R

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29th DAY OF SEPTEMBER, 2020

PRESENT

THE HON'BLE Mrs. JUSTICE B.V. NAGARATHNA

AND

THE HON'BLE MR. JUSTICE RAVI V.HOSMANI

WRIT PETITION No.8788 OF 2020 [EDN-RES]

Connected with

WRIT PETITION No.8951 OF 2020 [EDN-RES]

WRIT PETITION No.9145 OF 2020 [EDN-RES]

IN W.P. No.8788 OF 2020:

BETWEEN:

MASTER BALACHANDAR KRISHNAN
AGED ABOUT 17 YEARS

REPRESENTED BY HIS MOTHER
MRS. UMA KRISHNAN,
AGED 45 YEARS,
RESIDING AT NO.115/1, 7TH CROSS,
CIL LAYOUT, CHOLANAYAKANAHALLI,
BENGALURU - 560 032. ... PETITIONER

(BY SRI K.G. RAGHAVAN, SENIOR COUNSEL A/W.
SRI KARAN JOSEPH, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
DEPARTMENT OF PARLIAMENTARY
AFFAIRS AND LEGISLATION,
M.S. BUILDING, DR. AMBEDKAR ROAD,
BENGALURU - 560 001
REP. BY ITS SECRETARY.

2. THE UNION OF INDIA,
MINISTRY OF HUMAN RESOURCES
DEVELOPMENT, DEPARTMENT OF

HIGHER EDUCATION,
127-C, SHASTRI BHAWAN,
NEW DELHI – 110 001
REP. BY ITS SECRETARY.

3. THE BAR COUNCIL OF INDIA
21, ROUSE AVE INSTITUTIONAL AREA ROAD,
MATA SUNDARI RAILWAY COLONY,
MANDI HOUSE,
NEW DELHI – 110 002
REP. BY ITS CHAIRMAN.

4. THE NATIONAL LAW SCHOOL OF INDIA UNIVERSITY
GNANA BHARATHI MAIN ROAD,
OPPOSITE NAAC, TEACHERS COLONY,
NAGARABHAVI,
BENGALURU – 560 072
REP. BY ITS VICE CHANCELLOR. ... RESPONDENTS

(BY SRI PRABHULING K. NAVADGI, ADVOCATE GENERAL A/W.
SRI VIKRAM HUILGOL, AGA FOR R-1;
SRI C. SHASHIKANTHA, ASST. SOLICITOR GENERAL OF INDIA FOR R-2;
SRI VIKRAMJIT BANERJEE, ADDL. SOLICITOR GENERAL OF INDIA A/W SRI SRIDHAR PRABHU, ADVOCATE FOR R-3;
SRI UDAYA HOLLA, SENIOR COUNSEL A/ W.
SRI ADITYA NARAYAN, ADVOCATE FOR R-4;
DR. ADITYA SONDHI, SENIOR COUNSEL A/ W.
SRI SHIVASHANKAR S.K., ADVOCATE FOR IMPLEADING APPLICANT ON I.A.I/2020;
SRI PRAVEEN KUMAR HIREMATH, ADVOCATE FOR IMPLEADING APPLICANT ON I.A. II/2020)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO DECLARE THE NATIONAL LAW SCHOOL OF INDIA (AMENDMENT) ACT, 2020 (AT ANNEXURE – A) AS UNCONSTITUTIONAL, ILLEGAL AND ULTRA VIRES AND ETC.

IN W.P. No.8951 OF 2020:

BETWEEN:

1. MR. SATYAJIT SARNA
S/O. MR. NAVTEJ SARNA
AGED 35 YEARS,
RESIDING AT S-88,
GREATER KAILASH PART II,
NEW DELHI – 110 048.

2. MR. NIKHIL SINGHVI
S/O. MR. GANAPAT SINGH SINGHVI,
AGED 35 YEARS,
RESIDING AT K-27,
GROUND FLOOR,
HAUZ KHAS ENCLAVE,
NEW DELHI – 110 016. ... PETITIONERS

(BY SRI NANDAKUMAR C.K., ADVOCATE)

AND:

1. STATE OF KARNATAKA
THROUGH ITS SECRETARY,
DEPARTMENT OF PARLIAMENTARY
AFFAIRS AND LEGISLATION,
M.S. BUILDING, DR. AMBEDKAR ROAD,
AMBEDKAR VEEDHI,
BENGALURU – 560 001.

2. THE CONSORTIUM OF NATIONAL
LAW UNIVERSITIES,
THROUGH ITS PRESIDENT,
P.O. BAG 7201, NAGARBHAVI,
BANGALORE – 560 072.

3. NATIONAL LAW SCHOOL OF INDIA UNIVERSITY,
BENGALURU, THROUGH ITS VICE-CHANCELLOR,
GNANA BHARATI MAIN ROAD,
OPPOSITE NAAC, TEACHER'S COLONY
NAGARBHAVI,
BANGALORE – 560 072. ... RESPONDENTS

(BY SRI PRABHULING K. NAVADGI, ADVOCATE GENERAL A/ w.
SRI VIKRAM HUILGOL, AGA FOR R-1;
SMT. LAKSHMI MENON, ADVOCATE FOR R-2;
SRI UDAYA HOLLA, SENIOR COUNSEL A/ w.
SRI ADITYA NARAYAN, ADVOCATE FOR R-3;
SRI PRAVEENKUMAR HIREMATH, ADVOCATE FOR
IMPLEADING APPLICANT ON I.A. II/2020)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO DECLARE THAT THE NATIONAL LAW SCHOOL OF INDIA (AMENDMENT) ACT, 2020 AS ILLEGAL, UNCONSTITUTIONAL AND ULTRA VIRES NATIONAL LAW SCHOOL OF INDIA ACT, 1986 (ANNEXURE – A) AND ETC.

IN W.P. No.9145 OF 2020:

BETWEEN:

BAR COUNCIL OF INDIA
(A STATUTORY BODY CONSTITUTED,
GOVERNED AND FUNCTIONING
UNDER THE PROVISIONS OF
THE ADVOCATES ACT, 1961)
HAVING ITS OFFICE AT 21,
ROUSE AVENUE INSTITUTIONAL AREA,
NEAR BAL BHAWAN,
NEW DELHI – 110 002.
(REPRESENTED BY ITS SECRETARY) ... PETITIONER

(BY SRI VIKRAMJIT BANERJEE, ADDL. SOLICITOR GENERAL OF INDIA A/W SRI SRIDHAR PRABHU, ADVOCATE)

AND:

1. STATE OF KARNATAKA
DEPARTMENT OF PARLIAMENTARY
AFFAIRS AND LEGISLATION,
ROOM NUMBER 137, 1ST FLOOR,
VIDHANA SOUDHA,
BENGALURU – 560 001.
(REPRESENTED BY ITS SECRETARY)

2. NATIONAL LAW SCHOOL OF INDIA UNIVERSITY
A UNIVERSITY CONSTITUTED UNDER THE
PROVISIONS OF THE NATIONAL LAW SCHOOL
OF INDIA UNIVERSITY ACT, 1986
HAVING ITS OFFICE AT
GNANA BHARATHI MAIN ROAD,
OPP. NAAC, TEACHERS COLONY,
NAGARABHAVI,
BENGALURU – 560 072.
(REP. BY ITS REGISTRAR) ... RESPONDENTS

(BY SRI PRABHULING K. NAVADGI, ADVOCATE GENERAL A/w.
SRI VIKRAM HUILGOL, AGA FOR R-1;
SRI UDAYA HOLLA, SENIOR COUNSEL A/w.
SRI ADITYA NARAYAN, ADVOCATE FOR R-2;
SRI PRAVEEN KUMAR HIREMATH, ADVOCATE FOR
IMPLEADING APPLICANT ON I.A. I/2020)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO CALL FOR RECORDS; AND ISSUE A WRIT IN THE NATURE OF

MANDAMUS OR ANY OTHER WRIT, ORDER OR DIRECTION TO DECLARE THAT THE NATIONAL LAW SCHOOL OF INDIA (AMENDMENT) ACT, 2020 (KARNATAKA ACT 13 OF 2020), PRODUCED AT ANNEXURE – A AS ULTRA VIRES THE CONSTITUTION OF INDIA, AND HENCE, UNCONSTITUTIONAL, ILLEGAL, UNTENABLE; AND CONSEQUENTLY BE PLEASED TO STRIKE DOWN THE SAME FROM THE STATUTE BOOK AND ETC.

THESE WRIT PETITIONS COMING ON FOR *ORDERS* ON 01/09/2020 AND THE SAME HAVING BEEN HEARD AND RESERVED FOR *PRONOUNCEMENT OF ORDER*, THIS DAY, ***NAGARATHNA J.,*** PRONOUNCED THE FOLLOWING:

O R D E R

Since, these writ petitions raise common questions of law and facts, they have been connected together, heard at length and disposed of by this common order.

2. Writ Petition No.8788 of 2020 has been filed by a student who is a resident of Bengaluru for about eight years and has completed his school education from Florence Public School and MES Kishora Kendra, Bengaluru, while Writ Petition No.8951 of 2020 is a public interest litigation filed by two former students of the National Law School of India University, Bengaluru (hereinafter referred to as "respondent/Law School" or "respondent/Law University" for the sake of convenience). Writ Petition No.9145 of 2020 has been filed by the Bar Council of India (hereinafter referred to as "BCI" for the sake of convenience), a statutory body constituted,

governed and functioning under the provisions of the Advocates Act, 1961 (hereinafter referred to as "the 1961 Act" for short), through its Secretary.

3. In all these writ petitions, the petitioners have assailed the *vires* of the National Law School of India (Amendment) Act, 2020 (Karnataka Act No.13 of 2020) (hereinafter referred to as "the Amendment Act", for short) as being unconstitutional, illegal and *ultra vires.* There is also a challenge to the revised seat matrix in B.A., LL.B. (Hons.) and LL.M. programmes issued by the respondent/Law School, vide Notification dated 04.08.2020.

BRIEF FACTS :

In W.P.No.8788 of 2020:

4. The petitioner herein has stated that he is a resident of Bengaluru for about eight years and has completed his schooling in two institutions in Bengaluru. That he has registered for appearing in the Common Law Admission Test (hereinafter referred to as "the CLAT" for short) for the year 2020 in order to seek admission to the respondent/Law School for his five years B.A., LL.B. (Hons.) undergraduate programme pursuant to the

Notification issued by the respondent/Law School. The petitioner has challenged the *vires* of the Amendment Act, which provides 25% horizontal reservation by way of institutional preference for students who have studied in any recognized educational institution in Karnataka for a period of at least ten years preceding the date of qualifying examination, by insertion of sub-section (3) to Section 4 of the National Law School of India Act, 1986 (Karnataka Act No.22 of 1986) (hereinafter referred to as "the Act" for short), a copy of which is produced at Annexure – E to the writ petition.

5. According to the petitioner, the respondent/Law School has no power to provide for any kind of horizontal reservation (institutional or residential-based) in view of the law laid down by the Hon'ble Supreme Court in ***P.A. Inamdar vs. State of Maharashtra, [(2005) 6 SCC 537]*** *(P.A. Inamdar)*. That the petitioner learnt from newspaper reports that domicile based reservation for students of Karnataka by way of an amendment was passed by the Karnataka State Legislature providing 50% reservation but, the same was returned by the Hon'ble Governor of Karnataka on the

ground that such regional reservation could not be accepted. Thereafter, the Karnataka Legislature has passed the impugned Amendment Act introducing 25% horizontal reservation by way of institutional preference for students who have studied from any recognized educational institutions in Karnataka for a period of at least ten years preceding the date of qualifying examination by amending Section 4 of the Act.

6. According to the petitioner, the concept of institutional preference at the level of under-graduation in a professional course is unknown to law. That the respondent/Law School is an institution of national significance. It is a premier institution for excellence in legal education in India as well as in South Asia. The admission to the said institution must be on merit-based selection of students and satisfy the twin test of reasonable classification within the contours of Article 14 of the Constitution of India. The notion of institutional preference is recognized only in respect of postgraduate medical courses where institutional continuity is an important factor. Further, the respondent/Law School was constituted under the Act, in furtherance of the objects of

the BCI to establish, maintain and run a model law college in India for the promotion of legal education and to establish an institution to pioneer legal education reform and anchor the transformation of the Indian legal system through research and policy interventions. That the respondent/Law School, since its inception, has become and is recognized globally as the premier institution for imparting legal education in the country to students from India and overseas.

7. Admissions to the five years B.A., LL.B. (Hons.) undergraduate programme is based on performance at the national-level through a qualifying examination/test namely, CLAT conducted by the Consortium of National Law Universities (hereinafter referred to as "the Consortium" for the sake of brevity) in the country. Students who appear for CLAT are drawn from various schools across India and it is an All-India examination. Hence, the principle of institutional continuity or preference is irrelevant or inapplicable in such a system of admissions through CLAT. For the academic year 2020-21, respondent/Law University had notified a total number of eighty (80) seats for five years' B.A., LL.B.

(Hons.) undergraduate programme. The petitioner, being a resident of Bengaluru, fulfilled the eligibility criteria and applied for the programme under the general category on 28.02.2020 but, in view of COVID–19 pandemic, the Consortium published a Notification dated 18.05.2020 extending the date to fill online application for CLAT – 2020 until 01.07.2020. In the interregnum, 25% horizontal reservation has been brought in through the impugned Amendment Act more than three months thereafter i.e., in April-2020, from the date of publication of the Press Release calling for applications from the aspirant students. The introduction of horizontal institutional reservation for the benefit of students of Karnataka at the belated stage is illegal and impermissible as the same would alter the entire structure of seats which were originally made available to the candidates from other States. Also, the criterion for providing horizontal reservation for the students of Karnataka to an extent of 25% would adversely impact petitioner's opportunity to obtain admission in the respondent/Law School. That the preference for a particular category of students of Karnataka is arbitrary and ill-founded. As such, students of Karnataka even otherwise are adequately represented in

the Law School. The Amendment Act is manifestly arbitrary and violative of Article 14 of the Indian Constitution. Hence, the writ petition.

In W.P.No.8951 of 2020:

8. W.P. No.8951 of 2020 is a public interest litigation filed by two alumni of the respondent/Law School who are practicing advocates at Delhi. They have also assailed the Amendment Act providing horizontal reservation to the tune of 25% of the total number of unreserved seats for the residents of Karnataka. They have contended that the same would scuttle equal opportunity which is a constitutionally guaranteed right to the students who are being unfairly discriminated by virtue of the impugned reservation policy of the State Government. The said reservation, if implemented, would alter and affect the national character of the respondent/Law University and its reputation as a premier national institution of excellence. The respondent/Law University is the first national University in India having students from within and outside Karnataka. The law school has a character as a pan-India model law college having national-level importance, where the sole criterion

of admission is based on merit (subject to the permissible reservation as recognized under the Constitution), having a rigorous process of selection. The National Law University has rigorous academic schedule, which is extremely competitive. Even the admission in the said Law School is on the basis of merit and competence. The respondent/Law School is analogous to AIIMS in relation to medical education in New Delhi. It is a top University which provides legal education to its students. That any reservation provided in the admission process for students must meet the twin requirements of legitimate State interest and backwardness of the region as laid down by the Hon'ble Supreme Court in the case of ***Dr.Pradeep Jain vs. Union of India, [(1984) 3 SCC 654]*** *(Dr.Pradeep Jain)*. However, the Amendment Act is manifestly arbitrary and violative of Article 14 of the Constitution as it has no rational nexus to the object sought to be achieved under the Act.

9. Referring to various judgments of the Hon'ble Supreme Court, the petitioners have contended that the Amendment Act is sought to be applied arbitrarily after the commencement of the admission process on the issuance

of the Notification on 01.01.2020. That the Amendment Act cannot have a retrospective effect. The sudden inclusion of regional reservation by the Amendment Act would lead to destruction of the admission notification and the CLAT procedure. In the circumstances, they have sought to declare that the Amendment Act is illegal and *ultra vires* the Constitution.

In W.P.No.9145 of 2020:

10. BCI has preferred this writ petition by assailing the Amendment Act as being *ultra vires* the Constitution and by seeking quashing of the revised seat matrix of B.A., LL.B. (Hons.) and LL.M. programmes issued by respondent/Law University (Annexures – A and B to the said writ petition).

11. According to BCI, as per the scheme of the Constitution of India, education is a subject which is placed in the Concurrent List (List-III of Seventh Schedule of the Constitution) as per Entries 25 and 26. That, the 1961 Act is a complete code relating to legal practitioners under the said Act. The BCI was established to discharge certain statutory functions enumerated under Section 7 of the 1961 Act which, *inter alia,* includes promotion of legal

education and to lay down standards of such education in consultation with the Universities in India imparting such education and the State Bar Councils. Till the beginning of 1980s, there was no major reform in legal education. In late 1980s, the five years' integrated programme was developed to transform Indian Legal Education. The said programme was for eligible students after completion of higher secondary education.

12. The legendary Padma Bhushan Prof. N.R. Madhava Menon was then working as professor in Faculty of Law, Delhi University. He was approached by the then chairman and members of the BCI to start an institution for academic excellence, social relevance and professional competence. Prof.Menon took a three year sabbatical from Delhi University to join the BCI as Secretary of the Bar Council of India Trust ("BCI Trust" for short). The BCI Trust opened a branch office at Bengaluru and registered a society in the name and style of the National Law School of India Society (hereinafter referred to as "the Society" for the sake of brevity) under the Karnataka Societies Registration Act, 1960. The object of the said Society, *inter alia,* was establishing, maintaining and developing a

teaching and research institute of higher learning in Law with powers to award degrees, diplomas and other academic distinctions which is the respondent/Law University. The Society requested the State Government to establish a National Law School on the lines of the objects sought to be achieved. Respondent No.1/State Government considered it necessary to establish a national-level institution at Bengaluru and enacted the Act.

13. The Act has certain clear objects to be achieved at a national-level. The Act provides that the Chief Justice of India or his nominee, who is a sitting Judge of the Supreme Court of India shall be the Chancellor of the University. The Act provides for General Council, Executive Council and the Academic Council. The Chairman of the Bar Council of India is the Chairman of the General Council. The composition of the apex bodies namely, Governing Council, Executive Council and Academic Council of the respondent/Law University under the Act, is of a distinctive nature and has a national character. There can be no comparison of the respondent/Law University with any other institution or other law schools or University. According to the

petitioners, just as the BCI belongs to all, so does respondent/Law University. That the State of Karnataka had the locational advantage for the respondent/Law University. Initially, National Entrance Test was conducted by the respondent/Law School itself, but subsequently, in the year 2008, CLAT has been the basis for admission of students to the respondent/Law University. Further, petitioners have averred that twenty-six batches of students have completed their education and have pursued further studies in their chosen areas of specialization in other prestigious international universities on prestigious scholarships like Rhodes and INLAKS. Between the years 1996 and 2017, the respondent/Law University has produced twenty Rhodes Scholars, within which as many as seven are from the State of Karnataka. The students have graduated from the respondent/Law University and several students from respondent/University have joined practice of Law in India at various levels from the trial Courts to the High Courts and Supreme Court and a few of them have also joined civil services. The institution has undertaken many research projects and has exchange programmes with several international universities including the National University of Singapore, Osgoode

Hall Law School, New York University, Canada and Bucerius Law School, Germany etc. The faculty members of the respondent/Law University have studied in well-known universities overseas and are engaged in teaching and research under various exchange programmes. A number of professors and Judges from India and overseas have visited and interacted with, and even taught the students in the respondent/Law School. According to the petitioners, the Centre for training of in-service officers from several departments of both the Union and the State Governments including the institutional arrangements of several institutions of national repute makes the respondent/Law School truly of a national character.

14. According to the petitioners, when such is the position of the respondent/Law School, the Amendment Act introducing domicile reservation on horizontal basis is against the notion of equality as guaranteed under the Constitution of India. That the object of providing such a reservation is in order to nullify the judgment of this Court in ***Lolaksha vs. The Convener, Common Law Admission Test (CLAT-2009), NALSAR University of Law, [ILR 2009 Kar. 3934]*** *(Lolaksha)*. Further,

pursuant to the Amendment Act, the hitherto existing intake of 80 seats has been increased to 120 seats and 25% of the said seats are reserved as per the impugned Amendment. Also, the students of Karnataka have been provided benefit of 5% concession on the general merit cut-off score obtained in CLAT 2020. This is not contemplated either under the Act or the Amendment Act. The same is also unconstitutional. That in *Lolaksha*, this Court has held that reservation of seats for Scheduled Castes and Scheduled Tribes cannot be extended to candidates hailing from other States or areas and consequently, such candidates from Karnataka alone are entitled for reservation in the said category. The decision in *Lolaksha* is pending in Writ Appeal No.3545 of 2009 and there is no stay against the said judgment. Further, the institutional preference in a Governmental institution or under the regime of Government Quota seats in professional colleges is essentially and completely different from the admission regime in the respondent/Law School.

