jurisdiction under Article 226 of the Constitution does not take into account mere technicalities and comes to the aid of a petitioner only if he establishes that grave injustice has been done to him. Had respondent No. 5 got the vacancy in April, 1973, the petitioner could possibly have not levelled a challenge against his promotion. If by a quirk of fate justice was not done to respondent No. 5 earlier, this Court cannot lend its hands to further postpone the promotion of respondent No. 5.

(43) We are accordingly of the view that the petitioner in Civil Writ No. 998 of 1976 has also not been able to make out a case for the grant of any relief to him.

(44) For the reasons mentioned above, all the three petitions are dismissed but in the circumstances the parties are left to bear their own costs.

O. Chinnappa Reddy, A.C.J.—I agree with **Sharma** J's. conclusions.

Surinder Singh, J.—So do I.

N. K. S.

FULL BENCH

LETTERS PATENT APPEAL

Before S. S. Sandhawalia, Prem Chand Jain & Gurnam Singh, JJ.

THE PUNJAB UNIVERSITY,—*Appellant.*

versus

SUBASH CHANDER AND ANOTHER,—*Respondents.*
Letters Patent Appeal No. 352 of 1975

September 7, 1976.

Punjab University Act (VII of 1947)—Sections 31(1) and 31(2)(n)—Punjab University Calendar (1966) Volume II—Regulations 2, 25, 28 and 29—Senate—Whether empowered to frame or alter regulations retrospectively—Faculty of Medical Science—Studies and every University examination in—Whether constitute one consolidated and composite course.

Held, that from the plain language of section 31 of the Punjab University Act 1947 it is manifest that there is nothing therein which would explicitly or implicity clothe the Senate with power to frame Regulations retrospectively. The power to legislate retrospectively is a vital and potent function which would be exercised with care by the legislature itself and it is only when it clearly authorises the exercise of such a power to its delegates that the subordinate authority can be deemed to have such a power. There is no such authorisation at all in section 31 of the Act. Consequently the Regulations retrospectively altering the conditions for taking the examination to the detriment of the students could not be made applicable to them. Thus a student would be continued to be governed by the Regulations existing at the time when he joined his course of studies.

Sewa Ram *v.* Kurukshetra University, L.P.A. 97 of 1967 decided on 17th July, 1968, overruled.

(Para 15)

Held, that when a student joins the Faculty of Medical Science he does so with the intention of obtaining the degree of Bachelor of Medicine and Bachelor of Surgery. No degree or even a diploma is conferred on a student after he passes the first or the second professional examination. The scheme of the Regulations leaves no manner of doubt that the whole course of studies for the Faculty of Medicine is one consolidated and composite course, which could hardly be treated as consisting of independent annual examinations. The scheme visualises the course of study as a single integrated whole. It is only at the end and the completion of the course that the student would be entittled to the M.B.B.S. degree as such. Regulations 28 and 29 do indicate that the candidates shall be granted a degree only after they have completed the post examination training for 12 months of compulsory rotating housemanship. Thus the degree of M.B.B.S. in the Faculty of Medical Sciences of the Punjab University is a single integrated composite course of study.

(Para 18)

Letters Patent Appeal under Clause X of the Letters Patent against the judgment of Hon'ble Mr. Justice A. S. Bains passed on *6th May, 1975 in Civil Writ No. 1017 of 1975.*

J. L. Gupta, Advocate with Mr. Lakhinder Singh, Advocate, *for the appellant.*

L. K. Sood, Advocate with D. S. Keer and R. S. Sehgal, Advocates, *for the respondents.*

JUDGMENT

(1) S. S. Sandhawalia, J.—The larger issue that looms before the Full Bench in this appeal under clause 10 of the Letters patent is — whether the Panjab University can so frame or alter its Regulations as to prejudicially affect its students in the mid-stream of their course of studies.

(2) Subhash Chander, petitioner-respondent, joined the Daya Nand Medical College, Ludhiana, in the year 1965, to study for the degree of M.B.B.S. in the Faculty of Medical Science. At that time he was governed by the prevalent Regulation 25 of the Panjab University Calendar Volume II P. 383, which provided that the minimum number of marks required to pass in the examination would be 50 per cent in each subject separately. However, the relevant and the particular provision of this Regulation at that time stood in the following terms:—

> "A candidate who fails in one or more papers/subject and/or aggregate by not more than 1 per cent of the total aggregate marks shall be given the marks required to pass the examination in accordance with the rules approved by the Syndicate from time to time."

