

“NEET IS IN NEED, INDEED – TAMIL NADU”**By - R.Vigneshwaran**

*“If we desire respect for the law,
We must first make the law respectable”*

- Louis D. Brandeis

ABSTRACT

The Doctrine of Legitimate Expectation belong to the domain of public law and is intended to give relief to the people when they are not able to justify their claims on the basis of law, in the strict sense of the term, though they had suffered a civil consequence because their legitimate expectation had been violated. It is something between a “right” and “no right” and is different from anticipation, desire and hope.

The current issue that is pondering the entire society is the case of UG and PG Medical Reservation Quota. The Madras HC very recently struck down 85% reservation to Tamil Nadu State Board students in Medical Admission for UG and also quashes 50% of reservation for PG students by striking down Rule 9(b) of the PG Medical Educational Regulation, 2000. This made the students suffer in large which turns their life totally into a nightmare. At the end of the day there is no right to claim remedy, but the only hope is the applicability of this doctrine.

Key words: *Legitimate Expectation, Administrative actions, Judiciary, PG and UG Medical reservation*

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I. INTRODUCTION

The life of an individual and the society is largely administered by the administrative actions. The term “Welfare State”, denotes the role played by the states in promoting and protecting the socio and economic well-being of its citizens. These promotions are delegated to the proper channel to administer the situation, and the actions carried by the administrative officers are called as administrative actions.

The idea of Administrative law and Constitutional Law are classified under the Public law, because of two important reasons:

1. Both these laws are considered to be Supreme in nature (Supremacy) and paramountcy in nature and in their actions.
2. The two laws serve the needs of the public at large so it is classified under the Administrative law.

The situation that is pondering the entire society is the reservation for UG and PG Medical state quota. Supreme Court legitimately and without any hope broke the faith of many Tamil Nadu students and linger their ambitions in dreams. The Madras HC very recently struck down 85% reservation to Tamil Nadu State Board students in Medical Admission for UG and also quashes 50% of reservation for PG students by striking down Rule 9(b) of the PG Medical Educational Regulation, 2000. The appellant went for an appeal but the Supreme Court upheld the decision of Madras High Court. This made the students suffer in large which turns their life totally into a nightmare.

People had “legitimate expectation towards the government of Tamil Nadu and genuinely believed in the words of Tamil Nadu government that they had stated that “**Tamil Nadu will be exempted from the NEET Examination**”, basing on the promise made by the State Government students of Tamil Nadu believed and had a great hope of getting medical seats just by getting high cut-offs and good percentage in 12th standard, but all wrong way up and backstabbed their ambition.

As Lord Denning correctly pointed out that:

“A man should keep his words. All the more so when promise is not a bare promise but is made with intention that the other party should act upon it”¹

The only way to get solution to end this protest, is by way of an Administrative principle famously called as **“Doctrine of Legitimate Expectation”**, it is not a right that is given to the citizen who can move the court through succeeding petitions and get it resolved, neither it is not a right nor it a right, it is in-between a right and a no right. It is fashioned by court and it is being used by the courts for judicial review², this is completely based on the Natural Justice and it applies the **“ethics of fairness and reasonableness”** to the situation **“where a person has an expectation or interest in a public body retaining a long standing practise or keeping a promise”³**.

“The idea of backdrop for this concept of Judicial Review is check on the Arbitrariness of the Administrative Actions. This doctrine has an important place in the development of law of judicial review”⁴.

As already pointed out that the dreams of the students are shattered apart from this nightmare, till the end of 2nd counselling it is noted that **“Only two from Tamil Nadu Government Schools make it to the public medical colleges”⁵**.

After this cruel introduction of NEET examination, which faced a steadfast opposition from the state of Tamil Nadu, only two students from the Government State Board School could able to clear the examinations and rest all legitimately believed in the 12th Board Examination and high Cut-off marks. But comparatively, over the last thirty years students from Tamil Nadu Government State Board schools could easily make it to the state run medical colleges.

¹This quote was adopted by the Supreme Court in the case of Delhi Cloth & General Mills Ltd. V Union of India 1987 AIR 2414 1988 SCR (1) 383 1988 SCC (1) 86

² Seemeen Muzafa & Altaf Ahmad Mir, *Position of Legitimate expectation”: A comparative study*, Visata Law Journal, Vol. 3, No.3, (2013)

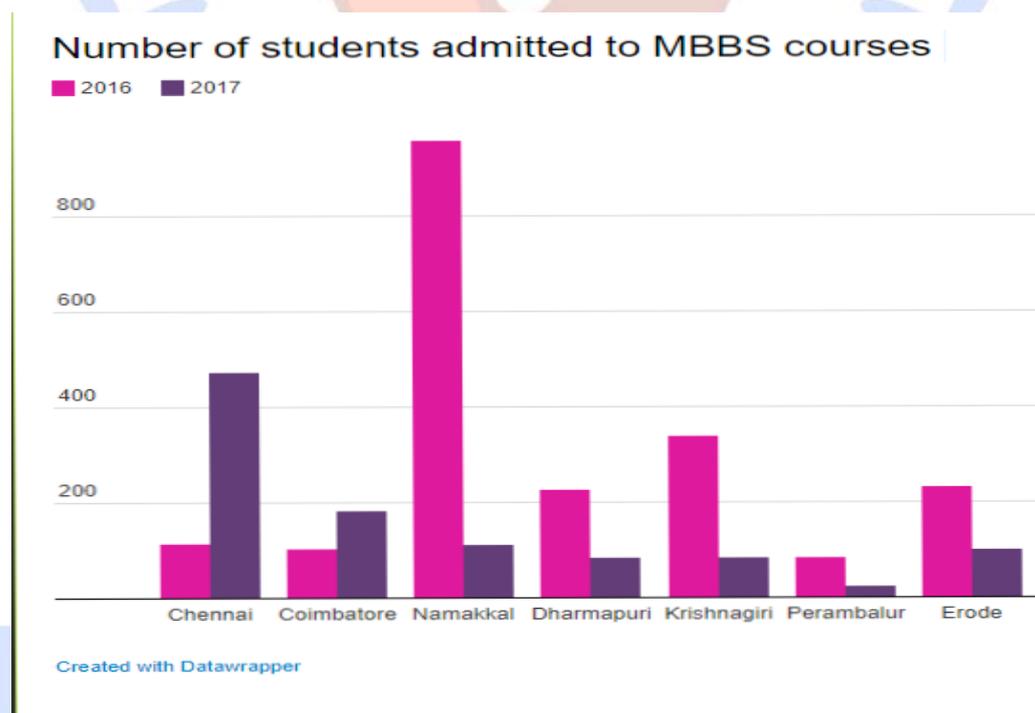
³ Seemeen Muzafar, *Doctrine of Legitimate Expectation in India: An analysis*, International Journal of Advanced research in Management and Social Science, Vol.2, No.1, (2013)

⁴Westminister City Council, re, (1972) 1 WLR 567; Union of India v Hindustan Development Corporation (1993) 3 SCC 499; State of Madhya Pradesh v Hazarilal, (2008) 3 SCC 273: (2008) 1 SCC (L&S) 611.

