CASE NO.:
Writ Petition (civil) 4 of 2005

PETITIONER:
Udai Singh Dagar & Ors

RESPONDENT:
Union of India & Ors

DATE OF JUDGMENT: 15/05/2007

BENCH:
S.B. Sinha & Markandey Katju

JUDGMENT:
J U D G M E N T

W I T H
CIVIL APPEAL NO.2537 OF 2007
[Arising out of SLP (Civil) No. 11880 of 2006]

S.B. SINHA, J :

1. Leave granted in S.L.P.

2. Constitutionality and/ or applicability of the provisions of Section 30 of the Indian Veterinary Council Act, 1984 (for short "the Central Act") is in question herein.

3. Before, however, embarking on the questions involved, we may at the outset notice that the Civil Appeal arising out of S.L.P.(Civil) No. 11880 of 2006 arises out of a judgment and order dated 26.04.2006 passed by a Division Bench of the High Court of Judicature at Bombay in Civil Writ Petition No. 4619 of 1997 whereby and whereunder the writ petition filed by the appellant herein in regard to the applicability of Section 30 of the Central Act was dismissed. In the said writ petition, the following prayers were made:

(a) the declaration that the non-graduate Veterinary Practitioners who are registered under the Maharashtra Veterinary Practitioners Act, 1971 (for short to be referred as "the State Veterinary Act") are eligible to practice Veterinary medicine in the same manner and on such conditions as they were prior to coming into force of the Indian Veterinary Councils Act, 1984 ("Central Veterinary Act" for short) in the State of Maharashtra;

(b) to declare that non-graduate Veterinary Practitioners who are eligible to be registered under the State Veterinary Act will be permitted to practice Veterinary medicine in the same manner and on such conditions as they were prior to the coming into force of the Central Veterinary Act in the State of Maharashtra; and

(c) for directions to renew the registration of non-graduate Veterinary Practitioners in the register maintained by the State Council under the State Veterinary Act til the coming into force of the Central Veterinary Act.

4. The Writ Petition under Article 32 of the Constitution of India has been filed by the petitioners representing similarly placed veterinary practitioners from several States and Union Territories of India against the Union of India as also the concerned States praying inter alia for the following reliefs:

"a) issue an appropriate writ revoking and declaring null and void the impugned Section 30 of the Indian Veterinary Council Act, 1984 and
b) issue an appropriate writ revoking and declaring null and void Rule No. 37/45 of Indian Veterinary Practitioners Regulation, 1992.
*** *** ***
l) issue a writ of mandamus/ any other appropriate writ, order or directions restraining the Respondents from acting/ giving effect to the provisions of Section 30 of the Indian Veterinary Council Act, 1984 and Rule No. 37/45 of Indian Veterinary Practitioners Regulation, 1992 and the above notifications mentioned in prayer clause (c) to (k) above."

In the writ petition, prayers have also been made for revoking and declaring notifications issued by the respective State Governments in terms of Section 30 of the Central Act as void.

5. We will, however, record the facts of the matter from Civil Appeal arising out of SLP (C) No. 11880 of 2006.

Appellant is an Association registered under the Trade Unions Act. It purports to represent the Veterinary Practitioners of the State of Maharashtra. The subject of legislation was a State subject. The States of Haryana, Bihar, Orissa, Himachal Pradesh and Rajasthan, however, adopted a resolution purported to be in terms of Clause (1) of Article 252 of the Constitution of India requesting the Union of India to make a parliamentary legislation to the effect that the matter may be regulated in those States by Parliamentary Act. Pursuant to or in furtherance of the said resolution, Parliament enacted the Central Act being Act No. 52 of 1984. It came into force with effect from 18th August, 1984. It was enacted with a view to regulate veterinary practice and to provide, for that purpose, for the establishment of a Veterinary Council of India and State Veterinary Councils and the maintenance of registers of the veterinary practitioners and for matters connected therewith.

6. We may hereafter notice some of the provisions of the Central Act.

7. Sections 2(e), 2(f) and 2(g) of the Central Act read as under:

"(e) "recognised veterinary qualification" means any of the veterinary qualifications included in the First Schedule or the Second Schedule;
(f) "register" means a register maintained under this Act;
(g) "registered veterinary practitioner" means a person whose name is for the time being duly registered in a register;"

8. Section 3 provides for the establishment of the Central Council and the State Councils.

9. Sections 15, 22, 23, 30 and 67 of the Central Act read as under:

"15. (1) The veterinary qualifications granted by any veterinary institution in India which are

included in the First Schedule shall be recognised veterinary qualifications for the purposes of this Act,

(2) Any veterinary institution in India, which grants a veterinary qualification not included in the First Schedule may apply to the Central Government to have such qualification recognised and the Central Government, after consulting the Council, may, by notification in the Official Gazette amend the First Schedule so as to include such qualification therein and any such notification may also direct that an entry shall be made in the last column of the First Schedule against such veterinary qualification declaring that it shall be a recognised veterinary qualification only when granted after a specified date.

22. Minimum standards of veterinary education.--

(1) The Council may, by regulations, specify the minimum standards of veterinary education required for granting recognised veterinary qualifications by veterinary institutions in those States to which this Act extends.

(2) Copies of the draft regulations and of all subsequent amendments thereof shall be furnished by the Council to the State Government concerned and the Council shall, before submitting such regulations or any amendments thereof, as the case may be, to the Central Government for approval, take into consideration the comments of the State Government received within three months from the furnishing of the copies as aforesaid.

(3) The Central Government may, before approving such regulations or any amendments thereof, consult the Indian Council of Agricultural Research.

(4) The Committee constituted under section 12 shall from lime to time report to the Council on the efficacy of the regulations and may recommend to the Council such amendments thereof as it may think fit.

23. Indian veterinary practitioners register.--

(1) The Council shall, as soon as may be after the commencement of this Act, cause to be maintained in such form and in such manner as may be provided by regulations a register of veterinary practitioners to be known as the Indian veterinary practitioners register which shall contain the names of all persons who possess the recognised veterinary qualifications and who are for the time being enrolled on a State veterinary register of the State to which this Act extends.