However, later in May, 1970, an amendment of the aforesaid provision was made by the University which was in the form of an exception to Regulation 2.1 in the 1970, Panjab University Calendar Volume I page 116—

> "2.1. A candidate, who appears in all subjects of an examination and who fails in one or more subjects (written, practical, sessional or *viva voce* and/or the aggregate (if there is a separate requirement of passing in the aggregate) shall be given grace marks up to maximum of 1 per cent of the total aggregate marks (excluding marks for internal assessment) to make up the deficiency, if by such addition the candidate can pass the examination. While awarding grace marks fraction working to ½ or more will be rounded to a whole.
>
> *Exception.*—In the case of M.B.B.S. and B.D.S. examinations, however, the grace marks shall be given up to one per cent of the total marks of each subject, and not up to one per cent of the aggregate of all the subjects. In other

words, each subject will be, for this purpose, a separate unit, and a candidate, who fails in a subject by not more than one per cent of the aggregate marks of that subject may be given the required number of marks in order to pass in that subject."

(3) The petitioner-respondent having duly qualified and passed in the earlier professional examinations appeared in the M.B.B.S. Final professional examination in the year 1974 and obtained the following marks:—

1. Medicines—202 out of 400 P.
2. Surgery—225 out of 400 P.
3. Eye and ENT—204 out of 400 P.
4. Midwifery

(i) Theory—95 out of 200 }
(ii) Practical—106 out of 200 } Reappear.

(4) As is evident according to Regulation 25 in force in the year 1965, read with rule 7(1) of P.U. Calendar 1966 (Volume 14 Page 142) the petitioner-respondent was entitled for grant of grace marks to the extent of 1 per cent of the total aggregate marks which in effect would mean that he was entitled to 16 grace marks in all which benefit he could claim in respect of any one or more of the different subjects. It is the respondent's claim that this concession was continued to be allowed in the cases of Shri Anil Kumar, Miss Chand Rani and Sarvshri Pawan Kumar Garg and Madan Mohan even in the year 1973. However, in the petitioner-respondent's case the University refused to apply the earlier Regulation 25 and insisted upon governing his case under the new Regulations whereby he could get grace marks only to the extent of one per cent of the total marks of each subject and not of the aggregate. The result consequently was that the petitioner-respondent was directed to reappear in the subject of midwifery.

(5) The petitioner-respondent challenged the declaration of his result primarily on the ground that the new Regulations could not

be made with retrospective effect to adversely affect his rights and he would, therefore, continue to be governed by the old Regulation 25 as existing in the year 1965. The learned Single Judge accepted this plea and held that the petitioner was governed by the old Regulation and not by the new amended one and consequently allowed the writ petition with a direction to the University to declare the result of the petitioner afresh after affording him the benefit of grace marks in accordance with the old Regulation 25. The Panjab University appeals.

(6) Mr. J. L. Gupta, on behalf of the appellant has first forthrightly contended that the University has the power to frame its regulations with retrospective effect even though they may prejudicially affect the students during the course of studies which they may be pursuing. It is his case that a student is entitled to secure his degree or diploma in accordance with the Regulations existing on the date of the holding of a particular examination and that no student has any vested right flowing from the regulaions which might have been in force when he joined his course of studies. In the alternative counsel has contended that in the present case there is no element of retrospectivity in the amended regulations and every annual examination is a separate and distinct entity. Consequently, it was argued that each such examination has to be governed by the regulations then in force and the concept of a course of studies is not well-founded.

(7) Inevitably the learned counsel for the parties have placed reliance on the judgments of this Court in support of their respective claims. I may, therefore, at the very outset opine that the relevant case law appears to be in a tangled state, evidencing a clash of precedent, with the result that either side has been able to rely on authoritative judgments in support of their contending propositions. Before us learned counsel for the parties have therefore assailed the correctness of the judgments relied upon by the opposite side. It therefore, becomes both inevitable and necessary to make some detailed references to the authorities cited at the bar.