⁵ Arun Janardhanan, *Post-NEET: Only two from government schools in Tamil Nadu government medical colleges*, INDIAN EXPRESS, (Chennai edn., September 25th, 2017), <http://indianexpress.com/article/education/post-neet-only-two-from-govt-schools-in-tamil-nadu-govt-medical-colleges-4859672/> Last visited on September 25, 2017

The number of students from urban centres getting into medical colleges has gone up, while the number of students admitted from other areas, including districts where the number of first-generation learners is high like perambalur, has decreased.⁶This made the people and the students loiter in dreams, it is not because of that they don't have the potential it is because of the bad education and insufficient coaching that is rendered to these poor students, puts end to their dreams.

Recently, On September 1, 2017 **Girl who filed case against NEET commits suicide**⁷.The author would like to say, India lost sorry unfortunately **Tamil Nadu** lost a budding, young, super intellect doctor, who had scored **98%** in her class 12th and it is not easy to score, even students in urban areas who go for plenty of Tuitions, coaching centres failed to get good score, but look at this young talented mind from a lower caste studied hard day and night to perceive her ambition as Doctor miserably failed as Cadaver.



⁶After NEET, only two from Tamil Nadu government schools make it to public medical colleges, THE WIRE (September 25th, 2017), <https://thewire.in/180975/neet-tamil-nadu-inequality/> Last visited on September 25, 2017

⁷ R Rajaram, *Girl who filed case against NEET commits suicide*, THE HINDU (Ariyalur Ed. September 2nd, 2017) <http://www.thehindu.com/news/national/tamil-nadu/dalit-girl-who-filed-case-against-neet-commits-suicide/article19601636.ece> Last visited on September 25, 2017

⁸After NEET, only two from Tamil Nadu Government schools make it to Public Medical Colleges, THE WIRE (September 25th, 2017) <https://thewire.in/180975/neet-tamil-nadu-inequality/> Last visited on September 25, 2017

II. RECENT ISSUES

The word “Legitimate Expectation” is not defined by any law for, the time being in force. Yet it is another doctrine fashioned by the court to review the administrative action⁹. By the beginning of the 1960s, the concept of “Legitimate Expectation” has widened its scope, because of the idea of Arbitrariness in administrative actions had increased and also the “**duty to be fair**”¹⁰ lost its goal in administrative functions.

The main essence of this doctrine is that as far as these policies are concerned, “*is that it is lawful for a public body to adopt a policy, to intimate to an individual what the policy is and to tell him that it will apply the policy after hearing them unless there is something exceptional to the normal case*”¹¹.

Nowadays, it has instead been left to the concept of legitimate expectation to redress the balance between the government and an individual so that the representative have “**Chilling effect**”¹² on the provisions of rule made by the appropriate authority, in certain circumstances, **a remedy may be obtained by an individual against a public body which adversely affects his interests** by the non-application of an existing policy or **the adoption of a new one**.

The above para stands true as students have no idea as to go against whom so in order to seek remedy against, the Madras HC order of striking down government’s order of providing 85% reservation quota in medical admissions for the students from the state board leaving only 15% of the total seats for students from CBSE and other boards.¹³ In their appeal in the Supreme Court all failed as the apex court upheld the decision of the Madras HC.

⁹ A.K.Srivastava, *Doctrine of Legitimate Expectation*, Vol 24, No 9, International Journal of Therapy and Rehabilitation (April-June 1995)

¹⁰ Re HK [1967] QB617, In Re HK Lord Parker CJ introduced the language of “**the duty to be fair**” as a duty incumbent upon administrators.

¹¹ R v PLA, ex parte Kynoch Ltd [1919] 1 KB 176, British Oxygen Co Ltd v Minister of Technology [1970] 3 All ER 165, Sagnata Investments Ltd v Norwich Corporation [1971] 2 All ER 1441, A-G ex rel Tilley v Wandsworth London BC [1981] 1 All ER 1162 (Lord Denning and it is the landmark judgement with regard to the concept of legitimate expectation).

¹² Iain Steele, *Substantive legitimate expectations: striking the right balance?*, Law Quarterly Review (2005) See also R. v North and East Devon HA Ex p. Coughlan [2001] Q.B. 213 (CA) and R. v Newham LBC [2001] EWCA Civ 607; [2002] 1 W.L.R. 237 (CA).

¹³ Apoorva Mandhani, *Madras HC Strikes down 85% reservation for TN State Board students in Medical Admission*, LIVE LAW (July 15th, 2017) <http://www.livelaw.in/madras-hc-strikes-85-reservation-tn-state-board-students-medical-admissions-read-judgment/> Last visited on September 26, 2017

Since the state board students who diligently believed in the 85% reservation in the state quote and also towards the promise made by the Government of Tamil Nadu that Tamil Nadu will be exempted from the NEET exam. They completely believed in the Administration of government as they legitimately believed the in getting medical seat by getting high marks and cut-offs in 12th Standard which is the practise all through these years.

Admission imbroglio

A look at Tamil Nadu's tryst with NEET

2016: Former Chief Minister Jayalalithaa announces during her poll campaign that she will ensure Tamil Nadu is exempted from NEET

FEB. 1 2017: State Assembly passes the T.N. Admission to MBBS and BDS Courses Bill

MAY 7: Over 81,000 students attend NEET for MBBS; 90% of them are from the State Board



JUNE 22: T.N. reserves 85% seats for the State Board; CBSE students move court

JULY 14: Justice K. Ravichandra Babu rules that there can be no quota as decreed by the State

JULY 17: The State appeals before a Division Bench

JULY 31: Bench upholds the single judge's order. Health Minister says Tamil Nadu will file an appeal

4

In order to substantiate that there exist validly Legitimate expectation among people and also the state has every right to make Act with regard to medical education was emphasised **under the Indian Constitution, Schedule VII, under the Concurrent list entry 25 exclusively speaks on “education, including technical education, medical education and universities, subject to the provisions of entries 63, 64, 65 and 66 of list I; vocational and training of labour.”¹⁵**

