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EDUCATION LAW

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I INTRODUCTION

EDUCATION is the bedrock of any constitutional democracy, serving as both a fundamental right and a foundational pillar of societal development. It empowers individuals with knowledge, critical thinking, and awareness of their rights and responsibilities, enabling active and informed participation in the democratic process. The Indian Constitution recognizes education as a fundamental right under Article 21A,[1] emphasizing its importance for individual and societal growth.[2] It mandates free and compulsory education for children aged 6 to 14 years, ensuring equal opportunities for all. Article 45 and article 51A(k) highlight the state's responsibility to provide early childhood care and education and the citizens' duty to educate their children. Education therefore in a constitutional democracy fosters equality, social justice, and the rule of law, ensuring that citizens can contribute meaningfully to governance and the realization of constitutional ideals.

Education in India has always been a powerful driver of social and economic development, and recent reforms have underscored the government's commitment to enhancing access, equity, and quality in education. With the implementation of the National Education Policy (NEP) 2020, we witness significant changes across various aspects of education, from early childhood to higher education and vocational training. The NEP's vision for holistic, flexible, and multidisciplinary learning has necessitated updates to existing laws and policies, prompting a closer look at education law in light of India's aspirations for an inclusive and dynamic knowledge society. The year 2022 marked a transformative period for education law in India, as the nation sought to align its educational policies with the evolving demands of a globalized world while addressing the unique socio-economic challenges faced domestically.

The "Survey of Education Laws in India for the Year 2022" presents a comprehensive analysis of the legal framework governing education across the

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1 The Constitution (Eighty-sixth Amendment) Act of 2002 added art. 21-A to the Constitution of India.

2 The Supreme Court in cases of *Mohini Jain,* AIR 1992 SC 1858 and *Unni Krishnan* v. *State of Andhra Pradesh,* AIR 1993 SC 2178, has endeavored to interpret right to education as integral part of right to life under art. 21 of the Constitution.

country. This aims to examine the key legislative and judicial developments in education during 2022, focusing on their alignment with the national goals of universal education, inclusivity, and skill development. It provides insights into the evolving nature of education laws, with a particular emphasis on their impact on primary, secondary, and higher education. By analyzing these changes, the survey serves as an essential resource for policymakers, educators, legal professionals, and scholars, offering an informed perspective on the dynamic landscape of education law in India. Through this annual review, we aim to contribute to a deeper understanding of the challenges and opportunities that lie ahead as India works to fulfill its educational mission for all.

For the sake of convenience, the survey is classified under various sections such as affirmative action, university administration, recruitment/appointment and conditions of service, affiliation & recognition, and rights of students.

II AFFIRMATIVE ACTION

Affirmative action in education in India is a critical measure aimed at ensuring social justice, equity, and inclusivity in a historically stratified society. Rooted in the principles of the Indian Constitution, particularly articles 15(4), 16(4), and 46, these measures focus on empowering marginalized groups, including Scheduled Castes (SCs), Scheduled Tribes (STs), and Other Backward Classes (OBCs), through equitable access to educational opportunities. Reservation policies are the cornerstone of affirmative action in education, mandating quotas in admissions to public educational institutions. These initiatives address centuries of systemic discrimination and socio-economic exclusion, enabling historically disadvantaged groups to participate in nation-building. Additionally, scholarship programs, fee waivers, and special coaching schemes further support underprivileged students in accessing quality education.

The Supreme Court of India which has developed a vast majority of affirmative action jurisprudence has held that, protective discrimination in favour of SC/ST and OBC is a part of the constitutional scheme of social and economic justice[3] to integrate them into the national mainstream so as to establish an integrated social order with equal dignity of person.[4] Clause (4) was added in article 15 basically to bring articles 15 and 29 in line with articles 16(4) and 46[5] and 340[6] and to make it constitutional for the State to reserve seats for the backward classes of citizens, SCs and STs in public educational institutions as well as to make other special

3 *Ashok Kumar Gupta* v. *State of UP* (1997) 5 SCC 201(para 46): *State of UP* v. *Dinanath Shukla (*1997) 9 SCC 662(para 7).

4 *Post Graduate Institute of Medical Education* v. *K. L. Narasimhan* (1997) 6 SCC 283 (para 24).

5 Constitution of India, 1950, art.46 reads: - Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections: The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.

6 Appointment of a Commission to investigate the conditions of backward classes.

provisions for their advancement.[7] The promotional measures provided under Article 46 of the Constitution to protect the weaker sections may well be by reservation and preferences. Protective discrimination is well within the benign ambit of this rescue shelter. If article 46 is to be harmoniously read with the articles14 and 16, the relevant interpretation may reconcile reservations and equal protection. The special provisions under article 15(4) and 15(5) would include reservation in the educational institutions and in the other walks of life.[8]

Despite its significance, affirmative action in education faces challenges. Critics argue that reservation policies sometimes benefit relatively privileged individuals within marginalized groups, while others highlight the neglect of economically disadvantaged individuals outside the reserved categories. Moreover, the lack of adequate resources and infrastructure in many institutions undermines the effectiveness of these measures. A lot legal and constitutional jurisprudence on affirmative action has been developed by our constitutional courts especially the apex court which continues to evolve. The survey of development in affirmative action in the year 2022 are as follows:

Formulae for fixing the percentage of reservation for the SC and ST candidates and for determining the percentage of seats to be reserved for OBC candidates under the second proviso of Section 3 of the Central Educational Institutions (Reservation in Admission) Act, 2006, ought to be gathered from the same source and any other interpretation would lead to uncertainty.

In *Kshetrimayum Maheshkumar Singh* v. *Manipur University*,[9] the issue before the Supreme Court was twofold: first; what about the extent of reservation for SC category candidates after Central Educational Institutions (Reservation in Admission) Amending Act, 2012 which amended the Central Educational Institutions (reservation in Admission) Act, 2006 and two; whether Manipur University was required to follow its own reservation hitherto followed prior to introduction of amendment for admissions to the University?

It is pertinent to mention that Manipur University prior to CEI Reservation Act, 2006 followed the reservation norm of 2% for SCs, 31% for STs, 17% for OBCs but post CEI Reservation Act, the reservation pattern that came to be implemented was 15% for SCs, 7.5% for STs, and 27% for OBCs. However, the amendment of 2012 reverted the reservation pattern to the previously followed of 2% for SCs, 31% for STs, 17% for OBCs.

The Supreme Court while referring and relying on 234thReport of Parliamentary Standing Committee on HRD and statements and objects of amendment act upheld the reservation pattern previously followed by the Manipura University *i.e.,* 31% for STs, 2% for SCs, and 17% for OBCs, stating it was justified and aligned with the objectives of the 2012 Amending Act. The court emphasized accommodating the

7 Durga Das Basu, *Shorter Constitution of India* 198, (13th edn. Rep.2004).

8 *Indra* v. *Union of India*, AIR 1993 SC 477.

9 (2022) 2 SCC 704.

aspirations of large tribal populations in Sixth Schedule areas like the North-East and harmonizing the reservation framework.

Transformative equality: From 'formal equality' to 'substantive equality'

In another significant case *Neil Aurelio Nunes (OBC Reservation)* v. *Union of India,*[10] the reservation introduced for OBC and EWS in the all-India quota seats (hereinafter referred as "AIQ seats") for both UG as well as PG medical courses i.e. the notice issued by the Union of India providing 27% OBC reservation and 10% EWS reservation was challenged. Three main concerns were raised *viz.,* first; Legality of EWS and OBC reservation per se in the AIQ seats, which were argued to be free from reservation and based only on merit, especially the PG courses; second; the reservation was introduced midway after commencement of the admission process for 2021-2022 and thus, introduction of reservation amounted to changing the rules of the game post its commencement and third; in AIQ seats of PG courses, there could not be reservation for SC, ST, and OBC to such a large extent, which is against the mandate of a longline of judgments in *Pradeep Jain* v. *Union of India*[11] and *Jagadish Saran* v. *Union of India*.[12]

A division bench of apex court consisting Justices D.Y. Chandrachud and A.S. Bopanna examined the binary concepts "merit" and "reservation", their correlation with each other. Relying upon the history of corelation between articles 15(1), 16(1) with their corresponding articles 15(4) and 16(4) respectively and verdict of apex court in *State of Kerela* v. *N.M. Thomas*,[13] the court held that: "Articles 15(4) and 16(4) are not exceptions to articles 15(1) and 16(1) respectively, but are another facet of equality mentioned under articles 15(1) and 16(1) therein. It would be a negation of constitutional precept and vision to read them as exceptions to the general principles of merit.

