II. Public and Private Interests

In India we find the following categories of educational institutions:-

1. Institutions wholly run by the Government.
2. Institutions aided and recognised by the Government - i.e. quasi-public institutions.
3. Institutions not aided but recognised by the Government.
4. Entirely private institutions i.e. neither aided nor recognised by the Government.

The last category of educational institution is of concern to the Government only in so far as it relates to the law and order situation. Of the remaining, institutions recognised by the Government and not getting grant at all are very few.[22] Almost all private institutions are quasi-government. These institutions involve interests of the following:-

(1) Public in its interest of

(A) maintenance of higher academic standards.

(B) education for the masses.

(2) The Managing Committees, representing the interest of the group or community which founded the institution.[23]

(3) The Institution itself in its interests of:-

(a) Coordination of Teaching and non-teaching staff.[24]

(b) Discipline among the students.

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22. "...no educational institutions in modern times, afford, to subsist and effectively function without some state-aid." S.R.Das., C.J. In re Kerala Education Bill 1957, A.I.R. 1958 S.C.956 at p.980.

23. See discussion item 1(A) and (B), infra.

24. Refer to items 3 and 4 of the Scheme, infra

PUBLIC INTEREST

Maintenance of higher academic standards.

We have already seen that in educational matters general powers except those exclusively demarcated for the Union Govt. under entries 63-66 of List I, are left with the State Governments. To exercise these powers Government of each State has a full-fledged administrative machinary headed by the Minister for Education. The Education Department controls all government or quasi-government institutions so far as teaching and teaching conditions are concerned. 'Public interest lies in obtaining proper academic standards and conditions in institutions where students go to learn and acquire knowledge which would help them to take up useful careers in life.[25] The following are some of the important steps that the government takes to maintain academic standards:

1. Prescribe Books.
2. Look into working conditions of teaching and non-teaching staff.
3. Examinations.

Out of the books approved by the Education Department, institutions make their own selections. The students of the respective institutions are required to purchase only the prescribed books. Thus publishers have a vital interest in getting their publications approved. This interest often comes in conflict with the right and the discretion of the authorities to reject a publication which in their opinion

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25. In re Kerala Education Bill, 1957. A.I.R. 1958. S.C. 956 S.R. Das C.J. at p. 984.

does not conform to appropriate academic standard. The Law Courts have preferred not to interfere with the authorities' discretionary power which is of technical nature, unless it is exercised in a manner which is arbitrary, 'Mala fide' or in disregard of prescribed rules of procedure.[26] Publishers have claimed that rejection of their publications affects there right under Art. 19(1)(g) of the Constitution. The Orissa High Court has held:[27]

"...no publisher (has a right to expect that his or her publication would be approved or continued...."

However, sometimes the exercise of discretion by the authority may become arbitrary and may favour a publisher to the exclusion of others, thus creating for one publisher a monopoly in the trade. This would violate the right of other publishers under Art. 19(1)(g). Venkataramaiya J.observed:[28]

Persons who make a living by sale of book, or to whom it is a calling and those who have to provide the books necessary for education of pupils who depend on them are entitled to expect and demand the observance of rules and adhereance for methods settled by practice so that there is no room for doubt fancied or real about play of personal predilections in the choice of books... under Art. 19(1)(g) of the Constitution the citizens have the right to carry on occupation, trade or

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26. Gopal Chetty v. Director of Public Instruction
A.I.R. 1955 Mysore 81
Manjula v.Director of Public Instruction .
A.I.R. 1952 Orisss 344.
Chaitaneja Prakash v. Board of Secondary Education.
AIR. 1960 Raj. 185.
27. Manjula v.Director of Public Instruction.
A.I.R. 1952 Orissa 344 at p. 346.
28. Gopal Chetty v. Director of Public Instruction
A.I.R. 1955 Mysore 81.

business, subject to such restrictions as the State may impose in the interest of the public and such qualifications as are necessary for carrying on any occupation, trade or business.."

Regulation of Working Conditions.

Merely prescribing standard books does not help in maintaining academic standards which are greatly effected by working conditions obtainable in educational institutions. The academic equipment of the teaching staff, the adequacy of the salary paid to it, the timeliness and regularity of payments made to them, general terms and conditions of their services, the number of students admitted to each class, all these[29] and many others are matters which are connected with educational quality of an educational institution. Common good of the community[30] is involved in all these matters and the Governmental regulation and control is extended to them.