(2) It shall be the duty of the Secretary of the Council to keep the Indian veterinary practitioners register in accordance with the provisions of this Act and of any orders made by the Council, and from time to time to revise the register and publish it in the Gazette of India or in such other manner as may be provided by regulations.

(3) Such register shall be deemed to be a public document within the meaning of the Indian Evidence Act, 1872, and may be proved by a copy published in the Gazette of India.

(4) Each State Veterinary Council shall furnish to the Council six printed copies of the State

veterinary register as soon as may be after the 1st day of April of each year and each State Veterinary Council shall inform the Council without delay of all additions, and other amendments in the State veterinary register made from time to time.

30. Right of persons who are enrolled on the Indian veterinary practitioners register.--
No person, other than a registered veterinary practitioner, shall--
(a) hold office as veterinary physician or surgeon or any other like office (by whatever name called) in Government or in any institution maintained by a local or other authority;
(b) practise veterinary medicine in any State :
Provided that the State Government may, by order, permit a person holding a diploma or certificate of veterinary supervisor, stockman or stock assistant (by whatever name called) issued by the Directorate of Animal Husbandry (by whatever name called) of any State or any veterinary institution in India, to render under the supervision and direction of a registered veterinary practitioner, minor veterinary services.
Explanation.-- "Minor veterinary services" means the rendering of preliminary veterinary aid, like, vaccination, castration, and dressing of wounds, and such other types of preliminary aid or the treatment of such ailments as the State Government may, by notification in the Official Gazette, specify in this behalf;
(c) be entitled to sign or authenticate a veterinary health certificate or any other certificate required by any law to be signed or authenticated by duly qualified veterinary practitioner;
(d) be entitled to give evidence at any inquest or in any court of law as an expert under section 45 of the Indian Evidence Act, 1872, on any matter relating to veterinary medicine.
67. Repeal and saving.--
As from the commencement of this Act in any State, every other Act relating to any matter contained in this Act and in force in that State shall, to the extent to which that Act or any provision contained therein corresponds, or is repugnant, to this Act or any provision contained in this Act, stand repealed and the provisions of section 6 of the General Clauses Act, 1897, shall apply to such repeal as if such other Act were a Central Act."

10. The State of Bombay enacted Bombay Veterinary Practitioners Act, 1953 (for short "the 1953 Act"). The matter relating to veterinary practice in the then State of Bombay as also the requisition in the service of the State appointments for the purpose of veterinary duties was regulated. The 1953 Act provided for maintenance of the register of the veterinary practitioners. Sections 14, 19, 24 and 25, which are relevant for our purpose, read as under:
"14 (1) Subject to the provisions of this Act, every person shall, if he holds any of the qualifications included in the Schedule be entitled on application to be registered, on payment of a fee of Rs. 15 and on giving evidence to the satisfaction of the Registration Officer or the Registrar, as the case

may be, of his possession of a qualification entitling him for registration.

(2) The State Government may, after consulting the Registration Officer or the Council, as the case may be, permit the registration of any person who has been actually conducting veterinary practice in the State of Bombay since a date prior to the 1st day of January 1944, notwithstanding the fact that he may not be possessing qualifications entitling him to have his name entered in the register.

(3) Every person for the time being registered with the veterinary Council of any other State in India under any law for the registration of veterinary practitioners in force in such State shall, if reciprocity of registration has been arranged with such Council, be entitled to be registered under this Act, on making an application in that behalf, on payment of a fee of Rs. 15 and on his informing the Registration Officer or the Registrar, as the case may be, of the date of his registration under the said law and on giving a correct description of his qualifications with the dates on which they were granted.

(4) Any person who has been convicted of a cognizable offence as defined in the Code of Criminal Procedure, 1898, or who, being or having been subject to military law has been convicted under the Army Act or under the Indian Army Act, 1911 or under the Army Act, 1950, of an offence which is also a cognizable offence as so defined and any person who after due enquiry has been held guilty by the Council of infamous conduct in any professional respect may be refused registration under this Act.

19. No person shall, except with the sanction of the State Government, hold any appointment for the performance of veterinary duties in any veterinary dispensary, hospital or infirmary which is not supported entirely by voluntary contributions or which belongs to a local authority or in any public establishment, body or institution, unless he is registered under this Act.

24 Notwithstanding anything contained in any law for the time being in force, no person other than a person registered under Part IV of this Act \026

(a) shall sign or authenticate any veterinary or physical fitness certificate required by any law or rule to be signed or authenticated by a duly qualified veterinary practitioner, or

(b) shall be qualified to give evidence as an expert under section 45 of the Indian Evidence Act, 1872, or any matter relating to veterinary science.

25: No person shall add to his name any title, description, letters or abbreviations which imply that he holds a degree, diploma, licence or certificate as his qualification to practice any

system of veterinary science unless \026

(a) he actually holds such degree, diploma, licence or certificate; and
(b) such degree, diploma, licence or certificate is specified in the Schedule or his recognized by law for the time being in force in India or in any part thereof or has been conferred, granted or issued by an authority empowered or recognized as competent by the State Government to confer, grant, or issue such degree, diploma, licence or certificate."

11. The State of Bombay was bifurcated into the State of Maharashtra and the State of Gujarat with effect from 1st May, 1960.

12. The State of Maharashtra enacted the Maharashtra Veterinary Practitioners Act, 1971 (for short "the 1971 Act"). The said Act came into force from 15th November, 1971. Section 15 of the 1971 Act mandates the State to cause a register to be prepared for veterinary practitioners of the State and maintained in such form as may be directed. The register is to contain the name, address and qualification of every person registered thereunder together with the date on which such qualification was acquired.

13. Sub-sections (1) and (2) of Section 18 of the 1971 Act read as under:

"18 (1) Subject to the provisions of this Act, every person shall, if he holds any of the qualifications included in the Schedule, be entitled on application to be registered, on payment of such fee as may be provided by regulations and on giving evidence to the satisfaction of the Registration Officer or the Registrar as the case may be, of his possession of a qualification entitling him for registration.
(2) The State Government may, after consulting the Registration Officer or the Council, as the case may be, permit the registration of any person who has been actually conducting veterinary practice in the State of Maharashtra on such conditions as may be provided for by regulations made for this purpose, notwithstanding the fact that he may not be possessing qualifications entitling him to have his name entered in the register."