¹⁴T.N. to base medical admission on NEET, THE HINDU,(Chennai Edn, June 25th ,2017), <http://www.thehindu.com/news/national/tamil-nadu/tn-to-base-medical-admissions-on-neet/article19143238.ece>

Last Visited on September 26, 2017

¹⁵ LAWMAAN'S, CONSTITUTION OF INDIA, Kamal Publishers, New Delhi

The above para signifies that **both the centre as well as state has the power to make laws in the matter of education** (specifically in medical education), but **Article 254 (2)** states that “*where a law made by the legislature of a state with respect to one of the matters enumerated in the concurrent list contains any provision repugnant to the provisions of an earlier law made by the parliament or an existing law with respect to that matter, then, the law so made by the legislature of such state shall, if it has been reserved for the consideration of the president and has received his assent, prevails in that state*”.¹⁶

In the case of *K.Suseela v State of Tamil Nadu*¹⁷ it was said by the Honourable Supreme Court that “*Before 42nd amendment, the subject “education” was in the State List and “co-ordination and determination of standards in higher education” was in the Union List. To the extent any matter was coming within entry 66, the Union had the exclusive jurisdiction and any law made by the State under Entry 11 of List II impinging upon the Central law was invalid. The position is not changed after 42nd amendment, save and except the fact that education including medical education now comes within the Concurrent List*”.

Here it is not about an encroachment into centre list rather state also has exclusive power to make laws regarding this issues, since the subject matter (**Medical Education**) falls under the ambit of Concurrent list. If there is any conflict between the central laws and states laws, the court has to interpret by using **harmonious construction** thereby, **the meaning which gives reliefs and protects the benefits of the people has to be taken into consideration so the Government of Tamil Nadu is in interest of protecting the benefits of the people at large by giving reservation, so it should be given much importance and the state is validly exempted from the NEET.**

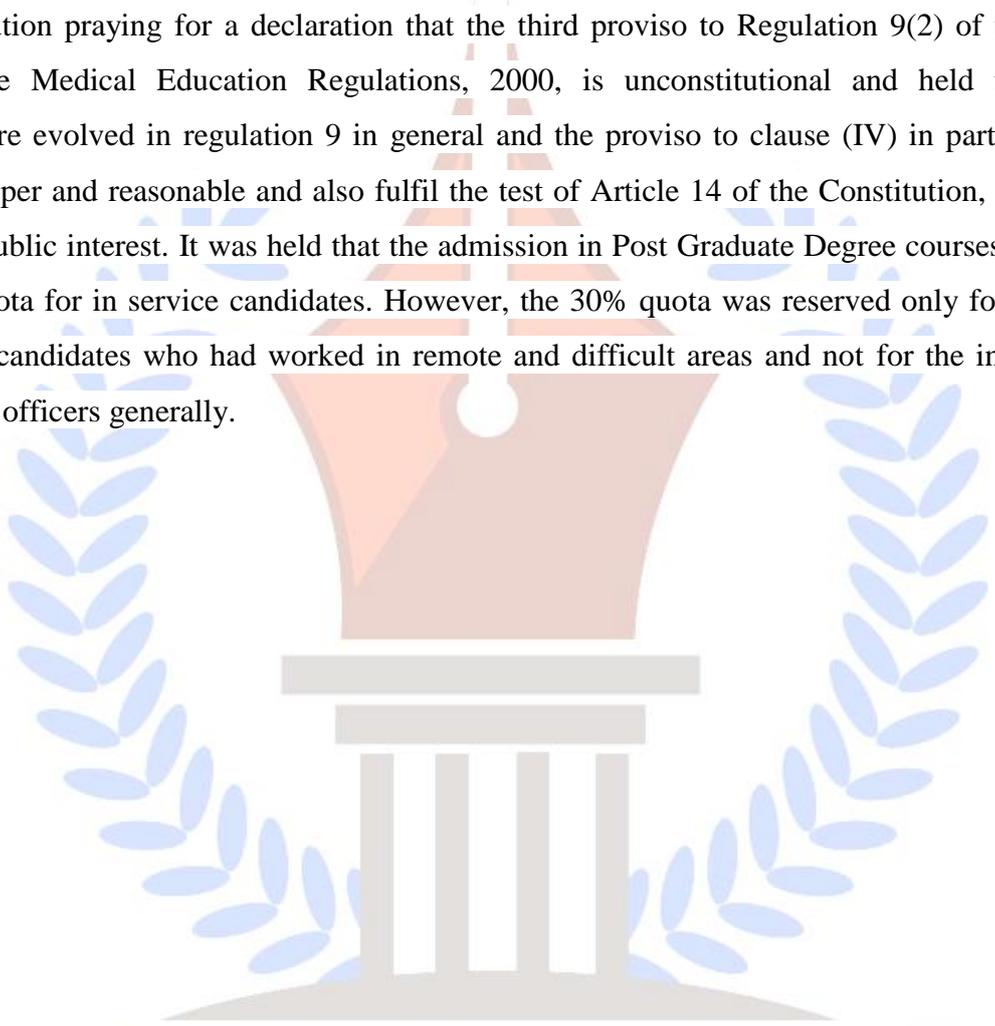
There is **No Justice** in the Judiciary, rather it is only trickery playing the field in the form of power and politics. It is important to note her that on 25th July 2017, the Madras High Court adjourned hearing on a PIL seeking a direction to the central and state governments to obtain presidential assent for bills exempting Tamil Nadu from NEET. The petitioner in this PIL has pointed out that the authorities had a duty to forward the bills passed by the state

¹⁶ *Ibid*

¹⁷ *K.Suseela v State of Tamil Nadu*, Judgement dated on 24th August 2015 (Madras High Court); *see also K Chandru Etc. Etc v State of Tamil Nadu & Ors* 1986 AIR 204; 1985 SCC (3) 536 (Supreme Court of India)

legislature for assent of the president promptly in any event within six months¹⁸. The PIL mandated that the direction to the state and central government authorities to obtain the presidential assent for the two bills, but it all failed and they hadn't assented to the bills and shattered all the dreams.

On the other side of the coin is the cancellation of reservation of seats for the PG students by the Madras High Court¹⁹, in a writ petition filed under Article 32 of the Constitution praying for a declaration that the third proviso to Regulation 9(2) of the Post Graduate Medical Education Regulations, 2000, is unconstitutional and held that the procedure evolved in regulation 9 in general and the proviso to clause (IV) in particular is just, proper and reasonable and also fulfil the test of Article 14 of the Constitution, being in larger public interest. It was held that the admission in Post Graduate Degree courses against 30% quota for in service candidates. However, the 30% quota was reserved only for the in-service candidates who had worked in remote and difficult areas and not for the in-service medical officers generally.