This regulation or control is not, however, ordinarily accepted by the management of private institutions. They oppose it and resent that it is an interference with their right[31] to manage and administer their institutions. Kerala is the State which took a major step and prepared the Education Bill which had envisaged a scheme of wider control on all private educational institutions in the State. The Bill was referred

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29. In re Kerala Education Bill, 1957. A.I.R. 1958 S.C. 956

30. Arya P.Sabha v.Bihar State AIR 1958 Patna 359 at p.365. Dependra Nath v. State of Bihar AIR 1962 Patna 103. Rev. Fr.Joseph v.State. AIR 1958 Ker. 290 at p.299.

31. Denominational bodies have claimed protection of this right under Arts 29(1) and 30(1).

to the Supereme Court for opinion under Art. 193(1) of the Constitution and the then Chief Justice S.R. Das held that "the right to administer cannot obviously include the right to maladminister."[32] He added "State may prescribe reasonable regulations to ensure the excellence of the institutions[33]..." He called these regulations as "Permissible regulations"[34]. These general regulations do not violate the constitutional protection guaranteed to religious and linquisitic minorities under Articles 29 and 30.[35] They "are not restriction on substance of the right which is guaranteed: they secure the proper functioning of the institutions, in matters educational."[36]

Substance of the right is the core in which the Government's regulatory powers should not generally penetrate. Thus Governmental "interference with the right of bare management of an educational institution does not amount to infringement of the right to property under Art. 19(1)(f)[37], unless, it divests the management of "its character as trustees in respects of the land and the building of the (institution)"[38] Government's attempt to take over or "to acquire" private institution even for a limited period, is a violation of the right to manage and administer an educational institution.[39]

32. In re Kerala Education Bill, 1957, A.I.R. (1958) S.C.956 982 at p.
33. Ibid. 983.
34. Ibid.
35. Arya P.Subba v. Bihar State A.I.R. 1958 Patna 359.
36. J.C.Shah J.in Sidharajbhai v. State of Gujarat A.I.R. 1963 S.C. 540, 545.
37. Sidhraj Bhai v. State of Gujrat, A.I.R.1963 S.C.540,544.
38. Dwarka Nath v. State of Bihar, A.I.R. 1959 S.C.244, 252
39. In re Kerala Education Bill 1957, AIR 1958 SC 956.

By admitting outsiders linguistic or religious minority institutions do not shed their denomination character and the State in regulating and controlling their management cannot claim that their rights are no more protected by Article 30 of the Constitution.[40] A Government's directive to denominational institutiin to admit government nominees in such a large number that the seats left to be filled by the institutiin's own candidates were insufficient to meet the requirements of the community which ran and managed the institution, has been held by the Supreme Court as unconstitutional.[41] Justice J.C.Shah observed.

"The right is intended to be effective and is not to be whittled down by so-called regulative measures conceived in the interest not of the minority educational institutions, but of the public or nation as a whole."[42]

If the protection provided by Article 30(1) can be interfered in national or public interest them, the court held, it would be a 'teasing illusion' or a 'Promise of unreality.'

For a State Regulation to be a valid regulation without effecting the substance of the right to manage and administer quasi-government and denominational educational institutions, his lordship J.C. Shah enunciated a dual test.[43] that (1) the Regulations must be reasonable and (2) be regulative only of the educational character of the institution so as to make it an effective vehicle of education.

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40. Ibid at p. 978.

41. Sidhraj bhai v. State of Gujarat AIR 1963 SC 540.

42. Ibid. p.547

43. Ibid. at p. 547.

Examination Cases

Regard for Statutory Provisions.