15. It is further averred that the respondent/Law School was conceived by the BCI to be a model national institution for legal education of national character and

repute; once the national character of the institution is compromised, the very purpose of establishing such an institution would be defeated. The respondent/Law School is the manifestation of the foundational function of the BCI i.e., to lay down standards of legal education and the Amendment Act is an encroachment into this exclusive domain of the BCI/petitioner herein. The Amendment Act providing for domicile reservation has no rational basis or legal logic and has also no rational nexus to the object sought to be achieved. The Amendment Act is manifestly arbitrary as it excludes the students of other States from seeking admission in an institution having a national character. Further, the revised seat matrix providing the benefit of 5% concession to Karnataka students has no statutory legal or legal basis. Hence, the writ petition.

STATEMENT OF OBJECTIONS:

Statement of objections filed by respondent No.1/State in W.P. No.8788 of 2020:

16. Statement of objections have been filed on behalf of the State contending as under:

(a) The respondent/Law School was established by the Act which was passed by the Karnataka State

Legislature with an intention to establish a teaching and research institute and with the object of promoting the legal education. The Act was passed on the basis of entry Nos.25 and 26 of List-III of Seventh Schedule of the Constitution of India and the Karnataka Legislature had the competence to pass the said Act.

(b) The respondent/Law School was established on twenty-three (23) acres of land, leased at a concessional rate by the State Government with an initial Corpus Fund that was also provided by the State Government. Further, the State Government is providing aid of Rs.2,00,00,000/- (Rupees Two crores) as annual grant which is released on a quarterly basis. Therefore, the respondent/Law School is "*an aided institution*" within the meaning of the Karnataka Education Act, 1983 vide Section 2(18) and it cannot be considered as a self-financing institution. The respondent/Law School is a State University receiving financial aid from the State and hence, the observations in *P.A.Inamdar* are wholly misplaced, as the same were made in the context of minority and non-minority private unaided institutions, which do not receive any funds from the Government.

(c) That the State, through the impugned Amendment Act, introduced horizontal reservation of 25% of the seats for students from Karnataka i.e., the students who have studied in any one of the recognized educational institutions in the State for a period of not less than ten years preceding to the qualifying examination. Therefore, the State has introduced institutional preference of 25% of the seats horizontally. In other words, a preference by way of 25% horizontal reservation of the seats has been introduced for those students who have studied in one of the recognized institutions in the State. This is not a regional reservation as has been contended by the petitioners. It is the reservation on the basis of institutional preference i.e., for the students who have studied in recognized institutions within the State. The reservation of seats on the basis of institutional preference has been affirmed by the Hon'ble Supreme Court subject to the condition that it conforms to the outer limit prescribed i.e., 50% of the total open seats, vide ***Nidamarti Mahesh Kumar vs. State of Maharashtra, (AIR 1986 SC 1362),*** *(Nidamarti Mahesh Kumar);* ***Yatinkumar Jasubhai Patel vs. State of Gujarat,***

[(2019) 10 SCC 1], *(Yatinkumar Jasubhai Patel);* ***Saurabh Choudri vs. Union of India, [(2003) 11 SCC 146],*** *(Saurabh Choudri).* Therefore, reservation of seats in the admission process on institutional preference to an extent of 50% of the total seats is constitutionally permissible. In the instant case, the State has provided 25% horizontal reservation which is well within the permissible limit of 50% of the total seats. The object of providing reservation is in line with various socio-economic factors laid down by the Hon'ble Supreme Court so as to bring about real equality in admission. It is supported by socio-economic reasons and an obligation on the State to uplift its citizens in education, employment and standards of living.

(d) It is further averred that the National Law Schools in various States have provided domicile preference in varying measures, having both vertical as well as horizontal reservations. That the Gujarat National Law University has provided 39 reserved seats under the category of "Gujarat Domicile"; Rajiv Gandhi National University of Law (RGNUL), Punjab provides 18 reserved seats under the category of "Resident Punjab"; the

National Law University and Judicial Academy (NLUJA), Assam, provides 5 reserved seats under the category of "Permanent Resident of Assam"; the Himachal Pradesh National Law University (HPNLU), Shimla provides 30 reserved seats under the category of "Himachal Pradesh Domicile". The State Legislature of Karnataka State has passed the Act providing 25% horizontal reservation for Karnataka Students to ensure a level playing field to students from Karnataka in their own State University, similar to students of other States in their respective Universities. Currently, all students of Karnataka are under a handicap as there is no level playing field for them to seek admission in the National Law Schools. That a meritorious candidate from the State of Karnataka would lose out to a candidate from outside Karnataka not only in the respondent/Law School, but also in other Law Schools in other States owing to similar reservations on the basis of residence in other law schools. Therefore, students from Karnataka State must have an equal opportunity in their own State while seeking admission in the respondent/Law School.

(e) Petitioners' contention that institutional preference is permissible only in postgraduate institutions, is baseless and unfounded. The said reservation is also applicable to undergraduate courses. It is similar to the reservation in postgraduate courses on the same basis. That the Hon'ble Supreme Court has recognized reservation on the basis of institutional preference as permissible even for an undergraduate professional courses, such as M.B.B.S. which is in medicine. Hence, there is no basis in the contention of the petitioners. The reason for introduction of institutional preference is to keep aside a fixed number of seats (within the permissible limits) for students who have studied in the recognized institutions in Karnataka State. The said policy is neither arbitrary nor impermissible in law. Hence, the Amendment Act cannot be struck down as it is constitutionally valid. That the respondent/Law School has issued a revised seat matrix dated 04.08.2020 as seats have been increased from 80 to 120 seats. The number of general category of seats has also been increased. Therefore, there can be no apprehension that meritorious students would lose an opportunity to gain admission to the institution on account of horizontal reservation for Karnataka students. That

petitioners reliance on ***AIIMS Students' Union vs. AIIMS, [(2002) 1 SCC 428],*** *(AIIMS Students' Union)* is misplaced and not applicable to the instant case, as AIIMS is an institution created by an Act of Parliament, while the respondent/Law School is a creation of the Karnataka State Legislature. Further, the Department of Higher Education under the Ministry of Education, Government of India has recognized ninety-five "Institutions of national importance" of which, AIIMS is a member but not respondent/Law School. It is averred that the CLAT was scheduled to be held on 22.08.2020, though normally it is held in the month of May, but was postponed this year on account of the COVID-19 pandemic. Now, CLAT has been postponed to 07.09.2020. There is no merit in the contention that the rules of the game have been altered after the admission process has begun. Even otherwise, a legislative amendment can always over-ride the Prospectus issued by educational institutions. That the Law School has adhered to the State's mandate by issuing revised seat matrix on 04.08.2020. That the policy decision of introducing institutional preference is by way of legislation and the same may not be interfered by this Court. The Amendment Act is not retrospective in nature but

prospective as the same would apply to the admissions that would take place post coming into force of the Act and all future admissions annually. In the circumstances, the State has urged for dismissal of the writ petition.

Additional Statement of Objections filed by the respondent No.1/State in W.P. No.8788 of 2020:

(f) Additional statement of objections has been filed on behalf of the State, wherein reliance has been placed on ***D.P. Joshi vs. State of Madhya Bharat, [AIR 1955 SC 334],*** *(D.P. Joshi)* as well as *Dr.Pradeep Jain* to contend that where finances are spent by the State Government for up-keeping and maintenance of educational institutions within its borders, the State can confer some benefits on its residents which would eventually benefit the State itself for the reason that the graduates are likely to settle down in the State and serve the State's interests. Considering the immense contribution and potential of the respondent/Law School, one of the primary interest of the State is to provide for 25% horizontal reservation to students who have studied in the State ("Karnataka students") so as to ensure that a portion of talent that is produced by the school is retained

within the State in the larger interest of the State's development. Therefore, reservation for Karnataka students, although not a guarantee, would result in some of the graduates choosing to stay in the State and contribute to the development of the State by practicing law in the State's Courts, joining the Government or the judiciary or being appointed as law professors. That non-Karnataka students are unlikely to practice in Karnataka Courts for want of knowledge of Kannada language and there is a far greater possibility of Karnataka students deciding to practice in Karnataka. Therefore, the State is likely to benefit by the high standards of excellence at the respondent/Law School. It is further stated that a Karnataka student who is not from a privileged background would find it difficult to compete with students from elite schools from other States. The legal profession and the State would lose out on a promising candidate as candidates from other States will not opt to practice in Karnataka for want of knowledge of Kannada language. On the other hand, a Karnataka student, who could have obtained education with higher standards of excellence and who would, in all probability, practice in the State, would

be deprived of such an opportunity. Therefore, the Amendment Act seeks to remedy the same.

(g) That by enhancing the number of Karnataka students to be admitted in the respondent/Law School, who would, settle in the State, they would contribute to the growth and development of the State. That, many meritorious students of the State if allotted colleges outside the State may not choose to opt for pursuing a career in Law and hence, the same is remedied by providing a reservation for Karnataka students. This is more so in the case of female students. Further, many Karnataka students may not get admission in Law Schools in other States on account of the domicile or residence-based reservation. The State has considered this aspect also while providing for reservation for Karnataka students in the respondent/Law School. That Karnataka students form a class by themselves and the horizontal reservation introduced by way of impugned Amendment is based on an intelligible differentia having a reasonable nexus to the object sought to be achieved. Hence, the impugned Amendment does not violate Article 14 of the Constitution,

as it is based on institutional preference in the instant case.

Statement of objections filed by Respondent No.1 / State in W.P. No.8951 of 2020:

17. The Statement of objections in this writ petition is similar to the one filed in Writ Petition No.8788 of 2020, except stating that the High Court should not ordinarily entertain a petition by way of public interest litigation questioning the constitutional validity of the statute or statutory rule. However, at this stage itself, we may add that no arguments on the maintainability of the public interest litigation were addressed on behalf of the State. The rest of the statement of objections is in *pari materia* with the statement of objections in writ petition No.8788 of 2020.

Statement of objections filed by Respondent No.2 / Consortium of National Law Universities in W.P. No.8951 of 2020:

18. The statement of objections has also been filed by the Secretary-cum-Treasurer of the Consortium of National Law University.

(a) It is averred that the Consortium is registered under the provisions of the Karnataka Societies

Registration Act, 1960 and the Rules framed thereunder as a Society. Annexure 'R1' is the bye-laws of the Consortium of National Law Universities. The Consortium was established in August 2007 with the object of improving standard of legal education in the country and in turn the justice delivery system through holistic legal education. The Consortium consists of twenty-two National Law Universities as its members. One of the responsibilities of the Consortium is to organize CLAT which is an annual national-level entrance examination for admission to undergraduate, postgraduate, doctoral and post-doctoral programmes offered by all participating / member National Law Universities across the nation. Under the CLAT Scheme, at the time of submitting their application, candidates are required to indicate their top three preferences amongst the participating law schools. Upon successfully clearing the examination and securing the cut off marks set by the Law Schools and depending upon the in-take, an offer for the admission is made to the candidates based on the candidates' preference as well as on the availability of seats in the preferred University. The total number of seats available and number of reserved seats categories and such other information are uploaded

by the participating universities through the Consortium on its official website. The Consortium is only empowered to collect such data relevant towards preparing the seat matrix and upload the information so collected on its official website, as it is. The Consortium does not have any power to alter or amend seat related information once submitted by the concerned University. It has no powers of adjudication or authority to decide the correctness or validity of the information shared by the participating National Law Schools/Universities. Every participating Law School/University is an autonomous body and is ultimately responsible for its own functioning and administrative matters including seat allocation, reservation of seats, etc. On 04.08.2020, the respondent/Law School uploaded the seat matrix by incorporating the horizontal domicile-based reservation as prescribed under the Amendment Act of 2020. The said updated information was made available on the website of the Consortium. On account of change in the seat matrix, candidates were given the opportunity to change their preference of University and the same is reflected in their admission form. In the instant case, the Consortium is only a formal party as it is only responsible

for implementing the directions issued by this Court or any other appropriate legal authority on the present issue.

(b) That the petitioners have challenged the Amendment Act, as a result, the students may have to re-indicate their preference which is a time consuming process. A change in seat matrix is, therefore, not an ideal situation for the students. That the Delhi High Court in W.P. (C) No.3454 of 2020 by order dated 29.06.2020 has stayed the operation of notifications promulgated by the Vice Chancellor of the National Law University of Delhi. In that case, the Notifications dated 14.01.2020 and 15.01.2020 provided for 50% reservation to candidates who have passed the qualifying examination from a recognized school/college or institution located within National Capital Territory (Delhi).

(c) That, this year, on account of COVID-19 pandemic, there is already a delay in the process of admission. But, the Consortium has adopted Social Distanced Computer Based Testing (SD-CBT) model for the ensuing examination. That the respondent/Law School did not provide for any reservation based on domicile when the seat matrix was uploaded. That it was only on

04.08.2020, the Consortium was supplied with an updated seat matrix which was duly uploaded on the same day. That, by Notification dated 05.08.2020 uploaded on the official website of the Consortium, the date of the examination has been postponed. It is averred that the Consortium is not concerned with matters, such as reservation of seats in the National Law Schools which are members of the Consortium. It is contended that the writ petition is not maintainable against the Consortium and therefore, it has sought for dismissal of the same.

Statement of objections filed by Respondent No.3 / Law School in W.P. No.8951 of 2020:

19. Respondent No.3/Law School in Writ Petition No.8951 of 2020 has filed its statement of objections contending as follows:

(a) The respondent/Law School was constituted as a University in fulfillment of the objects of the Bar Council of India Trust to establish, maintain and run a model law college for the promotion of legal education in India. The establishment of the said Law School was a culmination of efforts made by the Judiciary, BCI and the Karnataka Bar Council. The BCI Trust was constituted as a public

charitable trust with the object of, *inter alia,* establishing, maintaining and running of a model law college in India. The BCI Trust formed the National Law School of India Society—which was registered under the Karnataka Societies Registration Act, 1960, comprising members of the Bar and legal academics to establish a leading national institution for legal studies. The Society approached the Government of Karnataka, which agreed to host this unique national institution to be a pioneer in legal education in India. The State Legislature passed the Act to provide the legal frame work for the respondent/Law School to be created and operated as an autonomous institution, promoted and sponsored by the BCI. The respondent/Law School is a national-level institution which is now recognized globally as a premier institution for imparting legal education in the country to students from India and abroad. At present, it offers:

(i) five years' undergraduate programme leading to the award of B.A., LL.B. (Hons.) degree;

(ii) One year postgraduate programme leading to the award of LL.M. degree;

(iii) Two years Master of Public Policy postgraduate programme;

(iv) Ph.D./M.Phil. Research Degree Programme.

(b) The Act provides for administration of the respondent/Law School through (a) Executive Council, which is the chief executive body; (b) General Council, which is the chief advisory body; (c) The Academic Council which is the academic body of the respondent/Law School; and (d) Finance Committee, which is constituted by the Executive Council. Each one of the aforesaid bodies has their respective roles in the respondent/Law School. The Executive Council is presently headed by Hon'ble the Chief Justice of India and in addition, has four Sitting Judges and a retired Judge of the Hon'ble Supreme Court of India and various senior members of the legal profession, including the Chairman and Member of the Bar Council of India and the Chairman of the Karnataka State Bar Council as its members. The respondent/Law School carries out its functions autonomously through the aforesaid bodies in consonance with the standards of professional legal education prescribed by the BCI. Under Section 10 of the Act, the administration, management and control of the respondent/Law School and the income thereof is vested with the Executive Council which controls and administers the property and funds. The Act further vests the respondent/Law School the power to define its pedagogy

and structure of the courses of legal studies to be offered by it as well as other structural aspects, such as academic calendar, faculty, intake and capacity, etc.

(c) The respondent/Law School is an unaided educational institution and is not affiliated and recognized by any other University. It is a University by itself and is distinct from other State Universities promoted and maintained by the State Government. It is excluded from the applicability of the Karnataka State Universities Act, 2001 as well as the Karnataka State Law University Act, 2009 (KSLU Act). The respondent/Law School is substantially funded from sources raised from the University independently and autonomously. Towards the maintenance of the University, a grant is made by the State Government occasionally.

(d) It is further averred that CLAT is a National level Entrance Examination for admission to undergraduate and postgraduate law programmes offered by the National Law University across the country including the respondent/Law School. The National Law Universities were created on the pattern of Indian Institutes of Management (IIMs) and Indian Institutes of Technology

(IITs). Presently, in India, there are twenty-three National Law Universities, of which twenty-two admit students to the programmes offered by them through CLAT. Every year, almost two-third (2/3rd) of the CLAT applicants choose National Law Schools as their first preference. Earlier, CLAT was being conducted by the Consortium of National Law Universities by rotation. However, since the year 2017, the Consortium of National Law Universities has been established and the responsibility of organizing the CLAT is permanently vested with the Executive Committee of the Consortium comprising of President, Vice-president, Convener, Secretary, one permanent member and two other members, who are the Vice-Chancellors of the participating National Law Schools who are elected every year by the General Council of the Consortium. The Vice-Chancellor of the respondent/Law School is the Ex-officio Secretary of the Consortium.

(e) That, in December 2019, the Executive Committee of the Consortium discussed and approved the Schedule for CLAT, 2020. At that time, the seat matrix or intake of students and reservation details were notified. That the entire process of CLAT up to declaration of details

was to be completed by May 2020. However, in the wake of COVID-19 pandemic and the consequent lock-down restrictions, the last date for accepting applications for CLAT-2020 was extended till 10.07.2020 and CLAT examination was scheduled to be conducted on 22.08.2020. But, the Executive Committee of the Consortium met on 05.08.2020 and decided to postpone CLAT until further notice. Pursuant to the Amendment Act, the respondent/Law School published a notification notifying its updated seat matrix.

(f) It is further averred that the respondent/Law School is an autonomous and self-financing institution. All matters regarding admission of students, appointment of faculties and administration and implementation of reservation are governed by the Executive Council and in ***Writ Petition No.19329 of 1998, (Harsha Shivaram vs. National Law School of India, Bangalore)*** decided on 02.11.1998, it has been held that it is the prerogative of the respondent/Law School to prescribe and implement reservation. That the respondent/Law School in order to facilitate greater access to various segments of society, especially the marginalized and/or underprivileged, a few

years ago, undertook a detailed assessment and in fact, the Executive Council was in the midst of reviewing and reconsidering its reservation policy at its meeting to be held on 12.08.2020. The respondent/Law School is a national-level institution and hence, a proper balance has to be struck amongst the various groups and segments of the society.

(g) That, as far as reservation of seats for students of Karnataka State is concerned, the respondent University decided to implement the said reservation for candidates domiciled in Karnataka subject to an increase in intake for which additional resources are required and were solicited from the State Government. In order to enhance its capacity or intake of students so as to accommodate or facilitate domicile reservation, the respondent/national-level school would require funds and hence, communications have been addressed by it to the State Government. In order to meet the object of reservation policy of the State Government, additional seats have to be increased, infrastructure must be expanded and the additional faculty must be recruited. That IITs and IIMs have received full financial support from the Government of India while adopting reservation policy. But, insofar as

State Government is concerned, while on the one hand, there is no increase in the financial support to the respondent/Law School, on the other hand, on account of impugned reservation policy, it has necessitated an increase in the intake. This would have to be done slowly by the respondent/Law School with hardly any financial support from any quarter. That the Executive Council of the respondent/Law School at its 90th meeting conducted on 27.06.2020 has taken note of the impugned Amendment Act and has observed that the same would apply subject to the orders of this Court. The respondent/Law School has sought leave to file detailed statement of objections in due course.

Addl. Statement of Objections filed by respondent/Law School in W.P.No.8788/2020 :

(h) In their additional statement of objections, respondent/Law School has stated that it was constituted in furtherance of the objects of the BCI Trust to establish, maintain and run a model law college for the promotion of legal education in India. The said Trust is a public charity trust which formed the National Law School of India Society, which was registered under the provisions of the

Karnataka Societies Registration Act, 1960, comprising of members of the Bar and legal academics to establish a leading national institution for legal studies namely, respondent/Law School. That a reading of the preamble of the Act would clearly demonstrate that the respondent/Law School was conceived and established by the aforesaid Society and its operations were managed by the Society. The said Society framed its own rules providing for constitution of different authorities and matters relating to the respondent/Law School. The Society requested respondent No.1–State Government to establish the respondent/Law School to operate on the lines of the already existing rules to enable it to carry out the objects and functions effectively.

(i) Respondent No.1/State Government on finding it necessary to encourage the establishment of national legal institution in the State of Karnataka, agreed to establish the same by a legislation. As per the Preamble of the Principal Act, the purpose and object of the Act is to establish a "national-level institution" in the State of Karnataka. In fact, the State has understood the respondent/Law School to be an Institution, which is

equivalent to and would fit into character and definition of "institution of national importance" within the meaning of Entry No.63 of List-I of the Seventh Schedule of the Constitution of India. This National Law School is different from the State Universities established under the provisions of the Karnataka State Universities Act, 2000, which has repealed the earlier Act of 1976. The respondent/Law School is not a State University. On the other hand, it is an institution of national importance, which is evidenced from a reading of Annexure "R-14", which is a document of the Karnataka State Higher Education Council--a body constituted by the State Government under an enactment of 2010. Therefore, the respondent/Law School is not established by the State Government as a State University. On the other hand, the Act was passed by the State Legislature to "encourage" the establishment of a national-level institution. The Institution was originally conceived and contemplated by the BCI and the Society, and the Act is only an enabling legislation for the establishment of the respondent/Law School. It was never intended to function as a State University. The control and administration of the respondent/Law School vests with the governing bodies

constituted under the new Act namely, Executive Council, General Council, Academic Council and the Finance Committee.