(8) Basic reliance on behalf of the appellant is on *Sewa Ram's case*. This pertained to regulations framed under section 16 of the Kurukshetra University Act, 1956. Therein the said University had retrospectively changed the syllabi and the quantum of qualifying

marks to the prejudice of the student and the student petitioner had assailed the amendment. The learned Single Judge, whilst strongly opining that the conditions for obtaining degrees should not normally be changed by a University in the middle of a course to which candidates might already have been admitted, nevertheless refused to grant the writ in favour of the affected student in *Sewa Ram* vs. *The Kurukshetra University* (1). It was further observed therein that if discipline was to be maintained in the Universities students must know that the fate of their educational career was entirely in the hands of educationists and it would be fruitless for them to look to any other source for relief.

(9) The aforesaid judgment was challenged in L.P.A. No. 97 of 1967 decided on the 17th of July, 1968. Whilst affirming the judgment and expressly approving the observations of the learned Single Judge, Mahajan J., speaking for the Bench went further to make forthright and wide ranging observations to the effect that the Universities are empowered to change and alter the syllabi and the terms and conditions of holding the examination both prospectively and retrospectively and a student aggrieved by any such action is merely at liberty to leave the University and seek admission elsewhere but has hardly any right to challenge the same. Resting himself firmly on *Sewa Ram's case,* Mr. Gupta has contended that the ratio of that judgment does not proceed from any distinction in the language of Section 16(2) (c) of the Kurukshetra University Act as against the provision of section 31 of the Panjab University Act under which the Regulations in the present case have been framed. His submission is that both the learned single Judge and the affirming Letters Patent Bench *in Sewa Ram's case* have laid down the larger principle that all Universities have a blanket power at any time to amend, alter or reframe their Regulations and no vested legal right accrues to any University student to challenge their validity even though they may affect him prejudicially. To be candid, the observations in *Sewa Ram's case,* if read without reservations would indeed lend patent support to Mr. Gupta's argument.

(10) On the other hand the learned counsel for the respondent had forcefully pointed out that within this very Court there has been a subsequent whittling down and indeed a recantation from the extreme stand that seems to have been taken in *Sewa Ram's case.*

(1) C.W. 2450/66, decided on 22nd December, 1966.

Counsel first relied on *Baldev Chand etc.* v. *Panjab University* (2) judgment which was rendered by the same learned Judge (R. S. Narula J., as his Lordship then was), who had originally decided *Sewa Ram's case.* The petitioners in this case were the students of the B.Sc. (Engineering) Course of the Panjab University in the Engineering College, Chandigarh, who were aggrieved by certain retrospective changes made in the Regulations to their prejudice by the Panjab University in the course for the degree of Bachelor of Science (Engineering). The writ petition was allowed and the learned Judge explained and circumscribed the earlier observations made in *Sewa Ram's case.* It was opined that the judgment in that case may have rested on the peculiar language of section 16(2) (c) of the Kurukshetra University Act and also on other distinguishing features, like the fact that the petitioner in that case had approached the Courts in 1966 after having actually taken the examination under the new Regulations which had been promulgated as far back as the 31st of March, 1964. It was also observed by the learned Judge that the midstream stabbing of the academic career of the students could be sustained only if it was strictly within the statutory jurisdiction of the University authorities and it was held that the Panjab University had no authority to give retrospective effect to any Regulations framed by it under section 31 of the Panjab University Act. It is thus evident that an attempt was made to confine and limit the observations in *Sewa Ram's case* and the View that the Universities can always restrospectively alter their Regulations to the prejudice of the students under all circumstances was not adhered to.

(11) Now apart from *Baldev Chand's case,* primary reliance on behalf of the respondents is on the Division *Bench judgment in Ram Parkash Nagar* v. *The Haryana Agricultural University* (3). This case pertained to the Haryana agricultural University, Hissar, and the petitioning student had made a grievance that the Rules and Regulations applicable to him when he joined the course in July, 1968, had been altered to his disadvantage by the University by amendments of Rules 7.2 and 7.64 in September, 1969. The learned Single Judge whilst dismissing the petition noticed the apparent conflict betwixt the Single Bench decision *in Baldev Chand's case* and

(2) C.W. 3014/70, decided on 27th October, 1970.
(3) L.P.A. 64—71, decided on 27th May, 1971.