On a perusal of the cases connected with examination matters, it appears that various High Courts concentrate more on two aspects, viz. legal and social. It is the primary function of Law Courts to see that executive actions are covered by some statutory provision.[44] If an action is rightly based on a statutory provision, the courts have upheld it as lawful and valid action;[45] while on the other hand, in cases where actions of examination-authorities are results of mis-interpretation or misapplication of legal provisions the Courts have not hesitated to declare those actions as invalid and unlawful.[46]

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44. Prasum Kumar v.R.S. College, Jharia AIR 1959 Patna 486
Kamla Banerjee v.Calcutta University AIR 1956 Cal.563
G.P.Singh v. Faculty of Law AIR 1953 All.6
Himendra Chandra v.Gauhati University AIR 1954 Assam 65.
Gauhati University v. Sailash Ranjan AIR 1955 Assam 9
Laxmi Narain v. C.B. Mahajan AIR 1955 All.534
Indra Bajaj v. The Agra University AIR 1956 Cal. 563.
Somesh Charan v.University of Calcutta AIR 1957 Cal. 656
University of Calcutta v.Somesh Charan AIR 1958 Cal.131
G.K.Ghosh v.University of Calcutta AIR 1958 Cal.83.
Sobh Bhatnagar v.The State AIR 1959 M.P. 367.
Amitar v. Principal B.E. College AIR 1962 Cal.93.

45. Prasun Kumar v. R.S. College, Jharia AIR 1959, Patna 486
Kamla Banerjee v. Calcutta University AIR 1956 Cal.563.
G.P.Singh v.Faculty of Law AIR All 6.
Somesh Charan v. University of Calcutta AIR 1957 Cal.656.
University of Calcutta v. Somesh Charan AIR 1958 Cal. 131

46. Laxmi Narain v. C.B. Mahajan AIR 1955 All.534
G.K. Ghose V.University of Calcutta AIR 1958 Cal.83.
Amitar v. Principal B.E. College AIR 1962 Cal. 93.

Reluctance to Interfere -

The general attitude of the Courts may be divided under two heads (a) Respect for jurisdiction for exercise of powers by examining bodies (b) consciousness for immediate and future career of the examinees. Society has interest in both examining Bodies and educational institutions on the one hand, and the examinees on the other.. If examining Bodies are not given due respect and sanctity for their actions, smooth and orderly conduct of examinations would become, impossible. People do not take to examination willingly, they appear at it because it is unavoidable. It may be that, in case examinees find that they can avoid examinations by conveniently challenging any action of examination-authorities they may be quick to adopt it as practice. It appears, for some similar reasons the Court have been reluctant to interfere with jurisdiction of examining Bodies.[47]

Further, the courts have not only shown due regard and recognition to the authority of examining bodies to deal with matters falling in their jurisdiction, but have also denounced objectionable conduct on part of examinee

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47. Shudarshan Lal v. Allahabad University AIR 1953 All 194 "This Court is most reluctant to entertain such application especially as it is extremely desirable that the students should be under the full control and guidance of the university and its staff and unless the act complained of is clearly beyond the jurisdiction or is clearly against the rules of natural justice, this court will not interfere in such matters which relate to internal working of the university."

Malik C.J. at p.195.

petitioners.[48] Again, where petitioner has shown fear for subsequent prejudice on part of the examining body, the Court has shown its faith in fairness and reasonableness of the authorities.[49]

The Courts, in order to safeguard the honour of examining bodies, have, before issuing directions or orders to correct their mistakes, often allowed examination-authorities opportunity and time to do the needful on their own.[50] Sometimes courts has not even issued directions or orders.

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48. Shankar Rastogi v. Principal S.M.College AIR 1962 All 207

This court, as a court of equity will not exercise its discretion in favour of a student who by his demeanour in the suit itself has proved himself devoid of all sense of discipline. The Court will not impose on the college a student-teacher relationship by his open disrespect for the head of the institution and his very presence in the college with the subversive of discipline."

Bhavan J. at p.208.

49. G.P.Singh v. Facutly of Law AIR 1953 All.6
"There appears no reason to suppose that the Faculty of Law and the University will not act fairly and will not consider the question of the conferment of the degree of doctor of Laws on the applicant properly. We feel no doubt that these proceedings will not prejudice such consideration when the applicant resubmits his thesis after revising it in the light of the suggestion of the examiners."

Raghubar Dayal J.at p.9.

