V.S. DREAM COACHING

234 S.F. D-Mall, Shakti Khand-2

Indirapuram Ghaziabad

For

H.J.S. P.C.S. (J) A.P.O. & CLAT

Year- 2023

Secret of success is to know something

nobody else knows

No.1 of 2023

NEWSLETTER

January 2023

Index

Established in Sept. 2022

For Judicial Service Aspirants

In the service of Judicial Fraternity

V.S. DREAM COACHING

1. Study Material-Law

Anticipatory Bail (Section 438 Cr.P.C.)

What does the word anticipatory bail not mean is to be understood first to understand the whole concept of Anticipatory Bail. Anticipatory bail does not mean that bail be granted before arrest but refers to a pre-arrest order passed by a court that says that in the event a person is arrested, he is to be granted bail. The word 'anticipatory' labeling of the order can be misleading as it is not an order which grants a person bail before he is arrested as bail cannot come into effect before a person is arrested.

Having said that, the fundamental difference between an order for regular bail and one for anticipatory bail is to be understood in a proper perspective. The former is granted only after arrest (and becomes operative subsequently) but the latter is granted (Order) before arrest and hence is operative from the moment of arrest. One also has to understand that regular bail comes into operation once a person is remanded to judicial custody but the anticipatory bail comes into operation immediately on arrest and prior to being remanded to police custody and or judicial custody.

The provision of Anticipatory bail can be invoked if a person is apprehending arrest for commission of a non-bailable offence in which the police are empowered to arrest the person accused of any crime or on suspicion of the commission of a serious offence which requires the custody of the accused to conduct investigation.

Guidelines on Anticipatory Bail

Hon'ble Apex Court in case **Sushila Aggarwal and Ors. Vs. State (NCT of Delhi) and Anr., AIR 2020 SC 831, decided on 29/01/2020,** issued the following guidelines by holding that some principles to be kept in mind by Courts; while dealing with applications under Sec. 438, Cr.P.C.:-

(a) As held in **Gurbaksh Singh Sibbia etc Vs. State of Punjab, AIR 1980 SC 1632**, when a person apprehends arrest and approaches a court for anticipatory bail, his apprehension (of arrest), has to be based on concrete facts (and not vague or general allegations) relatable a specific offence or particular of offences. Applications for anticipatory bail should contain clear and essential facts relating to the offence, and why the applicant reasonably apprehends his or her arrest, as well as his version of the facts. These are important for the Court which

considering the application, to extent and reasonableness of the threat or apprehension, its gravity or seriousness and the appropriateness of any condition that may have to be imposed. It is not a necessary condition that an application should be moved only after an FIR is filed; it can be moved earlier, so long as the facts are clear and there is reasonable basis for apprehending arrest.

(b) The court, before which an application under Sec. 438, is filed, depending on the seriousness of the threat (of arrest) as a measure of caution, may issue notice to the public prosecutor and obtain facts, even while granting limited interim anticipatory bail.

(c) Section 438 Cr. PC does not compel or oblige courts to impose conditions limiting relief in terms of time, or upon filing of FIR, or recording of statement of any witness, by the police, during investigation or inquiry, etc. While weighing and considering an application (for grant of anticipatory bail) the court has to consider the nature of the offence, the role of the person, the likelihood of his influencing the course of investigation, or tampering with evidence (including intimidating witnesses), likelihood of fleeing justice (such as leaving the country), etc. The courts would be justified ' " and ought to impose conditions spelt out in Sec. 437(3), Cr. PC [by virtue of Sec. 438 (2)]. The necessity to impose other restrictive conditions, would have to be weighed on a case by case basis, and depending upon the materials produced by the state or the investigating agency. Such special or other restrictive conditions may be imposed if the case or cases warrant, but should not be imposed in a routine manner, in all cases. Likewise, conditions which limit the grant of anticipatory bail may be granted, if they are required in the facts of any case or cases; however, such limiting conditions may not be invariably imposed.

(d) Courts ought to be generally guided by the considerations such nature and gravity of the offences, the role attributed to the applicant, and the facts of the case, while assessing whether to grant anticipatory bail, or refusing it. Whether to grant or not is a matter of discretion; equally whether, and if so, what kind of special conditions are to be imposed (or not imposed) are dependent on facts of the case, and subject to the discretion of the court.

(e) Anticipatory bail granted can, depending on the conduct and behavior of the accused, continue after filing of the charge sheet till end of trial. Also orders of anticipatory bail should not be ' blanket' in the sense that it should not enable the accused to commit further offences and claim relief. It should be confined to the offence or incident, for which apprehension of arrest is sought, in relation to a specific incident. It cannot operate in respect of a future incident that involves commission of an offence.

(f) Orders of anticipatory bail do not in any manner limit or restrict the rights or duties of the police or investigating agency, to investigate into the charges against the person who seeks and is granted pre-arrest bail.

(g) The observations in Gurbaksh Singh Sibbia etc Vs. State of Punjab, AIR 1980 SC 1632, regarding 'limited custody' or 'deemed custody' to facilitate the

requirements of the investigative authority, would be sufficient for the purpose of fulfilling the provisions of Sec. 27, in the event of recovery of an article, or discovery of a fact, which is relatable to a statement made during such event (i.e. deemed custody). In such event, there is no question (or necessity) of asking the accused to separately surrender and seek regular bail. **Gurbaksh Singh Sibbia etc Vs. State of Punjab, AIR 1980 SC 1632** had observed that 'if and when the occasion arises, it may be possible for the prosecution to claim the benefit of Sec. 27 of the Evidence Act in regard to a discovery of facts made in pursuance of information supplied by a person released on bail by invoking the principle stated by Supreme Court in **State of U.P. Vs. Deoman Upadhyaya AIR 1960 SC 1125.**

(h) It is open to the police or the investigating agency to move the court concerned, which grants anticipatory bail, in the first instance, for a direction under Sec. 439 (2) to arrest the accused, in the event of violation of any term, such as absconding, non-cooperating during investigation, evasion, intimidation or inducement to witnesses with a view to influence outcome of the investigation or trial, etc. The court ' "in this context is the court which grants anticipatory bail, in the first instance, according to prevailing authorities.

(i) The correctness of an order granting bail, can be considered by the appellate or superior court at the behest of the State or investigating agency, and set aside on the ground that the court granting it did not consider material facts or crucial circumstances. This does not amount to 'cancellation' in terms of Section 439 (2), Cr.P.C.

Furthermore, in case **Sushila Aggarwal case (Supra),** the Hon'ble Supreme Court overruled the following eight case law:-

1. Salauddin Abdulsamad Shaikh Vs. State of Maharashtra, AIR 1996 SC 1042,
2. Satpal Singh Vs. State of Punjab, AIR 2018 SC 2011
3. Adri Dharan Das Vs. State of West Bengal AIR 2005 SC 1057
4. HDFC Bank Ltd. Vs. J.J. Mannan @ J.M. John Paul & Anr., AIR 2010 SC 618
5. Naresh Kumar Yadav Vs. Ravindra Kumar and Ors., AIR 2008 SC 218
6. Siddharam Satlingappa Mhetre Vs. State of Maharashtra and Ors., AIR 2011 SC 312
7. K. L. Verma Vs. State (NCT) of Delhi, (1998) 9 SCC 348
8. Nirmal Jeet Kaur Vs. State of M.P. and Anr., (2004) 7 SCC 558

<u>Case laws which have elaborated the provisions of the anticipatory bail</u>

The law as regards anticipatory bail has been simplified in the landmark judgment of **Gurbaksh Singh Sibba Vs. State of Punjab AIR 1960 SC 1632** and further the same has been reiterated now in 2010 in the judgment of **Siddharam Mhetre Vs. State of Maharashtra 2011(1) Bom C.R. (Cri) 293.** These two case laws are a authority on the law of anticipatory bail. Another landmark judgment on the point of

anticipatory bail is that of **Jagganath Vs. State of Maharashtra 1981 Cri.L.J. 1808.** Further there are also authorities which point out as to when anticipatory bail can be granted and what are the various aspects which have to be taken into consideration at the time of deciding anticipatory bail applications.

Pre-requisites taken into consideration before applying for Anticipatory Bail

(a) Apprehension should be shown for obtaining a anticipatory bail and
(b) The apprehension should be that the offence that could be registered against the applicant is of a non bailable offence (the offences which are bailable and non bailable are described in the First Schedule of the Criminal Procedure Code) and
(c) Apprehension that the police might register a non bailable offence

Is there any necessity of registration of First Information Report?

There is no necessity of an FIR being registered against the person applying for anticipatory bail. It can be granted by the Court when a person apprehends arrest for a non-bailable offence (refer to the First Schedule for the list of offences described as bailable and non bailable.

Interim Anticipatory Bail

Let us assume that the applicant on an apprehension wishes to obtain anticipatory bail and thereby files the same before the Court of Sessions. On filing of the anticipatory bail, the Public Prosecutor now requires time to file his say and wants to consult with the police machinery on the point as to whether custody is required or not. If the Public prosecutor required time to file his say and as well say of the investigating authority then in such circumstances there is a possibility that the police may use this time period to arrest the applicant. In such circumstances, the whole objective of the anticipatory bail would be frustrated and hence the applicant can apply for interim anticipatory bail and the Courts generally grant interim anticipatory bail.

As per the facts of each and every case the circumstances would differ but the general considerations would be
(i) the Court should be convinced as to how there are chances that the applicant may be falsely implicated in a particular crime
(ii) even if the applicant has a role to play it should be highlighted that the custodial interrogation is not required
(iii) in case of documentary evidence - how the documents are in the possession of the prosecution and how custody of the applicant would not serve any ends of the police

(iv) how there is no need of recovery of any document/weapon/incriminating article from the possession of the applicant
(v) how it would affect his/her liberty and would cause embarrassment in the society
(vi) how the applicant has roots in the society
(vii) that the applicant is a law abiding citizen
(viii) that there is no past criminal record
(ix) how he/she has contributed towards the wellbeing of the society by various social acts
(x) sole bread earner of the family/dependents
(xi) any medical history - "whether suffering from any particular ailment
(xii) and last but the most important" how the applicant is ready to abide by all the conditions put by the Court and how he/she would be ready to co-operate with the investigation.

Can the Anticipatory Bail once granted be cancelled by the Court?

Yes, if the Court which has the power to grant anticipatory bail also has the power to cancel the same if the prosecution/police authorities are able to show as to how the person released on anticipatory bail is not abiding by the conditions put down by the Court and also if the person given the benefit of anticipatory bail is not co-operating with the police authorities for investigation.

Whether the presence of the applicant is necessary in the Court?

If the Court has granted interim anticipatory bail to the applicant then in such case, the presence of the applicant shall be mandatory but in case the interim is not granted, the presence of the applicant at the time of final hearing of the applicant is mandatory. The Court may reject the application of anticipatory bail if the applicant is not present for the final hearing.

When can an Anticipatory bail be not granted?

There are certain circumstances where applications for anticipatory bail are normally refused. The offences which would require a custodial interrogation of the applicant, the case where there can be a chance of recovery of weapon from the accused, the cases where there is a chance of discovery of an incriminating article thereby directly showing the nexus between the accused and the offence in such case the anticipatory may be rejected.

The offences as described in Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and the Defence of India Rules, 1971 have made the provisions which state that the provisions of anticipatory bail would not be applicable but there is always an exception to the same and where the applicant is in

a position to show that the offence alleged is prima facie not made out as per the ingredients of the relevant Sections and in such cases the anticipatory can be granted. The offences like murder, rapes, dacoity, economic offences are the instances where the courts are very cautious while granting anticipatory bails.

On **10-02-2020,** the Hon'ble Supreme Court in case **Prathvi Raj Chauhan Vs. Union of India & Ors., AIR 2020 SC 1036,** held that the provisions of Section 438 of the Code of Criminal Procedure (Anticipatory Bail) shall not apply to the cases under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, except when the complaint doesn't make out a prima facie case for applicability of the provisions of the Act.

The Hon'ble Court further observed that in cases where prima facie case is not made out, the bar created by Section 18 and 18A (i) of the Act excluding provisions of Section 438 of the Code of Criminal Procedure (Anticipatory Bail), shall not apply. The Hon'ble Bench upheld the constitutionality of Section 18A of the SC-ST Act, inserted vide an amendment made in 2018.

The trend now in cases of economic offences is that they are worst than the murders and rapes and hence forget anticipatory bails but not even regular bails are granted because of the apprehension of tampering with the evidence, witnesses etc. In offence like MCOC Act and Defence of India Rules, the provision of anticipatory bail would be like making a mockery of the law. For offences/contraventions under certain specific statutes like the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and the Defence of India Rules, 1971. The provisions of Sec. 438 are normally refused to those accused of particularly heinous offences like murder, rapes

Where to make an application of Anticipatory Bail?

Law says Court of Sessions and the High Court have concurrent jurisdiction then in such cases the question is where to apply for the anticipatory bail? The application for anticipatory bail should be generally made in the Sessions Court but there are instances where the anticipatory bails have been directly granted by the High Court as the power to grant anticipatory bail is vested with Sessions as well as High Courts. The proper approach would be to file an application in the Court of Sessions, exhaust the remedy and then if the same is rejected then to move the High Court. If a person files a anticipatory bail in the High Court first and his anticipatory stands to be rejected, then it would be binding on the Sessions Court and that would be like waiving off your right to apply in the Sessions Court.

Conclusion

Section 438 is a procedural provision which is concerned with personal liberty of an

individual, entitled to the benefit of the presumption of innocent since he is not, on the date of his application for Anticipatory Bail, convicted of the offence in respect of which he seeks bail. Although the power to release on anticipatory bail can be described as of an "extraordinary" character this would not justify the conclusion that the power must be exercised in exceptional cases only. It is not necessary that the accused must make out a special case for the exercise of the power to grant anticipatory bail. Thus this paper dealt with how administration done in various States in India regards to Anticipatory Bail.

B. Important Cases Full Report

IN THE SUPREME COURT OF INDIA

Baharul Islam & Ors.

Vs.

The Indian Medical Association and Ors.

[Civil Appeal Nos._____ of 2023 @ SLP (C) Nos. 32592-32593 of 2015]

[TC (C) No. 25 of 2018] [TC (C) No. 24 of 2018]

HEADNOTE – Legislature cannot directly overrule a judgment; but can retrospectively remove its foundation to make it ineffective

JUDGMENT

Nagarathna, J.

Index

1. Leave granted.

2. In these appeals, the appellants have assailed the legality and correctness of the order dated 30.10.2014 passed by the Division Bench of the Gauhati High Court in W.P.(C) No. 5789/2005, whereby the High Court by allowing the Writ Petition struck down the Assam Rural Health Regulatory Authority Act, 2004 (hereinafter referred to as 'Assam Act' or the 'State Act' for the sake of brevity) which was enacted by the Assam State Legislature.

Brief facts of the case:

3. The facts giving rise to the present appeals and transferred cases, in a nutshell are that on 18.09.2004, the Assam Legislature enacted the Assam Act. The said Act was enacted to provide for the establishment of a regulatory authority in the State of Assam to register the Diploma holders in Medicine and Rural Health Care ("DMRHC"), to regulate their practice in medicine in rural areas and to regulate the opening of medical institutions to impart education and training for the course of Diploma in Medicine and Rural Health Care.

3.1. On 23.06.2005, the Director, Medical Education, State of Assam, published an advertisement in the Assam Tribune inviting applications from eligible candidates seeking admissions in the three-year course of Diploma in Medicine and Rural Health Care in 3 the Medical Institute, Jorhat, for the session starting in the year 2005.

3.2. The Indian Medical Association, Assam State Branch, Respondent No. 1 herein, filed a Writ Petition being W.P. (C) No. 5789 of 2005 under Article 226 of the Constitution of India, before the Gauhati High Court, assailing the validity of the Assam Act and the aforesaid advertisement. During the pendency of the Writ Petition before the High Court, the appellants herein were admitted in the First year of the three-year Diploma Course in Medicine and Rural Health Care in the Medical Institute, Jorhat, ('Jorhat Medical Institute' for the sake of convenience) for the sessions 2012-2013, 2013-2014 and 2014-2015 respectively, pursuant to the selection process.

3.3. Having regard to the fact that the Jorhat Medical Institute was created as envisaged under the State Act, and about four-hundred students had been admitted to the diploma course and awarded certificates on having passed the Course, State of Assam made a plea for impleadment of the Regulatory Authority, the Jorhat Medical Institute and the persons who had obtained diploma certificates and had been engaged as Rural Health Practitioners on the basis of such qualification.

3.4. By the impugned order dated 19.09.2014, the High Court rejected the State's plea for impleadment of the Regulatory Authority, the Jorhat Medical Institute and the persons who had obtained diploma certificates from the said Institute during the pendency of the Writ Petition before the High Court.

3.5. The pertinent findings of the High Court, in the impugned order dated 19.09.2014 may be summarized as under:

i) That the State had voluntarily assumed the risk of proceeding with the admission process under the State Act, even after a challenge was made to the vires of said Act before the High Court.

ii) The fact that there was no stay on the operation of the State Act would not be a valid justification for the State to proceed with the admissions to the course, more so, when the legality of the said Act was challenged. That the admissions, issue of diploma certificates to the persons who completed the course, and appointment of such persons as Rural Health Practitioners, were all developments that took place subsequent to the writ petition being filed.

iii) That no question arose in the writ petition as to the consideration of individual interests of the parties sought to be impleaded. The question and issue that would arise was only as to the vires of the State Act. Hence, there would be no reason to implead the Regulatory Authority, the Jorhat Medical Institute and the persons who had obtained diploma certificates and had been engaged as Rural Health Practitioners on the basis of such qualification, as necessary parties in the writ petition.

3.6. Further, vide the impugned judgment dated 30.10.2014, the High Court allowed W.P. (C) No. 5789 of 2005 by holding that the Assam Act, is unconstitutional and accordingly, the said Act was struck down. The relevant findings of the High Court in the impugned judgment dated 30.10.2014, have been culled out as follows:

i) That the State Act is in conflict with the Central Act i.e. Indian Medical Council Act, 1956 (hereinafter referred to as 'IMC Act, 1956' or 'Central Act' for the sake of convenience) inasmuch as Section 10A of the Central Act categorically declares that no medical college shall "open a new or higher 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.

ii) That the restrictions under Section 10A(b)(i) of the Central Act envisage injunction against medical colleges to open "a new or higher course."

The words "new or higher course" would definitely take in its sweep the diploma course contemplated under the State Act.

iii) That even for commencement of a diploma course, previous permission of the Central Government is required. But in the present case, no permission was taken. Therefore, it was concluded that the State had ventured to introduce a new diploma course in medicine and rural healthcare, without the necessary permission as contemplated under Section 10A of the Central Act.

iv) That the power and scope of the State Legislature to legislate under the field covered under Entry 25 of List III of the Seventh Schedule of the Constitution of India is very limited and is only in respect of a field unoccupied by a Central Act. In the present case, the Central Act fully covers the field and places a total restriction on opening a new course in medicine without the permission of the Central Government.

v) That it would be bizarre to say that the diploma-holders should practice in rural areas and not in urban areas, and they are entitled to treat only certain diseases and prescribe only certain medicines. That such restrictions were unworkable in practice. Such conditions and restrictions were stipulated in Section 24 of the State Act. However, striking down that provision alone would not save the situation as Section 24 is the "soul" of the State Act and without the said provision, the rest of the provisions of the Act would be meaningless.

vi) Keeping in view the larger interest of health and welfare of society and the lapses committed by the State Legislature in enacting a legislation without obtaining necessary approvals from the Central Government, the State Act was liable to be declared as unconstitutional and accordingly struck down.

3.7. Aggrieved by the impugned judgment, certain persons who were admitted in the First year of the three-year Diploma Course in Medicine and Rural Health Care in the Jorhat Medical Institute, for the sessions 2012-13, 2013-14 and 2014-15, during the pendency of the writ petition before the High Court, have preferred the present appeals.

3.8. At this stage itself, it may be mentioned that consequent upon the striking down of the Assam Act, the Assam Legislature passed the Assam Community Professional (Registration and Competency) Act, 2015 ("2015 Act", for short) with a view to

remove the basis of the judgment passed by the Division Bench of the Gauhati High Court in the aforesaid writ petition and in an attempt to restore the position of the diploma holders in medicine and to give them continuity in service. The said Act has been assailed by the diploma holders in Transferred Case (C) Nos. 24 and 25 of 2018 before this Court. In the circumstances, we have heard these cases together and the same are being disposed of by this common judgment.

Bird's Eye View of the Controversy:

4. The controversy in these cases revolve around the legislative competence of the Assam State Legislature to enact the Assam Act which has been assailed by the writ petitioners before the Gauhati High Court on the ground of legislative competence as per Article 246 read with the relevant entries of List I and III of the Seventh Schedule of the Constitution of India. However, the Gauhati High Court has struck down the Assam Act on the ground of repugnancy as per Article 254 of the Constitution.

Submissions:

5. We have heard learned Senior Counsel Mr. Harin P. Raval and learned senior counsel Mr. Sanjay Hegde for the appellants-diploma holders in medicine and learned counsel Sri Shivam Singh, appearing for the writ petitioner/Respondent No.1 herein namely, Indian Medical Association instructed by Sri Abhinav Singh and learned Additional Solicitor General Sri K.M. Natraj, for the Union of India and learned Senior Counsel Sri Vikas Singh, appearing on behalf of Respondent No. 7, Medical Council of India. We have heard Sri Rana Mukherjee learned Senior Counsel instructed by Ms. Oindrila Sen appearing on behalf of the petitioners in Transferred Case (C) Nos. 24 and 25 of 2018 and Mr. Ananga Bhattacharyya learned counsel appearing on behalf of the State of Assam. We have perused the material on record.

5.1. Learned Senior Counsel Sri. Harin P. Raval, appearing for the appellants submitted as under:

i. That the impugned judgment proceeds on a misplaced interpretation of the Indian Medical Council Act, particularly Section 10 thereof and is in the teeth of a three-judge bench judgment of this Court in Dr. Mukhtiar Chand vs. State of Punjab, (1998) 7 SCC 579, ("Dr. Mukhtiar Chand"). That the High Court erred in holding that as per Section 10A of the Central Act, any new course including the relevant diploma course can only be opened after prior permission of the Central Government.

The appellants submitted that Section 10A of the Central Act only prescribes that a new course which would qualify a person for the award of a recognised medical

qualification requires the permission of the Central Government. That Diploma in Medicine and Rural Healthcare is not a medical qualification as defined in Section 2(h) of the Central Act. Therefore, no permission of the Central Government was required to start such a diploma course.

ii. That the award of a recognised medical qualification gives a person the right to be included in the Indian Medical Register under Section 21(1) of the IMC Act. However, as per Section 15 of the said Act for practicing medicine in any State, all that is required is that a person has to be enrolled in a State Medical Register as defined in Section 2(k) thereof as a Register maintained under law enforced in any State regulating the registration of practitioners of medicine. That the impugned Assam Act, is such a law and the State Register of Rural Health Practitioners created by virtue of Section 17 of the Act is such a State Medical Register in terms of even Section 2(k) of the IMC Act, 1956.

iii. That the view taken by the High Court that medical practitioners cannot practice allopathic medicine unless they have completed any of the recognised courses under the IMC Act, was a view which was taken by this court in Dr. A. K. Sabhapathy vs. State of Kerala, 1992 Supp. 3 SCC 147, ("Dr. A. K. Sabhapathy"). Learned senior counsel for the appellants submitted that the said judgment has specifically been overruled by a three-judge bench in Dr. Mukhtiar Chand. It was thus, submitted that the view taken by the High Court is contrary to the decision in Dr. Mukhtiar Chand.

iv. Learned senior counsel for the appellants refuted the reliance placed by the Respondent-Medical Council of India on Gujarat University vs. Krishna Ranganath Mudholkar, 1963 Supp. (1) SCR 112, ("Gujarat University") wherein it was held that a State Legislation can be unconstitutional even if there is no contrary Union Legislation. It may be declared ultra vires if it effectively impinges on the field reserved for the Union under Entry 66 and infringes upon the Union field. It was contended that it is only where the State Legislation makes it impossible or difficult for the Parliament to legislate under Entry 66 of List I, that the State Law can be declared to be bad.

v. The learned senior counsel for the appellants placed reliance on the judgment of a Constitutional Bench of this court in R. Chitralekha vs. State of Mysore, AIR 1964 SC 1823, ("R. Chitralekha") wherein it was held that it is only when the State Legislation makes it impossible or difficult for the Parliament to legislate under Entry 66 of List I, and only if the impact of the State Law is so heavy or devastating on Entry 66 of List I, so as to wipe out or appreciably abridge the Central field of legislation, can it be struck down but not otherwise.

Learned senior counsel contended that in the present case, there is no question of the Assam Act, making it impossible or difficult for the Parliament to exercise its power for co- ordination and determination of standards in medical institutions. If the

Parliament wanted, they could easily legislate to say that no person who does not hold qualifications recognised by the IMC Act can practice allopathic medicine. That Parliament has not said so and Section 15 of the IMC Act indicates that the Parliament recognises that persons enrolled in State Medical Registers under State Acts can practice medicine in the State.

vi. Learned senior counsel for the appellants contended that accepting the argument of the MCI that allopathic medicine can be practiced only by M.B.B.S. doctors with a MBBS degree would not only be totally contrary to the scheme of the IMC Act but would effectively declare unconstitutional a number of State Acts of various States, which have prescribed qualifications other than M.B.B.S. to practice medicine in the State.

vii. That the Medical Council of India (MCI) in the Meeting of its Board of Governors at New Delhi on 16.07.2012, along with the Secretary (Health), Ministry of Health & Family Welfare, Government of India in its proposal for a B.Sc. (Community Health) Program sought to draw experience from the Assam and Chhattisgarh models of the Diploma Course and sought to affiliate these courses/programs to a University or Regulatory Body. Therefore, the Medical Council of India has itself acknowledged the Assam experience and sought to create a course on the same lines in the interest of public healthcare.

viii. That it is a well-known fact that M.B.B.S. doctors prefer not to practice in rural areas and thus, there is an acute shortage of such doctors in rural areas all over the country. To address such an issue, the Assam Act was brought into force by the State Legislature of Assam. Thus, striking it down would be counter-productive and contrary to the interests of the rural population of Assam.

ix. That as per the impugned Assam Act, Rural Health Practitioners can only practice in rural areas and that too, in a limited manner to treat basic common diseases and to prescribe basic medicines. Learned Senior counsel submitted that the impugned judgment may be set aside and the Assam Act may be declared to be a valid piece of legislation.

5.2 Sri. Sanjay Hedge, learned Senior Counsel, drew our attention to two judgments of this Court in the case of Dr. Mukhtiar Chand and Subhasis Bakshi to contend that this Court has recognised the practice in Allopathic medicine under various enactments and that the said judgments would squarely apply to the facts of this case. The judgments relied upon by Sri Sanjay Hedge shall be discussed later.

Arguments on behalf of Respondent No. 1 Indian Medical Association:

6. Learned counsel Sri Shivam Singh appearing for Respondent No. 1, Indian Medical Association submitted as under:

i. That the Assam Act is repugnant to the provisions of the Indian Medical Council Act, 1956, (IMC Act, 1956) i.e. the Central Act.

ii. That the role of the Central Government in granting permission for commencement of a "new or higher course" as prescribed under Section 10A(b)(i) of the Central Act, cannot be diluted nor given a go-by. Section 10(A)(1)(b) of the Central Act requires that previous permission of the Central Government be obtained prior to offering a new or higher course of study for obtaining a "recognised medical qualification" at an already established medical college. However, as regards prospective medical colleges, obtainment of previous permission of the Central Government is mandatory regardless of whether the medical college intends to offer a recognised medical qualification or a non-recognised medical qualification.

iii. That the term "Medical College" is not defined in the IMC Act, 1956, thus, reliance must be placed on the definition of "Medical Institution" as defined in Section 2(e) of the IMC Act, 1956. Thus, the term Medical College must be understood in a wide sense to even include those that do not offer a 'recognised medical qualification'. It was submitted that, the term "medical college" used in Section 10A(1)(a) of the IMC Act ought not be restricted as only "medical college offering a recognised medical qualification" within the meaning of the IMC Act, 1956.

iv. On the strength of the State Act, the Jorhat Medical Institute, was established to provide a Diploma Course in Medicine and Rural Healthcare, without prior permission of the Central Government which is an incurable defect. Thus, the setting up of the Jorhat Medical Institute and commencement of the diploma course is contrary to IMC Act, 1956 and, therefore, unlawful on the ground that it was contrary to Section 10A(1)(a) of the Central Act of 1956.

v. Reliance was placed on the decisions of this Court in Chintpurni Medical College & Hospital vs. State of Punjab, (2018) 15 SCC 1, ("Chintpurni Medical College & Hospital") and Prof. Yashpal vs. State of Chhattisgarh, (2005) 5 SCC 420, ("Prof. Yashpal") to contend that the State Government does not have the power to enact the Assam Act and that the States are denuded of the legislative power to legislate on medical education.

vi. That the Central Act, namely, IMC Act, 1956, in pith and substance, falls under Entry 66 of List I and occupies the entire field insofar as establishment of new medical colleges is concerned which deals with coordination and determination of standards, inter alia, in medical education. Therefore, the State Legislature is denuded of its power under Entry 25 of List III to enact a law providing for the establishment of a medical college contrary to the provisions of the Central Act.

vii. That the provisions of the Central Act hold the field of medical education and no medical college or course, including the impugned course can be commenced without the permission of the Central Government as mandated under Section 10A of the said Act. Also, the Doctrine of 'Occupied Field' would apply in the present case.

Learned counsel for Respondent No. 1 placed reliance on Thirumuruga Kirupananda Variyar Thavathiru Sundara Swamigal Medical Educational and Charitable Trust vs. State of Tamil Nadu, (1996) 3 SCC 15, ("Thirumuruga Kirupananda Variyar Thavathiru Sundara Swamigal Medical Educational and Charitable Trust") wherein it was held that under section 10A of the Indian Medical Council Act, the Parliament has evinced an intention to cover the whole field relating to the establishment of new medical colleges in the Country and by virtue of Section 10A, the Parliament has made a complete and exhaustive provision covering the entire field governing establishment of new medical colleges in the Country. No further scope is left for the operation of any State Legislation in the said field which is fully covered by the law made by the Parliament.

viii. That the Assam Act is repugnant to the provisions of the Central Act as no Presidential Assent was obtained as required under Article 254 of the Constitution, to overcome such repugnancy.

ix. Learned counsel for Respondent No. 1 further contended that the students who graduate on completion of the diploma course would be ill-equipped as doctors and this would pose risk to patients who require quality medical assistance and treatment. That it is the fundamental right of the patient to receive quality medical assistance; meeting the standards as prescribed by the Indian Medical Council or by the Parliament but such quality treatment cannot be provided by those who do not have the requisite qualification as per the standards set by the Parliament.

x. That one of the restrictions under Section 24 of the Assam Act, being that the practitioners who graduate in the diploma course would only be allowed to work in rural areas of the State of Assam, was not only unworkable but also in violation of Article 14 and 21 of the Constitution as equal quality of treatment should be secured for every citizen of this State. That the Assam Act discriminates between patients living in rural areas and those living in urban areas, implying that the persons who live in urban areas are entitled to standard treatment and those who live in rural areas are entitled to sub-standard treatment.

xi. That the argument of the appellants that doctors with MBBS qualification do not wish to practice in rural areas is completely incorrect and is without any basis. That the appellants have not brought anything on record to prove the same. There are more than 2244 MBBS doctors working in the rural areas of Assam; even if there is a shortfall of doctors in the rural areas and the Assam Act aims to remedy the

shortfall, the solution lies in increasing their coverage via permissible means and not otherwise.

xii. That the State of Assam has consciously and rightly chosen not to challenge the judgment passed by the High Court that struck down the Assam Act and only private individuals are appellants before this court. That the State of Assam has enacted a subsequent legislation and has tried to accommodate the ousted diploma holders in different capacities. Merely because the appellants before this court are aggrieved by their arrangement in a different capacity under the new legislation, it cannot equip them to sustain the present challenge.