the Division Bench judgment *in Sewa Ram's case* and feeling himself bound by the latter followed the same. On appeal, the Letters Patent Bench reversed the decision of the learned Single Judge and whilst allowing the petition directed the University to deal with his case as if the new Regulations were not applicable to him. The Letters Patent Bench made reference to *Sewa Ram's case* and nevertheless allowed the writ petition and approved of the limitations placed on the said case *in Baldev Chand's case.*

(12) Reliance on behalf of the respondents has also been placed on the Division Bench judgment in *Miss Gurvinder Kaur, etc.* v. *Panjab University, etc.* (4). Herein an amendment in the Rules made by the Panjab University pertaining to the grant of grace marks to the examinees which was detrimental to their interest was struck down by the Bench and ten writ petitions out of a batch of 12 were allowed. It was, however, observed that such a change could not be made to the detriment of an examinee after he has appeared in the examination and it was also opined that the withholding of the result until after the publication of the amendments was equally of no avail because the students were not given enough time to adjust themselves to the changes introduced in the Regulations.

(13) It would perhaps be wasteful to make a reference to earlier decisions which have been relied upon in the aforementioned cases. It suffices to mention that Mr. J. L. Gupta for the appellant was inevitably forced to assail the reasoning of the Letters Patent Bench *in Ram Parkash Nagar's case.* He submitted that the reasoning and the ratio of the said authority was incorrect because it ran patently counter to the earlier Division Bench judgment *in Sewa Ram's case.* According to him, the distinctions drawn were without any legal difference. It was pointed out by him that neither the judgment of the learned Single Judge nor that of the Division Bench in *Sewa Ram's case* proceeds on the basis of any peculiarity in the language of Section 16 of the Kurukshetra University Act and it was contended that subsequent decision cannot supplant or introduce another rationale into the said case when the relevant judgments themselves do not rely on any such distinction. Mr. Gupta commended the salutary and extreme principle laid down *in Sewa Ram's case* and canvassed for its acceptance.

(4) 1961 Current Law Jaurnal 568.

(14) On the other hand learned counsel for the respondents were equally vehement in assailing the correctness of the judgments of both the learned Single Judge and the Letters Patent Bench *in Sewa Ram's case.* It was argued that wide ranging and sweeping observations have been made by the Letters Patent Bench which were neither supportable on principle or authority. It was submitted that the extreme rigour of the Rule in the case had been totally eroded by virtual dissents within this Court itself in *Baldev Chand, Ram Parkash Nagar* and *Miss Gurvinder Kaur's cases* (supra).

(15) In the afore-mentioned state of the case law it appears to me that no useful purpose would be served by adverting to the facts and the reasoning in each individual case. Indeed an analysis in depth of the above-mentioned precedents would reveal that it is not possible to deduce any clear principle or rationale which may determine whether the particular action of a University to retrospectively alter its Regulations to the prejudice of its students is justifiable or not. The pendulum seems to have swung one way or the other and perhaps in some cases influenced more by the equities of the case and its peculiar facts rather than by cold calculated logic. Subtle distinctions have been drawn between the standard prescribed by the University for obtaining its degrees and the conditions for obtaining the same. Views have been expressed that if the change in the Regulations is made after the examination has been held it would not be valid thereby suggesting that on principle if it is made before the holding of an examination it may perhaps be valid. Similarly it has been opined that if reasonable notice is given to the student body of the retrospective change then perhaps such a change would be sustainable without clearly laying down or specifying as to what should be deemed as a reasonable notice in such circumstance. In one case the fact that the student petitioner came to Court after taking the examination and further that the amendment in the Regulations had been made a considerable time earlier were made grounds for non-suiting him. It appears to me that even the nature and the gravity of the hardship in each case seems to have weighed with the Court in upholding or striking down retrospective amendments in the Regulations. With great humility I am constrained to say that neither of these conditions appear to me to provide a firm legal basis or a clear guideline for determining the question at issue. The cases referred to above (as also those to which detailed reference has hot been deemed necessary) would seem to have left the law

