicated hereinbefore, the right of the MCI to frame Regulations under Entry 66, List I, does not take us anywhere, since the freedoms and rights sought to be enforced by the Petitioners flow from Articles 19(1)(g), 25, 26, 29(1) and 30 of the Constitution which cannot be superseded by Regulations framed by a Statutory authority by way of delegated legislation. The fact that such power was exercised by the MCI and the DCI with the previous approval of the Central Government, as contemplated under Section 33 of the 1956 Act and under Section 20 of the1948 Act, would not bestow upon the Regulations framed by the MCI and DCI, which are in the nature of subordinate legislation, primacy over the Constitutional provisions indicated above. A feeble attempt has been made by Mr. Gupta to suggest that admission into institutions run by the Christian Church depended on selection of students by the Diocese. This procedure, according to Mr. Gupta, was against the concept of recognition of merit.

148. In our judgment, such a stand is contrary to the very essence of Articles 25, 26, 29(1) and 30 of the Constitution. In view of the rights guaranteed under Article 19(1)(g) of the Constitution, the provisions of Article 30 should have been redundant, but for the definite object that the framers of the Constitution had in mind that religious and linguistic minorities should have the fundamental right to preserve their traditions and religious beliefs by establishing and administering educational institutions of their choice. There is no material on record to even suggest that the Christian Medical College, Vellore, or its counter-part in Ludhiana, St. John's College, Bangalore, or the linguistic minority institutions and other privately-run institutions, aided and unaided, have indulged in any malpractice in matters of admission of students or that they had failed the triple test referred to in P.A. Inamdar's case(supra). On the other hand, according to surveys held by independent entities, CMC, Vellore and St. John's Medical College, Bangalore, have been placed among the top Medical Colleges in the country and have produced some of the most brilliant and dedicated doctors in the country believing in the philosophy of the institutions based on Christ's ministry of healing and caring for the sick and maimed.

149. Although, there is some difference of opinion as to the right to freedom of religion as guaranteed under Article 25 of the Constitution being confined only to individuals and not organizations in regard to religious activities, Article 26(a) very clearly indicates that subject to public order, morality and health, every religious denomination or anysection thereof shall have the right to establish and maintain institutions for religious and charitable purposes. The emphasis is not on religious purposes alone, but extends to charitable purposes also, which would include the running of a hospital to provide low-cost, but efficient medical care to all, which the CMC, Vellore, and other private missionary hospitals of different denominations are doing. So long as a private institution satisfies the triple test indicated in P.A. Inamdar;s case(supra), no objection can be taken to the procedure followed by it over the years in the matter of admission of students into its M.B.B.S. and Post-graduate courses in medicine and other disciplines. Except for alleging that the admission procedure was controlled by the Church, there is nothing even remotely suggestive of any form of maladministration on the part of the medical institutions being run by the Petitioner Association.

150. This brings us to the issue regarding the impact of the NEET on the right of the religious and linguistic minorities in view of the provisions of Article 30(1) of the Constitution. Although, the said question has been dealt with to some extent while dealing with the other issues, certain aspects thereof still need to be touched upon. As has been mentioned hereinbefore, having regard to the provisions of Article 19(1)(g)of the Constitution, the provisions of Article 30 would have been redundant had not the framers of the Constitution had some definite object in mind in including Article 30 in the Constitution. This Court has had occasion in several matters to consider and even deal with the question. In the Ahmedabad St. Xavier's College Society case (supra), it was held that the right under Article 30(1) is more in the nature of protection and was intended to instill confidence in minorities against any executive or legislative encroachment on their right to establish and administer educational institutions of their choice. While the aforesaid observations help in understanding the

intention of the Constituent Assembly in including Article 30 in the Constitution as a fundamental right untrammeled by any restrictions, as in the case of other fundamental rights, the real spirit of the said Article has been captured by Justice V. Krishna Iyer in Jagdish Sharan's case (supra), wherein His Lordship observed that merit cannot be measured in terms of marks alone, but human sympathies are equally important. His Lordship's further observations that the heart is as much a factor as the head in assessing the social value of a member of the medical profession, completes the picture. This, in fact, is what has been attempted to be conveyed by Mr. Harish Salve, appearing for the CMC Vellore, while submitting that under Article 30 of the Constitution an educational institution must be deemed to have the right to reject a candidate having superior marks as against a candidate who having lesser marks conformed to the beliefs, aspirations and needs of the institution for which it was established.