Thus, "merit" and "reservation" cannot be treated as opposed to each other, but are relatable in the larger canvas of Articles 15 and 16 of the Constitution of India. The court then examined the role and nature of common competitive-cum-entrance examinations as a basis and index of merit. It held that assessment must be in the larger social background, disadvantages and handicaps faced by the candidate concerned, for which reservation has been introduced. Scores in any examination are not the sole determinant of excellence or capability, but merit must be examined in the backdrop of equalisation of opportunities for candidates coming from different social backgrounds. The court traced the development and concept of AIQ seats starting from the judgements of *Pradeep Jain* v. *Union of India,*[14] *Dinesh Kumar* v. *Motilal Nehru Medical College*[15] and *Dinesh Kumar* v. *Motilal*

10 (2022) 4 SCC 1.
11 (1984) 3 SCC 654.
12 (1980) 2 SCC 768.
13 AIR 1976 SC 490.
14 (1984) 3 SCC 654.
15 (1985) 3 SCC 22.

Nehru Medical College,[16] and the series of judgments that followed, mentioning that AIQ seats were introduced for providing opportunities to students to compete on a national level and take admission nationally in any State or college of their choice. All these judgements were rendered in their backdrop of reservation for domicile/local resident candidates and cannot be treated as precedents for restricting the implementation of reservation on the AIQ seats. On the aspect of changing of rules of the game midway, with the introduction of reservation, after holding of entrance examination, the court held that as per clause 11 of the brochure, the process of admission was formally to commence after notification of seat matrix by the counselling authority (GoI) and not before. Since, before the announcement of results itself, the notice under challenge dated July 29, 2022 was issued, therefore it could not be said that rules of the games were changed. The court while tracing and relying on the law on this aspect right from *K. Manjusree* v. *State of A.P.*[17] held that the challenge to the implementation of notice and the reservation in the AIQ seats of 2021-2022 cannot sustained.

There cannot be a legitimate expectation as to the continuity of the same scheme and state of things in the matter of admission on the part of students. The principle of just expectation cannot be invoked when public interest demands a change of policy

The writ petition filed in High Court of Madras in *Preethika C.* v. *State of T.N.*[18] challenged the 7.5% reservation/preference made for the students of the government schools in admissions to undergraduate medical/dental courses. It also challenged to constitutionality of various provisions of the "Tamil Nadu Admissions to Undergraduate Courses in Medicine, Dentistry, Indian Medicine and Homeopathy on Preferential Basis to Students of Government Schools Act, 2020." The contention of the petitioner are: (i) The reservation was outside the purview of Articles 15, 16, and 21 of the Constitution of India; (ii) The amended provisions excluded the students of Government-aided schools in Tamil Nadu for being provided preference at power with the students of government schools and thus the distinction between the two classes was unintelligible; (iii) The overall reservation is crossing the upper limit of 50% and thus violative of the ceiling of 50% as let down in *Indra Sawhney* v. *Union of India*;[19] (iv) There is already horizontal reservation for certain communities in the SC quota as also the backward classes and the most backward classes; and (v) There was a legitimate expectation amongst all the students at the time of appearing for the senior secondary examination the percentage for the reservation is fixed and thus the percentage of reservation cannot be altered to their prejudice, till and until the student are known in advance. Thus, the legitimate expectation of students was shattered, resulting in a violation of Article 14.

16 (1986) 3 SCC 727.

17 (2008) 3 SCC 512.

18 WP No. 20083 of 2020, order dated Apr 7, 2022 (Mad. HC).

19 1992 Supp (3) SCC 217.

The court after referring cases viz. *Sejal Garg* v. *State of Punjab,*[20] *Nupur* v. *Punjab University*[21] and *Monnet Ispat and Energy Ltd.* v. *Union of India*,[22] held that there cannot be a legitimate expectation as to the continuity of the same scheme and state of things in the matter of admission on the part of students. The principle of just expectation cannot be invoked when public interest demands a change of policy, which can never be barred by principles of promissory estoppel. Thus, since the matter relates to admissions to professional courses and the impugned enactment is an outcome of legislative policy made in consideration of overriding public interest, principles of legitimate public interest under Article 46 of the Constitution of India, the same could not have been challenged. The high court found that the State had followed due process by appointing a commission to study the relevant factors, data, and statistics, and then only impugned legislation was enacted by the state government ensuring "proportional equality."

The court also relied on the most recent judgment of *Neil Aurelio Nunes* v. *Union of India,*[23] and held that due to socio-educational and economical background, the cognitive gap shall always be there, which requires positive discrimination by the State. Accordingly, the amended provisions were held to have a nexus with the objective of providing opportunities to government students with a socially and economically weaker background to make them overcome disadvantages for the full utilisation of their physique, character, and intelligence and thus not violative of Article 14 of the Constitution of India. The court held that the impugned legislation is not including any person in the quota provided but introducing a new criterion altogether by way of horizontal reservation. Since the nature of reservation was horizontal, one being dealt with extensively in the earlier judgments of *Indra Sawhney* v. *Union of India*,[24] the argument of ceiling of 50% would not apply and it becomes a permissible reservation provided to "socially and educationally backward class" under Articles 15(4) and 15(5) read with Article 46 of the Constitution of India. In the given circumstances, the challenge to constitutionality of various amended provisions of the Government Schools Act, 2020 and office memorandum issued on that basis was declared unsustainable by the Madras High Court.

Even though the interchangeability/de-reservation of the vacant unfilled posts of SC category may be statutorily permissible and possible, but if the State Government had demonstrated to be not desirable, the fresh selection process and the fresh advertisement for filling up all the vacant SC/ST posts is not liable to be interfered

In another important ruling the apex court in *Mandeep Kumar* v. *State (UT of Chandigarh)*[25] held that that the satisfaction of the state government not to de-

20 C.W.P. No. 16886 and 17072 of 2019, decided on July 17, 2019 (P and H High Court).
21 1995 SCC OnLine P and H 1192.
22 (2012) 11 SCC 1.
23 (2022) 4 SCC 64.
24 AIR 1993 SC 477.
25 (2022) 5 SCC 800.

reserve/interchange the seat belonging to SC/ST to OBC was duly demonstrated in the matter to be existing in larger public interest against de-reservation. In such circumstances, even though the interchangeability/de-reservation of the vacant unfilled posts of SC category may be statutorily permissible and possible, but if the state government had demonstrated to be not desirable, the fresh selection process and the fresh advertisement for filling up all the vacant SC/ST posts of elementary trained teachers (hereinafter, ETT) is not liable to be interfered.

The appellants were all waitlisted candidates, who had approached the court for filling up of unfilled posts of ETT, from the waitlist, instead of being re-advertised again for filling of the same through the fresh round of selection. The High Court of Punjab and Haryana dismissed the writ petition holding that the employer is always entitled to go for a fresh round of selection after exhausting the main list and not compelled to resort to or exhaust the waitlist. The appellants belonged to reserved OBC category candidates, who were staking claim over the posts belonging to SCs/STs category remaining unfilled on account of non-availability of SCs/STs category candidates, which would have been surrendered to the OBCs category as per the applicable policy of the reservation/interchangeability of the posts from SCs/STs category to OBCs category in the event of non-availability of the category candidates concerned. The State took a specific stand that they were not inclined to interchange or de-reserve the vacant post of SC/ST category to the OBC category, for that reason fresh advertisement with a fresh selection process was initiated. The court found the satisfaction of the State Government under Section 7 of the Punjab Scheduled Castes and Backward Classes (Reservation in Services) Act, 2006 was duly demonstrated in public interest. The appeal was accordingly dismissed.