14. Section 23 of the 1971 Act contained an identical provision which is in pari materia with the provisions of the 1953 Act. Section 26 empowers the Council to call for information and attend examination. Section 33 provided for control in the following terms:

"33. If it shall appear to the State Government on the report of the Council or otherwise, that the course of study and examinations prescribed by any of the institutions specified in column 1 of the Schedule conferring the qualifications described in column 2 of that Schedule with their abbreviations specified in column 3 thereof are not such as to secure the possession by persons obtaining such qualifications of the requisite knowledge and skill for the efficient practice of their profession, or if it shall appear to the State Government, on the report of the Council or otherwise, that the course of study and examinations prescribed by any institution conferring a qualification not entered in

the Schedule are such as to secure the possession by persons obtaining such qualification of the requisite knowledge and skill for the efficient practice of their profession, it shall be lawful for the State Government from time to time by notification in the Official Gazette, to direct that the possession of any qualification entered in the Schedule shall not entitle any person to registration under this Act or to direct that the possession of any qualification not entered in the Schedule shall, subject to the provisions of this Act, entitle a person to be so registered as the case may be, and the Schedule shall thereupon be deemed for all purposes be altered accordingly."

15. Section 37 of the 1971 Act provides for a rule making power whereas Section 38 thereof provides for regulation making power. In terms of the provisions of Sections 18, 26 and 33 'recognised veterinary qualifications' were laid down in the schedule appended to the 1971 Act, item No. 20 and 24 whereof read as under:

Serial No.	Institutions (1)	Qualifications (2)	Abbreviation for registration (3)
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***			
***			
***			
***			
***			
***			
***			
***			
***			
***			
20.	Bombay Veterinary College	(1) Graduate of Bengal Veterinary College (2) Graduate in Veterinary Science	G.B.V.C.
***			
***			
***			
***			
***			
***			
***			
***			
24.	Nagpur Veterinary College	Two-year Diploma Certificate	

\005"

16. The State of Maharashtra in exercise of its power conferred upon it under Sub-section (1) of Section 38 read with Sub-section (2) of Section 18 of the 1971 Act made regulations known as "The Maharashtra Veterinary Practitioners (Conditions for registration of persons actually conducting veterinary practice) Regulations 1981" (for short "the 1981 Regulations"). Regulation 3 reads as under:

"3 (I) The conditions on which the registration of any person under sub-section (2) of section 18 of the Act may be permitted shall be as follows, namely:

(a) the said person shall possess a certificate of completion of practical and theoretical training course:-

(i) prescribed by any Government functioning in the Bombay area. Hyderabad area of Vidarbha region before the formation of the State of Maharashtra and who is actually conducting practice in the State of Maharashtra, since then: or

(ii) Prescribed or recognized by the Government of Maharashtra from time to time, after the formation of the State of Maharashtra and who is actually conducting practice in the State of Maharashtra, since then, for eligibility for appointment to a post of Livestock Supervisor, Stockmen, Stockmen-cum-Health Assistant or Veterinary Assistant: or

(b) Shall have at the time of registration, practical experience for a period of not less than ten years in compounding and dispensing under any registered veterinary practitioners possessing a degree in veterinary science of a statutory University."

17. Similar legislations were existing in many other States.

18. Although the Central Act came into force in 1984, several States did not adopt the same. On or from 1997, the Central Act was made applicable to the States of Haryana, Bihar, Orissa, Himachal Pradesh and Rajasthan and all Union Territories.

19. The State of Maharashtra issued a notification dated 26th August, 1997 in terms of Section 30 of the Central Act specifying minor veterinary services to be rendered by the Veterinary Science Certificate or Diploma holders in the Government Service or in Semi-Government organizations.

20. The contention of the writ petitions inter alia is that having regard to the fact that the veterinary practitioners who were possessing 'diploma in veterinary science' or 'certificate in veterinary science' which were recognized by the State of Maharahstra and some other States they could not have been divested of their right to practice by reason of the Central Act on the premise that they having the requisite qualification had a fundamental right in terms of Article 19(1)(g) of the Constitution to carry on veterinary practice or continue to be in the service of the State and any restriction placed on such rights should not only be a reasonable one but also in public interest. The Central Act, insofar as it purports to take away such right to

practice or to be continued in service, thus, imposes an unreasonable restriction interfering with their fundamental right inasmuch as the degree holders alone cannot serve the rural areas. Our attention in this behalf has also been drawn to the letters addressed by some Members of the Parliament to the concerned Ministries stating that in the event the services of the petitioners are dispensed with, the same would not be in public interest.

21. The second leaf of argument both in the writ petition as also in the civil appeal arising out of the SLP is that having regard to the provisions of Section 67 of the Central Act, the provisions of Section 6 of the General Clauses Act having been made applicable, the rights and liabilities accrued prior to coming into force of the Central Act must be held to be saved.

22. The contention of the Union of India and the respective State Governments, on the other hand, is that keeping in view the number of veterinary colleges which have been opened in the states, the services of a large number of degree holders can be utilized therefor and in fact thousands of such degree holders are still unemployed. In any event, the State can, for maintaining better standard in profession, lay down qualification which need not satisfy the test of public importance particularly in view of the fact that the Parliament or the States by making suitable enactments can always lay down the qualifications for carrying on any profession.

23. Section 6 of the General Clauses Act, it was urged, would have no application in a situation of this nature inasmuch as the very fact that the Central Act intended to bring about a new situation, the same would ipso facto be a pointer to the fact that both the Central Act and the State Act cannot stand together.

24. The Division Bench of the Bombay High Court, by reason of the impugned judgment, has upheld the contention of the respondents herein. It, however, opined that relief (c) prayed for by the writ petitioners before it, in view of the notification issued on 1st August, 1997 in terms whereof the Central Act had been introduced in the State of Maharashtra with effect from the first day of August, 1997, did not survive. It furthermore held that in view of the provisions of Sub-section (1) of Section 23 of the Central Act as existing veterinary practitioners whose names appeared in the register part I maintained by the State Veterinary Council are duly protected, relief (a) as reproduced hereinbefore would be covered thereby.

