

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.04.2010

CORAM

THE HONOURABLE MRS.JUSTICE R.BANUMATHI
AND
THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

W.P.Nos.26257 of 2009, 2963 of 2010, 2964 of 2010, 3079 of 2010, 3080 of 2010, 3081 of 2010, 3082 of 2010, 3083 of 2010, 3084 of 2010, 3150 of 2010, 25914 of 2009, 26289 of 2009, 26373 of 2009, 26632 of 2009, 101 of 2010, 215 of 2010, 26839 of 2009, 1175 of 2010, 26809 of 2009, 26810 of 2009, 26811 of 2009, 26771 of 2009, 26772 of 2009, 27189 of 2009, 27190 of 2009, 26528 of 2009, 27221 of 2009, 26827 of 2009, 26828 of 2009, 26910 of 2009, 26929 of 2009, 26930 of 2009, 27070 of 2009, 27595 of 2009, 27596 of 2009, 27597 of 2009, 27598 of 2009, 25862 of 2009, 27599 of 2009, 2696 of 2010, 2796 of 2010, 2004 of 2010, 923 of 2010, 48 of 2010, 216 of 2010, 217 of 2010, 184 of 2010, 1037 of 2010, 1129 of 2010, 384 of 2010;

AND

W.P.Nos.5274 of 2009, 23150 of 2009, 20937 of 2009, 18324 of 2009 and
W.P.No.18325 of 2009;

AND

W.P.Nos.22614 of 2009, 22615 of 2009, 22616 of 2009, 22617 of 2009, 22618 of 2009, 24711 of 2009, 22669 of 2009, 757 of 2010, 15527 of 2009, 26850 of 2009, 18322 of 2009, 18323 of 2009 and 3348 of 2010,

AND

CONNECTED MISCELLANEOUS PETITIONS

W.P.NO.5274 OF 2009:

K.Sakthi Rani
Vs.

... Petitioner

1.The Secretary,
Bar Council of Tamilnadu,
Chennai - 600 104.

2.The Secretary to the Government,
Information and Tourism Department,
Government of Tamilnadu,

Secretariat,
Chennai - 600 009.

3.The Registrar,
The Annamalai University,
Annamalai Nagar,
Chidambaram - 608 002.

4.The Secretary,
Bar Council of India,
New Delhi.

... Respondents

PRAYER IN W.P.NO.5274 OF 2009: Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, to direct the first respondent to admit the petitioner's application dated 23.03.2009 for enrollment as an Advocate.

Petitioners' Side Counsel:

Dr.G.Krishnamoorthy for Mr.R.Sankarasubbu in W.P.No.5274 of 2009.

Dr.G.Krishnamoorthy in W.P.Nos.22669 of 2009, 18322 to 18325 of 2009, 22614 to 22618 of 2009 and 24711 of 2009.

Mr.N.R.Chandran, Sr.Counsel for Mr.R.Suresh Kumar in W.P.Nos.48 and 184 of 2010.

Mr.V.Raghavachari in W.P.No.25914 of 2009.

Mr.Vijay Narayan, Sr.Counsel assisted by Mr.K.Gandhikumar in W.P.Nos.26809 to 26811 and 26839 of 2009.

Mrs.Nalini Chidambaram, Sr.Counsel for Ms.C.Uma in W.P.No.20937 of 2009.

Mr.T.Murugamanickam in W.P.No.25862 and 26289 of 2009.

Mr.Perumbulavil Radhakrishnan in W.P.No.26257 of 2009.

Mr.K.Sridhar in W.P.Nos.26929 and 26930 of 2009.

Dr.R.Sampath Kumar in W.P.Nos.215 to 217 of 2010

Mr.R.Veeramani in W.P.No.757 of 2010.

Mr.T.S.Vijayaraghavan in W.P.Nos.26771 and 26772 of 2009.

Mr.K.Selvaraj in W.P.Nos.26827 and 26828 of 2009.

Mr.K.Doraisamy, Sr.Counsel for Mr.Kandavadivel Doraisamy in W.P.No.26850 of 2009.

Mr.P.Vijendran in W.P.Nos.15527 and 23150 of 2009.

Mr.J.Franklin in W.P.Nos.27189, 27190 and 27221 of 2009.

Mr.S.Sivakumar in W.P.No.26528 of 2009.

Mr.K.Kalyanasundaram in W.P.No.26910 of 2009.

Mr.L.Chandrakumar in W.P.No.27070 of 2009.

Mr.R.Chellappa in W.P.Nos.27595 to 27599 of 2009.

Mr.Veerakathiravan in W.P.No.26373 of 2009.

Mr.R.Chandrasekaran in W.P.No.26632 of 2009.

Mr.S.Subbiah in W.P.No.101 of 2010.

Mr.N.Aravamudhan in W.P.No.1175 of 2010.

Mr.R.Subramanian in W.P.Nos.2963, 2964, 3079 to 3084 and 3348 of 2010.

Mr.R.Radha Pandian in W.P.No.3150 of 2010.

Respondents' Side Counsel:

Mr.P.R.Gopinathan (U.G.C) for R.4 in W.P.No.26257 of 2009.

Mr.R.Thiagarajan, Sr.Counsel assisted by Mr.K.Venkatakrishnan (Bar Council of India)
for

R1 in W.P.No.15527 of 2009.
R2 in W.P.No.22669 of 2009.
R1 in W.P.No.23150 of 2009.
R2 in W.P.Nos.26771 and 26772 of 2009.
R1 in W.P.Nos.27189 and 27190 of 2009.
R1 in W.P.No.27221 of 2009.
R2 in W.P.Nos.215 to 217 of 2010.
R2 in W.P.Nos.22614 to 22618 of 2009.
R2 in W.P.No.24711 of 2009.
R2 in W.P.No.26850 of 2009.
R2 in W.P.Nos.2963 and 2964 of 2010.
R2 in W.P.Nos.3079 to 3084 of 2010.
R2 in W.P.No.3348 of 2010.
R1 in W.P.No.20937 of 2009.

Mr.P.S.Raman, Advocate General assisted by Mr.S.Y.Masood (Bar Council of Tamil Nadu) for

R1 in W.P.No.5274 of 2009.
R2 in W.P.No.15527 of 2009.
R1 in W.P.No.22669 of 2009.
R2 in W.P.No.23150 of 2009.
R1 in W.P.Nos.26809 to 26811 of 2009.
R1 in W.P.Nos.26771 and 26772 of 2009.
R2 in W.P.Nos.27189 and 27190 of 2009.
Sole respondent in W.P.No.26528 of 2009.
R2 in W.P.No.27221 of 2009.
Sole respondent in W.P.No.26827 of 2009.
Sole respondent in W.P.No.26828 of 2009.
Sole respondent in W.P.No.26910 of 2009.
Sole respondent in W.P.Nos.26929 and 26930 of 2009.
Sole respondent in W.P.No.27070 of 2009.
R1 in W.P.Nos.27595 to 27599 of 2009.
Sole respondent in W.P.No.25862 of 2009.
Sole respondent in W.P.No.25914 of 2009.
R5 in W.P.No.26257 of 2009.
Sole respondent in W.P.No.26289 of 2009.

Sole respondent in W.P.No.26373 of 2009.
Sole respondent in W.P.No.26632 of 2009.
Sole respondent in W.P.No.101 of 2010.
R1 in W.P.Nos.215 to 217 of 2010.

Sole respondent in W.P.No.757 of 2010.
R1 in W.P.No.26839 of 2009.
R1 in W.P.Nos.22614 to 22618 of 2009.
R1 in W.P.No.24711 of 2009.
R1 in W.P.No.26850 of 2009.
Sole Respondent in W.P.No.1175 of 2010.
R1 in W.P.Nos.2963 and 2964 of 2010.
R1 in W.P.Nos.3079 to 3084 of 2010.
R1 in W.P.No.3150 of 2009.
R1 in W.P.No.3348 of 2010.
Sole respondent in W.P.No.48 of 2010.
Sole respondent in W.P.No.184 of 2010.
R2 in W.P.No.20937 of 2009.

Ms.D.Geetha (Annamalai University) for

R3 in W.P.No.5274 of 2009.
R2 in W.P.Nos.27595 to 27599 of 2009.
R3 in W.P.Nos.215 and 217 of 2010.
R3 in W.P.Nos.2963 and 2964 of 2010.
R3 in W.P.Nos.3079, 3081, 3082 and 3084 of 2010.
R3 in W.P.No.3348 of 2010.

Manonmaniam Sundaranar University

R5 in W.P.No.2963 of 2010.
R3 in W.P.No.3080 of 2010.

Mr.S.Sethuraman (Madurai Kamarajar University) for

R3 in W.P.No.26257 of 2009.
R3 in W.P.No.216 of 2010.
R4 in W.P.Nos.2963 and 2964 of 2010.
R3 in W.P.No.3083 of 2010.

Mr.T.D.Vasu (Dr.Ambedkar Law University) for

R3 in W.P.No.15527 of 2009.
R3 in W.P.No.23150 of 2009.

R2 in W.P.Nos.26809 to 26811 of 2009.
R3 in W.P.Nos.26771 and 26772 of 2009.
R3 in W.P.Nos.27189 and 27190 of 2009.

R3 in W.P.Nos.27221 of 2009.
R4 in W.P.No.216 of 2010.
R2 in W.P.No.26839 of 2009.
R6 in W.P.No.2963 of 2010.
R4 in W.P.Nos.3080, 3081, 3083 and 3084 of 2010.
R4 in W.P.No.3348 of 2010.
R4 in W.P.No.20937 of 2009.

Mr.M.Dhandapani, Special Govt. Pleader (W) for

R2 in W.P.No.5274 of 2009.
R3 in W.P.Nos.26809 to 26811 of 2009.
R3 in W.P.Nos.27595 to 27599 of 2009.
R1 and R2 in W.P.No.26257 of 2009.
R3 in W.P.No.26839 of 2009.

* * * * *

COMMON ORDER

M.M.SUNDRESH, J

In view of the common issues involved in all the writ petitions they have been taken up together for hearing and a common order is passed.

1(A). The above writ petitions are hereby divided into the following three categories:

(i) Writ petitions challenging the orders of the State Bar Council cancelling and refusing enrollment.

(ii) Writ petitions challenging the decision of the Bar Council of India holding that the persons with Post Graduate qualification from Open Universities are not entitled to be enrolled in the State Roll.

(iii) Writ petitions seeking a direction to the State Bar Council to entertain the applications for enrollment in the State Roll.

2. In all these writ petitions, the questions arise for consideration are as to whether the persons who studied law without basic degree, but obtained Post Graduate degree in Open Universities are entitled to be enrolled as Advocates and the applicability of Rule 2(8), Rule 4 and Rule 5 of the Legal Education Rules, 2008.

3. Law is the cement of the society and an essential medium of change. It is said "Law is the king of kings, far more rigid and powerful than the kings. Nothing can be mightier than law by whose aid as by that of the highest monarch, even a weak may prevail over the strong." Rule of Law is the basic foundation of a democratic society.

3(a). A lawyer is a guardian of rule of law. The father of the nation described a lawyer as thus:

"A lawyer is the salt of the nation."

4. In *J.S.Jadhav v. Mustafa Haji Mohammed Yusuf* (AIR 1993 SC 1535), the Honourable Apex Court has defined legal profession as follows:

"Advocacy is not a craft but a calling; a profession wherein devotion to duty constitutes the hallmark. Sincerity of performance and the earnestness of endeavour are the two wings that will bar aloft the advocate to the tower of success. Given these virtues other qualifications will follow of their own account. This is the reason why legal profession is regarded to be a noble one. But it cannot be allowed to become a sorriest of trades."

5. Similarly, in *Sanjiv Bitta v. Deputy Secretary, Ministry of Information and Broadcasting* (1995 (3) SCC 619), the Honourable Apex Court observed as follows:

"It is in the hands of the members of the legal profession to improve the quality of the service they render both to the litigant public and to the courts, and to brighten their image in the society. The legal profession is a solemn and serious occupation. It is noble calling and all those who belong to it are its honourable members. The legal profession is different from other professions in that what the lawyers do, affects not only an individual but also the administration of justice, which is the foundation of the civilised society. It must not be forgotten that the legal profession has always been held in high esteem and its members have played an enviable role in public life."

6. A good legal education is a sine quo non for creating a good lawyer. Such a legal education is the basis and foundation for creating a good and competent Judge as well.

7. In *P.D.Gupta v. Ram Murti and another* {(1997) 7 Supreme Court cases 147}, the Honourable Apex Court observed that the administration of justice is the concern of Bench and Bar as well and the Bar is the principal ground for recruiting Judges.

8. The passage from Harry R.Blythe, 21 Green Bag.224, may be usefully quoted in this context:

"Great God! the hour has come when we must clear the legal fields from poison and from fear; we must remould our standards--build them higher, and clear the air as though by cleansing fire, weed out the damning traitors to the law, restore her to her ancient place of awe."