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¹⁸Shihabudeen Kunju S, *Two NEET Bills and a government order in Tamil Nadu: Timeline of Events*, NDTV (6th August 2017), <https://www.ndtv.com/education/two-neet-bills-and-a-government-order-in-tamil-nadu-timeline-of-events-1732679>

¹⁹*Dr.Preethiswary S vs Dr.G.Kamaleshwaran*, Judgment pronounced on 6th May 2017.

III. CONCEPT OF LEGITIMATE EXPECTATION

Legitimate expectation relates to a benefit or privilege to which the claimant has no right in private law; in fact it may even be one which conflicts with the private law. Halsbury explained that *“a person may have a legitimate expectation of getting a particular treatment from the authorities, even though such treatment is not buttressed by any right in private law.”*²⁰The expectation may arise from:

- a) Either an express promise or representation²¹ or
- b) A representation implied from established past practise based upon the past actions or the settled conduct of the decision makers.²²

In 1993, the Supreme Court of India in the case of *Union of India v Hindustan Development Corporation*²³ has widened the scope for Legitimate Expectation and the court held by saying that *“means the legitimacy of an expectation can be inferred only if it is founded on the sanction of law or custom or an established procedure followed in regular and natural sequence. Again it is distinguishable from a genuine expectation. Such expectation should be justifiably legitimate and protect able. Every such legitimate expectation doesn’t by itself fructify into a right and therefore it does not amount to a right in the conventional sense”*.

The Doctrine of Legitimate Expectation is well established and operated in the domain of public law. Being less than an enforceable right, it does not apply to private law. The government and its departments, in administering the affairs of the country are expected to honour consistent code of conduct by treating all citizens fairly and equally. Every action of the state must be rational and in conformity with Article 14 of the Constitution²⁴. The doctrine of legitimate expectation thus gets assimilated in the doctrine of Rule of Law.²⁵

So in the light of discussion of the above para, **it should be understood that the principle of legitimate expectation is concerned with the relationship between administrative**

²⁰ “*Doctrine of Legitimate Expectation – A New dimension of Judicial Review*”, (2012), http://shodhganga.inflibnet.ac.in/bitstream/10603/38174/10/10_chapter%204.pdf

²¹ *Attorney General of Hong Kong v Ng, Yuen Shiu* [1983] 2 AC 629

²² *R v Secretary of State of Home Department* [1987] 1 WLR 1482; see also *Madras City Wine Merchants Assn v State of Tamil Nadu* (1994) 5 SCC 509 (Supreme Court of India)

²³ *Union of India v Hindustan Development Corporation* (1993) 3 SCC 499 (Supreme Court of India)

²⁴ C.K. TAKWANI, LECTURES ON ADMINISTRATIVE LAW, (6th ed. 2017)

²⁵ *Food Corporation of India v Kamdhenu Cattle Feed Industries* (1993) 1 SCC 71

authority and the individual, here it is relationship between the students and the head of the NEET exam controller and the Government of India and also the Supreme Court. As per the orders of the Honourable Supreme Court, there will be single medical exam all over India for the admission into medical and dental colleges, for this exam the board exams marks are not required and only minimum percentage of marks are only taken into sheets, for which the state board students who day and night worked so hard to get the best of best cut-offs to get into the state quota medical admission, look at the fate of these students who diligently believed in the Board exams and not the NEET exam. Also as time and again pointed out by the author that the students of Tamil Nadu had full faith and legitimately believed in the words of State government that the state will be exempted from Tamil Nadu.

The total number of seats offered under NEET are 53, 430 which is distributed accordingly;

COLLEGES	COLLEGES	SEATS
All private Colleges	226	25840
All Government Colleges	201	27590
NEET Counselling seats	179	3521
NEET Basis Seats	249	35461
TOTAL		53430

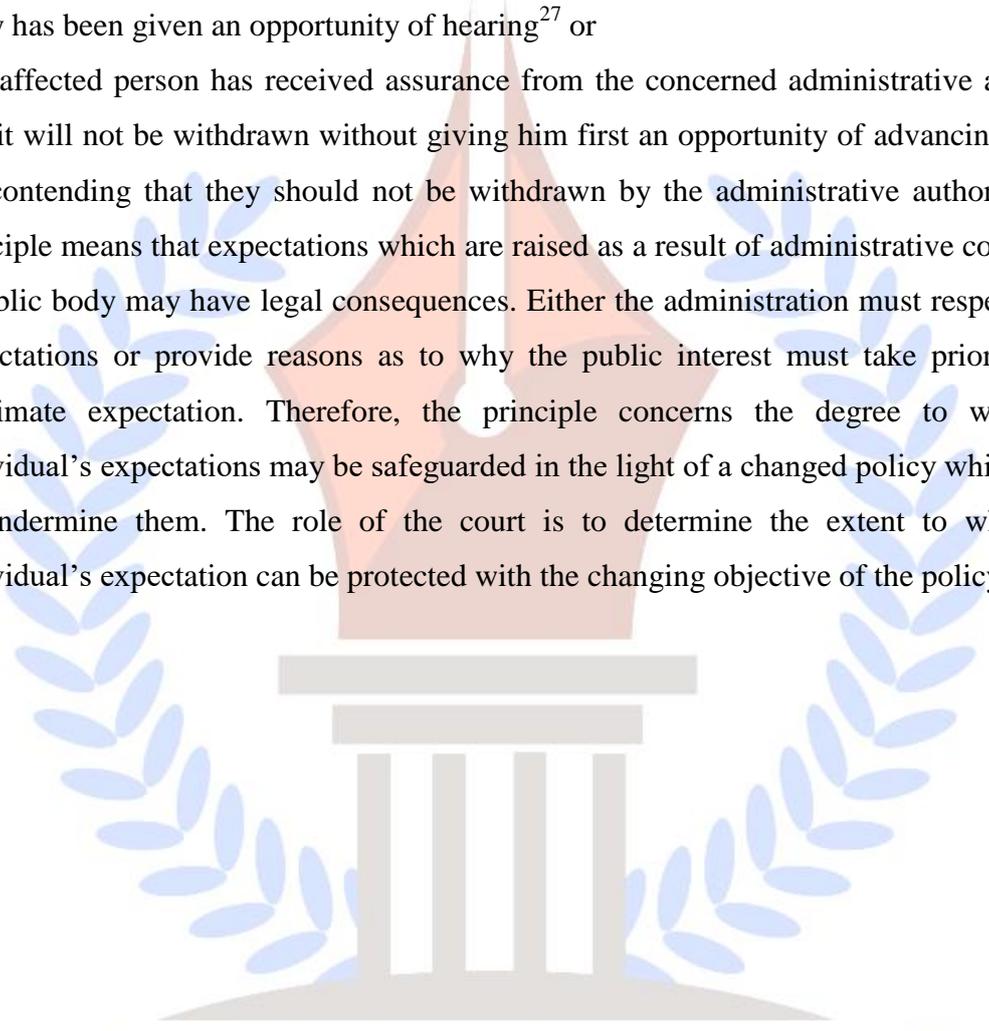
- Total MBBS Colleges – 426
- Government MBBS Colleges – 201 and
- Total MBBS Seats - 53430²⁶

