IN THE SUPREME COURT OF BANGLADESH
APPELLATE DIVISION

PRESENT:

Mr. Justice Surendra Kumar Sinha, Chief Justice

Mr. Justice Syed Mahmud Hossain.

Mr. Justice Hasan Foez Siddique

Mr. Justice Mirza Hussain Haider

CIVIL APPEAL NO.235 OF 2014.

(From the judgment and order dated 12.07.2010 passed by the High Court Division in Writ Petition No.2874 of 2008.)

With

C.P. NOs.2761-2764 & 2777-2779 OF 2016.

(From the judgment and order dated 13.04.2016 passed by the High Court Division in Writ Petition Nos.1500 of 2011, 10242 of 2006, 9529 of 2012, 3189 of 2008, 1443 of 2011, 9519 of 2011 and 8144 of 2011.)

With

C.P. NOs.2498, 2880, 3016, 3570, 3577 and 2873 OF 2016.

(From the judgment and order dated 13.04.2016 passed by the High Court Division in Writ Petition Nos.8144 of 2011, 10398 of 2013, 3189 of 2008, 10398 of 2013, 3189 of 2008.)

Bangladesh Bar Council, represented by its Chairman, Dhaka — **Appellant.** (In C.A.No.235 of 2014)

Darul Ihsan Trust, represented by its Chairman and Managing Trustee A Bazle Rabbi now Md. Faizul Kabir, Darul Ihsan Complex, Ganak Bri, P.S. Ashulia (Savar), Dhaka. — **Petitioner.** (In. C.P.No.2761 of 2016)

Darul Ihsan Trust and Darul Ihsan University: — **Petitioner** (In C.P.No.2762 of 2016)

Darul Ihsan University, represented by its Vice-Chancellor: — **Petitioner** (In C.P.No.2763 of 2016)

Darul Ihsan University, represented by its Vice-Chancellor: — **Petitioner** (In C.P.No.2764 of 2016)

Darul Ihsan Trust: — **Petitioner** (In C.P.Nos.2777-2779 of 2016)

Darul Ihsan University: — **Petitioner** (In C.P.No.2498 of 2016)

BRAC University and others: — **Petitioners.** (In C.P.No.2880 of 2016)

Asma Tamkeen: — **Petitioner** (In C.P.No.3016 of 2016)

East West University, Dhaka: — **Petitioner** (In C.P.No.3570 of 2016)

University Grant Commission of Bangladesh:	**Petitioner** (In C.P.No.3577 of 2016)
Abdus Salam Mollah (Registrar) World University of Bangladesh and others:	**Petitioner** (In C.P.No.2873 of 2016)

=Versus=

A.K.M. Fazlul Kamir and others:	**Respondents.** (In C.A.No.235 of 2014)
Government of Bangladesh and others:	**Respondents** (In C.P.Nos.2761-2764 of 2016
Secretary, Ministry of Education, Government of Bangladesh and others:	**Respondents** (In C.P.Nos.2777-2779 of 2016)
Darul Ihsan Trust:	**Respondent.** (In C.P.No.2498 of 2016)
Bangladesh Bar Council and others	**Respondent.** (In C.P.No.2880 of 2016)
Darul Ihsan University and others:	**Respondents** (In C.P.No.3016 of 2016)
Bangladesh Bar Council, represented by the Secretary, Bar Council Bhaban, Dhaka:	**Respondents.** (In C.P.No.3570 of 2016)
Darul Ihsan University, represented by its Vice-Chancellor:	**Respondent.** (In C.P.No.3577 of 2016)
Government of Bangladesh and others:	**Respondent.** (In C.P.No.2873 of 2016)

For the Appellant: (In C.A.No.235 of 2014)	**Mr. A. Y. Mosihuzzaman, Advocate, instructed by Mrs. Madhumalati Chy Barua, Advocate-on-Record.**
For the petitioner: (In C.P.Nos.2761-2764 of 2016)	**Mr. Fayzul Kabir, Advocate, instructed by Mr. Md. Zahirul Islam, Advocate-on-Record.**
For the petitioner: (In C.P.Nos.2777-2779 of 2016)	**Mr. Khorshed Alam Khan, Advocate, instructed by Mr. Sufia Khatun, Advocate-on-Record.**
For the petitioner: (In C.P.No.2498 of 2016)	**Mr. Farooque Ahmed, Senior Advocate instructed by Mr. Zainul Abedin, Advocate-on-Record.**
For the petitioner: (In C.P.No.2880 of 2016)	**Mr. Rokanuddin Mahmud, Senior Advocate (with Mr. A.M. Aminuddin, Senior Advocate) instructed by Mr. Syed Mahbubar Rahman, Advocate-on-Record.**
For the petitioner: (In C.P.No.3016 of 2016)	**Mr. M. Aminul Islam, Senior Advocate, instructed by Mr. Md. Shamsul Alam, Advocate-on-Record.**
For the petitioner: (In C.P.No.3570 of 2016)	**Mr. Rokanuddin Mahmud, Senior Advocate, instructed by Mr. Mvi. Md. Wahidullah, Advocate-on-Record.**
For the petitioner: (In C.P.No.3577 of 2016)	**Mr. M. Aminul Islam, Senior Advocate, instructed by Mr. Syed Mahbubar Rahman, Advocate-on-Record.**

For the petitioner: (In C.P.No.2873 of 2016)	Mr. Rokanuddin Mahmud, Senior Advocate, instructed by Mrs. Madhumalati Chowdhury Barya, Advocate-on-Record.
For the Respondent: (In C.A.No.235 of 2014)	Mrs. Sufia Khatun, Advocate-on-Record.
For the Respondents: (In C.P.Nos.2761-2764 of 2016)	Mr. Mahbubey Alam, Attorney General instructed by Mr. Haridas Paul, Advocate-on-Record.
For the Respondent nos.1-2: (In C.P.No.2763 of 2016)	Mr. Mahbubey Alam, Attorney General instructed by Mr. Haridas Paul, Advocate-on-Record.
For the Respondent no.3: (In C.P.No.2763 of 2016)	Mr. A.B.M. Bayezid, instructed by Mr.Mahbubar Rahman, Advocate-on-Record.
For the Respondent no.4: (In C.P.No.2763 of 2016)	Not represented.
For the Respondent nos.1-2: (In C.P.No.2764 of 2016)	Mr. Mahbubey Alam, Attorney General instructed by Mr. Haridas Paul, Advocate-on-Record.
For the Respondent nos.3-6: (In C.P.No.2764 of 2016)	Mr. A.B.M. Bayezid, instructed by Mr.Mahbubar Rahman, Advocate-on-Record.
Respondents (In C.P.Nos.2777-2779 of 2016)	Not Represented.
Respondent (In C.P.No.2498 of 2016)	Not Represented.
Respondent (In C.P.No.2880 of 2016)	Not Represented.
For the Respondent (In C.P.No.3016 of 2016)	Mr. Zainul Abedin, Advocate-on-Record.
Respondent (In C.P.No.3570 of 2016)	Not Represented.
Respondent (In C.P.No.3577 of 2016)	Not Represented.
For the Respondent nos.1-2: (In C.P.No.2873 of 2016)	Mr. Mahbubey Alam, Attorney General instructed by Mr. Haridas Paul, Advocate-on-Record.
For the Respondent no.3: (In C.P.No.2873 of 2016)	Mr. A.B.M. Bayezid, instructed by Mr.Mahbubar Rahman, Advocate-on-Record.
For the Respondent Nos.4-7: (In C.P.No.2873 of 2016)	Mr. Abdul Baset Mojumder, Senior Advocate, instructed by Mr. Nurul Islam Bhuiyan, Advocate-on-Record.
Respondent Nos.8-10: (In C.P.No.2873 of 2016)	Nor Represented.

Date of hearing: 8th February, 2017.

Date of Judgment: 8th February, 2017.

J U D G M E N T

Surendra Kumar Sinha,CJ: Facts and points of law involved in the appeal and the petitions are not identical but as the lawyers have a social obligation towards the section of the society who are unable to protect their lawful interest, their moral ethics, code of conduct and their great tradition are citadel in the maintenance of the rule of law in the country, these issues are involved in these matters and accordingly, all these matters are disposed of by this judgment.

Civil Appeal No.235 of 2014

The question involved in this appeal is whether a judicial officer having held judicial office for a period of at least 10 years in the subordinate courts can be permitted to practice in the district courts other than the High Court Division. Secondly, rule 65A(ii) of the Bangladesh Bar Council Rules, 1972 violates articles 27, 31 and 40 of the constitution.

To resolve this point of fact of this case is shortly stated thus. Writ petitioners having obtained graduation degrees in law from the University joined the Judicial Service on different dates on the basis of the result of the competitive examination conducted by the Bangladesh Public Service Commission. By virtue of their spotless and unblemished service record, they were eventually promoted as District and Session Judges. On attaining the age of superannuation, they went on Leave Preparatory to Retirement (LPR) and finally retired from service. Thereafter they were enrolled as advocates in the same year by the Bangladesh Bar Council. However, as per the proviso to rule 65A(ii) of the Bangladesh Legal Practitioners and Bar Council Rules, 1972 (Rules of 1972), a retired Judicial Officer has been debarred from practicing before any Subordinate Court, but permitted to practice in the High Court Division. There are over 1000 Judicial Officers in the country, a large

number of them retire annually and around 100 retired Judicial Officers have been enrolled as advocates. But most of them live in their own district headquarters as they do not have and can not afford any residential accommodation in Dhaka. They are thus constrained to practice in district courts. Due to this unreasonable and unnecessary restraint on their practice, the superannuated Judicial Officers are in great financial strains affecting their livelihood. Prior to the insertion of the impugned proviso in 1998, many retired Judicial Officers regularly practiced in district courts. The restrictive embargo imposed on the practice of the ex-Judicial Officers was inspired by the provisions of article 99 of the constitution. There are vast differences in the service conditions, remunerations, age of retirement and amount of pension between the ex-Judicial Officers and the ex-Supreme Court Judges. In such view of the matter, they cannot be bracketed together.

Consequentially, the restriction imposed on the practice of the former Judicial Officers by parity of reasoning having regard to article 99 of the constitution is unwarranted, unreasonable and arbitrary. There are 64 districts in the country having Subordinate Courts, both civil and criminal. On the other hand, there is only one Supreme Court located in Dhaka City. This being the position, it is impossible for many superannuated Judicial Officers to come over to Dhaka for practicing in the High Court Division. In the Bangladesh Legal Practitioners and Bar Council Order, 1972 (P.O.No.46 of 1972), there is no bar or restriction to practice by the retired Judicial Officers.