9. Sri.Dr.C.Radhakrishnan, the first vice-president of Republic India, has lamented thus:

"Our Colleges of law do not hold a place of high esteem either at home or abroad, nor has law become an arena of profound scholarship and enlightened research."

10. It is said, 'Legal Education is essentially a multi-disciplined, multi-purpose education which can develop the human resources and idealism needed to strengthen the legal system.... A lawyer, a product of such education would be able to contribute to national development and social change in a much more constructive manner.'

11. Keeping the above said principles in view, the issues raised in the writ petitions are being dealt with hereunder.

12. The one and only issue to be decided in all these writ petitions is as to whether the persons who obtained Post-graduate Degrees in Open Universities and thereafter joined the law course and completed are entitled to be enrolled on the rolls of the Bar Council of Tamil Nadu or not.

13. The brief facts of the case in a nutshell are as follows:

13.1. The petitioners have obtained Masters Degree in various Open Universities. Thereafter they applied for the Law Degree to various Colleges and Universities recognised by the Bar Council of India. All the petitioners have been admitted with their Masters Degree obtained from the Open Universities into their respective Law Colleges. The prospectus issued by the Colleges also provided for the admission of the petitioners into the Law Course. The petitioners got selected for admission after going through the process of selection along with other degree holders. Thereafter the petitioners completed their degree in law.

13.2. After the completion of their law degree, the petitioners made applications to the respondent-Bar Council of Tamil Nadu seeking to enroll themselves as members so as to enable them to practice as lawyers. The respondent/Bar Council of India had earlier passed a resolution as early as on 22.02.2002 approving the M.A. Degree obtained through Distance Education/Open University as sufficient qualification for admission to the three year law course. The said resolution was reiterated again by the respondent/Bar Council of India in and by its letter dated 11.02.2007 stating that a person with the M.A. Degree obtained through Open University and thereafter completes the law degree is entitled to be enrolled as an advocate.

13.3. After the receipt of the applications of the petitioners, the respondent/Bar Council of Tamil Nadu by its letter dated 23.07.2009 sought for a reference before the Bar Council of Tamil Nadu under Section 26(2) of the Advocates Act, 1961. The Bar Council of India has passed Rules of Legal Education, 2008 by exercising the power under Section 7(1)(h)&(i), 24(1)(c)(iii) and (iiia), 49(1)(af),(ag), and (d) of the Advocates Act, 1961 thereby framing rules on standard of legal education and

recognition of degree in law for the purpose of enrollment as an advocate. The above said rules came into existence on 14.09.2008. Rules 2(vi), 2(viii), 4 and 5 of the above said rules provide for a basic degree for entering into a law course. The Division Bench of the Hon'ble High Court in the judgment dated 04.02.2008 in ANNAMALAI UNIVERSITY REPRESENTED BY REGISTRAR v. SECRETARY TO GOVERNMENT, INFORMATION AND TOURISM DEPARTMENT AND OTHERS [(2008) 3 MLJ 255] had taken the view that a degree obtained through the Open University cannot be equated with the regular degree being contrary to the University Grant Commission Act and Regulations.

13.4.The said judgment of the Division bench was confirmed by the Hon'ble Apex Court on 25.02.2009 in ANNAMALAI UNIVERSITY REPRESENTED BY REGISTRAR v. SECRETARY TO GOVERNMENT, INFORMATION AND TOURISM DEPARTMENT AND OTHERS [(2009) 4 SCC 590]. Thereafter, the Bar Council of Tamil Nadu has made a reference under Section 26(2) of the Advocates Act, 1961 to the Bar Council of India as to whether the candidates who have obtained the M.A., Degree without undergoing basic degree and also obtained law degree could be enrolled as Advocates or not. The said reference was returned to the Bar Council of Tamil Nadu by the Bar Council of India by stating that a decision can be made by the Bar Council of Tamil Nadu and the said decision may be sent for the approval of the Bar Council of India. Thereafter in pursuant to the letter dated 27.04.2009 the Bar Council of Tamil Nadu took the decision that the candidates who have obtained M.A.Degree without undergoing basic degree cannot be permitted to be enrolled. The said decision was again sent to the Bar Council of India warranting acceptance of the reference.

13.5.In the meanwhile by the Resolution No.79 of 2009 dated 27.06.2009 the Bar Council of India took a decision based upon the judgment of the Apex Court as well as placing reliance upon Rule 5(b) Proviso of the Bar Council of India Rules to the effect that a candidate obtaining a degree through Open University cannot be permitted to be enrolled as an advocate. Placing reliance upon the resolution dated 27.06.2009, the Bar Council of India in and by its proceedings dated 07.10.2009 by way of resolution No.102 of 2009 answered the reference accepting the stand of the Bar Council of Tamil Nadu.

13.6.Thereafter the Bar Council of Tamil Nadu has rejected the applications of the petitioners. Earlier, after the judgment of the Division Bench dated 04.02.2008, the Bar Council of Tamil Nadu has refused to entertain the applications of some of the petitioners. Hence, writ petitions were filed earlier and a learned single Judge of this Hon'ble Court has passed an order in W.P.No.7353 of 2008 etc. stating that the petitioners therein shall be enrolled subject to the result of the Special Leave Petition which was the subject matter of the judgment in ANNAMALAI UNIVERSITY REPRESENTED BY REGISTRAR v. SECRETARY TO GOVERNMENT, INFORMATION AND TOURISM DEPARTMENT AND OTHERS.

13.7.Accordingly they have been enrolled subject to the condition of awaiting the results of the judgment of the Hon'ble Supreme Court. Following the said decision of the

learned single Judge, the other petitioners who are identically placed like them were also enrolled with the endorsement of subject to the Special Leave Petition. After the Judgment of the Hon'ble Apex Court confirming the judgment of the Hon'ble Division Bench holding that a degree obtained from the Open University cannot be equated with a regular degree, the subsequent applications have been rejected by the Bar Council of Tamil Nadu and those already enrolled subject to the orders of the Hon'ble Supreme Court got their enrollment cancelled. Therefore, three types of writ petitions have been filed by the petitioners and two of them challenging the order passed by the Bar Council of Tamil Nadu cancelling the enrollment which were made subject to the result of the judgment rendered in Annamalai University represented by Registrar v. Secretary to Government, Information and Tourism Department and others and the decision of the Bar Council of India answering the reference against the petitioners. The third set of writ petitions are for a Writ of Mandamus seeking a direction to the Bar Council of Tamil Nadu to entertain the pending applications for enrollment and enroll the petitioners in the State Roll.

13.8. In order to appreciate the rival submissions of the parties and the issues involved in the writ petitions, the provisions contained in Advocates Act, 1961 as well as the Bar Council of India Rules, 1961 and the Rules of Legal Education, 2008 will have to be looked into. Admittedly, the Bar Council of Tamil Nadu has not framed any rules regarding the basic qualification for enrollment. Therefore the applicability of the Bar Council of India Rules, 2008 will have to be considered by this Court for deciding the issues raised in these writ petitions.

13.9. The Advocates Act, 1961 deals with the qualifications, enrollment, right to practise and the discipline of the advocates. The main objective of the integration of the Bar into a single class of legal practitioners known as advocates and prescription of uniform qualifications for admission of advocates to the profession was sought to be achieved by the Advocates Act. Section 2 of the Advocates Act, 1961 pertains to definitions. Section 2(h) which defines "law graduate" is as follows:
(h) "law graduate" means a person who has obtained a bachelor's degree in law from any University established by law in India"

13.10. Section 6 of the Act speaks about the Functions of the State Bar Councils, which is as follows:

"(1) The functions of a State Bar Council shall be-
(a) to admit persons as advocates on its roll"

13.11. Similarly, Section 7 of the Act prescribes the Functions of the Bar Council of India, the relevant provision is quoted hereunder:

"(1) The functions of the Bar Council of India shall be-
(g) to exercise general supervision and control over State Bar Councils;
(h) to promote legal education and to lay down standards of such education in consultation with the Universities in India imparting such education and the State Bar Councils;

(i)to recognise Universities whose degree in law shall be a qualification for enrolment as an advocate and for that purpose to visit and inspect Universities [or cause the State Bar Councils to visit and inspect Universities in accordance with such directions as it may give in this behalf]"

13.12.The above two Sections would clearly show that the Advocates Act, 1961 prescribes the Functions of State Bar Council and the Bar Council of India respectively. Section 24 which is subject to the other provisions of the Act and the Rules speaks about the persons who may be admitted as advocates on a State roll.

"Section 24(1).Subject to the provisions of this Act, and the rules made thereunder, a person shall be qualified to be admitted as an advocate on a State roll, if he fulfills the following conditions, namely:-

(a).....

(b).....

(c) (i).....

(ii).....

(iii)after the 12th day of March 1967, save as provided in sub-clause (iiia), after undergoing a three year course of study in law from any University of India which is recognised for purposes of this Act by the Bar Council of India; or

(iv)in any other case, from any University, outside the territory of India, if the degree is recognised for the purposes of this Act by the Bar Council of India; or

(e)he fulfills such other conditions as may be specified in the rules made by the State Bar Council under this Chapter;

Section 24(3)(d) is entitled to be enrolled as an advocate under any rule made by the Bar Council of India in this behalf"

13.13.Section 24-A of the Act which deals about disqualification for enrollment of a law graduate is extracted hereunder:

"24-A. Disqualification for enrollment. (1)No person shall be admitted as an advocate on a State roll-

(a)if he is convicted of an offence involving moral turpitude;

(b)if he is convicted of an offence under the provisions of the Untouchability (Offences) Act, 1955 (22 of 1955);

(c)if he is dismissed or removed from employment or office under the State on any charge involving moral turpitude."

13.14.Section 36 of the Act speaks about the disciplinary powers of the Bar Council of India which is as follows:

36.Disciplinary powers of Bar Council of India.-(1) Where on receipt of a complaint or otherwise, the Bar Council of India has reason to believe that any advocate [***] whose name is not entered on any State roll has been guilty of professional or other misconduct, it shall refer the case for disposal to its disciplinary committee.

(2)Notwithstanding anything contained in this Chapter, the disciplinary committee of the Bar Council of India, may, [either of its own motion or on a report by a State Bar Council or on an application made to it by any person interested], withdraw for

inquiry before itself any proceedings for disciplinary action against any advocate pending before the disciplinary committee of any State Bar Council and dispose of the same.

(3)The disciplinary committee of the Bar Council of India, in disposing of any case under this section, shall observe, so far as may be, the procedure laid down in section 35, the references to the Advocate-General in that section being construed as references to the Attorney-General of India.

(4)In disposing of any proceedings under this section, the disciplinary committee of the Bar Council of India may make any order which the disciplinary committee of a State Bar Council can make under sub-section (3) of section 35, and where any proceedings have been withdrawn for inquiry [before the disciplinary committee of the Bar Council of India] the State Bar Council concerned shall give effect to any such order."

13.15. Section 49 deals with the general power of the Bar Council of India to make rules, the relevant rules are extracted hereunder:

49.(1)The Bar Council of India may make rules for discharging its functions under this Act and, in particular, such rules may prescribe-

(a).....

(ab).....

(ac).....

(ad).....

(ae).....

(af)the minimum qualifications required for admission to a course of degree in law in any recognised University;

(ag)the class or category of persons entitled to be enrolled as advocates;

(ah)the conditions subject to which an advocate shall have the right to practise and the circumstances under which a person shall be deemed to practise as an advocate in a Court.

13.16. The Bar Council of India Rules, 1961 under Section B speaks about the conditions to be fulfilled for a three year law course. After graduation the said provision is extracted hereunder:

"1.(1)Save as provided in section 24(1)(c)(iia) of the Act, a degree in law obtained from any University in the territory of India after the 12th day of March 1967 shall not be recognised for purposes of section 24(1)(c)(iii) of the Act unless the following conditions are fulfilled:-

(a)That at the time of joining the course of instruction in law for a degree in law, he is a graduate of a University or possesses such academic qualifications which are considered equivalent to a graduate's degree of a University by the Bar Council of India;

(b)That the law degree has been obtained after undergoing a course of study in law for a minimum period of three years as provided for in these rules;

(c)That the course of study in law has been by regular attendance at the requisite number of lectures, tutorials or moot courts in a college recognised by a University."

13.17. The Rules of Legal Education 2008 had been introduced on 14.09.2008 Rule 2(vi) which speaks about Bachelor Degree in Degree is extracted hereunder:

"2(vi). "Bachelor degree in law" means and includes a degree in law conferred by the University recognized by the Bar Council of India for the purpose of the Act and includes a bachelor degree in law after any bachelor degree in science, arts, commerce, engineering, medicine, or any other discipline of a University for a period of study not less than three years or an integrated bachelor degree combining the course of a first bachelor degree in any subject and also the law running together in concert and compression for not less than a period of five years after 10+2 or 11+1 courses as the case may be."