A writ of *mandamus* cannot be issued for providing incentives or reservation to the Government medical doctors

The decision of single judge bench of High Court of Kerala was challenged which dismissed the writ petitions of the petitioners, who were all government doctors holding that the provisions of Regulation 9 (IV) of the Medical Council of India Postgraduate (MCIPG) Medical Education Regulations, 2000 do not confer any right on the Government Medical Officers serving in rural areas to get weightage in the marks as incentive for the services rendered by them. The State of Kerala had a service quota in the PG medical course seats in which the government doctors, who had served in rural, remote, and difficult areas were entitled for being included in the said service quota along with grant of incentive marks. However, doctors working in rural areas were demanding to be given special reservations in the post graduate degree seats.

The Division Bench in *Vikas R.S.* v. *State of Kerela*[26] while affirming the judgment of the Single Bench, held that no such directions can be issued and that splitting up of seats between the three departments *viz.,* medical education service,

26 WA No. 219 of 2022, decided on May 26, 2022 (Ker. HC).

health service, and insurance medical service in the ratio of 45:45:10 of the service quota cannot be treated as unjustifiable. No right is conferred on medical officers in the services of government/public authorities to get weightage in the marks as an incentive for service in notified rural areas in such circumstances. Therefore, the court was handicapped in issuing any such direction to the government for incorporating the said provisions to the advantage of the appellants. Accordingly, the appeals were dismissed.

Transgender persons entitled to reservation under third gender category

The High Court of Madras in a progressive ruling in *S. Tamilselvi* v. *The Secretary to the Government*[27] directed that the petitioner, S. Tamilselvi, be treated as a transgender and given special reservation in the cut-off for admission to an educational institution. The petitioner had undergone a "sexual reassignment surgery" and started living as a female after changing her sex from male to female. She had also changed her erstwhile birth name from S. Santosh Kumar to female name S. Tamilselvi as per the prescribed procedure. There was no separate reservation provided horizontally for transgenders in the admission process and therefore petitioner prayed for categorising transgenders under special category and giving admission to the petitioner in post basic B.Sc. (Nursing) Course 2022 under special category as transgender.

Relying on landmark verdict of apex court in *NALSA* case,[28] the court held that the mandate to provide reservation and concessions to transgenders as a special class/category had already been mentioned and provided. Even though the representation of transgenders is minimal in the State, the same cannot be a ground for denial of reservation to them and albeit for a smaller class a sort of reservation-cum-preference could have been provided. Accordingly, the direction was issued to the respondent to treat the petitioner as a third gender/transgender to be placed in a special category for the purposes of her admission to the special seats.

The principle of "reasonable accommodation" for facilitating the development of the disabled

In *Anjali Sonkar* v. *State of Chhattisgarh*[29] the petitioner challenged the validity of Rule 5(2)(b) of the Chhattisgarh Chikitsa, Dant Chikitsa Evam Bhowtik Chikitsa (Physiotherapy) Snatak Pravesh Niyam, 2018, notified by the state government as *ultra vires* to the provisions of Rights of Persons with Disabilities Act, 2016. The petitioner appeared in NEET 2022 and sought admission under the persons with disability quota (hereinafter PwD quota), which was disallowed by the State on very many technical grounds. The petitioner claimed that he was possessing the disability of 40% damage to her middle finger owing to an electrocution accident in her child life. The certificate to the said effect was issued

27 2022 SCC OnLine Mad 4879.

28 (2014) 5 SCC 438.

29 2022 SCC OnLine Chh 2696.

by the District Medical Board, but not by the State Medical Board, which was issued in view of the applicable Central Rules under PwD Act. The SMB denied issuing the disability certificate on the ground that as per the State Rules, 2018 she was disqualified from undertaking the medical course. Thus, she was not found to be duly qualified.

The High Court of Chhattisgarh held that if the candidate is possessing the disability, but not able to produce the certificate at the time of admission, then the same must be treated as a curable defect in the application and she be allowed to produce the same later. The certificate of SMB was completely silent about the actual disability of the petitioner, and Rule 5(2)(b) is *ultra vires* the provisions of PwD Act, since it discredited and disallowed the benefits of disability arising from the one possessed by the petitioner. Petitioner was a disabled candidate as per the Central Rules, but was denied the benefit in view of Rule 5(2)(b) of the State Rules. Referring to a recent judgment of *Vikash Kumar* v. *Union Public Service Commission,*[30] the court reiterated the avowed objective of PwD Act, 2016 and the objective behind reservations and affirmative provisions for promotions of such disabled persons. The principle of "reasonable accommodation" is required to be applied for facilitating the development of the disabled. Accordingly, the petition was allowed and it was held that the petitioner was entitled for advantage of 40% disability and resultantly reservation against the said handicapped quota. The writ petition was allowed and the rule declared as *ultra vires* was resultantly struck down.

State is under an obligation to immediately implement the 10% EWS reservation

The petitioner Tista Das had approached the high court for revising the seat matrix for admissions to MBBS courses by implementing the 10% EWS reservation as incorporated and effected vide Constitution (One Hundred and Third Amendment) Act, 2019 and Article 15(6) of the Constitution of India. The government of West Bengal did not implement the 10% EWS reservation, owing to which the admission prospects of candidates belonging to the EWS category to secure their admission in the under graduate medical entrance examination were distressed. The court in *Tista Das* v. *State of W.B.*[31] held that constitutionality of 10% EWS reservation has been upheld and affirmed in the *Janhit Abhiyan* v. *Union of India,*[32] and State is under an obligation to immediately implement the said reservation. Accordingly, the seat matrix prepared and published by the State of West Bengal (UG Medical and Dental Counselling Board) was set aside and quashed with a direction to be revised implementing suitably the 10% EWS constitutional quota.

III UNIVERSITY ADMINISTRATION

University administration in India plays a pivotal role in shaping the academic, cultural, and social environment of higher education institutions. Issues like

30 (2021) 5 SCC 370.

31 2022 SCC OnLine Cal 3862.

32 2019 SCC OnLine SC 1867.

delayed decision-making, irregular appointments, and favouritism undermine the autonomy and credibility of universities. Moreover, the disconnect between administrative policies and the needs of students and faculty hampers institutional growth. Addressing these challenges requires reforms focused on accountability, decentralized decision-making, and stakeholder engagement. Strengthening university governance is essential to fostering academic excellence and ensuring the holistic development of India's higher education system. The important development under this section are as follows:

Relinquishment of promotion is not perpetual: Seniority, a thumb rule, which has to be considered every time

The apex court in *Jagathy Raj V.P.* v. *Rajitha Kumar S*[33] established an important legal point of importance of seniority and fair consideration based on seniority in the appointment process of HoD/Director in a University. There was an appeal against the decision of a Division Bench of High Court of Kerala setting aside the judgment of the single judge, through which appointment of HoD was set aside on the ground that appellant being a senior Professor was ignored in consideration for the appointment to the said post. The Government of Kerala under Section 39(1) of the University Act framed Statute 18 which prescribed the procedure for appointment of Director/HoD by the syndicate.

The appellant when he became due for consideration for appointment as HoD being the seniormost Professor, which used to happen through the process of nomination by rotation, expressed his unwillingness to take up the said assignment in the first turn. Accordingly, the next professor in seniority Mavoothu D. was nominated as Director/HoD for a period of three years. However, when the term of Mavoothu D. expired, the appellant staked claim to the said post being the seniormost Professor and showed interest to participate in the selection in the appointment process. He was overlooked and a junior professor to the appellant was appointed on the ground that since the appellant had expressed his unwillingness once, therefore he had waived his right to be considered for appointment as HoD/Director and could not have been taken into consideration again. It was argued that once the waiver was made, the appellant had forgone his right of consideration for all times to come and thus, the next seniormost Professor was picked up for the appointment.

The apex court held that every round of appointment is a fresh round of appointment, based and premised on seniority. Statute 18 cannot be interpreted to read in any right or any possibility of waiver or relinquishment of any right by any professor. It was further held that since in the past, on multiple occasions professors who had shown their unwillingness at one point of time earlier were considered by the university in the subsequent second process of appointment when they got interested, the said benefit cannot be denied to the appellant. Seniority is the thumb rule, which has to be considered every time and cannot be waived.

33 (2022) 6 SCC 299.