7. Learned Senior Counsel Sri K.M. Natraj appearing for Union of India has also been heard which shall be adverted to later.

Submissions on behalf of Respondent No. 7 (Medical Council of India):

8. Learned Senior Counsel Sri Vikas Singh appearing on behalf of Respondent No. 7, Medical Council of India, submitted as under:

i. Respondent No. 7 submitted that after the impugned judgment dated 30.10.2014 was passed by the High Court, the State of Assam notified the '2015 Act', on 29.05.2015. By virtue of Section 3(2) of the said Act, the Diploma Holders who have completed or are still undergoing the Diploma course in Medicine and Rural Health in the State of Assam under the scheme of Assam Act, have been recognised as "Community Health Professionals" and such Community Health Professionals have been engaged as para-medical professionals assisting the Medical Officers in the State of Assam. Thereafter, the State of Assam has protected the livelihood of the Rural Health Practitioners by absorbing them as Community Health Professionals under the '2015 Act'. Thus, the future of Rural Health Practitioners has been protected by the State of Assam as they have been employed as Community Health Professional in the State.

ii. That the Central Act i.e., IMC Act, 1956, is relatable to Entry 66 of List I of Seventh Schedule of the Constitution. It is an exhaustive legislation covering all aspects of opening of new or higher courses of medicine, teaching and training, recognition of medical qualification, registration of medical practitioner, eligibility criteria for registration in State Medical Register and practice of modern scientific medicine. Thus, the State Legislature is denuded of the power to make any law as the field is already occupied by the Central Act.

iii. That Section 15(1) of the Central Act prescribes minimum qualification for registration in the State Medical Register. Thus, medical qualification included in the Schedule of the Central Act is the only recognised medical qualification on the basis of which a person's name can be entered in the State Medical Register

maintained by the State Medical Council. Further, Section 15(2)(b) of the Central Act makes it unequivocally clear that only those persons who are enrolled in the State Medical Register are entitled to practice medicine in any State.

iv. That Section 2(d) of the State Act read with Section 15 thereof, and Schedule to the Assam Medical Council Act, 1999, ("AMC Act, 1999", for the sake of convenience) provide that recognised medical qualification for the purposes of registration in the State Medical Register shall mean only those medical qualifications which have been included in Schedule I to the Central Act of 1956. Thus, a combined reading of Section 2(d), Section 15 and Section 31 of the State Act, read with the Schedule to the AMC Act, 1999, makes it unequivocally clear that even the State Legislature of Assam intended that only a person possessing recognised medical qualification under Schedule I of the Central Act, is entitled in law to be entered in the State Medical Register and is allowed to practice modern scientific medicine.

v. That the Assam Act of 2004, was also in direct conflict and inconsistent with the AMC Act, 1999. That Section 31 of the AMC Act, 1999, prohibits practice of modern scientific medicine by any person, except those registered under the State Medical Register maintained by the Assam Medical Council.

vi. Respondent No. 7 next submitted that the provisions of Central Act, 1956, will prevail over the Assam Act, 2004, as Article 246(2) of the Constitution provides that law made by the State Legislature on any subject enumerated in List-III of Seventh Schedule of the Constitution is subject to the law made by the Parliament under Article 246(1). Thus, Entry 25 of List III of Seventh Schedule under which the Assam Act, 2004, had been enacted was subject to the law made by the Parliament under Entry 66 of List I i.e., IMC Act, 1956 which is a Central Legislation.

vii. Respondent No. 7 placed reliance on Dr. Preeti Srivastava vs. State of M.P., (1999) 7 SCC 120, ("Dr. Preeti Srivastava") to contend that a State Act cannot lower the standards fixed under the Central Act. That in the said case it was held that only the Medical Council of India could determine the lowering of standards or norms and the extent of the same. Therefore, the State of Assam does not have the legislative competence and authority to enact the Assam Act, which has the effect of lowering down the standards.

viii. Respondent No.7 contended that the judgment in Dr. Mukhtiar Chand was not applicable in the present case. In the said case, it was held that the registration in the State Medical Register relating to modern scientific medicine was a sine qua non to enable persons, who, otherwise did not possess recognised medical qualification, to practice modern scientific medicine. It was submitted that even if the name of a Diploma Holder was included in the State Register of Rural Health Practitioners as

provided under the Assam Act, it will not give them the right to practice modern scientific medicine as per Section 15 of the IMC Act, 1956.

ix. It was further submitted that medical students are required to undergo rigorous teaching and training during the MBBS course which is a five-year course and it is only after they successfully complete the same that they become eligible to get registered in the Indian Medical Register or the State Medical Register and thereafter, they become legally entitled to practice medicine and treat patients.

Reliance was placed on MCI vs. State of Karnataka, (1998) 6 SCC 131, ("MCI") to submit that Rural Health Practitioners were nothing but half-baked doctors who do not possess the requisite knowledge in the field of medicine and have also not received proper training. That Rural Health Practitioners have limited knowledge and experience and hence, cannot be permitted to practice modern scientific medicine and administer medical treatment. It was further submitted that if such Diploma holders are permitted to practice modern scientific medicine, then they would pose a great threat to society and would degrade the standard of health care system in the country.

Submissions on behalf of the State of Assam:

9. Learned counsel Sri Ananga Bhattacharyya made the following submissions on behalf of the State of Assam:

i. That the Preamble to the IMC Act, 1956 discloses that the said Act is enacted to provide for the reconstitution of Medical Council of India and the maintenance of a Medical Register for India and for matters connected therewith. Section 10A of the said Act provides that, notwithstanding anything contained in the Act or any other law for the time being in force, no person shall establish a medical college; or no medical college shall open a new or higher 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, except with the previous permission of the Central Government.

That the permission as contemplated in Section 10A is the permission to open a new or higher 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". As the Diploma in DMRHC as defined in Section 2(e) of the Assam Act is not akin to "recognised medical qualification" referred to in Section 10A of the IMC Act, 1956, the Assam Act can certainly co-exist. The powers and functions of rural health practitioners as delineated in Section 24 of the Assam Act would go to show that both legislations can co-exist without there being any overlapping.

ii. That a perusal of Regulation 11 framed by the State Authority under the Regulations of Assam Rural Health Regulatory Authority, 2005 would reveal that practice of medicine under the scheme of the State Act has a very limited meaning. Similarly, the word "surgery" has also been assigned a limited scope. Therefore, the underlying purpose is not to encroach upon the field covered by the Central Act but to provide rural health care to the needy persons. In attainment of the aforesaid objectives, if there is any incidental encroachment, the same cannot have the potential of adjudging the Assam Act as ultra vires.

iii. That in determining whether an enactment is a legislation with respect to a given power, what is relevant is whether, in its pith and substance, it is a law upon the subject matter in question. Reliance was placed on State of Bombay vs. F. N. Balsara, AIR 1951 SC 318, ("F. N. Balsara") wherein it was held that mere incidental encroachment on matters which have been assigned to another legislature does not vitiate the legislation. It was contended that in the instant case, the State Legislature has not made any attempt to encroach upon the field covered by the IMC Act, 1956 by offering qualifications envisaged in Section 2(h) read with First Schedule to the said Act. That the Parliament even after enacting the IMC 1956 Act left out certain grey areas, thus, the Assam Act is an attempt to cover the fields left open by the Parliament.

iv. That when one entry is made 'subject to' another entry, it means that out of the scope of the former entry, a field of legislation covered by the latter entry has been reserved to be specifically dealt with by the appropriate legislature. That what is covered by the Central Act is "recognised medical qualification" within the meaning of Section 2(h) of the Act read with the qualifications included in the First Schedule to the said Central Act and not Diploma in Rural Health Care and Medicine. Therefore, as long as the Parliament does not occupy the field earmarked for it under Entry 66 of List I or for that matter by invoking its concurrent powers under Entry 25 of List III, the question of competence of the State Legislature to regulate and register the Diploma Holders in medicine and rural health care and their practice of medicine in rural areas cannot be questioned.

v. That repugnancy arises when two enactments, both within the competence of two legislatures collide and when the Constitution expressly or by necessary implication provides that the enactment of one legislature has superiority over the other, then to the extent of repugnancy one supersedes the other.

Reliance was placed on Hingir - Rampur Coal Co. Ltd. vs. State of Orissa, AIR 1961 SC 459, ("Hingir - Rampur Coal Co. Ltd.") wherein this Court observed that in a case where a declaration is made by the Parliament that it is expedient in the public interest to take over the field, in such a case, the test must be whether legislative declaration covers the field or not. It was submitted on behalf of the State of Assam

that in the said case a distinction must be drawn between the Entries in List I wherein a declaration by the Parliament to take over the field is expressed and to other Entries in List I which do not contain such a declaration.

That Entry 66 of List I does not contain any such declaration; therefore, it would be appropriate to go by the language of Entry 25 of List III i.e., "subject to". Thus, the test is to find out the true nature and character of the State Legislation. Any incidental encroachment in the process would not vitiate the State law. Thus, the Assam Act and the Central Act can co-exist within their respective spheres and the provisions of Assam Act are not repugnant to the provisions of the Central Act, hence, there is no requirement of complying with the provisions of Article 254(2) of the Constitution of India.

10. Sri. Rana Mukherjee, learned Senior Counsel appearing for the petitioners in Transferred Case Nos.24 and 25 of 2018 drew our attention to the relief sought for by the petitioners therein and contended that the status and position of the petitioners therein, subsequent to the enactment of the '2015 Act' has been adversely altered. Hence, the petitioners therein have assailed the said Act. He contended that the petitioners therein were imparted medical education under the Assam Act and have been trained under the said Act and are registered as Rural Health Practitioners and have been serving as Rural Health Practitioners in various States.

The State of Assam proceeded to enact the impugned Legislation, i.e., the '2015 Act', instead of assailing the judgment of the Gauhati High Court which has struck down the Assam Act thereby, resulting in adverse consequence on the petitioners in these transferred cases. That by enactment of the '2015 Act', the petitioners in these cases are redesignated as Community Health Officers and thereby their status and position has been downgraded to that of Paramedics, whereas, under the Assam Act, they were registered as Rural Health Practitioners in the State Medical Register.

In these circumstances, the petitioners in these cases have sought for continuation of their rights, privileges, status and conditions of service as were provided or granted to them under the Assam Act as Rural Health Practitioners. Learned counsel submitted that the case of the petitioners in Transferred Cases would be resurrected in the event this Court is to set aside the judgment of the High Court and restore the Assam Act by allowing the Special Leave Petition filed by the similarly situated Rural Health Practitioners in the case of Baharul Islam and others, which is being considered.

He further submitted that in the event this Court is to affirm the judgment of the High Court, the vires of '2015 Act' is to be considered and the relief sought for by the petitioners in these Transferred Cases may be granted. Learned Senior Counsel also placed reliance on the judgment of this Court in the case of Association of Medical Superspeciality Aspirants and Residents and Others v. Union of India and

Others. (2019) 8 SCC 607; paragraphs 25 and 26, to emphasise the importance of rural health which has to be protected by the State.

Points for consideration:

Having heard the learned counsel for the respective parties and on perusal of the material on record, the following points would arise for our consideration:

i) Whether the Assam Act is invalid and null and void on the ground that the Assam State Legislature did not possess legislative competence to enact the said Act?

ii) Whether the '2015 Act' is ultra vires the Constitution?

iii) What Order?

Constitutional Scheme

11. Before proceeding, it would be useful to refer to the constitutional scheme relevant to the issues which arise in these cases.

11.1. For easy and immediate reference, the relevant provisions of the Constitution of India are extracted as under:

"246. Subject matter of laws made by Parliament and by the Legislatures of States -

(1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the "Union List").

(2) Notwithstanding anything in clause (3), Parliament, and, subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the "Concurrent List").

(3) Subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the "State List").

(4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a State notwithstanding that such matter is a matter enumerated in the State List.

254. Inconsistency between laws made by Parliament and laws made by the Legislatures of States -

(1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.

(2) Where a law made by the Legislature of a State 1 *** with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State:

Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State."

11.2. It is also useful to refer to Entry 66 of List I (Union List) and Entry 25 of List III (Concurrent List) of the Seventh Schedule of the Constitution of India. The same read as under: -

Entry 66 of List I -Union List

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

Entry 25 of List III -Concurrent List

"25. Education, including technical education, medical education and universities, subject to the provisions of entries 63, 64, 65 and 66 of List I; vocational and technical training of labour."

11.3. We shall now dilate on the aspect of interpretation of legislative Entries in the context of List I and List III of the Seventh Schedule of the Constitution of India referred to above. The power to legislate which is dealt with under Article 246 has to be read in conjunction with the Entries in the three Lists which define the respective areas of legislative competence of the Union and State Legislatures. While interpreting these entries, they should not be viewed in a narrow or myopic manner but by giving the widest scope to their meaning, particularly, when the vires of a

provision of a statue is assailed. In such circumstances, a liberal construction must be given to the Entry by looking at the substance of the legislation and not its mere form.

However, while interpreting the Entries in the case of an apparent conflict, every attempt must be made by the Court to harmonise or reconcile them. Where there is an apparent overlapping between two Entries, the doctrine of pith and substance is applied to find out the true character of the enactment and the entry within which it would fall. The doctrine of pith and substance, in short, means, if an enactment substantially falls within the powers expressly conferred by the Constitution upon the legislature which enacted it, the same cannot be held to be invalid merely because it incidentally encroaches on matters assigned to another legislature.

Also, in a situation where there is overlapping, the doctrine has to be applied to determine to which Entry, a piece of legislation could be related. If there is any trenching on the field reserved to another legislature, the same would be of no consequence. In order to examine the true character of enactment or a provision thereof, due regard must be had to the enactment as a whole and to its scope and objects. It is said that the question of invasion into another legislative territory has to be determined by substance and not by degree.

11.4. In case of any conflict between Entries in List I and List II, the power of Parliament to legislate under List I will supersede when, on an interpretation, the two powers cannot be reconciled. But if a legislation in pith and substance falls within any of the Entries of List II, the State Legislature's competence cannot be questioned on the ground that the field is covered by Union list or the Concurrent list vide Prafulla Kumar Mukherjee vs. Bank of Commerce, Khulna, AIR 1947 P.C. 60, ("Prafulla Kumar Mukherjee"). According to the pith and substance rule, if a law is in its pith and substance within the competence of the Legislature which has made it, it will not be invalid because it incidentally touches upon the subject lying within the competence of another Legislature vide State of Bombay vs. F.N. Balsara, AIR 1951 SC 318.

11.5. In Atiabari Tea Company Ltd. vs. State of Assam, AIR 1961 SC 232, ("Atiabari Tea Company Ltd.") it has been observed by this Court that the test of pith and substance is generally and more appropriately applied when a dispute arises as to the legislative competence of the Legislature and it has to be resolved by reference to the Entries to which the impugned legislation is relatable. When a question of legislative competence is raised, the test is to look at the legislation as a whole and if it has a substantial and not merely a remote connection with the Entry, the same may well be taken to be a legislation on the topic vide Ujagar Prints vs. Union of India, AIR 1989 SC 516, ("Ujagar Prints").

11.6. The expression used in Article 246 is 'with respect to' any of the matters enumerated in the respective Lists. The said expression indicates the ambit of the power of the respective Legislature to legislate as regards the subject matters comprised in the various Entries included in the legislative Lists. For instance, where an Entry describes an object of tax, all taxable events pertaining to the object are within that field of legislation unless the event is specifically provided for elsewhere under a different legislative Entry.

Thus, the Court has to discover the true character and nature of the Legislation while deciding the validity of a legislation. Applying the doctrine of pith and substance while interpreting the legislative Lists what needs to be seen is whether an enactment substantially falls within the powers expressly conferred by the Constitution upon the Legislature which enacted it. If it does, it cannot be held to be invalid merely because it incidentally encroaches on matters assigned to another Legislature vide FN Balsara.

11.7. In Ujagar Prints, it was observed that the Entries in the legislative Lists must receive a liberal construction inspired by a broad and generous spirit and not in a narrow and pedantic manner. This is because the Entries are not sources of legislative power but are merely topics or fields of Legislation. The expression 'with respect to' in Article 246 brings in the doctrine of pith and substance in the understanding of the exertion of the legislative power and wherever the question of legislative competence is raised, the test is whether the Legislation, looked at as a whole, is substantially 'with respect to' the particular topic of Legislation. For applying the principle of pith and substance, regard must be had (i) to the enactment as a whole, (ii) to its main object, and (iii) to the scope and effect of the provision.

11.8. Once the Legislation is found to be 'with respect to' the legislative Entry in question unless there are other constitutional prohibitions, the power would be unfettered. It would also extend to all ancillary and subsidiary matters which can fairly and reasonably be said to be comprehended in that topic or category of Legislation vide United Provinces vs. Atiqa Begum, AIR 1941 FC 16, ("United Provinces").

11.9. Another important aspect while construing the Entries in the respective Lists is that every attempt should be made to harmonise the contents of the Entries so that interpretation of one Entry should not render the entire content of another Entry nugatory vide Calcutta Gas Company vs. State of West Bengal, AIR 1962 SC 1044, ("Calcutta Gas Company").

This is especially so when some of the Entries in a different List or in the same List may overlap or may appear to be in direct conflict with each other, in such a situation, a duty is cast on the Court to reconcile the Entries and bring about a harmonious construction. Thus, an effort must be made to give effect to both Entries

and thereby arrive at a reconciliation or harmonious construction of the same. In other words, a construction which would reduce one of the Entries nugatory or dead letter, is not to be followed.

11.10. The sequitur to the aforesaid discussion is that if the Legislature passes a law which is beyond its legislative competence, it is a nullity ab-initio. The Legislation is rendered null and void for want of jurisdiction or legislative competence vide RMDC vs. Union of India, AIR 1957 SC 628, ("RMDC").

11.11. Under the Seventh Schedule of the Constitution, Lists I & II are divided essentially into two groups: One, relating to the power to legislate on specified subjects and the other, relating to the power to tax. In Hoechst Pharmaceuticals Ltd. vs. State of Bihar, AIR 1983 SC 1019, ("Hoechst Pharmaceuticals Ltd."), it has been categorically held that taxation is considered as a distinct matter for purposes of legislative competence.

11.12. Having regard to the aforesaid discussion, we now answer the points for consideration. While doing so, the following approach is being adopted with regard to the interpretation of the Entries of the Lists of the Seventh Schedule of the Constitution:

i) The Entries in the different Lists should be read together without giving a narrow meaning to any of them. The powers of the Union and the State Legislatures are expressed in precise and definite terms. Hence, there can be no broader interpretation given to one Entry than to the other. Even where an Entry is worded in wide terms, it cannot be so interpreted as to negate or override another Entry or make another Entry meaningless. In case of an apparent conflict between different Entries, it is the duty of the Court to reconcile them in the first instance.

ii) In case of an apparent overlapping between two Entries, the doctrine of pith and substance has to be applied to find out the true nature of a legislation and the Entry within which it would fall.

iii) Where one Entry is made 'subject to' another Entry, all that it means is that out of the scope of the former Entry, a field of legislation covered by the latter Entry has been reserved to be specially dealt with by the appropriate Legislature.

iv) When one item is general and another specific, the latter will exclude the former on a subject of legislation. If, however, they cannot be fairly reconciled, the power enumerated in List II must give way to List I.

v) On a close perusal of the Entries in the three Lists of the Seventh Schedule of the Constitution, it is discerned that the Constitution has divided the topics of legislation into the following three broad categories:

(i) Entries enabling laws to be made;

(ii) Entries enabling taxes to be imposed; and

(iii) Entries enabling fees and stamp duties to be collected. Thus, the entries on levy of taxes are specifically mentioned. Therefore, per se, there cannot be a conflict of taxation power of Union and the State.

Contentions on behalf of the Union of India:

12. In this context, learned ASG appearing for Union of India Sri Natraj submitted that there is a two-fold restriction on the field in which the Assam State Legislature can enact a law as far as medical education is concerned: the first is that any State law dealing with medical education must be subject to Entry 66 of List I which deals with coordination and determination of standards. That any law to be made by the Assam State Legislature or for that matter any State Legislature in the context of education, particularly, medical education would be subjected to Entry 66 of List I.

The second restriction on a law to be made by a State Legislature is in exercise of its concurrent power with Parliament under Entry 25 of List III which must not be a law which is repugnant to a Central Legislation and that the parameters of Article 254 would apply accordingly. He contended that even before testing the validity of a legislation made under Entry 25 of List III, it is necessary to, in the first instance, consider as to whether the State Legislation impinges upon any Central law which is in the realm of coordination and determination of standards as envisaged in Entry 66 of List I.

According to him, if that is so, then the law made by the Parliament is the Central law which in pith and substance is within the four corners of Entry 66 of List I and would supersede any law made by a State legislature as per Entry 25 of List III. But if an enactment does not trench upon the subject mentioned in Entry 66 of List I and a State Legislature enacts such a law within the legislative competence of Entry 25 of List III in such a case the only test to be applied is whether such a State Legislation is repugnant to any Central Legislation which has also been made relatable to Entry 25 of List III. If that is so, then the State Legislation being repugnant to the Central law would be null and void unless it has received presidential assent as envisaged under sub-clause (2) of Article 254 of the Constitution.

13. Sri Natraj contended that, in the instant case, the IMC Act, 1956 is an enactment, which in pith and substance is, within the four corners of Entry 66 of List I and is a Central Legislation in the mater of coordination and determination of standards in medical education applicable throughout the Country and hence, the State Law which is in direct conflict with the Central Law cannot muster constitutionality.

Hence, it must fail and be declared null and void. This is because a State law within the parameters of Entry 25 of List III is subject to Entry 66 of List I and therefore, the State law must yield to the Central law. Learned ASG contended that such an arrangement under the Constitution points towards federal supremacy having regard to Article 246 of the Constitution.

14. Therefore, according to Sri Nataraj, learned ASG, the State law is null and void and has been rightly struck down by the Division Bench of the Gauhati High Court. He, however, contended that the High Court has applied the doctrine of repugnancy to strike down the State enactment which was wholly unnecessary. Though the reasoning may not be appropriate, the conclusion is correct. Bearing in mind the aforesaid submissions of the learned ASG, we may proceed to consider the matter further.

Interplay between Entry 66 of List I and Entry 25 of List III:

15. Since these appeals concern interpretation, inter alia, of Entry 66 of List I and Entry 25 of List III, it would be useful to refer to the following decisions of this Court, which examine the interplay of the aforesaid Entries:

i) In Gujarat University, Ahmedabad vs. Shri Krishna Ranganath Mudhoklar, AIR 1963 SC 703, ("Gujarat University, Ahmedabad") the contest before a Constitution Bench of this Court pertained to the fixation of an exclusive medium of instruction in University Education and the Legislative competence of the State Legislature to do so.

This Court considered, inter alia, the question as to whether the Gujarat University Act, 1949, which authorized the University to prescribe Gujarati or Hindi or both as an exclusive medium of instruction and examination in the affiliated colleges, would infringe Entry 66 of List I. One of the arguments raised in that case was that under Entry 66 of List I of the Seventh Schedule the power of co-ordination and determination of standards in institutions for higher education or research in scientific and technical institutions was conferred upon Parliament and that these matters must be regarded as having been excluded from Entry 11 of List II (as it then stood), which read thus:

"Education, including universities, subject to the provisions of Entries 63, 64, 65 and 66 of List I and Entry 25 of List III."

Addressing such a contention, J.C. Shah, J., speaking for the majority (Subba Rao J. dissenting) observed that the power of the State Legislature to legislate with respect to higher scientific and technical education and vocational and technical training of labour, is controlled by the five items in List I and List III mentioned in Entry 11 of List II. Items 63 to 66 of List I are carved out of the subject of education and in

respect of these items the power to legislate is vested exclusively in the Parliament. That power of the State to legislate in respect of education including Universities must, to the extent to which it is entrusted to the Parliament, be deemed to be restricted.

It was further observed that if a subject of legislation is covered by Entries 63 to 66 even if it otherwise falls within the larger field of "education including universities," as covered under Entry 11 of List II, the power to legislate on that subject must lie only with the Parliament. Acknowledging that Entry 11 of List II and Entry 66 of List I undoubtedly overlap, it was held that the said entries must be harmoniously construed and to the extent of overlapping, the power conferred by Entry 66 of List I must prevail over the power of the State under Entry 11 of List II. The Majority on the Bench concluded that the power, having regard to the width of those items, must be deemed to vest with the Union.

Power to legislate in respect to medium of instruction, in so far it has a direct bearing and impact upon the legislative head of co-ordination and determination of standards in institutions of higher education or research and scientific and technical institutions, must also be deemed by virtue of Entry 66 of List I, to be vested with the Union. This Court rejected the argument that prescribing the medium of instruction is not a matter falling within determination and coordination of standards of higher education in Entry 66 of List I. It held expressly that it is within the purview of the said Entry. Accordingly, it was held that the State Legislature was not competent to legislate in that behalf.

ii) In State of Tamil Nadu vs. Adhiyaman Educational and Research Institute, (1995) 4 SCC 104, ("Adhiyaman Educational and Research Institute") this Court considered the question, whether, even after the coming into force of the All-India Council for Technical Education Act, 1987, which is a Parliamentary enactment, the State Government had the power to grant and withdraw permission to start a technical institution, acting under the Tamil Nadu Private College (Regulation) Act, 1976, and the statutes and ordinances framed thereunder.

The facts leading to the controversy were that the Respondent Institution applied to the Government of Tamil Nadu for permission to start a new self-financing private Engineering College in terms of a Government Memorandum dated 17th April 1984, which permitted private managements to start new Engineering Colleges under the self-financing scheme without any financial commitment to the Government, but subject to the fulfilment of certain conditions. The State Government by its order of 9th June, 1987, granted permission to the Trust to start a private Engineering College under the name and style of Adhiyaman College of Engineering at Hosur in Dharmapuri district, beginning with the academic year 1987-88.

One of the conditions imposed by the Government was that the institution could admit candidates of its choice upto 50 per cent of the approved intake under the management quota, and the remaining 50 per cent of the seats would be allotted by the Director of Technical Education from among the candidates of the approved list prepared for admission to Government and Government-aided Engineering Colleges. The Government had also stipulated that if any of the conditions imposed by them was not fulfilled, the permission granted to start the College would be withdrawn.

In July, 1989, the University sent a communication to the Respondent institution informing them that the Syndicate had accepted the report of the High Power Committee appointed by the Government and it resolved to reject the request of the institution for provisional affiliation for 1989-90 for the first year and also the request for provisional affiliation for second and third year courses for 1989-90. By way of the said communication, the Respondent was also informed that they should make alternative arrangement to distribute the students already admitted to the academic year 1987-88 and 1988-89 among other institutions with adequate facilities.

A challenge to the communication and the resolution passed by the Syndicate of the University accepting the report of the High Power Committee appointed by the Government, was carried before the High Court, and ultimately became the subject of challenge before this Court. The larger question before this Court in the said case was as regards the conflict between the All-India Council for Technical Education Act, 1987 and the Tamil Nadu Private College [Regulation] Act, 1976, in so far as the State Act provided significantly different and more stringent yardsticks to be complied with by technical universities seeking recognition, as compared to the Central enactment. In that background, this Court undertook analysis of the scope of Entry 66 of List I and Entry 25 of List III and culled out the following principles:

"[i] The expression "coordination" used in Entry 66 of the Union List of the Seventh Schedule to the Constitution does not merely mean evaluation. It means harmonisation with a view to forge a uniform pattern for a concerted action according to a certain design, scheme or plan of development. It, therefore, includes action not only for removal of disparities in standards but also for preventing the occurrence of such disparities. It would, therefore, also include power to do all things which are necessary to prevent what would make "coordination" either impossible or difficult. This power is absolute and unconditional and in the absence of any valid compelling reasons, it must be given its full effect according to its plain and express intention.

[ii] To the extent that the State legislation is in conflict with the Central legislation though the former is purported to have been made under Entry 25 of the Concurrent

List but in effect encroaches upon legislation including subordinate legislation made by the centre under Entry 25 of the Concurrent List or to give effect to Entry 66 of the Union List, it would be void and inoperative.

[iii] If there is a conflict between the two legislations, unless the State legislation is saved by the provisions of the main part of Clause [2] of Article 254, the State legislation being repugnant to the Central legislation, the same would be inoperative.

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

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

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

Adverting to the facts of the said case, this Court ruled that the provisions of the Central statute on the one hand and of the State statutes on the other, being inconsistent and therefore, repugnant to each other, the Central statute will prevail and the derecognition by the State Government or the disaffiliation by the State University on grounds which are inconsistent with those enumerated in the Central statute were declared to be inoperative.

It was observed that there was no material on record which would demonstrate that the standards laid down by the Central Act are inadequate to ensure that the colleges eligible for recognition as per the Central Act are able to successfully conduct the relevant courses. Hence, it was held that the State Government did not have the discretion to reject permission granted to any technical institution, or derecognise the institution because such institution has failed to satisfy the conditions laid down by the State, which were inconsistent with those enumerated in the Central statute.

iii) In Preeti Srivastava vs. State of Madhya Pradesh, AIR 1999 SC 2894, ("Preeti Srivastava") this Court considered the question, whether, it was open to the State to prescribe different admission criteria, in the sense of prescribing different minimum qualifying marks, for special category candidates seeking admission to the post-graduate medical courses under the reserved seats category as compared to the general category candidates. This Court observed that both the Union as well as the States have the power to legislate on education including medical education, subject, inter alia, to Entry 66 of List I which deals with laying down standards in institutions for higher education or research and scientific and technical institutions as also coordination of such standards.

A State has, therefore, the right to control education including medical education so long as the field is not occupied by any Union Legislation. It was further observed that the State cannot, while controlling education in the State, impinge on standards in institutions for higher education because that is exclusively within the purview of the Union Government. Therefore, while prescribing the criteria for admission to the institutions for higher education including higher medical education, the State cannot adversely affect the standards laid down by the Union of India under Entry 66 of List I.

That since norms for admission can have a direct impact on the standards of education, only such norms or rules may be prescribed which are consistent with or do not affect adversely the standards of education prescribed by the Union in exercise of powers under Entry 66 of List I. By way of illustration, it was stated that a State may, for admission to the postgraduate medical courses, lay down qualifications in addition to those prescribed under Entry 66 of List I. That such a rule would be consistent with promoting higher standards for admission to the higher educational courses; but any lowering of the norms laid down can and does have an adverse effect on the standards of education in the institutes of higher education.

It was declared that it is within the legislative competence of the State Legislature, in exercise of power under Entry 25 of the Concurrent List to prescribe higher educational qualifications and higher marks for admission in addition to the one fixed by the Indian Medical Council in order to bring out the higher qualitative output from the students who pursue medical course. The following factors were listed, which are non-exhaustive, which determine the standard of education in an institution:

"(1) The calibre of the teaching staff;

(2) A proper syllabus designed to achieve a high level of education in the given span of time;

(3) The student-teacher ratio;

(4) The ratio between the students and the hospital beds available to each student;

(5) The calibre of the students admitted to the institution;

(6) Equipment and laboratory facilities, or hospital facilities for training in the case of medical colleges;

(7) Adequate accommodation for the college and the attached hospital; and

(8) The standard of examinations held including the manner in which the papers are set and examined and the clinical performance is judged."

It was concluded in the said case that whether lower minimum qualifying marks for the reserved category candidates can be prescribed at the post-graduate level of medical education was a question which must be decided by the Medical Council of India since it affects standards of post-graduate medical education. That even if minimum qualifying marks can be lowered for the reserved category candidates, there cannot be a wide disparity between the minimum qualifying marks for the reserved category candidates and the minimum qualifying marks for the general category candidates at the level of post-graduation.

iv) In Modern Dental College and Research Centre vs. State of Madhya Pradesh, (2016) 7 SCC 353, ("Modern Dental College and Research Centre") this Court was called upon to adjudicate upon a challenge to the vires of the Niji Vyavasayik Shikshan Sanstha (Pravesh Ka Viniyaman Avam Shulk Ka Nirdharan) Adhiniyam, 2007, read with the Madhya Pradesh Private Medical and Dental Post Graduate Courses Entrance Examination Rules, 2009. The said Act and Rules were framed primarily to regulate the admission of students in post graduate courses in private professional educational institutions and also contained provisions for fixation of fee and reservation of seats in such colleges.