People who clear these exams can easily get through the medical counselling and get MBBS/ BDS seats without scoring high percentage in 12th exams. But the situation in Tamil Nadu is completely different that there are insufficient coaching centres and students are not aware of this impose of NEET exam will be compulsory, since the Tamil Nadu government gave hope that they will make sure that Tamil Nadu state is exempted from NEET, but it all happened in the other way round, **NO HOPE!, NO DREAM!, NO LIFE!** All ways are closed and no way is there and students cannot even go for the civil remedy or claim any compensation, the only administrative hope is this concept of “Legitimate Expectation”,

²⁶NEET Colleges 2017: State wise list of colleges, (27th September 2017), available at <http://www.motachashma.com/entranceexam/200136/colleges-accepting-aiptm-score> Lastvisited on 29th September 2017

It can be proved that, an expectation can be said to be legitimate in this case where the decision of the administrative authority (NEET) affects the person by depriving him of some benefits or advantage (State Board Students) which either:

- They had in the past been permitted by the decision maker to enjoy and which he can legitimately expect to be permitted to continue until some rational grounds for withdrawing it are communicated to such an individual or party and the affected person/ party has been given an opportunity of hearing²⁷ or
- The affected person has received assurance from the concerned administrative authority that it will not be withdrawn without giving him first an opportunity of advancing reason for contending that they should not be withdrawn by the administrative authority. The principle means that expectations which are raised as a result of administrative conduct of a public body may have legal consequences. Either the administration must respect those expectations or provide reasons as to why the public interest must take priority over legitimate expectation. Therefore, the principle concerns the degree to which an individual's expectations may be safeguarded in the light of a changed policy which tends to undermine them. The role of the court is to determine the extent to which the individual's expectation can be protected with the changing objective of the policy.²⁸



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²⁷Bharti Chhabra, *Doctrine of legitimate Expectation: An comparative analysis of Indian legal system with Britain legal system*, International Journal of Law and Legal Jurisprudence Studies, Volume 1, Issue No 6 (2014).

²⁸ B.C.SHARMA, *THE LAW OF ULTRA VIRES*, Eastern Law House Pvt. Ltd, (2004)

IV. DEVELOPMENT AND GROWTH OF LEGITIMATE EXPECTATION:

The concept of legitimate expectation made its first appearance in *Schmidt v Secy. of state for Home Affairs*²⁹, later the principle of substantive legitimate expectation, that is, expectation of a favourable decision of one kind or another, has been accepted as a part of English law in several cases as stated by De Smith.³⁰ According to Wade, the doctrine of substantive legitimate expectation has been rejected by the High Court of Australia in *Attorney General for N.S.W v quin*³¹ and the principle was also rejected in Canada *In reference Canada Assistance Plan, Re*³² but favoured in *Canon v Minister for Marine*.³³

The European courts goes further and permits the court to apply proportionality and go into the balancing of legitimate expectation and public interest. Even so, it has been held under the English law that the decision maker's freedom to change the policy in public interest, cannot be fettered by the application by the principle of substantive legitimate expectation. The observation made by the courts in earlier cases laid down more inflexible rule than is in vogue at present.³⁴

V. LEGITIMATE EXPECTATION – WHEN IT DOESNOT ARISE:

Legitimate expectation as already pointed out it is something between a right and a no right and it can be claimed by the individual or the group of persons only when there is an express promise made by the administrative authorities and that promise and the conduct has to be a past practise. Then the individual can definitely claim it is as the legitimate expectation.

But this defence of legitimate expectation cannot be according to the whims and fancies of the individual, it is completely from a wish, desire or a hope nor can it amount to a claim or demand on the ground of a right. “A *pious hope leading to a moral obligation cannot amount to legitimate expectation*”.³⁵

“It also important to note here that, when legitimate expectation does not arise is a decision based on consideration of national security can outweigh what would otherwise

²⁹*Schmidt v Secy. Of state for Home Affairs*(1969) 2 WLR 735 (PC)

³⁰B.C.SHARMA, THE LAW OF ULTRA VIRES, Eastern Law House Pvt. Ltd, (2004)

³¹*Attorney General for N.S.W v quin*[1990] 93 All ER 1

³²*In reference Canada Assistance Plan, Re*[1991] 83 DLR 297

³³*Canon v Minister for Marine*[1991] 1 IR 82

³⁴*Dr. Chanchal Goyal (Mrs.) v State of Rajasthan* (2003) 3 SCC 485.(Supreme Court of India)

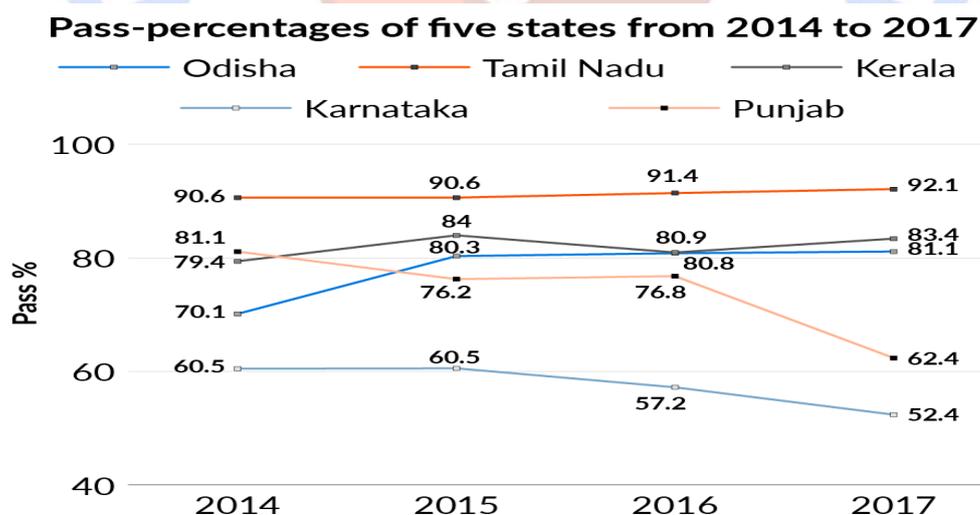
³⁵*Union of India v Hindustan Development Corporation* AIR 1994 SC 980, (1993) 3 SCC 499 (Supreme Court of India)