151. One of the eleven questions which came to be considered by the Eleven Judge Bench in the T.M.A. Pai Foundation case, namely, Question5(a), was whether the minority's rights to establish and administer educational institutions of their choice would include the procedure and method of admission and selection of students. While dealing with one of the five issues reformulated by the Chief Justice as to whether there can be Government regulations in case of private institutions and, if so, to what extent, it was indicated in the majority judgment that the right to establish and administer broadly comprises various rights, including the right to admit students in regard to private unaided non-minority educational institutions. It was further observed that, although, the right to establish an educational institution can be regulated, 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, and that the fixing of a rigid fee structure, dictating the formation and composition of the Governing Body, compulsory nomination of teachers and staff for appointment or nominating students for admissions, would be unacceptable restrictions.

152. As far as private unaided professional colleges are concerned, the majority view was that it would be unfair to apply the same rules and regulations regulating admission to both aided and unaided professional institutions. In that context, it was suggested that it would 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, which could be done by reserving a certain percentage of seats for admission by the management out of those students who had passed a common entrance test held by itself, while the rest of the seats could be filled up on the basis of counselling by the State agency, which would take care of the poorer and backward sections of society.

153. However, as far as the aided private minority institutions are concerned, the inter-play between Article 30 and Article 29(2) of the Constitution was taken note of in the majority decision and after considering the various decisions on the said issue, including the decision in D.A.V. College Vs. State of Punjab [(1971) 2 SCC 269] and the Ahmedabad St. Xavier's College Society case (supra), reference was made to the observations made by Chief Justice Ray, as His Lordship then was, that, in the field of administration, it was not reasonable to claim that minority institutions would have complete autonomy. Checks on the administration would be necessary in order to ensure that the administration was efficient and sound and would serve the academic needs of the institution. Reference was also made to the concurring judgment of Khanna, J., wherein the learned Judge, inter alia, observed that the right conferred upon religious and linguistic minorities under Article 30 is to establish and administer r educational institutions of their choice. Administration connotes management of the affairs of the institution and such management must be free of control so that the founders or their nominees could mould the institution as they thought fit and in accordance with the ideas of how the interest of the community in general and the institution in particular would be best served. The learned Judge was of the view that the right of the minorities to administer educational institutions did not prevent the making of reasonable regulations in respect of such institutions, but such regulations could not impinge upon the minority character of the institution and a balance had to

be maintained between the two objectives- that of ensuring the standard of excellence of the institution and that of preserving the right of minorities to establish and administer their educational institutions.

154. The learned Judges also approved the view taken in the St. Stephen's College case (supra) regarding the right of aided minority institutions to give preference to students of its own community for admission. Their Lordships, however, had reservations regarding the rigidity of percentage of students belonging to the minority community to be admitted.

155. While answering Question 4 as to whether the admission of students to minority educational institutions, whether aided or unaided, can be regulated by the State Government or by the University to which the institution is affiliated, the learned Judges held that admission of students to unaided minority educational institutions, namely, schools and under-graduate colleges, cannot be regulated by the State or the University concerned, except for providing the qualifications and minimum conditions of eligibility in the interest of academic standards. The learned Judges further held that the right to admit students, being an essential facet of the right to administer educational institutions of their choice, as contemplated under Article 30 of the Constitution, the State Government or the University may not be entitled to interfere with that right, so long as the admission to the unaided educational institutions was on a transparent basis and merit was adequately taken care of. The learned Judges went onto indicate that the right to administer, not being absolute, there could be regulatory measures for ensuring educational standards and maintaining excellence thereof, and it was more so in the matter of admissions to professional institutions.

156. In answering Question 5(a), as to whether the rights of minorities to establish and administer educational institutions of their choice would include the procedure and method of admission and selection of students, the learned Judges held that a minority institution may have its own procedure and method of admission as well as selection of students, but such a procedure must be fair and transparent and the selection of students in professional and higher educational colleges should be on the basis of merit and even an unaided minority institution should not ignore the merit of the students for admission while exercising its right to admit students to professional institutions. On the question whether the rights of minority institutions regarding admission of students and to lay down the procedure and method of admission would be affected, in any way, by receipt of State aid, the learned Judges were of the view that while giving aid to professional institutions, it would be permissible for the authority giving aid to prescribe conditions in that regard, without, however, affecting the right of such institutions to actually admit students in the different courses run by them.