Writ respondent No.2, Bangladesh Bar Council contested the rule. Its case is that the purpose behind the insertion of the impugned proviso to rule 65A(ii) of the Rules of 1972 by way of amendment in 1998 is to protect the position and dignity of former Judicial Officers. In order to facilitate

their practice in the High Court Division, rule 65A(ii) was inserted in the Rules of 1972. The Government Officers and employees retire at the age of 59; but the writ petitioners may have recourse to law for increase of the age of superannuation of the Judicial Officers. They may also take necessary steps for increase of the pensionary benefits. The other professions like business, teaching etc. are open to them. It is not intelligible as to why the ex-Judicial Officers are so eager to get permission to practice in the Subordinate Courts. Bar Council has the power to lay down the standard of professional conduct and etiquette for advocates in order to safeguard their rights, privileges and interests on its roll and to perform all other functions conferred on it by P.O.No.46 of 1972. The Bar Council has been authorized by P.O. No.46 of 1972 to frame necessary Rules in order to carry out the purposes of the said Order. The impugned proviso was inserted in the Rules of 1972 with a view to

preserving the self-dignity and self-prestige of the former Judicial Officers. The restrictive embargo imposed by the impugned proviso is neither unreasonable nor arbitrary or irrational or illogical.

The High Court Division was of the view that this restriction is violative to articles 31 and 40 of the constitution, and therefore, it was unreasonable and arbitrary; that as per P.O.46 of 1972 advocate means an advocate entered in the roll under the provisions of the Order, and after enrolment of a person as an advocate, he belongs to the community of advocates, even if he has worked for some time as a judicial officer.

One of the object for promulgating this Order is to admit persons as advocates on its roll, to hold examinations for the purposes of admission and to remove advocates from such roll (article 10(a)); to prepare and maintain such roll; to lay down standard of professional conduct and etiquette for

advocates (article 10(c)); to entertain and determine cases of misconduct against advocates on its roll and to order punishment of such cases (article 10(d)); to promote legal education and to lay down the standards of such education in consultation with the Universities of Bangladesh imparting such education (article 10(i)) and such other functions specified in article 10.

There are three standing committees namely; (a) executive committee; (b) finance committee; and (c) legal education committee. The functions of the enrollment committee is to decide the criteria and procedure of the enrollment of advocates. There is restriction of practicing in the High Court Division after being enrolled as an advocate under article 21. Before being enrolled the applicant must qualify in the MCQ test, written and viva voce examinations. After enrolment he has practiced as an advocate before subordinate courts for a period of 2 years; that he must be a law graduate and has practice as

an advocate before any court outside Bangladesh notified by the government and that he has his legal training or experience. This restriction is not applicable to a former judicial officer who has held a judicial office for a period of at least 10 years. A person to be qualified as an advocate if he fulfills the conditions set out in article 27 as under:

"27. (1) Subject to provisions of this Order and the rules made thereunder, a person shall be qualified to be admitted as an advocate if he fulfils the following conditions namely:-

(a) he is a citizen of Bangladesh;

(b) he has completed the age of twenty-one years;

(c) he has obtained –

(i) a degree in law from any university situated within the territory which forms part of Bangladesh; or

(ii) .....

(iii) .....

(iv) a bachelor's degree in law from any university outside Bangladesh recognized by the Bar Council; or

(v) he is a barrister;

(d) he has passed such examination as may be prescribed by the Bar Council; and

(e) .....

(1A) .....

(2) Before a person is admitted as an advocate, the Bar Council may require him to undergo such course of training as it may prescribe.

(3) A person shall be disqualified from being admitted as an advocate if –

(a) he was dismissed from service of Government or of a Public statutory corporation on a charge involving moral

turpitude, unless a period of two years has elapsed since his dismissal; or

(b) he has been convicted for an offence involving moral turpitude, unless a period of five years or such less period as the Government may, by notification in the official Gazette, specified in this behalf, has elapsed from the date of the expiration of the sentence."

Article 40 enjoins the Bar Council with prior approval of the government to make Rules to carry out the purposes of the Order amongst others:-

"(a) the examination to pass for admission as an advocate;

(b) the form in which applications for admission as an advocate are to be made and the manner in which such applications are to be disposed of;

(c) the conditions, subject to which a person may be admitted as an advocate;

(d) the manner in which an advocate may suspend his practice;

(e) the form in which permission to practice as an advocate in the High Court shall be given;

(f) the standard of professional conduct and etiquette to be observed by the advocates;

(g) the standard of legal education to be observed by universities in Bangladesh and the inspection of Universities for that purpose."

The government promulgates the Bangladesh Legal Practitioners and Bar Council Rules, 1972. Rules 60 and 65A are relevant for our purpose which read as under:

"**60(1).** Every person shall, before being admitted as an advocate take training

regularly for a continuous period of six months as a pupil in the Chamber of an advocate who has practised as an advocate for a period of not less than 10 years. Each Bar Association shall prepare a list of Advocates who are considered by the respective Bar Association to be fit and capable of accepting pupil for imparting legal training and send the same to the Bar Council for approval. Every person seeking enrolment to the Bar Council shall have to take such further legal training and post examination pupilage before conferment of the Sanad as may be determined by the Bangladesh Bar Council.

.....

"65A. The Bar Council, if satisfied, for the reasons as may be disclosed by the applicant, grant exemption under Article 21(1)(c) of the Bar Council Order requiring practice for a period of 2 years

before seeking permission to practice in the High Court Division of the Supreme Court of Bangladesh on the basis of the following criterion:-

(i) Advocates who were called to the Bar in U.K. or who have obtained higher 2nd class in LL.M. (at least 50% marks in aggregate) from any recognized University and further worked with a Senior Advocate of the Supreme Court in his Chamber for at least one year (since his enrollment as Advocate under Rule 62(1); and

(ii) Persons holding a degree in law who have held a judicial office (i.e. office of a Civil Judge) for a total period of at least 10 years. Such judicial officers shall not be required to appear for written test as per sub-rule (2) of this rule but they shall

have to appear before the Board for an interview.

Provided that such Advocates (former judicial officer) shall not be eligible for appearing and/or accepting any brief or maintaining any practice before any subordinate court. They will be permitted to practice only before the High Court Division of the Supreme Court of Bangladesh."

These provisions reveal that the Bar Council is an independent Body constituted by law. The object and purpose of formation of this organisation is to decide the procedure of the enrolment of advocates for practicing both in the district courts and the High Court Division; to issue certificate of enrolment; to recognise a degree obtained by a person to be eligible to become an advocate; to prescribe guideline to appear for admission as an advocate; to regulate training of advocates; to frame Rules regarding the standard of professional conduct and etiquette to be observed by the

advocates; to take disciplinary action against advocates for professional misconduct; to suspend/rescind the certificate issued to advocates; to monitor the standard of legal education to be observed by the Universities in Bangladesh and to inspect for that purpose and to conduct the election for the composition of the Bar Council by preparing voter list etc.

Bar Council is empowered to relax the mandatory provision of an advocate for practicing two years in the district Courts for his eligibility to practice in the High Court Division under certain circumstances as mentioned in clauses (i) and (ii) of rule 65A. Clause (ii) relates to a judicial officer who has held a judicial office for a period of at least ten years and has a law degree - he is not required to appear for written test but he has been debarred from appearing or maintaining any practice in the subordinate courts. This prohibition has been added by an amendment to the rule.

This rule says that a judicial officer holding a degree of law and has held judicial office for a period of at least 10 years is not required to appear for written test for being enrolled as a practicing advocate before the Bar Council. Such person shall be eligible to practice in the High Court Division - he is also not required to submit list of cases civil or criminal in which he has appeared with a senior advocate as is required in case of enrollment of other categories of persons. He is also not required to face MCQ and written examination of the Bar Council for enrollment as an advocate. He is also not required to complete the course as may be determined by the Bar Council to qualify MCQ examination. All types of rigorous tests, examinations are not applicable to him. He can directly enrol as an advocate for practicing in the High Court Division. This privilege is given on consideration of his vast experience in the field of law in judicial office. This is a special privilege

given in recognition to his experience, judicial training, acumen etc, a privilege which is a dream now-a-days for an advocate enrolled to practice in the district courts. As per prevailing Rules, after two year practice in district Courts, an advocate is required to qualify in the written and oral tests which include:

(a) drafting of memorandum of appeal

(b) drafting of a habeas corpus petition

(c) drafting of a petition for quashment of a proceedings

(d) drafting of a civil revision petition, and

(e) drafting of a writ petition.

Now the question is whether this prohibition is violative to articles 31 and 40 of the constitution. In this connection the High Court Division is of the view that this restriction is unreasonable, arbitrary and void under articles 31 and 40, inasmuch as, it infringes the freedom of occupation, profession or business. In elaborating its opinion

it has observed, "All Advocates, whether they are ex-judicial officers or not, form a class by themselves. Since they are a class by themselves, there cannot be any discrimination amongst themselves in the absence of any 'intelligible differentia' or 'permissible criteria". It has further held that 'these conditions (rules providing a person to be admitted as an advocate) are to be fulfilled prior to enrolment of a person as an Advocate; but after his enrolment as an Advocate, no question of application of the same arises. What we are driving at boils down to this; those conditions are pre-enrolment and not post-enrolment conditions. After enrolment of a person as Advocate, he belongs to the community of Advocates, no matter whether he has worked for some time as a Judicial Officer.'

In this connection the High Court Division has pointed out a paradigm that the constitutional embargo has been put to practice in the High Court Division by a confirmed Judge of the High Court

Division, but the Judicial Officers did not hold any constitutional office, and therefore, in the absence of any restriction in the terms and conditions of service of a judicial officer at the time of appointment it cannot be imposed by way of insertion to the proviso to rule 65A(ii) of the Rules, inasmuch as, 'the ex-Judicial Officers and the ex-Judges of the High Court Division cannot be placed on the same plane.'