*have been the reasonable expectation on the part of the claimant. An authority may defeat a legitimate expectation by giving overriding reason of public policy to justify in doing so.*³⁶ *“The protection of legitimate expectation does not require the fulfilment of the expectation where an overriding public interest requires otherwise.”*³⁷

In the case of Medical Entrance if some of the reporters say that there does not arise any legitimate expectation since there are greater public interest in view of against the NEET exam in the state of Tamil Nadu, the answer would simple that the very few children who are in greater public interest supporting NEET exam are all CBSE students, the ratio of CBSE students to State Board Students in Tamil Nadu has wide range of difference:

CBSE Schools³⁸: State Board School³⁹ = 682:3884

Even after looking at the difference, if the Government of India still, what to deprive their dreams without giving atleast some hope and some relaxation for this year alone, it's all done, **there are going to many deaths, rather saving many deaths.**



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Punjab: In the data-set release by the Punjab Board in 2014, the pass-percentage stated was 84.42%. But in data-sets in subsequent years, the figure stated is 81.09%. The second has been used here. All statistics from analyses made public by the Punjab Secondary Education Board.

Karnataka: Except for 2014 pass-percentage, the figures for the remaining years have been taken from media reports

Kerala: Statistics are from the Department of Higher Secondary Education. Only the figures for school-going children have been used.

Tamil Nadu: Statistics from the Department of Government Examinations

Odisha: Only science results declared so far. Statistics shared by the Controller, examinations

³⁶R v Secretary of state for Home Department [1984] 1 WLR 1337; [1985] All ER 40

³⁷Suvarna Cements Ltd v The Government of AP AIR 2002 AP 401 (Andhra Pradesh High Court)

³⁸Adarsh Jaini, *Number of CBSE schools double in Tamil Nadu*, TIMES OF INDIA(Coimbatore ed., 29th September 2017) <http://timesofindia.indiatimes.com/home/education/news/Number-of-CBSE-schools-double-in-5-years-in-Tamil-Nadu/articleshow/45947930.cms> Last visited on 29th September 2017

³⁹Government of India, Ministry of Human Resource Development Bureau of planning, Monitoring & Statistics New Delhi, *Statistics of School Education*, http://mhrd.gov.in/sites/upload_files/mhrd/files/SES-School_201011_0.pdf (2012)

Considering the above pass percentage it is important to note that near about 92.1% of State Board students passed out this year, around 83,000 students from Tamil Nadu appeared for NEET exam, where only 33,000 qualified from Tamil Nadu which is roughly 41% of the Total students appeared. **The pass percentage is lowest in south India but as Tamil Nadu students wrote it for the first time**, but Tamil Nadu states stands first in the Board Exam, with 92.1% pass percentage in compared to other states, they had full hope in getting medical seats, some students in engineering, some in law and other courses.

Even after getting high percentage of marks and cut-offs, going through difficulties all through the years to get these marks are all waste now, these students are not recognised, **Why the Government of India has to look at the plight of the people, We call ourselves as DEMOCRATIC country, where is the Democratic Country status NOW !!!**. In order to understand further there are two aspects of legitimate expectations, they are discussed below.

TWO ASPECTS OF LEGITIMATE EXPECTATION:

The doctrine of legitimate expectation has two aspects, viz. **procedural and substantive** aspects. The procedural part relates to making of representation or affording a hearing or other appropriate procedure before a decision is taken. The substantive aspect is that if a representation is made for the grant of a benefit of substantive nature or if the person is already in the receipt of a benefit that will be continued and not substantively varied⁴¹.

⁴⁰Poorvaja, *92.1% pass in plus two, highest of all states*, (Trichy ed., 13th May, 2017) <http://www.thehindu.com/news/national/tamil-nadu/tn-records-921-pass-in-plus-two-exams/article18434247.ece>

Last visited on 29th September 2017

⁴¹ S.P.SATHE, ADMINISTRATIVE LAW, (5th ed. 1991)

VI. ESSENTIAL INGREDIENTS OF LEGITIMATE EXPECTATION:

1. This doctrine imposes “*a duty on public body/administrative authority to afford an opportunity of hearing to an affected party if the government or public body or public authority has acted arbitrarily in violation of their legitimate expectation*”⁴². Thus, “*the affected party may get a chance of being heard by getting such administrative decision set aside through the writ of Mandamus*”.⁴³
2. The doctrine of legitimate expectation “*extends protection of natural justice or fairness to the exercise of non-statutory administrative powers where the interest affected is only a privilege or benefit*”.⁴⁴
3. The concept of legitimate expectation is a relevant factor for due consideration to make decision making process “fair”.
4. “*An individual can claim a benefit or privilege under the doctrine of legitimate expectation only when such expectation is reasonable.*”⁴⁵
5. The doctrine of legitimate expectation extends “*to the exercise of even non-statutory or common law powers.*”⁴⁶
6. The doctrine of legitimate expectation would “*arise from an express promise or existence of a regular practice*”.⁴⁷

Duty on Public Authority to act fairly, this doctrine imposes “*in essence a duty on public authority to act fairly by taking into consideration all relevant factors relating to such legitimate expectation. Unfairness in the form of unreasonableness here comes close to unfairness in the form of denial of natural justice and the doctrine of legitimate expectation can operate in both context. A duty to act judicially will arise in the exercise of a power to deprive a person of legitimate interest or expectation*”.⁴⁸

⁴² L. Harold Levinson, *The Legitimate Expectation that Public Officials Will Act Consistently*, 46 Am. J. Comp. L. Supp. 549, 576 (1998)

⁴³ *N.C.H.S. v. Union of India* [1993] 4 SCC 15 .(Supreme Court of India)

⁴⁴ *P.T.R Exports (Madras) Pvt. Ltd v Union of India* AIR 1996 SC 3461; (1996) 5 SCC 268 .(Supreme Court of India)

⁴⁵ *Southern Petro-Chemical Industries Co Ltd v Electricity Inspector & ETIO* (2007) 5 SCC 447, 449 (Supreme Court of India)

⁴⁶ *Ibid*, see also, *Official Liquidator v Dayanand* (2008) 10 SCC 1 (Supreme Court of India); *State of Karnataka v Umadevi (3)* (2006) 4 SCC 1 (Supreme Court of India)