157. What can ultimately be culled out from the various observations made in the decisions on this issue, commencing from the Kerala Education Bill case (supra) to recent times, is that admissions to educational institutions have been held to be part and parcel of the right of an educational institution to administer and the same cannot be regulated, except for the purpose of laying down standards for maintaining the excellence of education being provided in such institutions. In the case of aided institutions, it has been held that the State and other authorities may direct a certain percentage of students to be admitted other than by the method adopted by the institution. However, in cases of unaided institutions, the position is that except for laying down standards for maintaining the excellence of education, the right to admit students into the different courses could not be interfered with. In the case of aided minority institutions, it has been held that the authority giving aid has the right to insist upon the admission of a certain percentage of students not belonging to the minority community, so as to maintain the balance of Article 19(2) and Article 30(1) of the Constitution. Even with regard to unaided minority institutions, the view is that while the majority of students to be admitted should be from the minority community concerned, a certain percentage of students from other communities should also be admitted to maintain the secular character of education in the country in what has been described as a "sprinkling effect".

158. Mr. Parasaran's submissions with regard to the concept of "Rag Bag" legislation would not apply to the facts of these cases since the amendments to the Regulations of 1997, 2000 and 2007 were effected under Entry 66, List I of the Seventh Schedule and no recourse was taken to Entry25 of the Concurrent List by the MCI and DCI while amending the said Regulations.

159. This brings us to the last issue, which has been raised before us regarding the impact of the Presidential Orders made under Article 371D of the Constitution of India. As pointed out by Mr. L. Nageshwar Rao, learned Senior Advocate, special enactments have been made in the States of Andhra Pradesh and Tamil Nadu regarding admission of students in the different medical colleges and institutions being run in the said States. The said legislation being under Entry 25 of List III of the Seventh Schedule to the Constitution, the question which arises is whether the amended MCI Regulations would have primacy over the said State enactments. The question is answered by Article 371-D of the Constitution which empowers the President to make special provisions with respect to the State of Andhra Pradesh, including making orders with regard to admission in educational institutions. Clause 10 of Article 371-D provides as follows: "The provisions of this article and of any order made by the President there under shall have effect notwithstanding anything in any other provision of this Constitution or in any other law for the time being in force." Accordingly, the enactments made in the States of Andhra Pradesh and Tamil Nadu will remain unaffected by the impugned Regulations. We have already held that the Regulations and the amendments thereto have been framed by the MCI and the DCI with the previous permission of the Central Government under Entry 66, List I, but that the Regulations cannot prevail over the constitutional guarantees under Articles 19(1)(g), 25, 26, 29(1)and 30 of the Constitution.

160. Apart from the legal aspects, which have been considered at length, the practical aspect of holding a single National Eligibility-cum-Entrance Test needs to be considered. Although, it has been submitted by the learned Additional Solicitor General that a single test would help poor students to avoid sitting for multiple tests, entailing payment of fees for each separate examination, it has to be considered as to who such poor students could be. There can be no controversy that the standard of education all over the country is not the same. Each State has its own system and pattern of education, including the medium of instruction. It cannot also be disputed that children in the metropolitan areas enjoy greater privileges than their counter-parts in most of the rural areas as far as education is concerned, and the decision of the Central Government to support a single entrance examination would perpetuate such divide in the name of giving credit to merit. In a single window competition, the disparity in educational standards in different parts of the country cannot ensure a level playing field. The practice of medicine entails something more than brilliance in academics; it requires a certain commitment to serve humanity. India has brilliant doctors of great merit, who are located mostly in urban areas and whose availability in a crisis is quite uncertain. What is required to provide health care to the general masses and particularly those in the rural areas, are committed physicians who are on hand to respond to a crisis situation. Given the large number of people who live in the villages in difficult conditions, the country today has more need of such doctors who may not be specialists, but are available as general physicians to treat those in need of medical care and treatment in the far flung areas of the country, which is the essence of what was possibly envisaged by the framers of the Constitution in including Article30 in Part III of the Constitution. The desire to give due recognition to merit is laudable, but the pragmatic realities on the ground relating to health care, especially in the rural and tribal areas where a large section of the Indian population resides, have also to be kept in mind when policy decisions are taken in matters such as this. While the country certainly needs brilliant doctors and surgeons and specialists and other connected with health care, who are equal to any in other parts of the world, considering ground realities, the country also has need for "barefoot doctors", who are committed and are available to provide medical services and health care facilities in different areas as part of their mission in becoming doctors.

