IN THE HON'BLE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
I.A. NO. OF 2020
IN
WRIT PETITION (C) NO. 1023 OF 2016

IN THE MATTER OF:
RISHABH DUGGAL & ANR. …PETITIONERS
VERSUS
THE BAR COUNCIL OF INDIA & ANR.
…RESPONDENTS

AND IN THE MATTER OF:

RAJKUMARI TYAGI

…APPLICANT/ PROPOSED INTERVENOR

APPLICATION FOR DIRECTIONS

TO,
THE HON'BLE THE CHIEF JUSTICE OF INDIA
AND HIS COMPANION JUSTICES OF THE
HON'BLE SUPREME COURT OF INDIA

THE HUMBLE APPLICATION OF
THE APPLICANT ABOVE NAMED

MOST RESPECTFULLY SHOWETH

1. That Applicant/proposed Intervenor herein - Smt. Rajkumari Tyagi, a septuagenarian widow, is vide the present Application, seeking intervention in the captioned writ petition pending adjudication before this Hon'ble Court, wherein the validity of Clause 28, Schedule III, Rule 11 of the Rules of Legal Education, 2008 ('**BCI Rules'**) as well as Impugned Circular No. 6 dated 17.09.2016 issued by the Bar Council of India ("**BCI**"), have been assailed as being violative of Article 14, Constitution of India, by prescribing an age limit of 20 years and 30 years respectively for admission into the 5-

Year and 3-Year LLB Programmes of all law schools throughout India. A copy of the Aadhar Card of the Applicant herein is annexed hereto as **ANNEXURE – A [Page No. 33].**

2. That the Applicant herein, is desirous of pursuing her LL.B degree, not only to gain knowledge and utilize her time judiciously, doing something she is passionate about, considering she resides all alone, after the unfortunate demise of her husband, but is also keen to know the nitty gritties of law, through her education, to aid and assist her in managing the estate of her late husband, without having to consult a lawyer, to understand even the most basic of formalities.

3. To the utter shock and dismay of the Applicant herein, when she approached the various colleges in the vicinity of her home, to seek admissions, she was informed that there is age bar as imposed by the Bar Council of India, and she is therefore not eligible to enrol herself to the LL.B Degree Courses offered by any of the Law Colleges.

4. Upon further enquiry and reading about the matter, the Applicant further came to know, that there is also a confusion in the age restriction imposed by the BCI, for the reason that different High Courts across the country, have dealt with the said Rules & Notification in different manner.

5. It is most respectfully submitted, that being in the advances stage of her life, the Applicant herein is desirous

to pursue the a law degree, which stands impeded by the BCI age restriction, and the various conflicting judgements and orders and therefore the applicant wishes to intervene in the matter to submit that the Right to Life which is fundamentally guaranteed to a person under Article 21 of the Constitution, brings within its ambit the right to read, be educated in a medium of instruction, pursue a degree or a course of her choice, notwithstanding the limitation of age. The Applicant also seeks to assail the impugned notification dated 17.09.2016 and the validity of the extant provisions of the BCI Rules, as being in derogation of Article 14 of the Constitution of India.

6. That present Application for Directions is being preferred by the Applicant hereinabove challenging the validity of Clause 28, Schedule III, Rule 11 of the Rules of Legal Education, 2008 ('**BCI Rules'**) and of impugned Circular No. 6 dated 17.09.2016 on grounds of the same being in violation of Article 14 by prescribing an age limit of 20 years and 30 years respectively for admission into the 5-Year and 3-Year LLB Programmes of all law schools throughout India. A copy of the Notification No. BCI:D:1519 (LE: Cir 6) dated 17.09.2016, issued by the Bar Council of India is annexed hereto as **ANNEXURE – B [Page Nos. 34 to 35].**

BRIEF FACTS

7. The Bar Council of India ("**BCI**"), brought out a resolution No. 64/1993 dated 22.08.1993, which added Rule 9, under

Chapter III, of Part VI of the BCI Rules, consequently barring those, person who are 45 years of age or above, from enrolling as an advocate under the Advocates Act, 1961.

8. That the above said Rule 9 was assailed before this Hon'ble Court, for being violative of Articles 14, 19(1)(g) and 21 of the Constitution of India and Section 24 of the Advocates Act, 1961, and this Hon'ble Court vide its judgment dated 17.01.1995, in ***Indian Council of Legal Aid & Advice & Ors. V. Bar Council of India & Anr,*** **(1995) 1 SCC 732**, was pleased to strike it down by declaring it as ultra vires the Advocates Act, 1961 and violative of Article 14 of the Constitution.

9. Thereafter, on 14.09.2008, BCI passed Resolution No. 110/2008 and formulated the '*Rules of Legal Education, 2008*'. The rules, inter alia, under Schedule – III, in Clause 28, provided the 'age of admission' which capped the age limit for admission in law schools through India at 30 years and 20 years for 3-years course and 5-years course respectively.

10. Clause 28 of the BCI Rules, is reproduced hereunder for the ready reference of this Hon'ble Court -

> "Clause 28. Age on admission:
>
> (a) Subject to the condition stipulated by a University on this behalf and the high degree of professional commitment required, the maximum age for seeking admission into a stream of integrated Bachelor of law degree

program, is limited to twenty years in case of general category of applicants and to twenty two years in case of applicants from SC, ST and other Backward communities.