13.18. Similarly Rule 2(viii) defines the first degree which is a basic degree to be obtained before getting the degree in law, which is extracted hereunder:

"2(viii). "First Degree" means Bachelor Degree in any branch of knowledge such as Arts, Fine Arts, Science, Commerce, Management, Medicine, Engineering, Pharmacy, Technology etc. conferred by Universities or any other qualifications awarded by an institution/authority recognized by the Bar Council of India, from time to time."

13.19. In Chapter II of the Rules of Legal Education 2008 a law course has been defined. The said provision is also provided hereunder:

"4(a). A three year degree course in law undertaken after obtaining a Bachelors' Degree in any discipline of studies from a University or any other qualification considered equivalent by the Bar Council of India. Provided that admission to such a course of study for a degree in law is obtained from a University whose degree in law is recognized by the Bar Council of India for the purpose of enrolment."

13.20. The eligibility for admission has been mentioned under Rule 5 the relevant provision along with the explanation is provided hereunder:

"5(a). Three Year Law Degree Course: An applicant who has graduated in any discipline of knowledge from a University established by an Act of Parliament or by a State legislature or an equivalent national institution recognized as a Deemed to be University or foreign University recognized as equivalent to the status of an Indian University by an authority competent to declare equivalence, may apply for a three years' degree program in law leading to conferment of LL.B. degree on successful completion of the regular program conducted by a University whose degree in law is recognized by the Bar Council of India for the purpose of enrolment."

Explanation: The applicants who have obtained 10 + 2 or graduation / post graduation through open Universities system directly without having any basic qualification for prosecuting such studies are not eligible for admission in the law courses.

13.21. Hence, this Court will have to see as to whether that the decision of the respondents relying upon the provisions of the Rules of Legal Education, 2008 and the judgment of the Hon'ble Apex Court is justifiable or not.

13.22. W.P.No.5274 of 2009 was referred to the Division Bench by a learned single Judge of its order dated 17.08.1999 since in W.P.No.1479 of 2008 dated

25.02.2009 an order was passed by the Hon'ble Division Bench of this Court in which the learned single Judge was a party to the effect that without a basic degree a person is not entitled to be admitted into a law course. In view of the fact that the other writ petitions also involve the same issue, all of them having directed to be posted before the Division Bench.

14.Submissions of the Petitioners:

14.1.Dr.Krishnamurthy, learned counsel appearing for the petitioners in W.P.No.5274 of 2009 submitted that as per Section 24 of the Advocate Act, the petitioners are qualified and there is no dis-qualification under Section 24-A of the Advocates Act, 1961. It is further submitted that the Bar Council of India being a delegated authority cannot go beyond the Act. The learned counsel also submitted that the judgment relied upon by the respondents in ANNAMALAI UNIVERSITY REPRESENTED BY REGISTRAR v. SECRETARY TO GOVERNMENT, INFORMATION AND TOURISM DEPARTMENT AND OTHERS [(2009) 4 SCC 590] does not apply to the present case on hand. According to the learned counsel that till 2007 persons with degrees obtained from the Open Universities have been admitted and enrolled as members of the State Bar Council and they are allowed to continue and therefore the same is in violation of Article 14 of the Constitution of India.

14.2.The learned counsel further added that only those persons who got M.A.Degrees from the Open Universities were denied enrollment as against the others who got degrees through the Open Universities which is also in violation of Article 14 of the Constitution of India. According to the learned counsel, the Bar Councils of some other states such as Andhra Pradesh are still admitting the candidates with a M.A.Degree from a Open University. The learned counsel also relied upon the judgment in V.Sudeer v. Bar Council of India and another [(1999) 3 Supreme Court Cases 176] and submitted that the powers of the Bar Council of India being regulatory in nature, they are very much limited. The learned counsel submitted that the Apex Court in ANNAMALAI UNIVERSITY REPRESENTED BY REGISTRAR v. SECRETARY TO GOVERNMENT, INFORMATION AND TOURISM DEPARTMENT AND OTHERS [(2009) 4 SCC 590] in fact has not set aside the selection but only applied the ratio for the further promotion. Therefore the said judgment cannot be made applicable to the petitioners who completed the law course.

14.3.Shri.N.R.Chandran, learned senior counsel appearing for the petitioner in W.P.Nos.48 of 2010 and 194 of 2010 submitted that the Rules of Legal Education, 2008 having come into force with effect from 14.09.2008 cannot be made applicable with retrospective effect, since the petitioners have completed the course before coming into force of the Rules. Section 24 of the Advocates Act does not prohibit the admission of the petitioners in the rules, since there is no lack of basic qualification which is a degree in law. The learned senior counsel further submitted that having allowed the petitioners to get admitted in the law course and complete the course it is not open to the respondents to deny the enrollment and therefore they are estopped from doing so. According to the learned senior counsel that even some of the ministries of the Government of India have

recognised a degree obtained through the Open Universities. The learned senior counsel also relied upon the judgments in GURU NANAK DEV UNIVERSITY v. SANJAY KUMAR KATWAL AND ANOTHER [(2009) 1 SCC 610] , State of Tamil Nadu v. Sr.S.Sagayarani [(2009) 5 MLJ 652] and ANNAMALAI UNIVERSITY REPRESENTED BY REGISTRAR v. SECRETARY TO GOVERNMENT, INFORMATION AND TOURISM DEPARTMENT AND OTHERS [(2008) 3 MLJ 255] and contended that the principle of promissory estoppel would apply to the present case on hand and therefore the writ petition will have to be allowed.

14.4.The learned senior counsel further submitted that since the Rules of Legal Education, 2008 have come into force with effect from 14.09.2008 the same are not applicable to the petitioners case and only the old rule would apply. Therefore when there is no bar under the old Rules the respondents cannot deny the enrollment to the petitioners. The learned senior counsel further submitted that an order of Court cannot be contrary to the Rules and therefore the judgment of the Division Bench as confirmed by the Apex Court is not applicable to the present case on hand. In support of his said submissions, the learned senior counsel relied upon the judgments reported in (2007) 2 SCALE 159 [MALIK MAZHAR SULTAN AND ANOTHER v. U.P.PUBLIC SERVICE COMMISSION AND OTHERS] and 2010 SCC.L.COM 80 [RAKHI RAY AND OTHERS v. THE HIGH COURT OF DELHI AND OTHERS].

14.5.Shri.V.Raghavachari, learned counsel appearing for the petitioner in W.P.No.25914 of 2009 submitted that even a perusal of the prospectus of the Dr.Ambedkar Law University would show that a person having a decree obtained from the Open University was eligible for the law course. According to the learned counsel the law course is a regular course and the petitioners completed with the regular students either both at the time of getting the entry by way of admission and passing the examinations. The learned counsel further submitted that Section 2(h) of the Advocates Act, 1961 speaks only about a law graduate and Section 24 of the said Act speaks only about a degree in law. According to the learned counsel that the Rules of Legal Education, 2008 especially explanatory Rule 5 are contrary to the Parent Act and also contrary to Section B of the Bar Council of India Rules, 1961 and therefore the impugned order based upon the said rules is impermissible in law. The learned counsel submitted that the role of the Bar Council of India is only advisory and hence it cannot impose any new condition exercising the power under Section 49 of the Act contrary to Section 24 which only provides power to the State Bar Council. The learned counsel further submitted that the impugned order is in violation of the Article 14 of the Constitution of India, since there cannot be any discrimination between a person who passed out of the law college with a basic degree and a person who passed out of the said course with a degree from Open University, since both of them did the same law course. In support of his contention, the learned counsel relied upon the judgments reported in (2009) 1 SCC 610 [GURU NANAK DEV UNIVERSITY v. SANJAY KUMAR KATWAL AND ANOTHER]; (2006) 6 SCC 239 [STATE OF GOA v. WESTERN BUILDERS]; 2008 (1) WLN 177 [MANOJ SINGH v. STATE OF RAJASTHAN AND OTHERS]; (2003) 3 SCC 321 [ST.JOHNS TEACHERS TRAINING INSTITUTE v. REGIONAL DIRECTOR, NATIONAL COUNCIL FOR TEACHER EDUCATION AND

ANOTHER] and (1995) 1 SCC 732 [INDIAN COUNCIL OF LEGAL AID & ADVICE AND OTHERS v. BAR COUNCIL OF INDIA AND ANOTHER].

14.6. Mrs.Nalini Chidambaram, learned senior counsel appearing for the petitioner in W.P.No.20937 of 2009 submitted that the Rules of Legal Education 2008 cannot be applied retrospectively and therefore a right which has become vested cannot be taken away. The learned senior counsel submitted that the judgment will have to be applied to the facts of the case and it cannot be read like a statute.

14.7.Shri.Murugamanickam, learned counsel appearing for the petitioner in W.P.No.25862 of 2009 submitted that Section 7(i) of the Advocates Act, 1961 speaks only about recognition of Universities. According to the learned counsel both the Bar Council of Tamil Nadu and the Bar Council of India knew about the admissions made by the respective colleges by providing entry to the petitioners. The learned counsel further submitted that the rules cannot be applied with retrospective effect. The learned counsel further submitted that by applying the doctrine of prospective overruling the judgment of the Apex Court cannot be made applicable to the petitioners. In support of his contention, the learned counsel relied upon the judgments in BABURAM v. C.C.JACOB AND OTHERS [(1999) 3 SCC 362] and M.A.MURTHY v. STATE OF KARNATAKA AND OTHERS [(2003) 7 SCC 517].

14.8.Shri.Perumbulavil Radhakrishnan, learned counsel appearing for the petitioner in W.P.No.26257 of 2009 submitted that the judgment of the Apex Court based upon which cancellation of enrollment was made cannot be made applicable since it was not rendered between the parties. The learned counsel submitted that the Bar Council of India does not have the power to set aside a valid degree obtained by the petitioners.

14.9.Shri.K.Sridhar, learned counsel appearing for the petitioner in W.P.Nos.26929 and 26930 of 2009 submitted that a degree obtained validly cannot be nullified without even affording an opportunity. Therefore the impugned orders are liable to be set aside. The learned counsel further submitted that in GURU NANAK DEV UNIVERSITY v. SANJAY KUMAR KATWAL AND ANOTHER [(2009) 1 SCC 610] the University does not recognise a degree which is not the case in the present writ petitions.

14.10.Shri.Sampath Kumar, learned counsel appearing for the petitioner in W.P.Nos.215 to 217 of 2010 submitted that the similarly placed persons who got enrolled with the same degree earlier have not been touched and therefore the impugned orders will have to be set aside being violative of Article 14 of the Constitution of India.

14.11.Shri.Veeramani, learned counsel appearing for the petitioner in W.P.No.757 of 2010 and Shri.T.S.Vijayaraghavan, learned counsel appearing for the petitioner in W.P.Nos.26771 and 26772 of 2009 submitted that there was no bar at the time of admission to the Law College and therefore a valid degree cannot be set aside by the respondents.

14.12.Shri.K.Selvaraj, learned counsel appearing for the petitioner in W.P.Nos.26827 and 26828 of 2009 submitted that the rules coming into force on 15.09.2008 cannot be made applicable to the petitioner who got enrolled on 27.08.2008 subject to the results of the Special Leave Petition.

14.13.Shri.V.Vijay Narayan, learned senior counsel appearing for the petitioner in W.P.Nos.26809 to 26811 of 2009 submitted that the entire situation is because of the mistakes committed by the respondents. According to the learned senior counsel there is no difference between the person who got enrolled and the petitioners. The learned senior counsel argued elaborately with reference to the provisions of the Act vis-a-vis the rules and submitted that by exercising the power under Section 49 and 24-A the Bar Council of India cannot impose any new condition contrary to Section 24 of the Act. According to the learned senior counsel enrollment is the function of the State Bar Council and not the Bar Council of India. The learned counsel further submitted that the Bar Council of India can exercise the power under Section 24 (3)(d) of the Act only to include those persons who are otherwise not eligible to be included under Section 24 of the Act. Therefore the learned counsel in sum and substance submitted that the Bar Council of India does not have any power to impose such a condition.

14.14.The learned counsel also submitted that the power available to the Bar Council of India under Section 7(g) of the Act read with Section 49 of the Act can only be used for the purpose of Legal Education and not for enrollment. The learned counsel submitted that such a power cannot be used to prevent the person from getting enrolled. The learned counsel has made reliance upon the judgments of the Apex Court in INDIAN COUNCIL OF LEGAL AID & ADVICE AND OTHERS v. BAR COUNCIL OF INDIA AND ANOTHER [(1995) 1 SCC 732] and V.SUDEER v. BAR COUNCIL OF INDIA AND ANOTHER [(1999) 3 SCC 176] and submitted that Section 24 3(d) cannot be made use of by the Bar Council of India by imposing new conditions.