50. Himendra Chandra v. Gauhati University AIR 1959 Assam 65.

I was .... anxious that the authorities themselves would realise their mistake and would rectify the wrong which they had done to the petitioner; but I understand that in spite of my having given them sufficient opportunity to do so, they have consistently refused to consider the claim of the petitioner. The university is a creature of the statute and must obey the rules and regulation by which it professes to be bound.If it acts in violation of these rules and thereby adversely affects the rights of others,its conduct is open to question,I have,therefore,no other altetnative but to direct that the Rules and Regulations framed by the university should be strictly followed."
"The conduct of the respondents in the present case cannot be supported.I would accordingly order that a writ of mandamus should issue..." Sarjoo Prasad C.J.at p.69.

but only made recommendations to examination - authorities to reconsider the examinee's case favourably if possible.[51]

Consciousness for examinees' career in life -

Honour and authority of examining-bodies are maintained ultimately in the interest of examinees themselves. Therefore, where justice and fairness demand the examinees' interests are protected and upheld by the Law Courts. It is not justified to refuse a rightful claim of a student 'merely because some inconvenience is likely to be caused to the University authorities.'[52] The Court has gone to the extent that 'if on merits the petitioner has a good case he should not be deprived of his remedy merely because of the delay (in his petition)'[53]

Whenever, the Courts have found that two possible views can be taken of any statutory provision, they have always preferred one which 'supported the claim of the examinee and did not tend to thwart his career in life'.[54] The Courts would not favour "any other view of the matter...(which)would be harsh and unjust."[55] Under certain circumstances the

51. See also Tapendra Nath Roy v. University of Calcutta AIR 1954 Cal. 141.

Meena v. Madras University AIR 1958 Mad.494.
"Of course,this court has neither the power nor the intention to interfere with the discretion of the university in such matters. But just as it has got power to recommend to the Government the commutation of a sentence which it has no power to reduce,it must be deemed to have the power,and in deed duty, to recommend in suitable cases like this,to the university to reconsider its order,if it deems fit to do so.

P.Ayyar J. at p.495.

52. Damodar Mzhauly v. Utkal University AIR 1955 Orissa 151 Per Narasimah J. at p.156.
53. Ibid at p.156.
54. Himendra Chandra v. Gauhati University AIR 1954 Assam 65 Per Sarjoo Prasad C.J. at p. 67.
55. G.K. Ghose v, University of Calcutta AIR 1958 Cal. 83. per Sinha J.

Law Courts have found that 'Cancelling an examination or refusing to declare a result (is penal).[56] 'Any order would adversely affect the career of the student and deprive him or her of the fruits of the labour put-in must be regarded as a penalty for this purpose.'

The Calcutta High Court expressed its feeling of 'embarrasment' in dealing with a case where it found that 'the appellant has a just grievance(but) it is equally clear that no relief can be given'.[57] The courts have never lost opportunity, in deserving cases- where they have not found it difficult to issue orders or directions or allow remedies sought by the petitioners - to recommend to examination - authorities to adopt a sympathetic attitude and have reasonab[le] consideration for examinee petitioners.[58]

Education for Masses

A welfare government's responsibility does not end with establishing educational institutions or taking care that educational institutions run under its jurisdiction are of proper academic conditions and standards. It is also interested in seeing that the maximum number of persons take advantage of them. The Constitution enables Government to make special provisions to educate those who have lagged behind in the field of literacy and academic advancement.[59]

56. Chittra Srivastava v. Board of H.S. and Inter Exams. UP. AIR 1963 All 41 at p. 43 Per Katju J.

57. Kamla Banerjee v. Calcutta University AIR 1956 Cal. 563 Per Chakravarti C.J. at p. 564

58. e.g. Triloki Nath v. Allahabad University AIR 1953 All.24 Meena v. Madras University AIR 1958 Mad 494.

59. Ref - Article 15(4).

Eversince the Constitution came in force States have been making special provisions to facilitate educational requirements of socially and educationally backward class. The earlier State efforts to provide special advantages to members of backward classes, were held invalid by the Law Courts[60] as violating constitutional provisions prohibiting discrimination.[61]

The Madras State,[62] (in pursuance of Art. 46 of the Constitution,) had made reservation of seats in medical and engineering institutions in favour of candidates coming from Backward classes. The reservation restricted the rights of students of advanced classes, which were of higher caste also, to get admission in those institutions. Article 46 is one of the Directive Principles of State Policy and it was contended on behalf of the affected students that the communal G.O. could not be valid as directive principles cannot override the fundamental rights guaranteed under Arts. 15(1) and 29(1). The High Court of the State as well as the Supreme Court accepted the contention and declared the 'communal G.O.' unconstitutional.