'It is a truism that the life expectancy of the country has increased exponentially due to singular advancement of medical science. Judicial Officers retiring at the age of 57(59) usually remain mentally and physically fit for work ... Prior to the insertion of the impugned proviso, the former Judicial Officers used to practice in the District Courts of their respective home districts', the High Court Division observed..... 'when the retired Judicial Officers are in a position to help the Subordinate Courts ably by their vast wealth of

experience in coming to right decisions. In such a situation, we feel constrained to hold that the Bar Council inserted the impugned Proviso in rule 65A(ii) of the Rules of 1972 arbitrarily, unseasonable, irrationally and illogically' ..... 'This restrictive condition, to our way of thinking, has no relation to or nexus with the fitness or suitability or the former Judicial Officers seeking to enter the legal profession. From this point of view, that condition is ex-facie void. Rather they should have been welcome to practice before the subordinate courts due to their previous experience as Judges thereof,' the High Court Division observed.

The above observations and findings are not only self-contradictory but also devoid of merit. Two expressions 'arbitrariness' and 'reasonableness' have been used by the High Court Division while considering the equality clause contained in the constitution. An arbitrary action is discriminatory

and violative of the equality clause and in deciding the same the question arises as regards the standard of testing the reasonableness of an action. In this connection the Supreme Court of India in Shrilekha V. U.P., AIR 1991 S.C. 537 observed, 'The question, whether an impugned act is arbitrary of not, is ultimately to be answered on the facts and in the circumstances of a given case. An obviously test to apply is to see whether there is any discernible principle emerging from the impugned act and if so, does it satisfy the test of reasonableness.'

There is no doubt that an arbitrary action that is irrational and not based upon sound reason or as one that is unreasonable. An arbitrary action can be proved by the person raising the plea and it can be done by showing that the impugned action is uninformed by reason, inasmuch as, there is no discernible principle on which it is based or it is contrary to the prescribed mode of exercise of the power or is unreasonable (ibid). H.M.Secrvai, the

author of the 'Constitutional Law of India' Fourth Ed. at page 437 criticised the principle pointing out that 'No doubt arbitrary actions ordinarily violate equality; but it is simply not true that whatever violates equality must be arbitrary. The large number of decided cases, before and after Rayappa, make it obvious that many laws and executive actions have been struck down as violating equality without there being arbitrary.' The Supreme Court of India in Dwarakadas Marfatia V. Board of Trustee, AIR 1989 S.C. 1642 after considering a host of decisions has arrived at the conclusion that 'It is for the party challenging its validity to show that the action is unreasonableness, arbitrary or contrary to the professed norms or not informed by the public interest, and the burden is a heavy one.'

The question of arbitrariness in restricting the ex-Judicial Officers to practice in the district courts does not arise rather by imposing such restriction the Bar Council has performed its

onerous responsibility reposed in it with a view to maintaining the canons of ethics befitting for an honourable profession. Article 31 guarantees the protection of law that no action detrimental to life, liberty, body and reputation or property shall be taken of any citizen except in accordance with law. The concept is akin to the due process clause contained in the Fifth and Fourteenth amendment of the American constitution. But the Supreme Court of India in a catena of decisions held that the India constitution has not incorporated the American 'due process' concept and it is debatable whether the concept of 'due process' of non-arbitrariness can be involved in the equality clause of article 14 corresponding to article 31 of our constitution. The essence of the concept is fairness and avoidance of arbitrariness. From the substantive point of view a law will be violative to article 31 if it is demonstrably unreasonable or arbitrary. In other ways it may be said that a rule creating serious

hardship shall be declared void on the ground of lacking in reasonableness. To say more clearly, a law shall pass the test of article 31 if there is rational relationship between the provision of the law and the legitimate governmental objective sought to be achieved. In ascertaining such arbitrariness or reasonableness, a bounden duty is cast upon the court.

The primary duty cast upon the court is to see the existing economic and social conditions and the current values of the society with reference to which reasonableness or fairness of law and procedure will have to be judged. The principle of equality does not mean that every law must have universal application to all persons who are not by nature, attainment or circumstances in the same position. There are varying needs of different classes of persons often require separate treatment. Therefore, it cannot be said to be correct to assume that all laws have to be made uniformly applicable

to all people. Equality does not mean that the legislature is not competent to exercise its discretion or makes classification. This principle does not take away State power of classifying persons for legitimate purposes. There are authorities on this point that the legislature has power to determine what categories it would embrace within the scope of legislation and merely because certain categories which would stand on the same footing as those which are covered by the legislation are left out would not render the legislation which has been enacted in any manner discriminatory and violative to article 31.

A classification to be valid must rationally further the purpose for which the law was enacted. (Massachusetts Board of Retirement V. Murgia, (1976) 427 us 307. To pass the test of constitutionality, the classification made in the legislation must satisfy two conditions – (a) the classification must be logically correct, i.e. must be founded upon some

intelligible differentia which distinguish the persons or things grouped together from others left out of the group, and (b) the differentia must have a rational relation or nexus to the object sought to be achieved by the statute in question. (S.A. Sabur V. Returning officer, 41 DLR (AD) 30 and Ram Krishna Dalmia V. Justice Tendulker, AIR 1958 S.C. 538).

The High Court Division itself noticed that the expression 'equal protection of law' is used to mean that all persons or things are not equal in all cases and that persons similarly situated should be treated alike. Equal protection is the guarantee that similar people will be dealt with in a similar way and that people of different circumstances will not be treated as if they were the same. But then, relying upon the some Indian cases vis-à-vis rule 65A(ii) it held that 'all Advocates, whether they are ex-judicial officers or not, form a class by themselves.' This is a wrong assumption which is self-evident. The authority has relaxed certain

preconditions in respect of certain persons to practice directly in the High Court Division while it has attached conditions in respect of certain categories of persons, and in relaxing the preconditions a retired judicial officer is included. The Bar Council has differentiated a person who held a judicial office for a period of ten years to be eligible for enrolment as an advocate in the High Court Division. The relaxation of conditions makes him a different class and after his enrolment, he cannot be equated with another class of advocate who has not held a judicial office. Therefore, it is absolutely confused observation that after enrolment of a person as advocate he belongs to the community of advocate. Yes, he will belong to the community, but his status is a bit higher than the other category of advocates.

Though the High Court Division noticed that the constitution itself makes a classification, that is

to say, a classification may be made on different basis according to objects, occupation or the like but on the other breath, it has observed that all advocates form a class by themselves. A classification may be justified if it is not palpably arbitrary - if it is real and substantial, and there is some just and reasonable relation to the object of the legislation. If there is reasonable classification that may be treated as a class by itself - it will not hit the equality clause. It failed to notice that ex-judicial officers having ten years in judicial office and a fresh law graduate do not form a class by themselves. There is intelligible differentia or permissible criteria in the above categories. And therefore, the High Court Division has failed to follow the ratio in Sheik Abdus Sabur V. Returning officer, 41 DLR(AD) 30, Maneka Gandhi V. India, AIR 1978 SC 597, Romana Shetly V. International Airport Authority, AIR 1979 SC 1628, Ajy Hashia V. Khalid

Mujib, AIR 1981 SC 487, D.S. Nakara V. India, AIR 1983 SC 130; A.L. Kalra V. P and E Corporation of India, AIR 1984 SC 1361.

The second point is whether rule 65A(ii) is inconsistent with article 40 of the constitution. Article 40 guarantees freedom of occupation or profession or trade or business subject to any restriction imposed by law. Every citizen possessing qualification as may be prescribed by law in relation to his profession, occupation, trade or business shall have the right to enter upon any lawful profession or occupation and to conduct any lawful trade or business. To claim a right under this clause the claimant must show that rule 65A(ii) violates his right to practice the profession as advocate. A person can complain of the violation of the fundamental rights if it can be established that the right claimed is a legal right and secondly that, it is a fundamental right. If the claimant cannot satisfy that criteria he will not get any

relief on the ground of discrimination. Now the question is whether the Bar Council has denied the claim of the writ petitioners to practice as advocates. The answer is in emphatic no.

The Bar Council allowed them to practice as advocates in the High Court Division directly which right is denied to the other categories of applicants. The observation that it is the duty of the Bar Council 'to safeguard the rights, privileges and interest of advocates on its roll' is totally devoid of substance. Bar Council has not curtailed the right of the respondents to practice in the subordinate courts affecting their privilege. They have not acquired any privilege or right to practice in the subordinate courts after retirements from their service. What the Bar Council restricts is that a former judicial officer shall not be eligible to practice before any subordinate courts on the assumption that in the subordinate courts their colleagues, direct juniors are administering justice

and if they are allowed to practice in any subordinate courts that would be unethical, undignified and unprestigious. The officer who worked with them would be put to an embarrassing position to adjudicate justice impartially. It should be borne in mind that the main task of a lawyer is not only a profession but also a public utility service. The Bar Council has been reposed with the onerous responsibility to ensure 'the conditions subject to which a person may be admitted as an advocate, the standard of professional conduct and etiquette'. With that end in view, it has promulgated 'Bangladesh Bar Council Canons of Professional Conduct and Etiquette'. In the preamble it is clearly provided as under:

'WHEREAS the rule of law is an essential feature of civilized society and a pre-condition for realizing the ideal justice;

AND WHEREAS such a society affords to all citizens the equal protection of law and thereby secures to

them the enjoyment of their lives, property and honour;

AND WHEREAS an indispensable condition of such protection of the rights of citizens is the existence in society of a community of Advocates, men learned in the law and respected as models of integrity, imbued with the spirit of public service and dedicated to the task of upholding the rule of law and defending at all times, without fear or favour, the rights of citizens;

AND WHEREAS by their efforts Advocates are expected to contribute significantly towards the creation and maintenance of conditions in which a government established by law can function fruitfully so as to ensure the realization of political, economic and social justice by all citizens;

AND WHEREAS in order effectively to discharge these high duties Advocates must conform to certain norms of correct conduct in their relations with members

of the profession, their clients, the courts and the members of the public generally;

AND WHEREAS the Bangladesh Bar Council has formulated such norms of correct conduct into a set of Canons of Professional Conduct and Etiquette;”

This preamble speaks for itself that the rule of law is an essential feature of a civilized society and all citizens are entitled to equal protection of law. The lawyers are a class in the society who are entrusted with the task of protecting the rights of the citizens and it can be achieved only if they respect the models of integrity, imbubed with the spirit of public service and render their honourable responsibility in upholding the rule of law and if they maintain the dignity the rights of the citizens will be secured. The advocates are respective to contribute sufficient part towards the maintenance of the rule of law and therefore, the advocates must maintain norms of correct conduct. An independent judiciary

is the key to upholding the rule of law in a society. The independence may take a variety of forms across different jurisdictions and systems of law. Once citizens lose confidence in the fairness of legal system, they may turn to other means to assert their basic rights and this inevitably results in violence and loss of human life.