14.15.Shri.V.Vijaya Narayan, learned senior counsel further submitted that considering the factual position that the prospectus of the law Colleges provide for such an entry to the petitioners and also in view of the fact that there is no bar at that time of admission equity should be invoked in favour of the petitioners. According to the learned counsel the order passed by the respondents is in violation of the Article 19 (1)(g) of the Constitution of India. In support of his contention, the learned senior counsel relied upon the judgment in Haridas Das v. Usha Rani Banik reported in AIR 2007 SUPREME COURT 2688.

14.16.Shri.Kandavadivelu, learned counsel appearing for the petitioner in W.P.No.26850 of 2009 submitted that the UGC regulation came into effect from 01.06.1986 onwards whereas the petitioner had completed law degree course in the Open Universities in the month of May 1986. Therefore according to the learned counsel the Rules of Legal Education, 2008 are not applicable to the petitioners.

14.17.Shri.R.Subramanian, learned counsel appearing for the petitioners in W.P.No.2963 of 2010 etc., submitted that Rule 5 cannot be applied with retrospective

effect by taking away the rights of the petitioners and the writ petitions will have to be allowed on the principle of promissory and equitable estoppel.

15. Per contra, the learned counsel for the University Grants Commission Shri.P.R.Gopinathan based upon the counter affidavit submitted that it is the University Grants Commission Act, 1956 that covers the field in so far as the recognition of a degree is concerned. Therefore it is submitted by the learned counsel that the degree granted by the Open Universities being a degree not in accordance with the University Grants Commission Act, 1956, it is not a degree in the eye of law. The learned counsel has made reliance upon Section 26(1) of the University Grants Commission Act, 1956 which provides for powers to the Commission to make regulations.

16. The learned counsel has further relied upon the Regulation No.2(2) which governs admission of a student to the first degree as well as the Master Degree. Basing reliance upon the Regulation No.2(2), the learned counsel submitted that no student shall be eligible for the award of the first degree unless he has successfully completed a three year course. Similarly no student shall be eligible to seek admission to the Master course unless he successfully pursue the first degree course of three year duration. According to the learned counsel the issue of applicability of University Grants Commission Regulation, 1995 as against the Indira Gandhi Open University Act has been dealt with by the Hon'ble Division Bench as confirmed by the Hon'ble Apex Court. Therefore the learned counsel submitted that under those circumstances, the writ petitions will have to be dismissed, since the petitioners do not possess a basic degree.

17. Shri.R.Thyagarajan, learned senior counsel appearing for the Bar Council of India took us through the relevant provisions of the Bar Council of India rules, 1961 and the Rules of Legal Education, 2008 and submitted that a conjoint reading of Section 7(1)(f)(h)&(g) read with Section 24(1) and Section 49(af)(ag) would clearly establish the fact that the rules framed by the Bar Council of India are well within its powers. The learned senior counsel further submitted that the Bar Council of India has answered the reference made by the Bar Council of Tamil Nadu in accordance with the Section 26(2) of the Advocates Act, 1961. Therefore based upon the said reference the Bar Council of Tamil Nadu has made its decision. Hence, the learned counsel submitted that the impugned orders passed are well within the powers of the Bar Council of India and Bar Council of Tamil Nadu respectively. It is further submitted that from the object of the Rules it governs not only the degree in law but also the education prior to it. Hence a law degree without a basic degree is not a valid degree. The learned counsel has relied upon the judgment of the Apex Court in BALDEV RAJ SHARMA v. BAR COUNCIL OF INDIA AND OTHERS [AIR 1989 SC 1541] and submitted that a person seeking enrollment has to comply with the provisions of the Act and Rules and therefore the petitioners do not have any other choice except to abide by it. The learned senior counsel has relied upon the judgment in BAR COUNCIL OF INDIA v. BOARD OF MANG. DAYANAND COLL. OF LAW AND OTHERS [JT 2006 (10) SC 603] and submitted that the Bar Council of India has got control over the legal education. It is further submitted that the Bar Council of India has got the power to deny the enrollment particularly with reference to the standard of legal profession and the entitlement of those who seek entry to it. It is also submitted that the judgment of the Apex Court is binding

on the Bar Council of India being the law of the land under Article 14 of the Constitution of India and therefore the relief sought for cannot be granted.

18. Shri.P.S.Raman, learned Senior Counsel appearing for the Bar Council of Tamil Nadu submitted that the Bar Council of Tamil Nadu being a statutory body is bound to implement the law laid down the Hon'ble Supreme Court in the judgment in ANNAMALAI UNIVERSITY REPRESENTED BY REGISTRAR v. SECRETARY TO GOVERNMENT, INFORMATION AND TOURISM DEPARTMENT AND OTHERS [(2009) 4 SCC 590]. The learned Senior Counsel further submitted that inasmuch as the petitioners are not qualified to be admitted into a law course the consequential law degree without a basic degree would be a nullity and therefore the writ petitions will have to be dismissed. It is also submitted that the reference sought by the Bar Council of Tamil Nadu has been answered by the Bar Council of India holding that the persons having law degree with Masters Degree from the Open University cannot be enrolled and therefore the Bar Council of Tamil Nadu is bound to implement the same. Therefore the learned Senior Counsel submitted that the writ petitions will have to be dismissed.

19. From the arguments of the learned counsels appearing for the petitioners, the following points arise for consideration:

(i) Whether the Rules of Legal Education, 2008 are in accordance with the powers conferred under Section 7 (1)(h)&(i), 2 (1) 1(3) 3(a) and 49 (1a) (ag) (af) and (d) of Advocates Act, 1961 or not?

(ii) Whether the explanation to Rule 5 of the Rules of Legal Education, 2008 is beyond the rule making power conferred on the Bar Council of India under Section 49 of the Advocates Act, 1961 and hence becomes ultravires and unconstitutional.

(iii) Is the condition imposed by way of explanation to Rule 5 of the Rules of Legal Education, 2008 is contrary to Section 24 of the Advocates Act, 1961 by which powers are vested only with the State Bar Council.

(iv) Is the judgment rendered by the Hon'ble Apex Court in ANNAMALAI UNIVERSITY REPRESENTED BY REGISTRAR v. SECRETARY TO GOVERNMENT, INFORMATION AND TOURISM DEPARTMENT AND OTHERS [(2009) 4 SCC 590] applicable to the case of the petitioners.

(v) Can the Rules of Legal Education, 2008 be made applicable to the petitioners who completed the law course at the time of coming into force of the Rules.

(vi) Are the petitioners entitled to succeed based upon Article 14 of the Constitution of India.

(vii) Is the classification made between the degree holders who passed B.L.Degree and the petitioners is valid in law.

(viii) Are the petitioners entitled to succeed based upon the principles of promissory estoppel, acquiescence and legitimate expectation.

(ix) Are the petitioners entitled to get the writ petitions allowed based upon equity.

(x) Are the orders passed by the respondents would amount to nullifying the degree obtained by the petitioners.

Points (i), (ii) and (iii):

20. As narrated above, Section 7 of the Advocates Act, 1961, deals with the power of Bar Council of India regarding the general supervision and control over the State Bar Councils, to permit the legal education and to lay down standards of such education and to recognise the Universities, whose degree in law, shall be a qualification for the enrollment. It also provides that the Bar Council of India shall inspect the Universities for the above said purposes.

21. Similarly Section 24(1) of the Act speaks about the conditions to be fulfilled by a person seeking to enroll himself as an advocate on a State Roll. Section 24(3)(d) of the Act speaks about the power of the Bar Council of India to admit a person as an advocate, who is otherwise not eligible to be admitted in a State Roll under Section 24(1) of the Act.

22. Section 49 of the Act, speaks about the general power of the Bar Council of India to make rules. Section 49(1)(ag) of the Act deals with the minimum qualification required for admission to a course of a degree in law in any recognised University and Section 49(1)(ah) of the Act deals about the conditions subject to which an advocate shall have the right to practise. Further, Section 49(1)(d) of the Act provides for the power of the Bar Council of India to prescribe the standards of legal education to be observed by the Universities in India and the inspection of the Universities for that purpose.

23. Therefore, a conjoint reading of Sections 7, 24(1)(c)(iii) and (iii a), 49(1)(ag) and (ah) of the Act, clearly provide the required power and authority for the Bar Council of India to prescribe the minimum qualification, standard, inclusive of minimum marks, attendance, curriculum and other incidental qualifications to a Law University and the Law College recognised by it. Accordingly, the Bar Council of India in exercise of its power under Sections 7(1)(h)&(i), 24(1)(c)(iii) and (iii a), 49(1)(af), (ag) and (d) of the Advocates Act, 1961, has introduced the Rules of Legal Education, 2008, which has come into effect from 14.09.2008 onwards.

24. A degree has been defined by the University Grants Commission Act, 1956 and the Regulations framed by the University Grants Commission. As per the said Act and Regulations, a degree has to be for a duration of three years after the completion of +2 course. However, under the Indira Gandhi National Open University Act, 1985, a student is permitted to undergo and complete a post graduate degree without a basic as well as a first degree. The Division Bench of this Court and the Honourable Apex Court in *Annamalai University represented by Registrar v. Secretary to Government, Information and Tourism Department and others*, has held that 'University Grants Commission Act, 1956 and its Regulations will have overriding effect on the provisions of the Indira Gandhi National Open University Act, 1985 and therefore, a degree only means a degree obtained under the above said Act. In other words, it was held that a degree obtained under the Indira Gandhi National Open University Act, 1985, from a Open University is not a valid degree.

25. The petitioners herein have done their post graduation through various Open Universities and thereafter, got selected to various Law Universities and Law Colleges recognised by the Bar Council of India and completed the law course .

26. It is also not in dispute that the prospectus of the Colleges also provide for the admission of the petitioners into the law course.

27. The Bar Council of India also has passed resolutions in the year 2002 and 2007 permitting such students to enroll as advocate. However, after the judgment of the Division Bench of this Court holding that a post graduate degree obtained from the Open University is not a valid degree and after the confirmation of the judgment by the Honourable Apex Court as well as making reliance upon the explanation to Rule 5 of the Rules of Legal Education, 2008, the Bar Council of Tamil Nadu has cancelled the enrollments which were made after the judgment of the Division Bench of this Court and refused to enroll the petitioners who completed the law course. The said decision was made after the resolution of the Bar Council of India to that effect. Therefore, the petitioners have filed these writ petitions.

28. As discussed above, a conjoint reading of the provisions of the Advocates Act, would clearly show that the Bar Council of India has got ample power and authority to regulate and control the legal education, particularly with reference to entry of a student into a law course. It is the duty of the Bar Council of India to see to it that the standard of legal education is to be maintained, sustained and improved.

29. It is a well settled principle of law that a rule is presumed to be valid until and unless the same is set aside. In the absence of any specific challenge to the rules, in an incidental proceedings, the same cannot be questioned. In *Tamil Nadu Electricity Board v. Status Spinning Mills Ltd.* (2008) 7 SCC 353, in paragraph 31, the Honourable Apex Court has held as follows:

"31. Validity of the notifications on the ground that they are unreasonable has not been raised before the High Court. We, therefore, cannot go into the issue. If that be so, it is difficult to agree with Mr Parasaran that we should undertake an exercise to interpret the notifications in a manner which would not lead to unreasonableness. For the purpose of declaring a statute unconstitutional, foundational facts have to be laid therefor. Grounds are required to be raised therefor. In absence thereof it would not be possible for us to enter into the debate of constitutionality of the said provisions. The Division Bench of the High Court had rightly or wrongly opined that the doctrine of promissory estoppel has no application. The fact that the said doctrine may apply even in relation to a statute is beyond any dispute as has been held by this Court in *Mahabir Vegetable Oils (P) Ltd. v. State of Haryana* (2006) 3 SCC 620, *A.P.Steel Re-Rolling Mill Ltd.* (2007) 2 SCC 725, *Pawan Alloys and Casting (P) Ltd. v. U.P.SEB* AIR 1997 SC 3910 : (1997) 7 SCC 251 and *Southern Petrochemical Industries Co. Ltd. v. Electricity Inspector & ETIO* AIR 2007 SC 1984 : (2007) 5 SCC 447 : (2007) 4 MLJ 723."

30. However, inasmuch as the learned Counsels appearing for the petitioners have raised this plea that the explanation to Rule 5 to the Rules of Legal Education, 2008, ultra

vires the parent Act namely, the Advocates Act, 1961, we are inclined to consider the above said issue.