in so nebulous a state that it could be modulated either way in the context of the shifting sands of the facts of a particular case. I hope to rest my view on a clear legal principle rather on such empirical considerations. This principle to my mind, is a basic one that legislation is normally deemed to be prospective unless by clear intendment or necessary implication it has to be construed as retrospective also. However, this power of clothing legislation with retrospectivity is an attribute primarily of the plenary powers of the legislature itself. Power to legislate retrospectively is a hydra-headed weapon which must be wielded with care and circumspection and it is therefore that its exercise is normally left to the wisdom of the legislature itself rather than its delegates. To this rule, there is, however, one clear exception that the legislature whilst delegating its power to the subordinate authority may in express terms or by necessary intendment clothe the same with the identical power to make retrospective laws. It is unnecessary to dilate on this legal aspect any further because the same seems now to be firmly entrenched by pronouncements of the final Court. After relying on the earlier decisions in *Income-tax Officer Alleppy* v. *M. C. Ponnoose* (5) *and Cannanore Spinning and Weaving Mills Ltd.* v. *Collector of Customs and Central Excise Cochin* (6), Khanna J., speaking for the Bench in *Hukam Chand etc.* v. *Union of India and others* (7), has pithily observed :—

> "* * *. The underlying principle is that unlike Sovereign Legislature which has power to enact laws with retrospective operation, authority vested with the power of making subordinate legislation has to act within the limits of its power and cannot transgress the same."

In the light of the above-said enunciation of the law, the crux of the matter in the present case, therefore, is whether Section 31 of the Panjab University Act (admittedly under which the impugned Regulations have been framed) empowers the Senate to frame Regulations retrospectively. For facility of reference, the relevant part of the said section may first be set down—

> "31(1) The Senate, with the sanction of the Government, may, from time to time, make regulations consistent with this Act to provide for all matters relating to the University;

(5) A.I.R. 1970 S.C. 385.
(6) A.I.R. 1970 S.C. 1950.
(7) A.I.R. 1972 S.C. 2427.

(2) In particular and without prejudice to the generality of the foregoing power, such regulations may provide for—

"(a) to * * * *

(m) * * * * *

(n) the courses of study to be followed and the conditions to be complied with by candidates for any University examination, and for degrees, diplomas, licences, titles marks of honour, scholarships and prizes conferred or granted by the University;

(o) * * * * *

to

(u) * * * * * ."

From the plain language of the above-said provision it seems to be manifest that there is nothing herein which would explicity or implicity clothe the Senate with power to frame Regulations retrospectively. Indeed even Mr. Gupta did not seriously contend that the language of Section 31 was capable of any such construction. As has already been said, the power to legislate retrospectively is a vital and potent function which would be exercised with care by the legislature itself and it is only when it clearly authorises the exercise of such a power to its delegates that the subordinate authority can be deemed to have such a power. I find no such authorisation here at all. Consequently it has to be held that the Regulations retrospectively altering the conditions for taking the examination to the detriment of the petitioner-respondent could not be made applicable to him. Therefore, he would be continued to be governed by the Regulations existing at the time when he joined his present course of studies.

(16) Before parting with this aspect of the case, I may mention that herein we were concerned primarily with the relevant provisions of the Panjab University Act and the Regulations framed thereunder. Consequently I would not wish to opine on any analogous provisions of the other Universities which must necessarily involve the construction of their peculiar language authorising the

framing of statute in its particular context. I would, however, be failing in my duty if reference was not made to the wide ranging observations of Mahajan J. *in Sewa Ram's case* (supra). After expressly quoting and approving some observations of the learned Single Judge it was observed in the penultimate para of the judgment as follows :—

> " * * * In any case, I am not able to accept the contention, that as soon as a candidate enters University, the University cannot alter its regulations and prescribe different standards for the examinations which the student has not already taken. If the new regulations do not suit the student, he has every right to leave the University and seek admission elsewhere, where he considers the regulations to be more favourable to him. The University is an autonomous body and has every right in the matter of altering the requisite rules concerning the conduct of examinations and the qualifying marks necessary for a degree provided the regulations are made well in advance to the examination which a candidate is required to take."

With great humility I am constrained to observe that it is not possible to subscribe to such a proposition. A reference to the judgment would show that no principle or precedent has been cited in support of the same. If, as the aforementioned language suggests, it was the intention of the Bench to declare that the Universities have an inherent blanket power to alter their Regulations with retrospective effect without any regard to the enacting statute or the provisions thereof then I must respectfully take a contrary view and overrule the above-said declaration of the law to this effect. As has been said earlier the principle which in my view should govern these cases would be the plain one — whether the particular language of the statute creating the University authorises it to legislate or frame the regulations with retrospectivity ? Upon that and that alone should rest the answer to the question whether a University can prejudicially affect with retrospective effect the syllabi, the conditions of taking the examinations etc., of its student-community.