Former Chief Justice of India Y.K. Sabharwal, in an article 'Role of the Bar in a Democracy' stated 'cases of breach of professional conduct by the lawyers cannot be brushed aside as stray cases of aberration. Cumulatively, they have the effect of undermining the legal profession and eroding confidence of the public at large in the judicial administration and, therefore, a phenomenon that cannot be brooked. If allowed to snowball, misconduct by the legal community can lead us to anarchy, a state of affairs that could threaten the continuity of rule of law. In the large interest of the doctrine of justice on account of which, and for

which, we exist.' In this connection I add that the lawyers must bear in mind that they are not mere legal craftsmen functioning to represent the interest of their clients. Their responsibility is towards larger social economic development of the society where peoples welfare comes ahead of private interests.

In another article Sabharwal, CJ. stated as under:

> "The noble profession of law is founded on great traditions. It is not a business. It is a part of a scheme of a welfare State where the larger public good takes precedence over all narrow personal interests. Members of legal profession are answerable to the social conscience of the society and have moral and social obligation towards that section of the Society which is unable to protect its lawful interests. The Code of Conduct

developed by the Bar Council reminds each member of legal profession of his social responsibilities. Lawyers are duty-bound to contribute in a large measure in building a classless egalitarian social order so that the fruits of the goal of socio-economic justice reach the poorest of the poor and in this direction they are expected to be driven by compassion and humanitarian approach so that they can collaborate with the State policy."

In this connection D.P. Wadhwa, J. in P.D. Gupta V. Ram Murti and others, AIR 1998 SC 283, observed:

"A lawyer owes a duty to be fair not only to his client but also to the court as well as to the opposite party in the conduct of the case. Administration of justice is a stream which has to be kept pure and clean. It has to be kept unpolluted.

> Administration of justice is not something which concerns the Bench only. It concerns the Bar as well the Bar is the principal ground for recruiting judges. Nobody should be able to raise a finger about the conduct of a lawyer. Actually judges and lawyers are complementary to each other. The primary duty of the lawyer is to inform the court as to the law and facts of the case and to aid the court to do justice by arriving at the correct conclusions. Good and strong advocacy by the counsel is necessary for the good administration of justice. Consequently, the counsel must have freedom to present his case fully and properly and should not be interrupted by the judges unless the interruption is necessary."

The role of Bar Council has been lucidly explained in Bar Council V. Dabholkar, AIR 1975 SC

2092. It observed that 'The Bar Council acts as the protector of the purity and dignity of the profession. Third, the function of the Bar Council in entertaining a complaint against advocates is when the Bar Council has reasonable belief that there is a prima-facie case of misconduct that a disciplinary committee is entrusted with the enquiry.' In this connection V.R. Krishna Lyer, J. added a few words as under:

> "A glance at the Functions of the Bar Council, and it will be apparent that a rainbow of public utility duties, including legal aid to the poor, is cast on these bodies in the national hope that the members of this monopoly will serve society and keep to canons of ethics befitting an honourable order. If pathological cases of member misbehavior occur, the reputation and credibility of the Bar suffer a mayhem and who, but the Bar Council, is more

> concerned with and sensitive to this potential disrepute the few black sheep bring about? The official heads of the Bar i.e. the Attorney General and the Advocates General too are distressed if a lawyer 'stoops to conquer' by resort to soliciting, touting and other corrupt practices."

In Chapter II of the 'Canons of Professional Conduct and Etiquette' under the heading 'Conduct with regard to clients' in paragraph 12 it is specifically spelt out that 'but it is steadfastly to be borne in mind that the great trust of the Advocate is to be discharged within and not without the bounds of the law. The office of an Advocate does not permit, much less does it demand of him for any client, the violation of any law or any manner of fraud or chicanery. In doing his professional duty to his client he must obey the voice of his own conscience and not that of his client.' In Chapter

III under the heading 'Duty To The Court' clause 1 provided 'It is the duty of an Advocate to maintain towards the courts a respectful attitude, not for the sake of the temporary incumbent of the judicial office, but for the maintenance of its supreme importance. Judge not being wholly free to defend themselves are peculiarly entitled to receive the support of the bar against unjust criticism and clamour. At the same time whenever there is proper ground for complaint against a judicial officer, it is the right and duty of an Advocate to ventilate such grievances and seek redress thereof legally and to protect the complainant and persons affected.' Clause 4 said that 'Marked attention and unusual hospitality on the part of an Advocate to a Judge or judicial officer not called for by the personal relations of the parties, subject both the Judge and the Advocate to misconstructions of motive and should be avoided. An Advocate should not communicate or argue privately with the Judge as to

the merits of a pending cause and he deserves rebuke and denunciation for any device or attempt to gain from a Judge special consideration or favour. A self-respecting independence in the discharge of professional duty, without denial or diminution of courtesy and respect due to the Judge's station is the only proper foundation for cordial personal and official relations between the bench and the Bar.'

These professional ethics and conduct of an advocate cannot be adhered to and/or maintained by a former judicial officer after being enrolled as an advocate if he is allowed to appear before a subordinate officer who has worked under him. The judicial officers before whom such Judge turned advocate would appear, the public perception towards him would erode, and even if such advocate attempts to gain any special consideration, the Judges would hesitate to rebuke him. The Judges of the High Court Division has been restricted to practice in the High Court Division after retirement on consideration of

these aspects. Similarly a retired judicial officer stands on the same footing - no matter he held an office of the Republic or not. The question is whether if a Judge of the High Court Division after retirement appears before a Judge, who worked in the same Bench under him as a pusine Judge or a Judge of the same batch, the peoples perception towards him might not be respectful even if he makes any order/judgment in favour of the Judge turned lawyer in accordance with law. Similar principle will be applicable in case of ex-judicial officers.

The High Court Division made a distinction observing that after enrollment of a person as an advocate he belongs to the community of advocates, no matter whether he has worked for sometime as a judicial officer. This is absolutely based on wrong premise, inasmuch as, even after enrollment of two categories of persons although they belong to the same community, there remains doubt as to whether there was any possibility on the part of an ex-

judicial officer to influence a judicial officer who worked under him. Normally, it was not possible on the part of an advocate who had been enrolled directly after obtaining law degree, because he had no acquaintance with any judicial officer of the court. In the alternative, it may be said that all judicial officers working in the lower judiciary may be taken as a class by themselves and they cannot be equated with the advocates. Therefore, Rule 65A(ii) does not violate article 40 of the constitution.

The opinions expressed in Maneka Gandhi V. India, AIR 1978 SC 597 and Ramana Shetly V. International Airport Authority, AIR 1979 SC 1628, relied upon by the High Court Division have no application in this case. In the latter case, it was observed that 'the principle of reasonableness and rationality which is legally as well as philosophically an essential element of equality or non-arbitrariness is projected by Article 14 and it must characterize every State action, whether it be

under authority of law or in exercise of executive power without making of law. The State cannot, therefore, act arbitrarily in entering into relationship, contractual or otherwise with a third party, but its action must conform to some standard or norm which is rational and non-discriminatory.'

The amendment made by the Bar Council cannot be said to be unreasonable or irrational, inasmuch as, it has clearly distinguished the categories of advocates to be entitled to practice in the lower courts and in the High Court Division. In D.S. Nakara V. India, AIR 1983 SC 130, the court approved the views taken in AIR 1982 SC 879 observing that 'where all relevant considerations are the same, persons holding identical posts may not be treated differently in the matter of their pay merely because they belong to different purposes ……..Expanding this principle one can confidently say that if pensioners form a class, their computation cannot be by different formula affording unequal

treatment solely on the ground that some retired earlier and some retired later.' I fail to understand why the High Court Division has relied upon this case.

In A.L. Kalra V. P and E Corporation of India, AIR 1984 SC 1361, it was observed that 'conceding for the present purpose that legislative action follows a legislative policy and the legislative policy is not judicially reviewable, but while giving concrete shape to the legislative policy in the form of a statute, if the law violates any of the fundamental rights including Article 14, the same is void to the extent as provided in Article 13'. We do not dispute the proposition but how this proposition fits in this case is not clear to us.

The other cases considered by the High Court Division are to the same extent not relevant for the disposal of the issue involved in the matter.

The other point that a judicial officer retiring at the age of 57 years usually remain

mentally and physically fit for work. Financial stringency compels him to post-superannuation legal practice or other work. Former Judicial Officers hailing from various districts of Bangladesh are virtually handicapped to practice only before the High Court Division because of acute lack of residential accommodations and that prior to the insertion of the impugned provision, the former Judicial Officers used to practice in the district courts of their respective home district and very few of them practiced in the High Court Division. As regards the age limit of superannuation, it is now increased at 59. The scarcity of residential accommodation in Dhaka is not a legal ground to allow them to practice in the district courts because they are getting pensionery benefits.

A retired judicial officer will be able to earn a handsome amount if he practices in the High Court Division. If he does not arrange accommodation at Dhaka according to his financial incapacity, he can

engage himself in chamber practice or he may adopt other means of employment of teaching student of law colleges and private universities set up at districts levels. There are lot of avenues open to him now-a-days.

True, previously the judicial officers were allowed to practice in the district courts prior to the amendment, but that should not be a basis to allowing them to practice in the district courts. Law is not static and it changes when it needs to be changed or amended due to change of socio-economic condition or circumstances. Bar council has been given with the power to oversee the standard of professional conduct and etiquette by the advocates and for that matter it has promulgated Rules. The pre-condition for framing the Rules is that the advocates must contribute significantly towards the maintenance of law and must maintain norms of correct conduct. The Bar Council having realized that if a judicial officer after performing judicial

functions for a period at least for ten years is allowed to practice in the lower courts, the spirit of public service and the task of upholding rule of law may be hampered for the reasons stated above and accordingly it restricted them to practice in the lower courts by way of amendment to the Rules. It has performed its responsibility considering the socio-economic conditions of the country and we find no fault in making the classification of the advocates, who will be eligible to practice in the lower courts and those who will be directly eligible to practice in the High Court Division.

The High Court Division has illegally interfered with the powers of the Bar Council which acts as protector of the parity and dignity of the legal profession. What's more, the High Court Division ignored one vital aspect that a citizen can challenge the vires of a law if his right is infringed by the law. A retired judicial officer cannot claim a right to practice in the lower court.

He has a right if his terms and conditions of service are infringed, but to practice in district courts after retirement is not a right. It is a privilege afforded to him by the Bar Council and no judicial review is available at the instance of a judicial officer for safeguarding his future avocation after getting pensionary benefits.