(b) Subject to the condition stipulated by a University, and the general social condition of the applicants seeking legal education belatedly, the maximum age for seeking admission into a stream of Three Year Bachelor Degree Course in Law, is limited to thirty years with right of the University to give concession of 5 further years for the applicant belonging to SC or ST or any other Backward Community."

11. Pursuant to which challenges pertaining to the constitutionality of Clause 28 were mounted, with more than 200 Writ Petitions being filed in various High Courts throughout India, and interim orders of stay came to be passed by different benches of the Hon'ble High Courts.

12. That on 22.08.2009 , a meeting of BCI's Legal Education Committee was held under the Chairmanship of Hon'ble Justice Mr. A.P. Misra, wherein he made it clear that the operation of the stay orders will be applicable only in jurisdiction of the concerned High Courts wherever stay has been granted; and where no stay is granted by the High Courts, Clause 28 regarding age on admission will prevail.

13. That the Hon'ble Madras High Court in ***M. Santhosh Antony Vareed v. The Registrar, Tamil Nadu Dr. Ambedkar Law University, Chennai, 2009 (8) MLJ 1677*** vide its Judgment dated 09.09.2009, upheld the upper age

limit as prescribed in Clause 28 of the Rules of Legal Education, 2008. A copy of the Judgment dated 09.09.2009 passed by the Hon'ble High Court of Madras reported in 2009 (8) MLJ 1677 is annexed hereto as **ANNEXURE – C [Page Nos. 36 to 45].**

14. However, the Hon'ble Punjab & Haryana High Court, in ***CWP No. 20966 of 2010, titled –"Rajan Sharma v. BCI & Anr"*** & other connected matters, took an entirely different view, vide its Judgment dated 20.10.2011, and held that the provisions of Clause 28 of Schedule – III appended to the Rules are beyond the legislative competence of the Bar Council of India, and therefore, Clause 28 was held to be ultra vires the provisions of Sections 7(1)(h) and (i), 24(1)(c) (iii) and (iiia) or Section 49(1)(af), (ag) and (d) of the Advocates Act. The Hon'ble Court further held that even otherwise, the Rule is arbitrary as it introduces an invidious classification by dividing one class of students into two artificial and irrational classes by prescribing the maximum age for admission to law courses. A copy of the Judgment dated 20.10.2011, passed by the Hon'ble Punjab & Haryana High Court in CWP No. 20966 of 2010 is annexed hereto as **ANNEXURE – D [Page Nos. 46 to 55].**

15. That considering the various judgments being passed, and the criticism surrounding the said Clause, the BCI in 2013, formed a One-Man Committee by appointing Shri Thiru S. Prabhakaran, to reconsider the age restriction imposed by Clause 28 of Rules of Legal Education, 2008.

16. In the interregnum, this Hon'ble Court vide its order dated 11.03.2013, in SLP(C) No. 13846 of 2010, titled – "M. Santosh Antony Vareed v. Regr. Tamil Nadu Dr. Ambedkar Law Univ. & Ors", dismissed the Special Leave Petition, which was preferred against the order and judgement of the Hon'ble Madras High Court dated 09.09.2009 in M. Santhosh Antony Vareed v. The Registrar, Tamil Nadu Dr. Ambedkar Law University, Chennai. A copy of the order dated 11.03.2013 passed by this Hon'ble Court in SLP (C) No. 13846 of 2010 is annexed hereto as **ANNEXURE – E** **[Page No. 56].**

17. That the Prabakaran Committee on 28.07.2013, submitted its report pertaining to Clause 28, and inter alia, recommended that the incorporation of Clause 28 to the Rules is beyond the legislative competence of the Bar Council of India, and is therefore ultra vires of Sections 7(1)(h) and (i), 24(1)(c)iii) and (iiia), Section 49(1)(af),(ag) and (d) of the Advocates Act, 1961. The Committee further recommended Clause 28 to be repugnant of Fundamental Rights and being against the Principles of Natural Justice. It recommended the BCI to withdraw Clause 28, Schedule III, Rule 11 to the Legal Education Rules.

18. In the interregnum, this Hon'ble Court vide its order dated 23.08.2013, issued notice in SLP (CC) No. 14408-14412 of 2013, filed by BCI, against the Judgment dated 20.10.2011 passed by the Hon'ble Punjab & Haryana High Court in the Rajan Sharma batch of matters. A copy of the

order dated 23.08.2013 is annexed hereto as **ANNEXURE - F [Page No. 57]**.