(17) Repelled on his primary point, Mr. J. L. Gupta then faintly pressed his secondary contention that the impugned regulation herein should not be construed as retrospective but was indeed a prospective one. This argument is sought to be sustained on the

basis that every University examination in the Faculty of Medical Science should be deemed as an independent and separate entity and not merely a step in a consolidated course. On these premises it was submitted that the change introduced by the University related to the examination which was to follow later and should, therefore, be interpreted as prospective in essence.

(18) I am unable to agree. When the petitioner-respondent joined the Faculty of Medical Sciences in 1965 he obviously did so with the intention of obtaining the degree of Bachelor of Medicine and Bachelor of Surgery (M.B.B.S.). It is the common case that no degree or even a diploma is conferred on a student after he passes the first or the second professional examination. The scheme of the Regulations then existing leaves no manner of doubt that the whole course of studies for the Faculty of Medicine was one consolidated and composite course, which could hardly be treated as consisting of independent annual examinations. Reference to the relevant regulations existing at the time would itself show that the scheme thereof visualises the course of study as a single integrated whole. Regulation 2 in this context lays down that throughout the whole period of study, the attention of the students should be directed to the preventive aspects of medicine and thus an inkling is given that the course is to be treated as a continuous period of study rather than an isolated jumble of annual examinations. It is only at the end and the completion of the course that the student would be entitled to the M.B.B.S. degree as such. A reference to Regulations Nos. 28 and 29 would further show that the candidates shall be granted a degree only after they have completed the post examination training for 12 months of compulsory rotating housemanship. It is thus more than evident that the degree of M.B.B.S. in the Faculty of Medical Sciences of the Panjab University is a single integrated composite course of study.

(19) The above-said view, which I am inclined to take, has the consistent support of precedent within this Court. In *Baldev Chand's case* the degree of Bachelor of Science in Engineering was construed as a single composite course. Similarly in *Ram Parkash Nagar's case,* the degree of the Bachelor of Veterinary Science and Animal Husbandry was treated as a single course. In the batch of writ petitions covered by *Miss Gurvinder Kaur's case,* the Division Bench held the B.Sc. (Home Science), the three-years degree course (T.D.C.), for Bachelor of Arts and the Bachelor of

Laws degree in the Department of Laws amongst others as consolidated courses. On behalf of the appellant no serious challenge could be posed to the consistent stream of precedent in this regard.

(20) I do not find any merit in the second contention raised on behalf of the appellant which is consequently rejected.

(21) As both the contentions raised on behalf of the appellant fail, the Letters Patent appeal is hereby dismissed and the judgment of the learned Single Judge affirmed. The parties, however, will bear their own costs.

Prem Chand Jain, Judge.—I agree.

Gurnam Singh, Judge.—I agree.

N.K.S.

FULL BENCH

APPELLATE CRIMINAL

..Before O. Chinnappa Reddy, B. S. Dhillon and M. R. Sharma, JJ.

SARVINDER SINGH AND ANOTHER,—*Appellants.*

versus

THE STATE,—*Respondent.*

Criminal Appeal No. 44 of 1975.

September 8, 1976.

Indian Penal Code (XLV of 1860)—Sections 307 and 324—Gunshot fire resulting in simple injuries—Intention or knowledge of the accused—Whether to be inferred from the result of the act only—Accused—Whether could be guilty of an offence under section 307

Held, that intention or knowledge is not to be measured by the consequence. It has to be gathered from all the surrounding facts and circumstances. If an act is done with the intention or knowledge requisite for the commission of the offence of murder, and, if there are no circumstances introducing a defence to a charge of murder either by way of a general or a special exception, the offence would be attempt to murder, if the act does not result in death, whatever be the reason for the act not resulting in death, whatever be the nature of the injuries, and even if no injuries are caused. The requisite intention or knowledge is not to be excluded from the mere fact that death is not the consequence of the Act. Such an act may not result in death for a variety of reasons, such