To avoid this anamolous position, immediately after the Supreme Court decision, the First Amendment of the Constitution was made to insert Art. 15(4). This is a saving clause for State to make special provision for the advancement of any socially and educationally backward classes of citizens or

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60. Dorairajan v. State of Madras A.I.R. 1951 Mad. 120.

    State of Madras v. Sm. Champakam Dorairajan A.I.R. 1951 S.C. 226.

61. Articles 15(1), 29(2).

62. Dorairajan v. State of Madras, AIR 1951 Mad. 120 State of Madras v. Sm. Champakam Dorairajan AIR 1951 SC. 226.

for the Scheduled Castes and the Scheduled Tribes.

Art. 15(4), however, does not solve the entire problem, many other difficulties have been brought to the Law Courts. The difficulties are:

(1) Who may classify sections of citizens as socially and educationally backward classes and provide for them?

(2) What should be the criteria for such classification?

(3) What is the scope of Art. 15(4) to make special provisions for Backward Classes?

The first constitutional objection against steps taken by State authorities under Art. 15(4), is a jurisdictional one. Under Art. 340, it is in the President's jurisdiction to appoint a commission to investigate and study conditions of Backward Classes and to suggest steps to improve these conditions. Thus the contention was that it was not for the State but for the President to classify socially and educationally Backward Classes,[63] and to take steps to ameliorate their conditions. The contention was supported by citing Articles 341, 342 and 388 under which authority is vested in the President to determine and classify scheduled classes and scheduled Tribes. Both, the Supreme Court and the High Court of Mysore did not accept

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63. Ramkrishna Singh v. State of Mysore A.I.R. 1960, Mysore 338.

M.R. Balaji v. State of Mysore AIR 1963 S.C. 649.

64. Ibid.

these contentions. Chief Justice S.R. Das Gupta of the Mysore High Court pointed out that it was not mentioned in the Constitution that for the purposes of the Constitution "Socially and educationally backward classes would mean the classes who have been specified by the President under Art. 340 of the Constitution."[65]

Reading Articles 340 and 15(4) together, Justice Gajendragadkar (now Chief Justice of India) called the contention 'misconceived'. He said 'it would be erroneous to assume that the appointment of the Commission and the subsequent steps that were to follow it constituted a condition precedent to any action being taken under Art. 15(4)."[66] Regarding steps recommended by the Commission under Art. 340(1), his lordship held that they would be "implemented in their discretion by the Union and the State Government and not by the President .... (Thus) the argument that the President alone has to act in this matter cannot be accepted."[67]

Criteria for Backwardness

After upholding the validity of constitutional authority of the State to act through its Executive[68] or Legislature

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65. Ram Krishan Singh v. State of Mysore A.I.R. 1960 Mysore 338, 344.

66. M.R. Balaji v. State of Mysore AIR 1963 Sc 699,658.

67. Ibid at p. 658.

68. Ibid at p. 658, to the contention that under Art.15(4) only State legislature can act and not the State executive, the Court held that under Art. 12 State includes both the Government and the legislature.

under Art. 15(4), the Supreme Court considered the important question as to what should be the criteria according to which any class of citizens may be classified as Backward. The Court held that the backwardness should be both social and educational and not either of the two.[70] Determining social backwardness is a very difficult problem involving comprehension of complex and changing criteria needing an "elaborate investigation and collection of data and examining the said data in a rational and scientific way."[71]

However, the Supreme Court considered some objective conditions as relevant in adjudging backwardness of a class of citizens. These conditions are caste, poverty, occupations, place of habitation-rural or urban, and literacy.[72] To decide backwardness of a group of citizens caste is not an irrelevant consideration[73] and it can also not be said that under Art. 15(4) the only permissible discrimination on the basis of caste is in favour of Scheduled Castes,[74] but the court held that caste cannot be treated as sole test of backwardness. Other factors must also be taken into consideration.