A challenge was laid by the Appellants therein, which were unaided private medical and dental colleges, to those provisions of the Act and Rules, which sought to regulate admission, fixation of fee, reservation and eligibility criteria. The arguments raised by the Appellants therein before this Court were founded, inter alia, on power of the State to enact such a legislation. It was argued that the matter of admission in higher educational institutional falls within the purview of Entry 66 of List I to the Seventh Schedule of the Constitution and is not covered under Entry 25 of List III of Seventh Schedule. In that background, this Court undertook an analysis of the scope and ambit of Entry 66 of List I, relative to Entry 25 of List III.

This Court held that Entry 66 of List I is a specific Entry having a very specific and limited scope. It deals with co-ordination and determination of standards in institution of higher education or research as well as scientific and technical

institutions. Thus, when it comes to prescribing the standards for such institutions of higher learning, exclusive domain is given to the Union. That such co- ordination and determination of standards, insofar as medical education is concerned, is achieved by Parliamentary legislation in the form of Medical Council of India Act, 1956 and by creating the statutory body like Medical Council of India. With reference to Entry 25 of List III, it was observed that regulating 'education' as such, which includes medical education as well as universities, is a matter under the concurrent list.

That earlier, education, including university education, was the subject matter of Entry 11 of List II. Thus, power to this extent was given to the State Legislatures. However, this Entry was omitted by the Constitution (Forty-Second Amendment) Act, 1976 with effect from 03 July, 1977 and at the same time Entry 25 of List II was amended. Education, including university education, was thus transferred to Concurrent List and in the process technical and medical education was also added within the scope of Entry 25 of List II. With that preface, it was observed in the said case that on a harmonious reading of Entry 66 of List I and Entry 25 of List III, it would become manifest.

That in matters concerning co-ordination and laying down of standards in higher education or research and scientific and technical institutions, power rests with the Union/Parliament to the exclusion of the State Legislatures. However, in so far as other facets of education, including technical and medical education, as well as governance of universities are concerned, even State Legislatures are vested with power by virtue of Entry 25 of List III of the Seventh Schedule of the Constitution. That the field covered by Entry 25 of List III is wide enough and as circumscribed to the limited extent of it being subject to Entries 63, 64, 65 and 66 of List I.

It was observed that most educational activities, including admissions, have two aspects: the first of such aspects being the adoption and setting of the minimum standards of education. That it was essential to lay down a uniform minimum standard for the nation, with a view to provide a benchmark quality of education being imparted by various educational institutions across the country. To this end, Entry 66 of List I was formulated with the objective of maintaining uniform standards of education in fields of research, higher education and technical education. The Court went on to observe that the second aspect of regulation of education is with regard to the implementation of the standards of education determined by Parliament, and the regulation of the complete activity of education.

This activity necessarily entails the application of the standards determined by Parliament in all educational institutions in accordance with the local and regional needs. Therefore, it was held that while Entry 66 of List I dealt with determination and co-ordination of standards, on the other hand, the original Entry 11 of List II

granted the States the exclusive power to legislate with respect to all other aspects of education, except the determination of minimum standards and co-ordination which was in national interest.

Subsequently, vide the Constitution (Forty-second Amendment) Act, 1976, the exclusive legislative field of the State Legislature with regard to education was removed and deleted, and the same was replaced by amending Entry 25 of List III granting concurrent powers to both Parliament and State Legislature the power to legislate with respect to all other aspects of education, except that which was specifically covered by Entries 63 to 66 of List I. In a concurring judgment, Bhanumati J. in paragraphs 131 to 134 and 147 to 149, has held as under:

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

Entry 57-A merely deals with the maintenance of certain standards in certain classes of institutions, namely, institutions imparting higher education, scientific and technical institutions, institutions for research, etc. You may ask, "why this entry?"

I shall show why it is necessary. Take for instance, the BA Degree examination which is conducted by the different universities in India. Now, most provinces and the Centre, when advertising for candidates, merely say that the candidate should be a graduate of a university. Now, suppose the Madras University says that a candidate at the BA Examination, if he obtained 15% of the total marks shall be deemed to have passed that examination; and suppose the Bihar University says that a candidate who has obtained 20% of marks shall be deemed to have passed the BA degree examination; and some other university fixes some other standard, then it would be quite a chaotic condition, and the expression that is usually used, that the candidate should be a graduate, I think, would be meaningless.

Similarly, there are certain research institutes, on the results of which so many activities of the Central and Provincial Governments depend. Obviously, you cannot permit the results of these technical and scientific institutes to deteriorate from the normal standard and yet allow them to be recognised either for the Central purposes, for all- India purposes or the purposes of the State.

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

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

134. The words "coordination" and "determination of the standards in higher education" are the preserve of Parliament and are exclusively covered by Entry 66 of the Union List. The word "coordination" means harmonisation with a view to forge a uniform pattern for concerted action. The term "fixing of standards of institutions for higher education" is for the purpose of harmonising coordination of the various institutions for higher education across the country.

Looking at the present distribution of legislative powers between the Union and the States with regard to the field of "education", that State's power to legislate in relation to "education, including technical education, medical education and universities" is analogous to that of the Union. However, such power is subject to Entries 63, 64, 65 and 66 of the Union List, as laid down in Entry 25 of the Concurrent List. It is the responsibility of the Central Government to determine the standards of higher education and the same should not be lowered at the hands of any particular State.

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

For instance, Jawaharlal Nehru Krishi Vishwavidyalaya Adhiniyam, Rajiv Gandhi Prodyogiki Vishwavidyalaya Adhiniyam, Rashtriya Vidhi Sansathan Vishwavidyalaya Adhiniyam, etc. were established by the State Government in exercise of power under Entry 25 of the Concurrent List. Similarly, the Central Government has also enacted various legislations relating to higher education under Entry 25 of the Concurrent List pertaining to Centrally funded universities such as the Babasaheb Bhimrao Ambedkar University Act, 1994, the Maulana Azad National Urdu University Act, 1996, the Indira Gandhi National Tribal University Act, 2007, etc.

The Central Government may have the power to regulate the admission process for Centrally funded institutions like IITs, NIT, JIPMER, etc. but not in respect of other institutions running in the State. 148. In view of the above discussion, it can be clearly laid down that power of the Union under Entry 66 of the Union List is limited to prescribing standards of higher education to bring about uniformity in the level of education imparted throughout the country. Thus, the scope of Entry 66 must be construed limited to its actual sense of "determining the standards of higher education" and not of laying down admission process. In no case is the State denuded of its power to legislate under List III Entry 25. More so, pertaining to the admission process in universities imparting higher education.

149. I have no hesitation in upholding the vires of the impugned legislation which empowers the State Government to regulate admission process in institutions imparting higher education within the State. In fact, the State being responsible for welfare and development of the people of the State, ought to take necessary steps for welfare of its student community.

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

v) In Chintpurni Medical College and Hospital vs. State of Punjab and Ors., AIR 2018 SC 3119, ("Chintpurni Medical College and Hospital") this Court considered the question, whether, a State Government can withdraw an Essentiality Certificate once granted to a medical college and whether such power is ultra vires the Central Act. An essentiality certificate is required to be issued by the State Government within the territory of which the medical college is proposed to be established, certifying the need in the subject state, of a medical college.

The concerned State Government is required to certify that it has decided to issue an essentiality certificate for the establishment of a medical college with a specified number of seats in public interest, and further that such establishment is feasible. In examining whether such certificate, which is required to be secured by a college before seeking permission under Section 10A of the IMC Act, 1956, could be subsequently cancelled by the State, this Court held that the only purpose of the essentiality certificate is to enable the Central Government acting under Section 10A

to take an informed decision for permitting the opening or establishment of a new medical college.

Once the college is established, its functioning and performance and even the de-recognition of its courses is controlled only by the provisions of the Central Act and not any other law. That it would therefore be impermissible to allow any authority including a State Government which merely issues an essentiality certificate, to exercise any power which could have the effect of terminating the existence of a medical college permitted to be established by the Central Government. As regards the power of the Parliament under Entry 66 of List I, as juxtaposed with the power with the State Legislatures under Entry 25 of List III, this Court made the following observations:

"The IMC Act, which is a Legislation under Entry 66 of List I of Seventh Schedule of the Constitution of India is a complete code which governs the establishment, functioning, including maintenance of standards of education and even de-recognition of Medical Colleges vide Section 19 of the Act. The States are denuded of the Legislative Power to legislate on medical education under Entry 25 of the Concurrent List since Parliament has exercised its power under Entry 66 and enacted the IMC Act"

vi) In Tamil Nadu Medical Officers Association vs. Union of India, (2021) 6 SCC 568, ("Tamil Nadu Medical Officers Association") a Constitution Bench of this Court, considered the question, whether, under the scheme of the Constitution of India and the provisions of the IMC Act, 1956, read with the Medical Council of India Postgraduate Medical Education Regulations, 2000, a State has the legislative competence to enact legislation to provide for reservation of seats for admission in postgraduate medical courses, in favour of medical professionals working in government organisations within the State. In other words, the question before the Court pertained to the legislative competence of the states to make reservation for in-service doctors in the State quota in post graduate degree/diploma medical courses.

The primary contention of the Petitioners therein was that while co-ordination and determination of standards in institutions for higher education falls within the exclusive domain of the Union, under Entry 66 of List I, medical education is a subject in the Concurrent list, i.e., under Entry 25 of List III. That though Entry 25 of List III is subject to Entry 66 of List I, the State is not denuded of its power to legislate on the manner and method of making admissions to post-graduate medical courses. The case of the Petitioners therein was that the competence of the State Government to make reservation for post-graduate seats in medical colleges, in favour of in-service candidates, is traceable to Entry 25 of List III, vide Modern Dental College.

That since there was no plenary law by the Centre to provide for any reservation for in-service candidates, it would be competent for the State Governments to provide for a reservation for in-service candidates. That in the absence of a Central law governing the field, it would be open to the State Government to enact a legal instrument to provide reservation for in-service candidates. This Court deliberated on the scope and ambit of Entry 66 of List I, and also on the question as to whether, in view of the said Entry, the State Legislature is denuded of its power to legislate on the manner and method of admissions into post-graduate medical courses.

Referring to the dictum of this Court in Modern Dental College wherein it was held that Entry 66 of List I is specific and limited in scope, this Court observed that the said Entry pertains specifically and exclusively to the prescription of standards for higher education and research institutions and the scope of such Entry would not extend to matters such as conduct of examination, prescribing course fee or admission of students. It was therefore declared that in exercise of powers under Entry 66 of List I, the Union cannot provide for anything with respect to reservation/ percentage of reservation and/or mode of admission within the State quota, which powers are conferred upon the States under Entry 25 of List III.

Further, referring to the provisions of the IMC Act, 1956 and more particularly, Section 33 thereof, which provides for the power of the Council to make regulations, this Court held that the said provision does not confer any authority or power to frame regulations with respect to reservation in medical courses. Therefore, in the absence of a Central Law governing the field, it would be open to the State Government to make provision for reservation by legislating on the strength of Entry 25 of List III. This Court, therefore, concluded that that Entry 66 of List I is a very specific Entry having limited scope and that the no provision for reservation for in service candidates could be made under the said Entry; that power to legislate on such matter is traceable to Entry 25 of List III of the Seventh Schedule of the Constitution.

Aniruddha Bose J. in a separate but concurring judgment observed that although the students who would gain admission into the post-graduate courses as a part of the in-service quota, may not have been admitted purely based on a uniform order of merit, and this might, to some degree have an effect on the overall standard of medical education, the term "standards" in Entry 66 of List I must not be construed in such a manner. That the phrase "coordination and determination of standards" as appearing in Entry 66 of List I should be construed as the standard of education and other institutional standards which are to be complied with. Therefore, it was held that reservation in favour of in-service candidates, would in no way be regulated under Entry 66 of List I.

16. Bearing in mind the aforesaid discussion, we shall proceed to consider the scheme of the legislations relevant to these appeals.

16.1. The field of legislation covered under Entry 25 of List III is subject to Entries 63, 64, 65 and 66 of List I. It is, therefore, necessary to dilate on the effect of providing that one Entry or provision is 'subject to' another. As per Black's Law Dictionary, 5th Edition, Pg. 1278, "subject to" means "liable, subordinate, subservient, inferior, obedient to, governed or affected by." The following decisions would illustrate the above meanings of the phrase 'subject to':

i) In K.R.C.S. Balakrishna Chetty & Sons & Co. vs. The State of Madras, AIR 1961 SC 1152, ("K.R.C.S. Balakrishna Chetty & Sons & Co.") this Court observed that the expression "subject to" has reference to effectuating the intention of the law and the correct meaning, of the phrase is, "conditional upon".

ii) Similarly, in The South India Corporation (P) Ltd. vs. The Secretary, Board of Revenue Trivandrum and Ors., AIR 1964 SC 207, ("The South India Corporation (P) Ltd.") this court observed that the expression "subject to" conveys the idea of a provision yielding place to another provision or other provisions to which it is made subject. This understanding of the phrase "subject to" has been affirmed in K.T. Plantation (P) Ltd. vs. State of Karnataka, (2011) 9 SCC 1, ("K.T. Plantation (P) Ltd.").

iii) In Ashok Leyland Ltd. vs. State of Tamil Nadu and Anr., (2004) 3 SCC 1, ("Ashok Leyland Ltd.") this Court held that, "'Subject to' is an expression whereby limitation is expressed."

16.2. In the facts of the present case, the Assam Act would be subject to the provisions of the Central Act. This is because the Assam Act is stated to be enacted on the strength of Entry 25 of List III, and the power of the State Legislature under the said Entry is circumscribed to the limited extent of it being subject to Entries 63, 64, 65 and 66 of List I.

16.3. Where one Entry is made 'subject to' another Entry, it means that out of the scope of the former Entry, a field of legislation covered by the latter Entry has been reserved to be specially dealt with by the appropriate Legislature. In the present context, the field of legislation covered under Entry 25 of List III is subject to Entry 66 of List I. This would imply that out of the scope of Entry 25 of List III, a field of legislation covered by Entry 66 of List I is reserved to be dealt with by the Parliament. Hence, the field covered by the Central Act, enacted under Entry 66 of List I, is carved out of the scope of Entry 25 of List III and is reserved to be dealt with by the Parliament. What is that field of legislation has to be identified. We shall proceed to undertake the said exercise by considering both the Central as well as the State enactments.

Indian Medical Council Act, 1956 (IMC Act, 1956) (Central law)

17. The relevant provisions of the Indian Medical Council Act, 1956 ('IMC Act, 1956'), read as under:

Preamble - An Act to provide for the reconstitution of the Medical Council of India, and the maintenance of a Medical Register for India and for matters connected therewith.

"2. Definitions.- In this Act, unless the context otherwise requires,-

(a) "approved institution" means a hospital, health centre or other such institution recognised by a University as an institution in which a person may undergo the training, if any, required by his course of study before the award of anymedical qualification to him;

(d) "Indian Medical Register" means the medical register maintained by the Council;

(e) "medical institution" means any institution, within or without India, which grants degrees, diplomas or licences in medicine;

(f) "medicine" means modern scientific medicine in all its branches and includes surgery and obstetrics, but does not include veterinary medicine and surgery;

(h) "recognised medical qualification" means any of the medical qualifications included in the Schedules;

(k) "State Medical Register" means a register maintained under any law for the time being in force in any State regulating the registration of practitioners of medicine;

10A. Permission for establishment of new medical college, new course of study.-

(1) Notwithstanding anything contained in this 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 post-graduate 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 post-graduate course of study or training), except with the previous permission of the Central Government obtained in accordance with the provisions of this section.

Explanation 1.-For the purposes of this section, "person" includes any University or a trust but does not include the Central Government.

Explanation 2.-For the purposes of this section, "admission capacity", in relation to any course of study or training (including post-graduate course of study or training) in a medical college, means the maximum number of students that may be fixed by the Council from time to time for being admitted to such course or training.

10B. Non-recognition of medical qualifications in certain cases.-

(1) Where any medical college is established except with the previous permission of the Central Government in accordance with the provisions of section 10A, no medical qualification granted to any student of such medical college shall be a recognised medical qualification for the purposes of this Act.

(2) Where any medical college opens a new or higher course of study or training (including a post-graduate course of study or training) except with the previous permission of the Central Government in accordance with the provisions of section 10A, no medical qualification granted to any student of such medical college on the basis of such study or training shall be a recognised medical qualification for the purposes of this Act.

(3) Where any medical college increases its admission capacity in any course of study or training except with the previous permission of the Central Government in accordance with the provisions of section 10A, no medical qualification granted to any student of such medical college on the basis of the increase in its admission capacity shall be a recognised medical qualification for the purposes of this Act.

Explanation.-For the purposes of this section, the criteria for identifying a student who has been granted a medical qualification on the basis of such increase in the admission capacity shall be such as may be prescribed.

11. Recognition of medical qualifications granted by Universities or medical institutions in India.-

(1) The medical qualifications granted by any University or medical institution in India which are included in the First Schedule shall be recognised medical qualifications for the purposes of this Act.

(2) Any University or medical institution in India which grants a medical qualification not included in the First Schedule may apply to the Central Government to have such qualification recognised, and the Central Government, after consulting the Council, may, by notification in the Official Gazette, amend the First Schedule so as to include such qualification therein, and any such notification may also direct that an entry shall be made in the last column of the First Schedule against such medical qualification declaring that it shall be a recognised medical qualification only when granted after a specified date.

13. Recognition of medical qualifications granted by certain medical institutions whose qualifications are not included in the First or Second Schedule.-

(1) The medical qualifications granted by medical institutions in India which are not included in the First Schedule and which are included in Part I of the Third Schedule shall also be recognised medical qualifications for the purposes of this Act.

(2) The medical qualifications granted to a citizen of India-

(a) before the 15th day of August, 1947, by medical institutions in the territories now forming part of Pakistan, and

(b) before the Ist day of April, 1937, by medical institutions in the territories now forming part of Burma, which are included in Part I of the Third Schedule shall also be recognised medical qualifications for the purposes of this Act.

(3) The medical qualifications granted by medical institutions outside India before such date as the Central Government may, by notification in the Official Gazette, specify which are included in Part II of the Third Schedule shall also be recognised medical qualifications for the purposes of this Act, but no person possessing any such qualification shall be entitled to enrolment on any State Medical Register unless he is a citizen of India and has undergone such practical training after obtaining that qualification as may be required by the rules or regulations in force in the country granting the qualification, or if he has not undergone any practical training in that country he has undergone such practical training as may be prescribed.

15. Right of persons possessing qualifications in the Schedules to be enrolled.-

(1) Subject to the other provisions contained in this Act, the medical qualifications included in the Schedules shall be sufficient qualification for enrolment on any State Medical Register.

(2) Save as provided in section 25, no person other than a medical practitioner enrolled on a State Medical Register,-

(a) shall hold office as physician or surgeon or any other office (by whatever designation called) in Government or in any institution maintained by a local or other authority;

(b) shall practise medicine in any State;

(c) shall be entitled to sign or authenticate a medical or fitness certificate or any other certificate required by any law to be signed or authenticated by a duly qualified medical practitioner;

(d) shall be entitled to give evidence at any inquest or in any court of law as an expert under section 45 of the Indian Evidence Act, 1872 (1 of 1872) on any matter relating to medicine.

(3) Any person who acts in contravention of any provision of sub-section (2) shall be punished with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

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 post-graduate medical qualifications) by Universities or medical institutions in India.

(2) 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.

21. The Indian Medical Register.-

(1) The Council shall cause to be maintained in the prescribed manner a register of medical practitioners to be known as the Indian Medical Register, which shall contain the names of all persons who are for the time being enrolled on any State Medical Register and who possess any of the recognised medical qualifications.

(2) It shall be the duty of the Registrar of the Council to keep the Indian Medical Register in accordance with the provisions of this Act and of any orders made by the

Council, and from time to time to revise the register and publish it in the Gazette of India and in such other manner as may be prescribed.

(3) Such register shall be deemed to be a public document within the meaning of the India Evidence Act, 1872 (1 of 1872) and may be proved by a copy published in the Gazette of India.

22. Supply of copies of the State Medical Registers.-

Each State Medical Council shall supply to the Council six printed copies of the State Medical Register as soon as may be after the commencement of this Act and subsequently after the first day of April of each year, and each Registrar of a State Medical Council shall inform the Council without delay of all additions to and other amendments in the State Medical Register made from time to time.

23. Registration in the Indian Medical Register.-

The Registrar of the Council may, on receipt of the report of registration of a person in a State Medical Register or on application made in the prescribed manner by any such person, enter his name in the Indian Medical Register: Provided that the Registrar is satisfied that the person concerned possesses a recognised medical qualification."

17.1. On a conjoint reading of the aforesaid provisions, it is noted that the IMC Act, 1956, is an Act which repealed the erstwhile Act of 1933 with the object of providing for the reconstitution of the Medical Council of India and for the maintenance of a Medical Register for India and for matters connected therewith. There are two significant provisions which require consideration under this Act in the instant case: first is Section 10A and the second is Section 15. However, while considering the aforesaid Sections in detail, it would be worthwhile to refer to other relevant provisions of the IMC Act, 1956.

17.2. From the point of view of opening of a new medical institution as defined under Section 2(e), Section 10A becomes relevant. It begins with a non-obstante clause and states that notwithstanding anything contained in the IMC Act, 1956 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 post-graduate 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 post-graduate course of study or training), except with the previous permission of the Central Government obtained in accordance with the provisions of this Section.

Explanation 1 and Explanation 2 define the expression "person" and expression "admission capacity" respectively. Although, the expression "medical institution" has been defined in Section 2(e) to mean any institution, which grants degrees, diplomas or licences in medicine within or outside India, the expression "medical college" has not been defined. But in our view, the said expressions could be read interchangeably. Section 10A was inserted by the Act of 1993 with effect from 27.08.1992.

17.3. Thus, a condition precedent has been incorporated by an amendment to the IMC Act, 1956, with regard to opening of any medical institution/college in India which is, the seeking of previous permission of the Central Government in accordance with the procedure prescribed under Section 10A. In fact, this position is highlighted on a reading of Section 10B which states that if a medical qualification is granted to any student of a medical college which has been established de hors the provisions of Section 10A, no such qualification shall be recognised under the said Act.

The phrase "recognised medical qualification" is defined in Section 2(h) to mean any of the medical qualifications included in the Schedules. There are three Schedules to the IMC Act, 1956. The First Schedule deals with recognised medical qualifications granted by the Universities or Medical Institutions in India. The Second Schedule speaks of recognised medical qualifications granted by Medical Institutions outside India while the Third Schedule deals with recognised medical qualifications granted by Medical Institutions not included in the First Schedule.

17.4. In this context, Sections 11 and 13 are also relevant. Sub-section (1) of Section 11 states that the medical qualifications granted by any University or Medical Institution in India which is included in the First Schedule, shall be recognised medical qualification for the purposes of the said Act. Sub-section (2) of Section 11 is significant as it states that any University or medical institution in India which grants a medical qualification not included in the First Schedule, may apply to the Central Government to have such qualification recognised, and the Central Government, after consulting the Council, may, by notification in the Official Gazette, amend the First Schedule so as to include such qualification therein, and any such notification may also direct that an entry shall be made in the last column of the First Schedule against such medical qualification declaring that it shall be a recognised medical qualification only when granted after a specified date.

On the other hand, Section 13(1) states that the medical qualifications granted by Medical Institutions in India which are not included in the First Schedule and which

are included in Part I of the Third Schedule shall also be recognised medical qualifications for the purposes of the said Act. These are medical qualifications such as LMP (Licenced Medical Practitioners) in various States of India and erstwhile provinces of India. The Third Schedule is in respect of courses in medicine which were recognised prior to the enforcement of the IMC Act, 1956, while the courses conducted by the institutions mentioned in the First Schedule have recognition under the said Act.

17.5. Sections 11 and 13 have a bearing on Section 15 of the Act. Section 15 states that, subject to the other provisions contained in the Act, the medical qualifications included in the Schedules shall be sufficient qualification for enrolment on any State Medical Register. Further, except as provided in Section 25, no person other than a medical practitioner enrolled on a State Medical Register shall, inter alia, practice medicine in any State or shall be entitled to sign or authenticate a medical or fitness certificate or any other certificate required by any law to be signed or authenticated by a duly qualified medical practitioner.

The expression "State Medical Register" as per Section 2(k) means a register maintained under any law for the time being in force in any State, regulating the registration of practitioners of medicine. The word 'medicine' is defined in Section 2(f) of the said Act to mean modern scientific medicine in all its branches and includes surgery and obstetrics, but does not include veterinary medicine and surgery. Therefore, unless a person has sufficient qualification recognised under the Schedules to the Act, he or she cannot be enrolled on any State Medical Register. In the absence of any such enrolment, such a person is barred from practicing medicine in any State.

17.6. Further, all persons who are enrolled in any State Medical Register and who possess any of the recognised medical qualifications are enabled to be enrolled after registration as medical practitioners under the Indian Medical Register. As per sub-Section (2) of Section 21, it is the duty of the Registrar of the Indian Medical Council, to keep the Indian Medical Register in accordance with the provisions of the IMC Act, 1956, and to from time to time revise the register and publish it in the Gazette of India and in such other manner as may be prescribed.

In fact, under Section 22 of the Act, each State Medical Council has to supply to the Indian Medical Council, six printed copies of the State Medical Register on the first day of April of each year. On the receipt of report of the registration of a person in a State Medical Register or on application made in the prescribed manner by such person, enter his name in the Indian Medical Register vide Section 23 of the Act.

Removal of the names from the Indian Medical Register is dealt with in Section 24, while provisional registration is dealt with in Section 25 of the Act and registration of additional qualifications in Section 26 of the Act. Every person whose name is for

the first time being borne in the Indian Medical Register shall be entitled, according to his qualifications, to practice as a medical practitioner in any part of India and to recover in due course of law, in respect of such practice, any expenses, charges in respect of medicaments or other appliances, or any fees to which he may be entitled to.

18. It may be appropriate at this juncture to dilate on the Assam Act, 2004. Assam Rural Health Regulatory Authority Act, 2004 (Assam Act): The relevant provisions of the said Act are as extracted as under:

"2. Definitions.- In this Act unless the context otherwise requires:

(a) 'Act' means the Assam Rural Health Regulatory Authority Act, 2004;

(b) 'Authority' means the Assam Rural Health Regulatory Authority established under Section 3;

(c) 'Certificate' means a certificate issued by the Authority under Section 17;

(d) 'Course' means the prescribed course of education and training for the Diploma in Medicine and Rural Health Care;

(e) 'Diploma in Medicine and Rural Health Care' means the diploma awarded by the Authority on successful completion of the course of Diploma in Medicine and Rural Health Care under the provisions of the Act;

(g) 'Medicine' means allopathic medicine but does not include veterinary medicine;

(h) 'Medicine and Rural Health Care' means practice of allopathic medicine and health care system in rural areas in the State of Assam;

(i) 'Medical institute' means institute established under this Act for imparting medical education both theoretical and practical for the course of Diploma in Medicine and Rural Health Care;

(l) 'Rural areas' means areas not included in a Municipal Corporation, a Municipal Board or a Town Committee or any other area notified as urban area;

(n) 'Rural Health Practitioners' means a holder of the diploma in Medicine and Rural Health Care who has registered himself as such with the Authority and obtained a certificate and a registration number.

(o) 'State Register of Rural Health Practitioners' means the register maintained under Section 17 and the expressions "Registered' and 'Registration' shall be construed accordingly;

7. Minimum Standard.- The Authority may prescribe the minimum standards of the course, the curriculum, the examination etc. in respect of the course and prescribe by regulation the terms conditions and norms to be fulfilled, facilities to be provided by a Medical Institute for imparting education and training for the course of Diploma in Medicine and Rural Health Care.

8. Permission to open a Medical Institute.- (1) Notwithstanding anything contained in this Act or any other law for the time being in force no person or organization other than the State Government of Assam shall establish a Medical Institute without (a) the recommendation of the Authority and (b) prior and expressed permission of the State Government.

(2) Every person or organization or trust wanting to start a Medical Institute shall for the purpose of obtaining permission under sub-section (1) submit to the State Government a proposal in accordance with the provisions of the Act and the rules framed thereunder and the State Government shall refer the proposal to the Authority for its scrutiny and recommendations.

(3) On receipt of the proposal, the Authority may obtain such other particulars and information as may be considered necessary from the person or the organization concerned and thereafter if may, if the proposal is defective and does not contain any necessary particular, give a reasonable opportunity to the person or organization concerned for making a written representation and it shall be open to such person or organization to rectify the defects, if any, specified by the Authority.

(4) The State Government may after considering the proposal and the recommendations or observations of the Authority and after obtaining where necessary, such other particulars as may be considered necessary by it from the person or the organization concerned either approve (with such conditions, if any, as may be considered necessary) or disapprove the proposal.

(5) The authority while making its recommendations and the State Government while passing an order, either approving or disapproving the proposal shall have due regard to the following factors, namely, -

(a) whether the proposed person or organization seeking to open a Medical Institute would be in a position to offer the minimum standards of education as prescribed by the Authority;

(b) whether the person seeking to establish a Medical Institute has adequate financial resources;

(c) whether necessaryÂ· facilities in respect of staff; equipment, accommodation, training and other facilities to ensure proper functioning of the Medical institute;

(d) whether adequate hospital facilities having regard Â·to the number of students likely to attend the Medical Institute would be available;

(e) whether adequate qualified teaching and non-teaching staff would be available in the Medical Institute.,

(f) any other condition as may be prescribed.

17. State Register of Rural Health Practitioners.-

(1) The Authority shall cause to be maintained in the prescribed manner and form a Register of Diploma Holders in Medicine and Rural Health Care to be known as the State Register of Rural health Practitioners.

(2) It shall be the duty of Secretary to keep and maintain the State Register of Rural Health Practitioners in accordance with the provisions of this Act and the rules made thereunder.

(3) The State Register of Rural Health practitioners shall be deemed to be a public document within the meaning of the Indian Evidence Act, 1872.

(4) Every person on successful completion of the course shall be eligible for enrollment in the State Register of Rural Health Practitioners on furnishing to the Secretary the proof of such qualification and on payment of such fees as may be prescribed.

(5) Every person whose name has been enrolled in the State Register of Rural Health Practitioners shall be entitle to have a certificate issued by the Authority under the hand and seal of the President and the Secretary and bearing a Registration Number and shall be eligible to practise medicine and Rural Health Care in rural areas of the State of Assam.

24. Powers and Functions.-

The Rural Health Practitioners shall be eligible to practise Medicine and Rural Health Care subject to the following conditions namely.

(a) they shall treat only those diseases and carry out those procedures which shall be outlined in the rules;

(b) they shall prescribe only those drugs, which shall be outlined in rules;

(c) they shall not carry out any surgical procedure, invasion, investigation or treatment, 'Medical Termination or; Pregnancy etc. but shall confine themselves to such medicinal treatment and perform such minor surgery as may be prescribed.

(d) they shall practice only in rural areas as defined in the Act;

(e) they may issue illness certificates and death certificates.

(f) they shall maintain name, address, age, sex, diagnosis and treatment records of all patients treated by them; and

(g) they shall not be eligible for employment in Hospitals, Nursing Homes and Health establishments located in urban areas as General Duty Physicians involved in patient care in OPD, Emergency and Indoor Services.

18.1. The Assam Act is an Act to provide for the establishment of a regulatory authority in the State of Assam to regulate and register the Diploma holders in Medicine & Rural Health Care (DMRHC) and their practice of medicine in rural areas and also to regulate opening of Medical Institutes for imparting education and training for the course of Diploma in Medicine and Rural Health Care (DMRHC).