31. The Division Bench of the Bombay High Court in *Inamdar Vahab v. Symbosis Society's Law College, Pune* reported in AIR 1984 BOMBAY 451, while dealing with the power of the Bar Council of India in prescribing minimum percentage of marks in the qualifying examination for admission to the law course, has held that such a rule having rational nexus to the purpose sought to be achieved and having passed in exercise of power under Section 7(h) and (i), 24 and 49(1) of the Advocates Act, 1961, is constitutional and intra vires the parent Act. The Division Bench of the Bombay High Court has observed as follows:

"... No profession can maintain high standard if it is allowed to be inundated by persons who reluctantly took up the law course because having failed to secure admission to the courses of their choice, they have nothing else to do. The prescribed minimum qualification, therefore, has a rational nexus to the purpose sought to be achieved. We also do not feel that the percentage fixed is in any manner arbitrary. It is reasonable, and more so in view of the general pattern of percentage of marks generally obtained at the qualifying examinations. We are told that practically similar qualifying standard is laid down for admission to other professional courses. There is, therefore, no substance in the challenge to the rule on the basis of which the admissions of the petitioners and others were cancelled."

32. We are in respectful agreement with the judgment of the Division Bench of the Bombay High court.

33. The Division Bench of this Court in *Meenakshi Sundaram, President, National Union of Journalist, Madras v. The Director of Legal Studies, Madras Law College, Madras and others* reported in (1981) 2 MLJ 141, has upheld the stand taken by the Government that a student with B.G.L., correspondence degree would not be considered for admission to B.L., degree course of the Madras University. The Division Bench of this Court has observed as follows:

"10. Regarding the first contention that the rules framed by the Bar Council of India are outside the scope of its powers under the statute itself, we have already extracted the provisions of Sections 7(1)(h) and (t), 10(2), 24(1)(c)(iii) and (iii-a) and 49(1)(d) of the Act. The argument of the appellant is that Section 7(1) merely states that the functions of the Bar Council of India shall be to promote legal education and to lay down standards of such education, and that laying down of standards for such education will not include the power to prescribe that the course undergone should be regular and not by correspondence or prescribe a minimum percentage of attendance at the classes. According to the appellant, the expression 'standards of such education' occurring in Section 7(1)(h) will only refer to the excellence of the standard aimed at, and it will not take in any other matter, such as, whether the course should be a regular one or may be by correspondence, or how much attendance a candidate should have put in. The appellant also contended that Section 24(1)(a)(iii) merely referred to a three year course of study in law and that it did not refer to a three year regular course of study, attending classes in a college, and that therefore in making the rules in question the Bar Council of

India went beyond its powers conferred by the relevant statutory provisions. We are unable to accept this argument. The expression 'to lay down standards of such education' occurring in Section 7(1)(h) is capable of taking in every ingredient which will go to constitute the end or ultimate level of education that is expected of a candidate who applies for enrolment as an advocate under the Act. As a matter of fact, the appellant relied upon the meaning of the word 'standards' given in the Shorter Oxford English Dictionary and Chamber's Twentieth Century Dictionary. We have gone through those meanings, and we are not satisfied that there is anything therein which will have the effect of narrowing down the scope of the expression 'standards' occurring in Section 7(1)(h), as contended by the appellant. The Shorter Oxford English Dictionary, relied on by the appellant, gives the meaning of the word 'standard' as follows-

"A definite level of excellence, attainment, wealth or the like, or a definite degree of any quality viewed as a prescribed object of endeavour or as the measure of what is adequate for some purpose."

From this meaning, we are unable to hold that the prescription that the course, namely, attending lectures in a college, or that a candidate must have put in a particular percentage of attendance before obtaining a degree, can be said to fall outside the scope of the expression 'standard'. As a matter of fact, Section 7(1)(i) refers to the qualification for enrolment as an advocate, and the meaning of the word 'qualification' given in the same dictionary is as follows-

"A necessary condition, which must be fulfilled before a certain right can be acquired, an office held, or the like."

Consequently, the necessary condition contemplated will take in attendance at regular classes in a college or school and also a particular percentage of attendance. Therefore, we are unable to agree with the appellant that the expression 'standards of such education' occurring in Section 7(1)(h) of the Act in any way whittles down or narrows down the scope of the functions of the Bar Council of India, so as to take away from such functions the right to lay down a prescription, that the course, in the sense that the students are required to attend regular classes and to put in certain percentage of attendance."

.....

13. We are clearly of the opinion that the degree obtained after pursuing the correspondence course cannot be equated, in all circumstances, and in all respects with a degree obtained after attending regular classes.....

.....

Having regard to this factual position as stated by the University of Madras, it is not possible to hold that there is no difference between the B.G.L. degree of Madurai Kamarajar University obtained after pursuing the correspondence course and the degree obtained after attending regular classes. If so, there is absolutely no scope for the invocation of Article 14 of the Constitution at all, because, from the very nature of the case, the two degrees are not identical or equal, and therefore, it is not open to the appellant to contend that these unequal degrees must be treated as equals."

34. The Honourable Apex Court in *Baldev Raj Sharma v. Bar Council of India* and others reported in AIR 1989 SC 1541, has held that the qualifications and conditions imposed by the Bar Council of India regarding the regular attendance at the Law Colleges

and the rejection of enrollment on the ground of the difference between a regular course and a course of study pursued as a private candidate, is valid and a candidate desiring enrollment as an advocate must fulfil the conditions mentioned under the Act and Rules.

35. In *Bar Council of India v. Aparna Basu Mallick* [(1994) 2 Supreme Court Cases 102], the Honourable Apex Court was dealing with the case where enrollment was denied to a candidate on the ground that the said candidate has not attended the required lectures, tutorials and moot courts. The Honourable Apex Court has also approved the decision of the Bar Council of India for drawing distinction between a private candidate and a regular candidate. The Honourable Apex Court has observed in the above said judgment as follows:

"14. Now under Section 7, one of the functions of the Bar Council of India is to recognise Universities whose degree in law shall be a qualification for enrolment as an advocate and for that purpose to visit and inspect the Universities. This power of recognition of Universities is conferred where the degree of law of that University entitles the degree holder for enrolment as an advocate. Under Section 24(1)(c)(iii) which is relevant for this purpose, a person shall be qualified to be admitted as an advocate on a State roll if he fulfils the conditions of having undergone a three year course of study in law from any University in India which is recognised by the Bar Council of India. Sub-section (3) of Section 24 is an exception clause to sub-section (1) as it begins with a non-obstante clause which entitles a person to be enrolled as an advocate under special rule made in that behalf. No such rule was relied upon as having been made under sub-section (3) of Section 24. Section 49(1)(d) empowers the Bar Council of India to make rules which may prescribe the standards of legal education to be observed by Universities in India and the inspection of Universities for that purpose. If the acquisition of a degree in law is essential for being qualified to be admitted as an advocate on a State roll, it is obvious that the Bar Council of India must have the authority to prescribe the standards of legal education to be observed by Universities in the country. On a conjoint reading of these provisions of the Act with Rule 1(1)(c) in Part IV of the Rules which prescribe the standards for legal education and recognition of degrees in law as well as admission as advocates, it is difficult to understand how one can say that the said Rule is inconsistent with any of the provisions of the Act. What Rule 1(1)(c) requires is that the course of study in law must be completed by regular attendance at the requisite number of lectures, tutorials and moot courts in a college recognised by a University. As pointed out earlier, this Court in *Baldev Raj Sharma* case pointed out that there was a substantial difference between a course of studies pursued as a regular student and the course of studies pursued as a private candidate. The policy underlying the relevant provisions of the Rules is to lay emphasis on regular attendance of the law classes. It is, therefore, clear that a candidate desiring enrolment as an advocate must fulfil the conditions set out under the relevant clause of Section 24 read with Rule 1(1)(c) of the Rules. In the present case since both the candidates admittedly did not pursue any regular course of study at any college recognised by the University by attending the law classes, lectures, tutorials and moot courts, they cannot be said to have complied with the requirements for enrolment as an advocate. In that view of the matter we think that the view taken by the Calcutta High Court in *Aparna Basu Mallick v. Bar Council of India* is erroneous."

36. A reading of the above said judgments would clearly show that the Bar Council of India has got ample powers to regulate and control the mode and method by which the legal education should be imparted and improved. Hence, it cannot be said for the above said purpose, the qualification for entry of a student into a law course cannot be insisted by the Bar Council of India.

37. In *Bar Council of India v. Board of Management, Dayanand College of Law and others* reported in JT 2006 (10)SC 603, the Honourable Apex Court was pleased to hold that the Bar Council of India is concerned with the standard of legal profession and the equipment of those who seek entry into those profession and it was further observed that the Universities and the State Government concerned will have to act in accordance with the requirements set down by the Bar Council of India. It was further observed that the Bar Council of India retains adequate power to control the course of studies in law, the power of inspection, the power of recognition of degrees and the power to deny enrolment to law degree holders.

38. Therefore, a reading of the above said judgment would clearly show that the Bar Council of India has got ample powers under the Advocates Act, 1961 as well as the Rules of Legal Education, 2008.

39. Inasmuch as the Rules of Legal Education, 2008, have been introduced by exercising the power under the Advocates Act, 1961, we are of the considered view that the said rules have the legal sanction under the Advocates Act, 1961.

40. We are also of the view that explanation to Rule 5 of the Rules of Legal Education, 2008, in particular, and the Rules in general, are not beyond the rule making power conferred on the Bar Council of India under Sections 7(1)(h) and (i), 24 and 49(1) of the Advocates Act. Similarly, the said rules are not contrary to Section 24 (1) of the Advocates Act, 1961. A conjoint reading of Sections 7(h) and 49(1)(af), (ag) and (d) of the Act, clearly gives such a power to the Bar Council of India.

41. The learned Counsels appearing for the petitioners made strong reliance upon two judgments of the Honourable Apex Court in (i) *Indian Council of Legal Aid and Advice and others v. Bar Council of India* and another reported in (1995) 1 Supreme Court Cases 732 and (ii) *V.Sudeer v. Bar Council of India* and another reported in (1999) 3 Supreme Court Cases 176.

42. The issue involved in *Indian Council of Legal Aid and Advice and others v. Bar Council of India* and another reported in (1995) 1 Supreme Court Cases 732, is as to whether the condition imposed by the Bar Council of India preventing the enrollment of a candidate who completes 45 years and above, is valid or not. Therefore, the Honourable Apex Court was dealing with the case wherein the restriction was sought to be imposed which is after the completion of the law course. The Honourable Apex Court, after considering Sections 24, 49(1)(ag), (ah) and 7 of the Advocates Act, 1961, has held that such a power exercised by the Bar Council of India, is unconstitutional and contrary to

Section 24(1) of the Act, inasmuch as Section 24(1) of the Act prescribes conditions for enrollment into the State Roll and therefore, the Bar Council of India does not have the power.

43. The Honourable Apex Court also considered Section 24(3)(d) of the Act, by holding that the said sub-section can only be used to qualify a person who was otherwise disqualified under Section 24(1) of the Act. Hence, it is clear that the Honourable Apex Court was dealing with the case where the Bar Council of India sought to prevent the enrollment which was in the domain of the State Bar Council. The Honourable Apex Court was also dealing with Section 49(1)(ag) and (ah) and not the power exercised by the Bar Council of India in the present case under Section 49(1)(af) and (d) read with Section 7(1) of the Act.

44. Similarly, in *V.Sudeer v. Bar Council of India* and another reported in (1999) 3 Supreme Court Cases 176, the Honourable Apex Court was dealing with a case wherein the Bar Council of India sought to impose the condition that after the completion of the law course, a candidate will have to undergo an apprenticeship before enrollment. The Honourable Apex Court by following the said ratio, has held that such condition cannot be imposed by the Bar Council of India and it does not have the power or authority under Section 49(1) and Section 7(1) of the Advocates Act, 1961.

45. In fact, the Honourable Apex Court has specified in the said judgment that Section 49(1)(af) of the Act deals with the minimum qualification required for admission to a course in law in a recognised University and the said provision does not have anything to do with the rules impugned therein. The Honourable Apex Court was also considering the scope of Sections 7(1)(h), 24(3)(d) and 49(1)(ag) and (ah) and not Section 49(1)(af) of the Act. Therefore, we are of the considered view that the above said two judgments rendered by the Honourable Apex Court do not help the case of the petitioners. Accordingly, we answer Points (i), (ii) and (iii) in favour of the respondents that the Rules of Legal Education, 2008, are in accordance with the power conferred under Sections 7(1)(h)&(i), 24(1)(c)(iii) and (iii a), 49(1)(af), (ag) and (d) of the Advocates Act, 1961 and explanation to Rules 5 of the Rules of Legal Education, 2008, is in accordance with Section 49 of the Act and not contrary to Section 24(1) of the Advocates Act and hence, they are constitutional and valid in law.

Point (iv):

46. The Honourable Apex Court in *Annamalai University represented by Registrar v. Secretary to Government, Information and Tourism Department* and others reported in (2009) 4 SCC 590, was dealing with the case of promotion to the post of Principal in Film and Television Institute. The appointment made to the said post was challenged being contrary to the rule on the ground that the appellant therein does not have the valid degree as required. In the said case, the appellate had obtained a Master's degree from an Open University. The Honourable Apex Court has held that a degree obtained under the Indira Gandhi National Open University Act, 1985, from an Open University, is not a valid degree being contrary to a degree defined under the University Grants Commission Act, 1956 and the Regulations framed thereunder.