Appointment of a vice-chancellor under a state legislation cannot be contrary to UGC Regulations

The question arose in *Gambhirdan K. Gadhvi* v. *State of Gujrat*[34]was that, in the absence of any statutory provisions prescribing any eligibility under the Sardar Patel University Act, whether the provisions of section 26(1) of the UGC Act, 1956 read with UGC Regulations 2010/2018 can be resorted to for testing the eligibility for the appointment of the Vice-Chancellor of SPU.

The Supreme Court relying upon Section 12(b) of the UGC Act, held that in view of the fact that SPU was receiving central financial assistance, despite being the State University and having adopted the UGC scheme, it automatically got bound by the UGC Regulations, 2010 and thus eligibility laid down therein was binding on the State University for appointment of vice-chancellor. It further held that the state government failed to incorporate necessary amendments in the University Act adopting and imbibing the eligibility conditions for appointment to the post of vice-chancellor in consonance with UGC Regulations. However, in view of UGC Regulations, 2018, the appointment of respondent 4 (Vice-Chancellor) was held to be illegal, being subject to the issuance of a writ of quo warranto in the said regard. The provisions of the SPU Act as well the rules framed thereunder were held to be repugnant to Section 26(1) of the UGC Act read with the UGC Regulations, 2018 and thus repugnant in view of Article 254 of the Constitution of India. Accordingly, the appointment of vice-chancellor was struck down by the court.

Declaratory/clarificatory amendment usually meant to operate from antecedent date or cover antecedent events

A bench consisting Justices U. U. Lalit, Ravindra Bhat, and Sudhanshu Dhulia hearing a civil appeal in the case of the *University of Kerala* v. *Merlin J.N*[35] held that regulations passed by UGC have a retrospective effect on the appointment of university Lecturers, which gives them exemption from the compulsory qualification of NET.

Dr. Jayakumar had completed his graduation in Sociology in the year 1999, acquired his M.Phil. in the year 2000, and Ph.D. in 2006. The regulations prescribing qualifications for appointment promulgated by the University Grants Commission in 2000 prescribed passing the National Eligibility Test (NET) as an essential condition for appointment as Lecturer in any university. The University Grants Commission Regulations (UGCR) 2000 exempted candidates who had acquired M. Phil or submitted their Ph.D. thesis by December 1993 from taking the NET. Many amendments were made to the said regulations. In the third amendment the minimum stipulation for appointment of Lecturer was NET. However, candidates who had acquired their Ph.D. in compliance with the UGC Regulations 2009 were exempted from qualifying in the NET.

34 (2022) 5 SCC 179.
35 (2022) 9 SCC 389.

In 2011, the University of Kerala invited applications for the post of Lecturer. The advertisement spelt out the minimum qualifications required. One mandatory condition was that the candidates should fulfill the eligibility requirement for Lectureship, *i.e.,* the NET. At the same time, the advertisement exempted candidates who had a Ph.D. in the concerned subject from qualifying the NET. Jayakumar applied for the post and was ranked in the first position. The respondent Merlin J.N. was placed in the second position. Aggrieved, she preferred a writ petition before the High Court of Kerala. She challenged the appointment of Dr. Jayakumar, alleging that it contravened the 2009/10 UGCR, *i.e.,* as Jayakumar had not obtained his Ph.D. in accordance with the 2009 Ph.D. Regulations, he was not qualified to hold the post of Lecturer under the 2009/10 UGCR. The appointment of the petitioner was set aside by the single bench, which was affirmed by the division bench.

Referring to the judgment of *CIT* v. *Shelly Products*[36] and *Zile Singh* v. *State of Haryana,*[37] court held that since the two UGCR amendments of 2016 restored the exemption of Ph.D. degree holders prior to 2009, therefore they shall equally apply to thespecial leave petition petitioner and exempt him also from such mandatory requirements. Accordingly, the appeals were allowed and the judgments of the high court were set aside.

The contention in the petition was denial of appointment of the petitioner on the post of assistant professor for failure to produce the "chance certificate" of MBBS/MD/MDS/DNB/MSc (Medical) examination. The petitioners applied against the advertisement, but however failed to produce the "chance certificate", which indicates the number of attempts a person has made to clear the examination concerned. Challenging the rejection of their application for want of the said certificate, petitioners contended that since they had produced the passed certificate after completing and qualifying the MBBS, which thus impliedly mentioned the chance certificate, they could not be thrown out of the selection process.

Referring to the judgments of *Karnataka State Seeds Development Corporation Ltd.* v. *H.L. Kaveri*[38] and *Maharashtra State Board of Secondary and Higher Secondary Education* v. *Paritosh Bhupesh Kumar Sheth*[39] the court held that unless there is a clear violation of statutory provisions, the Regulations or the notifications issued by the courts must keep their hands off from the selection process since as per the advertisement, the required certificate was not produced by the petitioners, therefore they cannot challenge the rejection of their applications. Petition was dismissed.

No nexus between the classification of the services rendered in government colleges and the self-financing private colleges in the career advancement scheme

36 (2003) 5 SCC 461.
37 (2004) 8 SCC 1.
38 (2020) 3 SCC 108.
39 (1984) 4 SCC 27.

In *State of Kerela* v. *C. Sreenivasan*[40] the applicants before the court were all Assistant Professors of Mathematics in various Government institutions, appointed on the advice of the Kerala Public Service Commission. The issue agitated before the high court was about inclusion of the period of service rendered by them in self-financing colleges not taken into consideration for the grant of said benefit of career progression under the UGC Scheme. The question before the court was whether the prior service rendered in the self-financing unaided colleges could be counted as eligible service for being considered for career advancement promotion, which was decided by the Kerala Administrative Tribunal in favour of the APs. The primary contention of the government, was that since the Government and the State Universities have no administrative financial control over the unaided self-financing institutions, therefore the services rendered in the said cannot be treated as eligible service for the said benefit of career progression.

The High Court of Kerala held that there is no nexus between the classification of the services rendered in government colleges and the self-financing private colleges, when the career advancement scheme does not make any such distinction so issued by the UGC. When the said benefit was extended even to teachers working in autonomous, government-aided institutions, there was no reason why the said should not include within the self-financing private institutions as well. Accordingly holding the said classification to be unreasonable and violative of Article 14 of the Constitution of India, the high court affirmed the judgment of Kerala Administrative Tribunal holding all the original applicants as entitled to the benefit of the career advancement/progression scheme.

IV RECRUITMENT/APPOINTMENTS/TERMINATION AND CONDITIONS OF SERVICE

Recruitment, appointments, termination, and conditions of service are integral part of Indian higher education system. These aspects are generally regulated by the guidelines issued by regulatory bodies like the University Grants Commission (UGC), All India Council of Technical Education (AICTE), central and respective state governments. Faculty recruitment is typically based on merit, requiring qualifications such as NET/SLET and adherence to reservation policies. Appointments follow transparent procedures, including advertisements and interviews. Service conditions, including workload, pay scales, and leave policies, comply with UGC norms and institutional rules. Termination of services occurs for reasons like misconduct, non-performance, or policy violations, following due process. In the year 2022, the constitutional courts in India gave several significant verdicts which are as follows:

Contractual employment given after following processes like regular employment cannot be terminated without following the due principles of natural justice

The appellant in *K. Ragupathi* v. *State of U.P.*[41] challenged the termination order issued by Gautam Buddha University, Greater Noida, U.P. without holding

40 2022 SCC OnLine Ker 2479.

41 (2022) 6 SCC 346.

an enquiry submitting that he could not have been suddenly relieved, which in effect was a punitive termination and passed in a *mala fide* manner. The appellant was appointed following the same mode and manner, which was being followed for appointment of permanent and regularly teaching employees but on a purely contractual basis. The appointment was done after the recommendation of duly constituted selection committee and thus even though the nomenclature of the appointment was contractual, for all intended purposes, they were required to undergo the entire selection process, which was born out from the affidavit of the university itself filed before the high court. The terms and conditions are almost like a regular employee, including maintenance of annual performance assessment report (APAR) and grading of performance of the employee in the same including his reputation and integrity. The high court had dismissed the writ petition holding the appellant to be a contractual employee. The court held that since the employment was partaking the character of a regular employee, he could not have been terminated without following the due principles of natural justice, especially when the services were discontinued plausibly on account of stigmatic allegations made against him by relating to his performance in the services. Accordingly, the dean of the said university termination order was set aside with due reinstatement of the appellant.