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69. The Court held: "If the social backwardness of the communities to whom the impugned order applies has not been determined in a manner which is not permissible under Art. 15(4) and that itself would introduce an infirmity which is fatal to the validity of the said classification." Ibid at p.

70. Ibid at p. 658.

71. Ibid at p. 659.

72. Ibid.

73. Ibid.

74. Ramkrishan Singh v. State of Mysore AIR 1960 Mys. 338 at p. 345.

The Mysore State made reservations of seats in educational institutions for candidates coming from backward classes and fell in error when it assessed backwardness of these classes in comparison to the most advanced sections of the society. The High Court pointed out that Article 15(4) of the Constitution was not designed to provide for comparatively backward classes, i.e., classes who compared to most forward classes are backward."[75] The Court called this reservation discrimination against five per cent of the population of the State, rather than a provision for the backward classes.[76] In practice the provision gave no benefit to really socially and educationally backward classes as they could not compete in the reserved quota of the seats against comparatively advanced (but classified) classes of the population.

The Supreme Court noted that fixing most advanced classes in the State as a standard for comparing backwardness had actually resulted in "sub-classification" among backward classes. The Court held that in introducing two categories of Backward Classes the impugned order purported to devise a measure for the benefit of all the classes of citizens who were less advanced compared to the most advanced classes in the State and it was not the scope of the Art. 15(4).[77] "The classification of the two categories, therefore, is not warranted by Art. 15(4)."[78]

75. Ibid at p. 349;

76. Ibid.

77. M.R. Balaji v. State of Mysore. AIR 1963 SC 644 at 661.

78. Ibid.

The Law Courts have declared special provisions for backward classes unconstitutional where these provisions lead to infringment of the fundamental rights either of individuals[79] of the backward classes themselves or of other citizens. Thus the fixing of maximum number of seats available to members of Backward Classes resulted in hardship to them when they were actually able to compete and secure more seats had there been no reservations at all. Chief Justice K. Subba Rao (as he then was) of Andhra High Court held that this reservation would violate fundamental rights under Art. 19(2).[80] His Lordship suggested a modification in the rule for reservation of seats by substituting the words "minimum of 15 per cent" for the words "maximum of 15 per cent."[81]

The rights of other citizens may be abridged by special provisions made under Art. 15(4) but the Law Court would hold those provisions unconstitutional if the restraint "is wider than required by the actual necessity of imposing that restraint to achieve the object of securing advancement of Backward Classes." [82]

The arrangement is unconstitutional[83] which reserves percentage of seats in professional educational institutions in three categories viz., Scheduled Tribes and Scheduled Castes, Backward Classes and General Pool, and then provides that seats remaining unfilled in one of the first two categories might be

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79. Jacob Methew v. State of Kerala AIR 1964 Ker.39 at p.64.

80. P. Sundarsan v. State of Andh. Pradesh AIR 1958 A.P. 569 at p.571.

81. V. Raghuramulu v. Union of India AIR 1958 A.P. 129 at p.131.

82. S.A. Partha v. State of Mysore AIR 1961 Mys.220 at p.234.

transferred to another and also at the same time allows candidates for the reserved categories to compete separately both in the reserved as well as the general category.

This division of seats in different compartments and then allowing double advantages to backward class candidates causes great hardship to the candidates belonging to other communities.[84] K. Subba Rao the then Chief Justice of the Andhra High Court, suggested the need to work out reservation of seats in such a way as to protect the interests of students of the backward classes without at the same time causing prejudice to the students belonging to other communities.[85]

In M.R. Balaji v. State of Mysore,[86] P.B.Gajendragadkar J. emphasised the need to adjust the interest of weaker sections of society which are the first charge on the States and the Centre with the interests of the community as a whole.[87] He observed:

"It would be against the national interest to exclude from the portals of our universities qualified and competent students on the ground that all the seats in the universities are reserved for weaker elements in society."[88]

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84. P. Sundarsan v. State of Andhra Pradesh AIR 1958 A.P. 561.

85. Ibid.
"This could be achieved by pooling all the candidates together and guaranteeing minimum seats for those belonging to the backward classes.... If they fell short of that number, they would be selected to make up their number on the basis of merit inter se between them, though they get less marks than boys belonging to other communities."