47. After holding that a degree obtained from an Open University is not a valid degree in accordance with the Rules of the Film and Television Institute of Tamil Nadu, the Honourable Apex Court has dismissed the Special Leave Petition filed by the appellant therein. The said judgment has been rendered by the Honourable Apex Court confirming the judgment of the Division Bench of this Court. It is only after the judgment of the Division Bench of this Court, the Bar Council of Tamil Nadu has refused to enroll the candidates in its Rolls as advocates.

48. Now, the question to be decided is as to whether the said judgment rendered by the Division Bench of this Court as confirmed by the Honourable Apex Court is binding on the parties in the present writ petitions?

49. Admittedly, neither the petitioners nor the Bar Council of Tamil Nadu and the Bar Council of India are parties to the above said judgment. The issue involved therein was the promotion of the parties involved therein. Even in the said judgment, the Honourable Apex Court was pleased to hold that the appointment cannot be nullified, but the appellant will not get the promotion based upon the said degree. Therefore, the Honourable Apex Court was applying the law only for future promotion and it did not take away the right which has become accrued and vested.

50. It is a well settled principle of law that a judgment is a binding precedent for the issues decided on a conscious consideration of the facts involved therein. Therefore, the law laid down by a Court of law will have to be applied to the facts of a particular case. A judgment cannot be read like a statute. The Honourable Apex Court in *Commissioner of Central Excise, Bangalore v. Srikumar Agencies etc. etc.* reported in 2009 AIR SCW 942, has considered the said issues and held as follows:

"4. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In *London Graving Dock Co. Ltd. v. Horton* (1951 AC 737 at p.761), Lord MacDermot observed:

"The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J. as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge."

In *Home Office v. Dorset Yacht Co.* (1970 (2) All ER 294) Lord Reid said, "Lord Atkin's speech..... is not to be treated as if it was a statute definition. It will require qualification in new circumstances." Megarry, J. in (1971) 1 WLR 1062 observed: One

must not, of course, construe even a reserved judgment of Russell L.J. as if it were an Act of Parliament." And, in *Herrington v. British Railways Board* (1972(2) WLR 537) Lord Morris said:

"There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances made in the setting of the facts of a particular case."

5. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

The following words of Lord Denning in the matter of applying precedents have become locus classicus:

"Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive."

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"Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it."

6. Since the factual position has not been analysed in detail, disposal of appeals by mere reference to decisions, was not the proper way to deal with the appeals. The CEGAT also does not appear to have dealt with the relevance and applicability of ITC's case (supra) on which strong reliance has been placed by learned Solicitor General. The CEGAT ought to have examined the cases individually and the articles involved. By clubbing all the cases together and without analyzing the special features of each case disposing of the appeals in the manner done was not proper. In the circumstances, we set aside the impugned judgment in each case and remit the matter to CEGAT presently known as Customs, Excise & Service Tax Appellate Tribunal (in short 'CESTAT') to be dealt with by the appropriate Bench. In view of the aforesaid order there is no need to answer the reference made."

51. Considering the above said principles laid down by the Honourable Apex Court and applying the same to the present case on hand, we are of the considered opinion that the above said judgment of the Honourable Apex Court would be a binding precedent insofar as it holds that a degree obtained under the Indira Gandhi National Open University Act, 1985 from an Open University is not a valid degree in the eye of law. However, the said judgment cannot be construed to hold that a person, who after obtaining the said degree from the Open University and thereafter, completed law course, would be barred from getting himself enrolled. In other words, in a case where, a right has been crystallised and vested, then the same cannot be taken away.

52. Hence, we are of the opinion that the judgment of the Honourable Apex Court cannot be made applicable to the case of the petitioners herein who have completed the

law course even before the said judgment. Hence, we answer Point (iv) in favour of the petitioners on the facts and circumstances of the case.
Point (v) and (vi):

53. Admittedly, the Rules of Legal Education, 2008, came into existence on 14.09.2008. It is not in dispute that the petitioners have completed their law course by that time. It is also not in dispute that the old rule which was in existence prior to the new rules, did not prohibit the entry of the petitioners into the law course. It is a well settled principles of law that a rule which is by way of subordinate legislation, is to be construed as prospective unless the same is made retrospective provided the parent Act gives such a power.

54. Explanation to Rule 5 has been introduced with a purpose of preventing a person with Open University degree to enter into the law course. Inasmuch as such a rule has been introduced by way of a preventive measure, the same cannot be applied with retrospective effect. In the present case on hand, the petitioners' rights are accrued and are substantive rights. Therefore, until and unless there are words in the statute sufficient to show the intention to affect the existing rights, it is deemed to be prospective alone in accordance with the principle of '*Nova constitutio futuris formam imponere debet, non praeteritis.*' The said maxim has been defined under Black's Dictionary as follows:

"*Nova constitutio futuris formam imponere debet, non praeteritis.* A new enactment ought to impose form upon what is to come, not upon what is past. A new regulation should not apply retroactively but from its enactment."

55. Hence, we are of the considered view that the explanation to Rule 5 along with other rules which defined the first degree and basic degree, will have to be applied prospectively, in the sense, it cannot be applied to the case of the petitioners who have completed the very law course itself.

56. In *Gopal Krushna Rath v. M.A.A.Baig (Dead) by L.Rs. and others* reported in (1999) 1 SCC 544, the Honourable Apex Court has observed as follows:

"6. When the selection process has actually commenced and the last date for inviting applications is over, any subsequent change in the requirement regarding qualifications by the University Grants Commission will not affect the process of selection which has already commenced. Otherwise it would involve issuing a fresh advertisement with the new qualifications. In the case of *P.Mahendran v. State of Karnataka* (1990) 1 SCC 411 at 416 : (AIR 1990 SC 405 at pp. 408 and 409), this Court has observed:

"It is well settled rule of construction that every statute or statutory rule is prospective unless it is expressly or by necessary implication made to have retrospective effect."

The Court further observed that:

"Since the amending rules were not retrospective, it could not adversely affect the right of those candidates who were qualified for selection and appointment on the date they applied for the post, moreover, as the process of selection had already commenced

when the amending Rules came into force, the amended Rules could not affect the existing rights of those candidates who were being considered for selection as they possessed the requisite qualifications prescribed by the Rules before its amendment."

7. In the present case, therefore, the appellant possessed the necessary qualifications as advertised on the last date of receiving applications. These qualifications were in accordance with the Rules/guidelines then in force. There is also no doubt that the appellant obtained higher marks than the original respondent No.1 at the selection. There is no challenge to the process of selection, nor is there any allegation of mala fides in the process of selection."

57. In Maxwell on the Interpretation of Statutes, 12th Edn., the statement of law in this regard is stated thus:

"Perhaps no rule of construction is more firmly established than thus - 'that a retrospective operation is not to be given to a statute so as to impair an existing right or obligation, otherwise than as regards matters of procedure, unless that effect cannot be avoided without doing violence to the language of the enactment. If the enactment is expressed in language which is fairly capable of either interpretation, it ought to be construed as prospective only'. The rule has, in fact, two aspects, for it, 'involves another and subordinate rule, to the effect that a statute is not to be construed so as to have greater retrospective operation than its language renders necessary'."

58. In Francis Bennion's Statutory Interpretation, 2nd Edn., the statement of law is stated as follows:

"The essential idea of a legal system is that current law should govern current activities. Elsewhere in this work a particular Act is likened to a floodlight switched on or off, and the general body of law to the circumambient air. Clumsy though these images are, they show the inappropriateness of retrospective laws. If we do something today, we feel that the law applying to it should be the law in force today, not tomorrow's backward adjustment of it. Such, we believe, is the nature of law. Dislike of ex post facto law is enshrined in the United States Constitution and in the Constitution of many American States, which forbid it. The true principle is that *lex prospicit non respicit* (law looks forward not back). As Willes, J. said retrospective legislation is 'contrary to the general principle that legislation by which the conduct of mankind is to be regulated ought, when introduced for the first time, to deal with future acts, and ought not to change the character of past transactions carried on upon the faith of the then existing law'."

59. The Honourable Apex Court after relying upon the judgment rendered earlier, has observed as follows:

"26. In *Hitendra Vishnu Thakur v. State of Maharashtra* this Court laid down the ambit and scope of an amending Act and its retrospective operation as follows: (SCC p. 633, para 26)

(i) A statute which affects substantive rights is presumed to be prospective in operation unless made retrospective, either expressly or by necessary intendment, whereas a statute which merely affects procedure, unless such a construction is textually impossible, is

presumed to be retrospective in its application, should not be given an extended meaning and should be strictly confined to its clearly-defined limits.

(ii) Law relating to forum and limitation is procedural in nature, whereas law relating to right of action and right of appeal even though remedial is substantive in nature.

(iii) Every litigant has a vested right in substantive law but no such right exists in procedural law.

(iv) A procedural statute should not generally speaking be applied retrospectively where the result would be to create new disabilities or obligations or to impose new duties in respect of transactions already accomplished.

(v) A statute which not only changes the procedure but also creates new rights and liabilities shall be construed to be prospective in operation, unless otherwise provided, either expressly or by necessary implication.

27. In *K.S. Paripoornan v. State of Kerala* (SCC at p.636) this Court while considering the effect of amendment in the Land Acquisition Act in pending proceedings held thus: (SCC para 67)

67. In the instant case we are concerned with the application of the provisions of sub-section (1-A) of Section 23 as introduced by the amending Act to acquisition proceedings which were pending on the date of commencement of the amending Act. In relation to pending proceedings, the approach of the courts in England is that the same are unaffected by the changes in the law so far as they relate to the determination of the substantive rights and in the absence of a clear indication of a contrary intention in an amending enactment, the substantive rights of the parties to an action fall to be determined by the law as it existed when the action was commenced and this is so whether the law is changed before the hearing of the case at the first instance or while an appeal is pending.

28. From the aforesaid decisions the legal position that emerges is that when a repeal of an enactment is followed by a fresh legislation, such legislation does not affect the substantive rights of the parties on the date of the suit or adjudication of the suit unless such a legislation is retrospective and a court of appeal cannot take into consideration a new law brought into existence after the judgment appealed from has been rendered because the rights of the parties in an appeal are determined under the law in force on the date of the suit. However, the position in law would be different in the matters which relate to procedural law but so far as substantive rights of parties are concerned, they remain unaffected by the amendment in the enactment. We are, therefore, of the view that where a repeal of provisions of an enactment is followed by fresh legislation by an amending Act, such legislation is prospective in operation and does not affect substantive or vested rights of the parties unless made retrospective either expressly or by necessary intendment. We are further of the view that there is a presumption against the retrospective operation of a statute and further a statute is not to be construed to have a greater retrospective operation than its language renders necessary, but an amending Act which affects the procedure is presumed to be retrospective, unless the amending Act provides otherwise."

60. The above said principles of interpretation as intended by the law authorities and followed by the Honourable Apex Court, would make us to come to the conclusion that the Rules of Legal Education, 2008, particularly, with reference to explanation to

Rule 5, cannot be made applicable to the case of the petitioners. Therefore, we hold Point (v) in favour of the petitioners by concluding that the Rules of Legal Education, 2008, cannot be made applicable to the petitioners who had completed the law course at the time of coming into force of the Rules.

61. The learned Counsels appearing for the petitioners submitted that the writ petitions will have to be allowed on the ground of violation of Article 14 of the Constitution of India, namely the persons identically placed like the petitioners have been allowed to get enrolled till 2007; there is no difference between a degree holder who completes a law course and the petitioners since both are undergoing the same curriculum; some other State Bar Councils are allowing the persons identically placed like the petitioners and even the Bar Council of Tamil Nadu has allowed some persons without +2 qualification who did their degree through Open University.

62. The said submissions made by the learned Counsels for the petitioners cannot be countenanced, in our considered view since Article 14 of the Constitution of India cannot come to the help of a person based upon the benefit given to another person on the ground of illegality. It is a well settled principles of law that illegality cannot be a ground for invoking Article 14 of the Constitution of India. A mere fact that similarly placed persons were given a benefit earlier by itself cannot be a ground to allow the present writ petitions. However, the same can be persuasive in nature. The fact that the degree holders also allowed to undergo the same curriculum and therefore, the petitioners cannot be denied, enrollment cannot be accepted. A person with a regular degree with three years of study, stands on a different footing and therefore, the said classification is an intelligible one having nexus to the object. Hence, the contention cannot be countenanced. Likewise, the other allegations for which no material has been produced that the other Bar Councils of different States have allowed similarly placed persons and the Bar Council of Tamil Nadu has allowed the candidates with degree from Open University without undergoing +2 examination, also cannot be accepted even assuming that they are true for the argument sake, since Article 14 of the Constitution of India cannot be pressed into service in support of the petitioners.