(j) Further, the respondent/Law School is situated in a campus on lease-hold land. The lease was entered into by the respondent/Law School through the BCI Trust with the Bangalore University dated 02.11.1984 for a period of thirty years renewable from time to time, to an extent of nineteen acres. The lease rent was Rs.100/- per acre, per year. That a sum of Rs.1,800/- was paid every year to the Bangalore University. Subsequently, on 14.10.2019, the lease was renewed for a further period of thirty years, for a sum of Rs.10,000/- per acre, per year, subject to enhancement of 10% per year as the rent. The respondent/Law School has also agreed to pay arrears of rent for the period 2014 to 2019 and interest accrued thereon. Additional land of five acres has also been leased from the Bangalore University by Lease Deed dated 17.11.2005 for a period of thirty years renewable from time to time, for which, the rent is Rs.1,000/- per acre, per year. That since 1984, a sum of Rs.9,89,868/- (including interest on arrears) has been paid towards nineteen acres of land leased by the Bangalore University to it and since

2005, an additional sum of Rs.70,000/- towards the five acres of leased land has been paid.

(k) That respondent/Law School is substantially funded by sources raised by the University independently and autonomously. It receives grants from the State Governments of other States as well as from the State of Karnataka from time to time. It has not received any "aid" from any Governmental Authority. Minor financial contribution is paid by the State of Karnataka and it has received a sum of Rs.16.93 crores, as "maintenance grants" in the last thirty years, which is approximately, Rs.50 lakhs annually, which is only 5% of the University's total expenditure for the year 2019-20 and for the year 2020-21, it would be only 1% of the annual expenditure. It is stated that for the present year, grant is yet to be made. The details of the grants received by the respondent/Law School from the Governments of other States are indicated in Annexure "R-15". It is also stated that the respondent/Law School has not claimed any exemption on the basis of Section 10(23C)(iiiab) of the Income Tax Act, 1961, as it has not wholly and substantially financed by the Government. But, the

respondent/Law School is registered under Section 12AA of the Income Tax Act, 1961 read with Sections 11 and 12A of the said Act, for claiming exemption on Income-tax.

(l) As could be contrasted, the Karnataka State Law University ["KSLU", for short], Hubballi is a State University, which is constituted and aided by respondent No.1 – State of Karnataka, which is recognized as such, by the Karnataka State Higher Education Council. The annual budget sanctioned by the State of Karnataka for the said University was Rs.380 lakhs for the year 2019-20 and Rs.873 lakhs for the year 2020-21.

(m) It is further averred that the impugned reservation for the students of the State of Karnataka by way of institutional preference, which is sought to be introduced by the impugned Amendment Act, is not tenable and if at all any reservation is to be made, it would be after assigning the requisites of backwardness, necessity along with infrastructural and financial plan for increased student intake and faculty recruitment in the respondent/Law School. That respondent/Law School is yet to receive response from respondent No.1 with regard to its proposals. That any reservation policy for the

respondent/Law School must be framed and implemented by the governing bodies of the respondent/Law School, in consultation with the BCI and the State Government Authorities and subject to availability of adequate infrastructure and financial resources to accommodate such reservation. Further, the respondent/Law School is an autonomous institution of national importance having top ranking in the field of legal education and therefore, any reservation in the said institution must be effected after taking into consideration various factors including financial plan, infrastructural plan, etc.

(n) That other National Law Universities such as in Gujarat, Punjab, Assam and Himachal Pradesh provide reservation either on the basis of 'domicile' or 'residence' and not by way of institutional preference to the students of the respective States, in which the said Law Universities are situated. Those Universities have been established by the State Government and not by the BCI or National Law School of India University Society, as in the instant case. Those Universities are set up entirely by the State funds and represent their respective States. The capital and revenue expenditure of the said Universities have been

made by the respective State Governments unlike in the case of the respondent/Law School. Therefore, those Universities cannot be placed in the same class as the respondent/Law School. That the National Law Schools in other States have provided reservation on the basis of domicile and consequently, students of Karnataka State have been reduced opportunity of participating and seeking admission in those Law Schools, is not tenable or justified for having reservation in the respondent/Law School. It is averred that respondent/Law School is differently placed and there is no parity between the respondent/Law School and other National Law School Universities in other States. Meritorious candidates across the country have an equal opportunity to participate and getting admission in the respondent/Law School through CLAT. That any reservation of students of Karnataka can be implemented after it is shown that there exists social or educational backwardness and after ensuring that the respondent/Law School has adequate resources and infrastructure to accommodate such reservation.

(o) It is averred that CLAT-2020 was scheduled to be conducted on 07.09.2020. That the impugned

Amendment Act would have an impact on almost 80,000 candidates, who have been registered for CLAT-2020 examination, as they have submitted their preferences of University on the basis of the seat matrix. That a large number of candidates have preferred the respondent/Law School as a first preference and any change in the seat matrix would have a cascading effect on all other National Law University seats. Therefore, appropriate directions may be made for the Academic Year 2020-21.

(p) It is further stated that with an objective to secure the best candidates from across the country, the respondent/Law School has revised and increased the intake from 80 to 120 students for the undergraduate Programme as per the decision in the 90th meeting of the Executive Council held on 27.06.2020. The said decision has been approved by the Executive Council and accordingly, the respondent/Law School has published a notification revising the seat matrix on 04.08.2020. The decision to increase the intake of the students is independent of the impugned Amendment Act and it has no bearing on the implementation of the same. The decision to increase the intake has been approved by the

BCI also and the said decision was initiated much prior to the impugned Amendment Act. If the students domiciled in Karnataka, who had to have a reservation, then enhancement of the intake would be initiated, for which appropriate funding must be made by the State Government. That in its 90th meeting held on 27.06.2020, the Executive Council of the respondent/Law School has resolved to apply the impugned Amendment Act, subject to the orders of this Court. The same has been reiterated on 12.08.2020 by the Executive Council.

SUBMISSIONS OF LEARNED COUNSEL :

(A) Contentions of Sri K.G.Raghavan, learned Senior Counsel (for Sri.Karan Joseph, learned counsel), appearing for the petitioner in W.P. No.8788 of 2020 :

20. On behalf of the petitioner in W.P. No.8788 of 2020, Sri K.G.Raghavan, learned Senior Counsel appearing for petitioner's counsel submitted that the petitioner is a resident of Bengaluru for about eight years and has completed his school education in Bengaluru and has applied for CLAT Examination – 2020, seeking admission to the respondent/Law School for the five year undergraduate B.A., LL.B (Hons.) Programme. The petitioner is

aggrieved by the impugned Amendment Act, providing 25% horizontal reservation for students of Karnataka. He submitted that there is already a reservation of 15% and 7½% for Scheduled Caste and Scheduled Tribe students, which seats are filled by students belonging to Karnataka only. Over and above that 25% horizontal reservation is being provided for students of Karnataka, which is discriminatory and is in violation of Articles 14, 15(1) and 15(5) of the Constitution. That there is no rational basis for making the horizontal reservation for students of Karnataka by defining a student of Karnataka to be a student who has studied in any one of the recognized educational institutions in the Karnataka State, for a period of not less than ten years preceding the qualifying examination. He submitted that there is no basis for providing ten years of study prior to the qualifying examination. As a result, persons such as students/petitioners, who have studied for eight years or in any case less than ten years in any of the educational institutions in the State would be deprived of the benefit of such reservation and the same is hence, discriminatory. He submitted, there cannot be any discrimination amongst

the students of Karnataka while providing reservation to them on a horizontal basis.

21. In support of his submissions, he referred to the following judgments:

i) ***P.A. Inamdar and Others Vs. State of Maharashtra and Others, (2005) 6 SCC 537*** *(P.A. Inamdar);*

ii) ***Pramati Educational and Cultural Trust & and Others vs. Union of India and Others, (2014) 8 SCC 1*** *(Pramati);*

iii) ***Harsha Shivaram vs. National Law School of India University, (1999) 1 Kant LJ 245*** *(Harsha Shivaram);*

iv) ***Janhit Abhiyan vs. Union of India – Order*** of the Hon'ble Supreme Court ***dated 30.05.2019*** in ***Writ Petition (Civil) No.55/2019*** *(Janhit Abhiyan);*

v) ***Vishal Goyal and Others vs. State of Karnataka and Others, (2014) 11 SCC 456*** *(Vishal Goyal);*

vi) ***Dr. Kriti Lakhina and Others vs. State of Karnataka and Others, (2018) 17 SCC 453*** *(Dr. Kriti Lakhina);*

vii) ***Rajesh Kumar Daria vs. Rajasthan Public Service Commission and Others, (2007) 8 SCC 785*** *(Rajesh Kumar Daria);*

viii) ***Saurabh Chaudri and Others vs. Union of India and Others, (2003) 11 SCC 146*** *(Saurabh Chaudri);*

ix) ***Saurabh Dwivedi and Others vs. Union of India and Others, (2017) 7 SCC 626*** *(Saurabh Dwivedi);*

x) ***Yatinkumar Jasubhai Patel and Others vs. State of Gujarat and Others, (2019) 10 SCC 1*** *(Yatinkumar Jasubhai Patel);*

xi) ***Dr. Pradeep Jain vs. Union of India, (1984) 3 SCC 654*** *(Dr. Pradeep Jain).*

22. Learned Senior Counsel next submitted that the impugned Amendment Act has been made and enforced after commencement of the admission process and the same cannot be applied to the Academic Year 2020-2021, assuming for the sake of argument that the said amendment is valid. He contended that on 01/01/2020, announcement of the CLAT was made by issuance of press release inviting applications of interested students. In the usual course, entrance test would have been held in the last week of April, 2020 or first week of May, 2020. However, on account of the Corona Virus – Covid-19 pandemic and the consequent lock-down, CLAT was postponed and is scheduled to be held on 07.09.2020

(now, to be held on 28.09.2020) as submitted at the Bar. It is during this interregnum i.e., on 27.04.2020, the impugned Amendment has been enforced. He submitted that on the basis of the seat matrix as announced on 01.01.2020, the reservation of seats was made. It was only for 80 seats. Pursuant to the impugned Amendment making reservation of 25% of the seats for students of Karnataka, it has resulted in the increase of the intake of seats to 120 and has also altered the seat matrix. As a result, the students had to redo their preferences. But, despite this, petitioner, on account of the impugned Amendment, is discriminated by the horizontal reservation provided to only students of Karnataka, who have studied for ten years preceding the qualifying examination in Karnataka and not to other students of Karnataka. He contended that once the process of admission is commenced, there can be no variation made to the process by enforcing the impugned Amendment and thereby, making horizontal reservation to an extent of 25% of the seats for certain students of Karnataka only. He contended, even if this Court is to sustain the amendment, it cannot be applied to the present year.

23. Learned Senior Counsel further submitted that 22 ½% of the seats is reserved for the students who belong to the Scheduled Castes and Scheduled Tribes and 5% of the seats is reserved for persons with disability, which would make it 27½%. Further, 25% is being reserved for students of Karnataka, which takes the reservation to 52.5%, which is over and above what has been prescribed by the Hon'ble Supreme Court in a catena of decisions. There cannot be reservation to such an extent and hence, for that reason also, the horizontal reservation through the impugned Amendment must be struck down.

24. Elaborating his submission, learned Senior Counsel drew our attention to the statement of objects and reasons for the amendment and he submitted that the first reason stated therein for the amendment is that in eight National Law Schools in different States, horizontal reservation is being provided for candidates domiciled in the respective States and no such reservation on that basis is provided in the respondent/Law School for Karnataka students. They are therefore deprived of an opportunity and hence, the reservation is made. He contended that the aforesaid reason is fallacious and not sustainable in law.

That merely because other National Law Schools in various States of the country have made reservation on residence or domicile basis is no reason to make a similar reservation for students of Karnataka in the respondent/Law School. He submitted that the respondent/Law School is a University of national importance. It is not like other National Law Schools in various States. This is because the respondent/Law School was established and constituted by the BCI as a national level institution in the State of Karnataka and this University cannot be treated on par with the other National Law Schools in other States. Therefore, the reason that the other Law Schools have provided for reservation on domicile or residence basis is not a tenable reason for providing such a reservation in the respondent/Law School was the submission of learned Senior Counsel. In what way the said reservation seeks to promote the object sought to be achieved is not established as it is not clearly spelt out as to how the students of Karnataka have been deprived of an opportunity to seek admission in the respondent/Law School. He contended, on the other hand, by virtue of the impugned Amendment only certain category of students of Karnataka would have the benefit

of reservation while the other students of Karnataka would be discriminated against. Therefore, for this reason, the impugned Amendment cannot be sustained.

25. Learned Senior Counsel further contended, another reason provided in the statement of objections and reasons for the amendment is, institutional preference as a basis of reservation has been permitted by the Hon'ble Supreme Court in the case of *Saurabh Chaudri* and *Saurabh Dwivedi* to an extent of 50% in undergraduate courses. Also, reference has been made to the decision in *Yatinkumar Jasubhai Patel* by the Hon'ble Supreme Court, permitting reservation. Therefore, on the strength of the aforesaid decisions, 25% of the seats in the general category is sought to be provided for students of Karnataka in the respondent/Law School by the impugned Amendment. He submitted that the aforesaid decisions are all pertaining to reservation in post-graduation medical courses where institutional preference as a basis of reservation is permissible, but those cases cannot be a basis for making reservation for both the undergraduate as well as postgraduate programmes in the respondent/Law School. He contended that the basis of reservation for

seats in medical education proceeds altogether on a different footing as the object for providing such reservation in medical courses is in order to ensure that the beneficiaries of such reservation who emerge as doctors or specialists would serve the State in rural areas also and thereby, medical services could be provided to the citizens of the particular State on the premise that the doctors would settle down in the State in which they have graduated and serve the State. This would be a step to achieve one of the Directive Principles of the State Policy enunciated in Chapter IV of the Constitution i.e., to provide medical assistance and to ensure health of the citizens of the State. But such a basis cannot be simply replicated in the case of the respondent/Law School. That legal education is not similar to medical education in the country. Also, it would not apply to respondent/Law School. It cannot be expected that the students of Karnataka, who are going to be the beneficiaries of the horizontal reservation proposed or sought to be implemented by the impugned Amendment would continue to remain in the State and serve the cause of law and justice by practicing within the borders of the State of Karnataka and/or seek employment in the State itself.

Such an object is not at all envisaged by the impugned Amendment. He contended that on the other hand, the purpose of the impugned Amendment is to selectively help certain students of Karnataka to easily get admission in the respondent/Law School rather than by competing with the students from all over India.

26. Learned Senior Counsel next contended that the respondent/Law School is not just a Law College, it is an institution of national repute and established by the BCI for the purpose of promoting legal education in the country. The respondent/Law School is one of its kind and the first Law University, which is a national level institution. He said that the same is evident on a perusal of sections 3 to 12 of the Act. That Section 4 of the Act clearly spells out the object of establishing the respondent/Law School. It is with the view to advance and disseminate learning for students and their role in the national development and the school is open for persons of all race, caste, class and of all religions and when such are the objects of the Act, as expressly provided in Sections 4(1) and 4(2) of the Act, by the impugned Amendment, sub-section 3 could not have been introduced to Section 4.

He contended that the impugned Amendment goes against the very basis, purpose and object of establishing the respondent/Law School as a national level University. He contended that the impugned Amendment is by a *non-obstante* clause and such an amendment cannot find a place under Section 4 which provides for the objects for which the respondent/Law School was set up and that too with a *non-obstante* clause. He submitted that the object of establishing the national level institution could never be to provide 25% horizontal reservation for students of Karnataka, therefore, amendment is *ultra vires* and is wholly contrary to the Act. In other words, it was contended that the amendment is *ultra vires* the object and purpose of the Act.

27. Learned Senior Counsel next contended that provision of reservation for the Scheduled Caste and Scheduled Tribe has been made by the Executive Council and the same does not find a place under the Act. It was in the late 1980s that by a resolution of the Executive Council which functions under Section 10 of the Act, which is responsible for the administration, management and control of the respondent/Law School, such a reservation

was made. Reservation for Scheduled Castes and Scheduled Tribes, not being provided under the Act and being made by a resolution of the Executive Council, would imply that any reservation to be made for the respondent/Law School would be only by a resolution to be passed by the Executive Council. The Act also does not provide for reservation but it states that the entire administration, management and control of the respondent/Law School shall be vested with the Executive Council. Thus, it is only the Executive Council which can introduce any reservation for students in the Law School. On the other hand, by the impugned Amendment which is by a *non-obstante* clause, a direction has been issued by the State Legislature to the respondent/Law School to reserve horizontally 25% of the seats for students in Karnataka. He contended that such a direction in mandatory terms could not have been issued by the impugned Amendment to the respondent/Law School. It is for the Executive Council of the Law School to take such a decision in accordance with Section 10 of the Act. Therefore, the manner in which the reservation has now been provided horizontally to an extent of 25% of seats for students of Karnataka is also vitiated. He contended that

it is only for the Executive Council which can take a decision in the matter and the impugned Amendment is vitiated for the said reason also.

28. In this regard, learned Senior Counsel drew our attention to the fact that the State Government has no control over the respondent/Law School. It was only a facilitator, which has through the Act passed by the State legislation provided a legal structure for the establishment and incorporation of the Law School in Bengaluru, otherwise, the Law School is the endeavour of the BCI to promote legal education in India by setting up a model Law School in the country and it is a national level institution. He contended that at best, the State can only nominate members to the various authorities of the respondent/Law School namely, the General Council, Executive Council and Academic Council as per the provisions of the Act. Apart from that, the State Government has no role in the affairs of the respondent/Law School. He contended now, by virtue of the impugned Amendment, the State Government is trying to encroach upon the powers of the Executive Council which functions as per Section 10 of the Act and such

powers cannot be diluted as respondent/Law School is an autonomous body and the independent character of the institution cannot be taken away by the impugned Amendment particularly, when the involvement of the State in the management of the Law School is minuscule. At best, the State could have made a request to the Executive Council of the respondent/Law School to consider reservation for students of Karnataka and not by the impugned Amendment. That ultimately, it is for the Executive Council to take a decision in the matter and at best, the word "shall" in the impugned section could be read as "may".

29. In this regard, learned Senior Counsel drew our attention to the composition of the various authorities of the Law School, namely General Council, Executive Council, Academic Council and the Finance Committee to contend that the composition of the aforesaid authorities is such, so as to give a unique character to the respondent/Law School, which is a national level institution and secondly, an autonomous institution. In this regard, learned Senior Counsel emphasized that the entire premise or basis on which the amendment has been made is

erroneous as the State thinks that the respondent/Law School is a State University, which is not so. Further, the Act, which is a State Legislation does not provide any provision for making reservation whatsoever in the respondent/Law School. It is the Executive Council, which is responsible for the administration and management and has control over the Law School including the provision for any reservation. That it has done so for Scheduled Caste and Scheduled Tribe students as well as for persons with disability. The Law School, being an institution of national importance and excellence, must aim at having students with academic credentials and capabilities, so that they ultimately emerge from the said institution to become the leaders in the legal profession or join the judiciary or the Government and involve themselves otherwise in the field of law as academics, draftsmen etc. When such is the aim and object of setting up of the Law School in Bengaluru by the BCI, the same cannot remain an utopia. He contended that the reading of the objects and reasons for the amendment being on an erroneous basis is now sought to be explained by the State Government in its statement of objections by contending that it is for the promotion of equality and for upliftment of the students, who are in

need of such an opportunity namely, students of Karnataka, who have studied for not less than ten years preceding the qualifying examination in any recognized educational institution. He contended that there is no nexus between the classification made and the objects sought to be achieved. In that regard, learned Senior Counsel referred to certain judgments.

30. Learned Senior Counsel further submitted that respondent/Law School is not an aided institution. That the land on which respondent University is situated has been leased from the Bangalore University. That only a sum of Rupees Fifty Lakhs annually is paid by way of grant by the State Government, which is only a maintenance grant. Initially, a sum of Rupees Two Crores was provided towards the corpus fund. That when the respondent/Law School is an autonomous institution and not aided by the State Government, the impugned legislation could not have been made as it is against the Scheme of the Act.