⁴⁷ *Bombay Dyeing & Manufacturing C. Ltd (3) v Bombay Environmental Action Group* (2006) 3 SCC 434 (Supreme Court of India)

⁴⁸ *Indian Sugar & Refineries Ltd. V Amarvathi Service Cooperative Ltd.* AIR 2011 SC 775; (2011) 1 SCC 318 (Supreme Court of India)

VII. ARTICLE 14 AS THE BASIS OF THE DOCTRINE OF LEGITIMATE EXPECTATION

The basic reason behind quashing of the 85% reservation for Tamil Nadu state board students in Medical Admission is because this reservation don't serve the purpose of Equality enshrined under Article 14 of the Indian Constitution, this is the contention made by the CBSE Students. The contention of the petitioners in all these PIL for both UG and PG medical reservation was *“the petitioner had further, had alleged violation of Article 14 of the Constitution of India, on the ground that the Government discriminated between the students of State Board and Central Board, especially when the qualifying examination, i.e. NEET is common to all. The petitioner's contentions were also supported by the Indian Medical Council”*.⁴⁹

According to the author, it is the crux of the grievance of many petitioners who seek for the justice, that when the qualifying examination for admission to the M.B.B.S/ B.D.S course is only NEET and not the marks obtained in the respective Board Examination, the state cannot make distinction between the students of State Board and Central Board, since both of them are equally placed in so far as this NEET qualifying examination is concerned, it is also contended that the impugned reservation denied their reasonable opportunity to compete for admission in respect of all the seats, even though they are otherwise qualified in their NEET, even this is in violation of Article 14, then how can the reservation will be violation of Article 14. Therefore, in this light it can be said that there cannot be reservation, amounting to discrimination, among equals.

The reservation are not going against Article 14 and it is strongly put forth by the author that the state board students have legitimate expectation because *“the reason and the justification stated in the impugned order for making such reservation are mainly focused on the policy decision of the Government to protect the state board students whose syllabus, methodology and pattern of examination are stated to be entirely different from the Central Board of Secondary Education. Further justification stated in the impugned order is that the government wants to ensure an equal opportunity to the students of various boards and*

⁴⁹V.S. Sai Sachin v The State of Tamil Nadu, The Selection Committee, Directorate of Medical Education, The President, Medical council of India, The Registrar, and The Tamil Nadu Dr. M. G. R. Medical University - Judgement **Delivered on 14.7.2017**<http://www.livelaw.in/madras-hc-strikes-85-reservation-tn-state-board-students-medical-admissions-read-judgment/>

normalize the same".⁵⁰ So this obviously ensures that there is legitimate expectation on the part of State Board students and this is not violative of Article 14 of the Indian Constitution.

It is also pointed out already by the author that number of students who passed out of 12th standard consist of more than 95% appeared in the state board examination and it can be strongly said that only 5% or less than that appeared in the remaining board in Tamil Nadu.

This is the situation in Tamil Nadu, which is clearly explained and portrayed, there is **NO VIOLATION of Article 14**, even it is important to discuss the concept of Article 14 is the bases for the doctrine of Legitimate Expectation, so there is a minimum right ensured to these students whose dreams are collapsed.

Once discretionary powers are vested with the executive/ administrative, abuse or misuse of these powers are to be guarded in order to save the individual from the resultant damage for which state is vicariously liable⁵¹. In order to ensure equal treatment of all the citizens irrespective of discrimination based on caste, creed, cast, sex, it is protected under Article 15 of the Indian Constitution and very importantly under Article 14 of the India constitution ensures **equality and equal protection to all the citizens** by the State through administrative laws. In certain cases legitimate expectation of the subjects from the State may require a public body to confer substantive benefit to its subjects rather than procedural one and failure of the public body to consider the legitimate expectations of its subject's amounts to abuse of power⁵².

Procedural fairness as enshrined under the Article 14 of the Indian Constitution, comprises two broad common law rules designed to ensure fair procedures are followed in the making of decisions which affect the rights, obligations or legitimate expectations of individuals. The two rules or limbs, expressed in traditional terms are:

1. The decision makers must afford a "hearing" in appropriate circumstances and
2. The decision maker should not be biased or seen to be biased⁵³.

⁵⁰ *Ibid*

⁵¹ Bharti Chhabra, *Doctrine of legitimate Expectation: A comparative analysis of Indian legal system with Britain legal system*, International Journal of Law and Legal Jurisprudence Studies, Volume 1 issue 6.

⁵² HALSBURY'S LAWS OF ENGLAND, Vol I (I), (4th ed. 1989) p. 92

⁵³ S.P.SATHE, ADMINISTRATIVE LAW, (5th ed. 1991),

*“Failure of the government to exercise its discretion on the expected lines invokes the plea of legitimate expectation which though itself is not a right but certainly is a test of arbitrariness”*⁵⁴ and this plea of legitimate expectation *“cannot be involved against higher public interests of the State”*.⁵⁵

Legitimate expectation flows from principle of non-arbitrariness under Article 14 of Constitution of India and it becomes an enforceable right in case where state or its functionaries or its agents fail to perform their part in a fair and reasonable manner in exercising their power and very importantly while exercising their power, which results in the affecting people at large.

As observed by Honourable Supreme Court *“the doctrine of legitimate expectation falls within the purview of the rule of non-arbitrariness integrated in Article 14 of the Constitution”*.⁵⁶

The basic idea behind doctrine of legitimate expectation is **“Rule of Law”** which requires *“promptness, predictability and certainty in the actions of government while dealing with the public”*⁵⁷. The core point thus is that though legitimate expectation derived by a person from the promise or undertaking given by an authority but denial to act upon in consonance with such promise or undertaking has to be justified by the authority by showing some overriding public interest.⁵⁸

⁵⁴Union of India & Anr v Arulmozhi Iniarasu Ors [2011] 9 S.C.R 17 (Supreme Court of India)

⁵⁵Kesar Enterprises Ltd. V. State of U.P. & Ors [2011] 9 S.C.R. 19 (Supreme Court of India)

⁵⁶Food Corporation of India v. Kamadhenu Cattle Feed Industries Ltd. AIR 1993 SC 1601 (Supreme Court of India)

⁵⁷Chanchal Gayal Dr. v St. of Rajasthan AIR 2003 SC 1713 (Supreme Court of India)

⁵⁸ I D.D.BASU, COMMENTARY ON THE CONSTITUTION OF INDIA, (8th ed. 2008), page1262

VIII. CONCLUDING REMARKS

The doctrine of legitimate expectation is considered as fine example of judicial creativity to check the arbitrary exercise of powers by administrative authorities through Judicial Review. This doctrine drives its importance from Article 14, when there is no reasonableness and unfairness in the action, then the idea of this doctrine is invoked. The CBSE students claimed that there is no Equality and they are treated not equally in the appointment to the medical colleges, if this is so because there is no greater public interest and legitimate expectation comes into picture when there is greater public interest is defeated, here the State board students are more in population in Tamil Nadu, so the trend which the judiciary is practising all through the years has to take into consideration that legitimate expectation is on the part of the state boards to claim remedies. Therefore, they should be exempted from the NEET exams, as already promised by the state government.