19. Pursuant to the Committee's finding and report, BCI on 31.08.2013, passed a Resolution No. 200/2013 clarifying that since Clause 28 has been withdrawn, students applying to the colleges/ universities imparting legal education can take admissions in the courses so offered, without any age restriction. The resolution also directed the office of the BCI to notify the withdrawal of the said clause in the Gazette of India immediately, and also to move an application before this Hon'ble Court with a prayer to withdraw pending SLPs/TP, if any, with regard to the controversy. The relevant excerpt of the said resolution is reproduced herein for the ready reference of this Hon'ble Court –

> "*Resolution No. 200/2013-The office note seeking clarification as to whether, after withdrawal of Clause-28, Schedule III of rule 11 of the Rules of Legal Education, 2008, the Universities/Colleges imparting Legal Education can take admission in Law Courses without age restriction in spite of pendency of SLPs/TP in the Hon'ble apex Court, is considered by the Council. After consideration, the Council resolves to clarify that since Clauses-28, Schedule III of rule 11 of the Rules of Legal Education, 2008, prescribing age restriction to take admission in law courses has been withdrawn, the college/universities imparting legal education are allowed to take admission in 5 year/3 year courses*

without any age restriction. The office is directed to notify the withdrawal of this clause in the Gazette of India immediately. Office is further directed to move an application before Hon'ble Supreme Court with a prayer to withdraw SLP as well as Transfer Petition filed by the Bar Council of India in the matter of Clause-28, Schedule III of rule 11 of the Rules of Legal Education, 2008"

20. Another Resolution No. 231 of 2013 was passed by the BCI on 29.09.2013, incorporating certain changes made by Thiru Prabhakaran in the Report, and re-published in the Official Gazette on 31.10.2013, withdrawing Clause 28. A copy of the relevant extract of the Official Gazette dated 31.10.2013, is annexed hereto as **ANNEXURE - G [Page Nos.** 58 **to** 64**].**

21. It is most respectfully submitted that pursuant to the Resolution No. 200/2013, passed by the BCI, SLP (C) Nos. 26958-62 of 2013, filed against the Judgment passed by the Hon'ble Punjab & Haryana High Court dated 20.10. 2011, was withdrawn vide order dated 05.01.2015 passed by this Hon'ble Court. A copy of the order dated 05.01.2015 passed by this Hon'ble Court in SLP (C) Nos. 26958-62 of 2013 is annexed hereto as **ANNEXURE – H [Page Nos.** 65 **].**

22. It is submitted that, soon thereafter, the Hon'ble Bombay High Court vide its Judgment dated 22.01.2015, in ***Yasmin E. Tavaria v. UOI & Anr., PIL No. 18 of 2009***, following the decision of Hon'ble Punjab & Haryana High Court in

Rajan Sharma (supra), which had attained finality, declared Clause 28 as unconstitutional. It is further submitted that on an apprehension expressed by the Petitioner about the restoration of the said clause, the Hon'ble High Court made an observation that BCI is obviously under an obligation to consider the Hon'ble Punjab & Haryana High Court's decision on legislative competence and bound to consider its finding on arbitrariness and violation of Article 14 by Clause 28. A copy of the Judgment dated 22.01.2015 passed in PIL No. 18 of 2009 by the Hon'ble Bombay High Court is annexed hereto as **ANNEXURE – I [Page Nos. 66 to 69].**

23. That furthermore, vide its Judgment dated 07.08.2015, the Hon'ble Madurai Bench of the Madras High Court in ***WP (MD) No. 9533 of 2015, titled – "B. Ashok v. The Secretary, Ministry of Union Law and Justice, GOI and Ors."*** **2015 SCC OnLine Mad 7004**, declared the withdrawal of Clause 28 as invalid due to the reason that the due procedure laid down under the Advocates Act, 1961 and the rules thereunder was not followed while making the said amendment. In the said case, the issue before the Hon'ble Court was regarding the procedure to be followed for bringing an amendment in the Rules of Legal Education framed by the Bar Council of India, and the legislative competence of the Bar Council of India to frame rules regarding the upper age limit for admissions in law schools was not at all an issue before the Hon'ble Madras High Court. A copy of the Judgment dated 07.08.2015 passed by the Hon'ble Madras High Court

(Madurai Bench) in WP (MD) No. 9533 of 2015 is annexed hereto as **ANNEXURE – J [Page Nos.** 70 **to** 115**].**

24. That vide its order dated 11.12.2015, this Hon'ble Court dismissed SLP(C) No. 33742/2015 filed by BCI against the judgment of the Hon'ble Madurai Bench of Madras High Court in B. Ashok (supra), which had declared the withdrawal of Clause 28 by BCI as invalid. A copy of the order dated 11.12.2015 passed by this Hon'ble Court in SLP (C) No. 33742 of 2015 is annexed hereto as **ANNEXURE – K [Page Nos.** 116 **]**

25. It is most respectfully submitted that the BCI on 17.09.2016 issued the Impugned Circular No. 6, stating that as SLP (C) No. 33742/2015, titled – "Bar Council of India and Anr. v. B. Ashok and Ors.", challenging the decision of the Hon'ble Madras High Court in *B. Ashok v. The Secretary, Ministry of Union Law and Justice, GOI and Ors., WP (MD) No. 9533 of 2015*, has been dismissed by this Hon'ble Court, resultantly, the rule under Clause 28 of Legal Education Rules, 2008 stands resurrected and restored.

26. That aggrieved by the restoration of the said Clause in the BCI Rules, present writ bearing WP (C) No. 1023 of 2016, titled – " *Rishabh Duggal & Anr. V. Bar Council of India & Anr.",* was filed before this Hon'ble Court on 14.12.2016, challenging the vires of Rule 28, and also Notification No. NCI:D:1519 (LE:Cir.-6) dated 17.09.2016.