161. In the light of our aforesaid discussions and the views expressed in the various decisions cited, we have no hesitation in holding that the "Regulations on Graduate Medical Education (Amendment) 2010 (Part II)" and the "Post Graduate Medical Education (Amendment) Regulation, 2010 (Part II)",

whereby the Medical Council of India introduced the single National Eligibility-cum-Entrance Test and the corresponding amendments in the Dentists Act, 1948, are ultra vires the provisions of Articles 19(1)(g),25, 26(a), 29(1) and 30(1) of the Constitution, since they have the effect of denuding the States, State-run Universities and all medical colleges and institutions, including those enjoying the protection of the above provisions, from admitting students to their M.B.B.S., B.D.S. and Post-graduate courses, according to their own procedures, beliefs and dispensations, which has been found by this Court in the T.M.A. Pai Foundation case (supra), to be an integral facet of the right to administer. In our view, the role attributed to and the powers conferred on the MCI and the DCI under the provisions of the Indian Medical Council Act, 1956, and the Dentists Act, 1948, do not contemplate anything different and are restricted to laying down standards which are uniformly applicable to all medical colleges and institutions in India to ensure the excellence of medical education in India. The role assigned to the MCI under Sections 10A and 19A(1) of the 1956 Act vindicates such a conclusion.

162. As an off-shoot of the above, we also have no hesitation in holding that the Medical Council of India is not empowered under the 1956 Act to actually conduct the NEET.

163. The Transferred Cases and the Writ Petitions are, therefore, allowed and the impugned Notifications Nos. MCI-31(1)/2010-MED/49068, andMCI.18(1)/2010-MED/49070, both dated 21st December, 2010, published by the Medical Council of India along with Notification Nos. DE-22-2012 dated 31stMay, 2012, published by the Dental Council of India and the amended Regulations sought to be implemented there under along with Notification Nos. DE-22-2012 dated 31st May, 2012, published by the Dental Council of India, are hereby quashed. This will not, however, invalidate actions so far taken under the amended Regulations, including the admissions already given on the basis of the NEET conducted by the Medical Council of India, the Dental Council of India and other private medical institutions, and the same shall be valid for all purposes.

164. Having regard to the nature of the cases decided by this judgment, the parties thereto will bear their own costs.

.....CJI. (ALTAMAS KABIR)

.....J. (VIKRAMAJIT SEN)

New Delhi

July 18, 2013.

Christian Medical College Vellore & Ors. Vs. Union of India and Ors.

[T.C. (C) NO.98 OF 2012]

[T.C. (C) NO.99//2013] and batch

In The Supreme Court of India

ANIL R. DAVE, J.

1. I have carefully gone through the elaborate judgment delivered by the learned Chief Justice. After going through the judgment, I could not persuade myself to share the same view.

2. As the learned Chief Justice is to retire within a few days, I have to be quick and therefore, also short. Prior to preparation of our draft judgments we had no discussion on the subject due to paucity

of time and therefore, I have to express my different views but fortunately the learned Chief Justice has discussed the facts, submissions of the concerned counsel and the legal position in such a detail that I need not discuss the same again so as to make the judgment lengthy by repeating the submissions and the legal provisions, especially when I am running against time.

3. Sum and substance of all these petitions is that the Medical Council of India (hereinafter referred to as 'the MCI;) should not be entrusted with a right to conduct National Eligibility-cum- Entrance Test (hereinafter referred to as 'the NEET;) and whether introduction of the NEET would violate fundamental rights of the petitioners guaranteed under the provisions of Articles 19(1)(g), 25, 26, 29(1) and 30 of the Constitution of India.

4. The submissions are to the effect that if the MCI or any other body conducts examination in the nature of the NEET, the petitioners, who are managing medical colleges, would not be in a position to exercise their discretion in relation to giving admission to the students in their colleges and therefore, their fundamental right guaranteed under Article 19(1)(g) and the rights of the minority institutions under Articles 29 and 30 would be violated. The submission is to the effect that the minority institutions should have full and unfettered right to select the students who are to be imparted education in their colleges. Any restriction or regulation of whatsoever type, would violate their fundamental rights. Thus, what is to be seen by this Court is whether the system sought to be introduced by the MCI under the provisions of the Indian Medical Council Act, 1956 (hereinafter referred to as 'the Act ;) is violative of any of the legal or constitutional provisions. In the process of deciding so, in my opinion, this Court also has to examine whether it would be in the interest of the society and the students aspiring to study medicine to have a common examination in the nature of the NEET.