25. Before us Mr. R.F. Nariman, learned senior counsel advanced arguments on behalf of the appellants in Civil Appeal arising out of SLP (C) No. 11880 of 2006 whereas Mr. U.U. Lalit, learned senior counsel appeared on behalf of the writ petitioners in the writ petition.

26. The submission of the learned counsel is that Section 67 of the Central Act must be read in two parts. By reason of the first part, it is conceded that the State Act stands repealed, but it is contended that once the first part of Section 67 comes into force, by reason of the second part, Section 6 of the General Clauses Act is given effect to. In terms of Clauses (b) and (c) of Section 6 of the General Clauses Act, not only the previous operation of any enactment so repealed or anything duly done or suffered thereunder but also any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed would stand protected. In that view of the matter, those diploma holders who were on the register maintained by the State are entitled to continue to practice. Our attention in this behalf has also been drawn to the fact that prior to 11th August, 1993, the Maharashtra Veterinary Council is said to have imposed a condition de'hors the 1971 Act refusing to register certificate holders unless they were appointed in government or semi-government institutions and the validity thereof was pending consideration in writ petition No. 3377 of 1993 before the Bombay High Court and as only by a judgment dated 15.01.2003, the impugned condition has been set aside as a result whereof 25,000 certificate holders who could not get themselves also became entitled to the reliefs therefor.

27. The submission of the learned Solicitor General appearing on behalf of the Union of India, the Additional Solicitor General appearing on behalf of the Veterinary Council of India and Mr. Shekhar Naphade, learned senior counsel appearing on behalf of the State of Maharashtra, on the other hand, is that Section 6 of the General Clauses Act would be attracted only when no different intention appears in the new Act. It was pointed out that there exists a distinction between a simple repeal and repeal of an Act substituted by another. If the new Act provides for something which is wholly different from the purview of the repealed act, evidently, a different intention would appear.

28. Article 19 of the Constitution of India provides for protection of certain rights regarding freedom of speech, etc. Sub-clause (g) of clause (1) of Article 19 of the Constitution of India confers a fundamental right to protect any profession or to carry on any occupation, trade or business. Clause (6) of Article 19 reads as under:

"19. Protection of certain rights regarding freedom of speech, etc. \026
(1) ****
(2) ****
(3) ****
(4) ****
(5) ****
(6) Nothing in sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause, and, in particular, nothing in the said sub-clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to, -

(i) the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business, or

(ii) the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise."

29. The above provision is in two parts. It empowers Parliament and the State Legislature to impose reasonable restrictions on the exercise of the right conferred by the sub-clause (g) of Clause (1) of Article 19 of the Constitution of India in the interest of the general public. The second part of the said provision provides that in particular nothing therein shall affect the operation of an existing law insofar as it relates to or prevents the State from making any law inter alia relating to the profession or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business. By reason of a statute - law, therefore, undoubtedly, qualifications can be laid down inter alia for practising any profession or carry on any occupation.

30. Such qualifications had been laid down by the State Act. If by reason of the Central Act, a higher qualification has been laid down, the same, in our opinion, would prima facie be presumed to have been enacted in the interest of the general public.

31. We may notice that several States did not make any legislation covering the field like the State of Maharashtra. Some States, however, did.

32. Any profession which deals with the life of a human being or an animal may be regulated or controlled. Essential qualifications can be laid down for the purpose of entry in the State services. In the State of Maharashtra, rendition of veterinary service was primarily the responsibility of the Zilla Parishads and Panchayat Samities, as specified in Section 100 (1)(a) of the Maharashtra Zilla Parishads and Panchayat Samities Act, 1961.

"100. (1) (a) It shall be the duty of a Zilla Parishad so far as the district fund at its disposal will allow, to make reasonable provision within the District with respect to all or any of the subjects enumerated in the First Schedule as amended from time to time under sub-section (2) (in this Act referred to as "the District List") and to execute or maintain works or development schemes in the District relating to any such subjects."

33. Item No. 14 of the First Schedule and Item Nos. 9 and 10 of the Second Schedule appended to the said Act read as under:

"First Schedule

14. Veterinary aid (excluding District Veterinary Hospitals but including veterinary dispensaries, veterinary aid centres and village veterinary chests).

Second Schedule

(9) Village Veterinary Chests.
(10) Veterinary Aid Centres."

34. It is somewhat interesting to note that even in terms of the 1953 Act, there was no provision for allowing a diploma holder to practice.

35. The validity of a statute would ordinarily be tested keeping in view the social conditions as were existing on the date of coming into force thereof. It is one thing to say that a law causes hardship to a section of the people but it is another thing to say that the same would be unconstitutional. It may be that with the passage of time, a statute which was intra vires on the date of coming into force of the Act may be considered to be ultra vires. However, for that there should be sufficient materials which are either brought on record or of which the court can take judicial notice. The difficulty would arise where the materials brought on record may provide for divergent views. In such a situation, the court will not ordinarily exercise its power of judicial review over legislation. The facts on the basis whereof the Legislature of a State or the Parliament had chosen to rely upon should be the guiding factor. The Legislature of Executive can have several choices or options to deal with a matter, and courts cannot say which choice or option should have been preferred.

36. Before us, the Union of India as also the various States including the State of Maharashtra, have placed certain facts. According to the State Governments, despite coming into force of the Central Act they had not opted therefor, immediately as they had to make a detailed study of the applicability thereof in the fact situation obtaining in that particular State. We may by way of example consider the material placed before us by the State of Maharashtra, from a perusal whereof it appears that it is true that when qualified graduate veterinary doctors were not available in sufficient numbers, service of unqualified/diploma holders were utilized. But today we are living in a changed scenario. About 260 post graduates are produced every year and about 2000 qualified graduates are found to be without the job. It has been pointed out that prior to 1970 only 1 Veterinary Graduate

was working in each Community Development Block and around 10-15 veterinary Graduates in each district, whereas this situation has changed drastically in 2005.