Twelve out of thirteen writ petitions have been filed on behalf of Darul Ihsan university and its Trust by different persons seeking different reliefs as under:

(a) Writ Petition No.10242 of 2006 was filed challenging the appointment of Professor Monirul Huq as the Vice Chancellor of Darul Ihsan University.

(b) Writ Petition No.3189 of 2008 was filed challenging an action of closing outer campus of Darul Ihsan University.

(c) Writ Petition No.5448 of 2010 was filed seeking similar relief as in the earlier one.

(d) Writ Petition No.9406 of 2010 was filed challenging the amendment of the Memorandum, the Rules and Regulations of Darul Ihsan Trust approved by the Register, Joint Stock Companies and Firms under the Societies Registration Act, 1860.

(e) Writ Petition No.1443 of 2011 was filed seeking a direction upon the University Grant Commission to give recognition to Darul Ihsan University as valid and lawful one.

(f) Writ Petition No.1500 of 2011 was filed challenging the incorporation of the names Dr. Abul Hossain and S.M. Sabbir Hossain as Chairman and Secretary respectively in the Articles of Association of Darul Ihsan Trust.

(g) Writ Petition No.8647 of 2011 was filed seeking a direction upon the government to appoint Professor Akabr Uddin Ahmed as Vice Chancellor.

(h) Writ Petition No.8144 of 2011 was filed seeking a direction upon the writ respondents to

appoint Professor Dr. Rahamat-E-Dhuda as the Vice Chancellor of the Darul Ihsan University.

(i) Writ Petition No.6799 of 2011 was filed seeking a direction upon the government to appoint Dr. Saifullah Islam as the Vice Chancellor of the University.

(j) Writ Petition No.9519 of 2011 was filed challenging the constitution of the inquiry committee headed by justice Kazi Ebadul Huq by the government.

(k) Writ Petition No.9529 of 2012 was filed challenging an order of the government approving the Dhanmondi Campus as the main address of Darul Ihsan University.

(l) Writ Petition No.10005 of 2013 was filed seeking a direction upon the government to appoint an Administrator of Darul Ihsan University; and

(m) Writ Petition No.10398 of 2013 was filed seeking a direction upon the government to issue

admit cards enabling the writ petitioners to sit for the preliminary test.

Except one, all the above petitions were filed by the four contending groups namely Savar group, Dhanmondi group, Panchagar group, Ashulia group and another was filed by some students. Different persons claimed to be the pioneers of the university and sought for recognition of their unit of university as the main university campus and the trust. One group claimed the authority to run the university, and the trust, the other group disputes the claim and vice versa.

The High Court Division elaborately heard the learned counsel appearing in support of the contending parties claiming the right to operate the university and the trust. The High Court Division noticed that in support of Writ Petition No.5248 of 2010, none appeared and that Writ Petition No.9406 of 2012 has been discharged for non-prosecution. Since none appeared in Writ Petition No.5248 of

2010, it ought to have discharged the rule. Similarly, despite prayer made in Writ Petition No.10005 of 2012 not to press the rule, the High Court Division entered into the merit of the petition. The High Court Division should not have explored the issues which are not covered by the terms of the rules. Similarly it noticed that twelve writ petitions were filed by four contending groups seeking directions either to appointing a vice chancellor of their respective unit or in the alternative, challenging the actions of the University Grant Commission or to recognise their unit as the main campus of the university. It also noticed that each group is claiming the formation of the university and is entitled to use the goodwill of Darul Ihsan Trust and Darul Ihsan University, and in presence of such claims and counter claims, it has rightly held that the issue as to whether Professor Syed Ali Naki's action of registering the Darul Ihsan Trust on 02.04.2006 under the Societies

Registration Act is to be seen as the formation of a 2nd Darul Ihsan Trust, or it was a mere step towards fulfillment of the statutory obligation as stipulated in clause 7 of the Trust Deed No.14285, appeared to be a serious disputed question of fact, which can be adjudicated upon only by examining the relevant persons, who were involved in the formation of Darul Ihsan Trust at that point in time.

It further observed that the claim of Savar group that professor Naki's registration of the deed under the Societies Registration Act upon taking approval from the majority of the trusties including the consent of the then Chairman of the Darul Ihsan Trust, have out rightly been declined by the Dhanmondi group; that professor Naki and others were expelled by Dr. Naimur Rahman and these questions are complicated questions of fact and these disputed facts cannot be looked into in the petitions. It further observed that the claim and counter claim require to be adjudicated upon by taking oral

evidence and examining papers and to determine the issue each group has filed documents of the trust and that since the documents filed by Akbar Uddin group have totally been discarded by the Savar group, judicial review is not available to decide the said issue in these petitions, and therefore, 'all these petitions except the above two (Writ Petition Nos.10005 of 2013 and 10398 of 2013) being not maintainable are distinct to be discharged.'

Despite these findings, the High Court Division has entered into the merit of the matters at length. We also failed to notice that how the High Court Division made the above observations after recording the submission of the learned advocate appearing for Writ Petition No.10005 of 2012 intimating that he was instructed not to proceed with the rule. Only one rule which requires to be considered is Writ Petition No.10398 of 2013, in which, some students are claiming to have obtained LLB honours from the Darul Ihsan University and submitted papers for

being enrolled as advocates, but the Bar Council did not issue admit cards.

In this petition seven persons claimed that earlier some students obtained four years LLB honours degree from Dhanmondi Campus and enrolled with the Bar Council as advocates and that though they did not specifically say from which campus they obtained the law degree, by implication it is presumed that they had obtained law degree from the Dhanmondi Campus and that the Bar Council did not issue admit cards despite that it is claimed, the university was affiliated and approved by the University Grant Commission by letter under memo dated 19.8.1993.

The High Court Division extensively discussed the provisions of the Private University Ain, 1992 and the Ain of 2010, and came to the conclusion that neither Dhanmondi group nor the Savar group could produce papers to satisfy the court that they kept taka one crore in the reserved fund of the

university as a condition precedent to obtain no objection certificate for running a university. Accordingly it held that "when the law clearly requires that there must be a 2nd account to be maintained by the private universities; one is reserved fund (সংরক্ষিত তহবিল) for security purpose and another account is a general account (সাধারন তহবিল) to run their academic activities, none of the groups of the DI University has been able to produce any papers/bank statements to substantiate their claim that the said statutory condition was ever fulfilled.'

Section 7 of the Ain of 1992 requires seven criteria to be fulfilled in order to be eligible to obtain a licence for conducting a private university. One of the criteria is to keeping a reserved fund of taka one crore. Besides, a private university must possess/own five acres of land and sufficient infrastructure as required by section 4. The other requirement is that no private university

will be eligible to get a licence for conducting education as a university unless it obtains a certificate from the government under section 6. On 05.05.1998 there was corresponding amendment to the Ain providing that in place of taka one crore, a private university must keep reserved fund of taka five crore.

This law has been repealed in 2010 followed by a new legislation covering the field under the name 'বেসরকারী বিশ্ববিদ্যালয় আইন, ২০১০'. Similar to the earlier provisions, under the new Ain any one cannot operate a private university without a proper licence. A provision has been provided in section 6 for obtaining temporary licence for operating a private university subject to fulfillment of ten conditions. This temporary licence period shall not be extended beyond seven years and within this period, a private university to be established in Dhaka and Chittagong must own minimum one acre of land and outside those

two cosmopolitan cities, the university must acquire two acres of land.

The High Court Division upon consideration of the documents filed by the contending parties held that a temporary licence was given to Darul Ihsan University initially which was extended upto 31.12.1994 and thereafter the licence was not extended by the government. "All contending groups of DI University have hopelessly failed to obtain 'afresh temporary permission letter' (সাময়িক অনুমতিপত্র) under section 7 of the Ain, 2010 or 'licence' (সনদ) under section 10 of the Ain, 2010. Thus it 'unfolds the story about the University that it failed to obtain any temporary permission not only under the old law from 1.1.1995 but also under the new law which came into being 18.7.2010' the High Court Division observed. 'Under the garb of running the academic activities in the name of the Darul Ihasn University, (unscrupulous persons) are carrying out the illegal business of selling certificates.

Therefore, even if only one Darul Ihsan University is allowed to be established lawfully upon fulfillment of its statutory requirements, there shall remain a vulnerability for the prospective students to be cheated and defrauded and, thus, for the greater interest of the prospective students of this country, the Government shall never issue any 'temporary permission letter' under the name and style of the Darul Ihsan University in the future'.

The High Court Division noticed that the government as well as University Grant Commission failed its' statutory obligation to monitor the activities of different persons by operating different campuses of the university, despite the fact that none of the campuses had any legal licence but they did not take any proper action. It then held that the inaction of the officials 'attributes to collapse the higher education of the country in the private sector'. The ministry is also responsible by issuing letters appointing vice-

chancellor from time to time and also allowing the university to open outer campus observing that it was 'an utterly reckless step taken by the government, inasmuch as, the Ain, 1992 having not provided any provision allowing the private universities to open any outer campus ……,'. If there is violation in the State level' why the UGC should not compensate the State', it further observed.

The High Court Division then directed the Bar Council to prepare 'list of the private universities whose LLB (Hons) certificate may be recognized for Advocate-ship examination. In order to do that, the BBC must ask the private universities to follow the admission procedures akin to the public universities in admitting the LLB(Hons) course and set the same criteria of having particular marks in English and Bengali with overall good results in the SSC & HSC exams, as required by the public universities. Only the students who have passed HSC or equivalent in the last two years with GPA5 from any group

(science, arts or commerce), securing 70% marks in English or having a score Of 6+ in IELTS, shall be eligible to apply for admission in the LLB (Hons) course, subject to payment of prescribed fees.'

It not only directed to prepare list of the private universities it has also given some guidelines to follow the admission procedures in the LLB honours course prescribing that the students must obtain good results in SSC and HSC examinations and also that they must secure 70% marks in English and so on to be eligible for admission. It further held that the criteria for admission of students should be similar to those students who are being admitted in medical and dental colleges. The Bar Council should arrange for admission tests for aspirant candidates once a year. No private university shall be permitted to admit more than 100 students in a calendar year. It also directed the Bar Council to monitor the admission process of LLB honours course students in private universities and

also to monitor 'subsequent academic improvement improvements by maintaining the Registry for the first year, 2nd year, third year and final year LLB (Hons) students studying in private Universities in order to ensure that no pseudo student obtain LLB (Hons) certificate....'