5. Sections 19A and 20 of the Act, which have been reproduced in the judgment delivered by the learned Chief Justice, permit the MCI to prescribe the minimum standards of medical education. Section 33 of the Act also empowers the MCI to make regulations to carry out the purposes of the Act. Thus, the said provisions enable the MCI to regulate the system of medical education throughout the country.

6. Let me first of all consider the scope of the afore stated sections and the provisions of the Act in relation to the regulation of the standards of education to be imparted in medical colleges. It is a matter of sound common sense that to have doctors well versed in the subject of medicine and having proficiency in their field, we should have suitable and deserving students who should be imparted good medical education and there should be strict supervision over the education system so as to see that the students who are not up to the mark or are not having the highest standards of education are not declared successful at the examinations.

7. To achieve the afore stated ideal, the system should be such that it should have effective regulations at three different stages - The first stage is the admission of the students to medical colleges. The students who are admitted to the medical course should be suitable and should have the right aptitude so that they can be shaped well into the medical profession after being imparted proper education. The second stage is with regard to determination of syllabus and the manner of imparting education and for the said purpose, the regulating authorities should see that proper medical training is given to the students and for the said purpose sufficiently equipped hospitals should be there as teaching institutes. It should also be seen that sufficient number of patients are treated at the hospitals so that the students can get adequate practical training where the patients are being treated. Finally, the examinations, which the students have to pass to prove their worth as successful students should also be strictly regulated. If there is any lacuna or short-coming at any of the above three stages, it would adversely affect the professional standards of the students passing out from the educational institutions as physicians, who are trusted by the citizens of India at critical moments, when someone;s life is at stake. I need not state anything more with regard to the importance of the medical field or the physicians as it is a matter of common knowledge that to maintain good health and to cure the

diseases and to avoid or reduce trauma of a patient, existence of a trained and well groomed doctor is a sine qua non. All these facts equally apply to dentists and therefore, I am not specially referring to them every time.

8. By virtue of introduction of the NEET to be conducted under the supervision of the MCI, standards of the students at the stage of their admission to the medical colleges, be it for admission to the M.B.B.S. course or the post graduation studies in medical faculties, would be regulated. Similarly, for imparting education to the students studying in the field of Dentistry, Dental Council of India (For short 'the DCI;) has to regulate admissions so as to see that eligible and suitable students are admitted to the different courses in the field of dentistry.

9. There is no need to discuss the importance of quality of input, when something is to be produced, manufactured or developed. Even when one thinks of manufacturing an article, the manufacturer is conscious about the quality of the input and he would invariably select the best input i.e. such raw material so as to make his final product excellent. Principle is not different in the field of education. If an educational institution wants an excellent output in the nature of a well trained, well educated, well groomed professional, the institution must see that suitable and deserving students having an aptitude for becoming good doctors are admitted to the medical college. If among all good students, there are students who are not up to the mark, who are lagging behind in their studies, who are weak in studies, it would not be possible to educate or groom such students effectively and efficiently. A weak student may lag behind due to his lower level of grasping or education or training. In the circumstances, it becomes the duty of the regulating authority to see that quality of the students at the stage of admission is thoroughly examined and only deserving and suitable students are given admission to the medical colleges so as to make them suitable members of a noble profession upon completion of their studies. So as to see that only deserving and suitable students are admitted to the medical colleges, the MCI has introduced the NEET. By virtue of introduction of the NEET, the students aspiring to become physicians or pursue further medical studies will have to pass the NEET. The NEET would be a nationwide common examination to be held at different places in the country so that all students aspiring to have medical education can appear in the examination and ultimately, on the basis of the result of the examination, suitability and eligibility of the students for admission to the medical profession can be determined. This system is a part of regulation whereby entry to the field of medical education is regulated in such a way that only eligible and suitable students are given admission to medical colleges.