The test to be applied is an illegality that vitiates the selection process and the nearness of relation should be so great as to give rise to reasonable apprehension of bias in selection

In *Malankara Syrian Catholic Colleges* v. *Reshmi P.R.,*[42] the challenge was put to the selection and appointment of respondents, to the post of Assistant Professor. The selection process was alleged to be vitiated by bias and favouritism as the selected respondent was close to one of the members of the selection committee relying on certain documents annexed with the writ petition including the Facebook posts and photos.

The High Court of Kerala held that reasonable apprehension of pre-disposition of the members of the selection committee must be demonstrated based on cogent materials. The test for bias was stated to be whether a reasonably intelligent man, fully apprised of all the circumstances, would feel a serious apprehension of bias and that vague suspicions of whimsical/capricious and unreasonable people should not be made to regulate normal human conduct. Thus, merely on the basis of petitioners' apprehension or suspicion that they were deliberately given less marks at the interview compared to the rival candidates, it could not be inferred readily that overall process of assessment was vitiated. Mere reference to some random photographs pulled out from Facebook cannot be taken as basis for concluding that the respondent was related to or interested with the member of the selection committee. The test to be applied is of an illegality that vitiates the selection process and the nearness of relation should be so great as to give rise to reasonable apprehension of bias in selection. Accordingly, the writ

42 2022 SCC OnLine Ker 4448.

appeal was allowed setting aside the judgment of single bench, which had quashed and set aside the whole selection process.

Right to establish an educational institution is a fundamental right. Pharmacy Council of India can only impose moratorium by way of a law and not by executive instruction

In *Pharmacy Council of India* v. *Rajeev College of Pharmacy*[43] the petitioners challenged to the constitutional validity of executive departmental resolution passed by the Pharmacy Council of India (PCI) through which a five-year moratorium (ban) was imposed on opening up of new colleges in the country. The contention was made on following grounds: One; Right to open, operate and run educational institutions being a fundamental right guaranteed under Article 19(1)(g) of the Constitution of India, the same could have never been taken away through executive instructions passed by way of resolution/departmental orders by the PCI. Two; the PCI could have introduced any such moratorium or ban only by way of a regulation notified in the official gazette and not otherwise. For want of proper notification, therefore the GRs imposing ban by the PCI were unconstitutional. Three; the GRs imposing ban were discriminatory and violative of Article 14 on the ground that they exempted identically situated colleges/societies running existing colleges from opening a new institution, when societies who were opening maiden institutions were debarred from doing so. Four; the PCI could not have abdicated its statutory powers and duties of examining and scrutinising each and every application vested in it by virtue of sections 12, 13 and 15 of the PCI Act, 1948. Five; the ban imposed by the PCI was creating a monopoly and anti-competitive environment, favouring the existing colleges and players in the field of pharmacy education, whilst restraining the new players from entering the field and proving their competence and capabilities.

The apex court held that running, setting up and operation of educational institutions can safely be inferred and labelled as fundamental rights under Article 19(1)(g) of the Constitution of India and a citizen cannot be deprived of the said right except in accordance with law. It further held that the requirement of law for putting restrictions under Article 19(6) of the Constitution can by no stretch of imagination be achieved by issuing a circular or a policy decision in terms of Article 162 of the Constitution. Such restrictions can be made only by law passed by the legislation.

On the second issue, the court held that statutory corporations can do only such acts and take decisions as authorised by the statute creating it and the powers of such corporations cannot extend beyond what statutes provide expressly or by necessary implications. If an act is neither expressly or impliedly authorised by the statute which creates the corporation, it must be taken and presumed to be prohibited. Accordingly, the Supreme Court set aside the ban and reaffirmed the views taken up by the Karnataka, Delhi and Chhattisgarh High Courts.

43 2022 SCC OnLine SC 1224.

V RIGHTS OF STUDENT

India's higher education system recognizes several rights to student body to ensure a fair and inclusive academic environment. These rights include the right to quality education in recognized institutions, fair and transparent admission process, freedom of expression within institutional boundaries, and protection from discrimination based on caste, religion, gender, or disability under constitutional and statutory provisions. Students also have the right to grievance redressal through mechanisms like anti-ragging committees and sexual harassment cells. Access to information under the RTI Act allows students to seek institutional transparency. Additionally, they are entitled to safe infrastructure, fair assessment practices, and participation in extracurricular and governance activities for holistic development. The constitutional courts though its rulings have tried to protect these rights in the year 2022 which are as follows:

Admission schedule to post-graduate medical courses must be followed strictly

The Supreme Court in *Board of Governors* v. *Priyambada Sharma*[44] restated that the schedule for admission to the post-graduate medical courses must be followed strictly. The last date for post graduate admissions was May 31, 2019. The admissions made after this date by the private and aided medical colleges were cancelled by the State and the Medical Council Of India (MCI) which was challenged in the high court. The single judge of high court passed interim orders staying the cancellation orders and eventually, the interim orders were made absolute as final orders on the ground that the students had undergone education and study for more than six months and admissions were directed to be regularised.

Special leave petition was preferred before the Supreme Court against these final orders of regularisation of admissions. The apex court division bench of Justices Ajay Rastogi and C.T. Ravikumar held that the schedule for admission must be followed strictly and there should not be any relaxations on a routine basis to the same. The court further held that sympathetic view should not be taken in such cases, where admissions are carried out illegally, contrary to the applicable regulations or beyond the cut-off date. The judgment of the high court was accordingly set aside.

The above principle was reiterated by the apex court once again in *Dental Council of India* v. *Sailendra Sharma.*[45] The admissions were given after the cut-off date against the vacant seats at the college level counselling by the private colleges with due intimation to the Directorate of Medical Education (hereinafter, DME), State of Chhattisgarh. The list of candidates given admission to various private dental colleges as sent to the state government at the end of counselling did not possess the name of the petitioners before the high court, owing to which the admissions of the petitioner students were cancelled. High Court of Chhattisgarh quashed and set aside the communication of State of Chhattisgarh annulling/

44 2022 SCC OnLine SC 1442.

45 2022 SCC OnLine SC 1475.

cancelling the admissions of student candidates who had taken admission in various PG dental courses in private dental colleges of the State of Chhattisgarh.

The Supreme Court referring the judgments of *Abdul Ahad* v. *Union of India*[46] and *Board of Governors* v. *Priyambada Sharma*,[47] held that such students do not deserve any sympathy, who are admitted outside the counselling process. No admission could have been given after 4.30 p.m. of May 31, 2018 by the private dental colleges even though the seats were going vacant and were at the verge of being wasted. The court also relied on the judgments of *Astha Goel* v. *Medical Counselling Committee,*[48] *Supreet Batra* v. *Union of India*[49] and *Education Promotion Society for India* v. *Union of India*[50] and held that even if the seats are going vacant, the same cannot be a consideration for extending the cut-off date or the deadline for admissions. The court also condemned the practice of high court passing interim orders in favour of the students allowing them to continue their studies, holding such interim orders to be not sustainable. Accordingly, the judgment of the high court was set aside.

A candidate qualified from foreign medical institutions can be subjected to the Screening Test postulated by the Indian Medical Council Act, 1956

In *Apurv Shankar* v. *Union of India*[51] the petitioners had approached the High Court of Delhi challenging the decision of denying him the permission to appear in the screening test conducted by National Medical Commission, for the fundamental reason that the petitioner had obtained only 47.83% in Physics, Chemistry, and Biology taken together in the 10+2 examination and would have never been granted the eligibility certificate at the outset. The petitioner contended that the B.P. Koirala Institute of Health Sciences, Dharan, Nepal, from where he had completed his MBBS is a recognised institution under Section 12 read with Schedule II of the Indian Medical Council Act, 1956. The question arose about the interpretation of the press note issued by MCI in October 2008, about the applicability of the screening test regulations and eligibility regulations to the case of the petitioner.