It also directed Bar Council to float advertisement in the news papers and electronic media inviting applications who are aspiring to admit LLB honours course in private universities. "No private University shall commence LLB (Hons) Course without first obtaining clearance certificate from the Bar Council and that unless the Bar Council is satisfied that a private university is offering education of subjects must have full time competent teachers of those subjects and that no public or private university shall be allowed to offer two years LLB course except National University. It also observed that there is no justification to keep two years LLB course in the country and that law

colleges should introduce four year honours course from 2020' with the above findings, the High Court Division directed the concerned private university to compensate taka five lacs to each of the writ petitioner students.

Thereafter, the High Court Division examined the claim of four contending groups after the name 'Darul Ihsan University'. It then observed that the Dhanmondi group and Savar group do not own and possess the required areas of land; that since all the four contending groups have been running their respective universities illegally without obtaining permission from the government, they must make good the damage to the students; that the Board of Trustees must bear in mind that establishment of an Islamic University in private sector was a dream of Professor Syed Ali Asharf which is evident from the personal cotes of Professor Syed Ashraf; that if the Savar group and the Dhanmondi group fail to merge into one group towards formation of a single 'Darul

Ihsan Trust' or if the valid 'Board of Trustees' of the Darul Ihsan Trust is not determined by the civil Court, then the government shall take over the asset and property of the 'Darul Ihasan Trust'; that if the government takes over the each and the landed property in their control, 'the management of the proposed Syed Ali Ashraf Islamic University should confer upon the Savar Cantonment Board making the GOC of the said Cantonment to be the chairman of the Darul Ihsan Trust'.

Some of the observations and findings of the High Court Division are inconsistent and not conformity with law. It was not at all necessary on the part of the High Court Division to make such observations which are not relevant for the disposal of the issues involved in the rules. Even after noticing that except one petition, the writ petitioners have raised disputed questions of fact, it ought to have restrained from making observations touching to the process of establishing Darul Ihsan

Trust and Darul Ihsan University; the suggestion of merger of two groups and other unrelated issues. These are all unnecessary exercise. Some of the findings and directions given by the High Court Division come within the ambit of judicial legislation. The court would not by overlapping its bounds rush to do what parliament, in its wisdom, warily did not do. The exercise of judicial discretion on well established principles and on the facts of each case was not the same as to legislate.

Roland Dworkin is a great academic jurist, has a theory about the legitimacy of judicial governance. He says, present day judges who may have had nothing to do with the written constitution when it was framed, by reason of their position as judges, become and must act like – partners with the framers of the constitution in an on going project – it is and will always be an ongoing project – to interpret a historical document in the best possible

light. (Law's Empire (1986), Ronald Dworkin, Harbard Law University Press, Cambridge – 61-63). He invoked the idea of a constitutional conception of democracy wherein judicial review occasioned by a charter of rights ensures the democratic pedigree of legislation by benchmarking the values found in the content of law, rather than in the process of law making.

Fali S. Nariman in his book 'Before Memory Fades' made some remarks regarding 'judicial activism' and 'judicial review' remarked, 'All judicial review – all manner of adjudication by courts – is itself an exercise in judicial accountability – accountability to the people who are affected by the judge's rulings (if punitive contempt power is kept in check). That accountability gets evidenced in critical comments on judicial decisions when judges behave as they should (as moral custodians of the Constitution); the function they perform enhances the spirit of

constitutionalism. My only regret sometimes is that some of our modern-day judges – whether in India or elsewhere – do not always realize the solemnity and importance of the functions they are expected to perform. The ideal judge of today, if he is to be a constitutional mentor, must move around, in and outside court, with the constitution in his pocket, like the priest who is never without the Bible (or the Bhagavad Gita). Because, the more you read the provisions of our constitution, the more you get to know of how to apply its provisions to present-day problems.' In this connection by quoting a remark of Chief Justice Sir Edword Coke regarding the power of the court to correct errors and misdemeanours and also all manner of misgovernment. 'So that no wrong or injury, neither private not (nor) public, can be done, but that it shall be (here) reformed or punished by due course of law', stated as under:

> "That sometimes some men and women who sit on the bench are not conscious of the

> extent (or limits) of such power, or do not have the sensivity to exercise judicial restraint when warranted, only means that those (few) men (and women) are just not equal to the supremely difficult task of judging entrusted to them under the constitution. It only indicates that perhaps it is time we adopted a better method of selection of judges for our higher judiciary."

While exercising the power of judicial review it is to be borne in mind that the test of reasonableness whenever prescribed should be applied to each individual statute impugned and no extract standard or general pattern of reasonableness can be laid down by the court. The nature of right alleged to have been infringed - the underlying purpose of the restriction imposed - the extend and urgency of the evil sought to be remedied thereby, the disproportion of the imposition - the prevailing

conditions at the time - should all enter into judicial mind. In evaluating circumstances of a given case, it is inevitable to see that the social philosophy and the scale of values of the Judges participating in the decision should play an important part and the limit of their interference with legislative judgment in such cases can only be directed by their sense of responsibility and self restraint. To judge the quality of reasonableness, no abstract or a fixed principle can be laid down for universal application. This will vary from case to case. In doing a judicial verdict, the court is required to see the changing conditions, the value of human life, social philosophy of the constitution and prevailing conditions. The court should not make a rigid or dogmatic but an elastic and pragmatic approach to the facts of the case and the issues facing the situation. (Pathumma V. Kerala, (1978) 2 SCR 537)

The above discussions inevitably hinge involvement of question of law in determining the above matters and normally in such cases it is desirable that the points in issue involved in the matters should be resolved by granting leave. Learned Attorney General and the counsel appearing on behalf of some private universities submit that the admission of students in LLB honours course in the universities, the syllabus and number of students to be admitted in the universities, the enrolment process of advocates in the Bar Council remain stagnant at the moment and as such, if there is delay in resolving these issues, ends of justice will be defeated. Accordingly, it is suggested from all segments that these petitions should be disposed of summarily. Considering the urgency in the matters, this court decides to dispose of the matters summarily for ends of justice.

C.P. No.2778 of 2016

This petition has been filed on behalf of the Darul Ihsan University Trust represented by its Secretary S.M. Sabbir Hasan. The address of the petitioner has been given at Plot No.87, Sector No.7, Mymensingh Road, Uttara. It filed the writ petition challenging the notifications dated 25th October, 2011 and 30th October, 2011 issued by the Secretary, Ministry of Education and the constitution of the investigation commission. The High Court Division has assigned proper reasons while discharging the rule.

C.P. No.2762 of 2016

This petition has been filed on behalf of the Darul Ihsan University, Dhanmondi Branch. The writ petition was filed challenging the appointment of Professor Monirul Huq as the Vice Chancellor of the University. The High Court Division noticed that the university does not possess any valid licence and

therefore, the writ petition itself is misconceived one.

C.P. No.2777 of 2016

This petition has been filed on behalf of the Darul Ihsan Trust, Uttara Branch. It filed the writ petition seeking a direction upon the writ respondents to abide by the Private University Act, 2010 and to accord recognition of Darul Ihsan University Trust headed by Md. Abul Hossain. The fact of the petition is similar to the earlier one.

C.P. No.2779 of 2016

This petition has been filed on behalf of the Darul Ihsan Trust, Uttara Branch. It filed the writ petition seeking a direction to appoint Professor Dr. Rahmat-E-Khuda as the Vice-Chancellor of the Uttara Branch. Though the 'Trust' has legal entity, in view of the claim of different persons to represent the Trust, the High Court Division is justified in discharging the rule.

C.P. No.2764 of 2016

This petition has been filed on behalf of the Darul Ihsan University, Dhanmondi Branch. It filed the writ petition challenging the letter under memo dated 4.11.2007 issued by the Director, University Grant Commission to close down the outer campus of Darul Ihsan University. Since the writ petitioner has no locustandi to challenge the order impugned, no wrong or error committed by the High Court Division in discharging the rule.

C.P. No.2763 of 2016

This petition has been filed on behalf of the Darul Ihsan University and Darul Ihsan Trust representing the Darul Ihsan University from Ganakbari, Ashulia Branch, Dhaka. In the writ petition they challenged a letter under memo dated 05.4.2012 approving the campus of Darul Ihsan University, Dhanmondi Branch claiming that Darul Ihsan Complex, Ganakbari campus is the real

university. They raised disputed questions of facts and judicial review on those facts in not available.

C.P. No.2498 of 2016

This petition has been filed on behalf of the Darul Ihsan University of Dhanmondi Branch. It filed the writ petition seeking a direction upon the writ respondents to appoint Professor Dr. Rahamat-E-Khuda as the Vice Chancellor of the University. The University has no legal entity and thus, the Writ petition is not maintainable.

C.P. No.3570 of 2016

This petition has been filed on behalf of the East West University, A/2 Zohirul Islam Avenue; Zohurul Islam City, Aftab Nagar, Pabna with permission of the learned Judge in Chamber. It has not been impleaded as writ respondent, but the findings and observations made by the High Court Division impliedly affect the teaching of LLB students in the university. It filed the petition

for expunging some findings and observations of the High Court Division.

Mr. Rokonuddin Mahmood, learned counsel appearing for the petitioner submits that the High Court Division acted illegally in giving compulsive directives upon the Bangladesh Bar Council, inasmuch as, those directives touching to the criteria for admission of LLB students, the number of students to be admitted in private university and monitoring the teaching of law students by the Bangladesh Bar Council are beyond the pale of the terms of the rule and also made against the petitioner without affording opportunity of being heard. He further submits that the High Court Division has traveled beyond terms of the rules by making observations touching to the internal affairs of the private universities established in accordance with law. Accordingly he submits that, the directions given by the High Court Division regarding the private universities that they are not performing in

accordance with law is liable to be expunged. The submissions merit consideration.