10. If the NEET is conducted under the supervision of the apex professional body, it would inspire confidence in the system and in that event, the selection of the students for admission to the medical profession would be on merit based selection. No extraneous consideration would come into play in the process of selection. The process of selection would not be influenced by irrelevant factors like caste and creed, community, race, lineage, gender, social or economic standing, place of residence - whether rural or urban, influence of wealth or power; and admission would be given only to the students who really deserve to be well qualified physicians or dentists. Thus, there would not be any discrimination or influence in the process of selection. I may add here that though the students can be selected only on the basis of their merit, it would be open to the States to follow their reservation policy and it would also be open to the institutions based on religious or linguistic minority to select students of their choice, provided the students so selected have secured minimum marks prescribed at the NEET. From and among those students, who have secured prescribed qualifying marks, the concerned institutions, who want to give priority to the students belonging to a particular class or caste or creed or religion or region, etc. would be in a position to give preference to such students in the matter of their admission to the concerned medical college. Thus, the purpose with which the Articles 25, 26, 29, and 30 are incorporated in our Constitution would be fully respected and implemented.

11. Furthermore, centralization of the selection process under holding the NEET would help the students to appear at the examination from any corner of our nation. The result of the examination

would be published at the same time on one particular day and with the same standard. There would not be any problem with regard to equalizing marks and merits of different students passing different examinations from different regions or states or universities or colleges. The process of selection would be equal, fair, just and transparent. All the students would be in a position to compete from a common platform and the test will have credibility in the eyes of the students and the society. There are number of professional institutions which are having only one professional examination and there are some institutions which also have one common entrance test which would decide competence and capability of a student for being admitted to the professional course and the system which is followed by them for years is quite satisfactory and successful. The students would be benefited because they will not have to appear at different places on different days at different examinations for the same purpose. In my opinion, the afore stated factors, in practical life, would surely help the students, the profession and the institutions which are not money minded and are sincere in their object of imparting medical education to the aspiring students. The cost of appearing at the NEET would be much less as the aspiring students will not have to purchase several expensive admission forms and will not have to travel to different places.

12. An apprehension has been voiced by the counsel for the petitioners that the minority institutions or the educational institutions belonging to special classes would be adversely affected because of the introduction of the NEET. In fact, the said apprehension is not well founded. The policy with regard to the reservation can be very well implemented if the NEET is introduced because the NEET would determine standard or eligibility of a student who is to be imparted education in the field of medicine. The institution imparting medical education will have to see that the student to be admitted is having minimum standard of suitability and the institution will be at a liberty to select a student of its choice if it wants to promote a particular class of persons. By admitting suitable and deserving students having an aptitude for becoming doctors, the religious institutions would be in a position to have better doctors for fulfilling their objective.

13. Moreover, the policy with regard to reservation for certain classes, followed by the States would also not be adversely affected. From the deserving eligible students, who have procured qualifying marks at the NEET and who belong to the reserved classes would be given preference so as to fulfil the policy with regard to reservation. Thus, the students belonging to the reserved classes would also not suffer on account of holding the NEET.

14. In the circumstances, it cannot be said that introduction of the NEET would adversely affect the policy with regard to the reservation or the policy of the States pertaining to upliftment of downtrodden persons belonging to certain classes.

15. The MCI has power to regulate medical education and similarly the DCI has also the power to regulate the education in the field of Dentistry. Meaning of the word 'to regulate; would also include controlling entry of undeserving or weak students into the profession, who cannot be groomed in normal circumstances as good physicians or doctors or dentists. The term ‘regulates; would normally mean to control something by means of rules or by exercise of control over a system. It is an admitted fact that one of the functions of these apex bodies of the professionals is to regulate the system of education. In my opinion, we cannot put any fetter on the system introduced by these bodies, whereby they try to control entry of weak or undeserving or less competent students to the institutes where medical education is imparted. Thus, in my opinion, the MCI and the DCI are competent to exercise their right to regulate the education system under the provisions of the Act and under the provisions of the Dentists Act, 1948, which permit them to determine the standard of students who are to be admitted to these professional courses.

16. Hence, I am of the view that the MCI and the DCI are entitled to regulate the admission procedure by virtue of the provisions of their respective Acts, which enable them to regulate and supervise the overall professional standards.