Tracing the statutory history of Sections 12 and 13 of the IMC Act, 1956, whereunder sections 13, 4-A, 4-B, and 4-C were inserted and various regulations were made mandating for a screening test and obtaining an eligibility certificate for students,[52] who have obtained medical qualification from outside India, for enrolment as a medical practitioner in any State of the country, the court made purposive interpretation of the provisions. The said Act and Regulations were

46 2021 SCC OnLine SC 627.

47 2022 SCC OnLine SC 1442.

48 2022 SCC OnLine SC 734.

49 (2003) 3 SCC 370.

50 (2019) 7 SCC 38.

51 2022 SCC OnLine Del 1121.

52 Foreign Medical Institution Regulations, 2002, (hereinafter, "Eligibility Regulations") and Screening Test Regulations, 2002 (hereinafter, "Screening Test Regulations")

traced to have been needed, owing to medical scams of illegalities and irregularities that took place in admissions and passing out of students from such foreign medical institutions, thereby not meeting the domestic standards in the country. Therefore, the press note of October 2008 clarifying the applicability of screening test and eligibility was fully applicable to the petitioners and the petitioner was expected to possess at least 50% marks in aggregate of Physics, Chemistry, and Biology for being issued eligibility certificate to sit in the screening test of a foreign medical institution to get himself registered in India under the provisions of the Indian Medical Council Act, 1956. Accordingly, the petitioners were held to be ineligible for want of possessing appropriate minimum benchmark of marks in Physics, Chemistry, and Biology taken together for being issued eligibility certificate for sitting in the screening test and the petition was dismissed.

Hardship no ground to question validity of a medical PG eligibility criteria

The State of Gujarat had altered the eligibility condition for benefit of domicile reservation to various candidates appearing in the PG admission and counselling process, permitting all those candidates who were either born or completed the senior secondary education schooling from the State of Gujarat. Previously only those candidates were eligible for the benefit of domicile reservation who had completed MBBS or BDS course from the University of Gujarat, but through the revised eligibility criteria, more candidates were brought under the net by being extended the said benefit.

In *Saumil Hetalkumar Shah* v. *State of Gujarat*[53]challenge was laid to the validity of eligibility criteria prescribed for admission to PG medical and dental courses as changed immediately prior to counselling for the academic session (2022-2023) by the State of Gujarat, but subsequent to the conclusion of the NEET entrance examination. The primary contention of the petitioner was that after the game had begun, in the midst of the admission process existing eligibility criteria could not have been altered to the detriment of number of candidates and students who had already planned their studies and prospects of admission. The amended rule would frustrate and widen the net so much that the petitioners would be denied admissions to.

The High Court of Gujarat held that no student has a vested right to have a particular eligibility criteria continuing throughout the admission process, if his participation or eligibility to participate in the counselling or his entitlement for any benefit under the counselling is not adversely affected. The court held that a public notice had already been published beforehand mentioning in advance about the possibility of change of the eligibility criteria. Therefore, by making additional category of students eligible, the vested rights of eligible candidates have not been affected at all. If the right of a candidate had not been taken away and such candidate continues to be eligible, being otherwise qualified in terms of the amended rule, then no prejudice can be said to have been caused due to alteration of the

53 R/Special Civil Application No. 19057 of 2022, order dated 4-10-2022 (Guj HC at Ahme).

admission rule by bringing additional category/classes of students eligible for the said benefit. The petitioners were held to be aware from the beginning about the possibility of change of eligibility criteria prior to the counselling process and thus cannot be claimed to be stating about denial of information. Accordingly, the writ petition was dismissed.

No provision anywhere of permitting private medical colleges to take a bond

The question before the Indore Bench of High Court of Madhya Pradesh in *Ruxmaniben Deepchand Gardi Medical College* v. *Medical Education Mantralaya*[54] was returning of original documents and papers and withholding of deposit of Rs 5 lakhs on the ground of non-serving as senior resident demonstrator as per the bond executed with the medical college concerned. The Bench interpreted Clause 11 of Madhya Pradesh Medical and Dental Post Graduate Course Admission Rules (Degree/ Diploma), 2014, and observed that there is no provision anywhere of permitting private medical colleges to take a bond from if students were completing and pursuing their PG course. The court held that conditions that apply to government in-service category candidates and government medical colleges shall not apply to private institutions. Accordingly, the demand of the PMCs for a medical bond or insisting on the compliance of medical bond before returning their original papers was set aside and the colleges were directed to return the original papers of the petitioner students who had completed their PG medical courses from the colleges of the respondents.

Completion of entire duration of the course, including the clinical training is mandatory under Graduate Medical Education Regulations, 1997

In *National Medical Commission* v. *Pooja Thandu Naresh*,[55] the judgment of High Court of Madras which quashed the circular issued by Tamil Nadu Medical Council, that imposed the requirement of compulsory rotatory residential internship, followed by one year of internship before granting permanent registration under IMC in India was challenged. It was argued on behalf of the candidate that since she was declared qualified by the foreign institute after undertaking online teaching courses during the COVID-19 Pandemic, no additional requirement could be imposed by either the state medical council or the National Medical Commission as a precondition for registration as a medical practitioner. The only requirement that could be imposed is qualifying and clearing the screening test.

The court extensively examined the eligibility regulations and screening regulations which required the candidate concerned to undergo and clear the screening test. Referring to regulation 4(3), the court held that since the candidate had not completed the mandatory clinical training as part of a curriculum, the course cannot be said to have been completed properly. The necessity of completing the entire duration of the course, including the clinical training is mandatory when the eligibility regulations are read along with Graduate Medical

54 Writ Appeal No. 757 of 2022, order dated 20-9-2022 (MP HC at Indore).
55 2022 SCC OnLine SC 528.

Education Regulations, 1997. The candidate concerned may be eligible and entitled to practice in a foreign country, but he/she cannot be allowed to practice in India. Accordingly, the decision of the high court was held to be improper.

No unreasonability or arbitrariness can be attributed to the Licentiate or CRMI Regulations

Constitutional validity of various provisions of the National Medical Commission (Foreign Medical Graduate Licentiate) Regulations, 2021, and the provisions of National Medical Commission (Compulsory Rotating Medical Internship) Regulations, 2021 was challenged by several students who had undertaken their studies from various foreign universities and were unable to complete the course during the pandemic years of 2020, 2021 and 2022. The provisions of Licentiate Regulations provided for a minimum duration of the medical course being undertaken abroad; minimum duration of internship so undertaken abroad; registration with the regulatory body, *etc*., in the same vein, the provisions of CRMI Regulations provided for compulsory internship in recognised medical colleges as a precondition for permanent registration as a medical practitioner in India; undertaking of national exit test; registration with the regulatory body both prior and post commencement of the medical course with the competent regulatory authority in the countries where the course is being undertaken, as also in India. The challenge was mounted on various grounds, fundamentally being arbitrary, and violative of Part III rights of the Constitution of India.

The court in an important ruling in *Aravinth R.A.* v. *Union of India*,[56] held that pre-admission and post-completion of the medical course concerned, the expert body has full authority to determine the eligibility of any candidate who wants to study abroad, as he shall be utilising the skill obtained abroad to the citizens of the country, for the purposes of which the checks and restrictions can be imposed. Thus, accordingly referring to Sections 15, 35 and 36 of the NMC Act, the court held that no unreasonability or arbitrariness can be attributed to the Licentiate or CRMI Regulations, affirming the constitutionality of the same in view of the existence of laudable objectives behind it attending to the public health concerns of the country.