37. An attempt has been made in the counter-affidavit to demonstrate that due to availability of qualified graduates, duties and responsibilities of diploma holders were curtailed and shifted towards the degree holders. Considering the worldwide trend having regard to international conventions and covenants, the plea of the petitioners to continue old practices, cannot be sustained.

38. Similar is the position in the State of Rajasthan as from its counter affidavit, it would appear that the number of veterinary doctors are sufficient to provide for the veterinary services in the State and many degree holders are still unemployed.

39. We, therefore, are of the opinion that even in the matter of laying down of qualification by a statute, the restriction imposed as envisaged under second part of Clause (6) of Article 19 of the Constitution of India must be construed being in consonance with the interest of the general public. The tests laid down, in our opinion, stand satisfied. We may, however, notice that Clause (6) of Article 19 of the Constitution of India stands on a higher footing vis-'-vis Clause (5) thereof. We say so in view of the celebrated decision of this Court in State of Madras v. V.G. Row [(1952) SCR 597] wherein it was stated:

"15. \005 It is important in this context to bear in mind that the test of reasonableness, wherever prescribed, should be applied to each individual statute impugned, and no abstract standard or general pattern, of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent 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 the judicial verdict. In evaluating such elusive factors and forming their own conception of what is reasonable, in all the circumstances of a given case, it is inevitable that the social philosophy and the scale of values of the Judges participating in the decision should play an important part, and the limit to their interference with legislative judgment in such cases can only be dictated by their sense of responsibility and self-restraint and the sobering reflection that the Constitution is meant not only for people of their way of thinking but for all, and that the majority of the elected representatives of the people have, in authorising the imposition of the restrictions, considered them to be reasonable."

40. The tests laid down therein, viz., the test of reasonableness as also general public interest, however, may not ipso facto apply in a case involving Clause (6) of Article 19 of the Constitution of India.

41. Here we may deal with the extent of judicial review permissible under Article 19(6). It was observed in Saghir Ahmad v. The State of U.P. and Ors., AIR 1954 SC 728 by Mukherjea, J. at p. 727 in the following terms: The new clause in Article 19(6) has no doubt been introduced with a view to provide that a State can create a monopoly in its own favour in respect of any trade or business; but the amendment does not make the establishment of such monopoly a reasonable restriction within the meaning of the first clause of

Article 19(6). The result of the amendment is that the State would not have to justify such action as reasonable at all in a court of law, and no objection could be taken to it on the ground that it is an infringement of the rights guaranteed under Article 19(1)(g) of the Constitution.

42. The validity of a law creating a State monopoly came into question in Akadasi Padhan v. State of Orissa [1963] Supp. 2 S.C.R. 691 wherein Gajendragadkar, J. observed:

"'A law relating to' a State monopoly cannot, in the context, include all the provisions contained in the said law whether they have direct relation with the creation of the monopoly or not. In our opinion, the said expression should be construed to mean the law relating to the monopoly in its absolutely essential features. If a law is passed creating a State monopoly, the Court should enquire what are the provisions of the said law which are basically and essentially necessary for creating the State monopoly. It is only those essential and basic provisions which are protected by the latter part of Article 19(6). If there are other provisions made by the Act which are subsidiary, incidental or helpful to the operation of the monopoly, they do not fall under the first part of Article 19(6).

... the amendment (First Amendment) clearly indicates that State monopoly in respect of any trade or business must be presumed to be reasonable and in the interests of general public, so far as Article 19(1)(g) is concerned."

43. The position of law has since been consistently reiterated in M/s. Orient Paper and Industries Ltd. and another etc. v. State of Orissa and others [AIR 1991 SC 672], State of Tamil Nadu and Ors. v. L. Abu Kavur Bai and Ors. [AIR 1984 SC 326], Tinsukhia Electric Supply Co. Ltd. v. State of Assam and others [(1989) 3 SCC 709], Utkal Contractors and Joinery (P) Ltd. and Ors. v. State of Orissa [AIR 1987 SC 2310], Rasbihari Panda and Ors. v. The State of Orissa [AIR 1969 SC 1081], Amritsar and Ors. v. State of Punjab and Ors. [AIR 1969 SC 1100], etc.

44. In Dr. Mukhtiar Chand and Others v. State of Punjab and Others [(1998) 7 SCC 579] this Court primarily dealt with the right to practice the medical profession as also the related question of right to well being of a person as being part of life. In exercise of the power under Rule 2(ee)(iii) of the Drugs and Cosmetics Rules, 1945 the State of Punjab had issued a Notification dated 29.10.1967 declaring all the Vaids/Hakims who had been registered under the East Punjab Ayurvedic and Unani Practitioners Act, 1949 and the Pepsu Ayurvedic and Unani Practitioners Act, 2008 BK and the Punjab Ayurvedic and Unani Practitioners Act, 1963 as persons practising modern System of Medicine for purposes of the Drugs Act. The aforementioned rule defined "Registered Medical Practitioner". A medical practitioner who was registered with the Board of Ayurvedic and Unani System of Medicines, Punjab, and was practising modern system of medicines was served with an order prohibiting him from keeping in his possession any allopathic drug for administration to patients and further issuing general direction to the chemists not to issue allopathic drugs to any patient on the prescription of the said doctor. The medical Practitioner in response to the action moved the Punjab & Haryana High Court and claimed that he was covered by the said notification and was entitled to prescribe allopathic medicine to his patients and store such drugs for their treatment. The High Court held the said notification ultra vires to the provisions of rule 2 (ee) (iii) of the Drugs Rules as also contrary to the provisions of Indian Medical Council Act, 1956 and dismissed the writ petition.

45. In that case, this Court has noticed a distinction between maintenance of a State register and a Central register. Therein this Court while

considering the provisions of Indian Medicine Central Council Act, 1970 observed:

"43\005For a person to be registered in the Central Register, Section 25 enjoins that the Registrar should be satisfied that the person concerned was eligible under that Act for such registration. Keeping this position in mind, if we read Section 17(3)(b), it becomes clear that the privileges which include the right to practise any system of medicine conferred by or under any law relating to registration of practitioners of Indian medicine for the time being in force in any State on a practitioner of Indian medicine enrolled on a State Register of Indian Medicine, are not affected by the prohibition contained in sub-section (2) of Section 17."