17. I have now to see whether the legal provisions which permit the afore stated apex bodies to conduct the NEET, so as to regulate admission of the students to medical institutes, are in accordance with legal and Constitutional provisions. The afore stated question has been rightly answered by this court in the case of Dr. Preeti Srivastava and Another vs. State of M.P. and Others (1999) 7 SCC 120 to the effect that norms of admission will have a direct impact on the standards of education. This court has observed that the standards of education in any institution or college would depend upon several factors and the caliber of the students to be admitted to the institutions would also be one of the relevant factors. Moreover, in view of entry 25 of List III of the Seventh Schedule to the Constitution, Union as well as the States have power to legislate on the subject of medical education, subject to the provisions of entry 66 of List I of the Seventh Schedule, which deals with determination of standards in institutions for higher education. In the circumstances, a State has the right to control education, including medical education, so long as the field is unoccupied by any Union legislation. By virtue of entry 66 in List I to the Seventh Schedule, the Union can make laws with respect to determination of standards in institutions for higher education. Similarly, subject to enactments, laws made with respect to the determination of standards in institutions for higher education under power given to the Union in entry 66 of List I of the Seventh Schedule, the State can also make laws relating to education, including technical education and medical education. In view of the above position clarified in the case of Dr. Preeti Srivastava (supra), the NEET can be conducted under the supervision of the MCI as per the regulations framed under the Act. As stated hereinabove, Section 33 of the Act enables the MCI to make regulations to carry out the purposes of the Act and therefore, conducting the NEET is perfectly legal.

18. In para 36 of the judgment delivered in the case of Dr. Preeti Srivastava (supra), this Court has held that for the purpose of maintaining standards of education, it is very much necessary to see that the students to be admitted to the higher educational institutions are having high caliber and therefore, in the process of regulating educational standards in the fields of medicine and dentistry also the above principle should be followed and the apex professional bodies should be permitted to conduct examinations in the nature of the NEET. Regulations made under the Act and the Dentists Act, 1948 must be treated as part of the Act and therefore, conducting the NEET cannot be said to be illegal. Submissions were made by the learned counsel for the petitioners that as copies of the draft Regulations, as required under Section 19A of the Act, were not forwarded to the State Governments; the said Regulations cannot be acted upon. The said submission is of no importance for the reason that I am in agreement with the submission of the learned counsel appearing for the MCI that the said provision is not mandatory and therefore, non-supply of the draft regulations would not adversely affect the validity of the Regulations and the NEET. It also appears from the language used in Section 19A of the Act that the said provision with regard to furnishing copies of the draft regulations to all the State Governments is not mandatory and any defect in the said procedure would not vitiate validity of the Regulations or action taken in pursuance of the Regulations.

19. Similar question with regard to having a common test had arisen for admitting students aspiring to become veterinary surgeons. The question was whether it was open to the apex body of the said profession to conduct a common entrance test. Ultimately, the issue had been resolved by this court in the matter of Veterinary Council of India vs. Indian Council of Agricultural Research, (2000) 1 SCC 750. This court, after considering several issues similar to those which have been raised in these petitions, held that it was open to the concerned regulatory Council to conduct a common entrance test.

20. So far as the rights guaranteed under Article 19(1)(g) of the Constitution with regard to practising any profession or carrying on any occupation, a trade or business, are concerned, it is needless to say that the afore stated rights are not unfettered. Article 19(6) of the Constitution permits the State to enact any law imposing reasonable restrictions on the rights conferred by Article 19(1)(g) in relation to the professional or technical qualifications necessary for practising any profession. Enactments of the Act and the Dentists Act, 1948, including Regulations made there under, which regulate the professional studies cannot be said to be violative of the Constitutional rights guaranteed to the

petitioners under Article 19(1)(g) of the Constitution. The framers of the Constitution were conscious of the fact that anybody cannot be given a right to practise any profession without having regard to his capacity, capability or competence. To be permitted to practise a particular profession, especially when the profession is such which would require highly skilled person to perform the professional duties, the State can definitely regulate the profession. Even if we assume that all the petitioner institutions are in business of imparting education, they cannot also have unfettered right of admitting undeserving students so as to make substandard physicians and dentists. One may argue here that ultimately, after passing the final examination, all students who had joined the studies would be at par and therefore, even if a very weak or substandard student is given admission, after passing the final examination, which is supervised by one of the apex bodies referred to hereinabove, he would be at par with other students who were eligible and suitable at the time when they were given admission. In practical life, we do find a difference between a professional who has passed his professional examination at the first or second trial and the one who has passed examination after several trials. Be that as it may, it is for the apex body of the professionals to decide as to what type of students should undergo the professional training. The function with regard to regulating educational activity would be within the domain of the professional bodies and their decision must be respected so as to see that the society gets well groomed bright physicians and dentists. Thus, in my opinion, the introduction of the NEET would not violate the right guaranteed to the petitioners under the provisions of Article 19(1)(g) of the Constitution of India.