27. That this Hon'ble Court vide its Order dated 03.03.2017, while issuing notice, stayed the Notification dated 17.09.2016, issued by BCI and all consequential actions thereof, pending decision of the above-mentioned writ. A copy of the order dated 03.03.2017 passed by this Hon'ble Court in WP (C) No. 1023 of 2016 is annexed hereto as **ANNEXURE – L [Page Nos.117 to118]**.

28. It is most respectfully submitted that as the Challenge to the vires of Clause 28 of the BCI Rules, forms the subject matter of the instant proceedings, and with an intent to avoid multiplicity of proceedings, the Applicant herein has been constrained to move this Hon'ble Court seeking intervention and directions, on the grounds mentioned herein below.

GROUNDS FOR ASSAILING THE BCI RULES

29. That the Bar Council of India by way of Clause 28, Schedule- III, Rule 11 of the Rules of Legal Education-2008, has restricted citizens by from securing admission by imposing an upper age limit for getting admission into any law college/ university which is violative of Article 14 under the Constitution of India, 1950, in as much as it violates the principle of equality, and equal opportunity for those who are desirous of obtaining education in the discipline of law. The age restriction is unreasonable, arbitrary and discriminatory and the same has been upheld by this Hon'ble Court in the matter of *Indian Council of*

Legal Aid & Advice v. Bar Council of India,(1995) 1 SCC 732.

30. This Hon'ble Court in ***Indian Council of Legal Aid & Advice v. Bar Council of India*, (1995) 1 SCC 732** held that –

> *"13. …**in the first place there is no dependable material in support of the rationale on which the rule is founded and secondly the rule is discriminatory as it debars one group of persons who have crossed the age of 45 years from enrolment while allowing another group to revive and continue practise even after crossing the age of 45 years. The rule, in our view, therefore, is clearly discriminatory. Thirdly, it is unreasonable and arbitrary as the choice of the age of 45 years is made keeping only a certain group in mind ignoring the vast majority of other persons who were in the service of Government or quasi-Government or similar institutions at any point of time. Thus, in our view the impugned rule violates the principle of equality enshrined in Article 14 of the Constitution**."*
> While on one hand, any age restriction on the practice of law has been held to be violative of Articles 14, 19(1)(g) and 21 of the Constitution of India, an age restriction to the study of law continues to operate unabated, which itself is unreasonable and manifestly arbitrary. The impugned notification as well as the impugned Clause 28 of the Rules is therefore an impediment to the realization and manifestation of Right to practice law, since it restricts the age limit to study law as a subject, and is consequently a violation of Articles 14, 19(1)(g) as well as Article 21 of the Constitution of India.
>
> [**Emphasis Supplied**]

31. In the same manner, the Bar Council of India by way of Clause 28 has created two different classes by specifying age limit as criteria for the purpose of admission and thereby keeping certain group of people in mind and

leaving the vast majority of individuals who wish to practice in law and get enrolled.

32. The Impugned clause 28 and the Impugned Notification have therefore created two different classes of individuals, which has no reasonable basis of such classification. Furthermore, the object and purpose of the Legal Education Rules, 2008 was to ensure that individuals who are desirous of studying law can pursue it as a discipline. The measure undertaken by fixing an upper limit to study law as a discipline has no rational nexus with the object which is sought to be achieved, and is discriminatory and violative of Article 14 of the Constitution of India, as well as the decision passed by this Hon'ble Court in the *cassus classicus* of *State of West Bengal v. Anwar Ali Sarkar*, AIR 1952 SC 75.

33. The Hon'ble Madras High Court at Chennai, in ***M. Radhkrishnan vs. The Secretary, Bar Council of Tamil Nadu*, 2006 SCC OnLine Mad 1022,** has held that -

> *"Object of the rule is only to curtail a group of persons from entering into the profession and to satisfy other group of persons who also stand on the same footing — Merely because of happening certain stray instances here and there, it cannot be said that the whole field is dominated by persons with undesirable character — We cannot uphold the validity of a provision, even though it arises out of the rule-making power of the authority with proper jurisdiction, when it is apparently stained with arbitrariness and inequality and infringes Article 14."*

34. In the same manner, the Bar Council of India by way of the impugned circular-06 dated 17.09.2016 while restoring Clause 28 has created an upper age limit which is

manifestly arbitrary and has no rational nexus to the statutory objective which is sought to be achieved by the Advocates Act, 1961 and the Bar Council of India (Legal Education) Rules of 2008. Furthermore, there is no evidence, empirical or otherwise to justify the upper age criterion of 20 years as the optimum age for receiving education in the discipline of law. This also becomes manifestly arbitrary, since while there is no age restriction to practice law, there is an age restriction to study law, and this has resulted into absurdity on account of such irrational criterion being employed.

35. It is settled law that for a challenge to Article 14 there must be a reasonable classification on the basis of some intelligible differentia and there must be a rational nexus between the act of classification and the objective sought to be achieved.