In the very recent case of *Patel Amit Babulal v State of Gujarat through Secretary*⁵⁹, the court held that *“a person may have a legitimate expectation of being treated in a certain way of an administrative authority even though he has no legal right in private law to receive such treatment. The expectation may arise either from a representation or promise made by the authority, including an implied representation, or from consistent past practise”*.

Finally, **the legitimate expectation would arise when there is a regular practise of certain thing which the claimant can reasonably expect to continue**. It therefore follows that the concept of legitimate expectation consists in inculcating an expectation in the citizen that under certain rules and scheme he would continue to enjoy certain benefits of which he shall not be deprived unless there is some overriding public interest to deprive him of such expectation.

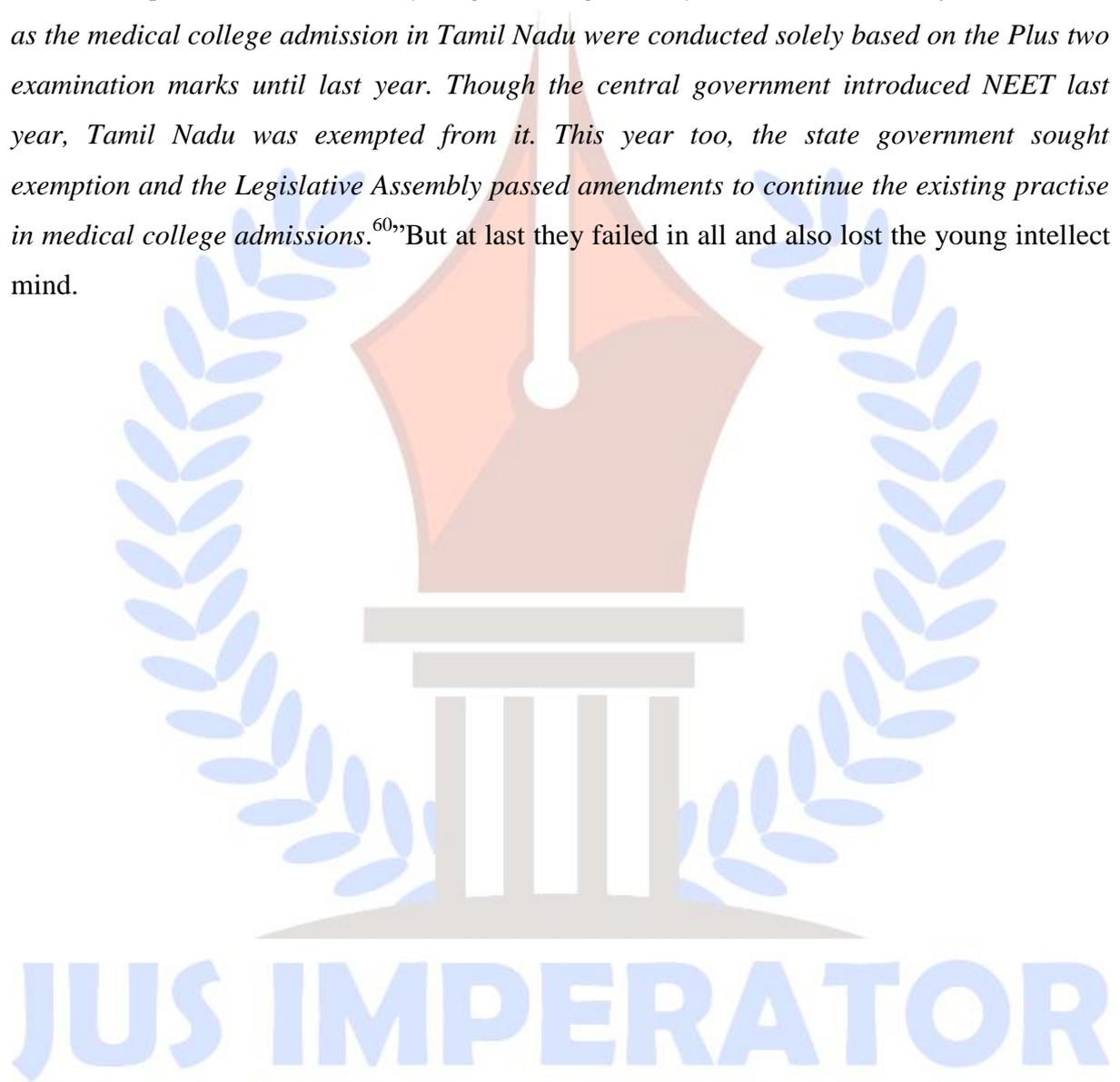
“We Want To See, We Want To Change, We Can”

Look at this poor children who had scored 1,176 out of 1,200 marks in class XII and had a cut off of 196.75 for medicine. She is the daughter of a daily wage labourer, hailing from Kuzhumur village near sendurai, had impleaded herself as one of the petitioner in the Supreme Court challenging NEET, even setting aside her economic status she approached the Supreme Court for justice.

⁵⁹*Patel Amit Babulal v State of Gujarat through Secretary* Judgement on 26th August 2016

“She had a good chance of securing medical seat”, even the students who go for numerous number of tuitions, the author guarantee the readers that they will fail to get these marks, she is subject brilliant and intellect and WE lost the future doctor, considering that the MBBS cut-offs for the SC candidates last year was only 191.25, she would have in all probability, bagged a seat in a sought after Government medical college.

The parents and also this young mind legitimately believed the State of Tamil Nadu, as the medical college admission in Tamil Nadu were conducted solely based on the Plus two examination marks until last year. Though the central government introduced NEET last year, Tamil Nadu was exempted from it. This year too, the state government sought exemption and the Legislative Assembly passed amendments to continue the existing practise in medical college admissions.⁶⁰”But at last they failed in all and also lost the young intellect mind.



⁶⁰ R.Rajaram, *Girl who filed case against NEET commits suicide*, (Ariyalur ed., 1st September, 2017) <http://www.thehindu.com/news/national/tamil-nadu/dalit-girl-who-filed-case-against-neet-commits-suicide/article19601636.ece> Last visited on 5th October 2017

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