18.2. Section 3 of the said Act deals with the establishment of the Assam Rural Health Regulatory Authority (in short "the Authority"). The powers and functions of the authority are enumerated in Section 6, inter alia, to include;

(a) to hold, conduct and regulate the examination for the course that is Diploma in Medicine and Rural Health Care including entrance test for admission into the Medical Institute;

(b) to maintain State Register of Rural Health Practitioners;

(c) to lay down the norms and standards for the course, curriculum facilities for instruction, training assessments and examinations for students undergoing the course for Diploma in Medicine and Rural Health Care and of the Medical Institute;

(d) to provide guidelines for admission of the students to the course.

(e) to inspect physical facilities, staff position, Hospital and academic infrastructure of a Medical Institute imparting education and training for Diploma in Medicine and Rural Health Care at the time of starting of such an Institute and to give no objection certificate after the said Institute has completed all formalities and norms and to make periodical inspection to judge compliance of shortcomings pointed out, and to maintain standard of the Institute;

18.3. Section 8 deals with opening of a medical institute. Sub section (1) of Section 8 begins with a non-obstante clause and states that, notwithstanding anything contained in the Assam Act or any other law for the time in force, no person or organisation other than the State Government of Assam shall establish a Medical

Institute without (a) the recommendation of the Authority and (b) prior and expressed permission of the State Government. Sub-section (2) of Section 8 states that any person or organisation or trust wanting to start a Medical Institute must obtain permission from the State Government by submitting a proposal to the State Government. The State Government shall refer the proposal to the Authority for its scrutiny and recommendations.

The Authority can prescribe the minimum standards of the course, the curriculum, the examination etc. in respect of the course and prescribe the regulation, the terms and conditions and norms to be fulfilled, facilities to be provided by a medical institute for imparting education and training for the course of Diploma in Medicine and Rural Heal Care. The Authority has the power to withdraw recognition, when an Institute does not conform to the standards prescribed by the authority, by making a reference to that effect to the State Government and the State Government may, on consideration of an explanation from the concerned Medical Institute and on making further enquiry, de-recognise an Institute.

18.4. Section 17 of the Assam Act speaks of State Register of Rural Health Practitioners. That the Authority shall cause to be maintained in the prescribed manner and form a register of Diploma Holders in Medicine and Rural Health Care to be known as the State Register of Rural Health Practitioners. Every person on successful completion of the course that is, the course of education and training for the Diploma in Medicine and Rural Healthcare, shall be eligible for enrolment in the State Register of Rural Health Practitioners on furnishing the proof of such qualification and on payment of such fees as may be prescribed.

Every person whose name has been enrolled in the State Register of Rural Health Practitioners shall be entitled to have a certificate to be issued by the Authority bearing a Registration Number and shall be eligible to practise Medicine and Rural Health Care in rural areas. The Rural Health Practitioners cannot use the word "Doctor" or "Dr." before and after their names. However, they can identify themselves as Rural Health Practitioners or RHP.

18.5. Section 21 of the Assam Act states that no person whose name is not enrolled or has been cancelled or removed from the State Register of Rural Health Practitioner shall practise Medicine and Rural Health Care at any place whether urban or rural in the State of Assam. The powers and functions of Rural Health Practitioners are delineated in Section 24 which clearly states that they can practice subject to the following conditions namely:

(a) to treat only those diseases and carry out only those procedures which are outlined in the rules;

(b) to prescribe only those drugs, which are outlined in the rules;

(c) not to carry out any surgical procedure, invasion, investigation or treatment, Medical Termination of Pregnancy etc. but confine themselves to such medicinal treatment and perform such minor surgery as may be prescribed.

(d) to practise only in rural areas as defined in the Assam Act;

(e) to issue only illness certificates and death certificates;

(f) they shall maintain name, address, age, sex, diagnosis and treatment records of all patients treated by them;

(g) not to be employed in Hospitals, Nursing Homes and Health establishments located in urban areas as General Duty Physicians involved in patient care in OPD, Emergency and Indoor Services.

18.6. Section 22 of the Assam Act empowers the State Government to make rules, while Regulations could be made by the Authority with the previous approval of the State Government, as per Section 23 of the Act.

18.7. The Regulations of Assam Rural Health Regulatory Authority, 2005, regarding admission into Diploma in Medical and Rural Health Care course in Medical Institutes of the State were framed under which minimum standards for Medical Institutes offering Diploma in Medicine and Rural Health Care were prescribed under which the subjects to be taught were as under:

"3. SUBJECTS TO BE TAUGHT:

(a) Anatomy

(b) Physiology & Biochemistry

(c) Community Medicine

(d) Pathology & Microbiology

(e) Pharmacology

(f) Medicine and Paediatrics

(g) Surgery and Orthopaedics

(h) Obstetrics and Gynaecology

(i) Eye & ENT

(j) Basics of Radiology and Imaging

(k) Basics of Forensic and State Medicine

(l) Basics of Human Genetics

(m) Basics of Dentistry."

18.8. Regulation 3 of the 2005 Regulations prescribes the curriculum for the course of Diploma in Medicine and Rural Health Care in the subjects referred to above. Annexure I to the regulations deals with the lists of diseases that can be treated by a Diploma holder in Medicine and Rural Health Care including the procedures that can be carried out, whereas, Annexure II lists the drugs that can be prescribed by such a diploma holder. The same read as under:

"ANNEXURE-1

DISEASES THAT CAN BE TREATED BY A DIPLOMATE OF MEDICINE AND RURAL HEALTH CARE

Acute bacterial infections febrile illnesses, diarrhoea, dysentery, viral infections, malaria, amoebiasis, giardiasis, worm infestations, gastroenteritis, cholera, typhoid fever, vitamin deficiencies, iron deficiency anaemia, malnutrition, upper respiratory infections, actuate bronchitis, bronchial asthma, hypertension, heart failure, in ischemic heart disease, peptic ulcer, acute gastritis, viral hepatitis, urinary tract infection, common skin infections, scabies, leprosy, first aid in poisoning and trauma, snake bite and animal bite. In children fever, respiratory infections, diarrhoeal diseases, nutritional deficiencies, anaemia, jaundice, convulsion, measles, chicken pox, asthma, scabies and other common skin infections. Care in pregnancy, child birth and post-natal period, family welfare activities.

PROCEDURES THAT CAN BE CARRIED OUT BY A DIPLOMATE IN MEDICINE AND RURAL HEALTH CARE: -

Venupuncture, venesection, application of bandages and dressings, nasogastric intubation, catheterization, peritoneal tap, normal delivery.

OPERATIVE PROCEDURES PERMITTED TO BE CARRIED OUT BY A DIPLOMATE IN MEDICINE AND RURAL HEALTH CARE

Repair of small wounds by stitching, drainage of abscess; burn dressing, application of splints in fracture cases, application of tourniquet in case of severe bleeding wound in a limb injury. Conduction of delivery, episiotomy, stitching of vaginal tear during labour.

ANNEXURE-II DRUGS THAT CAN BE PRESCRIBED BY DIPLOMATE IN MEDINE AND RURAL HEALTH CARE:-

Antacids, H2 receptor blockers, proton pump inhibitors, sucralfate. Antihistaminic. Antibiotics-cotrimoxazole, trimethoprim, norfloxacin, quinolones, tetracycline, chloramphenicol, streptomycin gentamycin, penicillin, cephalosporin, erythromycin, nitrofurantoin, metronidazole, tinidazole; Antitubercular-INH, rifampicin, ethambutol, pyrazinamide, streptomycin, Anthelminthics-mebendazole, albendazole, piperazine. Antimalerials-chioroquine, quinine, primaquine, sulfadoxine-pyrimethamide. Antileprosy-dapsone, rifampicin, clofazimine. Topical antifungal.

Antiviral-acyclovir. Antiamoebic-metronidazole, tinidazole, doloxanide furoate, chloroquine. Antiscabies-benzyle-benzoate, gamma benzene hexachloride, Anticholinergic-atropine. Antiemetics Antipyretics and analgesics Laxatives Oral rehydration solutions. Haematinics and vitamins. Diuretics and antihypertensives Nitroglycerine Sedatives and antiepilectics-phenobarbitone, diazepam, phenytoin. Bronchodilators-salbutamol, theophyiline, aminophylline, corticosteroids. Expectorants Uterine stimulants and relaxants, oral contraceptic pills."

19. A comparative table and analysis of the provisions of the IMC Act, 1956 and the Assam Act is as under:

Parameters	**Indian Medical Council Act, 1956**	**Assam Rural Health Regulatory Authority Act, 2004**
Object of the Act	"An Act to provide for the reconstitution of the Medical Council of India, and the maintenance of a Medical Register for India and for matters connected therewith."	"An Act to provide for the establishment of a regulatory authority in the State of Assam to regulate and register the diploma holders in Medicine & Rural Health Care (DMRHC) and their practice of medicine in rural areas and also to regulate opening of Medical Institutes for imparting education and training for the course of diploma in Medicine & Rural Health Care (DMRHC)"
Apex Authority	Indian Medical Council	Assam Rural Health Regulatory Authority
Definition of 'medicine'	"2 (f). 'Medicine' means modern scientific medicine in	"2 (g). 'Medicine' means allopathic medicine but does

	all its branches and includes surgery and obstetrics, but does not include veterinary medicine and surgery."	not include veterinary medicine."
Definition of 'medical institution'	"2 (e). 'Medical Institution' means any institution, within or without India, which grants degrees, diplomas or licences in medicine."	"2 (i). 'Medical Institution' means institution established under this Act for imparting medical education both theoretical and practical for the course of Diploma in Medicine and Rural Health Care."
Scope of Recognised medical qualification/ course(s) covered under the respective Acts	"2 (h) 'recognised medical qualification' means any of the medical qualifications included in the Schedules."	"2 (d). 'Course' means the prescribed course of education and training for the diploma in Medicine & Rural Health Care" 2 (e). 'Diploma in Medicine & Rural Health Care' means the diploma awarded by the Authority on successful completion of the course of diploma in Medicine & Rural Health Care under the provisions of the Act."
Power to prescribe minimum standards	"33- Power to make regulations- The Council may, with the previous sanction of the Central Government, make regulations generally to carry out the purposes of this Act, and without prejudice to the generality of this power, such regulations may provide for- (a)-(i) xxx (j) the courses and period of study and of practical training to be undertaken, the subjects of examination and the	"7. Minimum Standard- The Authority may prescribe the minimum standards of the course, the curriculum, the examination etc. in respect of the course and prescribe by regulation the terms, conditions and norms to be fulfilled, facilities to be provided by a Medical Institute for imparting education and training for the course of Diploma in Medicine and Rural health Care

	standards of proficiency therein to be obtained, in Universities or medical institutions for grant of recognised medical qualifications; (k) the standards of staff, equipment, accommodation, training and other facilities for medical education; (l) the conduct of professional examinations, qualifications of examiners and the conditions of admission to such examinations; (m) the standards of professional conduct and etiquette and code of ethics to be observed by medical practitioners."	
Permission for establishment of a new medical institute/college	"10A. Permission for establishment of new medical college, new course of study- (1) Notwithstanding anything contained in this 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 post-graduate course of study or training) which would enable a student	"8. Permission to open a Medical Institute- (1) Notwithstanding anything contained in this Act or any other law for the time being in force no person or organisation other than the State Government of Assam shall establish a Medical Institute without (a) the recommendation of the Authority and (b) prior and expressed permission of the State Government.

	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 post-graduate course of study or training), except with the previous permission of the Central Government obtained in accordance with the provisions of this section."	
Inclusion of name in the respective registers, and eligibility to practice upon such inclusion	"21. The Indian Medical Register- (1) The Council shall cause to be maintained in the prescribed manner a register of medical practitioners to be known as the Indian Medical Register, which shall contain the names of all persons who are for the time being enrolled on any State Medical Register and who possess any of the recognised medical qualifications. (2) It shall be the duty of the Registrar of the Council to keep the Indian Medical Register in accordance with the provisions of this Act and of any orders made by the Council, and from time to time to revise the register and publish it in the Gazette of India and in such other manner as may be prescribed. (3) Such register shall be	"17. State Register of Rural Health Practitioners- (1) The Authority shall cause to be maintained in the prescribed manner and form a register of Diploma Holders in Medicine and Rural health Care to be known as the state Register of Rural Health Practitioners. (2) It shall be the duty of the Secretary to keep and maintain the State Register of Rural Health Practitioners in accordance with the provisions of this Act and the rules made thereunder. (3) The State RegisterÂ· of Rural Health Practitioners shall be deemed to be a public document within the meaning of the Indian Evidence Act, 1872. (4) Every person on successful completion of the

	deemed to be a public document within the meaning of the Indian Evidence Act, 1872 (1 of 1872), and may be proved by a copy published, in the Gazette of India. "27. Privileges of persons who are enrolled on the Indian Medical Register.- Subject to the conditions and restrictions laid down in this Act regarding medical practice by persons possessing certain recognised medical qualifications, every person whose name is for the time being borne on the Indian Medical Register shall be entitled according to his qualifications to practise as a medical practitioner in any part of India and to recover in due course of law in respect of such practice any expenses, charges in respect of medicaments or other appliances, or any fees to which he may be entitled."	course shall be eligible for enrolment in the State Register of Rural Health Practitioners on furnishing to the Secretary the proof of such qualification and on payment of such fees as may be prescribed. (5) Every person whose name has been enrolled in the State Register of Rural Health Practitioners shall be entitle to have a certificate issued by the Authority under the hand and seal of the President and the Secretary and bearing a Registration Number and shall be eligible to practise medicine and Rural Health Care in rural areas of the State of Assam: (6) Provided that no Rural Health Practitioner shall use the word "Doctor" or "Dr." before and after his name. However, he may identify himself as Rural Health Practitioner or RHP."
Rights, powers and functions of persons possessing the qualifications prescribed under the respective Acts	"15. Right of persons possessing qualifications in the Schedules to be enrolled.- [1] Subject to, the other provisions contained in this Act, the medical qualifications included in the Schedules shall be sufficient qualification for enrolment on any State Medical Register. (2) Save as provided in	"24. Powers and Functions- The Rural Health Practitioners shall be eligible to practise Medicine and Rural Health Care subject to the following conditions, namely- (a) they shall treat only those diseases and carry out those procedures which shall be outlined in the rules;

	section 25, no person other than a medical practitioner enrolled on a State Medical Register, - (a) shall hold office as physician or surgeon or any other office (by whatever designation called) in Government or in any institution maintained by a local or other authority. (b) shall practice medicine in any State; (c) shall be entitled to sign or authenticate a medical or fitness certificate or any other certificate required by any law to be signed or authenticated by a duly qualified medical practitioner. (d) shall be entitled to give evidence at any inquest or in any Court of Law as an expert under section 45 of the Evidence Act, 1872 (1 of 1872) or on any matter relating to medicine.'	(b) they shall prescribe only those drugs, which shall be outlined in rules; (c) they shall not carry out any surgical procedure, invasion, investigation or treatment, Medical Termination or Pregnancy etc., but shall confine themselves to such medicinal treatment and perform such minor surgery as may be prescribed. (d) they shall practise only in rural areas as defined in the Act; (e) they may issue illness certificates and death certificates. (f) they shall maintain name, address, age, sex, diagnosis and treatment records of all patients treated by them; and (g) they shall not be eligible for employment in Hospitals, Nursing Homes and Health establishments located in urban areas as General Duty Physicians involved in patient care in OPD, Emergency and Indoor Services.

A comparative study between MBBS, DMRHC is made as under:

Parameters	**MBBS**	**DMRHC**
1. Nomenclature	Bachelor of Medicine and Bachelor of Surgery.	Diploma in Medicine and Rural Health Care.

2. Establishment	Under the Indian Medical Council Act, 1956. Affiliated to a recognised University.	Under the Assam Rural Health Regulatory Authority Act, 2004. Affiliated to Srimanta Sankaradeva University of Health Sciences
3. Status of the course	Medical - Degree.	Medical - Diploma.
4. Duration of the course	Four & Half years + One year Internship	Three & Half years (Six months Internship)
5.Eligibility Criteria	10+2 Science with minimum 60%	10+2 Science with minimum 60%
6. Syllabus	Anatomy	Anatomy
	Physiology	Physiology
	Biochemistry	Biochemistry
	Microbiology	Microbiology
	Pathology	Pathology
	Pharmacology	Pharmacology
	Community Medicine	Community Medicine
	Medicine	Medicine
	Obstetrics & Gynecology	Obstetrics & Gynecology
	Ophthalmology	Ophthalmology
	Orthopedics	Orthopedics
	ENT	ENT
	Pediatrics	Pediatrics
	Psychiatry	Psychiatry
	Surgery	Surgery
	Dermatology & Venereology	Dermatology as a part of Medicine
	Forensic Medicine & Toxicology Anesthesiology	
	Internship	Internship
7. Registration	Every student who successfully completes the course shall be eligible for enrollment in the State Medical Register as per the IMC Act, 1956.	Every student who successfully completes the course shall be eligible for enrollment in the State Register of Rural Health Practitioners as per Assam Act.
8. Designation	After the registration the graduates are posted in different level of Health sectors and designated as a Medical Officers (MO) at PHC, CHC etc.	After the registration the graduates are posted in different Sub-Centers, PHC at rural area and designated as a Rural Health Practitioners' (RHP).

9. Powers and Functions	1. They can practice medicine and provide primary health care. 2. They can perform minor surgery at PHC, CHC level. 3. They will provide normal delivery at PHC, CHC and Higher Level. 4. They can issue illness certificates and death certificates.	1. They shall be eligible to practice medicine and Rural Health Care in rural areas only in the State of Assam. 2. They can perform minor surgery at PHC or sub-center clinic. 3. They will provide normal delivery at Sub Centre and PHC Level. 4. They can issue illness certificates and death certificates.

20. The following aspects of the matter emerge when the provisions of the Assam Act are considered in juxtaposition with the corresponding provisions of the Central Act:

i) The Central Act operates in the area of modern scientific medicine, in all its branches, vide Section 2(f). The Assam Act seeks to regulate the practice of allopathic medicine, in rural areas, vide Section 2(g). Essentially, modern scientific medicine, includes allopathy. In other words, modern scientific medicine is the genus and allopathic medicine is a species of modern scientific medicine. This view has been adopted by this Court in A.K. Sabhapathy and Dr. Mukhtiar Chand. Therefore, the practice in modern scientific medicine including allopathic medicine, is governed by the Central Act. Hence, in order to be recognised as a practitioner in any branch of modern scientific medicine, including allopathic medicine, the qualifications that must mandatorily be obtained are those listed in the Schedules to the Central Act.

ii) Further, Section 17 of the Assam Act provides that persons holding a Diploma in Medicine and Rural Health Care after successful completion of the course instituted under the Act, would be registered as Rural Health Practitioners and would be eligible to practise 'medicine' and Health Care in rural areas of Assam. The Assam Act permits Diploma holders to practise 'medicine', i.e., allopathic medicine, in rural areas of Assam. We are unable to accept that allopathic medicine, which is governed by the Central Act, may be practised by persons who do not possess the qualifications contemplated under the Schedules to the Central Act.

iii) Practise in modern scientific medicine, including allopathic medicine, must be permitted only after having successfully undergone the academic rigor, as prescribed under the Central Act. The Central Act, in Section 33 authorizes the Council to prescribe inter alia, the courses and period of study, practical training to be undertaken, subjects, examination and standards of proficiency required to be

achieved. Therefore, it is problematic to hold that without having successfully gone through meticulous training as contemplated under the Central Act, a person may practise medicine.

iv) On a close reading of Section 15 of the Central Act, in conjunction with Section 24 of the Assam Act, we find that Rural Health Practitioners possessing a Diploma under the Assam Act have been authorised to perform certain functions identical to those performed by medical practitioners who possess qualifications prescribed under the Central Act. Such functions include treatment of common illnesses, prescription of certain categories of drugs, performance of minor surgeries, issuance of illness and death certificates. Performance of such functions by persons who do not possess the qualifications prescribed under the Central Act, could, in our view, have dangerous consequences.

It is to be noted that insofar as Entry 25 of List III is concerned, there are dual restrictions which would operate on the legislative competence of a State Legislature to enact any law under the said Entry: first is, if such a law is to be made by the State Legislature, it is always subject to Entries 63, 64, 65 and 66 of List I or the Union List, in respect of which only the Parliament has the power to enact a law. The second restriction is with regard to the subject of the Entry as a whole. If the Parliament has made any law which is outside the scope of Entries 63, 64, 65 and 66 of List I but within the scope of Entry 25 of List III, in such a case Article 254 and the principles of repugnancy would apply if a State Law is in conflict with such Parliamentary Law.

In the instant case the law made by the State Legislature, namely, the Assam Act is hit by the first of the aforesaid two restrictions; hence, it is null and void as the Assam Legislature lacked the legislative competence to enact such a Law. In light of the aforesaid discussion, we are of the considered view that Rural Health Practitioners enlisted under the Assam Act, are underqualified to perform functions similar to those performed by medical practitioners registered in accordance with the Central Act. In order to be recognised as a practitioner in any branch of modern scientific medicine, including allopathic medicine, the qualifications that must mandatorily be obtained are those listed in the Schedules to the Central Act. Triology of Cases

21. We next consider the three decisions relied upon by learned senior counsel for the appellants. (A) Dr. Mukhtiar Chand vs. State of Punjab, (1998) 7 SCC 579, ("Dr. Mukhtiar Chand"):

(i) In this case the controversy was with regard to the issuance of declarations by the State of Punjab under clause (iii) of Rule 2(ee) of the Drugs and Cosmetics Rules, 1945 (for short, 'Drugs Rules') which defines "registered medical practitioner". The State of Punjab issued a notification dated 29.10.1967 declaring all the vaids/hakims

who had been registered under the East Punjab Ayurvedic and Unani Practitioners Act, 1949, and the PEPSU Ayurvedic and Unani Practitioners Act, 2008, and the Punjab Ayurvedic and Unani Practitioners Act, 1963, as persons practising modern system of medicine for the purposes of the Drugs Act.

(ii) Before this Court, it was contended that the right of practitioners of Indian medicine to practice modern scientific system of medicine (allopathic medicine) is protected under Section 17(3)(b) of the Indian Medicine Central Council Act, 1970 ('IMCC Act, 1970' for short).

(iii) While dealing with the IMC Act, 1956, this Court observed that in order to ensure professional standards required to practice allopathic medicine, the IMC Act, 1956 was passed, and the said Act also deals with the reconstitution of the Medical Council of India and maintenance of an Indian Medical Register. Section 2(f) of the IMC Act, 1956, defines "medicine" to mean "modern scientific medicine" in all its branches and includes surgery and obstetrics, but does not include veterinary medicine and surgery and the expression "recognised medical qualification" is defined in Section 2(h) of the said Act to mean any of the medical qualifications included in the Schedules to the Act.

Further, referring to Section 15 of the IMC Act, 1956, it was observed that qualifications included in the Schedules shall be sufficient qualification for enrolment in any State Medical Register; but in none of the Schedules, the qualifications of integrated courses figure. Consequently, by virtue of this section, persons holding degrees in integrated courses cannot be registered in any State Medical Register. Hence, by Act 24 of 1964, Section 15 of the IMC Act, 1956, was modified by adding two more sub-sections.

Section 15(2)(b) thereof prohibits all persons from practicing modern scientific medicine in all its branches in any State except a medical practitioner enrolled in a State Medical Register. There are two types of registration as far as the State Medical Register is concerned: the first is under Section 25 and the second is under Section 15(1) of the said Act. The third category of registration is in the "Indian Medical register" which the Indian Medical Council is enjoined to maintain under Section 21 of the said Act for which recognised medical qualification is a prerequisite.

(iv) The privileges of persons who are enrolled in the Indian Medical Register are mentioned in Section 27 of the IMC Act, 1956, and include the right to practice as a medical practitioner in any part of India. On the other hand, State Medical Registers are maintained by the State Medical Council of respective States which are not constituted under the IMC Act, 1956, but are constituted under any law for the time being in force, in any State regulating the registration of practitioners of medicine.

It is, thus, possible that in any State, the law relating to registration of practitioners of modern scientific medicine may enable a person to be enrolled on the basis of the qualifications other than the "recognised medical qualification" which is a prerequisite, only for being enrolled in the Indian Medical Register and not for the purposes of registration in a State Medical Register.

A person holding "recognised medical qualification" cannot be denied registration in any State Medical Register, but a person registered in a State Medical Register cannot be enrolled in the Indian Medical Register unless he possesses "recognised medical qualification". This follows from a combined reading of Sections 15(1), 21(1) and 23 of the IMC Act, 1956. So, by virtue of such qualifications as prescribed in a State Act and on being registered in a State Medical Register, a person will be entitled to practice allopathic medicine under Section 15(2)(b) of the IMC Act, 1956.

(v) In this context, it would be relevant to mention what are the recognised medical qualifications in the context of the First and Third Schedules to the IMC Act, 1956. While the First Schedule deals with recognised medical qualifications secured by persons from recognised Universities in India, on the other hand, the Third Schedule deals with medical qualification attained under the Pre-Independence recognised medical enactments such as Bombay Medical Act, 1912, the Bihar and Orissa Medical Act, 1916, the Punjab Medical Registration Act, 1916, etc.

(vi) It was further observed in the said Judgment that Rule 2(ee) of the Drugs Rules was inserted with effect from 14.05.1960, while Section 15 of the IMC Act, 1956, as it then stood, only provided that the medical qualifications in the Schedules shall be sufficient qualification for enrolment in any State Medical Register. Therefore, there was no inconsistency between the Section and the Rule when it was brought into force.

However, after sub-section (2) of Section 15 was inserted into the said Act, a medical practitioner enrolled in a "State Medical Register" could practice modern scientific medicine in any State but the rights of non-allopathic doctors to prescribe drugs by virtue of the declaration issued under the said Drugs Rules, by implication, got obliterated. However, this Court observed that it did not debar them from prescribing or administering allopathic drugs sold across the counter for common ailments.

(vii) On a harmonious reading of Section 15 of the IMC Act, 1956 and Section 17 of the IMCC Act, 1970, it was observed that there is no scope for a person enrolled in the State Register of Indian Medicine or the Central Register of Indian Medicine to practice modern scientific medicine in any of its branches unless that person is also enrolled in a State Medical Register within the meaning of the IMC Act, 1956. Right to practice modern scientific medicine or Indian system of medicine cannot be based

on the provisions of the Drugs Rules and declaration made thereunder by State Governments.

(viii) In the above context, it was held that Rule 2(ee)(iii) as effected from 14.05.1960 was valid and did not suffer from the vice of want of legislative competence and the notifications issued by the State Governments thereunder were not ultra vires the said Rule and were legal. That after sub-section (2) in Section 15 of the IMC Act, 1956, occupied the field vide Central Act 24 of 1964 with effect from 16.06.1964, the benefit of the said Rule and the notifications issued thereunder would be available only in those States where the privilege of such right to practice any system of medicine is conferred by the State law under which practitioners of Indian medicine are registered in the State, which is for the time being in force.

That the position with regard to medical practitioners of Indian medicine holding degrees in integrated courses is on the same plane inasmuch as if any State Act recognises their qualification as sufficient for registration in the State Medical Register, the prohibition contained in Section 15(2)(b) of the IMC Act, 1956 will not apply. Thus, as far as modern medicine or allopathic medicine is concerned, the provisions of Section 15 of the IMC Act, 1956, would again become relevant inasmuch as Section 15(1) of the IMC Act, 1956, would have to be fulfilled before a person can be enrolled in any State Medical Register insofar as modern scientific medicine is concerned.

If such a person does not fulfil the requirement of sub-section (1) of Section 15, then he would not have a recognised medical qualification in modern scientific medicine, in which event he cannot be registered in the said Medical Register under the IMC Act, 1956. Even insofar as those medical practitioners holding degrees in integrated courses are concerned, the State has to recognise their qualifications as sufficient for registration in the State Medical Register, otherwise, the prohibition under Section 15(2)(b) would apply, qua practice of modern scientific medicine. In such an event, they would not be empowered to prescribe allopathic drugs covered by the Indian Drugs and Cosmetics Act, 1940 (Drugs Act) and they can only prescribe allopathic drugs sold across the counter for common ailments.

(B) Subhasis Bakshi vs. W.B. Medical Council, (2003) 9 SCC 269, ("Subhasis Bakshi"):

(i) In this case the appellants therein, who had completed the diploma course of Community Medical Service from duly recognised institutions in the State of West Bengal and were posted in different parts of the State, had assailed the Notification dated 15.10.1980, issued by the Government of West Bengal by which amendments were made to the statute of the State Medical Faculty by introducing Article 6-F under Part B. Thereafter, a Corrigendum was issued and the diploma course that was

earlier known as "Diploma in Medicine for Community Physicians" was rechristened as "Diploma in Community Medical Service".

The grievance of the appellants therein was that although they could treat certain common diseases but they had no right to issue certificates of sickness or death, prescriptions etc. as the same was taken away by a Notification dated 21-11-1990. Subsequently, challenging the denial of "consequential right to treat" such as the right to issue prescription or certificates of sickness or death, the second-round of litigation began. A Writ Petition was filed before the Calcutta High Court which was allowed in favour of the appellants, subject to the condition that they would not be allowed to pursue private practice and it was made clear that their only right was to prescribe medicines and issue certificates and this part of the order became final.

However, the Bengal Medical Council preferred an appeal before the Division Bench of the Calcutta High Court. Relying on Dr. A.K. Sabhapathy vs. State of Kerala and others, AIR 1992 SC 1310, ("Dr. A.K. Sabhapathy") wherein it was found that "a person can practise in allopathic system of medicine in a State or in the country only if he possesses a recognised medical qualification" and since the appellants therein did not possess the required qualification, it was held that their names could not be included in the Medical Register. On this basis, the appellants approached this Court. This Court considered the question as to whether the right to issue prescription or certificates could be treated as a part of right to treat.

This Court observed that once the right to treat is recognised, then the right to prescribe medicine or issue necessary certificate flows from it, or else the right to treat cannot be completely protected. It was further observed that appellants therein had the right to prescribe medicine. Consequently, the order of the Division Bench was set aside and the order of the learned Single Judge was restored. A direction was issued to include the names of all the diploma-holders concerned in the State Medical Register for the limited purpose indicated therein.

(C) Dr. A.K.Sabhapathy vs. State of Kerala, AIR 1992 SC 1310, ("Dr. A.K.Sabhapathy"):

(i) In this case, the validity of the first proviso to Section 38 of the Travancore Cochin Medical Practitioners' Act, 1953 (for short, "the State Act") and the order dated 20.09.1978 and a notification dated 13.04.1981 issued by the Government of Kerala, were assailed. This Court considered the aforesaid State Law in light of the IMC Act, 1956 ("the Central Act") and observed that the expression 'modern scientific medicine' in Section 2(f) of the Central Act refers to the Allopathic system of medicine and that the provisions of the Central Act have been made in relation to medical practitioners practising the said system.

This view found support from the fact that after the enactment of the Central Act, the Parliament had enacted the IMCC Act, 1970 in relation to the system of Indian medicine commonly known as Ayurveda, Siddha and Unani and the Homoeopathy Central Council Act, 1973 in relation to Homoeopathic system of medicine wherein provisions similar to those contained in the Central Act had been made in relation to the said systems of medicine.

This Court was of the view that from the provisions of the State Act, noticed earlier, it was evident that the field of operation of the State Act covered all the systems of medicine, namely, Allopathic, Ayurvedic, Siddha, Unani and Homoeopathic systems of medicine.Moreover, the State Act dealt with recognition of qualifications required for registration of a person as a medical practitioner in these systems, conditions for registration of medical practitioners and maintenance of register of practitioners for each system and the constitution of separate councils for modern medicine, homoeopathic medicine and indigenous medicine.

It was observed that as compared to the State Act, the field of operation of the Central Act is restricted and it is confined in its application to modern scientific medicine, namely, the Allopathic system of medicine only, wherein it also deals with recognition of medical qualifications which may entitle a person to be registered as a medical practitioner; constitution of the Medical Council of India to advise the Central Government in the matter of recognition or withdrawal of recognition of medical qualifications, to prescribe the minimum standards of medical education required for granting recognised medical qualifications by Universities or Medical Institutions in India and to appoint inspectors and visitors for inspection of any medical institution, college or hospital.