21. So far as the rights guaranteed to the petitioners under the provisions of Articles 25, 26, 29 and 30 are concerned, in my opinion, none of the rights guaranteed under the afore stated Articles would be violated by permitting the NEET. It is always open to the petitioners to select a student subject to his being qualified by passing the examination conducted by the highest professional body. This is to assure that the students who are to undergo the professional training are suitable for the same. Regulations relating to admission of the students i.e. admitting eligible, deserving and bright students would ultimately bring reputation to the educational institutes. I fail to understand as to why the petitioners are keen to admit undeserving or ineligible students when eligible and suitable students are available. I am sure that even a scrupulous religious person or an educational institution would not like to have physicians or dentists passing through its institution to be substandard so as to bring down reputation of the profession or the college in which such a substandard professional was educated. Minorities - be it religious or linguistic, can impart training to a student who is found worthy to be given education in the field of medicine or dentistry by the professional apex body. In my opinion, the Regulations and the NEET would not curtail or adversely affect any of the rights of such minorities as apprehended by the petitioners. On the contrary, standard quality of input would reasonably assure them of sterling quality of the final output of the physicians or dentists, who pass out through their educational institutions.

22. An apprehension was voiced by some of the counsel appearing for the petitioners that autonomy of the petitioner institutions would be lost if the NEET is permitted. I fail to understand as to how autonomy of the said institutions would be adversely affected because of the NEET. The Government authorities or the professional bodies named hereinabove would not be creating any hindrance in the administrative affairs of the institutions. Implementation of the NEET would only give better students to such institutions and from and among such highly qualified and suitable students, the minority institutions will have a right to select the students of their choice. At this stage, the institutions would be in a position to use their discretion in the matter of selection of students. It would be open to them to give weight age to the religion, caste, etc of the student. The institutions would get rid of the work of conducting their separate examinations and that would be a great relief to them. Except some institutions having some oblique motive behind selecting students who could not prove their mettle at the common examination, all educational institutes should feel happy to get a suitable and eligible lot of students, without making any effort for selecting them.

23. For the reasons recorded hereinabove, in my opinion, it cannot be said that introduction of the NEET would either violate any of the fundamental or legal rights of the petitioners or even adversely

affect the medical profession. In my opinion, introduction of the NEET would ensure more transparency and less hardship to the students eager to join the medical profession. Let us see the consequence, if the apex bodies of medical profession are not permitted to conduct the NEET. A student, who is good at studies and is keen to join the medical profession, will have to visit several different States to appear at different examinations held by different medical colleges or institutes so as to ensure that he gets admission somewhere. If he appears only in one examination conducted by a particular University in a particular State and if he fails there, he would not stand a chance to get medical education at any other place. The NEET will facilitate all students desirous of joining the medical profession because the students will have to appear only at one examination and on the basis of the result of the NEET, if he is found suitable, he would be in a position to get admission somewhere in the country and he can have the medical education if he is inclined to go to a different place. Incidentally, I may state here that learned senior counsel Mr. Gupta had informed the Court that some medical colleges, who are more in a profiteering business rather than in the noble work of imparting medical education, take huge amount by way of donation or capitation fees and give admission to undeserving or weak students under one pretext or the other. He had also given an instance to support the serious allegation made by him on the subject. If only one examination in the country is conducted and admissions are given on the basis of the result of the said examination, in my opinion, unscrupulous and money minded businessmen operating in the field of education would be constrained to stop their corrupt practices and it would help a lot, not only to the deserving students but also to the nation in bringing down the level of corruption.

24. For the afore stated reasons, I am of the view that the petitioners are not entitled to any of the reliefs prayed for in the petitions. The impugned notifications are not only legal in the eyes of law but are also a boon to the students aspiring to join medical profession. All the petitions are, therefore, dismissed with no order as to costs.

.....J. (ANIL R. DAVE)

New Delhi

July 18, 2013