46. In regard to the applicability of Clause (6) of Article 19 of the Constitution of India, it was stated:

"48. The right to practise modern scientific medicine or Indian system of medicine cannot be based on the provisions of the Drugs Rules and declaration made thereunder by State Governments. Indeed, Ms Indira Jaising has also submitted that the right to practise a system of medicine is derived from the Act under which a medical practitioner is registered. But she has strenuously argued that the right which the holders of a degree in integrated courses of Indian medicine are claiming is to have their prescription of allopathic medicine honoured by a pharmacist or a chemist under the Pharmacy Act and the Drugs Act. This argument is too technical to be acceded to because prescribing a drug is a concomitant of the right to practise a system of medicine. Therefore, in a broader sense, the right to prescribe drugs of a system of medicine would be synonymous with the right to practise that system of medicine. In that sense, the right to prescribe an allopathic drug cannot be wholly divorced from the claim to practise allopathic medicine."

47. Such is not the case here.

48. Furthermore, the Central Act is flexible. It not only recognizes the degrees granted by the institutions recognized by it, it provides extension of grant of such recognition to other institutions also if they satisfy the tests. Undoubtedly, such a flexible situation has been created by reason of the Central Act only to meet the exigencies of the situations arising in future, if any.

49. It is not for this Court to arrive at a conclusive opinion that the rural areas continue to be heavily dependant on the certificate holders for providing essential veterinary services as was submitted on behalf of the petitioners. The State is presumed to know the needs of the citizens.

50. Our attention has been drawn to a Constitution Bench decision of this Court in Akadasi Padhan v. State of Orissa and Others [AIR 1963 SC 1047 : 1963 Supp (2) SCR 691] wherein two extreme positions were taken by the learned counsel for the parties. In the said decision, the court was dealing with the right of a State to create a State monopoly in the kendu leaves. Whereas the contention of the learned Attorney General was that creation of such a monopoly is not required to satisfy the test of reasonableness, the

contention of the counsel for the petitioners was that the court is entitled to consider the same. It was held that if a law is passed creating a State monopoly, the court should enquire as to what are the provisions of the said law which are basically and essentially necessary therefor and only essential and basic provisions are protected by the latter part of Clause (6) of Article 19 of the Constitution of India. It is not a case where the Central Act makes any provision which are subsidiary, incidental or helpful to the operation of the main provisions of the Act.

51. We have noticed hereinbefore, that it has been conceded before us and, in our opinion, rightly so, that the provisions contained in Section 30 of the Central Act constitute a reasonable restriction within the meaning of the first part of Article 19(6) of the Constitution of India and the fundamental rights under Article 19(1)(g) thereof.

52. If the legislative power of the Parliament vis-'-vis the State Government in this behalf is considered, a'fortiori the State will have the legislative competence to lay down the qualification therefor.

53. It is one thing to say that laying down such qualification or taking away the right of the practitioners to continue their practice is unconstitutional but it is another thing to say that the same cannot be given retrospective effect.

54. A statute does not operate retrospectively only because a person's right to continue in profession comes to an end. A person will have a right to enter into a profession and continue therewith provided he holds the requisite qualification. As and when a qualification is laid down by a law within the meaning of Sub-clause (g) of Clause (1) of Article 19 of the Constitution of India, the same would come into effect. In other words, it would act prospectively and, thus, not retrospectively, inasmuch as the practice he had already enjoyed is not taken away.

55. In Delhi Pradesh Registered Medical Practitioners v. Director of Health, Delhi Admn. Services and Others [(1997) 11 SCC 687], this Court rejected a similar contention to the effect that only because the practitioners got their names registered in the discipline of Ayurveda, they would have a right to practice in such discipline as registered medical practitioners, and the privileges which a registered practitioner has stood protected by sub-section (3) of Section 17 of the Indian Medicine Central Council Act, 1970 stating:

"5. We are, however, unable to accept such contention of Mr Mehta. Sub-section (3) of Section 17 of the Indian Medicine Central Council Act, 1970, in our view, only envisages that where before the enactment of the said Indian Medicine Central Act, 1970 on the basis of requisite qualification which was then recognised, a person got himself registered as medical practitioner in the disciplines contemplated under the said Act or in the absence of any requirement for registration such person had been practising for five years or intended to be registered and was also entitled to be registered, the right of such person to practise in the discipline concerned including the privileges of a registered medical practitioner stood protected even though such practitioner did not possess requisite qualification under the said Act of 1970. It may be indicated that such view of ours is reflected from the Objects and Reasons indicated for introducing sub-section (3) of Section 17 in the Act."

56. Noticing the objects and reasons of the legislation, it was held:

"As it is not the case of any of the writ petitioners that they had acquired the degree in between 1957 (sic 1967) and 1970 or on the date of enforcement of provisions of Section 17(2) of the said Act and got themselves registered or acquired right to be registered, there is no question of getting the protection under sub-section (3) of Section 17 of the said Act. It is to be stated here that there is also no challenge as to the validity of the said Central Act, 1970\005"

57. We may now consider the second limb of submissions, viz., whether the rights and privileges of the certificate holders are protected in terms of Section 67 of the Act.

58. The General Clauses Act, 1897 governs Parliamentary Acts. The subject matter of the legislation is a State legislation. The Central Government stepped in only because of the resolutions adopted by some State Governments at the outset and resolutions adopting the Central Government by other States at a later stage, viz., 1997. Section 6 of the General Clauses Act, therefore, was referred to in Section 67 of the Central Act creating a legal fiction as if both the Central Act and the State Act are enacted by the Parliament. In absence of such a legal fiction raised, the provisions of either the General Clauses Act, 1897 or the respective State General Clauses Act would have no application. It, therefore, does not create any right. It does not make Section 6 of the General Clauses Act ipso facto applicable. Section 6 of the General Clauses Act would be attracted but it would have no application if a different intention appears.

59. We have noticed the contention of the learned Senior Counsel appearing on behalf of the petitioners that there exists an inconsistency insofar as whereas under the Central Act only the degree holders are entitled to be enrolled in the register maintained by the Central Council; the State Act recognizes the diploma and certificate holders also.