It also provides for maintaining the Indian Medical Register and for enrolment of a person possessing recognised medical qualification in the said register and for removal of a person from the said register. That the Central Act does not deal with the registration of medical practitioners in the States and it proceeds on the basis that the said registration and the maintenance of State Medical Register is to be governed by the law made by the State. This Court was of the view that, it cannot, therefore, be said that the Central Act lays down an exhaustive code in respect of the subject matter dealt with by the State Act.

It can, however, be said that the Central Act and the State Act, to a limited extent occupy the same field, viz., recognition of medical qualifications which are required for a person to be registered as a medical practitioner in the allopathic system of medicine. Both the enactments make provision for recognition of such qualifications granted by the universities or medical institutions. In this context, sub-section (1) of Section 15 of the Central Act, i.e. IMC Act, 1956 as well as sub-section (1) of Section 21 of the said Act were referred to and it was observed that the aforesaid

provisions contemplated that a person can practise in Allopathic system of medicine in a State or in the country only if he possesses a recognised medical qualification.

Permitting a person who does not possess the recognised medical qualification in the Allopathic system of medicine would be in direct conflict with the provisions of the Central Act. That the first proviso to Section 38 of the State Act in so far as it empowers the State Government to permit a person to practise Allopathic system of medicine even though he does not possess the recognised medical qualifications for that system of medicine, is inconsistent with the provisions of Sections 15 and 21 read with Sections 11 and 14 of the IMC Act, 1956 i.e., the Central Act.

That the said proviso suffered from the vice of repugnancy in so far as it covered persons who wanted to practice the Allopathic system of medicine and that the same was void to the extent of such repugnancy. That practitioners in the Allopathic system of medicine must, therefore, be excluded from the scope of the first proviso and it must be confined in its application to systems of medicines other than the Allopathic system of medicine. Consequently, this Court allowed the appeal in part. On a close consideration of the case law discussed above, it is evident that the following broad areas, would be covered within the legislative field of "Coordination and determination of standards" under Entry 66 of List I:

i) Prescription of medium of instruction, vide Gujarat University, Ahmedabad vs. Shri Krishna Ranganath Mudhoklar;

ii) Recognition/de-recognition of an Institution imparting medical education by laying down standards for medical education vide State of Tamil Nadu vs. Adhiyaman Educational and Research Institute; Modern Dental College and Research Centre vs. State of Madhya Pradesh; Chintpurni Medical College and Hospital vs. State of Punjab.

iii) Calibre of teaching staff, syllabus to be taught, student-teacher ratio, ratio between the students and the hospital beds available to each student, laboratory facilities, standard of examination, vide Preeti Srivastava vs. State of Madhya Pradesh.

The Assam Act, which is enacted by the State Legislature on the strength of Entry 25 of List III, not only seeks to introduce a new course in the field of medical education, but also seeks to regulate the profession of the candidates successfully completing the said course. The Assam Act vests with the Regulatory Authority constituted thereunder, the power to prescribe the minimum standards of the course, duration of the course in allopathic medicine the curriculum, the examination etc. Further, it authorises the State Government to grant permission for the opening of a medical institute. Prescription of minimum standards for medical education,

authority to recognise or de-recognise an institution etc., are areas over which exclusive legislative competence lies with the Parliament, under Entry 66 of List I.

The State Legislatures, on the other hand, under Entry 25 of List III, possess legislative competence to legislate with respect to all other aspects of education, except the determination of minimum standards and co-ordination. With a view to provide a benchmark quality of medical education, it is essential that uniform standards be laid down by the Parliament, which are to be adhered to by institutions and medical colleges across the country.

To this end, Entry 66 of List I has been formulated with the objective of maintaining uniform standards of education in fields of research, higher education and technical education. Hence, State Legislatures lack legislative competence in the areas of prescription of minimum standards for medical education, authority to recognise or de-recognise an institution, etc. The Assam Act which seeks to regulate such aspects of medical education is therefore liable to be set aside on the ground that the State Legislature lacks competence to legislate with regard to the aspects enumerated hereinabove.

22. Another aspect of the matter that remains to be considered is with regard to the vires of the Assam Community Professional (Registration and Competency) Act, 2015 (hereinafter referred to as 'Assam Act of 2015' for the sake of convenience), which was enacted by the State of Assam with a view to remove the basis of the impugned judgment and in an attempt to restore the position of the diploma holders in medicine and to give them continuity in service. The relevant provision of the said Act read as under:

"An Act to provide for registration norms and competency of the Community Health, Professionals, after passing B.Sc. (Community Health) Course and to give same status to the students who have completed or have been undergoing the Diploma in Medicine and Rural Health Care (DMRHC) course in Medical Institute, Jorhat with that of B.Sc (Community Health) course, to enable them to serve as Paramedical personnel in the State of Assam.

Whereas it is expedient to provide for registration norms and competency of the Community Health Professionals, after passing B.Sc (Community Health) course and to give same status to the students who have completed or have been undergoing the Diploma in Medicine and Rural Health Care (DMRHC) course in Medical Institute, Jorhat with that of B.Sc (Community Health) course, to enable them to serve as Paramedical personnel in the State of Assam and the matters connected therewith or incidental thereto;

2. In this Act, unless the context otherwise requires,-

(a) "Act" means the Assam Community Health Professionals' (Registration and Competency) Act, 2015;

(b) "Certificate" means a Certificate of Registration issued by the Director of Medical Education, Research and Training, Assam under section 3 of this Act;

(c) "Community Health Professionals" means the persons who have been registered as such by the Director and issued a Certificate of Registration in accordance with the provisions of section 3 of this Act;

(d) "Course" means the prescribed Paramedical Course of B.Sc (Community Health) or in short B.Sc (CH) as approved by the Union Cabinet, conveyed vide Govt. of India's letter No. DO No. V 11025/40/2009/MEP-1 Dated 31/12/2013;

3. (1) Every student who successfully completes the Course from any institution permitted by the Government of Assam to run the Course, shall be registered by the Director at Directorate of Medical Education, Assam, Guwahati and shall be issued with a Certificate of Registration as Community Health Professional.

(2) The students who have already completed or have been undergoing the Diploma in Medicine and Rural Health Care (DMRHC) course in the Medical Institute, Jorhat, on the date of commencement of this Act, shall be deemed to have completed or have been undergoing as the case may be, the Paramedical Course of B.Sc (CH) for the purposes of this Act and shall acquire the same status to that of B.Sc (Community Health) graduates and they shall also be registered by the Director and issued with Certificate of Registration as Community Health Professionals:

Provided that the Certificate of Registration issued by the Director under this sub-section to the students who have already completed Diploma in Medicine and Rural Health Care (DMRHC) course from the Medical Institute, Jorhat, shall be deemed to have been issued by the Director with effect from the date of issue of their respective Diplomas from the said Institute:

Provided further that the students who have been undergoing the Diploma in Medicine and Rural Health Care (DMRHC) course in the Medical Institute, Jorhat on the commencement of this Act, shall be deemed to have been undergoing the Course as defined under this Act and they shall be issued Certificate of Registration under this Act by the Director on completion of their Course."

It would be useful to refer to a decision of this Court in the case of Indian Aluminium Company Co. vs. State of Kerala, AIR 1996 SC 1431, wherein the principles regarding the abrogation of a judgment of a court of law by a subsequent legislation could be culled out in the following manner:-

"56. From a resume of the above decisions the following salient principles would emerge:

(1) The adjudication of the rights of the parties is the essential judicial function. Legislature has to lay down the norms of conduct or rules which will govern the parties and the transaction and require the court to give effect to them;

(2) The Constitution has delineated delicate balance in the exercise of the sovereign power by the Legislature, Executive and Judiciary;

(3) In a democracy governed by rule of law, the Legislature exercises the power under Articles 245 and 246 and other companion Articles read with the entries in the respective Lists in the Seventh Schedule to make the law which includes power to amend the law.

(4) The Court, therefore, need to carefully scan the law to find out:

(a) whether the vice pointed out by the Court and invalidity suffered by previous law is cured complying with the legal and constitutional requirements;

(b) whether the Legislature has competence to validate the law;

(c) whether such validation is consistent with the rights guaranteed in Part III of the Constitution.

(5) The Court does not have the power to validate an invalid law or to legalise impost of tax illegally made and collected or to remove the norm of invalidation or provide a remedy. These are not judicial functions but the exclusive province of the Legislature. Therefore, they are not the encroachment on judicial power.

(6) In exercising legislative power, the Legislature by mere declaration, without anything more, cannot directly overrule, revise or override a judicial decision. It can render judicial decision ineffective by enacting valid law on the topic within its legislative field fundamentally altering or changing its character retrospectively. The changed or altered conditions are such that the previous decision would not have been rendered by the Court, if those conditions had existed at the time of declaring the law as invalid. It is also empowered to give effect to retrospective legislation with a deeming date or with effect from a particular date.

(7) The consistent thread that runs through all the decisions of this Court is that the legislature cannot directly overrule the decision or make a direction as not binding on it but has power to make the decision ineffective by removing the base on which the decision was rendered, consistent with the law of the Constitution and the Legislature must have competence to do the same."

In the aforesaid case, Section 11 of the Kerala Electricity Surcharge (Levy and Collection) Act, 1989 arose for consideration and it was held that it was a valid piece of legislation and not an incursion on judicial power as the effect of Section 11 was to validate illegal collection of tax under an invalid law. In Hindustan Gum and Chemicals Ltd. vs. State of Haryana, (1985) 4 SCC 124, this Court held that it is permissible for a competent legislature to overcome the effect of a decision of a court, setting aside the imposition of a tax by passing a suitable Legislation, amending the relevant provisions of the statute concerned with retrospective effect, thus taking away the basis on which the decision of the court has been rendered and by inactive and appropriate provision validating the levy and collection of tax made before the decision in question was rendered.

In that decision, reliance was placed on Shri Prithvi Cotton Mills Ltd. vs. Broach Borough Municipality, AIR 1970 SC 192, a Constitution Bench decision of this Court, which has laid down the requirements which a validating law should satisfy in order to validate the levy and collection of a tax which has been declared earlier by a court as illegal, the relevant portion of the said judgments read as under:-

"When a Legislature sets out to validate a tax declared by a court to be illegally collected under an ineffective or an invalid law, the cause for ineffectiveness or invalidity must be removed before validation can be said to take place effectively. The most important condition, of course, is that the Legislature must possess the power to impose the tax, for, if it does not, the action must ever remain ineffective and illegal. Granted legislative competence, it is not sufficient to declare merely that the decision of the court shall not bind for that is tantamount to reversing the decision in exercise of judicial power which the Legislature does not possess or exercise.

A court's decision must always bind unless the conditions on which it is based are so fundamentally altered that the decision could not have been given in the altered circumstances. Ordinarily, a court holds a tax to be invalidly imposed because the power to tax is wanting or the statute or the rules or both are invalid or do not sufficiently create the jurisdiction. Validation of a tax so declared illegal may be done only if the grounds of illegality or invalidity are capable of being removed and are in fact removed and the tax thus made legal. Sometimes this is done by providing for jurisdiction where jurisdiction had not been properly invested before.

Sometimes this is done by re-enacting retrospectively a valid and legal taxing provision and then by fiction making the tax already collected to stand under the re-enacted law. Sometimes the Legislature gives its own meaning and interpretation of the law under which the tax was collected and by legislative fiat makes the new meaning binding upon courts. The Legislature may follow any one method or all of

them and while it does so it may neutralize the effect of the earlier decision of the court which becomes ineffective after the change of the law.

Whichever method is adopted it must be within the competence of the Legislature and legal and adequate to attain the object of validation. If the Legislature has the power over the subject-matter and competence to make a valid law, it can at any time make such a valid law and make it retrospectively so as to bind even past transactions. The validity of a validating law, therefore, depends upon whether the Legislature possesses the competence which it claims over the subject-matter and whether in making the validation it removes the defect which the courts had found in the existing law and makes adequate provisions in the validating law for a valid imposition of the tax."

Further, in the following decisions, this Court has held that the amendments made to the respective Acts subsequent to the decision of the court were valid and therefore, were upheld:-

a) In State of Orissa vs. Oriental Paper Mills Ltd., AIR 1961 SC 1438, the insertion of Section 14A by way of an amendment to Orissa Sales Tax Act subsequent to the decision of this Court in State of Bombay vs. United Motors India Ltd., AIR 1953 SC 252, was upheld.

b) In M/s. Misrilal Jain vs. State of Orissa, AIR 1977 SC 1686, this Court declared Orissa Taxation (on Goods Carried by Roads or Inland Waterways] Act, 1962 as invalid, since it did not cover the defect from which the Orissa Taxation (on Goods Carried by Roads or Inland Waterways] Act 7 of 1959 had suffered. It was further held that the State was not entitled to recover any tax. The subsequent Act 8 of 1968 was upheld as the vice from which the earlier enactment suffered was cured by due compliance with the legal or constitutional requirements.

c) In M/s. Tirath Ram Rajindra Nath, Lucknow vs. State of U.P., AIR 1973 SC 405, this Court held that there is a distinction between encroachment on the judicial power and nullification of the effect of a judicial decision by changing the law retrospectively. The former is outside the competence of the legislature but the latter is within its permissible limits. In that case, the U.P. Sales Tax Act (Amendment and Validation) Act, 1970 was upheld by this Court.

d) In Govt. of A.P. vs. Hindustan Machine Tools Ltd., AIR 1975 SC 2037, I.N. Saksena vs. State of M.P., AIR 1976 SC 2250, Central Coal Fields Ltd., vs. Bhubaneswar Singh, AIR 1984 SC 1733 and several other decisions this Court has upheld the amendments made to the respective Acts subsequent to the decision of a court of law thereby removing the basis of the judgment.

e) In State of Himachal Pradesh vs. Narain Singh, (2009) 13 SCC 165, this Court has held that Himachal Pradesh Land Revenue (Amendment and Valuation) Act, 1996 was sound as it removed the defect of the previous law. Hence, the amendment was not invalid just because, it nullified some provisions of the earlier Act. It was also held that the amendment was necessitated in the interest of land revenue, land settlement and for the purpose of updating the same.

The Legislature cannot directly overrule a judicial decision. But when a competent Legislature retrospectively removes the substratum or foundation of a judgment to make the decision ineffective, the said exercise is a valid legislative exercise provided it does not transgress on any other constitutional limitation. Such legislative device which removes the vice in previous legislation which has been declared unconstitutional is not considered an encroachment on judicial power but an instance of abrogation. The power of the sovereign legislature to legislate within its field, both prospectively and retrospectively cannot be questioned.

It would be permissible for the legislature to remove a defect in earlier legislation pointed out by a constitutional court in exercise of its powers by way of judicial review. This defect can be removed both retrospectively and prospectively by a legislative process and the previous actions can also be validated. But where there is a mere validation without the defect being legislatively removed, the legislative action will amount to overruling the judgment by a legislative fiat which is invalid.

In light of the aforesaid discussion, the petitions challenging the vires of the Assam Community Professional (Registration and Competency) Act, 2015 i.e., Transferred Case (C) Nos. 24 and 25 of 2018 are liable to be dismissed, and are accordingly dismissed. The said Act has been enacted with a view to restore the position of the diploma holders in medicine and to give them continuity in service. The said Act has been enacted by a valid legislative exercise, and does not transgress any other constitutional limitation and in accordance with Entry 25 of List III of the Seventh Schedule and is not in conflict with the IMC Act, 1956 and the rules and regulations made thereunder as per Entry 66 of List I of the Seventh Schedule.

23. Before parting with this case, it is necessary to advert to the reasoning of the Division Bench of the High Court which has held in paragraph 15 of its judgment dated 30.10.2014 that the Central Legislation, namely, the IMC Act, 1956, fully covers the field and therefore, the impugned legislation passed by the Assam State Legislature concerning the Diploma Course in Allopathic Medicine was null and void. In this context, Article 254 of the Constitution has been adverted to and it has been observed that, on account of repugnancy and there being no Presidential assent as required under Article 254, the Assam Act is null and void.

24. We do not think the doctrine of repugnancy governing Article 254 of the Constitution of India, would apply in the instant case. Although, Entry 25 of List III

of the Seventh Schedule of the Constitution of India is in the Concurrent List which gives powers to both the Union as well as the State Legislatures to pass laws on the subject of 'Education', it is significant to note that any such law to be made by the State Legislature is subject to, inter alia, Entry 66 of List I or the Union List of the Seventh Schedule.

Hence, when there is a direct conflict between a State Law and the Union Law in the matter of coordination and determination of standards in higher education (Entry 66 of List I) such as in medical education, concerning allopathic medicine or modern medicine, as is in the instant case, where the State Law is in direct conflict with the Union law, the State Law cannot have any validity as the State Legislature does not possess legislative competence. In other words, the Assam Act and Rules and Regulations made under the said Act, being in conflict with the Indian Medical Council Act, 1956 (IMC Act, 1956) and the Rules and Regulations made thereunder, the doctrine of repugnancy as such would not apply within the meaning of Article 254 of the Constitution.

The finding with regard to the constitutionality of the Assam Act of 2015 is limited to holding it non-repugnant with the Indian Medical Council Act, 1956. However, this Court is not rendering any finding with regard to any potential conflict of the provisions of the Assam Act of 2015 with the National Medical Commission Act, 2019. We also wish to refer to the Directive Principle of State Policy. The framers of the Constitution, in Article 47 have directed the Union and State Governments to regard the 'improvement of public health', as its primary duty. It follows from this directive that the State shall make all possible efforts to ensure equitable access to healthcare services.

These efforts must be made to progressively realize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, as acknowledged in international conventions and agreements. While the State has every right to devise policies for public health and medical education, with due regard to peculiar social and financial considerations, these policies ought not to cause unfair disadvantage to any class of citizens. The citizens residing in rural areas have an equal right to access healthcare services, by duly qualified staff. Policies for enhancing access to rural healthcare must not shortchange the citizens residing in rural areas or subject them to direct or indirect forms of unfair discrimination on the basis of their place of birth or residence.

Any variation between the standards of qualification required for medical practitioners who render services in rural areas qua the medical practitioners rendering services in urban or metropolitan areas must prescribe to constitutional values of substantive equality and non-discrimination. We may hasten to add that deciding the particular qualifications for medical practitioners practising in disparate

areas and in disparate fields, providing different levels of primary, secondary or tertiary medical services, is within the mandate of expert and statutory authorities entrusted with the said mandate by the Parliament. The above ought to be considered in the spirit of constitutional goals and statesmanship subserving, as it does, the common good of the citizenry of our Country.

Conclusion:

25. In the result, we arrive at the following conclusions:

(i) Entry 25 of List III of the Seventh Schedule of the Constitution of India deals with the subject education which is in the Concurrent List under which both the Parliament or the Union Legislature as well as the State Legislatures have legislative competence to legislate. However, Entry 25 of List III is subject to, inter alia, Entry 66 of List I which is the Union List. Entry 66 of List I deals with coordination and determination of standards in institutions for higher education or research and scientific and technical institutions.

Thus, when any law is made under Entry 25 of List III by a State Legislature, the same is always subject to Entry 66 of List I. In other words, if any law made by the Parliament comes within the scope of Entry 66 of List I, then the State Legislation would have to yield to the Parliamentary law. Thus, where one Entry is made "subject to" another Entry, it would imply that, out of the scope of the former Entry, a field of legislation covered by the latter Entry has been reserved to be specifically dealt with by the appropriate legislature.

(ii) In the instant case, it is held that the IMC Act, 1956 is a legislation made by the Parliament for the purpose of coordination and determination of standards in medical education throughout the Country. The said law, along with the Rules and Regulations made thereunder are for the purpose of determination of standards of medical education throughout India. Thus, determination of standards in medical education in India is as per the IMC Act, 1956 which is a Central Law. This is in respect of modern medicine or allopathic medicine within the scope of Entry 66 of List I and not under Entry 25 of List III of the Seventh Schedule.

Therefore, a State Legislature which passes a law in respect of allopathic medicine or modern medicine would be subject to the provisions of the IMC Act, 1956 and the Rules and Regulations made thereunder. This would imply that no State Legislature has the legislative competence to pass any law which would be contradictory to or would be in direct conflict with the IMC Act, 1956 and the Rules and Regulations made thereunder.

In other words, the standard in medical education insofar as modern medicine or allopathy is concerned, having been set by the IMC Act, 1956 and the Rules and

Regulations made thereunder or by any subsequent Act in that regard, such as the Medical Council of India Act, 2019, the State Legislature has no legislative competence to enact a law which is in conflict with the law setting the standards of medical education in the context of modern medicine or allopathic medicine, which has been determined by Parliamentary Legislation as well as the Rules.

In other words, a State Legislature has no legislative competence to enact a law in respect of modern medicine or allopathic medicine contrary to the said standards that have been determined by the Central Law. In view of the above conclusion, we hold that decision of the Gauhati High Court holding that the Assam Act to be null and void, is just and proper.

However, the Gauhati High Court has held that the State had no legislative competence to enact the Assam Act in view of Article 254 of the Constitution on the premise that the IMC Act and the Rules and Regulations made thereunder were holding the field and hence, on the basis of the doctrine of occupied field, the Assam Act was struck down as being repugnant to the Central Law. In view of the aforesaid conclusion, we are of the view that the said reasoning is incorrect. It is reiterated that the IMC Act and the Rules and Regulations made thereunder, which are all Central legislations, have been enacted having regard to Entry 66 of List I and would prevail over any State Law made by virtue of Entry 25 of List III of the Constitution.

(iii) Hence, in view of the Indian Medical Council Act, 1956 and the Rules and Regulations made thereunder, the Assam Act, namely, the Assam Rural Health Regulatory Authority Act, 2004, is declared to be null and void, in view of the Assam Legislature not having the legislative competence to enact the said Law.

(iv) Consequently, the subsequent legislation, namely, the Assam Act of 2015 i.e., the Assam Community Professionals (Registration and Competency) Act, 2015, enacted pursuant to the judgment of the Gauhati High Court, is a valid piece of Legislation as it has removed the basis of the impugned judgment passed by the Gauhati High Court. The 2015 Act is also not in conflict with the IMC, Act, 1956.

This is because the Central Act namely, IMC, Act, 1956 does not deal with Community Health Professionals who would practise as allopathic practitioners in the manner as they were permitted to practise under the Assam Act, in rural areas of the State of Assam. Hence, by a separate legislation the Community Health Professionals have been permitted to practise as such professionals. The said legislation of 2015 is not in conflict with IMC, Act, 1956 and the rules and regulations made thereunder.

Hence, the Act of 2015 is not hit by Entry 66 of List I of the Constitution and is within the legislative competence of the State Legislature under the Seventh Schedule of the Constitution. 26. In the result, the Civil Appeals arising out of

SLP(C) Nos. 32592-32593 of 2015 as well as TC (C) No. 24 of 2018 and TC (C) No. 25 of 2018 stand dismissed. Pending application(s), if any, shall stand disposed of.

27. Parties to bear their respective costs.

.....J. (B.R. Gavai)

.....J. (B.V. Nagarathna)

New Delhi;

January 24, 2023.

IN THE SUPREME COURT OF INDIA

Prasad Pradhan & Anr.

Vs.

State of Chhattisgarh

[Criminal Appeal No(s). 2025 of 2022]

HEADNOTE – Murder Trial - Mere Long standing pre-existing dispute will not attract exception of 'grave & sudden provocation'

JUDGMENT

S. Ravindra Bhat, J.

1. This appeal, by special leave, arises from the judgment and order of the Chhattisgarh High Court, affirming the conviction recorded, and the sentence imposed, upon the present appellants.

2. The State of Chhattisgarh (hereafter "the state") prosecuted the appellants in relation to an incident, leading to the death of one Vrindawan. The prosecution's allegation was that the appellant/accused and Vrindawan, the deceased, were cousins. On the afternoon of 28.02.2012, when the deceased was getting his land levelled through a JCB machine, the appellants reached the place and attacked him. Vrindawan sustained several injuries including head injuries.

He was taken to the hospital and was examined by Dr. Bhageshwar Patel (PW11). As serious head injuries were involved Vrindawan was operated upon by Dr. S.N. Madhariya (PW15). However, Vrindawan could not survive and died on 22.03.2012. Dr. S.K. Bagh (PW14) conducted the post-mortem and in his report (Ex. P-28), stated that death was caused by injuries sustained by the deceased on the head.

3. The police registered a case under Section 302 read with 34 Indian Penal Code (hereafter "IPC") against all accused, based on a first information report (hereafter 'FIR') lodged by Aarti Pradhan (PW1) the deceased Vrindawan's daughter. The FIR (Ex. P-1) alleged that the appellants reached the spot, abused Vrindawan and then assaulted him. The allegation against A-1 Prasad Pradhan was that he was armed with an axe and attacked the deceased on the head. Against A-2 Lingraj Pradhan, the allegation was that he was armed with an axe and had assaulted the deceased on the legs. Regarding the third accused person - Soudagar Pradhan, who is grandson of A-1 and son of A-2, the allegation was that he went to the spot and caught hold of the deceased. Soudagar Pradhan, however, is not an appellant before this court.

4. After the final report was filed, the trial court charged all three accused persons of sharing common intention and then committing the murder of Vrindawan - they were charged for offences under Section 294, 323 read with 34, 302 read with 34, IPC. The appellants, having abjured guilt, were put to trial. The prosecution examined as many as 15 witnesses. Aarti Pradhan (PW1), Narrotam (PW2), Safed Pradhan (PW3), Rukni (PW4), Ayodhya Bai (PW5) and Navin Sahu (PW6) are relatives of the deceased.

The appellants examined two defence witnesses. The court held all the appellants guilty of commission of the offence alleged against them and sentenced them: life imprisonment, for the offence of murder, and six months rigorous imprisonment for the offence under Section 323 IPC. The appellants' appeal before the High Court was partly allowed by the impugned judgment. The High Court acquitted Soudagar Pradhan on both counts, but affirmed the conviction and sentence of the present appellants (A1 and A2). They are, resultantly, before this court.

Contentions of the appellants

5. The appellants argue that the prosecution evidence ought to be discarded. The credibility of the three eyewitnesses is impeached, as they were related to the deceased and further, according to the appellants, their statements otherwise suffer from material contradictions and are implausible. Learned counsel submitted that taken as a whole, the evidence cannot lead one to conclude that the finding of common intention is made out. Learned counsel argued that the dispute arose in a flash, suddenly at the spot when the deceased -Vrindawan started getting the disputed land levelled, due to which the appellants (who lived in the same locality in adjacent houses) went out of their houses, and allegedly assaulted the deceased.

Therefore, in these circumstances, it is argued, the appellants are liable only to the extent of their individual overt acts. It was argued alternatively, that the incident happened all of a sudden and without premeditation. The appellants had no intention to cause death but deter Vrindawan from doing any activity on the disputed land. Therefore, the conviction of the appellants may not travel beyond Section 304 Part-II IPC.

6. Learned counsel for the appellants also argues that the death of Vrindawan took place after about 20 days of the incident on account of complication in the surgery and it cannot be said that the cause of death was injury as the prosecution could not prove that injury caused to the deceased, in ordinary course of nature, was sufficient to cause death. Learned counsel highlighted that the injury caused by the appellants, particularly the head injury, was stitched in and had healed. Learned counsel emphasized that Vrindawan died as a result of cardio-respiratory failure, as stated by PW14.

Such being the case, the finding of the courts below that the appellants were guilty of the offence of Section 302 IPC was clearly in error of law. It was argued that arguendo, if the prosecution could be said to have proved the attack by the appellants on the deceased, the cause of death neither being immediate nor a direct result of it, there is no question of the ingredients of the offence of murder under Section 302 IPC having been proved beyond reasonable doubt.

7. It was submitted that taken together, the appellants could, at the highest, be convicted of the offence of culpable homicide not amounting to murder under Section 304 Part I IPC since it was neither their intention to kill the deceased nor was the injury sufficient to cause death in the ordinary course of nature - which was borne out by the circumstance of him surviving the attack for 20 days.

It was submitted that the appellants should be granted the benefit of a modified conviction to one, under that provision. Justifying the submission, the learned counsel stated that there was a prior history of disputes between the appellants and the deceased. The deceased's conduct in calling for a heavy JCB machine, to get the tank on the property repaired, was a sudden provocation, given the history of bad blood, which the prosecution witness PW1 in fact, deposed to. Therefore, the exception to Section 300 IPC was attracted to the facts of this case.

8. It was submitted that the High Court erred in failing to give the benefit of doubt to the appellants, in the manner that it did to the third accused - Soudagar Pradhan. It was contended that the evidence and materials in respect of his alleged involvement were the same as in the case of the appellants; therefore, they too, were entitled to be treated in a like manner and acquitted.

Contentions of the state/respondent

9. It was argued, on behalf of the state, that the concurrent findings of the courts below - as well as the sentence imposed, do not call for interference, as they do not contain any glaring infirmity or error. Learned counsel relied on the depositions by the two doctors and also highlighted that the victim never recovered from his injuries; he was not even in a position to record a statement. It was also argued that for the entire duration that the victim was alive after the incident, he was in the hospital, where he never recovered and died there itself.

10. It was argued that the credibility of PW1 as an eyewitness cannot be questioned; she was, in fact, also a victim of the attack and had received injuries on her leg, due to an axe blow given by one of the accused/appellants. Likewise, learned counsel stated that PW2, another brother of the deceased, had corroborated the evidence of PW1 on all material aspects. He had seen both accused, armed in the manner deposed to by PW1, attacking the deceased. Further, PW3, the wife of the deceased also corroborated the testimonies of the other two witnesses. Though she did not

witness the actual assault, she had seen the two appellants armed with axes. PW4, sister-in-law of PW3, too, deposed that Vrindawan was attacked by the accused whilst he was engaged in cleaning near the septic tank and that the two appellants attacked him with axes.

11. Learned counsel argued that the medical examination of the deceased was conducted by Dr. Bhageshwar Patel (PW11), who prepared the medical report (Ex. P-21). The Surgeon, Dr. S.N. Madhariya (PW15) deposed that the back of the deceased's skull was broken and was operated upon. Dr. S.K. Bagh (PW14), who conducted post-mortem, clearly stated regarding cause of the death, in the present case, which pointed out to cardio- respiratory failure, due to multiple injuries. In the cross examination, the appellants could not elicit from the witness that the injury caused to the deceased in the ordinary course of nature was insufficient to cause death or that the death occurred due to surgical complication and not because of injury.

12. Learned counsel for the state relied on this court's decisions in Sudershan Kumar v. State of Delhi2, State of Rajasthan v. Arjun Singh & Ors.3, State of Rajasthan v. Kanhaiya Lal4, and State of Rajasthan v. Leela Ram5 to urge that the facts of this case, do not support the appellants' contention that the offence of culpable homicide under Section 304 Part II is made out. It was submitted that the pre-existing dispute, in this case, could not be said to constitute a "grave and sudden" provocation. Further, the circumstance that the victim survived for some length of time, ipso facto is an irrelevant factor since the prosecution established that the cause of the death was directly linked to the injuries sustained, which in turn were inflicted by the appellants.

13. Learned counsel submitted that Exception 4 to Section 300 IPC is clearly not attracted in the facts of this case because the appellants had, in fact, behaved in an unusual and cruel manner and also took undue advantage of the situation because they were fully armed, and inflicted serious injuries upon the deceased, who was neither armed nor provoked them.

Analysis and conclusions

14. In this case, the nature of the attack by the appellants and the quality of eyewitness testimony of prosecution witnesses, especially PW1 to PW5, cannot be doubted. This court is of the opinion that the circumstance that most of the witnesses were related to the deceased does not per se exclude their testimony. The test of credibility or reliability when applied, is fully satisfied in respect of the strength of their testimonies. Although PW1 is the deceased's daughter, that is insufficient to doubt the veracity of what she recounted during the trial, which is that she saw the appellants attack her father with axes.