36. Therefore, this distinction does not have any nexus with the ultimate statutory objective which the Bar Council of India seeks to achieve, and is violative of Article 14 of the Constitution, on the grounds of manifest arbitrariness, a principle that has been held by the Hon'ble Supreme Court in the matter of ***Shayara Bano v. Union of India, (2017) 9 SCC 1***,

> *"70. That the arbitrariness doctrine contained in Article 14 would apply to negate legislation, subordinate legislation and executive action is clear from a celebrated passage in Ajay Hasia v. Khalid Mujib Sehravardi [Ajay Hasia v. Khalid Mujib Sehravardi, (1981) 1 SCC 722 : 1981 SCC (L&S) 258] : (SCC pp. 740-41, para 16) "16. ... The true scope and ambit of*

> *Article 14 has been the subject-matter of numerous decisions and it is not necessary to make any detailed reference to them. It is sufficient to state that the content and reach of Article 14 must not be confused with the doctrine of classification. Unfortunately, in the early stages of the evolution of our constitutional law, Article 14 came to be identified with the doctrine of classification because the view taken was that article forbids discrimination and there would be no discrimination where the classification making the differentia fulfils two conditions, namely, (i) that the classification is founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group; and (ii) that that differentia has a rational relation to the object sought to be achieved by the impugned legislative or executive action.*
>
> *It was for the first time in E.P. Royappa v. State of T.N. [E.P. Royappa v. State of T.N., (1974) 4 SCC 3 : 1974 SCC (L&S) 165] that this Court laid bare a new dimension of Article 14 and pointed out that that article has highly activist magnitude and it embodies a guarantee against arbitrariness."*

37. The Impugned circular-06 dated 17.09.2016 creates entry barrier to the right guaranteed to the Applicant under Article 19(1)(g) and right to get enrolled as per Section 24 under the Advocates Act 1961. The Article 19(1)(g) of the Constitution of India, 1950 gives fundamental right to every citizen of India to practice any profession or to carry on any occupation, trade or business.

38. As per section 24 of the Advocates Act, 1961, there is no upper age limit prescribed for enrollment i.e. any person who holds a degree in law can take law as a profession by enrolling with its state bar council. However, the Bar Council of India as per its rule making power, restored

Clause 28, which renders the Applicant to seek admission in any college, pursuant to which it's impossible for her to practice law or take law as a profession, which is a fundamental right under Article 19(1)(g) of the Constitution of India, 1950. This entry barrier to the very study of law and a consequent right to practice law is manifestly arbitrary and is violative of Article 14 of the Constitution of India.

39. It is a well-established principle of law that what cannot be done directly, is not permissible to be done indirectly. The Bar Council of India by not prescribing the upper age limit for enrollment under Section 24 of the Advocates Act, 1961, is indirectly restricting the candidates of certain age from practicing law by setting an upper age limit for admission in law colleges/ universities by way of Clause 28.

40. The abovementioned principle has been laid down by this Hon'ble Court in the matter **of *Institution of Mechanical Engineers (India) vs. State of Punjab and Ors;* (2019) 16 SCC 95**. It has further been laid down that -

> *"39.The principle that what cannot be done directly cannot be achieved indirectly is well settled and was elaborated by this Court in following decisions:*
>
> *i. In State of Tamil Nadu and Ors. v. K. Shyam Sunder and Ors. (2011) 8 SCC 737 as under: 43. 21. It is a settled proposition of law that what cannot be done directly, is not permissible to be done obliquely, meaning thereby, whatever is prohibited by law to be done, cannot legally be effected by an indirect and circuitous contrivance on the principle of quandoa liquid prohibetur, prohibetur et omne per quod deveniturad illud. An authority cannot be*

permitted to evade a law by 'shift or contrivance'.

41. It is the constitutional mandate of a Welfare State to ensure that its citizens can realize their lives to its fullest potential. Receiving education is an integral facet of such realization. The State or its instrumentality (BCI) cannot deny to the Applicant herein, the right to receive education in an institution of her choice, on the sole pretext that she is of an advanced age. It is submitted that human development is influenced by several aspects which includes education and a denial of such education on a pernicious pretext such as age will result in the very realization of Right to life with dignity, fundamentally guaranteed to a person within the mandate of Article 21 of the Constitution of India.

42. A Constitution Bench of this Hon'ble Court in the matter of ***K.S. Puttaswamy (Aadhaar-5J.) v. Union of India; (2019) 1 SCC 1***, has held that -

"1220.....Development requires the removal of major sources of unfreedom: poverty as well as tyranny, poor economic opportunities as well as systematic social deprivation, neglect of public facilities as well as intolerance or overactivity of repressive States. Despite unprecedented increases in overall opulence, the contemporary world denies elementary freedoms to vast numbers—perhaps even the majority—of people. Sometimes the lack of substantive freedoms relates directly to economic poverty, which robs people of the freedom to satisfy hunger, or to achieve sufficient nutrition, or to obtain remedies for treatable illnesses, or the opportunity to be adequately clothed or sheltered, or to enjoy clean water or sanitary facilities. In other cases, the unfreedom links closely to the lack of public facilities and social care, such as the absence of epidemiological programmes, or of organised arrangements for

> *healthcare or educational facilities, or of effective institutions for the maintenance of local peace and order. In still other cases, the violation of freedom results directly from a denial of political and civil liberties by authoritarian regimes and from imposed restrictions on the freedom to participate in the social, political and economic life of the community."*
>
> *"1221. In Sen's analysis, human development is influenced by economic opportunities, political liberties, social powers, and the enabling conditions of good health, basic education, and the encouragement and cultivation of initiatives."*