VI AFFILIATION AND RECOGNITION

The affiliation and recognition process in India's higher education system ensures standardization, quality, and accountability in academic institutions and courses. Universities, often governed by bodies like the UGC (University Grants Commission), affiliate colleges to grant them the authority to offer specific programs. Professional courses require additional approvals from statutory bodies such as AICTE, NMC, MCI, DCI, BCI, or NCTE, depending on the discipline. This process evaluates factors like infrastructure, faculty, curriculum, and compliance with regulations. Recognition validates a course or institution's credibility, ensuring its degrees are legitimate and valued. Regular audits and accreditation uphold

56 2022 SCC OnLine SC 612.

educational standards and promote institutional excellence. The year 2022 witnessed several important rulings of the high courts and the Supreme Court which are briefly explained:

Mere perception of unreasonability or arbitrariness is not enough, but something more must be forthcoming on the ground of challenge as not meeting the essential and basic parameters of reasonableness

The High Court of Rajasthan had quashed and declared the provisions of Regulation 6(2)(h) of the DCI (Establishment of New Dental Colleges, Opening of New or Higher Course of Study or Training and Increase of Admission Capacity in Dental Colleges) Regulations, 2006 (as amended by 2012 Notification) as unconstitutional.Through Regulation 6(2)(h), a condition was imposed for all new dental colleges for having exclusive affiliation with a private/Government medical-cum-dental hospital situated within a periphery of 10 Kms (subsequently increased to 20 Kms) which do not have any medical or dental colleges affiliated to them. High Court of Rajasthan declared the said provision to be unreasonable, arbitrary, and unconstitutional on three essential grounds. First; It violates Article 19(1)(g) of Constitution of India; second; it is beyond the scope of powers of Council to make delegated legislation as provided under sub-section (7) of Section 10-A of the said Act and third; it violates Article 14 of the Constitution of India, inasmuch as the dental colleges established prior to impugned notification would be permitted to run without attachment with medical colleges, whereas the dental colleges established after the impugned notification will be compelled to have such an attachment with the medical colleges.

The Supreme Court setting aside the said judgment in *Dental Council of India* v. *Biyani Shikshan Samiti*,[57] held that subordinate legislation can always be tested on the grounds of unreasonability, arbitrariness or proportionality, but the same must be "manifestly arbitrary/unreasonable." The apex court held that mere perception of unreasonability or arbitrariness is not enough, but something more must be forthcoming on the ground of challenge as not meeting the essential and basic parameters of reasonableness. If the rulemaking authority is able to demonstrate a differential treatment for differential classes with sound and plausible justification for the same, then the rule shall not be manifestly arbitrary. Accordingly, after examining the justification offered by the Central Government and Dental Council of India, the court held that reason for not permitting more than one dental college to be attached to existing recognised medical college within the prescribed radius is that if one dental college is permitted to be attached to a recognised medical college, which is already having 500-750 students, then it will lead to overcrowding of students in the medical hospital, which may affect their clinical studies. Therefore, the amended regulation cannot be said to be manifestly arbitrary, so as to warrant interference by the court. Accordingly, the judgment of High Court of Rajasthan was set aside, holding the amended Rules 6(2)(h) to be *intra vires*.

57 (2022) 6 SCC 65.

Permission granted for medical admissions for subsequent year cannot be deemed to be permission for earlier year

In *Central Council for Indian Medicine* v. *Karnataka Ayurveda Medical College,*[58] the question arose before the court was whether permission granted for medical admissions for new course of study of Bachelor of Ayurvedic Medicine and Surgery (BAMS") for subsequent year can be deemed to be permission for earlier year too? The High Court of Karnataka took the view that though recognition/permission for the previous academic year was not granted, but subsequently in the next academic year the said approval has been issued, then the said permission would relate to the previous academic year as well.

The apex court in appeal referring Sections 13-A, 13-B of Medical Central Council Act, 1970, held that approval/permission on a scheme from the Central Government is a precondition for starting Ayurveda course and that no scheme can be started dehors the same. Specific factors as laid down under section 13-A Clause 8 are to be taken into consideration prior to grant of approval of this scheme, which is a complete proposal in itself, for commencement of the Ayurveda course. The legislature itself has taken care of Ayurveda medical colleges established prior to the commencement of the IMCC (Amendment) Act, 2003 and therefore, the high court had failed to take into consideration the entire scheme under Section 13-A of the IMCC Act. In order to be eligible for grant of permission the institution must fulfil the requirements of minimum standards as on December 31, of the previous year. In such circumstances, the finding that permission granted for subsequent academic year would also ensure to the benefit of earlier academic year is totally erroneous and the view of the High Court of Karnataka was accordingly set aside.

The courts cannot question the inspection report issued by an expert team of assessors or sit an appeal of the same

The approval/permission for various PG courses was denied by the National Medical Commission and Government of India on the ground of non-production of an essentiality certificate from the state government concerned to start a new medical college, as also on the ground that the existing PG courses of the petitioner were yet to be recognised. The permission for other courses was allowed in part, meaning thereby that only half of the seats out of the full applied intake were approved, and the full applied intake was denied on a presumptive suspicious ground that the principal of the college must have produced exaggerated disclosures.

On preliminary objection about the maintainability of the writ petition, the court in *M.K. Shah Medical College and Research Centre* v. *Union of India*,[59] held that since counselling process was underway and there were purely legal questions involved, the writ petition without availing the alternative remedy is

58 (2022) 7 SCC 46.

59 2022 SCC OnLine Del 938.

maintainable. It further held that the petitioner was denied the opportunity of hearing and principles of natural justice was not followed in the case. While the assessors/inspectors' report was completely in favour of the petitioner institution, but the NMC acted contrary to the same, without hearing the institution concerned. Therefore, the writ petition was maintainable.

The court further held that since no deficiency was found in the inspection report prepared by the assessors/inspectors who had physically inspected the medical institution, and that everything was found in order in the said inspection, without giving due opportunity of hearing and compliance of principles of natural justice, or pointing out new deficiencies or shortcomings in the institution, the petitioner's application could not have been rejected or lesser applied intake approved instead of the actual applied intake. When no discrepancies were found in the inspection report, and the petitioner was not given any opportunity to explain the same, merely on presumptive apprehensions and suspicions, the seats could not have been reduced whilst granting approval to the medical college concerned against the actual intake applied for by them. The courts cannot question the inspection report issued by an expert team of assessors or sit an appeal of the same. The said logic shall apply to the NMC as well, which cannot arrive at its own arbitrary conclusions. The petitioner was granted permission to participate in the ongoing counselling for admissions instead of being remanded back for issuance of a fresh letter of approval/permission by the NMC by the court. The petition was accordingly allowed.

The High Court of Gujrat delivered an important verdict *in Inner Vision Education and Charitable Trust* v. *Union of India.*[60] The rejection of application for opening of new Ayurveda (BAMS Course) College by the petitioner institution for want of timely submission of NOC from the state government and consent of affiliation from the university was challenges in the High Court of Gujarat. By the time, he received the consent, the deadline had expired. It was argued on behalf of the petitioner institution that section 29 permits a window of three months to rectify the deficiency, if any in the application which was not provided in their case.

The high court after referring to Regulation 7 of the Establishment of New Medical College, Opening of New and Higher Course of Study or Training and Increase of Admission Capacity by a Medical College Regulations, 2019 held that Regulation 7 applies at the threshold, at the time of filing of the application itself. Interpreting the word "scheme" occurring under section 29, the court held that it refers to the scheme which is forwarded after scrutiny under Regulation 7 to the Central Council, complete in all respects with all the documents as required under Regulation 7. Thus, the proviso to section 29(3) giving a window of three months for rectification of any deficiencies shall not be available in the case at hand as the scheme itself is not complete being not accompanied by all the papers mentioned under Regulation 7. It was further held that the judgment of *Royal Medical Trust*

60 Special Civil Application No. 13473 of 2022, decided on Sep. 9, 2022 (Guj HC).

v. *Union of India*[61] shall not apply, since the application of the petitioner for grant of consent of affiliation was not at all pending before the affiliating university on the date of submission of application for the permission to open the new college. The fresh application for grant of consent of affiliation was made only after the last date of submission of the application for permission to open the college, which thus distinguishes the facts of the matter completely. Accordingly, the writ petition was dismissed.

Merely because in the same session, a teacher leaves previous employment to join a new institution, cannot be debarred from being counted in the regular faculty of the new institution

The application of the petitioner for starting of new ayurveda college with Bachelor of Ayurveda Medicine and Surgery (BAMS) degree from Academic Year 2021-2022 was rejected. The final approval was denied to the college essentially on the grounds of non-availability of teaching staff, functioning hospital with proper OPD and IPD and the hospital staff.