31. It was further contended that there is violation of Articles 14 and 15 of the Constitution in the instant case. In this regard, our attention was drawn to Article 15(4) and 15(5) of the Constitution, which provide for

reservation for socially and economically backward classes and for Scheduled Castes and Scheduled Tribes and the said reservation is an instance of vertical reservation. Any other reservation which is in the nature of a horizontal reservation must be in accordance with Articles 14 and 15(1) of the Constitution. Though in the instant case, by the impugned Amendment, the reservation is sought to be made, on the strength of Article 15(1) of the Constitution and not under Article 15(4) or 15(5) thereof, is nevertheless contrary to Article 14 of the Constitution, which is the equality clause. That by the impugned Amendment, more meritorious students from both outside and within State of Karnataka, who would compete with Karnataka students have been deprived of their seat in the respondent/Law School owing to the reservation being made to less meritorious students of Karnataka. As a result, merit is a causality and the same cannot be permitted to occur in an institution of national repute. He further contended that when on the strength of Article 15(4) read with 15(5) of the Constitution, reservation is provided for students belonging to backward classes, Scheduled Castes and Scheduled Tribes, inevitably would mean students of Karnataka belonging to the said

categories and reservation cannot also extend in the general merit category once again to students of Karnataka to an extent of 25% of the seats in the general category. As a result, respondent/Law School would lose its character as a national level institution and would be akin to any other Law School in the other States. The Law Schools in the other States of the country cannot be compared with the respondent/Law School as it is a stand-alone institution incorporated and established by the BCI as a model Law College and hence, provision for reservation on domicile/residence basis in the other National Law Schools cannot be of a rationale for providing for such a reservation in the respondent/Law School.

32. Learned Senior Counsel contended that similarly, institutional preference as a basis of reservation, which is permissible as in medical education, cannot be straightaway imported in respect of respondent/Law School or for that matter legal education. Therefore, the impugned Amendment supported by the statement of objects and reasons for the said amendment is without any basis. Reservation on the basis of domicile or residence or for that matter institutional preference applicable to

medical colleges cannot be blindly applied to Law Colleges and particularly, to the Law University, which is a national level institution.

33. In that regard, learned Senior Counsel took us through a catena of cases dealing with reservation in medical colleges and in post graduation programmes of medical education, which we shall refer to later. But while making a detailed reference to *Dr.Pradeep Jain*, learned Senior Counsel contended that by the impugned Amendment, neither the State's interest is in any way enhanced nor is the reservation for the purpose of ameliorating the regional backwardness; that the entire State of Karnataka cannot be construed to be a backward region and hence, the judgments relied upon in the statement of objects and reasons which have their genesis in *Dr.Pradeep Jain* cannot support the impugned Amendment in any way.

34. In the backdrop of the aforesaid submission, iearned Senior Counsel submitted that the impugned Amendment may be struck down as being violative of Articles 14 and 15(1) of the Constitution of India.

(B) Contentions of Sri.C.K.Nandakumar, learned counsel appearing for the petitioners in W.P. No.8951 of 2020:

35. Learned counsel, Sri C.K.Nandakumar, appearing for the petitioners in Writ Petition No.8951 of 2020 which is in the nature of a public interest litigation, submitted that the petitioners in this writ petition are former students of the respondent/Law School who are practicing advocates at Delhi. At the outset, he drew our attention to the statement of objects and reasons of the Act to contend that the respondent/Law School is an institution of national excellence. The BCI conceived establishing a model law college in India which would be a national level institution and have a national character to be headquartered at Bengaluru. Section 4 of the Act indicates the objects of the School. It was incorporated and established by way of a legislation passed by the Karnataka State Legislature, but it was conceived and conceptualized by the BCI by incorporating a Trust and a Society for that purpose. That the Society requested the State Government to establish the Law School in Bengaluru through the medium of the Act. Further, the respondent/Law School has been ranked as number one

institution in the country by the Ministry of Human Resource Development, Government of India for several years. Initially the Law School used to conduct the entrance test, but since the year 2008, the respondent/Law School is a member of Consortium of Law Schools which conducts CLAT. For this year, when CLAT was announced in January 2020, no horizontal reservation was provided and the impugned Amendment has been made after the process of admission has commenced which cannot be implemented midway.

36. Secondly, the respondent/Law School has issued a Notification dated 04.08.2020, which is at Annexure - R8 to the statement of objections filed by it, not only providing 25% reservation for students of Karnataka in terms of impugned Amendment, but also providing 5% concession or additional marks by way of weightage to the students of Karnataka. This has been introduced by a notification and it is not known as to whether the same is supported by any resolution of the Executive Council, which has always been responsible for the administration, management and control of the respondent/Law School. That even reservation for

Scheduled Castes and Scheduled Tribes students was made by the Executive Council by passing the resolution and similarly, for persons with disability, from 3% to 5% of the total seats have been reserved. When the Executive Council is in charge of the management of the Law School, the State Legislature could not have passed the impugned Amendment directing the respondent/Law School to reserve horizontally 25% of the seats for the students of Karnataka. He contended that the role of the State in the management and control of the Law School is absolutely minimum, which is evident from the statement of objects and reasons of the Act. That the State has been only a facilitator for the establishment of the Law School by passing the enactment, but now it is trying to control the composition of the students of Law School through the impugned Amendment. In that regard, our attention was drawn to Section 10 of the Act and the provisions of the Schedule to the Act. He contended that the amendment is repugnant or *ultra vires* the Act as it has usurped the powers of the Executive Council by directing it to reserve horizontally 25% of the seats to the students of Karnataka. According to learned counsel, such an amendment could not have been made by the state legislature by ignoring

the fact that the respondent/Law School is a national institution and the national character of the institution cannot be destroyed. In this regard, reliance was placed on ***Andhra Pradesh Dairy Development Corporation Federation vs. B. Narasimha Reddy, [(2011) 9 SCC 286]*** *(Andhra Pradesh Dairy Development Corpn.)*.

37. Learned counsel reiterated the role of BCI and the BCI Trust and the Society in conceiving and establishing the respondent/Law School in Bengaluru by requesting the State Government to pass the Act. Beyond that, the State has no role in the management or in the control of the Law School nor with regard to provision of 25% of seats being reserved horizontally for students of Karnataka as per the impugned Amendment.

38. Learned counsel further contended that any reservation to be provided for an educational institution must not only be in terms of Article 15(1), but also in consonance with Article 14 of the Constitution. That, in terms of the decision of the Hon'ble Supreme Court in *Dr. Pradeep Jain,* the burden is on the State to justify reservation even though there may be a presumption of constitutionality. In the said judgment, there have been

two departures, which have been enunciated as a justification for reservation to be provided in a medical college, namely, State's interest and regional backwardness and both those reasons do not apply in the instant case. Further, the objects and reasons of the impugned Amendment do not indicate as to why the students of Karnataka require horizontal reservation to an extent of 25% and that there is no basis for doing so. The respondent/Law School is a model Law University conceived by the BCI as a national level University and merely because the Law Schools in other States have made reservation on the basis of domicile or residence, such a reservation would not be permissible in respect of the respondent/Law School.

39. That institutional reservation on the basis of preference is applicable for postgraduate courses and not for undergraduate courses. The departure for making reservation in medical colleges may be justifiable, but it is an anathema when it comes to legal education. In the case of medical services, what is known as compulsory rural service would have to be undertaken by the medical graduates. Sometimes, a bond has to be executed by

them, but that cannot apply to law graduates. In fact, Section 30 of the Advocates Act, 1961 places no such embargo, rather, it permits an advocate to enroll before the State Bar Council and to practice anywhere in the country or even before the Supreme Court.

40. Learned counsel further contended that the judgments of the Hon'ble Supreme Court relied upon in the objects and reasons of the impugned Amendment are not at all applicable in the instant case. He contended that the State does not have to protect any interest insofar as legal education is concerned and what is now sought to be justified in the statement of objections of the State filed to these writ petitions does not find a place in the statement of objects and reasons of the impugned Amendment. There is no material placed as to how there is regional backwardness in the State of Karnataka. If at all, any such regional backwardness is present, students of such regions may be entitled, but on the other hand, the reality is quite different; even without any reservation, Karnataka students have been admitted in substantial number in the respondent/Law School. There is a reasonable representation for such students, which is around 9% and

there is no under representation of Karnataka students in the respondent/Law School. Moreover, students of Karnataka are not backward so as to be provided horizontal reservation to them. In the absence of any cogent material being produced to justify the need for reservation for Karnataka students, the impugned Amendment is bad, was the contention.

41. Learned counsel further contended that the State has not undertaken any study to ascertain as to whether the students of Karnataka require horizontal reservation to an extent of 25% in the respondent/Law School. On the other hand, the impugned Amendment is discriminatory. It discriminates between the students of Karnataka who have studied for ten years or more in the State and who have studied for a lesser period. There are many students who are, though originally from Karnataka, on account of their parents' jobs or occupations—may be in Defence Forces, Banks or Railways—have been residing outside Karnataka. Such students would not have the benefit of reservation. Therefore, it is arbitrary and in violation of Article 14 of the Constitution.

42. He further submitted that the respondent/Law School cannot be directed to reserve 25% of the seats for students of Karnataka horizontally without taking the Executive Council of the Law School into confidence. The respondent/Law School is not a State institution. It is an autonomous body. It is independent of the State of Karnataka. The State has only been a facilitator. That the National Law School at Bengaluru is like Indian Institute of Management (IIM) or the IIT, which are established in various states in the country and where the State Governments have no say in the matter. That any reservation has to be introduced in a gradual manner. The policy would have to be conceived and implemented in a phase-wise manner.

43. Further, the respondent/State has been providing a meager grant to the respondent/Law School in the annual budget for the simple reason that it is not a State university, but a national institution and such being the position, the State Government, through the impugned Amendment, cannot usurp the functions of the Executive Council and reserve the seats for students of Karnataka bypassing merit. He also submitted that the impugned

Amendment has been enforced after the commencement of process of admission. That, in the case of National Law University, Delhi, a similar reservation based on domicile has been stayed. Of course, Delhi Law School is not a part of the Consortium, but the attempt made therein has not been successful.

44. While adopting the submissions made by learned Senior Counsel, Sri Raghavan, learned counsel appearing for the petitioners in this writ petition, which is filed as public interest litigation, sought striking down of the impugned Amendment.

(C) ***Submission of Sri Vikramjith Banerjee, learned Additional Solicitor General of India along with Sri.Sridhar Prabhu, learned counsel for the BCI/petitioner in W.P. No.9145 of 2020:***

45. Sri Vikramjith Banerjee, learned counsel for the BCI, at the outset submitted that the respondent/Law School is an institution conceived and established by the BCI as an autonomous institution in Karnataka. That the BCI intended to establish a Law School of national stature. Initially, it was to be in Delhi, but thereafter, it was decided to locate it at Bengaluru as the State Government, then, was receptive to the idea of having a law school as a

national institution in the State of Karnataka. The respondent/Law School is an example of success of experiment in legal education by the BCI. The respondent/Law School has been segregated and protected from all political undercurrents. No person or institution or State Government can own the respondent/Law School. On the other hand, the BCI has a deep and pervasive control over it. In that regard, learned Senior Counsel drew our attention to the objects of the Act and the BCI through the vehicles of the BCI Trust and the Society intended to establish a national level institution at Bengaluru. That the objects of the Act very clearly indicate that the BCI intended to set up a model law college to be a national level institution in the State of Karnataka, but the impugned Amendment made to Section 4 of the Act by insertion of Section 4(3) thereof, with a *non-obstante* clause is wholly contrary to the letter and spirit of Section 4(1) and 4(2) of the Act. He contended that merely because the Law School is headquartered in Bengaluru, does not give any power to the State Government to pass the amendment, which is impugned herein.

46. That the Bangalore University has leased land to the BCI Trust and the lease, which was initially for a period of thirty years has been renewed. According to learned Senior Counsel, it is the BCI, which has a deep and pervasive role in the management of the institution. In that regard, he pointed out that under Section 7 of the Act, the Society can nominate a Judge to be the Chancellor of the School and if the Chief Justice of India accepts or consents, he could be nominated as the Chancellor. Further, it has always been the Chief Justice of India, who has been the Chancellor of the respondent/Law School. Also, the BCI has the power of nomination of members to the General Council, Executive Council, Academic Council as well as the Finance Committee as the treasurer of the School is the Managing Trustee of the BCI Trust. In that regard, our attention was drawn to Clauses 2, 3, 7, 13 and 16 of the Schedule to the Act. He also contended that the national character of the institution is very clear from Clause 23 of the Schedule inasmuch as it can receive funds from various State Governments, University Grants Commissions, the Central Government, BCI Trust, State Bar Councils, donations from various private individuals or institutions, fees from students and from other sources.

The respondent/State Government has made only small contributions towards annual grants and it cannot be assumed that the State is aiding the institution. Therefore, it was submitted that the amendment is contrary to the objects of the Act.

47. It was next submitted that merely because, Law Schools in other States have provided for reservation on domicile or residence basis, is no reason to provide 25% horizontal reservation to the students of Karnataka. This is against the spirit of the Act and the object with which the respondent/Law School was set up. That the other Law Schools have been conceived and established by the respective State Governments, but not the respondent/Law School. It is not an institution of the State Government, but a national level institution established by the BCI. That the respondent/State Government acted as a facilitator so as to encourage the intentions of the BCI. Reference was made to *AIIMS Students Union* to contend that in a national institution, reservation of any kind would be destructive of merit and hence, the impugned Amendment is contrary to the aforesaid proposition.

48. Sri.Sridhar Prabhu, learned counsel appearing for the BCI contended that the State Legislature has no competence to pass the impugned Amendment in view of Section 5 read with Section 10 of the Act. Section 5 deals with the powers and functions of the School while Section 10 deals with the Executive Council which is vested with the power of administration, management and control of the School as well as the income thereof. Also, the functioning of the School is on the basis of the decisions taken by the Executive Council. Thus, the State Legislature had no power to amend the Act by providing for reservation by directing the respondent/Law School to reserve horizontally 25% of the seats for students of Karnataka. The same could not have been by amending Section 4 of the Act which deals with the objects of the School, etc. That any reservation that could be provided is by the Executive Council passing a Resolution. It has been done so for the benefit of Scheduled Castes and the Scheduled Tribes (22.5%) by Resolution dated 11.09.1998 as well as for the persons with disability (5%). If the respondent/Law School had been a State University, then the State Government could have provided for reservation.

But, in the instant case, the amendment directs the School to reserve 25% of the seats horizontally for students of Karnataka. Such a direction could not have been issued by way of an amendment made to the objects of the respondent/Law School.

49. He next contended that students of Karnataka cannot be a class by themselves. Even if they are construed to be a class by themselves, there is again discrimination between a student of Karnataka, who has studied ten years preceding the date of qualifying examination in any recognized educational institution in the State, and one who has studied less than ten years. If the reservation had been provided for the students from rural areas in Karnataka, or for those who are hailing from the areas covered under Article 371-J of the Constitution by clearly defining the class of students, such a reservation could have been considered by the Executive Council. But, in the instant case, the definition of students of Karnataka, being inherently discriminatory, makes the amendment contrary to Articles 14 and 15(1) of the Constitution and hence vitiated, even if it has to be assumed that the State Government had the authority to make such an

amendment to the Act. He further contended that the respondent/Law School has been established at the behest of the BCI, the object of establishing a national-level institution was to attract talent from all over the country and make available legal education to such meritorious students. Thus, the object of the Law School is to enhance diversity but, on the other hand, the impugned Amendment negates the said object and intends to encompass the respondent/Law School as an institution of the State Government, which it is not so.

50. He next contended that under Article 371-J of the Constitution as well as the provisions made for the benefit of the rural candidates in the State, it is necessary that they should obtain a certificate in that regard. In other words, there must be Rules made for a student of Karnataka to possess a certificate so as to claim the benefit of reservation, instead by the impugned Amendment and in the absence of there being any rules made, unguided power has been reserved to an applicant to decide for himself as to whether he is a student of Karnataka or not. There is no authority envisaged under the amendment to certify that a candidate is a student of

Karnataka within the meaning of the amendment viz., explanation to Section 4(3) of the Act. He submitted that the amendment is vague and hence, arbitrary in nature.

51. Sri.Prabhu further drew our attention to the Kannada version of the amendment and contrasted it with the English version and submitted that in Kannada version of the amendment, it is clear that for ten years prior to the qualifying examination, the Karnataka student had to be educated from a recognized educational institution in Karnataka, but in English version, such an intendment has to be inferred and is not clear in that regard. He also pointed out that the explanation "*not less than ten years preceding the qualifying examination*" does not indicate as to whether it should be a continuous period of ten years or whether there could be a hiatus and if a student has studied in Karnataka for a total period of ten years prior to the qualifying examination, he would be entitled to the benefit of the amendment. He contended that the explanation is vague and could be interpreted in different ways and hence, the same is arbitrary.

52. Learned counsel next drew our attention to the Notification dated 04.08.2020 issued by the

respondent/Law School subsequent to the impugned Amendment, wherein it has been indicated that the total number of seats for the undergraduate programme has been increased from 80 to 120. Clause 2.2 of the said Notification states that pursuant to the impugned Amendment effected on 27.04.2020, a new category of institutional preference for candidates who have studied for not less than ten years in a recognized educational institution in Karnataka ("Karnataka students") has been introduced and for such candidates, twenty-five per cent (25%) of the total seats available in the undergraduate and postgraduate programmes offered by the respondent/Law School is reserved. He submitted that respondent/Law School intends to benefit general category candidates, who are 'Karnataka students', by giving five percent (5%) concession in the general merit quota on cut-off score obtained in CLAT-2020. That, Karnataka students who also belong to the Scheduled Castes and Scheduled Tribes and persons with disability categories may also be provided the same concession. However, the implementation of the above benefit for Karnataka students would be subject to the orders of the Courts. He contended that the provision of five per cent (5%)

concession in the general merit quota on score obtained in CLAT-2020 by Karnataka students is arbitrary. This is because once students from all over India appear in CLAT-2020, only Karnataka students cannot have five per cent (5%) weightage on the general merit cut-off score. This is also discriminatory, apart from the fact that it interferes with the national rank list that is prepared by CLAT-2020 based on the performance of the students who are from all over India.

53. He also contended that Scheduled Castes and Scheduled Tribes students have reservation up to 22.5% (15% + 7.5%) and in the increased seat matrix of 18% + 9% seats respectively are reserved for them and those seats are filled by only Karnataka students who belong to the Scheduled Castes and Scheduled Tribes category. Therefore, 27 seats out of 120 seats are filled by Karnataka students who belong to Scheduled Castes and Scheduled Tribes candidates. Ninety-three (93) seats are reserved for General category. In that, six seats, being five percent by the total seats are again reserved for persons with disability on horizontal basis. Then, the remaining seats for general category are only 87 seats.

But, up to 25% of total seats in each vertical reservation category subject to a maximum of 30 seats shall be admitted under the horizontal institutional preference for Karnataka students which would include Scheduled Castes and Scheduled Tribes as well as general category students. That when only Karnataka students can fili up the reservation meant for Scheduled Castes and Scheduled Tribes, there is no reason to extend horizontal reservation on institutional preference for the said candidates on the basis of the impugned Amendment. If that is so, then it is only in the General category, that thirty students could be filled up. Thus, only 57 out of 120 seats would be available for students outside Karnataka which is less than fifty per cent of the total seats, which is impermissible in law. The same is the position with regard to postgraduate or LL.M. Course. Therefore, the same is arbitrary as it is in violation of Articles 14 and 15(1) of the Constitution. Hence, he submitted that the impugned Amendment as weii as the Notification dated 04.08.2020 issued by the respondent/Law School may be struck down.

(D) Submissions of Sri.Prabhuling K.Navadgi, learned Advocate General along with Sri.Vikram Huilgol, AGA, on behalf of Respondent No.1/State:

54. Learned Advocate General at the outset submitted that the incorporation of the respondent/University was preceded by the Society which was registered under the provisions of the Karnataka Societies Registration Act requesting the State Government for passing a law for the establishment of the University. In that regard, he drew our attention to the letter dated 03.05.1985 written by Sri.V.R.Reddy, the then Treasurer of the BCI (Trust), to the then Chief Minister of the State of Karnataka. He contended that the relationship of the State Government with the respondent/Law School is inseparable inasmuch as the State provided the initial corpus fund and also the land (eighteen acres) belonging to Bengaluru University was leased initially for a period of thirty years and subsequently, additional five acres was leased and thereafter, a renewal of the earlier lease for a further period of thirty years has taken place.

55. According to learned Advocate General, on a perusal of the Act, it is clear that the object of establishing

the Law School was not just to train students for the profession of advocacy or as advocates, but for providing legal services towards law reform, etc. That Section 8 of the Act provides for the authorities of the School which are five in number. Section 18 of the Act which deals with authorities and Officers of the School etc., states that the authorities of the School and their composition, powers, functions and other matters relating to them, the officers of the School and their appointment, powers, functions and other matters relating to them and all other matters relating to the finances, powers, teaching, administration and management of the affairs of the School shall, subject to the provisions of the Act be, as specified in the Schedule or as may be provided by the regulations.

56. That as per the Schedule to the Act, membership of the Governing Council is stipulated in Clause (2) thereof. As per Clause (2)(l)(j), five important functionaries of the State are nominated to the General Council. There are five members who are nominated by the Society; one, being the chairman of the Bar Council of Karnataka and another is Secretary to Government of Karnataka. All these persons are *ex-officio* members.

That the membership to the Executive Council is stipulated in clause (7) to the Schedule. Clauses (7)(e) and 7(f) indicate the nominees of the State in the Executive Council. Similarly, in the Academic Council, as per clause (13)(c), a nominee of the State Government is a member of the same.