63. An illegal and unauthorised entry of one person cannot be a ground for another person's entry. In *State of Uttaranchal v. Alok Sharma and others* [(2009) 7 Supreme Court Cases 647], the Honourable Apex Court was pleased to hold that the equality is a positive concept and therefore, the benefit of an illegal order cannot enure to another person. The Honourable Apex Court has observed in paragraph 27 as follows:

"27. Our attention has been drawn to an additional affidavit filed by the respondents wherein inter alia it has been shown that a large number of employees who had been absorbed were initially appointed after 1-10-1986. Article 14 carries with it a positive concept. It would have no application in the matter of enforcement of an order which has its source in illegality. In other words, equality cannot be applied in illegality."

64. A similar view has been taken by the Honourable Apex Court in *Union of India and others v. Muralidhara Menon and another* [(2009) 9 Supreme Court Cases 304]. In the said case, a claim was made based upon a relaxation granted in favour of one employee which was rejected by the Honourable Apex Court by holding that the same cannot be a binding precedent and in such a case, Article 14 of the Constitution of India cannot be invoked. In *Union of India and others v. M.K.Sarkar* [(2010) 2 Supreme Court Cases 59], the Honourable Apex Court has held that a claim on the basis of guarantee of equality, is permissible only when the person similarly placed has been lawfully granted a relief and the person claiming relief is also lawfully entitled to the same. In *Union of India and another v. Kartick Chandra Mondal and another* [(2010) 2 Supreme Court Cases 422], the Honourable Apex Court was pleased to reject the contention of the respondents therein that an illegal or irregular appointment made in favour of similarly placed persons cannot be a ground to grant the relief to some other person on the ground of equality under Article 14 of the Constitution of India.

65. Hence, on consideration of the legal principles, we answer Points (vi) and (vii) against the petitioners.

Points (viii), (ix) and (x):

66. The other question to be decided is as to whether the petitioners are entitled to succeed on the basis of the principles of estoppel, acquiescence, legitimate expectation and equity. It is further to be seen that the impugned orders passed by the respondents would amount to nullify the degree obtained by the petitioners.

67. In order to appreciate the contention of the petitioners, certain factual aspects will have to be gone into.

68. At the time of joining the various law institutions, there was no express bar under the Advocates Act, 1961, or the rules made thereunder for the petitioners in joining the institutions. Even the prospectus of some of the Universities including that of Dr.Ambedkar Law University provides for the entry of the petitioners. The Bar Council of India has passed a resolution in the year 2002 which was reiterated in 2007 permitting the persons like the petitioners with the Master's degree from the Open Universities to be enrolled as advocates in the State Roll. Based upon the said decision, the Bar Council of Tamil Nadu has also permitted the enrollment of candidates as advocates in the rolls.

69. Both the Bar Council of Tamil Nadu and Bar Council of India were aware of the fact that the petitioners and others like the petitioners were allowed entry into various law courses recognised by them. The persons identically placed like the petitioners got themselves enrolled till the year 2007 and no action has been taken against them. Even though Section 7(1)(g), (h) and (i) of the Act provides for supervisory control of the the Bar Council of Tamil Nadu, the unintentional anomaly has not been looked into and redressed by the Bar Council of Tamil Nadu and Bar Council of India. The objection was made for the first time by the Bar Council of Tamil Nadu only after the judgment of the Division Bench of this Court in the year 2008. The petitioners have completed the course and obtained a degree in law. The petitioners have spent three years of their

valuable time, money and energy in obtaining the law degree and they have competed with the regular students while entering into the law course and also by undergoing the same curriculum.

70. With the above said facts, the principles of promissory estoppel, acquiescence, legitimate expectation, and equity will have to be seen.

71. Subsequent to the judgment of the Division Bench of this Court and also after coming into the Rules of Legal Education, 2008, the Law Universities have refused to allow the students with Open University post graduate degree from entering into the law course and the said decision was also upheld by the judgment of the Division Bench of this Court in S.Jamesh v. The Registrar, Tamil Nadu Dr.Ambedkar Law University in W.A.No.1479 of 2008 dated 25.03.2009.

72. The principle of promissory estoppel is based upon equity. If by way of a representation or a conduct of one party, the other party was made to do and complete a work, then the former party is estopped by way of conduct from altering his position. In such an event, when a former party goes back on his promise, the Court will have to step in and grant the appropriate relief in order to mitigate the damages that would be caused to the party who acted upon the promise. There is a difference between a case in which a party has actually completed his part of obligation and in a case where a party is in the process of completion or taking preparation for completion. The principle of promissory estoppel will have more bearing in a case where a party has actually done his part. In other words, an action which has already been completed by a party, cannot be nullified by the other party when the said action was done based upon the promise.

73. It is well settled principles of law that the principle of promissory estoppel is applicable in all force to the Government and its undertakings. The principle of promissory estoppel is based upon not only equity, but on honesty, good faith which is the basis of rule of law. As against the Government, a citizen cannot be expected to say that the Government has committed a mistake since a citizen is entitled to presume that the action of the Government is correct. If the Government makes a promise and the promisee acts in reliance upon them and alter his position, then the Government should not go back upon the same. The law cannot acquire legitimacy and gain social acceptance unless it accords with the moral values of the society.

74. As observed earlier, the doctrine of promissory estoppel is based upon the equitable doctrine. Therefore, under those circumstances, a public authority having committed to the rule of law cannot claim immunity to the doctrine of promissory estoppel.

75. It is also well settled principles of law that the doctrine of promissory estoppel can even be applied in relation to the statute, more so when it is sought to be invoked against the Bar Council of India and Bar Council of Tamil Nadu and not against University Grants Commission. In the present case on hand, as observed earlier, the facts involved would clearly show that the petitioners are not at fault. On the other hand, the

Bar Council of Tamil Nadu and Bar Council of India have allowed the persons who are identically placed like the petitioners to enter into the law course and complete and thereafter, enroll. Even the petitioners have been allowed to the law course and complete. It is also seen that after the judgment of the Division Bench, for the subsequent years, various Law Universities recognised by the Bar Council of India had not permitted the students with Open University degree.

76. Lord Denning, in *Falmouth Boat Construction Co. Ltd. v. Howell* reported in (1950) 1 All ER 538, has held that 'whenever government officers, in their dealings with a subject, take on themselves to assume authority in a matter with which the subject is concerned, he is entitled to rely on their having the authority which they assume. He does not know and cannot be expected to know, the limits of their authority and he ought not to suffer if they exceed it.' Lord Denning, further observed in *Robertson v. Minister of Pensions*, [(1948) 2 All ER 767], as follows:

"The Crown cannot escape by saying that estoppels do not bind the Crown, for that doctrine has long been exploded. Nor can the Crown escape by praying in aid the doctrine of executive necessity, that is, the doctrine that the Crown cannot bind itself so as to fetter its future executive action."

77. In a recent judgment rendered between *State of Bihar and others v. Kalyanpur Cements Ltd.* reported in 2010(1) Supreme 161, the Honourable Apex Court was dealing with the principle of promissory estoppel on behalf of the Government. The Honourable Apex Court after considering the earlier judgment of the Honourable Apex Court, has held as follows:

"65. The law with regard to the applicability of the doctrine of promissory estoppel was again comprehensively considered by this Court in the case of *Nestle India (supra)*. Ruma Pal, J. speaking for the Bench observed as follows:-

"24. But first a recapitulation of the law on the subject of promissory estoppel. The foundation of the doctrine was laid in the decision of *Chandrasekhara Aiyar, J. in Collector of Bombay v. Municipal Corpn. of the City of Bombay*....."

".....Chandrasekhara Aiyar, J. concurred with the conclusion of Das, J. but based his reasoning on the fact that by the resolution, representations had been made to the Corporation by the Government and the accident that the grant was invalid did not wipe out the existence of the representation nor the fact that it was acted upon by the Corporation. What has since been recognised as a signal exposition of the principles of promissory estoppel, Chandrasekhara Aiyar, J. said: (AIR p. 476, paras 21 & 22)

"The invalidity of the grant does not lead to the obliteration of the representation. Can the Government be now allowed to go back on the representation, and, if we do so, would it not amount to our countenancing the perpetration of what can be compendiously described as legal fraud which a court of equity must prevent being committed. If the resolution can be read as meaning that the grant was of rent-free land, the case would come strictly within the doctrine of estoppel enunciated in Section 115 of the Evidence Act. But even otherwise, that is, if there was merely the holding out of a promise that no rent will be charged in the future, the Government must be deemed in the circumstances of this case to have bound themselves to fulfil it. ... Courts must do justice by the promotion of honesty and good faith, as far as it lies in their power."

"25. In other words, promissory estoppel long recognised as a legitimate defence in equity was held to found a cause of action against the Government, even when, and this needs to be emphasised, the representation sought to be enforced was legally invalid in the sense that it was made in a manner which was not in conformity with the procedure prescribed by statute."

"26. This principle was built upon in *Union of India v. Anglo Afghan Agencies* where it was said (SCR at p. 385): (AIR p 728, para 23) "23. Under our jurisprudence the Government is not exempt from liability to carry out the representation made by it as to its future conduct and it cannot on some undefined and undisclosed ground of necessity or expediency fail to carry out the promise solemnly made by it, nor claim to be the judge of its own obligation to the citizen on an ex parte appraisal of the circumstances in which the obligation has arisen." xxxx xxxx xxxx xxxx

"44. Of course, the Government cannot rely on a representation made without complying with the procedure prescribed by the relevant statute, but a citizen may and can compel the Government to do so if the factors necessary for founding a plea of promissory estoppel are established. Such a proposition would not "fall foul of our constitutional scheme and public interest". On the other hand, as was observed in *Motilal Padampat Sugar Mills* case and approved in the subsequent decisions: (SCC p. 442, para 24)

"It is indeed the pride of constitutional democracy and rule of law that the Government stands on the same footing as a private individual so far as the obligation of the law is concerned: the former is equally bound as the latter. It is indeed difficult to see on what principle can a Government, committed to the rule of law, claim immunity from the doctrine of promissory estoppel."

"46.The facts in the present case are similar to those prevailing in *Godfrey Philips*. There too, as we have noted earlier, the statutory provisions required exemption to be granted by notification. Nevertheless, the Court having found that the essential prerequisites for the operation of promissory estoppel had been established, directed the issuance of the exemption notification."

66. In *Petrochemical* (supra), this Court has clearly reiterated the promissory estoppel would apply where a party alters his position pursuant to or in furtherance of the promise made by a State. It is also clearly held that such a policy decision can be expressed in notifications under statutory provisions or even by executive instructions. Whenever the ingredients for invoking the principle of promissory estoppel are established, it could give rise to a cause of action. Not only may it give rise to a cause of action but would also preserve a right. The relevant observations are as under:-

"121. The doctrine of promissory estoppel would undoubtedly be applicable where an entrepreneur alters his position pursuant to or in furtherance of the promise made by a State to grant inter alia exemption from payment of taxes or charges on the basis of the current tariff. Such a policy decision on the part of the State shall not only be expressed by reason of notifications issued under the statutory provisions but also under the executive instructions. The appellants had undoubtedly been enjoying the benefit of (sic exemption from) payment of tax in respect of sale/consumption of electrical energy in relation to the cogenerating power plants."

"122. Unlike an ordinary estoppel, promissory estoppel gives rise to a cause of action. It indisputably creates a right. It also acts on equity. However, its application against constitutional or statutory provisions is impermissible in law."

"130. We, therefore, are of the opinion that doctrine of promissory estoppel also preserves a right. A right would be preserved when it is not expressly taken away but in fact has expressly been preserved."

67. This Court in *MRF Ltd. Kottayam* (supra) considered the legality of a notification withdrawing the exemption granted by an earlier notification. Relying on the representations contained in the earlier notification, MRF had altered its position. Whilst setting aside the subsequent notification withdrawing the exemptions, this Court held that the whole actions of the State including exercise of executive power has to be tested on the touchstone of Article 14 of the Constitution of India. It was held that the action of the State must be fair.

78. The above said judgments of the Honourable Apex Court would clearly show that the doctrine of promissory estoppel would be applicable to the case of the petitioners herein.

79. Insofar as the application of legitimate expectation is concerned, it is a well settled principles of law that the said principle is not a very strong right, but it based upon various other factors and it can be invoked incidentally. The doctrine of legitimate expectation can be invoked where there is an irreparable loss to the party and public interest does not suffer. In the present case on hand, as observed earlier, we are dealing with the unintended anomaly since the petitioners had completed the course and there is no question of allowing anyone else with the post graduate qualification from the Open University either to be admitted into the law course or to be enrolled in the State Roll.