She tried to intervene and save the deceased, upon which she was also given axe blows on her leg. There is no explanation on the part of the appellants as to why the witness should depose falsely; nor is there any explanation as to how she could have received her injuries. Most importantly, her testimony is corroborated by PW2, PW3 and PW4. Therefore, this court is of the opinion that all the material aspects of the factual accusations against the appellants and how they attacked the deceased in an unprovoked manner, cannot be doubted.

15. The question, then, is whether the appellants are guilty of the offence of murder, punishable under Section 302, or whether they are criminally liable under the less severe Section 304, IPC. As noted in several judgments, this question has engaged the courts for over a century. The distinction between these two is discernible in the manner they are defined, under Section 2996 IPC and Section 3007 IPC. In a decision, which is now considered to be the locus classicus on the issue, Virsa Singh v. State of Punjab,8 this court stated as follows:

"The prosecution must prove the following facts before it can bring a case under S. 300 '3rdly'. First, it must establish, quite objectively, that a bodily injury is present; secondly the nature of the injury must be proved. These are purely objective investigations. It must be proved that there was an intention to inflict that particular injury, that is to say that it was not accidental or unintentional or that some other kind of injury was intended. Once these three elements are proved to be present, the enquiry proceeds further, and, fourthly it must be proved that the injury of the type just described made up of the three elements set out above was sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender."

16. In State Of Andhra Pradesh v. Rayavarapu Punnayya & Anr.9 another oft-cited judgment, this court observed as follows:

"Clause (b) of Section 299 corresponds with clauses (2) and (3) of Section 300. The distinguishing feature of the mens rea requisite under clause (2) is the knowledge possessed by the offender regarding the particular victim being in such a peculiar condition or state of health that the internal harm caused to him is likely to be fatal, notwithstanding the fact that such harm would not in the ordinary way of nature be sufficient to cause death of a person in normal health or condition. It is noteworthy that the "intention to cause death" is not an essential requirement of clause (2). Only the intention of causing the bodily injury coupled with the offender's knowledge of the likelihood of such injury causing the death of the particular victim, is sufficient to bring the killing within the ambit of this clause. This aspect of clause (2) is borne out by Illustration (b) appended to Section 300.

Clause (b) of Section 299 does not postulate any such knowledge on the part of the offender. Instances of cases falling under clause (2) of Section 300 can be where the

assailant causes death by a fist blow intentionally given knowing that the victim is suffering from an enlarged liver, or enlarged spleen or diseased heart and such blow is likely to cause death of that particular person as a result of the rupture of the liver, or spleen or the failure of the heart, as the case may be. If the assailant had no such knowledge about the disease or special frailty of the victim, nor an intention to cause death or bodily injury sufficient in the ordinary course of nature to cause death, the offence will not be murder, even if the injury which caused the death, was intentionally given.

In clause (3) of Section 300, instead of the words "likely to cause death" occurring in the corresponding clause (b) of Section 299, the words "sufficient in the ordinary course of nature" have been used. Obviously, the distinction lies between a bodily injury likely to cause death and a bodily injury sufficient in the ordinary course of nature to cause death. The distinction is fine but real, and, if overlooked, may result in miscarriage of justice. The difference between clause (b) of Section 299 and clause (3) of Section 300 is one of the degree of probability of death resulting from the intended bodily injury. To put it more broadly, it is the degree of probability of death which determines whether a culpable homicide is of the gravest, medium or the lowest degree.

The word "likely" in clause (b) of Section 299 conveys the sense of "probable" as distinguished from a mere possibility. The words "bodily injury sufficient in the ordinary course of nature to cause death" mean that death will be the "most probable" result of the injury, having regard to the ordinary course of nature. For cases to fall within clause (3), it is not necessary that the offender intended to cause death, so long as the death ensues from the intentional bodily injury or injuries sufficient to cause death in the ordinary course of nature. Rajwant v. State of Kerala [AIR 1966 SC 1874: 1966 Supp SCR 230: 1966 Cri LJ 1509.] is an apt illustration of this point."

The court then quoted the decision in Virsa Singh (supra), and held that:

"Thus according to the rule laid down in Virsa Singh's case (supra) even if the intention of accused was limited to the infliction of a bodily injury sufficient to cause death in the ordinary course of nature and did not extend to the intention of causing death, the offence would be murder. Illustration (c) appended to S. 300 clearly brings out this point. Clause (c) of S. 299 and clause (4) of S. 300 both require knowledge of the probability of the causing death. It is not necessary for the purpose of this case to dilate much on the distinction between these corresponding clauses.

It will be sufficient to say that cl. (4) of S. 300 would be applicable where the knowledge of the offender as to the probability of death of a person or persons in general-as distinguished from a particular person or persons--being caused from his

imminently dangerous act, approximates to a practical certainty. Such knowledge on the part of the offender must be of the highest degree of probability, the act having been committed by the offender without any excuse for incurring the risk of causing death or such injury as aforesaid."

A later decision, Pulicherla Nagaraju @ Nagaraja Reddy v. State of Andhra Pradesh10 considered these aspects and held that:

"29. Therefore, the Court should proceed to decide the pivotal question of intention, with care and caution, as that will decide whether the case falls under Section 302 or 304 Part I or 304 Part II. Many petty or insignificant matters plucking of a fruit, straying of cattle, quarrel of children, utterance of a rude word or even an objectionable glance, may lead to altercations and group clashes culminating in deaths. Usual motives like revenge, greed, jealousy or suspicion may be totally absent in such cases. There may be no intention. There may be no premeditation. In fact, there may not even be criminality.

At the other end of the spectrum, there may be cases of murder where the accused attempts to avoid the penalty for murder by attempting to put forth a case that there was no intention to cause death. It is for the courts to ensure that the cases of murder punishable under Section 302, are not converted into offences punishable under section 304 Part I/II, or cases of culpable homicide not amounting to murder are treated as murder punishable under Section 302. The intention to cause death can be gathered generally from a combination of a few or several of the following, among other, circumstances;

(i) nature of the weapon used;

(ii) whether the weapon was carried by the accused or was picked up from the spot;

(iii) whether the blow is aimed at a vital part of the body;

(iv) the amount of force employed in causing injury;

(v) whether the act was in the course of sudden quarrel or sudden fight or free for all fight;

(vi) whether the incident occurs by chance or whether there was any premeditation;

(vii) whether there was any prior enmity or whether the deceased was a stranger;

(viii) whether there was any grave and sudden provocation, and if so, the cause for such provocation;

(ix) whether it was in the heat of passion;

(x) whether the person inflicting the injury has taken undue advantage or has acted in a cruel and unusual manner;

(xi) whether the accused dealt a single blow or several blows.

The above list of circumstances is, of course, not exhaustive and there may be several other special circumstances with reference to individual cases which may throw light on the question of intention."

17. The question in cases, like the present one is, therefore, whether the injury caused due to the attack is one which falls within the description of Section 300 thirdly ("If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death") or if it falls within the mischief of Section 300 fourthly ("If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid").

18. The requirement of Section 300 thirdly is fulfilled if the prosecution proves that the accused inflicted an injury which would been sufficient to have resulted in death of the victim. The determinative fact would be the intention to cause such injury and what was the degree of probability (gravest, medium, or the lowest degree) of death which determines whether the crime is culpable homicide or murder.

19. The case law on the issue of the nature of injury being so dangerous as to result in death (Section 300 fourthly), have emphasised on the accused's disregard to the consequences of the injury, and an element of callousness to the result, which denotes or signifies the intention. In State of Madhya Pradesh v. Ram Prasad,11 this court held that: "Although Clause fourthly is usually invoked in those cases where there is no intention to cause the death of any particular person (as the illustration shows) the Clause may on its terms be used in those cases where there is such callousness towards the result and the risk taken is such that it may be stated that the person knows that the act is likely to cause death or such bodily injury as is likely to cause death.

In the present case, Ram Prasad poured kerosene upon the clothes of Mst. Rajji and set fire to those clothes. It is obvious that such fire spreads rapidly and burns extensively. No special knowledge is needed to know that one may cause death by burning if he sets fire to the clothes of a person. Therefore, it is obvious that Ram Prasad must have known that he was running the risk of causing the death of Rajji or such bodily injury as was likely to cause her death. As he had no excuse for incurring that risk, the offence must be taken to fall within 4thly of Section 300, Indian Penal Code.

In other words, his offence was culpable homicide amounting to murder even if he did not intend causing the death of Mst. Rajji. He committed an act so imminently dangerous that it was in all probability likely to cause death or to result in an injury that was likely to cause death. We are accordingly of the opinion that the High Court and the Sessions Judge were both wrong in holding that the offence did not fall within murder." Similarly, three Judges of this Court, in Santosh S/o. Shankar Pawar v. State of Maharashtra12 observed,

"13. Even assuming that the Accused had no intention to cause the death of the deceased, the act of the Accused falls under Clause Fourthly of Section 300 Indian Penal Code that is the act of causing injury so imminently dangerous where it will in all probability cause death. Any person of average intelligence would have the knowledge that pouring of kerosene and setting her on fire by throwing a lighted matchstick is so imminently dangerous that in all probability such an act would cause injuries causing death."

20. Turning back to the facts of this case, the concurrent findings which this court sees no difficulty in accepting are that firstly, the appellants were aggressors; secondly, they attacked the deceased, with axes; thirdly, the deceased was unarmed; fourthly, during the attack, the victim's daughter, PW1 reached the spot, and tried to dissuade the appellants; fifthly, the appellants continued their assault on the victim and also attacked the witness with an axe; sixthly, since three injuries sustained by the appellant, were on the head, he fell down; seventhly, the victim was rushed to the hospital, and had to be shifted to another speciality hospital, for surgery.

Eighthly, the deceased was not able to record his statement; he was never discharged and died in the hospital, after 20 days. Lastly, the doctor who conducted the post-mortem (PW-14), stated that the injuries were caused by a hard and blunt object, and death of the deceased was due to cardio respiratory failure "as a result of multiple injuries on his body and their complications". Apart from the head, there were several other injuries, in the form of abrasions, contusions on the elbow, the lower back, fracture of rib cage, etc. At the time of death, Vrindawan was aged 55 years.

21. There is evidence in the form of statements of both PW1 (Vrindawan's daughter) and PW2 (Vrindawan's brother, Narottam) that the deceased and the appellants had pre-existing disputes. However, both these witnesses corroborated each other and stated that the quarrel or dispute pertained to land had existed for a long time. PW2, in fact, stated that partition of properties had taken place amongst the brothers, despite which these quarrels had persisted.

22. The question then is - was there a "sudden quarrel" between the deceased and the appellants so that the case would not be murder, but culpable homicide, in terms of Exception 4 ("if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue

advantage or acted in a cruel or unusual manner"). In the opinion of this court, there was no "sudden quarrel". The testimonies of the two important eyewitnesses, PW1 and PW2, establish that when the deceased was levelling the septic tank on his property, the accused/appellants started abusing him; he asked them not to.

The appellants, who were in the adjacent property, climbed the wall, entered the deceased's house, and attacked him with axes. These facts do not constitute a "sudden quarrel", given that the appellants abused the deceased, in an unprovoked manner, and then they went to where he was, armed with axes, and assaulted him. Arguendo, even if the facts are assumed to disclose that there was a sudden fight, it cannot be said that the accused failed to act in a cruel manner, or did not take undue advantage. This is because they were armed: a fact which shows pre-meditation on their part. Moreover, they both attacked Vrindawan on the head, which is a vital part of the body, thus taking undue advantage of their situation.

23. Again, on the question of whether the facts of this case are covered by the first exception to Section 300, i.e., that the accused/appellants did what they were accused of (which is to attack and inflict grave injuries that led to the death of Vrindawan), because of their loss of self-control, on account of a grave and sudden provocation - the answer must be the same, which is that the provision (Exception 1 to Section 300) cannot be attracted. Apart from a long-standing pre-existing dispute, what caused "sudden" provocation to the appellants, has not been shown by them. Neither did they lead any evidence, to fall within Exception 1, nor did the evidence on record substantiate such a contention. Speaking of what is grave and sudden provocation, this court in K.M. Nanavati v. State of Maharashtra13 explained the standard of reasonableness for applying the "grave and sudden" provocation, in the following manner:

"84. Is there any standard of a reasonable man for the application of the doctrine of "grave and sudden" provocation? No abstract standard of reasonableness can be laid down. What a reasonable man will do in certain circumstances depends upon the customs, manners, way of life, traditional values etc.; in short, the cultural, social and emotional background of the society to which an Accused belongs. In our vast country there are social groups ranging from the lowest to the highest state of civilization. It is neither possible nor desirable to lay down any standard with precision: it is for the court to decide in each case, having regard to the relevant circumstances. It is not necessary in this case to ascertain whether a reasonable man placed in the position of the Accused would have lost his self-control momentarily or even temporarily when his wife confessed to him of her illicit intimacy with another, for we are satisfied on the evidence that the Accused regained his self-control and killed Ahuja deliberately.

85. The Indian law, relevant to the present enquiry, may be stated thus:

(1) The test of "grave and sudden" provocation is whether a reasonable man, belonging to the same class of society as the Accused, placed in the situation in which the Accused was placed would be so provoked as to lose his self-control.

(2) In India, words and gestures may also, under certain circumstances, cause grave and sudden provocation to an Accused so as to bring his act within the First Exception to Section 300 of the Indian Penal Code.

(3) The mental background created by the previous act of the victim may be taken into consideration in ascertaining whether the subsequent act caused grave and sudden provocation for committing the offence. (4) The fatal blow should be clearly traced to the influence of passion arising from that provocation and not after the passion had cooled down by lapse of time, or otherwise giving room and scope for premeditation and calculation"

24. If one were to apply the above tests to the present case, what is evident is that while there were pre-existing disputes of some vintage, between the appellants and the deceased, there is nothing to show that they had been aggravated. It is also, likewise, not clear whether the deceased said anything to the appellants which triggered their ire, leading to loss of self-control as to result in "grave and sudden provocation". In any case, if there were something, the appellants ought to have brought the relevant material or evidence on record, as what facts did exist, was within their peculiar knowledge.

25. During the hearing, the appellants counsel had urged that Vrindawan died 20 days after the attack, and the lapse of such a time shows that the injuries were not sufficient to cause death in the ordinary course of nature. On this aspect, there are several judgments, which emphasize that such a lapse of time, would not per se constitute a determinative factor as to diminish the offender's liability from the offence of murder to that of culpable homicide, not amounting to murder. In Om Parkash v. State of Punjab,14 the death occurred 13 days after the attack; the accused was convicted of murder. Similarly, in Patel Hiralal Joitaram v. State of Gujarat, 15 the death occurred a fortnight after the attack, and in Sudershan Kumar (supra), the death occurred 12 days after the attack.

26. There can be no stereotypical assumption or formula that where death occurs after a lapse of some time, the injuries (which might have caused the death), the offence is one of culpable homicide. Every case has its unique fact situation. However, what is important is the nature of injury, and whether it is sufficient in the ordinary course to lead to death. The adequacy or otherwise of medical attention is not a relevant factor in this case, because the doctor who conducted the post-mortem clearly deposed that death was caused due to cardio respiratory failures, as a result of the injuries inflicted upon the deceased. Thus, the injuries and the death were closely and directly linked.

27. In view of the above discussion, this court is of the opinion that there is no infirmity in the impugned judgment. The conviction and sentence imposed on the appellants do not therefore, call for interference. The appeal is consequently dismissed, without order on costs.

.....J. [Krishna Murari]

.....J. [S. Ravindra Bhat]

New Delhi,

January 24, 2023.

IN THE SUPREME COURT OF INDIA

Boby

Vs.

State of Kerala

[Criminal Appeal No. 1439 of 2009]

HEADNOTE – Section 27 Evidence Act -Recovery cannot be relied upon when statement of accused is not recorded

JUDGMENT

B.R. Gavai, J.

1. This appeal challenges the judgement and order dated 25th August 2008, passed by the learned Division Bench of the High Court of Kerala at Ernakulam (hereinafter referred to as "the High Court") in Criminal Appeal Nos. 326, 230 and 847 of 2005 thereby dismissing the appeals filed by Shibu @ Shibu Singh (accused No. 1) and Boby (accused No. 3/appellant herein), thereby upholding the judgment of conviction and sentence dated 18th December 2004, passed by the Additional Sessions Judge, Fast Track Court-II (Adhoc Court), Thrissur (hereinafter referred to as "the trial court") in Sessions Case No. 208 of 2003 in respect of the said accused persons. Vide the same impugned judgment, the High Court, however, allowed the appeal filed by Biju @ Babi (accused No. 2) and acquitted him from all the offences charged with.

2. Shorn of details, the facts leading to the present appeal are as under:

2.1 On 21st November, 2000, Leela w/o Vishwanathan (Complainant/PW1) made a statement before the Police Station, Anthikkadu, Dist. Thrissur, wherein she alleged that Shibu @ Shibu Singh (accused No. 1), the younger brother of her husband, Vishwanathan (deceased), was a convict who was then undergoing imprisonment as he was involved in many theft cases wherein stolen articles from the said thefts were disposed of by her husband.

2.2 It is the case of the complainant that Shibu @ Shibu Singh (accused No. 1) had escaped from the prison and was absconding. Due to the fear that Vishwanathan (deceased) would disclose to the police about his escape from jail, Shibu @ Shibu Singh (accused No. 1) along with other accused persons, namely, accused No. 2 to

accused No. 7 came in a jeep to the house of Vishwanathan (deceased) on 20.11.2000 at 08.00 p.m. The accused persons then held Vishwanathan (deceased) at knife point, forcefully poured liquor into his mouth and compelled him to drink till he was left unconscious.

When Leela (Complainant/PW1) tried to interfere, she sustained injuries on her palm due to the knife carried by the accused persons with which they attempted to inflict blows on her. Thereafter, Leela (Complainant/PW1) along with her husband were blindfolded and taken in a jeep. After covering a distance of about 30 kms., the Complainant/PW1 was dropped at Poomala, which was her native place. When she managed to reach her house with the help of a local named Baiju from the said village, she informed her brother Babu (P.W.6) about the aforesaid incident, who attempted to search for Vishwanathan (deceased) during the said night.

Next day, i.e., on 21st November 2000, Leela (Complainant/PW1) along with Babu (PW6) lodged her statement (Ext. P1) at the Police Station Anthikkadu, Dist. Thrissur. Based on the contents of the aforesaid complaint, a First Information Report (Ext. P19) (for short, "FIR") came to be registered against the aforementioned accused persons along with other unknown persons for offences punishable under Section 395 and 365 of the Indian Penal Code, 1860 (hereinafter referred to as "IPC").

2.3 Boby (accused No. 3/appellant herein) was arrested by the Police on 25th November 2000. Based on his disclosure statement (Ext. P23), the dead body of Vishwanathan, which was buried at Pattithara on the banks of river Bharathapuzha, was recovered. Additionally, stolen goods were also recovered from the house of accused No. 3 and were marked as Ext. P14. Shibu @ Shibu Singh (accused No. 1) and Biju @ Babu (accused No. 2) were arrested on 28th November 2000 from a lodge at Guruvayoor by the Guruvayoor Police. Subsequently, they were handed over to the Anthikkadu Police on 2nd December 2000. Based on the disclosure statement of Shibu @ Shibu Singh (accused No. 1), the spade with which the deceased's burial spot was dug was recovered near the site where the body was exhumed from, concealed in a plastic bag.

2.4 At the conclusion of investigation, a chargesheet came to be filed before the Judicial Magistrate First Class, Court-II, Thrissur, who committed the case to the Sessions Court, Thrissur for trial.

2.5 Charges came to be framed by the trial court for the offences punishable under Sections 395, 364, 365, 380 and 302 read with Section 34 of the IPC.

2.6 All the accused persons pleaded not guilty and claimed to be tried. The prosecution examined 33 witnesses to bring home the guilt of the accused persons. The prosecution also placed on record 14 Material Objects which were marked as

M.O. 1 to M.O. 14. During the crossexamination from the defence side, Sekharan (DW1), father of the deceased was examined. The accused persons were questioned under Section 313 of the Criminal Procedure Code, 1973 (for short, "the Cr.P.C.") wherein they denied the circumstances that appeared against them in evidence which were put to them.

At the conclusion of trial, the learned trial court found Shibu @ Shibu Singh (accused No. 1), Biju @ Babu (accused No. 2) and Boby (accused No. 3/appellant herein) guilty of the offences charged with and accordingly sentenced them to undergo life imprisonment for the offence punishable under Section 302 read with Section 34 IPC. It further directed them to undergo rigorous imprisonment for different periods for the offences punishable under Sections 364, 395, and 201 read with Section 34 of the IPC. The sentences were directed to run concurrently.

2.7 Being aggrieved thereby, accused Nos. 1 to 3 preferred their respective appeals before the High Court. The High Court, by the impugned judgement, dismissed the appeals preferred by Shibu @ Shibu Singh (accused No. 1) and Boby (accused No. 3/appellant herein), but was pleased to allow the appeal preferred by Biju @ Babu (accused No. 2), thereby setting aside the judgment of conviction and sentence of the trial court insofar as Biju @ Babu (accused No. 2) was concerned.

3. Being aggrieved thereby, the present appeal.

4. We have heard Shri R. Basant, learned Senior Counsel appearing on behalf of the appellant-Boby and Shri K.N. Balgopal, learned Senior Counsel appearing on behalf of the respondent-State of Kerala.

5. Shri Basant, learned Senior Counsel would submit that both the trial court and the High Court have erred in convicting and sentencing the appellant-Boby for the offences punishable under Sections 395, 365, 364, 201, 380, 302 and 302 read with Section 34 of the IPC. He submitted that the prosecution has failed to prove its case against the appellant-Boby beyond reasonable doubt and that there are glaring lacunae in the case of the prosecution.

It is submitted that even the High Court found that there were discrepancies in the statements of the prosecution witnesses who were examined during the trial. It is further submitted that the High Court also observed the glaring discrepancies in the statement of the Complainant/PW1 with regard to Biju @ Babu (accused No. 2) on the basis of which, the High Court acquitted the said accused Biju @ Babu (accused No. 2) of all the charges levelled against him.

6. Shri Basant submitted that a Memorandum under Section 27 of the Indian Evidence Act, 1872 (hereinafter referred to as "the Evidence Act") is required in cases of recovery initiated at the instance of an accused person, based on the

statements made before the Police. It is submitted that, on perusal of evidence on record in the instant matter, neither such Memorandum under Section 27 of the Evidence Act was prepared at the time of the recovery of the body of deceased Vishwanathan, nor were signatures of independent or panch witnesses taken at the time of said recovery. It is further submitted that it was the duty of the Investigating Officer (for short, 'IO') to have prepared the said Memorandum while acting on the information obtained from Boby (appellant herein) and that such inaction on part of the IO would vitiate the prosecution case, at least insofar as proving the recovery of the dead body of the deceased is concerned.

7. Shri Basant submitted that the trial court solely relied on the last seen theory and held that the prosecution had proved the same with regard to the chain of circumstances in this case. It is further submitted that conviction of an accused person cannot be sustained only on the basis of proving the last seen theory as the same was required to be corroborated with the statements of the witnesses that are examined during trial along with other evidence placed on record. While pointing out the discrepancies in the statements of prosecution witnesses, which were relied upon by the courts below, it was submitted that the conviction of the appellant herein could not be sustained on the said ground alone.

8. Shri Balgopal, on the contrary, submits that the courts below have concurrently found the accused persons guilty of the offences charged with. The prosecution has proved the incriminating circumstances beyond reasonable doubt. It has also proved the chain of circumstances which leads to no other conclusion than the guilt of the accused. He relies on the judgment of this Court in the case of Suresh Chandra Bahri v. State of Bihar1.

9. Undisputedly, the present case rests entirely on circumstantial evidence. A threeJudges Bench of this Court in the case of Sharad Birdhichand Sarda v. State of Maharashtra2, has laid down the golden principles with regard to conviction in a case which rests entirely on circumstantial evidence. We may gainfully refer to the following observations of this Court in the said case:

"153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. It may be noted here that this Court indicated that the circumstances concerned "must or should" and not "may be" established. There is not only a grammatical but a legal distinction between "may be proved" and "must be or should be proved" as was held by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra [(1973) 2 SCC 793 : 1973 SCC (Cri) 1033 : 1973 Crl LJ 1783] where the observations were made: [SCC para 19, p. 807: SCC (Cri) p. 1047]

"Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused."

10. It can thus clearly be seen that it is necessary for the prosecution that the circumstances from which the conclusion of the guilt is to be drawn should be fully established. The Court holds that it is a primary principle that the accused 'must be' and not merely 'may be' guilty before a court can convict the accused. It has been held that there is not only a grammatical but a legal distinction between 'may be proved' and "must be or should be proved".

It has been held that the facts so established should be consistent only with the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty. It has further been held that the circumstances should be such that they exclude every possible hypothesis except the one to be proved. It has been held that there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probabilities the act must have been done by the accused.

11. In the light of these guiding principles, we have to examine the present case.

12. The trial court has relied on the following circumstances:

(i) Last seen together with the deceased; (ii) Recovery of the stolen material including jewellery from accused No.3Boby;

(iii) Recovery of spade from accused No. 1Shibu @ Shibu Singh;

(iv) Recovery of the dead body at the instance of accused No. 3Boby;

13. The trial court had convicted accused Nos. 1 to 3 upon finding that the prosecution had proved the aforesaid circumstances against them. In appeal, the

High Court found that the prosecution had failed to prove the case against Biju @ Babi (accused No. 2) and accordingly acquitted him.

14. The learned Division Bench of the High Court, though found that the prosecution had failed to prove the case beyond reasonable doubt insofar as accused No.2 was concerned, held that, insofar as accused Nos. 1 and 3 were concerned, the prosecution had proved the case beyond reasonable doubt.

15. It could thus be seen that the trial court as well as the High Court found the circumstance of the accused persons having been last seen in the company of the deceased on the basis of the evidence of PW1, as the main incriminating circumstance. The High Court further found that, insofar as Boby (accused No.3/appellant herein) was concerned, there was an additional evidence with regard to the recovery of the dead body and ornaments. Insofar as Shibu @ Shibu Singh (accused No. 1) was concerned, the High Court found that the recovery of spade which was used to dig the burial site where the dead body was concealed, was an additional circumstance which proved the guilt of Shibu @ Shibu Singh (accused No. 1).

16. Insofar as last seen theory is concerned, it will be relevant to refer to the following observations of this Court in the case of State of U.P. v. Satish3:

"22. The lastseen theory comes into play where the timegap between the point of time when the accused and the deceased were last seen alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. It would be difficult in some cases to positively establish that the deceased was last seen with the accused when there is a long gap and possibility of other persons coming in between exists. In the absence of any other positive evidence to conclude that the accused and the deceased were last seen together, it would be hazardous to come to a conclusion of guilt in those cases. In this case there is positive evidence that the deceased and the accused were seen together by witnesses PWs 3 and 5, in addition to the evidence of PW 2."

17. It could thus clearly be seen that the lastseen theory comes into play where the timegap between the point of time when the accused and the deceased were last seen alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. If the gap between the time of last seen and the deceased found dead is long, then the possibility of other person coming in between cannot be ruled out.

18. In the present case, according to the complainant/PW1, the deceased was taken away by the accused persons on the night of 20th November 2000 at 08.00 p.m. Though, it is the contention of the appellant that he was taken into illegal custody on 21st November, 2000 and his arrest was shown on 25th November, 2000, we do not

find it necessary to go into that aspect of the matter. A perusal of the evidence of the IO would reveal that, on 25th November, 2000, on the basis of secret information that Boby (accused No.3/appellant herein) was standing at Manaloor Kadavu, he proceeded to that place and arrested him at 02.00 p.m.

He stated that, on the basis of his confession, various articles were seized from his house. He further stated that thereafter on the same day, the accused led them towards the place in Bharathapuzha where the deceased was buried. He stated that, after seeing the loose soil, the scene was guarded as it was an odd time. He further stated that, on 26th November 2000, as led by accused No. 3, they reached the place and the Tahasildar, Ottapalam prepared the inquest report.

19. It can thus clearly be seen that firstly, there is a gap of at least five days from the date on which, according to PW1, the deceased was taken away by the accused persons and the dead body was recovered. However, the crucial question would be as to whether it can be held that the prosecution had established beyond reasonable doubt that the recovery of dead body was at the instance of Boby (accused No. 3/appellant herein). Only in the event the prosecution establishes that the recovery of the body was at the instance of Boby (accused No. 3/appellant herein), the relevancy of the gap of five days would come.

20. As early as 1946, the Privy Council had considered the provisions of Section 27 of the Evidence Act in the case of Pulukuri Kotayya and Others v. KingEmperor4. It will be relevant to refer to the following observations of the Privy Council in the said case:

"The second question, which involves the construction of s. 27 of the Indian Evidence Act, will now be considered. That section and the two preceding sections, with which it must be read, are in these terms. [His Lordship read ss. 25, 26 and 27 of the Evidence Act and continued :] Section 27, which is not artistically worded, provides an exception to the prohibition imposed by the preceding section, and enables certain statements made by a person in police custody to be proved. The condition necessary to bring the section into operation is that the discovery of a fact in consequence of information received from a person accused of any offence in the custody of a police officer must be deposed to, and there upon so much of the information as relates distinctly to the fact thereby discovered may be proved.

The section seems to be based on the view that if a fact is actually discovered in consequence of information given, some guarantee is afforded thereby that the information was true, and accordingly can be safely allowed to be given in evidence; but clearly the extent of the information admissible must depend on the exact nature of the fact discovered to which such information is required to relate. Normally the section is brought into operation when a person in police custody produces from

some place of concealment some object, such as a dead body, a weapon or ornaments, said to be connected with the crime of which the informant is accused.

Mr. Megaw for the Crown, has argued that in such a case the "fact discovered" is the physical object produced, and that any information which relates distinctly to that object can be proved. On this view information given by a person that the body produced is that of a person murdered by him, that the weapon produced is the one used by him in the commission of a murder, or that the ornaments produced were stolen in a dacoity, would all be admissible. If this be the effect of s. 27, little substance would remain in the ban imposed by the two preceding sections on confessions made to the police, or by persons in police custody. That ban was presumably inspired by the fear of the legislature that a person under police influence might be induced to confess by the exercise of undue pressure.

But if all that is required to lift the ban be the inclusion in the confession of information relating to an object subsequently produced, it seems reasonable to suppose that the persuasive powers of the police will prove equal to the occasion, and that in practice the ban will lose its effect. On normal principles of construction their Lordships think that the proviso to s. 26, added by s. 27, should not be held to nullify the substance of the section. In their Lordships' view it is fallacious to treat the "fact discovered" within the section as equivalent to the object produced; the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given must relate distinctly to this fact.

Information as to past user, or the past history, of the object produced is not related to its discovery in the setting in which it is discovered. Information supplied by a person in custody that "I will produce a knife concealed in the roof of my house" does not lead to the discovery of a knife; knives were discovered many years ago. It leads to the discovery of the fact that a knife is concealed in the house of the informant to his knowledge, and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant. But if to the statement the words be added "with which I stabbed A.", these words are inadmissible since they do not relate to the discovery of the knife in the house of the informant."

[Emphasis supplied]

21. It could thus be seen that Section 27 of the Evidence Act requires that the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given must relate distinctly to the said fact. The information as to past user, or the past history, of the object produced is not related to its discovery. The said view has been consistently followed by this Court in a catena of cases.

22. This Court, in the case of Chandran v. The State of Tamil Nadu5, had an occasion to consider the evidence of recovery of incriminating articles in the absence of record of the statement of accused No. 1. In the said case also, no statement of accused No. 1 was recorded under Section 27 of the Evidence Act leading to the recovery of jewels. The Court found that the Sessions Judge as well as the High Court had erred in holding that the jewels were recovered at the instance of accused No. 1 therein in pursuance to the confessional statement (Ex. P27) recorded before PW34 therein. It will be relevant to refer to the following observations of this Court in the said case:

"36. Thus the fact remains that no confessional statement of A1 causing the recovery of these jewels was proved under Section 27, Evidence Act."