86. AIR 1963 S.C. 649.

87. Ibid at p. 663.

88. Ibid at p. 662.

To achieve this adjustment of conflicting interests he referred with approval to the University Education Commission's suggestion that "the percentage of reservation shall not exceed a third of the total number of seats, and ... the principle of reservation may be adopted for a period of ten years (p.53).[89]

However the Supreme Court was aware that to achieve this adjustment of interests no common formula or plan could be provided which could be adopted by each State. P.B. Gajendragadkar J.. while concluding his judgment observed:[90]

"In our country where social and economic conditions differ from State to State, it would be idle to expect absolute uniformity of approach; but in taking executive action to implement the policy of Art. 15(4), it is necessary for the States to remember that the policy which has been declared by Art. 46 and the preamble of the Constitution. It is for the attainment of social and economic justice that Art. 15(4) authorise the making of special provisions for the advancement of the communities there contemplated even if such provisions may be inconsistent with the fundamental rights guaranteed under Art. 15 or 29(2). The context, therefore, requires that the executive action taken by the State must be based on an objective approach free from all extraneous pressures. The said action is intended to do social and economic justice and must be taken in a manner that justice is and should be done."

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89. Ibid.

90. Ibid at p.664.

Students' indiscipline cases and the Law Courts -

A review of the cases connected with rustication of students on disciplinary grounds, discloses that the Law Courts have taken into consideration:

(i) that in India the relationship between teacher and pupil is held sacred.91

(ii) that the educational institution stands for the improvement of moral and intellectual standards of students. [92]

(iii) that maintaining discipline the responsibility is entirely that of the head of the institution or any other authorised body. [93]

(iv) that while exercising its disciplinary powers the authority concerned has to see the interest of all the three parties concerned - the institution, other students and the student against whom action is taken.

(v) that the authority having a disciplinary power is the best judge to meet out punishment for misconduct committed by a student.[94]

Considering (i) and (ii) it can be said that the courts in India are very reluctant to entertain and proceed with student - petitions relating to cases of indiscipline. The Courts do not like to interfere in the sacred relationship between a student and a teacher, or to help a student against his teacher. Teja Singh C.J. observed.[95]

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91. Jang Bahadur v. Mohinder College AIR 1951 Pep. 59.

92. Trilochan Singh v. Director S.I.S. Institute A.I.R. 1963 Mad. 68.

93. Rana Pratap v. Banaras Hindu University A.I.R. 1960 All.579.

94. Ram Chandra v. Allahabad University A.I.R. 1956 All. 46.

95. Jang Bahadur v. Principal Mohindra College, A.I.R. 1951 Pepsu 59. at p.60.

"The relationship between a pupil and a teacher has always been held to be sacred in India and it is in the interests of students as well as of the entire body of the citizen that discipline amongst student is insisted upon. If students are allowed to condemn their teachers openly and with impunity, discipline is bound to go to dogs and no teacher will be able to discharge the sacred duty with which he is entrusted. It is for this reason that in every civilized state, Heads of Educational Institutions have been given ample and in some cases drastic powers to deal with cases of proved breach of discipline."

"It is wrong to import," observed Subba Rao J..[96] "the conception of "lis" in dealings of a Principal with his students." And, on the question of a legal right of the student to come to a law court, Malik C.J.[97] observed:

"To hold that a student has a legal right to come to a court of law and require the head of the institution to justify his action where he has meted out some punishment or taken any disciplinary action will be subversive of all discipline in the schools and colleges. The High Court will not interefere in such matters for the internal autonomy of education institutions."

Giving a modern interpretation of contractual relationship betweem a student and a head of an educational institution, V. Bhargava J. of Allahabad High Court observed:[98]

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96. C.D. Sikkilar v. Krishna Moorthi AIR 1952 Mad. 151.