57. Clause (23) deals with the funding of the Law School. That Clause 23(1)(a) states that it could receive funds from the State Governments, which means only Government of Karnataka. Therefore, presence of the State Government in the administration of the Law School is deep and intrinsic. In the circumstances, the State Government has the competence as well as authority to pass the impugned Amendment. That initially in the year 2017, the amendments stipulated 50% reservation for students of Karnataka, but ultimately by the impugned Amendment, it has been reduced to only 25% on the basis of institutional preference. Recently, respondent/Law School has incorporated the said reservation on horizontal basis in the seat matrix which has been uploaded on the website of the Consortium.

58. That apart, learned Advocate General contended that on a perusal of Entry No.32 of List-II and Entry No.23 of List-III of the VII Schedule of the Constitution, the State Legislature has the legislative competence to incorporate, regulate and wind up Universities and also to deal with the subject – education as it is now in entry 25 of List III of the Constitution. Therefore, there is no denial of the fact that there is legislative competence for the State Legislature to pass the impugned Amendment Act.

59. He next contended that Article 15(1) of the Constitution bars reservation being given on the basis of the place of birth. That no citizen can be discriminated on the basis of place of birth even in the matter of admissions to educational institutions. However, reservation could be provided on the basis of institutional preference. The same is recognized as a valid basis for making reservation. In the Amendment Act also, the reservation is based on institutional preference and not on residence or place of birth. Institutional preference as a basis for reservation has been accepted by the Hon'ble Supreme Court in *Dr.Pradeep Jain* and *Saurabh Choudri* and other cases. As

a result of the said reservation being implemented in the respondent/Law School, students of Karnataka State would ultimately benefit. The said reservation is also not violative of Article 14 of the Constitution. This is because there is an intelligible differentia inasmuch as students who have studied in Karnataka in any recognised educational institution for a period of ten years preceding the qualifying examination are given the reservation. The object of the same is to ensure that those students, who graduate from the respondent/Law School, remain in the State of Karnataka and as a result, it would improve the legal talent in the State and thus, the State's interest is protected. He contended that even in the case of *D.P.Joshi*, the Hon'ble Supreme Court accepted the concession given for the students in the State of Madhya Bharat in the matter of fees payable to medical colleges. Therefore, the basis of reservation that is applicable in the case of medical education would also apply to legal education. The Hon'ble Supreme Court has declared that irrespective of the fact situation, reservation could be made for the benefit of the students of a State as there is reasonable likelihood that such students would remain in the State and serve the society in the State. In this

context, learned Advocate General contended that the reservation based on institutional preference cannot be confined to only medical colleges, but it could be extended even to law colleges. He also clarified that the impugned reservation is not made for students who are originally from Karnataka or Kannadigas but any student who has studied for ten years preceding the qualifying examination would have the benefit of the reservation as he/she is likely to stay in Karnataka and render legal service in the State.

60. According to learned Advocate General, it is also not necessary that ten years of study must be continuous, even if there is hiatus, it would not matter. In this regard, our attention was also drawn to the judgment of the Hon'ble Supreme Court in ***Kumari N.Vasundara vs. State of Mysore and Another, [(1971) 2 SCC 22],*** *(Vasundara)*. It was submitted that if a student has studied for ten years in Karnataka, there is a likelihood that he would settle down in Karnataka and hence, on a plain reading of the said provision, it could be observed that the years of study prior to the qualifying examination need not be conjunctive, but is disjunctive.

61. Learned Advocate General in this context referred to the judgment of the Hon'ble Supreme Court in *Yatinkumar Jasubhai Patel* where reservation on the basis of institutional preference has been sustained and ***Rajdeep Ghosh vs. State of Assam, [(2018) 17 SCC 524]*** *(Rajdeep Ghosh)*, where residence was made as a criterion for reservation and it was accepted by the Hon'ble Supreme Court.

62. Learned Advocate General next contended that several private universities incorporated by legislation passed by the State Legislature has an express provision, wherein 40% of the students must belong to Karnataka and such private universities have to reserve 40% of the seats for students of Karnataka, the petitioners can have no grievance with regard to the horizontal reservation of only 25% of seats in the respondent/Law School for students of Karnataka State. In this regard, learned Advocate General pointed out that in Law Schools of other States, there is a provision for reservation on the basis of domicile or residence and the same is indicated in the statement of Objects and Reasons in the impugned Amendment. Hence, in respect of the respondent/Law School, the object is to provide students of Karnataka to

study in Karnataka itself as they have been deprived from studying in the Law Schools in other States on account of the reservation for the students of the respective States in those Law Schools. Learned Advocate General submitted that in ***Anil Kumar Gupta and others vs. State of U.P. and others [(1995) 5 SCC 173],*** *(Anil Kumar Gupta),* horizontal reservation has been accepted. He also conceded the fact that the respondent/Law School is an institution of national importance, but it is incorporated by a law passed by the State Government. That the University Grants Commission also recognizes it as a State University. It is not a University of national importance or eminence as determined by the Central Government.

63. Learned Advocate General further submitted that the petitioners have not discharged their burden to demonstrate unconstitutionality in the instant case, or as to how the impugned legislation is arbitrary or irrational. In this regard, he places reliance on ***Ram Krishna Dalmia vs. Justice S.R. Tendolkar [AIR 1958 SC 538]*** *(Ram Krishna Dalmia).* He also submitted that the Statement of Objects and Reasons are not the sole aids for interpretation of a provision in a statute. In this regard,

reliance was placed on ***State of Haryana & Others vs. Chanan Mal & Others, [(1977) 1 SCC 340****] (Chanan Mal).*

64. Continuing his submissions, learned Advocate General stated that the respondent/Law School is also not opposed to the impugned reservation. In fact, the Vice Chancellor of the Law School has communicated to the State Government about the increase in seats from 80 to 120 and has requested for extra grants and funds. That the said request is also not unjustified. To a query from the Court, learned Advocate General very fairly submitted that even without reservation being provided, grants would be made to the extent possible. Concluding his arguments, learned Advocate General submitted that since institutional preference is an accepted basis for reservation and the same has been applied in the instant case, the impugned Amendment Act may be sustained.

(E) Contentions of Sri.Uday Holla, learned Senior Counsel (along with Sri.Aditya Narayan, learned counsel) for respondent No.3/Law School in W.P. No.8951 of 2020:

65. Sri. Uday Holla, learned Senior Counsel, appearing for the respondent/Law School, at the outset,

contended that the National Law School of India University at Bengaluru is not a State University. It is specifically excluded under Section 3 of the Karnataka State Universities Act, 2000. Further, Sections 6(ii) and (iv) of the Karnataka State Law University Act ('KSLU Act') exclude the respondent/Law School from the ambit of the said Act. Moreover, annual budget of the respondent/Law School is Rupees Thirty crore for this year. The funds received from various sources include fees received from the regular students and from the students of distance education. The State provides only Rupees Fifty lakhs per year as a grant. He also submitted that the notification dated 04.08.2020 at Annexure 'R8' to the statement of objections filed by respondent/Law School was issued in consultation with a Senior Advocate in the Supreme Court and the Executive Council at its 90th meeting held on 26.06.2020 resolved that the Amendment Act would be applied subject to the decisions of the Courts.

(F) Submissions of Ms.Lakshmi Menon, learned counsel for the Consortium:

66. Ms. Lakshmi Menon, learned counsel appearing for the Consortium, submitted that CLAT-2020 was announced by a press release and on the website of the

Consortium on 01.01.2020. At that time, the unamended seat matrix of the respondent/Law School was uploaded. After the impugned Amendment, ten days time was given to the students to change their preference which was, from 04.08.2020 to 17.08.2020. That the total marks in the entrance test for undergraduate programmes is 150 and for the postgraduate programmes is 120. Further, the Consortium has taken the services of the third party service provider in the matter of allocation of colleges on the basis of the ranking list and preference. That as of now, the examination is slated on 07.09.2020 and it would take about twenty days for declaration of the results.

(G) Submissions of Sri.Aditya Sondhi, learned Senior Counsel, (along with Sri.Shivashankar S.K., learned counsel,) appearing for the impleading applicant-Abhishek Kareddy (IA No.1 of 2020 in WP No.8788 of 2020):

67. Sri.Aditya Sondhi, learned Senior Counsel, appearing for one of the impleading applicants-Abhishek Kareddy submitted that the said student has passed his S.S.L.C. and P.U.C. in Bengaluru. That he is an aspirant for the undergraduate programme in the respondent/Law School and he has applied for the same. There is no doubt

that the BCI is the brain behind the respondent/Law School. The role of the Law School cannot be disputed as such, but the establishment of the respondent/Law University is by a statute and by an enactment made by the Karnataka State Legislature. Although the BCI Society requested the State Government to establish the Law School, it is nevertheless by an Act passed by the State Legislature. Beyond that, the BCI has no legal or constitutional right vis-à-vis respondent/Law School.

68. As regards the status of the respondent/Law School, reference was made to ***Lolaksha vs. The Convener, Common Law Admission Test (CLAT-2009) NALSAR University of Law [ILR 2009 Kar. 3934]*** *(Lolaksha)*. That the respondent/University is not a national level University. He submitted that the Executive Council of the respondent/Law School provided reservation for students who belong to Scheduled Castes and Scheduled Tribes and now by the Amendment Act, horizontal reservation is provided for students of Karnataka. That it is a compartmentalized reservation in each category.

69. Reference was made to the judgment of the Hon'ble Supreme Court in *Yatinkumar Jasubhai Patil, Nidamarti Mahesh Kumar, D.P.Joshi* as well as ***Rajesh Kumar Daria vs. Rajasthan Public Service Commission, [(2007) 8 SCC 785]*** *(Rajesh Kumar Daria)* to contend that horizontal reservation is permissible and workable in the instant case.

(H) Submissions of Sri.Praveen Kumar Hiremath, learned counsel appearing for the impleading applicant-Srikanth Madihalii Venkatesh (IA No.2 of 2020 in WP No.8788 of 2020)*:*

70. The other applicant-Srikanth Madihalli Venkatesh was represented by learned counsel, Sri.Praveen Kumar Hiremath, who submitted that the applicant is already in 2nd year Law course and he intends to implead himself in the matter. Objection was raised to the application by contending that the applicant is not an aspirant for the ensuing CLAT and he has no *locus standi* to file the application and hence the application is liable to be dismissed.

71. In the circumstances, we did not permit him to make his submissions further. Also, learned counsel for the said applicant admitted the fact that the applicant was

a student of 2nd year B.A., LL.B. course without disclosing the institution in which he is studying in and he not being an aspirant for the ensuing CLAT exam.

Reply arguments:

72. By way of reply, Sri.K.G.Raghavan, learned Senior Counsel appearing for the petitioners in W.P. No.8788/2020, submitted that this Court would have to determine the nature and character of the respondent/Law School. That if the Law School is of a national character, then the impugned Amendment affects the vitals of the Law School as well as the statute. Secondly, the Amendment Act is contrary to Articles 14 and 15 of the Constitution. Thirdly, the impugned Amendment Act has been passed after the commencement of the admission process and the same cannot apply to the present admission process. Elaborating the aforesaid contentions, learned Senior Counsel for the petitioners contended that in terms of Articles 15(4), 15(5) and 15(6), reservation can be provided only in terms of those Articles. No other form of reservation can be provided. Reservation on the basis of Articles 15(4), (5) and (6) are not merely illustrative of the manner of reservation but they are exhaustive. Therefore, in the instant case, reservation

provided on a horizontal basis is not in accordance with Articles 15(4), (5) and (6) of the Constitution.

73. He next submitted that even if it has to be assumed that impugned reservation is as per Article 15(1) of the Constitution, nevertheless, it has to satisfy the requirement of Article 14 also. In that regard, he submitted that the statement of objects and reasons indicate two reasons for the impugned enactment. One is the fact that nine other law universities have provided for reservation and therefore, the respondent/Law University also must provide reservation for Karnataka students. He submitted that this 'tit-for-tat policy' would not apply insofar as the respondent/Law School is concerned, because the Law Schools in other States and the respondent/Law School cannot be treated on the same plane. Therefore, the said reason is without any merit. He further submitted that as far as institutional preference being the basis for reservation is concerned, there are no reasons to indicate as to why such a reservation is required in respect of the respondent/Law School. There has been no survey conducted by the State Government, no material has been placed as to why such a reservation

is required or for whose benefit it is made. That the justification sought to be made in the statement of objections cannot be supplemented by what has been stated in the statement of objects and reasons for the amendment. In that regard, the judgment of the Hon'ble Supreme Court in ***A.Manjula Bhashini vs. The Managing Director, A.P.Women's Co-operative Finance Corporation Limited, [(2009) 8 SCC 431]***, *(A.Manjula Bhashini)* was relied upon. He contended that there is no nexus between the basis of reservation and the objects sought to be achieved and therefore, the twin criteria under Article 14 is not met and hence, being violative of Article 14, the impugned Amendment Act must be struck down.

74. Sri Banerjee, learned Senior Counsel, appearing for the BCI, submitted that it is on the letter of the Treasurer of the Society of the BCI to the Chief Minister dated 03.05.1985 that the State of Karnataka thought it was necessary to encourage the endeavours of the BCI for setting up of the respondent/Law School which is a national-level institution. In this regard, he pointed out that under Section 23(1)(a) of the Act, the School has

received funds not just from the State Government, but from various other State Governments and other entities and it is not only from the State of Karnataka that it has received funds. Learned Senior Counsel for the BCI also pointed out to the judgments of the Hon'ble Supreme Court in *AIIMS Students' Union* to contend that the institutional preference as a basis of reservation may be applicable to the postgraduate medical courses but institutions of national eminence such as National Law School/respondent herein cannot be considered to be on par with the other National Law Schools in other States. In such institutions, there can be no reservations apart from the one stipulated under Articles 15(4), (5) and (6) of the Constitution. He referred to ***D.S.Nakara and others vs. Union of India, [AIR 1983 SC 130],*** *(D.S.Nakara),* to contend that the burden is on the State Government to establish the twin-test under Article 14 of the Constitution i.e., intelligible differentia and the same having a rational nexus to the objects sought to be achieved. It is not for the petitioners to establish otherwise. In this regard, he submitted that even if the principle of constitutionality is mandated while deciding the *vires* of a provision, such

presumption is not absolute and it could always be displaced.

75. Sri.C.K.Nandakumar, learned counsel, submitted that any departure from the principle of admission on the basis of merit must be justified by the State Government. That in the instant case, there is no justification for providing 25% reservation for students of Karnataka in the respondent/Law School. Further, 5% weightage of marks to be given to the students of Karnataka also impinges on the principle of equality. When once the aspirants appear for a national test and have been allotted rank, the same cannot be changed or manipulated by addition of marks or weightage. Therefore, the notification issued by the respondent/Law School dated 04.08.2020 has to be quashed.

76. He further submitted that reliance placed on the decision of the Hon'ble Supreme Court in *Saurabh Choudri* for making institutional preference in the instant case would not also apply. That the decision is in respect of the postgraduate medical seats and not for undergraduate seats and also not applicable to law colleges.

77. He submitted that the State Government could have consulted the respondent/Law School and on consultation, the Executive Council of the respondent/Law School could have thought of reservation being made for students of Karnataka, if permissible in law, but in the absence of there being any consultation, the State Government has thrusted the impugned reservation on the Law School. As a result, there would be imbalance in the student population in the Law School. That the increase in intake is not for the purpose of implementing the impugned reservation. The increase in seats is independent and the intake capacity being increased would not in any way justify 25% reservation for students of Karnataka. He, contended that the impugned Amendment Act and the Notification of the respondent/Law School dated 04.08.2020 may be struck down and quashed.

78. We have heard the learned Senior Counsel and learned counsel for the respective parties as well as the learned Advocate General along with learned Additional Government Advocate at length and perused the material on record.

79. Having heard learned Senior Counsel and other counsel for petitioners, learned Advocate General along with Additional Government Advocate for the State and learned Senior Counsel and other counsel for respondents, the following points would arise for our consideration:-

(1) *Whether the impugned Amendment to the Act is sustainable in law? More particularly, whether the impugned Amendment is in accordance with the Constitution of India?*

(2) *What Order?*

80. We shall consider the aforesaid points in two parts, namely, Part-I and Part-II.

Part-I:

In part-I, the following aspects of the matter shall be discussed:

(a) *Whether the State had the authority to direct reservation to be made by the respondent/Law School horizontally to an extent of 25% for students of Karnataka?*

(b) *Whether the impugned Amendment is contrary to the scheme of the Act and powers vested in various authorities of the Law School under the Act?*

Part-II:

In Part-II the following aspects shall be discussed:

(a) Whether the impugned Amendment to the Act infringes Articles 14 and 15(1) of the Constitution of India?

(b) Whether respondent/Law School could have awarded 5% concession on the last cut off score in general merit category for "students of Karnataka" as per the Notification dated 04.08.2020?

Part-I:

81. At the outset, it would be useful to extract the objects and reasons as well as the impugned Amendment Act, which read as under:

"KARNATAKA ACT NO. 13 OF 2020

THE NATIONAL LAW SCHOOL OF INDIA (AMENDMENT) ACT, 2020

Arrangement of Sections

Sections:

1. Short title and commencement
2. Amendment of section 4

STATEMENT OF OBJECTS AND REASONS

Act 13 of 2020.—Whereas there are 19 National Law School Universities in India wherein horizontal reservation of State domicile is provided as under:-

(1) 25% of seats are horizontally reserved for candidates of domicile of State of Madhya Pradesh in National Law School University, Bhopal.

(2) 10% of seats are reserved for Punjab residents in Rajiv Gandhi National University, Punjab.

(3) 30 seats are reserved for permanent residents of Assam in National Law University and Judicial Academy, Assam.

(4) 80 seats out of 258 seats are reserved for candidates of domicile of Uttar Pradesh in Dr.Ram Manohar Lohia National Law University, Lucknow.

(5) 30 seats out of 120 seats are reserved for General Candidates of Andra Pradesh in Damodar Sanjivayya National Law University, VishakaPatnam, Andra Pradesh.

(6) 16 General Tamil Nadu seats are filled out of 54 seats in Tamil Nadu National Law School Tiruchirapalli, Tamil Nadu.

(7) 16 seats out of 81 seats are reserved for residents of Telangana in National Academy of Legal Studies and Research University, Hyderabad.

(8) 80 seats out of 187 seats are filled horizontally by Chattisgarh domicile students in Hidayatulla National Law University, Raipur.

Whereas National Law School of India University, Bangalore is a creature of the State Legislature. No reservation is provided in the said University for Karnataka Students and they are deprived of this opportunity. Institutional reservation for Karnataka Students is permissible as per the Hon'ble Supreme Court Judgement in Sourabh Choudary v/s Union of India (2003) 11 SCC 146 and in Sourabh Dwivedi v/s

union of India (2017) SCC 626 dt.7-6-2017 upto the extent of 50% in undergraduate Courses.

In Yatin Kumar Jasubhai Patel v/s State of Gujarat in W.A.No.7939 of 2019. Dt.4-10-2019 the Hon'ble Supreme Court has held as follows:-

"The decision of this Court in the case of Dinesh Kumar (Dr.) (II) (supra) permitting 25% Institutional Preference has been distinguished by a Constitutional Bench of this Court in the case of Saurabh Chaudri (supra). Therefore, once the Institutional Preference to the extent of 50% of the total number of open seats has held to be permissible, in that case, thereafter it will be for the appropriate authority/State to consider how much percentage seats are to be reserved for Institutional Preference/Reservation. It will be in the realm of a policy decision and this Court cannot substitute the same, unless it is held to be arbitrary and/or mala fide and/or not permissible. As observed hereinabove, a five Judge Bench of this Court in the case of Sourabh Chaudri (supra) has categorically allowed/permitted/approved the Institutional Preference/Reservation in the post graduate medical courses to the extent of 50% of the total number of open seats."

Now therefore initially it is considered necessary to provide for 25% of seats to Karnataka Students in National Law School of India, University Bangalore by amending the Karnataka National Law School of India Act, 1986 (Karnataka Act 22 of 1986).

[L.A. Bill No.03 of 2020, File No. Samvyashae 34 Shasana 2017]
[Entry 25 and 26 of List III of the Seventh Schedule to the Constitution of India]
[Published in Karnataka Gazette Extra-ordinary No. 148 in part-IV dated: 27.04.2020]"

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"KARNATAKA ACT NO.13 OF 2020
(First Published in the Karnataka Gazette Extra-ordinary on the 27th Day of April, 2020)

THE NATIONAL LAW SCHOOL OF INDIA (AMENDMENT) ACT, 2020
(Received the assent of Governor on the 27th day of April, 2020)

An Act further to amend the National Law School of India Act, 1986.

Whereas, it is expedient to amend the National Law School of India Act, 1986 (Karnataka Act 22 of 1986) for the purposes hereinafter appearing;

Be it enacted by the Karnataka State Legislature in the Seventy First year of the Republic of India as follows.–

1. Short title and commencement.– (1) This Act may be called the National Law School of India (Amendment) Act, 2020.

(2) It shall come into force at once.

2. Amendment of section 4.–In section 4 of the National Law School of India Act, 1986 (Karnataka Act 22 of 1986) after sub-section (2), the following shall be inserted, namely:-

"(3) Notwithstanding anything contained in this Act and the regulations made thereunder, the school shall reserve horizontally twenty five percent of seats for students of Karnataka.