23. It is thus clear that this Court refused to rely on the recovery of jewels since no confessional statement of the accused was proved under Section 27 of the Evidence Act.

24. It will also be relevant to refer to the following observations of this Court in the case of State of Karnataka v. David Rozario and Another6:

"5. This information which is otherwise admissible becomes inadmissible under Section 27 if the information did not come from a person in the custody of a police officer or did come from a person not in the custody of a police officer. The statement which is admissible under Section 27 is the one which is the information leading to discovery. Thus, what is admissible being the information, the same has to be proved and not the opinion formed on it by the police officer. In other words, the exact information given by the accused while in custody which led to recovery of the articles has to be proved.

It is, therefore, necessary for the benefit of both the accused and the prosecution that information given should be recorded and proved and if not so recorded, the exact information must be adduced through evidence. The basic idea embedded in Section 27 of the Evidence Act is the doctrine of confirmation by subsequent events. The doctrine is founded on the principle that if any fact is discovered as a search made on the strength of any information obtained from a prisoner, such a discovery is a guarantee that the information supplied by the prisoner is true. The information might be confessional or noninculpatory in nature but if it results in discovery of a fact, it becomes a reliable information.

It is now well settled that recovery of an object is not discovery of a fact envisaged in the section. Decision of the Privy Council in Pulukuri Kottaya v. Emperor [AIR 1947 PC 67 : 48 Cri LJ 533 : 74 IA 65] is the mostquoted authority for supporting the interpretation that the "fact discovered" envisaged in the section embraces the place from which the object was produced, the knowledge of the accused as to it, but

the information given must relate distinctly to that effect. (See State of Maharashtra v. Damu [(2000) 6 SCC 269 : 2000 SCC (Cri) 1088 : 2000 Cri LJ 2301]."

[Emphasis supplied]

25. A threeJudges Bench of this Court recently in the case of Subramanya v. State of Karnataka7, has observed thus:

"82. Keeping in mind the aforesaid evidence, we proceed to consider whether the prosecution has been able to prove and establish the discoveries in accordance with law. Section 27 of the Evidence Act reads thus:

"27. How much of information received from accused may be proved.-

Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved."

83. The first and the basic infirmity in the evidence of all the aforesaid prosecution witnesses is that none of them have deposed the exact statement said to have been made by the appellant herein which ultimately led to the discovery of a fact relevant under Section 27 of the Evidence Act.

84. If, it is say of the investigating officer that the accused appellant while in custody on his own free will and volition made a statement that he would lead to the place where he had hidden the weapon of offence, the site of burial of the dead body, clothes etc., then the first thing that the investigating officer should have done was to call for two independent witnesses at the police station itself. Once the two independent witnesses would arrive at the police station thereafter in their presence the accused should be asked to make an appropriate statement as he may desire in regard to pointing out the place where he is said to have hidden the weapon of offence etc.

When the accused while in custody makes such statement before the two independent witnesses (panch-witnesses) the exact statement or rather the exact words uttered by the accused should be incorporated in the first part of the panchnama that the investigating officer may draw in accordance with law. This first part of the panchnama for the purpose of Section 27 of the Evidence Act is always drawn at the police station in the presence of the independent witnesses so as to lend credence that a particular statement was made by the accused expressing his willingness on his own free will and volition to point out the place where the weapon of offence or any other article used in the commission of the offence had been hidden.

Once the first part of the panchnama is completed thereafter the police party along with the accused and the two independent witnesses (panch-witnesses) would proceed to the particular place as may be led by the accused. If from that particular place anything like the weapon of offence or blood stained clothes or any other article is discovered then that part of the entire process would form the second part of the panchnama. This is how the law expects the investigating officer to draw the discovery panchnama as contemplated under Section 27 of the Evidence Act. If we read the entire oral evidence of the investigating officer then it is clear that the same is deficient in all the aforesaid relevant aspects of the matter."

26. This Court has elaborately considered as to how the law expects the IO to draw the discovery panchnama as contemplated under Section 27 of the Evidence Act. In the present case, leave aside the recovery panchnama being in accordance with the aforesaid requirement, there is no statement of Boby (accused No. 3/appellant herein) recorded under Section 27 of the Evidence Act. We are, therefore, of the considered view that the prosecution has failed to prove the circumstance that the dead body of the deceased was recovered at the instance of Boby (accused No. 3/appellant herein).

27. Another circumstance on which the High Court relied was that the recovery of ornaments was at the instance of Boby (accused No. 3/appellant herein). We find that both the trial court and the High Court have patently erred in relying on such recovery. The trial court found that there was enough material to show that the alleged recovery memo was a fabricated document and the alleged recovery as per Ext. P14 is farce. However, the trial court still relied on the said recovery to convict the accused. In our view, the finding of the trial court in this regard is totally perverse which has been confirmed by the High Court.

28. Insofar as Shibu @ Shibu Singh (accused No. 1) is concerned, the additional circumstance sought to be relied on by the trial court and the High Court is the alleged recovery of the spade. It is to be noted that the spade was also recovered from the same place from where the dead body of the deceased was alleged to have been recovered at the instance of Boby (accused No. 3/appellant herein). The trial court again held that the place from where the spade was recovered was already known from the disclosure statement of Boby (accused No. 3/appellant herein); however, it still held the recovery of the said spade to be admissible in evidence. It is thus clear that the said recovery was from a place which was already known and not exclusively within the knowledge of Shibu @ Shibu Singh (accused No. 1). We find that the trial court has again committed perversity in arriving at such a finding.

29. It is thus clear that the only circumstance that now remains is the circumstance of the accused last seen in the company of the deceased on the basis of the evidence of PW1. In that view of the matter, we find that, solely on the basis of last seen theory,

the conviction could not have been recorded. The prosecution has utterly failed to prove that the recovery of the dead body of the deceased was at the instance of Boby (accused No. 3/appellant herein). The recovery of the articles from the house of Boby (accused No. 3/appellant herein), even according to the trial court, is farce and fabricated. The recovery of the spade at the instance of Shibu @ Shibu Singh (accused No. 1) is from a place which, even according to the trial court, was also known on account of the disclosure statement made by Boby (accused No. 3/appellant herein).

30. In that view of the matter, we find that the prosecution has utterly failed to prove the chain of incriminating circumstances which leads to no other conclusion than the guilt of the accused.

31. Insofar as the reliance placed by Shri Balgopal, learned Senior Counsel on the case of Suresh Chandra Bahri (supra) 26 is concerned, it is totally misplaced inasmuch as in paragraph 40, this Court has observed thus:

"40. Before we discuss the merits or demerits of the aforesaid submissions we would like to state that the law relating to conviction based on circumstantial evidence is well settled and it hardly requires a detailed discussion on this aspect. Suffice to say that in a case of murder in which the evidence that is available is only circumstantial in nature then in that event the facts and circumstances from which the conclusion of guilt is required to be drawn by the prosecution must be fully established beyond all reasonable doubt and the facts and circumstances so established should not only be consistent with the guilt of the accused but they also must entirely be incompatible with the innocence of the accused and must exclude every reasonable hypothesis consistent with his innocence."

32. It will further be relevant to refer to the following observations of this Court in the said case:

"71. The provisions of Section 27 of the Evidence Act are based on the view that if a fact is actually discovered in consequence of information given, some guarantee is afforded thereby that the information was true and consequently the said information can safely be allowed to be given in evidence because if such an information is further fortified and confirmed by the discovery of articles or the instrument of crime and which leads to the belief that the information about the confession made as to the articles of crime cannot be false."

33. A perusal of paragraph 71 of the said judgment would reveal that the Court has reiterated that the two essential requirements for the application of Section 27 of the Evidence Act are that (1) the person giving information must be an accused of any offence and (2) he must also be in police custody. The Court held that the provisions of Section 27 of the Evidence Act are based on the view that if a fact is actually

discovered in consequence of information given, some guarantee is afforded thereby that the information was true and consequently the said information can safely be allowed to be given in evidence.

34. In the facts of the said case, the Court found that there was, in fact, a confessional statement of the disclosure made by the appellant Gurbachan Singh which was confirmed by the recovery of the incriminating articles. As such, the Court believed the disclosure statement and the evidence led in that behalf. As already stated hereinabove, in the present case, there is no confessional statement of Boby (accused No.3/appellant herein) recorded with regard to recovery of the dead body of the deceased.

35. In the result, the appeal is allowed.

36. The judgment dated 18th December 2004 passed by the trial Court, thereby convicting the appellant under Sections 395, 365, 364, 201, 380, 302 read with Section 34 of the IPC and the impugned judgment dated 25th August 2008, passed by the High Court affirming the same are set aside. The appellant is acquitted of all the charges charged with. The bail bonds of the accused shall stand discharged.

37. Pending application(s), if any, shall stand disposed of.

.....J. [B.R. Gavai]

.....J. [M.M. Sundresh]

New Delhi;

January 12, 2023.

1 1995 Supp. (1) SCC 80

2 (1984) 4 SCC 116

3 (2005) 3 SCC 114

4 1946 SCC OnLine PC 47

5 (1978) 4 SCC 90

6 (2002) 7 SCC 728

7 2022 SCC OnLine SC 1400

ITEM NO.102/1

Boby Vs. State of Kerala

[Criminal Appeal No(s). 1439/2009]

Date: 12-01-2023

This appeal was called on for hearing today.

CORAM:

HON'BLE MR. JUSTICE B.R. GAVAI
HON'BLE MR. JUSTICE M.M. SUNDRESH

For Appellant(s)

Mr. R. Basant, Sr. Adv.
Mr. Abdulla Naseeh V.T., Adv.
Meena K. Poulose, Adv.
Mr. Akshay, Adv.
Mr. Ashok Basoya, Adv.
Ms. Shruti Jose, Adv.
Mr. P. S. Sudheer, AOR

For Respondent(s)

Mr. K.N. Balgopal, Sr. Adv.
Mr. Harshad V. Hameed, AOR
Mr. Dileep Poolakkot, Adv.
Ms. Ashly Harshad, Adv.

UPON hearing the counsel the Court made the following

ORDER

The appeal is allowed in terms of the signed reportable judgment. Pending application(s), if any, shall stand disposed of.

The concluding paragraph of the judgment reads as under:

"The judgment dated 18th December 2004 passed by the trial Court, thereby convicting the appellant under Sections 395, 365, 364, 201, 380, 302 read with Section 34 of the IPC and the impugned judgment dated 25th August 2008, passed

by the High Court affirming the same are set aside. The appellant is acquitted of all the charges charged with. The bail bonds of the accused shall stand discharged."

(Geeta Ahuja)	(Anju Kapoor)
Assistant Registrar-cum-PS	Court Master

(signed reportable judgment containing the reasons is placed on the file)

signed order dated 12.1.2023 along with ROP has already been uploaded and sent to the concerned Branch.

Boby Vs.

State of Kerala

[Criminal Appeal No. 1439 of 2009]

For the reasons to be recorded separately, the appeal is allowed.

The judgment and order dated 18.12.2004 of the trial Court of conviction and sentence of the appellant punishable under Sections 395, 365, 364, 201, 380, 302 read with Section 34 of the Indian Penal Code and the judgment and order dated 25.08.2008 of the High Court affirming the same are set aside.

The appellant is acquitted of all the charges charged with. The bail bonds of the accused shall stand discharged.

Pending application(s), if any, shall stand disposed of.

.....J. (B.R. Gavai)

.....J. (M.M. Sundresh)

New Delhi

January 12, 2023

ITEM NO.102

Boby Vs. State of Kerala

[Criminal Appeal No(s). 1439/2009]

Date: 12-01-2023

This appeal was called on for hearing today.

CORAM:

HON'BLE MR. JUSTICE B.R. GAVAI
HON'BLE MR. JUSTICE M.M. SUNDRESH

For Appellant(s)

Mr. R. Basant, Sr. Adv.
Mr. Abdulla Naseeh V.T., Adv.
Meena K. Poulose, Adv.
Mr. Akshay, Adv.
Mr. Ashok Basoya, Adv.
Ms. Shruti Jose, Adv.
Mr. P. S. Sudheer, AOR

For Respondent(s)

Mr. K.N. Balgopal, Sr. Adv.
Mr. Harshad V. Hameed, AOR
Mr. Dileep Poolakkot, Adv.
Ms. Ashly Harshad, Adv.

UPON hearing the counsel the Court made the following

ORDER

For the reasons to be recorded separately, the appeal is allowed.

The judgment and order dated 18.12.2004 of the trial Court of conviction and sentence of the appellant punishable under Sections 395, 365, 364, 201, 380, 302 read with Section 34 of the Indian Penal Code and the judgment and order dated 25.08.2008 of the High Court affirming the same are set aside.

The appellant is acquitted of all the charges charged with. The bail bonds of the accused shall stand discharged.

Pending application(s), if any, shall stand disposed of.

(Geeta Ahuja)
Assistant Registrar-cum-PS

(Anju Kapoor)
Court Master

(Signed Order is placed on the file)

C. Legal Article

Plea Bargaining

The Supreme court recently issued guidelines on disposing of cases through Plea Bargaining in an attempt to explore options for popularizing the very concept. However, it has once again started the eternal debate among legal scholars surrounding its fairness and constitutionality.

To begin with, Plea Bargaining can be defined as the system of negotiating an agreement between the prosecution and defence wherein the defendant pleads guilty to a lesser offence or one or more offences charged in return for a lesser sentence or dismissal of other charges. It is based on the principle of 'Nolo Contendere', literally meaning 'I do not wish to contend'. Although not available for all types of offences, Plea Bargaining has been used as a tool to reduce enforcement costs and save courts time to focus on more significant and pressing cases.

Although there have been historical instances that can be labelled as plea bargains, the modern concept only emerged in the 19th century, having traces in American Judiciary.

India did not feel the need for Plea Bargaining due to the presence of the Jury system until the 1960s when legal representation was permitted.

Highlighting the glaring inefficiency of the Indian Criminal Justice system, with a multitude of backlogs, excessively long trial lifespans and surprisingly low rate of conviction, The Law Commission of India, in its 142nd report, in 1991, implicitly underlined the need for Plea Bargaining. It made its recommendation based on the efficacy of the American model. The report further stated that such a practice is consistent with both the Constitution and the Fairness Principles. It further addressed coherent contentions and further conducted a survey which established that the majority of the legal community was in favour of the such practice.

The Law Commission, in its subsequent reports as well underscored the need for such a practice. In its 154th report in 1996, it called for having a remedial measure for the timely disposal of trials for the better of under-trial prisoners. Then in 2001, in its 177th report, the need for the concept of Plea Bargaining was reiterated.

Malimath Committee was set up under the NDA government in 2003 to suggest improvements to India's century-old criminal justice system, which too recommended the implementation of the plea bargaining concept for speedy disposal of cases and reduced burden on courts.

The question of Plea Bargaining's legitimacy and constitutionality was then settled in **State Of Gujarat vs Natwar Harchandji Thakor (2005) 1 GLR 709** in 2005, the court recognized the value of plea bargaining and that each "Plea of guilt", which is considered to be part of the process of a criminal trial, should not be assessed factually but rather evaluated on case to case basis. It is a legal issue that must be resolved on a case-by-case basis. The court stated that the entire purpose of the law is to give an easy, inexpensive, and quick justice by resolving conflicts, taking into account the dynamic character of law and society.

Eventually, Chapter XXI A was inserted in the Code of Criminal Procedure, 1973, by the Criminal Law (Amendment) Act, 2005. It was enforceable from 5th July 2006.

Plea Bargaining is mainly of three types: Charge bargaining, Sentence bargaining and Fact bargaining. Prevalent in Criminal cases, Charge Bargaining is when the defendant agrees to plead guilty to a lesser charge in exchange for the dismissal of more severe charges, e.g. pleading guilty for aggravated assault rather than attempting to murder with the primary intent of getting a lesser sentence. This is also the purpose of Sentence Bargaining; however, here, the defendant agrees to plead guilty to all the stated charges for consideration of a lighter sentence. The third sort of plea and least frequently utilized is fact bargaining, in which specific facts are admitted, doing away with the need for the prosecutor to prove them in exchange for an agreement not to bring up other facts.

Under the CrPC, plea bargaining is available for offences that are punishable by up to seven years imprisonment. This instrument also cannot be used in offences that affect the socio-economic condition of the country or where the offence is committed against a woman or a child below 14 years of age.

As in other countries, plea bargaining in India has been the subject of controversy, with some arguing that it can result in the accused person being pressured to plead guilty to crimes they did not commit. Others have argued that plea bargaining can help to reduce the burden on the criminal justice system and facilitate the resolution of cases that might otherwise be bogged down in the courts.

There are several advantages to plea bargaining in India:

1. Faster resolution of cases: Plea bargaining allows for the resolution of criminal cases more quickly and efficiently, as it allows the accused to avoid the time and cost of a trial.

2. Reduced burden on the justice system: Plea bargaining helps to reduce the workload of the courts and the prosecution, as it allows for the resolution of cases

without the need for a trial. This can help to free up resources and allow the justice system to focus on more severe cases.

3. Leniency for the accused: Plea bargaining allows the accused to receive a lesser sentence or have other charges dismissed in exchange for a guilty plea. This can benefit those willing to accept responsibility for their actions and avoid the risk of a harsher sentence at trial.

4. Victim satisfaction: Plea bargaining can provide closure for victims, as it allows for a resolution to the case without needing a lengthy and emotionally complicated trial.

While plea bargaining can have certain advantages, it also has some potential disadvantages in the Indian legal system. Some of the main drawbacks of plea bargaining include the following:

1. Loss of the right to a fair trial: By pleading guilty to a lesser charge, the accused person is giving up their right to a fair trial. This can be problematic if the accused is innocent and is pressured into pleading guilty to avoid the risk of a harsher sentence at trial.

2. Incentive for prosecutors to overcharge: If a prosecutor knows that the accused is likely to accept a plea bargain, they may be more likely to bring more severe charges in the hope of negotiating a plea bargain for a lesser charge. This can result in accused persons being charged with more serious crimes than they actually committed.

3. Lack of accountability for the accused: Plea bargaining can result in the accused person avoiding accountability for their actions, as they are able to plead guilty to a lesser charge without having to go through a trial. This is a form of leniency that may not be justified in some instances.

4. Lack of closure for victims: While plea bargaining can provide closure for some victims, it may not be sufficient for others who want to see the accused held fully accountable for their actions.

5. Its critics also claim it violates Article 20(3), which prohibits self-incrimination.

The guidelines and suggestions issued by the Supreme court as far as they relate to Plea Bargaining involve brief training sessions for Judicial officers, counselling the accused if he is willing to accept his guilt with the aid of the District Legal Services Authority. Moreover, the list of such accused should be sent to the Director General of Police so they can check the convict's criminal history to see if the accused is prepared to accept the plea and file a High Court application. Although the

suggestions on the bench of Justices Sanjay Kishan Kaul and Abhay S. Oka are a step in the right direction, some potential threats need to be answered.

While plea bargaining can be a helpful tool for resolving criminal cases in India, it is essential to carefully consider the potential disadvantages and ensure that the rights of the accused and the interests of justice are protected.

2. Study Material-G.K.

GOVERNOR GENERALS AND VICEROYS OF INDIA

Take a look at the table below that shows all the Governor Generals of Bengal

Year/ Duration	Name	Events during tenure
1772-1785	Warren Hastings	He was the first Governor-General of Bengal and brought an end to the dual system of administration. His achievements include Regulating Act of 1773, establishment of Supreme Court at Calcutta and the Asiatic Society of Bengal. He fought the first Anglo-Maratha War and signed the Treaty of Salbai. The first English translation of Bhagavad Gita was done in his tenure and lastly Pitt's India Act-1784 was brought in his regime.
1786-1793	Lord Cornwallis	He established appellate courts, lower grade courts and Sanskrit college. During his tenure the wars that were fought were the Third Anglo-Mysore War and Treaty of Seringapatam was signed. Introduction of Permanent Settlement and civil services were also conducted during his tenure.
1793-1798	Sir John Shore	Charter act of 1793 was passed as he came in. Policy of Non-intervention and Battle of Kharda are his achievements.
1798-1805	Lord Wellesley	He is extremely well known for introducing Subsidiary Alliance System and fighting wars like Fourth Anglo- Mysore war and the Treaty of Bassein, Second Anglo – Maratha war. He established the Madras presidency and also Fort William College in Calcutta
1805-1807	Sir George Barlow	He was the Acting Governor-General of India until Lord Minto arrived. He is the reason for diminishing area of British territory due to his passion for economy and retrenchment. The Mutiny of Vellore took place in 1806 under his tenure.
1807-1813	Lord Minto I	Treaty of Amritsar was concluded with Maharaja Ranjit Singh in 1809 when Lord Minto came and

		he introduced the Charter Act of 1813 in India.
1813-1823	Lord Hastings	During his tenure the following events took place: The end of policy of Non-intervention Anglo-Nepal War (1814-16) and the Treaty of Sagauli, 1816 Third Anglo-Maratha war Abolition of Peshwaship Establishment of the Ryotwari System in Madras and Bombay Mahalwari system in north-western Provinces and Bombay
1823-1828	Lord Amherst	During his time the annexation of Assam happened leading to the first Burmese war of 1824, and a mutiny broke out in Barrackpore.

Governor General of India

This post was created after the passing of the Charter Act of 1833. The first Governor General of India was William Bentinck.

This post was administrative and they reported directly to the East India Company's court of directors. Take a look at the table below.

Year	**Name of the Governor General**	**Major Events during tenure**
1828-1835	Lord William Bentinck	First Governor-General of India as per the rules in the Charter Act of 1833. He abolished Sati system, suppressed the Thugee system along with infanticide and child sacrifices. It was in his regime the English Education Act of 1835 was proposed and Medical College and Hospital, Kolkata was established.
1835-1836	Lord Charles Metcalfe	He is famously called the Liberator of the Indian Press because he openly withdrew the restraints on an open press in India
1836-1842	Lord Auckland	Improvement of domestic schools took place in his regime. He is also responsible for the expansion of the commercial industry of India. The first Anglo-Afghan war was fought in his

		tenure.
1842-1844	Lord Ellenborough	Sindh was annexed during his tenure.
1844-1848	Lord Hardinge I	First Anglo Sikh War took place in his time.
1848-1856	Lord Dalhousie	He is responsible for the following: Second Anglo-Sikh War (1848-49) The annexation of Lower Burma (1852) Introduction of the Doctrine of Lapse Wood's Dispatch 1854 First railway line connecting Bombay and Thane in 1853 Establishment of PWD Indian Post Office Act
1856-1857	Lord Canning	The Calcutta, Madras and Bombay Universities were established and the Revolt of 1857 took place during his tenure

Viceroys of India

It was after the revolt of 1857 took place that the British Crown took it all under its direct control. Government of India Act 1858 was passed and the post of the Governor General of India was replaced by Viceroy of India. He was directly appointed by the British Government. Lord Canning was the first viceroy of India.

Year	**Name of Viceroy**	**Events during the tenure**
1856-1862	Lord Canning	The events that took place under his regime were Revolt of 1857 Establishment of three universities at Calcutta, Madras and Bombay in 1857 Abolition of East India Company and transfer of power to the British Queen Government of India Act, 1858 Indian Councils Act of 1861
1864-1869	Lord John Lawrence	Bhutan War took place in 1865 and the establishment of the High Courts at Calcutta, Bombay and Madras were done under his regime
1876-1880	Lord Lytton	The Vernacular Press Act of 1878 was passed followed by the Arms Act (1878), Second Afghan War in 1878 to 1880. Queen Victoria was crowned the Queen of India in his regime.
1880-1884	Lord Ripon	The first Factory Act was passed in 1881 and Vernacular Press Act was repealed by him in

		1882. Local self-government was formed during his regime and Ilbert Bill controversy arose followed by Hunter Commission on education (1882)
1884-1888	Lord Dufferin	The two major events in his tenure were Third Burmese War and the establishment of Indian National Congress
1888-1894	Lord Lansdowne	He brought the Indian Councils Act in 1892 and set up the Durand Commission in 1893
1899-1905	Lord Curzon	He is responsible for the Indian Universities Act Partition of Bengal Appointment of Police Commission (1902) Appointment of Universities Commission (1902)
1905-1910	Lord Minto II	Swadeshi Movement took place from 1905-11 and establishment of Muslim League happened in his regime. Morley-Minto Reforms were brought about in 1909.
1910-1916	Lord Hardinge II	His tenure witnessed: Annulment of Partition of Bengal Transfer of capital from Calcutta to Delhi Establishment of the Hindu Mahasabha
1916-1921	Lord Chelmsford	Lucknow pact , Champaran Satyagraha , Montague's August Declaration, Government of India Act, Rowlatt Act , Jallianwalan Bagh massacre , Launch of Non-Cooperation and Khilafat Movements
1921-1926	Lord Reading	Chauri Chaura incident took place in 1922 followed by withdrawal of Non-Cooperation Movement. Also establishment of Swaraj Party happened and Kakori train robbery took place in 1925.
1926-1931	Lord Irwin	Simon Commission came to India in 1927 when he was the Viceroy. The other events were, Harcourt Butler Indian States Commission (1927), Nehru Report (1928), Lahore session of the Congress in 1929, Dandi March and the Civil Disobedience Movement (1930), First Round Table Conference (1930), Gandhi-Irwin Pact (1931)
1931-1936	Lord Willingdon	The following happened : Communal Award (1932)

		Second & Third Round Table Conference (1932) Poona Pact (1932) Government of India Act of 1935
1936-1944	Lord Linlithgow	His tenure witnessed the Congress ministries resignation following the Second World War in 1939, followed by Tripuri Crisis & formation of Forward Bloc. Then came the August Offer in 1940 and the formation of the Indian National Army, Cripps Mission and Quit India Movement
1944-1947	Lord Wavell	Wavell Plan and the Simla Conference (1942) Cabinet Mission (1946) Direct Action Day (1946) Announcement of end of British rule in India by Clement Attlee (1947)
1947-1948	Lord Mountbatten	Radcliff commission of 1947 followed by India's Independence on 15th August 1947

C Rajgopalachari was the last Governor General of India and the post was abolished in 1950 for good.

3. Study Material-Language

Synonyms

Synonyms are words or phrases which have the same or nearly the same meaning as other words or phrases in the same language:

Amazing	incredible, unbelievable, improbable, fabulous, wonderful, fantastic, astonishing, astounding, extraordinary
Anger	enrage, infuriate, arouse, nettle, exasperate, inflame, madden
Angry	mad, furious, enraged, excited, wrathful, indignant, exasperated, aroused, inflamed
Answer	reply, respond, retort, acknowledge
Ask	question, inquire of, seek information from, put a question to, demand, request, expect, inquire, query, interrogate, examine, quiz
Awful	dreadful, terrible, abominable, bad, poor, unpleasant
Bad	evil, immoral, wicked, corrupt, sinful, depraved, rotten, contaminated, spoiled, tainted, harmful, injurious, unfavorable, defective, inferior, imperfect, substandard, faulty, improper, inappropriate, unsuitable, disagreeable, unpleasant, cross, nasty, unfriendly, irascible, horrible, atrocious, outrageous, scandalous, infamous, wrong, noxious, sinister, putrid, snide, deplorable, dismal, gross, heinous, nefarious, base, obnoxious, detestable, despicable, contemptible, foul, rank, ghastly, execrable
Beautiful	pretty, lovely, handsome, attractive, gorgeous, dazzling, splendid, magnificent, comely, fair, ravishing, graceful, elegant, fine, exquisite, aesthetic, pleasing, shapely, delicate, stunning, glorious, heavenly, resplendent, radiant, glowing, blooming, sparkling
Begin	start, open, launch, initiate, commence, inaugurate, originate
Big	enormous, huge, immense, gigantic, vast, colossal, gargantuan, large, sizable, grand, great, tall, substantial, mammoth, astronomical, ample, broad, expansive, spacious, stout, tremendous, titanic, mountainous
Brave	courageous, fearless, dauntless, intrepid, plucky, daring, heroic, valorous, audacious, bold, gallant, valiant, doughty, mettlesome
Break	fracture, rupture, shatter, smash, wreck, crash, demolish, atomize
Bright	shining, shiny, gleaming, brilliant, sparkling, shimmering, radiant, vivid, colorful, lustrous, luminous, incandescent, intelligent, knowing, quick-witted, smart, intellectual
Calm	quiet, peaceful, still, tranquil, mild, serene, smooth, composed, collected, unruffled, level-headed, unexcited, detached, aloof

Come	approach, advance, near, arrive, reach
Cool	chilly, cold, frosty, wintry, icy, frigid
Crooked—	bent, twisted, curved, hooked, zigzag
Cry	shout, yell, yowl, scream, roar, bellow, weep, wail, sob, bawl
Cut	gash, slash, prick, nick, sever, slice, carve, cleave, slit, chop, crop, lop, reduce
Dangerous	perilous, hazardous, risky, uncertain, unsafe
Dark	shadowy, unlit, murky, gloomy, dim, dusky, shaded, sunless, black, dismal, sad
Decide	determine, settle, choose, resolve
Definite	certain, sure, positive, determined, clear, distinct, obvious
Delicious	savory, delectable, appetizing, luscious, scrumptious, palatable, delightful, enjoyable, toothsome, exquisite
Describe	portray, characterize, picture, narrate, relate, recount, represent, report, record
Destroy	ruin, demolish, raze, waste, kill, slay, end, extinguish
Difference	disagreement, inequity, contrast, dissimilarity, incompatibility
Do	execute, enact, carry out, finish, conclude, effect, accomplish, achieve, attain
Dull	boring, tiring,, tiresome, uninteresting, slow, dumb, stupid, unimaginative, lifeless, dead, insensible, tedious, wearisome, listless, expressionless, plain, monotonous, humdrum, dreary
Eager	keen, fervent, enthusiastic, involved, interested, alive to
End	stop, finish, terminate, conclude, close, halt, cessation, discontinuance
Enjoy	appreciate, delight in, be pleased, indulge in, luxuriate in, bask in, relish, devour, savor, like
Explain	elaborate, clarify, define, interpret, justify, account for
Fair	just, impartial, unbiased, objective, unprejudiced, honest
Fall	drop, descend, plunge, topple, tumble
False	fake, fraudulent, counterfeit, spurious, untrue, unfounded, erroneous, deceptive, groundless, fallacious
Famous	well-known, renowned, celebrated, famed, eminent, illustrious, distinguished, noted, notorious
Fast	quick, rapid, speedy, fleet, hasty, snappy, mercurial, swiftly, rapidly, quickly, snappily, speedily, lickety-split, posthaste, hastily, expeditiously, like a flash
Fat	stout, corpulent, fleshy, beefy, paunchy, plump, full, rotund, tubby, pudgy, chubby, chunky, burly, bulky, elephantine
Fear	fright, dread, terror, alarm, dismay, anxiety, scare, awe, horror, panic, apprehension