60. Veterinary services in terms of the Central Act is in two parts (1) veterinary services and (2) minor veterinary services. What would be the minor veterinary services has been laid down by reason of a notification issued by the respective State Governments in exercise of their power under clause (b) of Section 30 of the Central Act. Once such a notification has been issued, indisputably, those who are not otherwise entitled to resort to veterinary practices within the meaning of the Central Act can be asked to perform the jobs of minor veterinary services.

61. A distinction exists between a repeal simpliciter and a repeal by an Act which is substituted by another Act.

62. This legal position operating in the field is clear from the proposition laid down by a Constitution Bench of this Court in State of Punjab v. Mohar Singh [(1955) 1 SCR 893] wherein the law has been laid down in the following terms:

"... Whenever there is a repeal of an enactment, the consequences laid down in Section 6 of the General Clauses Act will follow unless, as the section itself says, a different intention appears. In the case of a simple repeal there is scarcely any room for expression of a contrary opinion. But when the repeal is followed by fresh legislation on the same subject we would undoubtedly have to look to the provisions of the new Act, but only for the purpose of determining whether they indicate a different intention. The line of enquiry would be, not whether the new Act expressly keeps alive old rights and liabilities but whether it manifests an

intention to destroy them. We cannot therefore subscribe to the broad proposition that Section 6 of the General Clauses Act is ruled out when there is repeal of an enactment followed by a fresh legislation. Section 6 would be applicable in such cases also unless the new legislation manifests an intention incompatible with or contrary to the provisions of the section. Such incompatibility would have to be ascertained from a consideration of all the relevant provisions of the new law and the mere absence of a saving clause is by itself not material. It is in the light of these principles that we now proceed to examine the facts of the present case."

63. In Gammon India Ltd. v. Special Chief Secretary and Others [(2006) 3 SCC 354], this Court held:

"73. On critical analysis and scrutiny of all relevant cases and opinions of learned authors, the conclusion becomes inescapable that whenever there is a repeal of an enactment and simultaneous re-enactment, the re-enactment is to be considered as reaffirmation of the old law and provisions of the repealed Act which are thus re-enacted continue in force uninterruptedly unless the re-enacted enactment manifests an intention incompatible with or contrary to the provisions of the repealed Act. Such incompatibility will have to be ascertained from a consideration of the relevant provisions of the re-enacted enactment and the mere absence of the saving clause is, by itself, not material for consideration of all the relevant provisions of the new enactment. In other words, a clear legislative intention of the re-enacted enactment has to be inferred and gathered whether it intended to preserve all the rights and liabilities of a repealed statute intact or modify or to obliterate them altogether.
74. On the touchstone of the principles of law culled out from the judgments of various courts applied to the facts of these cases lead to a definite conclusion that the Assistant Commissioner (Commercial Taxes), Warangal Division was fully justified in initiating and completing the proceedings under the A.P. GST Act even after it is repealed."

64. Yet again in India Tobacco Co. Ltd. v. Commercial Tax Officer, Bhavanipore and Others [(1975) 3 SCC 512], this Court held:

"16. It is now well-settled that repeal connotes abrogation or obliteration of one statute by another, from the statute book as completely as if it had never been passed; when an Act is repealed, it must be considered (except as to transactions past and closed) as if it had never existed. (Per Tindal, C.J., in Kay v. Goodwin and Lord Tenterdon in Surtees v. Ellison cited with approval in State of Orissa v. M.A. Tulloch & Co.).
17. Repeal is not a matter of mere form but one of substance, depending upon the intention of the legislature. If the intention indicated expressly or by necessary implication in the subsequent statute was to abrogate or wipe off the former enactment,

wholly or in part, then it would be a case of total or pro tanto repeal. If the intention was merely to modify the former enactment by engrafting an exception or granting an exemption, or by super-adding conditions, or by restricting, intercepting or suspending its operation, such modification would not amount to a repeal (see Craies on Statute Law, 7th Edn. pp. 349, 353, 373, 374 and 375; Maxwells Interpretation of Statutes, 11th Edn. pp. 164, 390 based on Mount v. Taylor; Southerlands Statutory Construction 3rd Edn. Vol. I, para 2014 and 2022, pp. 468 and 490). Broadly speaking, the principal object of a repealing and amending Act is to excise dead matter, prune off superfluities and reject clearly inconsistent enactments see Mohinder Singh v. Harbhajan Kaur."

65. The legal position as to where there is a repeal of an enactment and simultaneously re-enactment whether the re-enacted enactment manifests an intention incompatible with or contrary to the provisions of the repeal statute has to be ascertained upon consideration of all the relevant provisions of the re-enacted enactment. This is no longer res integra.

66. Mr. Nariman, however, would submit that in terms of Section 6(1)(c) of the General Clauses Act which corresponds to Section 17(1)(c) of the English Interpretation Act, 1978 not only a vested or accrued right but also an inchoate right is protected. Strong reliance in this behalf has been placed on a decision of the Court of Appeal on Chief Adjudication Officer and another v. Maguire [1999 (2) ALL ER 859], where it is stated:

"The relevant overpayment there had been made before the legislation changed but the fact of such overpayment was not discovered until afterwards. The Secretary of State sought to contend that s.53 was retrospective. In holding not, the House of Lords decided rather that s.119 could still be operated to effect recovery (albeit with greater difficulty for the Secretary of State) in respect of pre-repeal overpayments. Having cited s.16(1)(c) (of Interpretation Act 1978.) Lord Woolf said this:
"Inchoate rights and obligations and liabilities are covered by (c). This was established by Free Lanka Insurance Co Ltd v Ranasinghe [1964] AC 541. In that case the Privy Council had no difficulty in construing the Ceylon Interpretation Ordinance 1900 as including an inchoate or contingent right and the same approach should be adopted to the interpretation of 'right,' 'obligation,' or 'liability' in s.16 of the Act of 1978. The section clearly contemplates that there will be situations where an investigation, legal proceeding or remedy may have to be instituted before the right or liability can be enforced and this supports this approach."

67. Whether such a right is protected or not must be considered having regard to the statute in question. If a right has crystallized before the repealing Act comes into force, by reason of repeal of the earlier statute indisputably the right crystallized cannot be taken away.