The High Court of Delhi in *Sumandeep Vidyapeeth* v. *Union of India*[62] examined the inspection report to discover that teaching and non-teaching staff was found to be fully present during physical inspection by the assessing inspecting team. However, the AYUSH denied their employment on the ground that in the same academic session, the teachers were previously engaged in other institutes of the academic session and had joined the institution recently as full-time salaried teachers. The High Court of Delhi repelled the contention of AYUSH about teachers being fake teachers on the ground that there is no statutory bar over teachers changing their place of employment in the same academic year or joining a new one after leaving the previous institution of employment and that merely because in the same session, a teacher leaves previous employment to join a new institution, he gets debarred from being counted in the regular faculty of the new institution. It would be against public interest to deny permission to such ayurveda colleges. The AYUSH was directed to issue letter of permission to the petitioner for participating in the remaining rounds of counselling of the BAMS course for session 2021-2022.

It is unnecessary and superfluous to require a private university to claim affiliation from a third state university

The petitioner university was granted approval for 150 seats of the MBBS course by the National Medical Commission. When the admission process was to commence, a notification was issued mandating all the private, self-financing medical and dental colleges of the State to get themselves affiliated with the state medical university, and the petitioner, being the private university itself, was denied participation in the State counselling for want of affiliation from the state university. The writ petition was instituted for twin purposes, firstly, for the inclusion of the

61 (2014) 14 SCC 675.

62 (2022) 2 HCC (Del) 538.

65% seats in the State counselling and secondly, for the inclusion of 35% seats in the centralised counselling conducted by the Directorate General of Health Services.

The issue that arose before the High Court *in Srinivasan Medical College and Hospital* v. *Union of India*[63] was about the requirement of affiliation of a private university imparting MBBS and medical education courses (UG and PG) with the State University (TNMGR Medical University, Chennai) as a precondition for granting admissions in its medical courses.

The court whilst examining the provisions of the TNPU Act, 2019 held that the act is an expression of the State's interest in promoting private players in the field of university education and that the Act ensures appropriate, adequate, and proper control and supervision on the management of private universities at the behest of the State authorities. In the said view of the statutory arrangement, it would be unnecessary and superfluous to require the petitioner, being a private university to claim affiliation from a third State university. Imposing the condition for affiliation on such a university is clearly an inroad into the autonomy of the institution concerned, which cannot be permitted. Accordingly, the notification of the State insofar as it mandated the university concerned to procure affiliation from state medical university was quashed qua the private universities established under TNPU Act, 2019.

On the second issue, court held that referring to Regulation 3 of the Graduate Medical Education Regulations, 1997, a university established under the State enactment *viz.,* the TNPU Act, 2019 shall be deemed to be a University established by the State enactment. Referring to a longline of judgments of *S.S. Dhanoa* v. *MCD*[64] when the colleges affiliated to TNMGR Medical University can be included in the all-India counselling, there is no hindrance for ingredient colleges of the private university of the petitioners being covered by Clause 3 of the GME Regulations. However, the court lamented the absence of any mechanism or framework through which all AIQ counselling can be extended and convened for private Universities in the State of Tamil Nadu, for which purpose the Centre and the State authorities were directed to immediately come out with such a framework. Accordingly, the writ petition was allowed, and the seats approved by the NMC of the medical course of the petitioner institution were directed to be included in the counselling process.

VII CONCLUSION

The "Survey of Education Laws in India for the Year 2022" highlights the dynamic interplay between law and education in shaping the nation's socio-economic and cultural landscape. This survey underscores the critical role of education laws in advancing India's constitutional vision of equality, justice, and opportunity for all. Throughout 2022, significant judicial interventions demonstrated the commitment of judiciary to strengthen the education sector.

63 WP Nos. 1392 and 9236 of 2022, decided on April 29, 2022 (Mad HC).

64 (1981) 3 SCC 431.

From addressing affirmative action policies to enhancing inclusivity in higher education to bring transparency and accountability in administration of educational institutions these efforts have aimed to align the legal framework with the evolving needs of learners and society.

The survey of 2022 finds several verdicts of the Supreme Court which established important principles. The apex court in *Kshetrimayum Maheshkumar Singh* v. *Manipur University*,[65] accommodated the aspirations of large tribal populations in Sixth Schedule areas like the North-East by harmonizing the reservation framework. In *Neil Aurelio Nunes (OBC Reservation)* v. *Union of India,*[66] the apex court highlighted that "merit" and "reservation" cannot be treated as opposed to each other, but are relatable in the larger canvas of Articles 15 and 16 of the Constitution of India. The ruling in *Jagathy Raj V.P.* v. *Rajitha Kumar S*[67] established an important legal point of importance of seniority and fair consideration based on seniority in the appointment process of HoD/Director in a University. At time when appointment of Vice-Chancellors in universities has become a major flash point in the confrontation between state governments and Governors of the State, the ruling of the apex court in *Gambhirdan K. Gadhvi* v. *State of Gujrat*[68] interpreted Section 12(b) of the UGC Act and held that in view of the fact that Sardar Patel University was receiving central financial assistance, despite being the state university and having adopted the UGC scheme, it automatically got bound by the UGC Regulations, 2010 and thus eligibility laid down therein was binding on the State University for appointment of Vice-Chancellor. The apex court further in *K. Ragupathi* v. *State of U.P.*[69] laid an important principle by observing that contractual employment given after following processes like regular employment cannot be terminated without following the due principles of natural justice. The court once again reiterated its previous stand that right to establish an educational institution is a fundamental right under Article 19(1) (g) of the Constitution of India and therefore Pharmacy Council of India can only impose moratorium by way of a law and not by an executive instruction.[70] The Supreme Court in *Board of Governors* v. *Priyamvada Sharma*[71] and *Dental Council of India* v. *Sailendra Sharma*[72] emphasized an important aspect that the schedule for admission to the post-graduate medical courses must be followed strictly.

While apex court gave important rulings and laid down law under Article 141 of the Constitution settling various principles related to affirmative action, university administration, recruitment and condition of service and admission *etc.*, our high courts were not behind. Year 2022 witnessed several progressive

65 (2022) 2 SCC 704.
66 (2022) 4 SCC 1.
67 (2022) 6 SCC 299.
68 (2022) 5 SCC 179.
69 (2022) 6 SCC 346.
70 *Pharmacy Council of India v. Rajeev College of Pharmacy,* 2022 SCC OnLine SC 1224.
71 2022 SCC OnLine SC 1442.
72 2022 SCC OnLine SC 1475.

judgements by several high courts across the country. The High Court of Madras in a progressive ruling in *S. Tamilselvi* v. *The Secretary to the Government*[73] directed that the petitioner, S. Tamilselvi, be treated as a transgender and given special reservation in the cut-off for admission to an educational institution. Similarly, the High Court of Chhattisgarh *Anjali Sonkar* v. *State of Chhattisgarh*[74] held that if the candidate is possessing the disability, but not able to produce the certificate at the time of admission, then the same must be treated as a curable defect in the application and she be allowed to produce the same later. The High Court of Kerala in *State of Kerela* v. *C. Sreenivasan*[75] held that there is no nexus between the classification of the services rendered in Government colleges and the self-financing private colleges, when the career advancement scheme does not make any such distinction so issued by the UGC. High Court of Delhi in *Apurv Shankar* v. *Union of India* reiterated the principle that a candidate qualified from foreign medical institutions can be subjected to the screening test postulated by the Indian Medical Council Act, 1956. The Gujarat High Court in *Saumil Hetalkumar Shah* v. *State of Gujarat*[76] held that no student has a vested right to have a particular eligibility criteria continuing throughout the admission process, if his participation or eligibility to participate in the counselling or his entitlement for any benefit under the counselling is not adversely affected.

The findings of this survey serve as a valuable resource for future reforms, emphasizing the need for a rights-based, inclusive, and forward-looking approach to education. By continuously evaluating and refining the legal and policy framework, India can ensure that its education system remains a powerful tool for individual empowerment and national progress.

In conclusion, the year 2022 was marked by noteworthy strides and critical learnings in the realm of education laws. As India marches toward becoming a knowledge-driven economy and a global leader, a robust and equitable legal framework for education will remain indispensable for realizing its democratic and developmental aspirations.

73 2022 SCC OnLine Mad 4879.

74 2022 SCC OnLine Chh 2696.

75 2022 SCC OnLine Ker 2479.

76 R/Special Civil Application No. 19057 of 2022, order dated October 4, 2022 (Guj HC at Ahmedabad).