Fly	soar, hover, flit, wing, flee, waft, glide, coast, skim, sail, cruise
Funny	humorous, amusing, droll, comic, comical, laughable, silly
Get	acquire, obtain, secure, procure, gain, fetch, find, score, accumulate, win, earn, rep, catch, net, bag, derive, collect, gather, glean, pick up, accept, come by, regain, salvage
Go	recede, depart, fade, disappear, move, travel, proceed
Good	excellent, fine, superior, wonderful, marvelous, qualified, suited, suitable, apt, proper, capable, generous, kindly, friendly, gracious, obliging, pleasant, agreeable, pleasurable, satisfactory, well-behaved, obedient, honorable, reliable, trustworthy, safe, favorable, profitable, advantageous, righteous, expedient, helpful, valid, genuine, ample, salubrious, estimable, beneficial, splendid, great, noble, worthy, first-rate, top-notch, grand, sterling, superb, respectable, edifying
Great	noteworthy, worthy, distinguished, remarkable, grand, considerable, powerful, much, mighty
Gross	improper, rude, coarse, indecent, crude, vulgar, outrageous, extreme, grievous, shameful, uncouth, obscene, low
Happy	pleased, contented, satisfied, delighted, elated, joyful, cheerful, ecstatic, jubilant, gay, tickled, gratified, glad, blissful, overjoyed
Hate	despise, loathe, detest, abhor, disfavor, dislike, disapprove, abominate
Have	hold, possess, own, contain, acquire, gain, maintain, believe, bear, beget, occupy, absorb, fill, enjoy
Help	aid, assist, support, encourage, back, wait on, attend, serve, relieve, succor, benefit, befriend, abet
Hide	— conceal, cover, mask, cloak, camouflage, screen, shroud, veil
Hurry	rush, run, speed, race, hasten, urge, accelerate, bustle
Hurt	damage, harm, injure, wound, distress, afflict, pain
Idea	thought, concept, conception, notion, understanding, opinion, plan, view, belief
Important	necessary, vital, critical, indispensable, valuable, essential, significant, primary, principal, considerable, famous, distinguished, notable, well-known
Interesting	fascinating, engaging, sharp, keen, bright, intelligent, animated, spirited, attractive, inviting, intriguing, provocative, though-provoking, challenging, inspiring, involving, moving, titillating, tantalizing, exciting, entertaining, piquant, lively, racy, spicy, engrossing, absorbing, consuming, gripping, arresting, enthralling, spellbinding, curious, captivating, enchanting, bewitching, appealing
Keep	hold, retain, withhold, preserve, maintain, sustain, support

Kill	slay, execute, assassinate, murder, destroy, cancel, abolish
Lazy	indolent, slothful, idle, inactive, sluggish
Little	tiny, small, diminutive, shrimp, runt, miniature, puny, exiguous, dinky, cramped, limited, itsy-bitsy, microscopic, slight, petite, minute
Look	gaze, see, glance, watch, survey, study, seek, search for, peek, peep, glimpse, stare, contemplate, examine, gape, ogle, scrutinize, inspect, leer, behold, observe, view, witness, perceive, spy, sight, discover, notice, recognize, peer, eye, gawk, peruse, explore
Love	like, admire, esteem, fancy, care for, cherish, adore, treasure, worship, appreciate, savor
Make	create, originate, invent, beget, form, construct, design, fabricate, manufacture, produce, build, develop, do, effect, execute, compose, perform, accomplish, earn, gain, obtain, acquire, get
Mark	label, tag, price, ticket, impress, effect, trace, imprint, stamp, brand, sign, note, heed, notice, designate
Mischievous	prankish, playful, naughty, roguish, waggish, impish, sportive
Moody	temperamental, changeable, short-tempered, glum, morose, sullen, mopish, irritable, testy, peevish, fretful, spiteful, sulky, touchy
Neat	clean, orderly, tidy, trim, dapper, natty, smart, elegant, well-organized, super, desirable, spruce, shipshape, well-kept, shapely
New	fresh, unique, original, unusual, novel, modern, current, recent
Old	feeble, frail, ancient, weak, aged, used, worn, dilapidated, ragged, faded, broken-down, former, old-fashioned, outmoded, passe, veteran, mature, venerable, primitive, traditional, archaic, conventional, customary, stale, musty, obsolete, extinct
Part	portion, share, piece, allotment, section, fraction, fragment
Place	space, area, spot, plot, region, location, situation, position, residence, dwelling, set, site, station, status, state
Plan	plot, scheme, design, draw, map, diagram, procedure, arrangement, intention, device, contrivance, method, way, blueprint
Popular	well-liked, approved, accepted, favorite, celebrated, common, current
Predicament	quandary, dilemma, pickle, problem, plight, spot, scrape, jam
Put	— place, set, attach, establish, assign, keep, save, set aside, effect, achieve, do, build
Quiet	silent, still, soundless, mute, tranquil, peaceful, calm, restful

Right	correct, accurate, factual, true, good, just, honest, upright, lawful, moral, proper, suitable, apt, legal, fair
Run	race, speed, hurry, hasten, sprint, dash, rush, escape, elope, flee
Say/Tell	inform, notify, advise, relate, recount, narrate, explain, reveal, disclose, divulge, declare, command, order, bid, enlighten, instruct, insist, teach, train, direct, issue, remark, converse, speak, affirm, suppose, utter, negate, express, verbalize, voice, articulate, pronounce, deliver, convey, impart, assert, state, allege, mutter, mumble, whisper, sigh, exclaim, yell, sing, yelp, snarl, hiss, grunt, snort, roar, bellow, thunder, boom, scream, shriek, screech, squawk, whine, philosophize, stammer, stutter, lisp, drawl, jabber, protest, announce, swear, vow, content, assure, deny, dispute
Scared	afraid, frightened, alarmed, terrified, panicked, fearful, unnerved, insecure, timid, shy, skittish, jumpy, disquieted, worried, vexed, troubled, disturbed, horrified, terrorized, shocked, petrified, haunted, timorous, shrinking, tremulous, stupefied, paralyzed, stunned, apprehensive
Show	display, exhibit, present, note, point to, indicate, explain, reveal, prove, demonstrate, expose
Slow	unhurried, gradual, leisurely, late, behind, tedious, slack
Stop	— cease, halt, stay, pause, discontinue, conclude, end, finish, quit
Story	tale, myth, legend, fable, yarn, account, narrative, chronicle, epic, sage, anecdote, record, memoir
Strange	odd, peculiar, unusual, unfamiliar, uncommon, queer, weird, outlandish, curious, unique, exclusive, irregular
Take	hold, catch, seize, grasp, win, capture, acquire, pick, choose, select, prefer, remove, steal, lift, rob, engage, bewitch, purchase, buy, retract, recall, assume, occupy, consume
Tell	disclose, reveal, show, expose, uncover, relate, narrate, inform, advise, explain, divulge, declare, command, order, bid, recount, repeat
Think	judge, deem, assume, believe, consider, contemplate, reflect, mediate
Trouble —	distress, anguish, anxiety, worry, wretchedness, pain, danger, peril, disaster, grief, misfortune, difficulty, concern, pains, inconvenience, exertion, effort
Ugly	hideous, frightful, frightening, shocking, horrible, unpleasant, monstrous, terrifying, gross, grisly, ghastly, horrid, unsightly, plain, homely, evil, repulsive, repugnant, gruesome
Unhappy	miserable, uncomfortable, wretched, heart-broken, unfortunate,

	poor, downhearted, sorrowful, depressed, dejected, melancholy, glum, gloomy, dismal, discouraged, sad
Use	employ, utilize, exhaust, spend, expend, consume, exercise
Wrong	incorrect, inaccurate, mistaken, erroneous, improper, unsuitable

4. Current Affairs

JANUARY 2023 – MCQs

1. Which nation recently adopted Euro as its currency?
(a). Croatia
(b). Armenia
(c). Belarus
(d). Denmark

2. Which Department under the 'Ministry of Finance notifies changes in rates on small savings schemes?
(a). Department of Expenditure
(b). Department of Economic Affairs
(c). Department of Revenue
(d). Department of Financial Services

3. Who has been appointed as the new chairman and CEO of the Railway Board?
(a). N.K. Singh
(b). Suman Bery
(c). Om Birla
(d). Anil Kumar Lahoti

4. The incubation Centre at the National Research Development Corporation has been inaugurated in which city?
(a). Bhopal
(b). Chennai
(c). New Delhi
(d). Uttarakhand

5. Who took oath as the 39th President of Brazil?
(a). Geraldo Alckmin
(b). Lula da Silva
(c). Josh Sera
(d). Jair Bolsonaro

6. Cristiano Ronaldo has recently joined which club?
(a). Al Nassr
(b). Manchester United
(c). Juventus
(d). Al- Shabab

7. In which state of India did the first IVF unit for animals start?
(a). Andhra Pradesh
(b). Bihar
(c). Uttar Pradesh
(d). Gujarat

8. When is the birth anniversary of the first female teacher in Modern India, Savitri Bai Phule celebrated?
(a). 31 December
(b). 4 January
(c). 1 January
(d). 3 January

9. Which state organizes the world's largest open-air theatre 'Dhanu Yatra' festival?
(a). Gujarat
(b). Odisha
(c). West Bengal
(d). Kerala

10. Which country took over the Presidency of the Council of the European Union for the first six months of 2023?
(a). Finland
(b). Germany
(c). Italy
(d). Sweden

11. How many people will be awarded the Pravasi Bharatiya Samman Awards this year?
(a) 12
(b) 20
(c) 27
(d) 25

12. In which city does PM Modi inaugurate the 108th Indian Science Congress?
(a). Nagpur
(b). Ahmedabad
(c). Patna
(d). Lucknow

13. Who has been appointed as the state icon for Bihar by the Election Commission of India?

(a). Shatrughan Sinha
(b). Manoj Vajpayee
(c). Maithili Thakur
(d). Pawan Singh

14. Which sportsperson won both the World Rapid and World Blitz chess titles?
(a). R Praggnananda
(b). Koneru Humpy
(c). Harika Dronavalli
(d). Magnus Carlsen

15. Which country inaugurated the Pokhara Regional International Airport (PRIA), with the support of China?
(a). Sri Lanka
(b). Bhutan
(c). Nepal
(d). Bangladesh

16. Mohamed Irfaan Ali, a recipient of the Pravasi Bharatiya Samman Award, is the President of which country?
(a). Guyana
(b). UAE
(c). Israel
(d). Ukraine

17. In which state did Union Minister Ashwini Vaishnaw launch high-speed 5G telecom services?
(a). Himachal Pradesh
(b). Madhya Pradesh
(c). Odisha
(d). Gujarat

18. Who won the best director award at New York Film Critics Circle?
(a). Prashanth Neel
(b). Hanu Raghavapudi
(c). SS Rajamouli
(d). Ayan Mukherji

19. The 17th Pravasi Bharatiya Diwas (PBD) will be held in which city?
(a). Bhopal
(b). Ahmedabad
(c). Chennai

(d). Dehradun

20. 'Bailey Suspension Bridge' has been inaugurated in which state/UT?
(a). Arunachal Pradesh
(b). Jammu and Kashmir
(c). Assam
(d). Karnataka

21. In which city/region will India deploy the largest platoon of women peacekeepers in the UN mission?
(a). Mogadishu
(b). Kyiv
(c). Tehran
(d). Abyei

22. The former captain of the women's Australian cricket team, Belinda Clark bronze statue is unveiled in which stadium?
(a). Melbourne Cricket Ground
(b). Wankhede Stadium
(c). Sydney Cricket Ground
(d). Lord's Cricket Ground

23. In which city did Prime Minister Narendra Modi inaugurate the Pravasi Bharatiya Divas convention?
(a). Bangalore
(b). Ahmedabad
(c). Indore
(d). Pune

24. World Hindi Day is celebrated on which day?
(a). 7 January
(b). 10 January
(c). 15 January
(d). 5 January

25. In which state will PM Modi inaugurate the 26th National Youth Festival on January 12, 2023?
(a). Karnataka
(b). Gujarat
(c). Madhya Pradesh
(d). Rajasthan

26. Who has been appointed as the new MD and CEO of Paytm bank?

(a). Vijay Kumar
(b). R.S. Sodhi
(c). Surinder Chawla
(d). Mridula Kochar

27. In which state did DRDO carry out the successful test launch of the short-range ballistic missile Prithvi II?
(a). Odisha
(b). Gujarat
(c). Rajasthan
(d). Karnataka

28. Who is the composer of the Golden Globe Award-winning song "Naato Naato" from the movie RRR?
(a). Rahul Sipligunj
(b). Chandrabose
(c). A.R. Rehman
(d). MM Keeravani

29. Which is the most polluted city in India according to the CPCB report?
(a). Gurugram
(b). Ghaziabad
(c). Delhi
(d). Patna

30. The Grand cultural event Sur Sarita-Symphony of Ganga will be held in which city?
(a). Bhopal
(b). Pune
(c). Varanasi
(d). Haridwar

31. India's first 5G-enabled drone has been developed by which company?
(a). Skylark Drones
(b). Teja Aerospace and Dynamics
(c). IG Drones
(d). Garuda Aerospace

32. Where does India stand in the Henley Passport Index for 2023?
(a). 80
(b). 81
(c). 84
(d). 85

33. Who has been selected as the new Chief Technologist of NASA?
(a). AC Charania
(b). Subrahmanyan Chandrasekhar
(c). Raja Chari
(d). Soumya Swaminathan

34. In which city will Tata Power set up India's 1st solar plant for housing society?
(a). Pune
(b). Bhopal
(c). Mumbai
(d). Ahmedabad

35. 'Year of Enterprises' Project is a flagship scheme of which Indian state?
(a). Gujarat
(b). Maharashtra
(c). Rajasthan
(d). Kerala

36. PM Modi flags off World's Longest River Cruise, Ganga Vilas, in which city will the cruise conclude?
(a). Patna
(b). Kolkata
(c). Dibrugarh
(d). Guwahati

37. Who has been appointed as the new CEO of the IT company Cognizant?
(a). Ravi Kumar
(b). Jane Fraser
(c). Shantanu Narayen
(d). Oliver Gypsy

38. When is Indian Army Day celebrated?
(a). 12 January
(b). 15 January
(c). 18 January
(d). 13 January

39. Which movie won the Critics Choice Awards 2023 for Best Foreign Language Film?
(a). All Quiet on the Western Front

(b). Argentina 1985
(c). RRR
(d). Decision to Leave

40. Which institution has released the "Global Risk Report 2023"?
(a). World Bank
(b). International Monetary Fund
(c). Asian Development Bank
(d). World Economic Forum

41. Which district of Kerala has been considered the first Constitution Literate District of India?
(a). Wayanad
(b). Kollam
(c). Ernakulam
(d). Kottayam

42. Who has won the "Miss Universe 2023" title?
(a). Amanda Dudamel
(b). Divita Rai
(c). Andrina Martinez
(d). R'Bonney Gabriel

43. DotFEST Festival has been organized in which Indian state?
(a). Odisha
(b). Arunachal Pradesh
(c). Assam
(d). Madhya Pradesh

44. What is the name of the 21st edition of the Naval Exercise between India and France?
(a). Bongo Sagar
(b). Varuna
(c). Naseem Al Bahr
(d). Exercise Kakadu

45. The first district for the deployment of innovative 5G use cases, Vidisha is located in which state?
(a). Odisha
(b). Gujarat
(c). Kerala
(d). Madhya Pradesh

46. Which country will introduce its stamp with Jawaharlal Nehru's portrait on its 75th Independence Day?

(a). Srilanka
(b). Bhutan
(c). Fiji
(d). Nepal

47. What is the theme of the World Economic Forum 2023?

(a). Unity for World Health
(b). Cooperation in a Fragmented World
(c). One World One Business Model
(d). Cooperation for World Business Model

48. In which city did PM Modi inaugurate the 2nd phase of Saansad Khel Mahakumbh?

(a). Varanasi
(b). Basti
(c). Kanpur
(d). Jhansi

49. Who has been appointed as the deputy NSA of India?

(a). Alkesh Kumar Sharma
(b). Pankaj Kumar Singh
(c). Ajit Dhobal
(d). Brijesh Mishra

50. Sibi George has been concurrently accredited as the next ambassador to which country?

(a). Marshall Island
(b). Finland
(c). Norway
(d). Guyana

51. In which city did the first G20 Health Working Group under India's G20 presidency begin?

(a). Guwahati
(b). Ahmedabad
(c). Srinagar
(d). Thiruvananthapuram

52. Which Indian-American has been awarded the Martin Luther King Grand Parade Special award?

(a). Harmeet Dhillon
(b). Krishna Vavilala
(c). Rohit Khanna
(d). Maya Ajmera

53. India's first 3x platform wind turbine generators (WTG) have been installed in which state?
(a). Rajasthan
(b). Odisha
(c). Telangana
(d). Karnataka

54. Who is the youngest batsman to hit double centuries in one-day international cricket?
(a). Ishan Kishan
(b). Harry Brook
(c). Cameron Green
(d). Shubman Gill

55. Badara Alieu Joof was the vice-president of which country, who died in India?
(a). Guyana
(b). Ghana
(c). Gambia
(d). Mozambique

56. Who won Bahrain's ISA award for Service to Humanity?
(a). Carol Shields
(b). Dr. Sanduk Ruit
(c). Malik Y. Kahook
(d). Donald Tan

57. Who has been appointed as the director of the National Health Authority?
(a). Dr. Indu Bhusan
(b). Dr. R.S Sharma
(c). Mukesh Kumar Khetan
(d). Praveen Sharma

58. Which Indian has been ranked number 2 globally on the Brand Guardianship Index 2023?
(a). Mukesh Ambani
(b). Gautam Adani
(c). Anand Mahindra

(d). Sunil Bharti Mittal

59. When will the first Global Tourism Investor's Summit be held under the G-20 Presidency of India?
(a). 10-12 April 2023
(b). 10-12 February 2023
(c). 12-14 March 2023
(d). 01-05 February 2023

60. Which India-born British man won the "Freedom of the city of London" award?
(a). Laxmi Niwas Mittal
(b). Gopi Hinduja
(c). Manish Tiwari
(d). Kiran Mazumdar Shaw

61. What is the theme of National Youth Festival 2023?
(a) Intergenerational Solidarity: Creating a World for All Ages
(b) Yuvaah – Utsah Naye Bharat Ka
(c) Developed Youth – Developed India
(d) FIT YOUTH FIT INDIA

62. Who has become the youngest and the first LGBTQ woman of color to take the oath of Oakland City Council in the US state of California?
(a) Janani Ramachandran
(b) Santhi Kumari
(c) Manpreet Monica Singh
(d) Surbhi Jakhmola

63. NASA-JAXA Geotail Studied about Earth's Protective bubble in:
(a) Exosphere
(b) Mesosphere
(c) Stratosphere
(d) Magnetosphere

63. Which airport won the prestigious "Best Sustainable Greenfield Airport" award?
(a) Cochin International Airport
(b) Rajiv Gandhi International Airport
(c) Chhatrapati Shivaji Maharaj International Airport
(d) Goa Manohar International Airport

64. Who made history by becoming the first Indian-American politician to be elected as the lieutenant governor of the US state of Maryland?
(a) Pratibha Singh
(b) Roshni Sharma
(c) Ravena Prasad
(d) Aruna Miller

65. Which of the following bank has become India's first public sector bank to launch credit cards for its fixed deposit customers?
(a) SBI
(b) Canara Bank
(c) Punjab National Bank
(d) Bank of Baroda

66. India's first School of Logistics, Waterways, and Communication has launched in which state?
(a) Tripura
(b) West Bengal
(c) Assam
(d) Bihar

67. Indian Navy is all set to commission the fifth diesel-electric Scorpene named as INS _____ on January 23.
(a) Kalvari
(b) Karanj
(c) Vela
(d) Vagir

68. The first of its kind joint Exercise Cyclone-I, being held in the deserts of Rajasthan, is Between India and _____.
(a) UAE
(b) Russia
(c) Israel
(d) Egypt

69. Tata Boeing Aerospace Limited (TBAL) delivered the first fuselage for six AH-64 Apache attack _____ ordered by the Indian Army.
(a) Missiles
(b) Helicopters
(c) Tanks
(d) Jets

70. Who was recently appointed as next Directorate General of Civil Aviation (DGCA)?
(a) Arun Kumar
(b) Shrikant Madhav Vaidya
(c) Vikram Dev Dutt
(d) Sandeep Kumar Gupta

71. UNESCO has decided to dedicate the 2023 International Day of Education to Afghan girls and women. When is the day observed?
(a) January 22
(b) January 24
(c) January 26
(d) January 28

72. Netaji Subhas Chandra Bose Jayanti or Netaji Jayanti is a national event celebrated in India as Parakram Diwas on _____.
(a) January 21
(b) January 22
(c) January 23
(d) January 24

73. Prime Minister Narendra Modi participate in a ceremony to name _____ largest unnamed islands of Andaman & Nicobar Islands.
(a) 21
(b) 22
(c) 23
(d) 24
(e) 25

74. A book titled "India's Knowledge Supremacy: The New Dawn" Written by international Indian expat, _____ has released globally.
(a) Mohd. Rafique
(b) Vinayak Dasgupta
(c) Dr Ashwin Fernandes
(d) Dharmendra Pradhan

75. Who inaugurated the first STEM innovation and learning center in Chennai?
(a) Australian Group
(b) American India Foundation
(c) United Nations Organization
(d) Asian Development Bank

76. Who won the women's singles final in the India Open Badminton Championship?
(a) An Seyoung
(b) Akane Yamaguchi
(c) Chen Qingchen
(d) Jia Yifan

77. In which state 'International Craft Summit' has been inaugurated?
(a) Rajasthan
(b) Karnataka
(c) Odisha
(d) Assam
(e) Madhya Pradesh

78. Which historic site of Assam has been nominated for the UNESCO World Heritage Site?
(a) Tezpur
(b) Rang Ghar
(c) Agnigarh Hill
(d) Charaideo Maidam

79. Who has been awarded "the most distinguished scientist of the year 2022" at the Indian Achievers Award at Vigyan Bhawan?
(a) A. S. Kiran Kumar
(b) Malathi Sivan
(c) Ritu Karidhal
(d) R Vishnu Prassad

80. The United Nations General Assembly has proclaimed _____ as International Day of Education.
(a) 21 January
(b) 22 January
(c) 23 January
(d) 24 January

81. What is the theme of International Day of Education 2023?
(a) Recover and Revitalize Education for the COVID-19 Generation
(b) Changing Course, Transforming Education
(c) To invest in people, prioritize education
(d) Learning for people, planet, prosperity and peace

82. On _____, the nation celebrates National Girl Child Day. This day was established in 2008 by the Ministry of Women and Child Development.
(a) 21 January
(b) 22 January
(c) 23 January
(d) 24 January

83. Who among the following won the India Open title in January 2023?
(a) Viktor Axelsen
(b) Lee Zii Jia
(c) Loh Kean Yew
(d) Kunlavut Vitidsarn
(e) Jonatan Christie

84. Which police station was awarded as the number one police station in the country?
(a) Kharsang Police Station, Arunanchal Pradesh
(b) Jhilmili Police Station, Chhattisgarh
(c) Kanth Police Station, Uttar Pradesh
(d) Aska Police Station, Odisha

85. Amidst the ongoing standoff with China, the Indian Air Force is going to conduct _____ exercise in Northeast India.
(a) VIJAY
(b) PRALAY
(c) PRABAL
(d) GARUDA

86. What is the theme of National Voters Day 2023?
(a) Making Our Voters Empowered, Vigilant, Safe and Informed
(b) Making Elections Inclusive Accessible and Participative
(c) Electoral Literacy for Stronger Democracy
(d) Nothing Like Voting, I Vote for Sure

87. Which song from India nominated for this year's Oscar?
(a) Doobey
(b) Kesariya
(c) Apna Bana Le
(d) Naatu Naatu

88. The _____ programme aims to raise awareness among citizens to stay safe in an online world.
(a) Cyber Saathi

(b) GoI Cyber Saathi
(c) Cyber Sangini
(d) CyberSecurity

89. Uttar Pradesh Celebrated its Foundation on _____.
(a) 24th January
(b) 30th April
(c) 15th August
(d) 23rd December

90. Which railway station has been awarded the 'Green Railway Station Certification with the highest rating of Platinum'?
(a) Dehradun Railway Station
(b) Visakhapatnam Railway Station
(c) Indore Junction Railway Station
(d) Varanasi Cantt

91. India celebrated its 74th Republic day on 26th January 2023. For the first time, women were a part of which of the following contingents?
(a) Indigenous Mobile Network Centre Contingent
(b) BSF's Camel Contingent
(c) Indian Army's Corps of Engineering contingent
(d) Indian Army's Punjab Regiment

92. Who among the following has become the 1st-ever Indian cricketer to have won the ICC Men's T20 Cricketer of the Year award?
(a) Virat Kohli
(b) Hardik Pandya
(c) Surya Kumar Yadav
(d) Rohit Sharma

93. International Customs Day is observed every year on January 26, the theme for 2023 is _____.
(a) Smart Borders for Seamless Trade, Travel and Tourism
(b) Customs fostering Sustainability for People, Prosperity and the Planet
(c) Customs bolstering Recovery, Renewal and Resilience
(d) Nurturing the next generation: promoting a culture of knowledge-sharing and professional pride in Customs

94. _____ Provides Tap Water to 11 Crore Rural Households
(a) Mission Amrit Sarovar
(b) Jal Jeevan Mission
(c) AMRUT 2.O Scheme

(d) PM Krishi Sinchayee Yojna

95. What is the theme of 2023 Data Privacy Day?
(a) Think Privacy First
(b) Privacy Matters
(c) Stop. Think. Connect
(d) Own Your Privacy

96. Who took charge as General Manager of Central Railway recently?
(a) Ashok Kumar Misra
(b) R.N. Singh
(c) Naresh Lalwani
(d) B G Mallya

97. Who has won the Men's Single Title of the Australian Open Championship 2023?
(a) Rafael Nadal
(b) Jason Kubler
(c) Novak Djokovic
(d) Stefanos Tsitsipas

98. What is the new name of Rashtrapati Bhavan's Mughal garden?
(a) Rajendra Prasad Udyan
(b) Amrit Udyan
(c) Shanti Udyan
(d) Anand Udyan

99. Which country won the Men's Hockey World Cup 2023 title?
(a) Germany
(b) Belgium
(c) England
(d) Australia

100. Which state/UT's tableau won the best tableau award for Republic Day 2023?
(a). Uttar Pradesh
(b). Gujarat
(c). Uttarakhand
(d). Maharashtra

101. Who has been appointed as the new Vice Chief of the Indian Air Force?
(a). Vivek Ram Chaudhary
(b). Birender Singh Dhanoa

(c). Rakesh Kumar Singh
(d). Amar Preet Singh

5. Prelims and Mains Notes Preparation Scheme

V.S. DREAM COACHING
FOR
HJS, PCS (J.) AND CLAT

Prelims and Mains Notes Preparation Scheme is going on. Prepare your own excellent study notes to crack HJS, PCS (J) and CLAT on the subjects mentioned below under the able guidance of Hon'ble Mr. Justice Vedpal (Former Judge), High Court of Judicature at Allahabad, Ex-Director of Judicial Training and Research Institute, U.P., Lucknow and resource person of various legal academies and institutions. Seek prior appointment to avoid despair. Subjects;-

1.General Knowledge	2.Law
1. Current Affairs 2. G.K.MCQs 3. History of India and Indian Culture 4. Geography of India 5. Indian Polity 6. Current National Issues 7. Topic of Social Relevance with special reference to newly added 9 Social Acts 8. India and the World 9. Indian Economy 10.International Affairs and Institutions 11. Development in the field of: (a) Science and Technology (b) Communications and Space	1. Constitutional Law 2. Law of Evidence 3. Criminal Procedure Code 4. Code of Civil Procedure, 5. Indian Panel Code 6. Law of Contract 7. Partnership Act 8. Easements Act 9. Law of Torts 10. Transfer of Property Act 11. Principles of Equity , 12. Law of Trust 13. Specific Relief Act 14. Hindu Law 15. Muslim Law 16. U.P. Revenue Code. 17. U.P. Municipalities Act 1916 18. U.P. Panchayat Raj Act 1947 19. U.P. Consolidation of Holdings Act, 1953 20. U.P. Urban (Planning and Development) Act, 1973
3.CLAT 1. General Knowledge 2. A Guide for CLAT	

6. About Coaching

V.S. Dream coaching is one of the premiere law institute that offers coaching for Judicial Services Examinations at all the three levels – Preliminary Test, Main Examination and Personality Test.

We started our journey the month of Sept. 2022 with a vision driven by the socialist ideology. Since its inception, the coaching is successfully conducting courses for Judicial Services Exams and has always worked by aligning itself to the best interest of its students. The coaching Institute is focused on providing comprehensive and reliable training and support to all its students, who plan to appear for the Judicial Services Exam and are in the search of highly qualified targeted and dedicated faculty to crack examinations successfully.

The teaching faculty of the Institute has been drawn from highly qualified persons having experience. We also guide the aspirant in preparing his own notes and quality study Material

Teaching pedagogy

Our faculty uses a teaching pedagogy which is easily understandable and is aspirant friendly. Our patron Hon'ble Mr. Justice Vedpal former Judge High Court Allahabad had been a Trainer of Trainers. Director of Judicial Training and Research institute U.P., Resource person of several Judicial Institutes and member of Law commission U.P. The faculty of the coaching Institutes consists of those who have several decade experience in teaching in the field of law.

7. About Director and faculty

Ms. Anshu Singh B.A., LL.B is the director of the coaching who remained associated with the law for more than two decades. The director of the coaching possess self-awareness, garner credibility, focus on relationship-building, exhibit humility, empower others, stay authentic, present themselves as constant and consistent, become role models and are fully present

The director aims to improve performance and focuses on the 'here and now' rather than on the distant past or future. The director is subject expert. And focuse on helping the individual to unlock their own potential

Regular Faculty

1. Ms. Anshu Singh, B.A. (English Literature) LL.B. The Director, herself

2. Shri Shantanu Baliyan, B.A. LL.B who is a Law graduate from C.C.S. University Campus. He has also received Certificate of Excellency from the University. He has started teaching at a very young age and now with his teaching experience, he has developed innovative ways of teaching Law and general knowledge, which suites to the need of a law student, as well as an Judicial service aspirant. He has conducted many online and offline Courses. His notes on Law subjects as well as on general knowledge are masterly work

8. Resource persons/Guest Speakers

1. Hon'ble Mr. Justice Vedpal, Former Judge, High Court Allahabad -Mentor
2. Shri Soraj Singh, Ex-Director (Ag.), U.P. Government- Guest Speakers
3. Mrs. Kalpana Malik, B.Sc., LL.B., LL.M. (P) - Guest Speakers
4. Dr. Venu Agarwal M.A.(English), M.Com. M.Ed., PhD - Guest Speakers

9. Library with Research wing

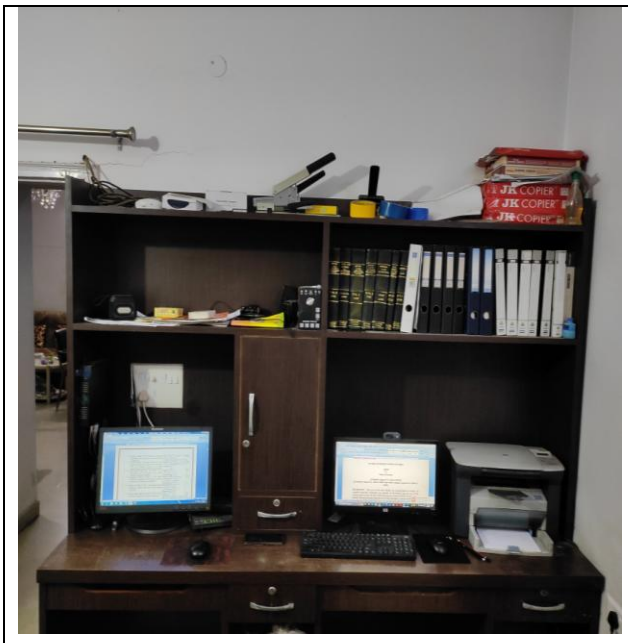
V.S. Dream Coaching has an excellent Library containing **about five thousand books, Journals, brochures, notes and guides**. The library in a coaching institute plays an important role in the life of students by serving as the store house of knowledge. It facilitates the work of the resource person and faculty also. The students have also access to library, after coaching hours. Our library changes as technology changes and remains updated in Course subjects. The coaching itself prepares study excellent and qualitative reading material.

Preparing a study material on a subject on Law and General Knowledge, is a herculean task. There is always a debatable question to be asked regarding what, and what not to include and how to differentiate the books and brochures from the ones already available in the market.

There should be a system for the verification of facts, data, etc. While preparing study material, we always keep in the mind the quality, so we hope that the book, brochures prove beneficial to all the aspirants taking examinations with law and General Knowledge..

A coaching should provide students with the fundamental knowledge base or foundation needed in order to be successful in their exam. Aspirants were surveyed to determine how they should be taught. The survey was developed based on course content. We encourage accredited programs to regularly evaluate current curricula for and develop new curricula that reflect changing construction technologies and management trends.

Library



Research wing