68. Section 17(1) of the Interpretation Act, 1978 provided that where an Act repeals a previous enactment and substitutes new provisions for the enactment repealed, the repealed enactment remains in force until the substituted provisions come into force.

69. We are not beset with such a situation in the instant case. The right of

the petitioners to practise in the field of veterinary practice has expressly been taken away. When such a right has been taken away upon laying down an essential qualification therefor which the petitioners admittedly do not possess, the right of the petitioners to continue to practice despite the fact that they do not fulfill the criteria laid down under the Parliamentary Act or the Central Act would not survive.

70. The expression "unless a different intention appears" contained in Section 6 of the General Clauses Act, thus, in this case, would be clearly attracted. A right whether inchoate or accrued or acquired right can be held to be protected provided the right survives. If the right itself does not survive and either expressly or by necessary implication it stands abrogated, the question of applicability of Section 6 of the General Clauses Act would not arese at all. [See Bansidhar and Others v. State of Rajasthan, (1989) 2 SCC 557 and Thyssen Stahlunion Gmbh v. Steel Authority of India Ltd., (1999) 9 SCC 334]

71. For the reasons aforementioned, we respectfully agree with the view taken by the High Court.

72. The submission of Mr. Lalit that Parliament while enacting other laws laying down the qualifications for practice in some other profession allowed the practitioners with lesser qualification to continue is not of much consequence. Parliament in its wisdom while enacting some other statutes might have done so. But it may be that in a case of this nature where with the passage of time new diseases have been discovered and new techniques and tools are to be put in place for treating the animals (even wild animals), a higher qualification laid down for combating the current problem cannot per se be held to be unreasonable only because persons with lesser qualifications are not allowed to continue to practice or enter into the services of the government or semi-government organizations.

73. A faint submission has been made that whereas Section 19 of the 1953 Act or Section 23 of the 1971 Act provided for a mandatory obligation on the part of the practitioners to get themselves registered so as to enable them to obtain appointment in the services of the State or other local authorities or public corporations, no such restriction was prescribed for general medical practitioners.

74. On the first flush, the submission appears to be attractive. The liability of a person to get himself registered on the State register, in our opinion, is imperative so as to enable the State to control the profession as such. We have seen hereinbefore that the Maharashtra Zilla Parishads and Panchayat Samities Act, 1961 confers the responsibility of providing veterinary services on the Zilla Parishads and Panchayat Samities. Nothing has been shown to us that any person could start practice in veterinary services without getting himself registered. Hence, in our opinion, the answer to the said question appears to be in the negative inasmuch as a legislative act must be read with the regulations framed. A subordinate legislation, as is well known, when validly framed, becomes a part of the Act.

75. Regulation 3 provides for the mode and manner in which registration of a medical practitioner has to be carried out. The 1973 Act was enacted for registration of veterinary practitioners. Section 23 must be read in that context. The Act also does not provide for carrying on any profession as such. It is difficult to assume that practice in veterinary service would be wholly unregulated despite the preamble of the Act.

76. Regulation 3 encompasses within its fold both the categories, viz., practitioners as also the employees.

77. The necessity to maintain a register cannot be minimized unless the name of a person is placed on the register. It may not be possible for the State or even the Veterinary Council to keep a watch on the performance of the said persons and in particular when a complaint is made against him. Only when a person’s name is placed on the register, the question of striking

off his name therefrom in the event of commission of a professional or other misconduct would arise. A person who is in service, in the event of his committing any misconduct, may also be held to be subject to disciplinary action.

78. For the aforementioned purpose, we are of the opinion that the statute being vague, a purposive construction thereto must be given.

79. In Francis Bennion's Statutory Interpretation, purposive construction has been described in the following manner:

"A purposive construction of an enactment is one which gives effect to the legislative purpose by\027
(a) following the literal meaning of the enactment where that meaning is in accordance with the legislative purpose (in this Code called a purposive-and-literal construction), or
(b) applying a strained meaning where the literal meaning is not in accordance with the legislative purpose (in the Code called a purposive-and-strained construction)."

[See also Bombay Dyeing and Mfg. Co. Ltd. v. Bombay Environmental Action Group and Ors., (2006) 3 SCC 434 and National Insurance Co. Ltd. v. Laxmi Narain Dhut, 2007 (4) SCALE 36]

80. We cannot also accept the submission of Mr. Nariman that, as for certain reasons with which we are not at present concerned, a large number of certificate holders could not file application for getting themselves registered, they have derived an accrued right to have their names entered in the register. For the purpose of registration, the conditions laid down under Regulation 3 were to be fulfilled. A person, thus, is not entitled to be registered by the State Council or the Central Council only because he holds an educational qualification. Several other factors are required to be taken into consideration therefor. The right to practice or right to be in service or right to obtain an appointment in government or semi-government organization would, thus, be dependant upon a person's name being registered therefor in the State or Central register, as the case may be. So long their names are not on the register, the question of their acquiring any vested or accrued right does not arise. In a case of this nature, the court cannot confer a right to practice on the certificate holders despite the fact that their names do not find place in the register maintained by the State Council or the Central Council.

81. Despite our aforementioned findings, we are of the opinion that those who are in service of the State or the semi-government or local self government organizations must be held to have a right to continue in service. The employees of the State enjoy a status. A person who enjoys a status can be deprived therefrom only in accordance with law having regard to the nature of right conferred on him under Article 311 of the Constitution of India. The law in this behalf, in our opinion, is clear. Their nature of duty may change but they would be otherwise entitled to continue in service. The State of Maharashtra or for that matter even the other States have issued notification (s) in terms of clause (b) of Section 30 of the Central Act. Minor veterinary services, therefore, having been specified in terms of the said notification, those certificate holders who are in the services of the State or the other semi-government organizations are entitled to continue in service, subject of course to, carrying out their duties strictly in terms of the notification issued by the State under clause (b) of Section 30 of the Central Act. In the event, any State has not issued such a notification, they may do so.

82. For the reasons aforementioned, the writ petition and the civil appeal are dismissed, subject to the aforementioned observations and directions. No costs.