43. Furthermore, the Impugned notification strikes at the heart of the decision rendered by a Constitution Bench of this Hon'ble Court in the matter of ***Francis Coralie Mullin v. Administrator, Union Territory of Delhi, (1981) 1 SCC 608*** wherein it has been laid down that Right to Life under Article 21 of the Constitution, is not limited to mere "animalistic existence" but also includes right to live with dignity which includes facilities for reading and writing and the right to receive instructions in a course/medium of one's choice. The said principle has been laid down in the following paragraphs,

> *"7. Now obviously, the right to life enshrined in Article 21 cannot be restricted to mere animal existence. It means something much more than just physical survival.*
>
> *8. But the question which arises is whether the right to life is limited only to protection of limb or faculty or does it go further and embrace something more. We think that the right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessaries of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling*

> *with fellow human beings. Of course, the magnitude and content of the components of this right would depend upon the extent of the economic development of the country, but it must, in any view of the matter, include the right to the basic necessities of life and also the right to carry on such functions and activities as constitute the bare minimum expression of the human-self. Every act which offends against or impairs human dignity would constitute deprivation pro tanto of this right to live and it would have to be in accordance with reasonable, fair and just procedure established by law which stands the test of other fundamental rights."*

44. It is also most respectfully submitted, that the Impugned notification and Clause 28 of the BCI Rules are an affront to the very conception of "dignity" as has been held by this Hon'ble Court to be a concomitant attribute to right to life in the matter of ***K.S. Puttaswamy (Privacy-9J.) v. Union of India*, (2017) 10 SCC 1** where the following principle has emerged -

> *"108. Over the last four decades, our constitutional jurisprudence has recognised the inseparable relationship between protection of life and liberty with dignity. Dignity as a constitutional value finds expression in the Preamble. The constitutional vision seeks the realisation of justice (social, economic and political); liberty (of thought, expression, belief, faith and worship); equality (as a guarantee against arbitrary treatment of individuals) and fraternity (which assures a life of dignity to every individual). These constitutional precepts exist in unity to facilitate a humane and compassionate society. The individual is the focal point of the Constitution because it is in the realisation of individual rights that the collective well-being of the community is determined. Human dignity is an integral part of the Constitution. Reflections of dignity are found in the guarantee against arbitrariness (Article 14), the lamps of freedom (Article 19) and in the right to life and personal liberty (Article 21)."*

45. It is a settled principle of law that Right to Life does take in educational facilities under Article 21 of the Constitution, and is a fundamental right guaranteed by the Constitution. It is pertinent to mention that age restriction is not only violative of Article 21 but also violative of Article 14.

46. This Hon'ble Court in the matter of ***Unni Krishnan, J.P. v. State of A.P.*, (1993) 1 SCC 645** has laid down that -

> *"166. In Bandhua Mukti Morcha [(1984) 3 SCC 161 : 1984 SCC (L&S) 389] this Court held that the right to life guaranteed by Article 21 does take in "educational facilities". (The relevant portion has been quoted hereinbefore.) Having regard to the fundamental significance of education to the life of an individual and the nation, and adopting the reasoning and logic adopted in the earlier decisions of this Court referred to hereinbefore, we hold, agreeing with the statement in Bandhua Mukti Morcha [(1984) 3 SCC 161 : 1984 SCC (L&S) 389] that right to education is implicit in and flows from the right to life guaranteed by Article 21. That the right to education p has been treated as one of transcendental importance in the life of an individual has been recognised not only in this country since thousands of years, but all over the world."*

47. This Hon'ble Court has laid down principles through which a State actions under Article 14 of the Constitution of India shall not be arbitrary and must be reasonable and the same has been upheld in the matter of ***K.S. Puttaswamy (Privacy-9J.) v. Union of India*, (2017) 10 SCC 1** -

> *"Firstly, the fundamental rights emanate from basic notions of liberty and dignity and the enumeration of some facets of liberty as distinctly protected rights under Article 19 does not denude Article 21 of its expansive ambit. Secondly, the validity of a law which infringes the fundamental rights has to be tested not with reference to the*

> *object of State action but on the basis of its effect on the guarantees of freedom. Thirdly, the requirement of Article 14 that State action must not be arbitrary and must fulfil the requirement of reasonableness, imparts meaning to the constitutional guarantees in Part III.*

48. It is a settled principle of law that the executive and legislative actions are subjected to judicial scrutiny because the impugned notification as well as clause 28 of the Rules of Bar Council of India are not only manifestly arbitrary in their width, but are also discriminatory and severely impinge on the Golden Triangle of fundamental rights as has been laid down by this Hon'ble Court in the matter of ***Maneka Gandhi v. Union of India,*** **(1978) 1 SCC 248 -**

> ***"203.*** *We have to remember that the fundamental rights protected by Part III of the Constitution, out of which Articles 14, 19 and 21 are the most frequently invoked, form tests of the validity of executive as well as legislative actions when these actions are subjected to judicial scrutiny. We cannot disable Article 14 or 19 from so functioning and hold those executive and legislative actions to which they could apply as unquestionable even when there is no emergency to shield actions of doubtful legality."*