Explanation: For the purpose of this section "student of Karnataka" means a student who has studied in any one of the recognized educational institutions in the State for a period of not less than ten years preceding to the qualifying examination."

By Order and in the name of
The Governor of Karnataka,

Sd/-
(K. DWARAKNATH BABU)
Secretary to Government
Department of Parliamentary
Affairs and Legislation"

** ** **

82. The impugned Amendment is made by insertion of sub-section (3) to Section 4 of the Act, along with an explanation. Hence, it is necessary, in the first instance, to extract the relevant provisions of the Act. They read as under:-

" KARNATAKA ACT No.22 OF 1986

(*First published in the Karnataka Gazette Extraordinary on the Thirteenth day of May, 1986*)

THE NATIONAL LAW SCHOOL OF INDIA ACT, 1986

(*Received the assent of the Governor on the Thirtieth day of April, 1986*)
(As amended by Act 3 of 1993 and 15 of 2004)

An Act to establish and incorporate National Law School of India University at Bangalore.

Whereas the functions of the Bar Council of India includes the promotion of legal education;

And whereas the Bar Council of India to carry out the said function has got created a public charitable trust called the Bar Council of India Trust, the objects of which *inter alia* includes the establishment, maintenance and running of a model law college in India;

And whereas the Bar Council of India Trust to carry out the said objects of the Trust opened a branch office at Bangalore and registered a society named and styled as the National Law School of India Society under the Karnataka Societies Registration Act, 1960 (Karnataka Act 17 of 1960) the objects of which *inter alia* includes the establishment, maintenance and development of a teaching and research institute of higher learning in law with powers to award degrees, diplomas and other academic distinctions called the National Law School of India in Bangalore;

And whereas in furtherance of the above object and to manage the said National Law School of India, rules were framed by the said society providing for constitution of different authorities and other matters relating to the School;

And whereas the National Law School of India Society, has requested the State Government to establish the National Law School of India University on the lines of the said rules to enable it to carry out its objects and functions effectively,

And whereas it is considered necessary to encourage the establishment of such a national level institution in the State of Karnataka;

And whereas it is deemed expedient to establish National Law School of India University for the purposes hereinafter appearing;

BE it enacted by the Karnataka State Legislature in the Thirty-Seventh Year of the Republic of India as follows.–

1. Short title and commencement.–

(1) This Act may be called the National Law School of India Act, 1986.

(2) It shall be deemed to have come into force on the ninth day of January, 1986.

2. Definitions.–In this Act, unless the context otherwise requires.–

(1) "Academic Council" means the Academic Council of the School;

(2) "Bar Council of India" means the Bar Council of India constituted under the Advocates Act, 1961 (Central Act 25 of 1961);

(3) "Bar Council of India Trust" means the Bar Council of India Trust, a public charitable trust, got created by the Bar Council of India;

(4) "Chairman" means the Chairman of the General Council;

(5) "Vice Chancellor" means the Vice Chancellor of the School;

(6) "Executive Council" means the Executive Council of the School;

(7) "General Council" means the General Council of the School;

(8) "Registrar" means the Registrar of the School;

(9) "Regulations" means the regulations of the School made under clause 31;

(10) "School" means the National Law School of India University established under Section 3;

(11) "Schedule" means the Schedule appended to this Act;

(12) "Society" means the National Law School of India Society registered under the Karnataka Societies Registration Act, 1960 (Karnataka Act 17 of 1960); and

(13) "Chancellor" means the Chancellor of the School;

3. Establishment and Incorporation of the National Law School of India University.–

(1) With effect from such date as the State Government may by notification appoint there shall be established, in the State of Karnataka,

a University by the name of the National Law School of India University which shall consist of the Vice Chancellor, the General Council, the Executive Council, the Academic Council and the Registrar.

(2) The School shall be a body corporate by the name aforesaid, having perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire and hold property, to contract and shall, by the said name, sue and be sued.

(3) In all suits and other legal proceedings by or against the School, the pleadings shall be signed and verified by the Vice Chancellor and all processes in such suits and proceedings shall be issued to, and served on, the Vice Chancellor.

(4) The headquarters of the School shall be at Bangalore.

4. The Objects of the School etc.–

(1) The objects of the School shall be to advance and disseminate learning and knowledge of law and legal processes and their role in national development, to develop in the student and research scholar a sense of responsibility to serve society in the field of law by developing skills in regard to advocacy, legal services, legislation, law reforms and the like, to organise lectures, seminars, symposia and conferences to promote legal knowledge and to make law and legal processes efficient instruments of social development, to hold examinations and confer degrees and other academic distinctions and to do all such things

as are incidental, necessary or conducive to the attainment of all or any of the objects of the School.

(2) The School shall be open to all persons of either sex irrespective of race, creed, caste or class of all religions and it shall not be lawful for the School to impose on any person any test whatsoever of religious belief or profession in order to entitle him to be admitted thereto as a teacher or a student or to hold any office therein or to graduate thereat or to enjoy or to exercise any privilege thereof.

(3) Notwithstanding anything contained in this Act and the regulations made thereunder, the school shall reserve horizontally twenty five percent of seats for students of Karnataka.

Explanation: For the purpose of this section "student of Karnataka" means a student who has studied in any one of the recognized educational institutions in the State for a period of not less than ten years preceding to the qualifying examination.

(Amendment in bold)

5. **Powers and functions of the School**.–The powers and functions of the School shall be.–

(i) to administer and manage the School and such centres for research, education and instruction as are necessary for the furtherance of the objects of the School;

(ii) to provide for instruction in such branches of knowledge or learning pertaining to law, as the School may think fit and to make provision for

research and for the advancement and dissemination of knowledge of law;

(iii) to organise and undertake extra-mural teaching and extension services;

(iv) to hold examinations and to grant diplomas or certificates, and to confer degrees and other academic distinctions on persons subject to such conditions as the School may determine and to withdraw any such diplomas, certificates, degrees or other academic distinctions for good and sufficient cause;

(v) to confer honorary degrees or other distinctions in the manner laid down in the regulations;

(vi) to fix, demand and receive fees and other charges;

(vii) to institute and maintain halls and hostels and to recognise places of residence for the students of the School and to withdraw such recognition accorded to any such place of residence;

(viii) to establish such special centres, specialised study centres or other units for research and instruction as are, in the opinion of the School, necessary for the furtherance of its objects;

(ix) to supervise and control the residence and to regulate the discipline of the students of the School and to make arrangements for promoting their health;

(x) to make such arrangements in respect of the residence, discipline and teaching of women students;

(xi) to create academic, technical, administrative, ministerial and other posts and to make appointments thereto;

(xii) to regulate and enforce discipline among the employees of the School and to take such disciplinary measures as may be deemed necessary;

(xiii) to institute professorships, associate professorships, assistant professorships, readerships, lecturerships, and any other teaching, academic or research posts required by the School;

(xiv) to appoint persons as professors, associate professors, assistant professors, readers, lecturers or otherwise as teachers and researchers of the School;

(xv) to institute and award fellowships, scholarships, prizes and medals;

(xvi) to provide for printing, reproduction and publication of research and other works and to organise exhibitions;

(xvii) to sponsor and undertake research in all aspects of law, justice and social development;

(xviii) to co-operate with any other organisation in the matter of education, training and research in law, justice, social development and allied subjects for such purposes as may be agreed upon on such terms and conditions as the School may from time to time determine;

(xix) to co-operate with institutions of higher learning in any part of the world having objects wholly or partially similar to those of the School, by exchange of teachers and scholars and generally in such manner as may be conducive to the common objects;

(xx) to regulate the expenditure and to manage the accounts of the School;

(xxi) to establish and maintain within the School's premises or elsewhere, such class rooms, and study halls as the School may consider necessary and adequately furnish the same and to establish and maintain such libraries and reading rooms as may appear convenient or necessary for the School;

(xxii) to receive grants, subventions, subscriptions, donations and gifts for the purpose of the School and consistent with the objects for which the School is established;

(xxiii) to purchase, take on lease or accept as gifts or otherwise any land or building or works, which may be necessary or convenient for the purpose of the School and on such terms and conditions as it may think fit and proper and to construct or alter and maintain any such building or works;

(xxiv) to sell, exchange, lease or otherwise dispose of all or any portion of the properties of the School, moveable or immovable, on such terms as it may think fit and proper without prejudice to the interest and activities of the School;

(xxv) to draw and accept, to make and endorse, to discount and negotiate, Government of India

and other promissory notes, bills of exchange, cheques or other negotiable instruments;

(xxvi) to execute conveyances, transfers, reconveyances, mortgages, leases, licences and agreements in respect of property, moveable or immovable including Government securities belonging to the School or to be acquired for the purpose of the School;

(xxvii) to appoint in order to execute an instrument or transact any business of the School any person as it may deem fit;

(xxviii) to give up and cease from carrying on any classes or departments of the School;

(xxix) to enter into any agreement with Central Government, State Governments, the University Grants Commission or other authorities for receiving grants;

(xxx) to accept grants of money, securities or property of any kind on such terms as may deem expedient;

(xxxi) to raise and borrow money on bonds, mortgages, promissory notes or other obligations or securities founded or based upon all or any of the properties and assets of the School or without any securities and upon such terms and conditions as it may think fit and to pay out of the funds of the School, all expenses incidental to the raising of money, and to repay and redeem any money borrowed;

(xxxii) to invest the funds of the School or money entrusted to the School in or upon such securities and in such manner as it may deem

fit and from time to time transpose any investment;

(xxxiii) to make such regulations as may, from time to time, be considered necessary for regulating the affairs and the management of the School and to alter, modify and to rescind them;

(xxxiv) to constitute for the benefit of the academic, technical, administrative and other staff, in such manner and subject to such conditions as may be prescribed by the regulations, such as pension, insurance, provident fund and gratuity as it may deem fit and to make such grants as it may think fit for the benefit of any employees of the School, and to aid in establishment and support of the associations, institutions, funds, trusts and conveyance calculated to benefit the staff and the students of the School;

(xxxv) to delegate all or any of its powers to the Vice Chancellor of the School or any committee or any sub-committee or to any one or more members of its body or its officers; and

(xxxvi) to do all such other acts and things as the School may consider necessary, conducive or incidental to the attainment or enlargement of the aforesaid objects or any one of them.

6. Teaching of the School.–

(1) All recognised teaching in connection with the degree, diplomas and certificates of the School shall be conducted, under the control of the General Council, by the teachers of the School, in accordance with the syllabus prescribed by the regulations.

(2) The courses and curricula and the authorities responsible for organising such teaching shall be as prescribed by the regulations.

7. Chancellor of the School.–

(1) A Judge nominated by the Society shall be the Chancellor of the School:

Provided that if he gives his consent the Chief Justice of India shall be nominated as the Chancellor.

(2) The Chancellor shall have the right to cause an inspection to be made by such person or persons as he may direct, of the School, its buildings, libraries and equipments and of any institution maintained by the School, and also of the examinations, teaching and other work conducted or done by the School and to cause an inquiry to be made in like manner in respect of any matter connected with the administration and finances of the School.

(3) The Chancellor shall, in every case give notice, to the School of his intention to cause an inspection or inquiry to be made, and the School shall be entitled to appoint a representative who shall have the right to be present and be heard at such inspection or inquiry.

(4) The Chancellor may address the Vice Chancellor with reference to the result of such inspection or inquiry, and the Vice Chancellor shall communicate to the General Council the views of the Chancellor along with such advice as the Chancellor may have offered on the action to be taken thereon.

(5) The General Council shall communicate through the Vice Chancellor to the Chancellor such action, if any, as it proposes to take or has been taken on the result of such inspection or inquiry.

8. Authorities of the School.–The following shall be the authorities of the School.–

(1) the General Council;

(2) the Executive Council;

(3) the Academic Council;

(4) the Finance Committee; and

(5) such other authorities as may be declared as such.

9. The General Council.–The General Council shall be the chief advisory body of the School.

10. Executive Council.–

(1) The Executive Council shall be the chief executive body of the School.

(2) The administration, management and control of the School and the income thereof shall be vested with the Executive Council which shall control and administer the property and funds of the School.

11. The Academic Council.–The Academic Council shall be the academic body of the School, and shall, subject to the provisions of this Act and the regulations, have power of control and general regulation of, and be responsible for, the maintenance of standards of instruction, education and examination of the School, and shall exercise such other powers and perform such other duties as may be conferred or imposed upon it by this Act

or the regulations. It shall have the right to advise the Executive Council on all academic matters.

12. Officers of the School.–The following shall be the officers of the School, namely.–

(a) the Vice Chancellor;

(b) the Heads of the Departments;

(c) the Registrar; and

(d) such other officers as may be prescribed by the regulations."

x x x

18. Authorities and officers of the School etc.-

The authorities of the School and their composition, powers, functions and other matters relating to them, the officers of the School and their appointment, powers, functions and other matters relating to them and all other matters relating to the finances, powers, teaching, administration and management of the affairs of the School shall, subject to the provisions of this Act be as specified in the Schedule or as may be provided by the regulations.

x x x

21. Act to have overriding effect.- The provisions of this Act and any regulation made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

** ** **

SCHEDULE

"1. Definitions.–

In this Schedule, unless the context otherwise requires,–

(1) "clause" means a clause of this Schedule;

(2) "teacher" includes professors, associate professors, assistant professors, readers, lecturers and any other person imparting instructions in the School.

2. Membership of General Council.–(1) There shall be a General Council of the School, which shall consist of the following members, namely.–

(a) the Chairman of the Bar Council of India;

(b) the Vice Chancellor;

(c) two nominees of the Bar Council of India Trust from among its trustees of whom one shall be the managing Trustee;

(d) six nominees of the Bar Council of India from amongst its members;

(e) two persons nominated by the Bar Council of India in consultation with the visitor;

(f) two representatives of allied disciplines in social sciences and humanities nominated by the Bar Council of India Trust;

(g) two Judges from among the Judges of the Supreme Court and High Courts, nominated by the Bar Council of India in consultation with the visitor;

(h) five persons nominated by the Bar Council of India Trust from among persons connected with administration of law and education, in consultation with the visitor;

(i) the Chief Justice of the Karnataka High Court;

(j) five members nominated by the Government of Karnataka of whom one shall be the Law Minister of Government of Karnataka, one shall be the Advocate-General for Karnataka, one shall be the

Education Minister of Government of Karnataka, one shall be the Secretary to Government of Karnataka, Education Department and the other shall be an eminent person in the field of law;

(k) all the Heads of the Departments of the School, if any;

(l) five members nominated by the Society of which one shall be the Chairman, Karnataka State Bar Council, one shall be the Secretary to Government of Karnataka, Law Department, and others from amongst its members;

(m) such other members of the Executive Council as are not member of the General Council:

Provided that an employee of the School shall not be eligible for nomination under items (e) and (f):

Provided further that the General Council constituted under the rules of the Society shall be the first General Council.

3. Chairman, Secretary and Treasurer.– (1) The Chairman of the Bar Council of India shall be the Chairman of the General Council.

(2) The Vice Chancellor of the School shall be the Secretary of the General Council.

(3) The Managing Trustee of the Bar Council of India Trust shall be the Treasurer of the School.

x x x

7. Membership of the Executive Council.–(1) The Executive Council shall consist of the following, namely.–

(a) the Vice Chancellor

(b) the Chairman;

(c) two persons nominated by the Bar Council of India Trust from among the distinguished men of letters, educationists of repute, members of the learned professions or eminent public men, in consultation with the visitor;

(d) a nominee of the Society;

(e) the Law Secretary to the Government of Karnataka;

(f) two members nominated by the Government of Karnataka from among the members of the General Council;

(g) three members nominated by the Bar Council of India from among its members;

(h) two members nominated by the Bar Council of India Trust from among its trustees of whom one shall be the managing Trustee;

(i) three Professors, elected by the teaching staff of the School, by rotation according to seniority:

Provided that an employee of the School shall not be eligible for nomination under category (c).

(2) The Vice Chancellor shall be the Chairman of the Executive Council.

x x x

13. Membership of the Academic Council.– (1) The academic council shall consist of the following persons, namely:-

(a) the Vice Chancellor, who shall be the chairman thereof;

(b) three persons from amongst the educationists of repute or men of letters or members of the learned professions or eminent public men, who are not in the service of the School, nominated by the Bar Council of India, in consultation with the visitor;

(c) a person nominated by the State of Karnataka;

(d) a nominee of the Bar Council of India;

(e) a nominee of the Bar Council of India Trust;

(f) all the Heads of the Departments, if any;

(g) all professors other than the Heads of the Departments, if any;

(h) two members of the teaching staff, representing Associate and Assistant Professors of the School:

Provided that an employee of the School shall not be eligible for nomination under category (b).

(2) The term of the members other than *ex-officio* members and those whose term is specified by item (h) of sub-clause (1) shall be three years:

Provided that the term of the first Academic Council shall be five years.

x x x

16. Finance Committee.– (1) There shall be a Finance Committee constituted by the Executive Council consisting of the following, namely:-

(a) the Treasurer of the School;

(b) the Vice Chancellor;

(c) three members nominated by the Executive Council from amongst its members out of whom atleast one would be from the Bar

Council of India and one from the Government of Karnataka."

x x x

23. Funds of the School.–(1) There shall be for the School a School Fund which shall include.–

(a) any contribution or grant made by the State Governments;

(b) any contribution or grant made by the University Grants Commission or the Central Government;

(c) any contribution made by the Bar Council of India;

(d) any contribution made by the Bar Council of India Trust;

(e) any contribution made by the State Bar Councils;

(f) any bequests, donations, endowments or other grants made by private individuals or institutions;

(g) income received by the School from fees and charges; and

(h) amounts received from any other source.

(2) The amount in the said Fund shall be kept in a Scheduled Bank as defined in the Reserve Bank of India Act, 1934 or in a corresponding new bank constituted under the Banking Companies (Acquisition and Transfer of Undertaking) Acts of 1970 and 1980 or may be invested in such securities authorised by the Indian Trusts Act, 1982, as may be decided by the Executive Council.

(3) The said Fund may be employed for such purpose of the School and in such manner as may be prescribed by regulations."

83. The notification issued by the respondent/Law School incorporating the amendment by way of a revised seat matrix and concession of 5% marks on the general merit cut off score obtained in CLAT 2020 reads as under:

" **NATIONAL LAW SCHOOL OF INIDA UNIVERSITY**

BENGALURU

NOTIFICATION

Revised seat matrix for B.A.LLB(Hons.) and LL.M programmes

August 4, 2020

This notification brings to the notice of the applicants a change in the seat matrix of the National Law School of India University, Bangalore, Karnataka. Candidates are requested to update their eligibility criteria, by Monday, 17th August, 2020, if applicable.

1. The total number of seats available in B.A., LL.B(Hons.) Programme has been increased from 80 (eighty) to 120 (Hundred and twenty).

2. **New "Karnataka Students" category**

2.1. The National Law School of India (Amendment) Act, 2020 (Karnataka Act No. 13 of 2020) which came into effect on 27.04.2020, has introduced a new category of institutional preference for candidates who have studied for not less than ten years in a recognized educational institution in Karnataka ("**Karnataka Students**"). These candidates shall be preferred for admission for upto 25% of the total seats available in the B.A., LLB (Hons.) and LL.M programmes offered by NLSIU.

2.2. General Category candidates who are 'Karnataka Students' shall benefit from a 5% concession on the General Merit cut-off score obtained in CLAT 2020.

'Karnataka Students' who also belong to the SC, ST or PWD categories shall be subject to the same concessions provided to SC, ST and PWD categories respectively.

2.3. The implementation of the "Karnataka Students" category shall be subject to the Orders of the High Courts and the Supreme Court in ongoing litigation.

The revised Seat matrix for B.A., LL.B (Hons.) is as follows:

Category	No. of seats (out of 120)
Scheduled Caste (15%)	18
Scheduled Caste (15%)	9
General Category	93

Note –

1) Six (6) seats comprising 5% of the total seats shall be reserved horizontally for Persons with Disability.

2) Upto 25% of total seats in each vertical reservation category, subject to a maximum of Thirty (30) students, shall be admitted under the horizontal institutional preference for Karnataka Students.

The revised Seat matrix for LL.M is as follows:

Category	Business seats (30)	Human Rights seats (20)
Scheduled Caste (15%)	5	3
Scheduled Tribe (7.5%)	2	2
General Category	23	15

Note –

1) Two (2) seats in Business Law and One (1) seat in Human Rights Law comprising 5% of the total seats shall be reserved horizontally for Persons with Disability.

2) Upto 25% of total seats in each vertical reservation category, subject to a maximum of Thirteen (13) students shall be admitted under the horizontal institutional preference for Karnataka Students.