C.P. No.2880 of 2016

This petition has been filed on behalf of the Brac University; Asa University; State University of Bangladesh; Bangladesh University of Business and Technology; European University of Bangladesh, Daffodil International University; Fareast International University; Fast Capital University of Bangladesh; Green University of Bangladesh, North Western University of Khulna, Primeasa University, Sonargaon University, Sylhet International University, Metropolitan University Sylhet, North East University Sylhet. On behalf of the petitioners Mr. Mahmud makes similar argument that these private universities are reputed universities and have been running their education programme in accordance with law and the High Court Division acted illegally in directing the Bar Council to monitor the admission of students of law course, although it is not an

issue in the writ petitions filed by on behalf of the Darul Ihsan University. The other point argued on behalf of the petitioners is that the High Court Division erred in law in making discrimination in giving such directions, inasmuch as, it has directed the Bar Council to monitor the private universities but it has not directed the Bar Council to monitor the activities of public universities in failing to notice that the laws promulgated by the government are applicable to both private and public universities. The other point urged on behalf of the petitioners is that the directions as given are tantamount to interfering with the internal affairs of the private universities without affording them an opportunity of being heard. There is substance in the submissions.

C.P. No.3577 of 2016

This petition has been filed on behalf of the University Grant Commission and Md. Khaled, University Grant Commission. Mr. M. Amirul Islam,

learned counsel appears on behalf of the petitioners. Learned counsel submits that the High Court Division acted illegally in directing the petitioner No.2 to pay taka five lac as compensation to the government exchequer without affording him any opportunity of being heard. It is further contended that the High Court Division acted further error in shouldering the responsibility upon the petitioner No.2 while dealing with the affairs of Darul Ihsan University. It is submitted that the petitioner No.2 Dr. Md. Khaled signed the order as per direction of the University Grant Commission and in this connection, learned counsel has drawn our attention to the resolution of the University Grant Commission dated 6.12.2016. He further submits that this direction is also violative of the principle of natural justice, inasmuch as, before imposing penalty the High Court Division has not given any opportunity of being heard.

We have heard the learned counsel and perused the resolution dated 6.12.2016 of the University Grant Commission. In Agenda No.5 of the resolution relates to the alleged letter of the commission. It was pointed out that Dr. Md. Khaled was not involved in the matter of communicating the letter under memo dated 31.5.2015 and that the said letter was issued by Md. Shamsul Alam, former Director of UGC and that Dr. Md. Khaled signed the order on behalf of the Director-in-charge. It was further pointed out that Dr. Md. Khaled was not in charge of Director of UGC. It was further pointed out that no letter has ever been issued by any officer of the UGC without concurrence of the Chairman and other members of the Commission. In view of the said resolution, it is clear that Dr. Md. Khaled was not responsible in issuing the said letter and that the High Court Division acted illegally in shouldering the responsibility upon Dr. Md. Khaled. It has also committed fundamental error in giving the direction

to pay taka five lac without affording Dr. Md. Khaled an opportunity of being heard. Accordingly the penalty imposed against Dr. Md. Khaled is expunged.

C.P. No.2873 of 2016

Twelve persons on behalf of World University of Bangladesh; Northern University of Bangladesh; Prime University; North South University; Bangladesh Islamic University; The People's University of Bangladesh; Eastern University; Southeast University; The University of Asia Pacific; Canadian University of Bangladesh; Dhaka International University; Uttara University filed this petition on the ground that the High Court Division acted illegally in giving certain directions upon the Bangladesh Bar Council to monitor the activities of the Private Universities and that the High Court Division has not afforded any opportunity of being heard before giving such direction and therefore, the findings and observations made by the High Court

Division are violative of the principle of the natural justice. The submissions merit consideration.

C.P. No.3016 of 2016

This petition has been filed by Asma Tamkeen, Joint Secretary, Ministry of Local Government, Rural Development and Co-operatives. Mr. M. Amirul Islam, learned counsel appearing for petitioner submits that the High Court Division erred in law in directing the petitioner to pay taka five lac as compensation to the government exchequer for issuing the letter dated 31.12.2001 from the Ministry of Education without affording her any opportunity of being heard, and therefore, the said order is violative of the principle of natural justice. He further submits that the letter in question was issued by the Ministry of Education and that she had communicated the letter. According to him as per Rules of Business 1996 and সচিবালয় নির্দেশমালা, ১৯৭৬, she was not the decision maker of the concerned Ministry and

that she was the signatory for Ministry of Education for communicating a decision.

In support of his contention, learned counsel has drawn our attention to the সচিবালয় নির্দেশমালা, ১৯৭৬. As per the Rules of Business, 1996, the Secretary was the administrative head of the Ministry and the Secretary shall organize the division/ministry into a number of working units to be known as section. As per rule 4, the Secretary shall be responsible for its administrative and discipline for proper conducting of business assigned to the Ministry. The petitioner has quoted the order under memo dated 31.12.2001 and the said memo was shows that it has been issued by the Ministry of Education and the said memo was withdrawn by memo dated 25.6.2007. If the High Court Division finds that the petitioner has issued the said letter without concurrence of the concerned Secretary or any superior officer, it ought to have issued notice upon her to explain her position, but it did not follow the said formality.

Petitioner stated that the said letter was issued as back as 15 years ago and whatever she did, it was done in her official capacity and she did not have any personal knowledge about it. On consideration of the Rules of Business and the সচিবালয় নির্দেশমালা, ১৯৭৬, we are of the view that the High Court Division acted illegally in imputing the blame upon the petitioner in issuing the letter under memo dated 31.12.2001 and that's too, without affording her any opportunity of being heard. The penalty imposed by the High Court Division is accordingly expunged.

The High Court Division attached some condition upon the private universities that they shall not admit students more than 100 students in the 1st year LLB honours and that unless a student whose name does not appear in the pass list of the admission test to be conducted by Bar Council, he will not be eligible to be admitted in the calendar year. The second condition is that the private

universities shall apply to the Bar Council within 1st September, 2016 for obtaining the 'clearance certificate' on payment of taka ten lacs as security in the account of Bar Council which are desiring to open LLB honours course. The third condition to be complied with is that the private universities shall send the list of first year LLB honours students after completing the admission process and then they shall supply the list to the Bar Council by 30th October of each year, and that the other condition is that the private universities shall not issue LLB certificate if the students obtain Bachelor of Executive Law Certificate even if they incorporate law subjects in the syllabus.

The High Court Division should have given opportunity to the private universities before attaching the conditions, but it did not choose to proceed as such. In course of the hearing of the matters it has been urged from the Bar that on consideration of the degradation of the standard and

moral ethics of a good number of lawyers it is high time for this court to fix up the age limit of a person to be eligible for enrolment as advocate or in the alternative, a guideline should be given by this court with a view to checking the inclusion of undesiring persons in the honourable profession.

A look into the Order and the Rules show that only minimum age has been fixed in respect of a person for his being enrolled as an advocate and though no maximum age has been mentioned, by inserting rule 65A, the Bar Council has relaxed the age limit up to 59 years for of a person as an advocate, who held a judicial office. Such person normally retires at the age of 59 years. After retirement if a person who held judicial office can become an advocate, a pertinent question will arise as to whether this court can fix the age limit of other persons who are desiring to become advocates. There was proposal from one section that age limit should be fixed at forty and

another proposal is that the age should be forty five years and after crossing the age limit no person should be allowed to appear in the Bar Council examination for enrolment. These suggestions were made keeping consideration that some officials after being removed from the service on moral turpitude are entitled to enrol as advocates under the existing law.

There is already a restriction in this regard in respect of a person who has been dismissed from government service or convicted for an offence involving moral perpetuate in article 27(3)(a) and (b). It provides that if a government servant or a person holding statutory corporation is dismissed from service on a charge of moral perpetuate, he will be disqualified for being admitted as an advocate within two years of his dismissal. And in case of a person convicted for offence involving moral perpetuate, unless a period of five years expired from the date of conviction, he will be

debarred from admitting as an advocate. In presence of these two specific provisions unless the law is amended, this court cannot fix the age limit for enrollment as an advocate.

More so, apart from the above two categories of persons, if a person after obtaining law degree left the country without intimation to the Bar Council, returns after ten years but in the meantime he has crossed forty years. The question is whether the court can debar him from being enrolled as an advocate if he crosses the above age limit. Or if a person after obtaining a degree in law, due to unavoidable reason failed to face Bar Council within the age of 40/45 years to becoming an advocate. Is it desirable for this court to debar him from facing the Bar Council in the absence of any law? Or in the alternative, there may be a case that a person after acquiring requisite qualification involved in political activities or business and after lapse of time he decides to become an advocate at the age of

fifty. Will it be fair on the part of this court to restrict those categories of persons in the absence of specific law covering the field?

In India, the State Bar Councils prescribed age limit of 45 years for enrollment as advocates. The Supreme Court quashed the said age limit on the reasoning that 'How can this be done? Lot of people enroll as lawyers after retirement or after their resignation. In fact, I know about one person in Karnataka who was under suspension and he started practicing law. He turned out to be one of the best lawyers in the sate. These things do happen." (Transferred case (civil) No.47 of 2014) We cannot fully endorse the views taken by the Supreme Court of India because of the fact that a person may turn to become a good lawyer after removal from service on the ground of corruption, but if he is corrupt or involved in activities of moral perpetuate, his conduct would not be changed in a day or two after becoming a lawyer.

By the last two and half decades, there has been a paradigm shifts in the socio economic condition of the country. This has also contributed to new challenges for the judges and lawyers. However, considering the mammoth changes that have taken place, hardly any change has been injected in the body of the legal profession and legal education in Bangladesh to cope up with the new challenges in legal practice.

Historically and at least up to the time of market liberalisation in Bangladesh, the legal profession was largely based on typical civil dispute (all most all relating to land litigation) and criminal dispute (almost all relating to classic offence as covered by penal statutes), but now the horizon of legal practice has boomed into new dimension where the so called and old fashioned attitude in resolving modern legal dispute is measurably inadequate and outdated. The concept of citizens' rights has entered into a new era, the

courts are coming up with creative interpretation of constitutional rights, young, talented and highly educated judges are coming up with new notion of rights and remedies, corporate lawyering and corporate legal responsibility (including intellectual properties) is completely a new field of practice, and of course this digital age has posed us with entirely a new phenomenon of legal challenges including the forensic evidence which has already revolutionised the law and legal practices. All these new challenges are not to rise in future, our society is already surrounded by these and we urgently need a numbers of brilliant lawyers, and judges who are capable of facing these uphill new challenges and ensure a stable society. To comprehend all this new symptoms of legal development and to ensure a judiciary which understand the sensitivity of the people and the demands of the modern age we need a new generation lawyers and judges who possesses an unexhausted

spirit of fighting the evil and unbreakable commitment towards establishment of rule of law in the society.