49. The Hon'ble Division Bench of the Punjab and Haryana High Court in the matter of ***Ankit Bhardwaj*** **v.** ***Bar Council of India,*** **W.P. No. 12528 of 2011** dated 20.10.2011, that the provisions of Clause-28 of Schedule III appended to the Rules are beyond the legislative competence of the Bar Council of India. That clause-28 ultra vires the provisions of Section 7 (1) (h) and (I), 24 (I) (C) (iii) and (iiia) or Section 49 (I) (af) and (d) of the Advocates Act. Even otherwise, the Rule is arbitrary as it

introduces and invidious classification by dividing one Class of student into two artificial and irrational Classes by prescribing the maximum age for admission to law courses. The said writ petition has been used a precedent in the Prabakaran Committee Report. Furthermore, the Hon'ble Court laid down the following principles through paragraphs 9 and 10, which are mentioned hereunder:-

> *"9. The impugned Clause 28 dealing with the age on admission occurring in Schedule-III appended to the Rules have been framed under Section 7(1)(h) and (i) and 24(1)(c)(iii) and (iiia), 49(1)(af), (ag), and (d) of the Advocates Act. Section 7 of the Advocates Act deals with the function of the Bar Council of India and Clause 7(1)(h) and (i) only deals with such functions of the Bar Council of India, which are aimed at promoting to legal education and to lay down standards of such education in consultation with the Universities in India imparting such education and to recognize the Universities whose degree in 55 law shall be a qualification for enrolment as an Advocate. Therefore, this clause would not arm the Bar Council of India to incorporate the provisions in the Rules like clause 28 concerning the age on admission to L.L.B. Course. Likewise, Section 24(i)(c) deals with person who may be admitted as an Advocate on a State roll. It has got nothing to do with the age on admission and cannot be construed to have conferred power on the Bar Council of India to prescribe the maximum age for the purposes of admission to L.L.B. Five years' Course or L.L.B. Three Years' Course.*
>
> *10. We are left to deal with Section 49(1)(af) and (ag) of the Advocates Act. The aforesaid clause (af) deals with the minimum qualification required for admission to a course of degree in law in any recognized University and clause (ag) deals with the class or category of the persons entitled to be enrolled as Advocates. Clause (d) of Section 49 (i) of the Advocates Act deals with the standards of legal education to be observed by universities in India and the inspection of universities for that purpose. We are afraid that even this Clause would*

> *not extend to grant competence to Bar Council of India to incorporate a provision concerning the maximum age for admission to L.L.B. Course. The matter has been discussed in detail in Indian Council of Legal Aid and Advice's case (supra) by Hon'ble the Supreme Court. It is also relevant to mention that a similar view was taken by a Division Bench of Madras High Court in the case of M. Radhakrishnan v. The Secretary, the Bar Council 56 of India, AIR 2007 Madras 108. Therefore, we find that the provisions of Clause 28 of Schedule-III appended to the Rules are beyond the legislative competence of the Bar Council of India. Clause 28 ultra vires the provisions of Sections 7(1)(h) and (i), 24(1)(c) (iii) and (iiia) or Section 49(1)(af) (ag) and (d) of the Advocate Act. Even otherwise, the Rule is arbitrary as it introduces an invidious classification by dividing one Class of student into two artificial and irrational Classes by prescribing the maximum age for admission to law courses.*

50. Furthermore, the Hon'ble Punjab & Haryana High Court, has also held in the above referred case, that, "*Even otherwise, the rule is arbitrary as it introduces an invidious classification by dividing one class of student into two artificial and irrational classes by prescribing the maximum age for admission to law courses.*"

51. It is pertinent to mention that in the present matter, the Applicant seeks to get admission in a college for the purpose of pursuing LLB course, but due to Clause 28, Schedule- III, Rule 11 of the Rules of Legal Education-2008 it renders her impossible to seek admission in any of the college/ university due to the maximum age criteria prescribed which is arbitrary and discriminatory.

52. "Life" as is understood within the meaning of Article 21 takes within its ambit, all the essential attributes which make it meaningful, and which accords dignity to an individual. The expression "dignified life" has been held to mean and include all the amenities, which are fundamentally guaranteed to every person by the Welfare State. These include the right to shelter, the right to medicines, the right to healthcare, and the right to pursue courses of one's choice.

53. It is most respectfully submitted, that the National Human Rights Commission of India, through its Letter No. 68/5/97-98 dated March 1, 2000 has clearly outlined that even prisoners who are undertrials or convicted have every right to pursue their education. Because of Clause 28, the Applicant is not being able to pursue her education through a college/ university. To pursue a particular course and read is an essential concomitant of the Right to a dignified life and no citizen shall be deprived from obtaining a particular degree in any course only because of age restrictions. Denial of such a salutary constitutional guarantee is affront to both Articles 14, 19 and 21 The extract from the National Human Rights Commission has been provided as under:-

i) As prisoners have a right to a life with dignity even while in custody, they should be assisted to improve and nurture their skills with a view to promoting their rehabilitation in society and becoming productive citizens. Any restrictions imposed on a prisoner in respect of reading materials must therefore be reasonable.

ii) *In the light of the foregoing, all prisoners should have access to such reading materials which are essential for their recreation or nurturing of their skills and personality, including their capacity to pursue their education while in prison.*

iii) *Every prison should, accordingly, have a library for the use of all categories of prisoners, adequately stocked with both recreational and instructional books and prisoners should be encouraged to make full use of it. The materials in the library should be commensurate with the size and nature of the prison population.*

54. It is further trite law, that *"a non-speaking order of dismissal of a special leave petition cannot lead to the assumption that it had necessarily decided by implication the correctness of the decision under challenge"* and the same has been upheld by this Hon'ble Court in the matter of ***Kunhayammed v. State of Kerala*, (2000) 6 SCC 359**.