Sd/-
Prof.(Dr.) Sarasu E. Thomas
Registrar, NLSIU, Bengaluru "

84. Section 4 of the Act deals with the objects of the respondent/Law School. Section 4(1) speaks about the objects and purpose for which the School was established, namely, dissemination of learning and knowledge of law and legal processes, to hold examinations and confer degrees etc. Sub-section (2) thereof deals with the School being open to all persons of either sex, irrespective of race, creed, caste or class of all religions. On an analysis of Section 4 of the Act, it indicates that the objects of the School are, firstly, with regard to the main activity of the School i.e., to impart knowledge of law and to develop skills in law particularly, in advocacy, legal services, legislation, law reforms etc., to hold examinations and to confer degrees and other distinctions and the second object is, the aforesaid activity shall be open to all persons without any discrimination. Now, by virtue of the impugned Amendment, sub-section

(3) has been included in the objects clause. It begins with a *non-obstante* clause and it states that notwithstanding anything contained in the Act and the Regulations made thereunder, the School shall reserve horizontally 25% of the seats for students of Karnataka. The explanation defines "student of Karnataka" as a student who has studied in any one of the recognized educational institutions in the State for a period of not less than ten years preceding the qualifying examination.

85. As submitted by the learned Advocate General, while considering the constitutional *vires* of a provision, it is necessary to bear in mind the approach of the Court in such matters enunciated in *Ram Krishna Dalmia (supra)*. On a reading of the said decision, it is noted that there is always a presumption of constitutionality and the burden is on the petitioners to demonstrate as to how the said provision is unconstitutional or *ultra vires* the Act. Also, The construction of an amendment to a statute as well as the effect of an amendment to a statute should be ascertained by construing the amended statute. Thus, what is looked at is the amended statute itself as if it were a free-standing piece of legislation and its meaning and

effect ascertained by an examination of the language of that statute. Also, the language and expression of the amending statute has to be considered in certain circumstances as the amending statute would alter the law from that which it had been before ***(Vide, Inco Europe Ltd v First Choice distribution (a firm) [1999] 1 ALL ER 820).***

86. Bearing in mind the principles of interpretation of statutes, at the outset, we observe that in the instant case, what is being considered is an amendment made to the Act by insertion of sub-section (3) to Section 4. On a reading of the same, the following questions would arise: firstly, whether, the impugned Amendment could be read as an exception or proviso to sub-section (2) of Section 4 of the Act, inasmuch as despite the School being open to all persons nevertheless there shall be horizontal reservation provided to an extent of 25% of the seats only for students of Karnataka. In other words, certain percentage of the seats would not be allowed to be filled by any person other than a student of Karnataka. This is similar to a percentage of seats being reserved for Scheduled Castes and Scheduled Tribes or persons with

disability, which of course are valid basis of reservation. Secondly, whether the impugned provision could be sustained in any other manner. Thirdly, whether the amendment is *ultra vires* the Act. In that regard, there have been rival submissions advanced which we have recorded in detail and it is unnecessary to reiterate the same.

87. In light of the aforesaid questions that arise, it is necessary to answer the same in the context of the main objects and purposes of the Act and secondly, in whom or which authority the administration, functioning and the management of the respondent/Law School vests and whether, the State, by virtue of the impugned Amendment could have mandated the respondent/Law School to reserve 25% of the seats for the students of Karnataka by way of horizontal reservation.

88. Before considering the questions that arise, it would be useful to refer to the following passages from the book *"An Idea of a Law School – Ideas from the Law School"* – a collection of essays edited by Prof.N.R. Madhava Menon and two others. Prof. N.R.Madhava Menon, as we all know is not only one of the founders of

respondent/Law School but is also regarded as the "Father of Modern Legal Education in India". Therefore, we deem Prof. Menon's detailing of the history of modern legal education in India, which commences with the establishment of the respondent/Law School, apposite to our ensuing discussion on the *sui-generis* structure and stature of the respondent/Law School.

a) Professor Madhava Menon, in his article "*Transformation of Indian Legal Education*" has stated that the first generation reforms in legal education followed soon after the passing of the Advocates Act, 1961 by the Parliament creating a duly elected Bar Council at the State and Central levels with the authority to manage the profession, including the standards of legal education, in consultation with the Universities teaching law. In this phase of reforms, Bachelor of Laws (LL.B.) became a Post-graduate Programme of three years duration after a basic degree in Arts, Science, Commerce or Humanities.

b) Within two decades, access to legal education was greatly expanded, though according to Dr.Menon the quality was diluted uncontrollably. Therefore, second generation reforms became imperative to maintain access

and improve quality. This was undertaken a decade before economic liberalization happened in the country in early 1990s. The idea was to make the LL.B. course a post-higher secondary school course of a longer duration (Five years) with an expansive curriculum, where students study law in a social context and employing multiple methods of teaching and evaluation. The Five-year Integrated LL.B. progamme thus developed was prescribed by the BCI to be the only BCI-recognised law course beginning in 1982. But, due to resistance from some sections of the Bar and some Universities, the Bar Council soon revised its own Regulation and allowed both streams, (Three-Year postgraduate LL.B. and Five-Year post-higher secondary integrated LL.B.) to be run by Colleges and Universities according to their choice.

c) In the above context, the BCI developed a strategy of sponsoring a model law school with University status to act as a pace-setter for legal education reforms envisaged by its Five-Year Integrated LL.B. curriculum. This initiative led to the birth of the first National Law School of India at Bangalore in 1986, which is supposed to become the "Harvard of the East" according to its

sponsors. In the words of Professor Madhava Menon, *"the success of the National Law School experiment was indeed a turning point in Indian legal education, particularly, in respect to academic excellence, social relevance and professional competence. It soon assumed the dimensions of a movement with every State in India seeking to establish a National Law School on the 'Bangalore Model'*. The above was the Second Generation Reform in legal education.

d) Dr.Menon states that the original objectives for setting up of National Law Schools were to supply well trained lawyers to the trial and Appellate Courts as well as judicial service, so that access to justice is at large and quality of justice for the common man is improved and strengthened. But, this has not happened to any satisfactory level.

e) In another Essay titled, *"Towards a Draft National Policy on Legal Education",* Professor Menon while speaking about multiple structures in the changing system of legal education, makes a reference to the National Law Schools in various States including the respondent/Law School, though they are set up by State Legislations, they

are designated as "National institutions admitting students nationally through a Common Law Admission Test (CLAT)". The law which establishes these Universities are modeled on the lines of the Karnataka Act, wherein the Chief Justice of India or the State High Court Chief Justice is designated as the Chancellor and the University Authorities - Executive and Academic Councils - are constituted largely with nominees of the Bar, the Bench, the Academia and State/Central Government representatives. According to Prof.Menon, they enjoy a lot of autonomy unlike other State Universities and they can be considered organizationally a class in themselves comparable in status to that of IITs and IIMs. There are 22 Law Universities in the country as on 2017.

f) In another Essay titled as, "*Continuing Legal Education and the Role of Bar Councils and Bar Associations*", Professor Menon has said that the Five- Year Integrated LL.B. programme introduced with the establishment of National Law University in Bangalore in 1987 injected some degree of academic rigour, professional relevance and clinical experiential learning in legal education in India.

89. We have perused the amendment made to the Act which is impugned in these cases. The amendment is made to Section 4 of the Act, which deals with the objects of the Law School, and it is by insertion of sub-section (3) thereto. Firstly, the amendment has an over-riding effect on the Act; secondly, it directs the respondent/Law School to reserve seats; thirdly, the reservation of seats is horizontally to an extent of 25% of the seats and fourthly, the reservation is only for students of Karnataka. The definition of "*student of Karnataka*" specifies two aspects: firstly, the student must have studied for ten years preceding the qualifying examination which is either second year Pre-University Course or 12th Standard. Secondly, the said study must be in a recognized educational institution in the State.

90. The statement of objects and reasons for the said amendment indicates a two-fold reason for making the amendment: firstly, in nineteen National Law Universities in various States in India, horizontal reservation on the basis of State domicile or residence is provided. The respondent/Law School, being a creature of the State Legislature, has not provided such a reservation

for Karnataka students. Hence, they are deprived of this opportunity. Secondly, institutional reservation for Karnataka students is provided as it is permissible as per the judgments of the Hon'ble Supreme Court in *Saurabh Choudri* and *Sourabh Dwivedi* and as per *Yatinkumar Patel*, it could be up to an extent of 50% in undergraduate courses. Therefore, the amendment.

91. Pursuant to the said amendment, the respondent/Law School issued a notification dated 04.08.2020, which is also extracted above. The notification indicates the following aspects: firstly, that there is an increase in the intake for the undergraduate programme from 80 seats to 120 seats (which is not consequent to the amendment). Secondly, reservation is provided for Karnataka student up to 25% on the basis of a new category of institutional preference for candidates who have studied for not less than ten years in a recognized educational institution in Karnataka. Thirdly, Karnataka students shall also be given a 5% concession on the general merit cut off score obtained in CLAT-2020. Fourthly, Karnataka students who also belong to Scheduled Castes and Scheduled Tribes or persons with

disability category shall also be subject to the same concession provided to Scheduled Castes, Scheduled Tribes and persons with disability categories respectively, and fifthly, the implementation of the reservation for Karnataka students shall be subject to the orders of the Courts.

92. The revised seat-matrix indicates that out of 120 seats in the undergraduate programme, 18 seats (15%) for Scheduled Castes; 9 seats (7.5%) for Scheduled Tribes are reserved vertically; 93 seats are general category seats; 6 seats comprising of 5% of the total seats are to be reserved horizontally for persons with disability and 25% of the total seats in each vertical reservation category subject to a maximum of 30 seats shall be admitted under the horizontal institutional preference for Karnataka students.

93. For the LL.M. programme in Business Law, out of total 30 seats - 5 seats (15%) are reserved for Scheduled Castes category; 2 seats (7.5%) are reserved for Scheduled Tribes category and 23 seats are for general category. Under the Human Rights Law, 3 seats (15%) out of 20 seats and 2 seats (7.5%) are reserved for

Scheduled Castes and Scheduled Tribes category and 15 seats are for general category. 2 seats in Business Law and 1 seat in Human Rights Law comprising of 5% of the total seats shall be reserved horizontally for persons with disability and also upto 25% of the total seats in each vertical reservation category subject to a maximum of 13 seats shall be admitted under the horizontal institutional preference for Karnataka students.

94. With the above preface, we shall proceed to consider the scheme of the Act. Much emphasis was laid by learned Senior Counsel, Sri Vikramjit Banerjee, appearing for the BCI on the deep and pervasive role of the BCI in setting up of the respondent/Law School as well as its functioning. This was in support of his contention that having regard to the role played by BCI in establishing the respondent/Law School, its structure as a National Law University and the manner of its functioning, the respondent State could not have directed the Law School to provide horizontal reservation for students of Karnataka. In this context, he also submitted that the respondent/Law School cannot be equated to a Law college of a State University nor is it akin to other National Law

Schools in other States. In this regard, our attention was drawn to the Act and the Schedule thereto. In order to determine whether the respondent/Law School is an independent and autonomous entity and subject to deep and pervasive control of the BCI alone and not the State, as contended by learned Senior Counsel, Sri. Vikramjit Banerjee, we have considered the following aspects of the respondent/Law School in the ensuing discussion:

(a) Genesis and manner of incorporation and establishment of the respondent/Law School.
(b) Composition of the authorities created by the Act for the management and administration of the respondent/Law School.
(c) Powers and functions of the authorities so created by the Act.
(d) Finances to run the respondent/Law School including grants.
(e) Admission of students.
(f) Recruitment of faculty and their salary.
(g) Academic programs and their regulation.
(h) Role of State in the functioning of the respondent/Law School, if any, under the Act.

95. We note that the Act was passed by the State Legislature to establish and incorporate the respondent/Law School as a "National Law School of India

University" at Bengaluru. That one of the functions of BCI is promotion of legal education and in order to carry out the said function, the BCI created a public Trust called the BCI Trust. One of the objects of the Trust was to establish, maintain and run a model law college in India. The BCI Trust opened a branch office at Bengaluru and registered a Society styled as National Law School of India Society (herein after referred to as 'Society', for brevity sake) under the provisions of Karnataka Societies Registration Act, 1960. The object of the Society was to establish, maintain and develop a teaching and research institution of higher learning in law, with powers to award degrees, diplomas and other academic distinctions, called National Law School of India University in Bengaluru. In furtherance thereof, Rules were framed by the said Society providing for constitution of different authorities and other matters relating to the School and the Society requested the State Government to establish the respondent/Law School on the lines of the said Rules to carry out its objects and functions effectively. The State Government considered it necessary to encourage and establish such a national-level institution in the State of Karnataka and enacted the Act which was enforced with effect from

09.01.1986. It is useful to quote Prof. Menon on the name of the respondent/Law School as National Law School of India University as under:

> "It is necessary to explain the rather strange name that the new University carried. Initially in the deliberations of the Bar Council of India it was to be a National School of Law like the Harward Law School. It then came to be called the National Law School of India in the documents drafted for consideration of the Karnataka Government. When it was clothed with the status of a University, the draftsmen of Karnataka Government felt the word 'University' must necessarily appear in the name and christened it as the National Law School of India University. Today if it wants to change its rather incongruous name, it requires a legislative amendment which, if attempted, people fear, will bring about more unwelcome changes disturbing the character of the institution itself. We, therefore, are stuck with a name which stands out as unique among schools and which gives an identity of its own among universities."
>
> ***(Emphasis by us)***

96. In the above background, it would also be useful to refer to a letter addressed by Sri V.R.Reddy, the then Treasurer, National Law School of India Society, to the then Hon'ble Chief Minister of Karnataka, dated 03.05.1985, a copy of which has been referred to by learned Advocate General:

"THE NATIONAL LAW SCHOOL OF INDIA SOCIETY

National Law School of India
Central College Building
BANGALORE – 560 001

NLSI/29/1985

May 3, 1985

V.R.REDDY
TREASURER,
NATIONAL LAW SCHOOL OF INDIA SOCIETY

Dear Sir,

As you are aware, the National Law School of India proposed to be established in Bangalore is conceived by the Bar Council of India as an autonomous body with the status of a University. The Bar Council of India deeply appreciates the munificent gesture of the Government of Karnataka in offering to help in the form of financial assistance and allocation of land and building. The School was formally inaugurated on 21st February, 1984 in your august presence. Though the school is expected to commence functioning from the academic year 1985-86, the organizers are faced with difficulties in securing the deemed University status owing procedural and practical problems.

In these circumstances we are approaching you to kindly consider establishing the school as a University under an appropriate enactment of the State. If the Government of Karnataka is favourably inclined, the National Law School of India Society will be happy to furnish all the necessary materials for the kind consideration of the Government.

Thanking you,

Yours faithfully,
Sd/-
(V.R.REDDY)

To

Shri Ramakrishna Hegde,
Hon'ble Chief Minister of Karnataka,
Bangalore."

(underlining by us)

97. From this letter, we gather that, National Law School of India which had come into existence even prior to the passage of the Act, was desirous of becoming a deemed university and therefore sought the assistance of the State to grant it "deemed University" status. This assistance was sought by way of passing a requisite legislation by the State which is also evident in the letter reproduced above. The reason for seeking the passage of an enactment by the State is also found in the letter namely "various procedural and practical problems". Therefore, the State was approached by way of a request for passing an enactment to facilitate the conferment of "deemed University" status on the existing National Law School of India. The said request from the National Law School to confer the status of a University on it has also been taken note of in the Objects clause of the Act.

98. In fact, the Scheme of the Act which we have dealt with in detail below, reveals that the Legislature was also aware of its limited role *vis-à-vis* the respondent/Law School. Therefore, the enactment, meant to confer "deemed university status" on the respondent/Law School rightly recognizes and vests autonomy in various

authorities of the respondent/Law School and conceptualizes it as an autonomous and independent entity free from state control. It is in this background that the State has not reserved any power unto itself regarding the management and administration of the respondent/Law School. This is evident on a discussion of the relevant provisions of the Act.

99. Section 3 of the Act states that with effect from the date the State Government appoints, a University by the name of the National Law School of India University (respondent/Law School) consisting of the Vice Chancellor, the General Council, the Executive Council, the Academic Council and the Registrar shall be established. The Head Quarters of the School is at Bengaluru.

100. Section 4 of the Act deals with the objects of establishing such a School, which we have already referred to above, namely to advance and disseminate learning and knowledge of law and legal processes, and their role in national development, etc. Another important object of the School is that it would be open to all persons of either sex, irrespective or race, creed, caste or class of all regions. The impugned Amendment has been added to

the aforesaid objects by insertion of sub-section (3) providing for reservation horizontally to an extent of 25% for students of Karnataka.

101. Further, the Society is empowered to nominate a Judge to be the Chancellor of the School and if the Chief Justice of India consents, he shall be nominated as the Chancellor (Section 7). The authorities of the School are General Council, the Executive Council, the Academic Council, the Finance Committee and such other authorities as may be declared as such. The General Council is the Chief advisory body of the School. The membership of the General Council, *inter alia,* consists of (a) the Chairman of the BCI; (b) two nominees of the BCI Trust from among its trustees of whom one shall be the managing Trustee; (c) six nominees of the BCI from amongst its members; (d) two persons nominated by the BCI in consultation with the Chancellor; (e) two representatives of allied disciplines in social sciences and humanities nominated by the BCI Trust; (f) two Judges from among the Judges of the Supreme Court and High Courts, nominated by the BCI in consultation with the Chancellor; (g) five persons nominated by the BCI Trust from among persons

connected with administration of law and education, in consultation with the Chancellor; (h) five members nominated by the Society, of which, one shall be the Chairman, Karnataka State Bar Council; one shall be the Secretary to Government of Karnataka, Law Department, and others from amongst its members. Thus, as many as twenty-five (25) members of the General Council are nominated by the BCI, the BCI Trust or the Society of whom nine members are nominated in consultation with the Chancellor. The Chairman of the BCI is the Chairman of the General Council and the Managing Trustee of the BCI Trust is the Treasurer of the School.

102. Section 10 of the Act speaks about the Executive Council. The Chairman of the BCI is a member of the Executive Council; two persons nominated by the BCI Trust from among the distinguished men of letters, educationists of repute and members of the learned professions or eminent public men, in consultation with the Chancellor and a nominee of the Society are, *inter alia*, the members of the Executive Council, three members nominated by the BCI from amongst its members; two members nominated by the BCI Trust from amongst its

trustees of whom one shall be the managing trustee. The Vice-Chancellor is the Chairman of the Executive Council. Thus, nine out of sixteen members of the Executive Council are appointed by the BCI Trust while, three members only are nominees of the State Government. The Executive Council is guided by the Chancellor of the Law University.

103. Section 11 of the Act speaks about the Academic Council. The members of the Academic Council, *inter alia*, is by nomination by the BCI in consultation with the Chancellor as follows: three persons from amongst the educationists of repute or men of letters or members of the learned professions or eminent public men, who are not in the service of the School, nominated by the BCI, in consultation with the Chancellor; a nominee of the BCI and a nominee of the BCI Trust. Thus, five-out of-six nominees on the Academic Council are by the BCI or BCI Trust.

104. Under Clause 16 of the Schedule, the Finance Committee constituted by the Executive Council consists of the Treasurer of the School, who is the managing Trustee of the BCI Trust; three members nominated by the Executive Council from amongst its members, out of

whom, at least one, would be from the BCI. The Treasurer presides over the meetings of the Finance Committee. Respondent/Law School, *inter alia,* receives contribution by the BCI, BCI Trust and the State Bar Councils.

105. The respondent/Law School has received grants from various other Governments such as Haryana, Tamil Nadu, West Bengal, Maharashtra, Meghalaya and Andhra Pradesh. Since the years 1984-85, the respondent/Law School has received maintenance grants of rupees two lakhs up to two crores per annum, from the respondent State depending on the budgetary allocations. For the last thirty years, the Government of Karnataka has granted approximately rupees sixteen crores to the respondent/Law School and for the current Financial Year, rupees fifty lakhs only has been sanctioned as a grant.

106. On a reading of the aforesaid provisions of the Act and the Schedule thereto, it is clear that the BCI, in order to discharge one of its functions, being promotion of legal education, set up a public charitable Trust and a registered Society for the purpose of establishing a model law college in India, which is headquartered in Bengaluru. The Society, in turn, requested the State Government to

establish the respondent/Law School. The State Government responded to the said request as it considered it necessary to "encourage" the establishment of a national-level institution in the State of Karnataka. Thus, it is clear, from its very inception, the respondent/Law School is not a State University, but a national-level institution whose genesis was in the minds of the then members of the BCI. The BCI conceived and contemplated the establishment of a national level Law College and in turn constituted the BCI Trust for the purpose of establishing a model law college in India. The respondent/Law School is not set up directly by the Society which was incorporated by the BCI Trust, but by means of an enactment i.e., the Act in question as the State Government considered it necessary to encourage the establishment of a national-level institution in the State of Karnataka.

107. The role of the BCI in the establishment of the respondent/Law School and the composition of the Authorities of the School discussed above clearly indicate that the Society, which was incorporated by the BCI Trust in Karnataka, has the power to nominate the Chancellor of

the School, who could also be the Chief Justice of India, if he would consent to the same. This also indicates that the respondent/Law School was conceived to be a national-level institution and therefore, the Chief Justice of India could be nominated as its Chancelior. Even in the composition of the General Council, Executive Council, Academic Council and the Finance Committee, the number of nominations that could be made by the BCI, BCI Trust or the Society set up by the BCI Trust are very significant. In fact, the Chairman of the BCI is the Chairman of the General Council. The Chairman of the BCI is also a member of the Executive Council and the nominees of the BCI and BCI Trust are members of the Academic Council. Also, the Treasurer of the School is the Managing Trustee of the BCI Trust. This clearly demonstrates the deep and pervasive role of the BCI in establishing a national-level institution in the State of Karnataka and its continued influence in the administration, functioning and control over the Law School. Thus, in our view, the respondent/Law School is a fulfillment of the vision of the then members of the BCI to set up a national level institution.