Thus, this is a high time to consider a proposal to develop a process for the enrolment of academia (such as university teachers) as advocate opening the doors of the courts for their practice. Both the Bar Council and law faculties across the country must sit together to facilitate this avenue. Even in late sixties and seventies there had been a very good nexus between the lawyers and legal education institution. Many highly reputed lawyers used to regularly teach in universities and law colleges. But unfortunately this nexus now almost is non-existent. A good practice has died off but it should not preclude us in attempting to create new practices. Legal academia and legal profession must have a very close tie; it is the demand of this time because the legal profession in Bangladesh is now at a crossroad. The veteran lawyers and judges are

going in retirement or becoming absent from the court due old age but the symptom of new and emerging lawyers who were supposed to replace them is not much promising. I feel a crisis of legal genius is looming in the horizon of our judiciary.

Already there is ignominious depletion in the standard of lawyers practising all over the country. Due to socio economic change, except a few, lawyers are now more money-driven than knowledge-driven. In many cases we find severe dearth of evidence in pleadings touching the points in issue. Many have been seen conducting cases with deplorable level of superficial knowledge about facts and applicable laws relating to the case. The result is disastrous, final verdict goes against the party having three previous judgments in his favour due to sheer incompetency of his counsel. Similarly, in criminal matters prosecutors conducting prosecutions cannot lead even relevant evidence to prove the charge and sometimes it so happens that the counsel appeared

for the defense rectify the defects of the prosecution by cross examination or putting suggestion to the witness.

We have noticed a few legal journals published from various public universities containing articles by law teachers covering diverse topic i.e. human rights, rule of law, environmental justice and jurisprudence, family court and other issues. I have found many articles are very standard. Sometimes they analyse the judgment of the Supreme Court of Bangladesh and foreign courts in the light of the relevant subject matters. If university teachers are allowed to practise in the court the bar will be enriched because they not only teach law but also do research in the field of law. The legal academia and legal practitioners together will contribute in reshaping our collective conscience of jurisprudence capable of catering the new legal challenges surfacing due to rapid change in local and global economy and cutting edge technology.

A lawyer is a most respected person in the society. He upholds the rule of law and represent a person if his fundamental rights is violated by the state functionary. He represents a citizen's right to property involving millions of taka. Lord Justice Stephen Sedley, one of the reputed Judge of England reminds his readers that rule of law, of which we speak so glibly, is a necessary but not a sufficient condition of a decent society. There is more to a decent society than the rule of law. For instance, judicial enforcement of rights by courts of law does not necessarily guarantee public understanding and support for those rights; such understanding and/or awareness needs to be inculcated and can only be achieved by education. And if lawyers are to be educators, they must be trendsetters inspiring public confidence. (Freedom, Law and Justice (1999), sweet and Maxwell, London). This cannot be expected of a background of such a person.

Lord Leslie Scarman, another distinguished Judge at a conference of the Law Society of New Zealand in 1984, expressed his anxiety about law profession in the developed countries. He said that lawyers must not serve, but 'their position is servants of society'. He adds:

> "But he (Englishman) will now say lawyers are idiots. He may say they are too expensive. He may say they are too wealthy. But he will, and does, respect them. The law may fall into disrepute but lawyers do not, unless they themselves create the circumstances in which they can become disreputable.' (Before Memory Fades).

It is difficult to say that a person who involved in activities of moral turpitude would suddenly change his character. One most serious aspect facing the legal profession is that legal education system appears to have lost its ethical content. So legal education should be checked by

competent authority and it should not be allowed to deteriorate in the manner it has been deteriorating day-by-day. There is therefore, urgent need to re-discover and re-affirm the profession's moral foundation that will help refurbish its image. These are issues which should be looked into by the elected bodies of Bar Council and it is none of the business of court to decide. The court may express an opinion in this regard.

In India, Bar Council has restricted the age limit in the admission of LLB course by inserting clause 28 of Schedule III of the Legal Education Rules, 2008. As per restriction, upper age limit for LLB three year course was thirty years and LLB five year course was twenty years. It provides:

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 five further years for the applicant belonging to SC or ST or any other Backward Community."

Bar Council had withdrawn clause 28 by resolution No.200 of 2013 and thereby the age restriction was removed. Writ petition No.9533 of

2015 was filed before the Madurai Bench of the Madras High Court. The Court declared the withdrawal was illegal. The Supreme Court affirmed the decision in Leave Petition (civil) No.337421 of 2015 by judgment dated 11.12.2015.

Another factor which should be looked into by the Bar Council. If a person holding judicial office is permitted to practice directly in the High Court Division after retirement, why not a professor of law of a university who had taught law students or a high ranking government servant having law degree, who held judicial office (Magistracy) and quashi judicial in his career should not be allowed to practice in the High Court Division in the similar manner of a retired judicial officer.

We hope that the Bar Council shall look into the matter and if such categories of persons are permitted, the Bar will be enriched and enlightened.

The High Court Division has directed and/or declared that a person will not be eligible to get

admission in any university unless the LLB honours course run by such universities shall obtain clearance certificate from the Bar Council. Clause (d) of Order 27(1) prescribes that a person shall be qualified to be admitted as an advocate if he "has passed such examination as may be prescribed by the Bar Council." True, the Bar Council has a role to oversee the standard of education in law subjects either in public or private universities or law colleges which are conferring law decree on a person properly. Or to see as to whether the universities and colleges are teaching law students properly and whether they have qualified teachers for undergoing such education because ultimately these law graduates will become a Judge or a competent lawyer. We have been noticing for a considerable time that the new entrants in the profession from the universities and law colleges with exception of one or two are performing every poor standard. This is due to lack of proper education and training. We

hope that the Bar Council shall prescribe/give guide lines to all the universities and colleges teaching on law subjects and conferring law degrees to the students. It should compel them to follow the syllabus on subjects to be taught, which should be uniform and in case of violation, it would not recognise the law degree of such institute. If it can restrict the recognition of those students, who have obtained law degree from the universities and colleges which do not teach basic law subjects and have no permanent qualified teachers on all subjects of law, the standard of law graduates will be improved.

It is seen that the Bar Council cannot perform its responsibilities properly. It cannot conduct the enrolment process of advocates properly and accordingly, the Judges of the Supreme Court have been entrusted with the responsibility. It is also not possible on the part of the Judges to undertake such responsibility because they are over burdened

with judicial works. It is also not possible on the part of the Judges to inspect the private universities to oversee whether those universities have standard class rooms of law subjects. By compulsion they have undertaken the responsibilities of the enrollment of advocates without taking remuneration/financial benefits. It hoped that Bar Council shall arrange at least a vehicle for the Chairman of the enrollment committee and the members of the said committee nominated by the Chief Justice for the days of their engagement in the enrolment process. The Bar Council shall consider as to whether a retired Judge of the Appellate Division and three retired Judges of the High Court Division are appointed as Chairman and members of the enrolment committee so that the enrolment process can be expedited. It may also consider as to whether the said Judges may act as advisors of legal and education committee to stream lime the law education. It is reported that the Bar Council

cannot complete enrolment process once every year. If the enrolment process is complete every year, the pressure will be minimised.

Though there is provision in article 40(2)(t) that the Bar Council may frame Rules providing "the standard of legal education to be observed by universities in Bangladesh and the inspection of universities for that purpose' it has remained a silent spectator in this regard. There are allegations that Darul Ihsan University and some other private universities have set up campuses at remote areas and they are involved in selling law graduation certificates in exchange for money. This type of allegation should be taken to task and the violators should be put to justice. Therefore, it is the high time for the Bangladesh Bar Council to frame Rules in accordance with the article 40(2)(t) with prior approval of the government to oversee the standard of the legal education being taught by the universities and colleges. In the absence of Rules,

it is not desirable to interfere with the internal management of the universities and colleges. Such conditions may be attached in accordance with article 27(1)(d) of P.O.46 of 1972.

In view of the discussions made above, our conspectus opinion is as under:

(a) A profession of law being founded on great traditions that it is not a business but a part of a scheme of a welfare State where all segments of public reposed faith in them to protect their fundamental rights, they are answerable to the social conscience of the society and have moderate obligation towards them who are unable to protect their interest.

(b) Lawyers are duty bound to contribute in building social order so that the fruits of the social economic justice reach to the poor segment of people of

the country, and therefore, a lawyer owes a duty to be fair not only to his client but also to the society.

(c) Bangladesh Bar Council is rendering public utility service and law cast on this Body in the national hope that the members of legal profession will serve society and keep the cannons of ethics defeating an honourable order.

(d) The Bar Council shall frame Rules with approval of the government to monitor the standard of legal education to be observed by universities and law colleges in Bangladesh and the inspection of the universities and colleges for that purpose in accordance with article 40(2)(t) of P.O.46 of 1972.

(e) The Bar Council shall publish a syllabus to be taught by the

universities and law colleges compulsorily which will award LLB honours and pass course degree certificates and that no person shall be allowed to be enrolled as an advocate unless he/she obtains a graduation certificate on law on those subjects in accordance with article 27(1)(i) and (d) of P.O. 46 of 1972.

(f) The Bar Council has exclusive power to recognize a decree in law obtained by any person from any university or college and it has power to curtail/exonerate the power to practice of any person either in the district courts or in the High Court Division.

(g) No private university shall issue Bachelor of Law degree unless such person undergoes four years education in law course and this direction shall

have prospective effect. No public or private university shall admit students in bachelor of law course more than 50 (fifty) students in a semester.

(h) The Bar Council has power not to recognize any degree in respect of any student for being enrolled as an advocate who has not studied four years horours course in law along with other subjects in any private university.

(i) No public or private university or law college shall issue any law degree certificate to a student which does not have sufficient number of teachers to teach the law subject, as may be prescribed by the Bangladesh Bar Council.

(j) The Bar Council may limit/increase the age limit of a person to be enrolled as an advocate either in the district courts or the High Court Division by framing rules.

(k) Rule 65A of the Bangladesh legal practitioners and Bar Council Rules,

1972 intravires the constitution and P.O. 46 of 1972.

(l) The Bar Council shall complete the enrolment process of the applicants to be enrolled as advocates in the district courts each calendar year.

Civil Petition Nos.2761, 2762, 2763, 2764, 2777, 2778, 2779, 2498 of 2016 are dismissed and Civil Petition Nos. 2880, 2873, 3016, 3570 and 3577 of 2016 are disposed of in the light of the above observations. The penalty imposed upon Asma Tamken and Dr. Md. Khaled are hereby expunged.

C.J.

J.

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J.

***The* 8th February, 2017.**

Md. Mahbub Hossain.

APPROVED FOR REPORTING