55. That after the order dated 11.12.2015 passed by this Hon'ble Court, wherein no reason was accorded for dismissal of Special Leave Petition, the Bar Council of India revived and restored the Clause 28 vide Circular No. 6 dated 17.09.2016 stating, that "since its SLP (C) No. 33742/2015 challenging the decision of the Hon'ble Madras High Court in *B. Ashok v. The Secretary, Ministry of Union Law and Justice, GOI and Ors., WP (MD) No. 9533 of 2015* has been dismissed, as a consequence, the rule under Clause 28 of Legal Education Rules, 2008 stands resurrected and restored."

56. In ***Kunhayammed v. State of Kerala, (2000) 6 SCC 359***, this Hon'ble Court has held that *"the effect of a non-speaking order of dismissal of a special leave petition without anything more indicating the grounds or reasons of its dismissal must, by necessary implication, be taken to be that this Court had decided only that it was not a fit case where special leave should be granted. This conclusion may have been reached by this Court due to several reasons. When the order passed by this Court was not a speaking one, it is not correct to assume that this Court had necessarily decided implicitly all the questions in relation to the merits of the award, which was under challenge before this Court in the special leave petition."*

57. That BCI struck down the Clause 28 vide notification dated 31.10.2013, which notification was further quashed only by the Hon'ble Madras High Court vide Order dated 07.08.2015. The said notification was still in force throughout the remaining part of India. The dismissal of SLP does not authorize the BCI to restore the said clause without consulting the colleges/ universities.

58. The BCI passed a resolution vide Resolution no. 231/2013 dated 31.10.2013 and accepted the report submitted by the Hon'ble Member Mr. S. Prabakaran with regard to Clause 28, Schedule- III, Rule 11 of the Rules of Legal Education- 2008 and the order stating the removal of Clause 28 published through official gazette. The BCI struck down the Clause 28, Schedule- III, Rule-11, of the of the Rules of Legal Education- 2008 by relying on the following points:-

i. Order passed by the Hon'ble High Court of Punjab and Haryana in the matter of Ankit Bhardwaj v. Bar Council of India wherein it was declared that Clause 28 ultra vires the provisions of Advocates act and is arbitrary in nature.

ii. There are other professional courses such as B.Ed., C.A., C.S., and M.B.A., there is no upper age limit to take admission in the professional courses even in the medical courses some of the states do not have upper age limit. Restriction of the age to take admission violates the fundamental right, Article-19 of the Constitution of India.

iii. Clause 28- the Rule is arbitrary as it introduces an invidious classification by dividing one Class of student into two artificial and irrational Classes by prescribing the maximum age for admission to law courses.

iv. In the larger interest in many of the State after due deliberations, the opinions has been formed, the Clause-28, Schedule-III, Rule-11 of the Rules of legal Education-2008, is ultra vires, unconstitutional and against the principles of the natural justice. In such circumstances, keeping in view the broader aspect and aforesaid reasons, the said Clause-28, Schedule-III, Rule-11 of the Rules of legal Education-2008 is hereby withdrawn.

59. It is most humbly submitted that because of impugned circular-06 dated 17.09.2016 through which Clause 28, Schedule III, Rule 11 of the Rules of Legal Education, 2008

('**BCI Rules'**) is restored whereby imposing restrictions on the present Applicant from seeking admission in any law college/ university, the interest of the Applicant is directly involved in the present petition and will affect their future prospects substantially. Hence in view of the facts and circumstances as narrated here and above, it has become necessary for the Applicants to intervene in the present Writ Petition and place their submission before this Hon'ble Court.

60. In pursuance thereof, it shall be imminently in the interest of justice that the Applicant is permitted to intervene in the present writ petition.

61. The present Application is bonafide, and an order allowing the same shall meet the interest of justice.

PRAYER

It is, therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to:

A. DECLARE that the impugned Circular No. 6 dated 17.09.2016 and Clause 28, Schedule III, Rule 11 of the Rules of Legal Education, 2008 is violative of Article 14, 19(1)(g) and Article 21 of the Constitution of India and is *ultra vires* the provisions of the Advocates Act, 1961 and the Bar Council of India (Legal Education) Rules 2008;

B. DECLARE that the Applicant herein has a fundamental right to pursue legal education in a college/professional

institution of her choosing, as part of her fundamental right to a dignified life under Article 21;

C. DECLARE that the Right to pursue professional education at an institution of one's choice which is a concomitant of Right to Life with dignity under Article 21 cannot be whittled down by constraints of age;

D. PASS such further order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

AND FOR THIS ACT OF KINDNESS THE APPLICANT HEREIN AS IN DUTY BOUND SHALL FOREVER PRAY.

DRAWN BY:

Nipun Saxena, Serena Sharma & Umang Tyagi, Advocates

FILED BY:

[**ASTHA SHARMA]**

Advocate on Record for the Applicant

New Delhi

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