97. Kishob Chandra v. Inspector of Schools A.I.R. 1953 All. 623.

98. Ram Chandra v. Allahabad University A.I.R. 1956 All. 46.

"A student, who enrols himself in a University to receive education places himself under disciplinary powers of the Vice-Chancellor and the Vice-Chancellor can obviously award every kind of punishment that would be appropriate for the purpose of maintaining discipline."

iii) To achieve the purpose of an educational institution - 'to raise the moral and intellectual standard of its students' and to honour the relationship between a student and a teacher, the courts have also accepted full discretionary powers of authorities of educational institutions to take disciplinary actions against misbehaving students. The exercise of such discretionary power has been held in many cases as an exercise of administrative discretion where observance of rules of natural justice while conducting enquiry into misbehaviour has not been held to be necessary.[99] In the exercise of administrative discretion the only requirements are that (a) an opportunity to explain the charge must be given to the student concerned at any stage

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99. Swapan Roy v. Khagendra Nath. A.I.R. 1962 Cal. 520.

Shibani Bose v. Promotha Nath AIR 1952 Cal. 238.

Ranvir Singh v. Distt. Inspector of Schools A.I.R. 1954 All. 636

Ram Gopal Gupta v. Principal Victoria College A.I.R. 1955 M.B. 33.

Ram Chandra v. Allahabad University A.I.R. 1956 All. 46.

Jogindra Raj V. University of Allahabad A.I.R. 1956 All.502.

Rana Pratap v. Banaras Hindu University A.I.R. 1960 All. 253 A.I.R. 1960 All. 579.

Trilochan Singh v. Director S.I.S. Institute A.I.R. 1963 Mad. 68.

Harbans Singh v. Punjab University AIR 1964 Pun. 456.

of the enquiry[100] (b) the enquiry must be held 'honestly' an with no mala fide intention[101] (c) the action taken must be on 'reasonable grounds'.[102]

The interpretation of the rules of natural justice has been narrowed down by the courts and they have varied their application with the special circumstances of each case[10
Thus, where the courts found that the statutory provision authorising the exercise of disciplinary power requires the exercise in quasi-judicial manner,[104] they have considered differently the adequacy of the opportunity[10 given to the student concerned to be heard before disciplinar action could be taken against him. In such a case the Court required that the opportunity should have been given when the charges against the concerned student were

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100. Rana Pratap v. Vice-Chancellor AIR 1960 All. 579.

101. Shibani Bose v. Promotha Nath AIR 1952 Cal 228.

102. Sadhu Ram v. Principal Rajender College A.I.R. 1954 Pepsu 151.

103. The requirement of the rule of natural justice, when applied to bodies like the university, what is required is that, the person to be proceeded against should be given an adequate or fair opportunity to rebut or explain the case against him, and as to whether in a given case the opportunity is adequate and fair must, from the very nature of things depend on a variety of circumstanc I.D. Dua J.

Harbans Singh v. Punjab University AIR 1964 Pun 456.
Sadhu Ram v. Principal Rajendra College A.I.R. 1959 Pepsu 151. 1954

104. Ramesh Chandra v. N. Padhy A.I.R. 1959 Orissa 196. 209.

105. Sadhu Ram v. Principal Rajinder College A.I.R. 1954 Pepsu 151, 156.

'crystalized' and 'before the order of expulsion was passed:[106]

(v) An expulsion order is a severe form of punishment. It carries with it a great stigma against the punished student. It has 'far-reaching consequences on his entire future career.' The Courts have, however, taken into consideration interests of the institution and its other students, and prefered not to interfere with the discretion of the institution's authority in the choice of punishment. Sometimes, the courts have chosen to comment on the punishment awarded to a student when they found that the expulsion order was not going to benefit either the institution, other students or the expelled student, and recommended to the concerned authorities to adopt a different attitude which may do good to all.[107] The Courts have shown great concern when the awarded punishment endangered the future of the punished youngman. B.N. Banerjee J. observed:[108]

"Scratch the green rind of a sapling repeatedly or wantonly twist it in the soil, and a scarred or crooked oak will tell of the act for years to come. So it is with the youngester treat him unsympathetically or shut to his face all the doors of educational institutions and an uneducated or a half-educated youth may live a useless life to proclaim what men want only didby refusing to him all opportunities of college education."

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106. Sadhu Ram v. Principal Rajinder College A.I.R. 1954 Pepsu 151, 156.

107. C.D. Sekkilar v. Krishna Moorthy AIR 1952 Mad. 151,57.

108. Swapan Rao v. Khagendra Nath AIR 1962 Cal. 520, 524.