80. Even though a right based upon the legitimate expectation is not a legal right, when the expectation is legitimate, reasonable, logical and valid and a certain degree of fairness is required from the other persons, then the doctrine of legitimate expectation can be invoked. In *State of Karnataka v. Umadevi* [(2006) 4 SCC 1 : 2006 SCC (L&S) 753], the Constitution Bench referred to the claim of the employees based on the doctrine of legitimate expectation and observed as under:

"46. ... The doctrine can be invoked if the decisions of the administrative authority affect the person by depriving him of some benefit or advantage which either (i) he had in the past been permitted by the decision-maker to enjoy and which he can legitimately expect to be permitted to continue to do until there have been communicated to him some rational grounds for withdrawing it on which he has been given an opportunity to comment; or (ii) he has received assurance from the decision-maker that they will not be withdrawn without giving him first an opportunity of advancing reasons for contending that they should not be withdrawn."

81. Similarly, when the decision taken by the authority is found to be arbitrary, unreasonable and not taken in public interest, the doctrine of legitimate expectation can be invoked. In the present case on hand, as observed earlier, the public interest also

would suffer, after allowing the petitioners to undergo the course, by putting so much of time, money and efforts, they are prevented from practising, then the entire exercise done by way of using the infrastructure, giving education, etc., would become waste and futile.

82. The Honourable Apex Court in *MRF Ltd., Kottayam v. Assistant Commissioner (Assessment) Sales Tax and others* reported in (2006) 8 SCC 702, has observed as follows:

"38. The principle underlying legitimate expectation which is based on Article 14 and the rule of fairness has been restated by this Court in *Bannari Amman Sugars Ltd. v. CTO* 21. It was observed in paras 8 and 9: (SCC pp. 633-34)

"8. A person may have a 'legitimate expectation' of being treated in a certain way by an administrative authority even though he has no legal right in private law to receive such treatment. The expectation may arise either from a representation or promise made by the authority, including an implied representation, or from consistent past practice. The doctrine of legitimate expectation has an important place in the developing law of judicial review. It is, however, not necessary to explore the doctrine in this case, it is enough merely to note that a legitimate expectation can provide a sufficient interest to enable one who cannot point to the existence of a substantive right to obtain the leave of the court to apply for judicial review. It is generally agreed that 'legitimate expectation' gives the applicant sufficient locus standi for judicial review and that the doctrine of legitimate expectation to be confined mostly to right of a fair hearing before a decision which results in negating a promise or withdrawing an undertaking is taken. The doctrine does not give scope to claim relief straightaway from the administrative authorities as no crystallised right as such is involved. The protection of such legitimate expectation does not require the fulfilment of the expectation where an overriding public interest requires otherwise. In other words, where a person's legitimate expectation is not fulfilled by taking a particular decision then the decision-maker should justify the denial of such expectation by showing some overriding public interest.

9. While the discretion to change the policy in exercise of the executive power, when not trammelled by any statute or rule is wide enough, what is imperative and implicit in terms of Article 14 is that a change in policy must be made fairly and should not give the impression that it was so done arbitrarily or by any ulterior criteria. The wide sweep of Article 14 and the requirement of every State action qualifying for its validity on this touchstone irrespective of the field of activity of the State is an accepted tenet. The basic requirement of Article 14 is fairness in action by the State, and non-arbitrariness in essence and substance is the heartbeat of fair play. Actions are amenable, in the panorama of judicial review only to the extent that the State must act validly for discernible reasons, not whimsically for any ulterior purpose. The meaning and true import and concept of arbitrariness is more easily visualised than precisely defined. A question whether the impugned action is arbitrary or not is to be ultimately answered on the facts and circumstances of a given case. A basic and obvious test to apply in such cases is to see whether there is any discernible principle emerging from the impugned action and if so, does it really satisfy the test of reasonableness." (emphasis supplied)"

"39. MRF made a huge investment in the State of Kerala under a promise held to it that it would be granted exemption from payment of sales tax for a period of seven years.....
".....The action of the State cannot be permitted to operate if it is arbitrary or unreasonable. This Court in *E.P. Royappa v. State of T.N* observed that where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14. Equity that arises in favour of a party as a result of a representation made by the State is founded on the basic concept of "justice and fair play". The attempt to take away the said benefit of exemption with effect from 15-1-1998 and thereby deprive MRF of the benefit of exemption for more than 5 years out of a total period of 7 years, in our opinion, is highly arbitrary, unjust and unreasonable and deserves to be quashed."

83. Applying the above said principles to the facts of the present case, we are of the opinion that the doctrine of legitimate expectation also would be applicable to the present case on hand, since the petitioners' expectation to get enrolled is a legitimate one after allowing them to complete the law course.

84. The facts narrated above would clearly show that the equity certainly lies with the petitioners.

85. In *Guru Nanak Dev University v. Sanjay Kumar Katwal* and another reported in (2009) 1 Supreme Court Cases 610, the Honourable Apex Court has applied the equity in a case where a candidate with Open University decree, was allowed to complete the course since he was on the verge of the completion.

86. Similarly, the Division Bench of this Court in *State of Tamil Nadu v. Sr.S.Sagayarani* reported in (2009) 5 MLJ 652, has held that in a case, admission was wrongly given by the authorities, thereafter, they cannot go back and say at the time of completion that the said admission was wrong.

87. In the present case on hand, the petitioners have competed with the regular students and completed the course. The petitioners also got entry by way of open competition and it is nobody's case that their entry to the Law College is otherwise irregular.

88. The Honourable Apex Court in *Employees' State Insurance Corporation and others v. Jardine Henderson Staff Association and others* reported in (2006) 6 Supreme Court Cases 581, has held that even in a case where a notification is valid, the power under Article 226 of the Constitution of India can be exercised by the High Court to hold that such a notification has to be applied prospectively. It is a well settled principles of law that the power under Article 226 of the Constitution of India can be exercised when there is a grave injustice done to a party. Such a power can also be exercised de hors the statutory provisions.

89. The Honourable Apex Court, in a recent judgment in *State of West Bengal v. Committee for Protection of Democratic Rights* reported in 2010(2) SCALE 467, has held as follows:

"35. As regards the power of judicial review conferred on the High Court, undoubtedly they are, in a way, wider in scope. The High Courts are authorised under

Article 226 of the Constitution, to issue directions, orders or writs to any person or authority, including any government to enforce fundamental rights and, "for any other purpose". It is manifest from the difference in the phraseology of Articles 32 and 226 of the Constitution that there is a marked difference in the nature and purpose of the right conferred by these two Articles. Whereas the right guaranteed by Article 32 can be exercised only for the enforcement of fundamental rights conferred by Part III of the Constitution, the right conferred by Article 226 can be exercised not only for the enforcement of fundamental rights, but "for any other purpose" as well, i.e. for enforcement of any legal right conferred by a Statute etc."

90. Therefore, we are of the considered view that even while upholding the power of the Bar Council of India in issuing the resolution and also in framing the rules, suitable relief can be moulded to the petitioners on the facts of the present case available on record in exercise of the powers conferred under Article 226 of the Constitution of India. Hence, we are of the view that the petitioners are entitled to succeed regarding Points (viii), (ix) and (x).

91. It is said that law and equity operate on distinct and separate fields. It is also a well settled principle of law that when there is a conflict between the law and equity, law would prevail. It is said "two streams have met and now run in the same channel, but their waters do not mix." However, law has to be understood to mean, the law in accordance with the Act, rules and regulations which can be described as 'common law'. In other words, equity would only mean 'natural justice'. In that sense, broadly speaking, equity would also form part of law. However, by applying the facts of the present case as discussed above to the principles of estoppel, legitimate expectation and equity and on a consideration of the hardship and agony that would be caused to the petitioners, we are of the opinion that in the present case, the petitioners are entitled to get the relief based upon the above said principles of law.

92. On consideration of the above said factual and legal issues, the following conclusions are arrived at:

(i) The Rules of Legal Education, 2008, are framed in accordance with the powers conferred under Sections 7(1)(h)&(i), 24(1)(c)(iii) and (iii a), 49(1)(af), (ag) and (d) of the Advocates Act, 1961 and hence, they are constitutionally valid;

(ii) Explanation to Rule 5 of the Rules of Legal Education, 2008, is neither contrary to Section 24(1) of the Act nor beyond the rule making power conferred on the Bar Council of India under section 49 of the Advocates Act, 1961;

(iii) The Bar Council of India is well within its rights to insist that a person having a decree from the Open University under the Indira Gandhi National Open University Act, 1985, cannot be allowed to join a law course in a Law University recognised by it and the Bar Council of Tamil Nadu and Bar Council of India can also refuse to enroll such a person who joins the law course and completes the same. The judgment of the Honourable Apex Court in Annamalai University represented by Registrar v. Secretary to Government, Information and Tourism Department and others, is binding on the Bar

Council of Tamil Nadu and Bar Council of India insofar as the applicability of the University Grants Commission Act and Regulations, but the said judgment cannot be applied to the petitioners who have already obtained the law degree. The Rules of Legal Education, 2008, cannot be made applicable to the case of the petitioners who had already completed their law course at the time of coming into force of the Rules;

(iv) The petitioners are not entitled to succeed based upon Article 14 of the Constitution of India;

(v) The petitioners are entitled to succeed on the principles of promissory estoppel, acquiescence, legitimate expectation and equity;

(vi) The writ petitions filed in W.P.Nos.26257 of 2009, 2963 of 2010, 2964 of 2010, 3079 of 2010, 3080 of 2010, 3081 of 2010, 3082 of 2010, 3083 of 2010, 3084 of 2010, 3150 of 2010, 25914 of 2009, 26289 of 2009, 26373 of 2009, 26632 of 2009, 101 of 2010, 215 of 2010, 26839 of 2009, 1175 of 2010, 26809 of 2009, 26810 of 2009, 26811 of 2009, 26771 of 2009, 26772 of 2009, 27189 of 2009, 27190 of 2009, 26528 of 2009, 27221 of 2009, 26827 of 2009, 26828 of 2009, 26910 of 2009, 26929 of 2009, 26930 of 2009, 27070 of 2009, 27595 of 2009, 27596 of 2009, 27597 of 2009, 27598 of 2009, 25862 of 2009, 27599 of 2009, 2696 of 2010, 2796 of 2010, 2004 of 2010, 923 of 2010, 48 of 2010, 216 of 2010, 217 of 2010, 184 of 2010, 1037 of 2010, 1129 of 2010 and 384 of 2010, challenging the order of cancellation of enrollment by the Bar Council of Tamil Nadu, are allowed and the impugned orders passed are set aside and the Bar Council of Tamil Nadu is directed to issue Enrollment Certificates to the petitioners as in the case of other candidates;

(vii) The writ petitions filed in W.P.Nos.5274 of 2009, 23150 of 2009, 20937 of 2009, 18324 of 2009 and W.P.No.18325 of 2009, challenging the order of the Bar Council of India, are allowed to the extent that the said resolution cannot be made applicable to the writ petitioners in view of the fact that they have already completed the law degree; and

(viii) The writ petitions in W.P.Nos.22614 of 2009, 22615 of 2009, 22616 of 2009, 22617 of 2009, 22618 of 2009, 24711 of 2009, 22669 of 2009, 757 of 2010, 15527 of 2009, 26850 of 2009, 18322 of 2009, 18323 of 2009 and 3348 of 2010,, seeking a Writ of Mandamus, directing the Bar Council of Tamil Nadu, to entertain the pending applications for enrollment, are allowed by directing the Bar Council of Tamil Nadu to enroll the petitioners subject to the other conditions stipulated under Section 24(1) of the Advocates Act, 1961. Consequently, all the connected Miscellaneous Petitions are closed.

93. The Bar Council of India is directed to issue intimation to all the Law Universities recognised by it, stating that in view of the judgment of the Honourable Apex Court in Annamalai University represented by Registrar v. Secretary to Government, Information and Tourism Department and others and in view of the Rules of Legal Education, 2008, no candidate from the Open University having a degree contrary to the University Grants Commission Act and Regulations, and contrary to the Rules of Legal Education, 2008, shall be admitted into a law course. The Law Universities concerned which are recognised by the Bar Council of India will have to convey the said communication of the Bar Council of India to all the Law Colleges

affiliated to them. The Bar Council of India is also directed to communicate the above said decisions, to all the State Bar Councils in the country if such communications are not sent already. The Bar Council of Tamil Nadu is directed to decide the pending applications and the future applications in the light of the orders passed by this Court.

sri+rsb

To

- 1.The Secretary,
Bar Council of Tamilnadu,
Chennai - 600 104.
- 2.The Secretary to the Government,
Information and Tourism Department,
Government of Tamilnadu,
Secretariat,
Chennai - 600 009.
- 3.The Registrar,
The Annamalai University,
Annamalai Nagar,
Chidambaram - 608 002.
- 4.The Secretary,
Bar Council of India,
New Delhi