108. It was stated at the Bar that in no other National Law Schools in India incorporated under other States' enactments, the BCI had such a deep and pervasive role which continues even after nearly three decades of the establishment of the respondent/Law School. In fact, as already noted, the very conception of the respondent/Law School is at the behest of the BCI, which determined to establish a model law college in India, as a national-level institution for the purpose of dissemination of learning and knowledge of Law and legal processes and for such other objects. Therefore, one cannot undermine or ignore the role of the BCI, BCI Trust and the Society in the conceptualization and incorporation of the respondent/Law School as a national-level institution in Bengaluru. It is in response to the request made by the Society acting on behalf of the BCI Trust and BCI that the State Government thought it necessary to encourage the establishment of such a national-level institution and hence, gave it a legislative frame work by enacting the Act. The reason as to why the respondent /Law School was headquartered in Bengaluru and not in any other place outside Karnataka was because the then Chief Minister promised to facilitate the setting up of a

national-level institution in Bengaluru by providing land and an initial corpus fund. Thus, the munificence of the State Government acted as a catalyst for the establishment of a national-level institution in Bengaluru.

109. Therefore, there can be no two opinions that the BCI and its other entities, namely the BCI Trust and the National Law School of India Society incorporated by the Trust, not only played a pioneering role in the establishment of a National Law School in Bengaluru as a national-level institution, but has continued to have a great influence in advancing the objects of the School. The BCI also has a significant say in the functioning and management of the School through its membership in the various Authorities of the School. No less a person than the Chief Justice of India, if he consents, shall be nominated as the Chancellor of the School by the Society. The significance of the Chief Justice of India being nominated as the Chancellor of the School by the Society cannot be undermined. Thus, the respondent/Law School functions under the guidance of the highest judicial authority of the land, namely Hon'ble the Chief Justice of India and has, as the members of the various other

authorities, Hon'ble sitting and retired Judges of the Supreme Court of India, leading advocates, other eminent academics and such other eminent persons, most of whom, are nominated by the BCI Trust or the Society in consultation with the Chief Justice of India. Hence, in our view, the respondent/Law School must be construed to be a brain child and a result of the efforts of the BCI, the BCI Trust and the Society and hence, its role is not only in the incorporation and the establishment of the same, but also in its functioning for all these decades has been significant under the Act as opposed to the State Government. This is clearly noted from the various Sections of the Act referred to above.

110. In *Lolaksha*, a learned Single Judge of this Court, while holding that only students belonging to the Scheduled Castes and Scheduled Tribes, specified in relation to the State of Karnataka under Articles 341 and 342 of the Constitution, are entitled to reservation in the said quota in the respondent/Law School, has also opined that the respondent/Law University is a brain-child of the BCI Trust. It has been established as a national-level institute by the Karnataka State Legislature; that there is

no provision in the Act which requires the respondent/Law University to extend the benefit of reservation for the purpose of admission to the law course. It has always been the practice since beginning for the respondent/Law University to extend reservation from time to time.

111. As a sequitur, it is inferred that the respondent/Law School is not akin to a State University established by the State Government. In fact, on a reading of the scheme of the Act, it is clear that the State Legislature was mindful of the fact that it was establishing a national-level institution in the State of Karnataka and that its powers under the Act was minimal. It is also not on par with the other national law schools in the country. It may be that the respondent/Law School is a part of the Consortium along with other National Law Schools for the purpose of participating in CLAT. But, the respondent/Law School cannot be compared with other Law Schools nor is on par, for the reason that the incorporation and establishment of the respondent/Law School is unique; it is the product of an experiment made by the BCI to set up a model law college in India for the promotion of the legal education, which would be a national-level institution.

Hence, the respondent/Law School is a unique national-level institution and cannot be construed to be a State University. It may be that the establishment of the respondent/Law School is by a legislation just as other law schools have been set up in various States of the country but, the similarity ends there. In all other respects, the respondent/Law University is a stand-alone Law School and University of India. It has its own distinctive features and therefore, must function as such so as to achieve the objects for which it has been set up.

112. In this regard, the submissions of learned Senior Counsel, Sri Holla, appearing for the Law School are apposite. The respondent/Law School is neither a University within the scope and ambit of Karnataka Universities Act, 2000 nor the Karnataka State Law University Act, 2009 ("KSLU Act, 2009", for brevity sake), which applies to almost all the other Law Colleges in the State. The aforesaid Acts also expressly exclude the respondent/Law School from their purview. In fact, learned Senior Counsel appearing for the respondent/Law School pointed out that Section 3 of the Karnataka State Universities Act, 2000 deals with the establishment and

incorporation of Universities, but it does not include the respondent/Law School.

113. Further, in Section 6(ii) of the KSLU Act, 2009, it is stated that notwithstanding anything contained in that Act, the jurisdiction of the said University (Karnataka State Law University) extends to the whole of the State of Karnataka. That no college in the State of Karnataka imparting education in Law shall, save with the consent of the Karnataka State Law University and the sanction of the Government, be associated in any way with or seek admission to any other University in India or abroad, excluding National Law School of India University. Therefore, after the establishment of the respondent/Law School as a University under the Act, when the KSLU Act, 2009 was enacted, the Legislature was conscious of the fact that the respondent/Law School is altogether a separate University and excluded it from the purview of KSLU Act, 2009. Further, under Section 9 of the KSLU Act, 2009, the Chancellor may, either *suo motu* or on the recommendation of the State Government, issue such directions as may be necessary or expedient in the interest of both administration and academic functioning of the

University and in particular, to ensure peace and tranquility and to protect the property and finances. The Chancellor of the Karnataka State Law University is the Governor of Karnataka, who is the *ex officio* Chancellor of the University. But, under the Act in question, there is no such provision, which is vested with the State Government to recommend or to issue directions to the respondent/Law School with regard to the administration, management or academic functioning of the University. This is precisely because of the membership and composition of the various Authorities under the Act, which we have detailed above and the Chancellor of the respondent/Law University could be and has always been Hon'ble the Chief Justice of India.

114. Although the National Law School is indicated to be a State University by the University Grants Commission (UGC), it is only for the purpose of making grants to the respondent/University by construing it to be a University established by a State enactment. But, the said fact would not make the respondent/Law University to be a State University as contended by the learned Advocate General. Further, the respondent/Law University may not be an "institution of national importance" or

"institution of eminence" as per the Central Government but is, nevertheless, a national-level institution. In fact, the Karnataka State Higher Education Council has listed the respondent/Law School as an "Institution of national importance" and not as a State Government University. Also, on perusal of the ranking that has been given to the respondent/Law University by the National Institutional Ranking Framework (NIRF), Ministry of Human Resource Development, Government of India, for the academic years 2018-19 and 2019-2020, the respondent/Law University has been ranked as No.1. So also in earlier years.

115. That is why Section 21 of the Act makes it evident that the provisions of the Act and the regulation made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any other instrument having effect by virtue of any law other than the Act. Such a provision by a *non-obstante* clause is significant and is conspicuous by its absence in other States' enactments concerning establishment of State Universities. Further, on a reading of the powers and functions of the School

delineated under Section 5 of the Act, it is noted that, *inter alia,* the powers and functions of the School as under:

> "**5. Powers and functions of the school.—**The powers and functions of the School shall be.—
>
> (i) to administer and manage the School and such centres for research, education and instruction as are necessary for the furtherance of the objects of the School;
>
> x x x
>
> (viii) to establish such special centres, specialized study centres or other units for research and instruction as are, in the opinion of the School, necessary for the furtherance of its objects;
>
> x x x
>
> (xxii) to receive grants, subventions, subscriptions, donations and gifts for the purpose of the School and consistent with the objects for which the School is established;
>
> x x x
>
> (xxiv) to sell, exchange, lease or otherwise dispose of all or any portion of the properties of the School, moveable or immovable, on such terms as it may think fit and proper without prejudice to the interest and activities of the School;
>
> x x x
>
> (xxix) to enter into any agreement with Central Government, State Governments, the University Grants Commission or other authorities for receiving grants;
>
> x x x
>
> (xxxiii) to make such regulations as may, from time to time, be considered necessary for

regulating the affairs and the management of the School and to alter, modify and to rescind them;

x x x

(xxxv) to delegate all or any of its powers to the Vice Chancellor of the School or any committee or any sub-committee or to any one or more members of its body or its officers, and

(xxxvi) to do all such other acts and things as the School may consider necessary, conducive or incidental to the attainment or enlargement of the aforesaid objects or any one of them."

116. A reading of the above would also indicate that the respondent/Law School has been set up as a distinct and autonomous entity and cannot be treated on par with other Universities in the State. Thus, the role of the State Government in the running of the respondent/Law School is very minimal and to the extent of only nominating persons to various authorities of the respondent/Law School envisaged under the Act.

117. The above discussion would persuade us to deduce and infer that the State Government, when it enacted the Act, was conscious of the nature and character of the respondent/Law School as a national-level institution established in Karnataka. The State Legislature, therefore, structured the Act in such a manner so as to

constitute the Authorities of the Law School whose membership was so envisaged in order to give the BCI, BCI Trust and the Society an upper-hand in its constitution. Further, the administration, management and control of the Law School vests with the Executive Council and therefore, makes the respondent/Law School as an autonomous institution and not under the control of the State Government. Thus, the role of the BCI in structuring the Act, the Authorities under the Act as well as their composition is indeed significant.

118. The State has no direct say in the functioning of the respondent/Law School except through its nominees who form a small part of the membership of the various authorities of the Law School. Thus, the State Legislature did not reserve with the State Government any power in the matter of the administration, management and control of the respondent/Law School. There is also no provision under the Act which enables the State to issue directions or advisories regarding the functioning of the respondent/Law School. The role of the State was only to act as a catalyst in setting up the respondent/Law School as a national-level institution in Bengaluru and for that

purpose to provide land and make a grant apart from a legislative framework. Beyond that, the Act does not provide any role for the State Government in the administration and functioning of the Law School. In fact, the objects, powers and functions of the Law School when read cumulatively would indicate that the State only acted as a facilitator in the incorporation and establishment of the respondent/Law School in Bengaluru. Beyond that, under the Act, the State did not specify nor reserve for itself any role in the functioning of the Law School.

119. We have adverted to the Scheme of the Act with particular emphasis on the composition of the various authorities of the respondent/Law School and their functions. Nowhere in the Act, any role of the State Government in the functioning of the Law School has been envisaged. This is because, the State Legislature was mindful of the fact that the respondent/Law School was conceptualized as a model college of Law, an experiment in legal education by the BCI, BCI Trust and the Society, and it had to provide only a legislative framework for the BCI to carry out its endeavour in setting up a University in Bengaluru. The structure of the Act including the schedule

thereto, to which we have alluded to in detail, would lead us to infer that, the State has a very negligible role in the functioning of the respondent/Law University.

120. Thus, the respondent/Law School is not a University over which the State has any control. The scheme of the Act is, in fact, to the contrary. The control over the Law School emanates from the BCI and its entities through the various Authorities constituted under the Act and not by the State Government. The respondent/Law School was established to be of a national stature and a national-level institution and not one under the control of the State Government.

121. Such being the position of the respondent/Law School, as a University of national stature and not similar to other Law Colleges or Universities in the State, was it permissible for the State Government through the amendment to direct the Law School to make horizontal reservation to an extent of 25% exclusively for students of Karnataka? In other words, is the impugned Amendment contrary to the objects and scheme of the Act and therefore *ultra vires* the Act? In this regard, we must emphasise that merely because in Law Schools in other

States, such reservation on the basis of domicile/residence has been provided, is no reason for providing reservation on the basis of institutional preference in the respondent/Law School. Here, we are not speaking on the validity of reservation on the basis of institutional preference as that is altogether another controversy. But, what we observe is, having regard to the genesis, manner of incorporation, structure and framework and the intensity of the role of BCI and its ancillary bodies in the composition of the authorities of the respondent/Law School as well as its All India stature, it means that the role of the State Government in the functioning of the Law School in question is very minimal. According to Sri Holla, the respondent/Law School receives a paltry maintenance grant of Rs.50 Lakhs per year as opposed to Rs.380 lakhs for the year 2019-20; Rs.873 lakhs for the year 2020-21 granted to KSLU. This grant comprises a very small portion of its overall annual expenditure of about thirty crores. The representatives of the State Government in the various authorities are by virtue of the Law School being situated in the State Capital and it was established by a State enactment. Beyond this, the State has no role in the

management, control and functioning of the respondent/Law School.

122. In this context, we wish to rely upon a recent judgment of the Hon'ble Supreme Court in the case of ***Ramakrishna Mission and Another vs. Kago Kunya and others [(2019) 16 SCC 303]*** *(Ramakrishna Mission),* wherein it has been held that the aid (or grant) received from the State *per se* would not characterize the aided institution as one subject to the control of the State so as to be denuded of its autonomous character, even if it is an institution established under a statute. The inherent autonomy of such an institution is not lost, particularly when the institution is not carrying out a sovereign function of the State. Further, the respondent/Law School has received grants from various other States in the Union of India. As stated previously, the States of Tamil Nadu, West Bengal, Maharashtra, Meghalaya and Andhra Pradesh have extended financial aid to the respondent/Law School presumably in view of the fact that it is a national level institution. It cannot also be said that these State Governments have control of any sort over the respondent/Law School.

123. Further, keeping in tune with its pan-India character, the admission of students to the respondent institution is by an All India Test namely, CLAT. Students from all over India are eligible to apply to the institution. The student population is drawn from almost every State and Union Territory of India and Karnataka students, also form a significant percentage of the student population. The fact that meritorious students are drawn from all over India adds to the diversity of the student base which has not only steered the respondent/Law School to greater heights but has also greatly enhanced the scholastic experience for the students. Since, admission to the respondent/Law School is very competitive on account of its unique character, one of which is, it is a national-level institution having its own curriculum, method of teaching and trimester system of examination, only the really meritorious students secure admission in the respondent/Law School provided they are within the cut-off score. In fact, learned counsel for the petitioners, Sri.C.K.Nandakumar pointed out the difference between the score of rank No.1 and the last ranker in general merit category in the respondent/Law School is hardly five to ten

marks. The implication of this statistic being that all students who are eligible for admission to the respondent/Law School have scored marks which are within a narrow range. In other words, the difference in the marks secured by the first ranker and the last ranker in the All-India Merit List is only of a few marks. This indicates that all students admitted to respondent/Law School are of similar merit who have secured the top percentile of the overall marks. They are all toppers in the All-India Test who have opted to study in respondent/Law School as their first preference. This has been the pattern in CLAT for over a decade.

124. While one cannot undermine the fact that the State of Karnataka has facilitated the establishment of respondent/Law School, including passing of a legislation, the fact remains that the Law School in question is not under the control of the State Government; nor can it be considered to be an aided institution as understood under the legal regime of the State or the judgment of the Hon'ble Supreme Court referred to above. The State has no role in structuring the curricula or the academic programmes nor any say in the manner in which its funds

are spent. In fact, the faculty of the Law School are not paid nor receive any financial aid from the State nor do the non-teaching staff. The respondent/Law School has received funds from various State Governments, including Karnataka (to a tune of Rs.50 lakh per year) as well as from other sources, as enabled in Clause 23 of the Schedule to the Act, such as BCI, State Bar Councils and various other entities from all over India. This makes the respondent/Law School a truly national institution. What distinguishes the Law School in question from other Law Schools is its diversity, its national or All India character with an international outlook. According to Prof.Menon, it must become the *'Harvard of the East'.* In fact, the respondent/Law School is the face of legal education in India internationally.

125. Therefore, in light of the above, it must be held that the State Legislature does not have any power or authority under the Act to mandate the respondent/Law School to horizontally reserve 25% of the seats for students of the Karnataka. By this, we do not mean that it had no legislative competence in the context of Schedule VII of the Constitution of India. But, we observe that

having regard to various provisions of the Act dealing with the objects, the constitution of various authorities and their functions, the State did not retain or reserve any role for itself in the matter of administration, management and control of the Law School. Thus, the amendment is *ultra vires* the Act, namely, the objects and purport of the Act as well as the character of the respondent/Law School as an autonomous and independent entity having an All India or national character. This position was, in fact, communicated by letter dated 03.05.1982 by Sri V.R.Reddy, the then treasurer of the BCI Trust. In response, the then Chief Minister of the State Government facilitated the establishment of the respondent/Law School at Bangalore by the State Legislature passing the Act to confer status of deemed University. Thus, sub-section (3) of Section 4 cannot be read as a proviso to sub-section (2) of Section 4 or as an independent provision and hence, under the objects Clause or elsewhere in the Act, the Amendment cannot be sustained.

126. We also observe that, the use of the *non-obstante* clause in the amendment would not in any way assist in saving the amendment from being *ultra vires* the

Act. According to "Interpretation of Statutes" by Justice G.P.Singh, *non-obstante* clause may be used as a legislative device to modify the ambit of the provision or law mentioned in the *non-obstante* clause or to override it in specified circumstances. While interpreting the *non-obstante clause,* the Court is required to find out the extent to which the legislature intended to give it an overriding effect. Even though, the *non-obstante* clause is very widely worded, its scope may be restricted by construction, having regard to the intention of the legislature gathered from the enacting clauses or other related provisions of the Act. When the Section containing the *non-obstante clause* does not refer to any particular provision of an Act, which it intends to override, but, refers to the provisions of the statute generally, as in the instant case, it is not permissible to hold that it excludes the whole Act and it requires a determination as to which provision answers the description and which does not over-ride any of the provisions discussed above and certainly not Sections 10 and 18 of the Act. Therefore, in our view, the *non-obstante* Clause in no way can be pressed into service so as to give it an over-riding effect. This is particularly so, when Section 21 of the Act has an

overriding effect over all other laws or any instrument having effect by virtue of any law other than the Act. Therefore, the Act as a whole has an overriding effect. When that is so, an amending Section cannot override the entire Act by virtue of a *non-obstante* clause, particularly when the amending Section is contrary to the entire Schedule of the Act.

127. The other aspect to be considered is the mandatory nature of the impugned provision. There are several principles in the realm of interpretation of statutes concerning the interpretation to be made to the word "shall" and also the word "may". Many a time, use of the word "may" is held to be mandatory in nature and not directory and sometimes, the expression "shall" could also be interpreted to be directory and not mandatory. If the expression "shall" used in the impugned Amendment is given its plain meaning then, whether, the State Legislature could have directed the respondent/Law School to provide for horizontal reservation for students of Karnataka to an extent of 25% of the seats? On a close reading of the Act, we find that nowhere in the Act any provision has been made for reservation of seats for

students during the admission process. This is because, under Section 10 of the Act, "administration, management and control" of the School is vested with the Executive Council. If that is so, whether, provision of reservation in admission to students of the Law School would come within the expression "administration, management and control" of the School. We think that it would do so. In fact, the Act does not empower the State to provide for reservation for students during admission even in the context of Article 15(4) of the Constitution. Therefore, it must be held that provision for reservation is a matter which is and must be left to the wisdom and discretion of the Executive Council of the Law School. The reason being, when the entire "administration, management and control" of the School vests with the Executive Council, provision of reservation for students at the time of their admission comes within the scope and ambit of comprehensive expression of "administration, management and control" of the School. It is only the Executive Council which can provide for reservation on the touchstone of Articles 14 and 15 of the Constitution and not by the State Government directing the Law School to do so by the impugned Amendment. As it is only the

Executive Council which can provide for reservation, then its power and discretion to do so must be given its full effect. Thus, in our view, the State Government cannot insist upon the Law School to make any reservation of seats for students whatsoever. This would also mean that it could not have mandated the Law School to horizontally reserve 25% of the seats for students of Karnataka by the impugned Amendment. It is for the Executive Council of the Law School to take a decision as to, whether, reservation on any basis could be made or not and if so, whether it should be made on a horizontal or on a vertical basis and further, as to what could be the percentage of seats that could be reserved and more particularly, for which class or categories of persons, reservation could be provided bearing in mind Articles 14 and 15 of the Constitution. If the entire determination of reservation of seats in the respondent/Law School has to be made by the Executive Council of the Law School, the impugned Amendment is not sustainable as it is contrary to Section 10 as well as other provisions of the Act referred to above, which form the substratum of the legislative structure of the respondent/Law School.

128. On a reading of the various sections of the Act and the Schedule thereto, it is observed that the "administration, management and control" of the Law School vests with the Executive Council. In fact, the Act itself has vested the said powers in the Executive Council. Such being the position, the State, through the impugned Amendment could not have mandated the respondent/Law School to reserve 25% of the seats horizontally for students of Karnataka by way of a *non-obstante* clause. By this Amendment, the State has usurped the powers that could have been exercised by the Executive Council of the Law School in the matter of reservation of seats for students in the Law School. Any other interpretation would imply that there would be a dual centre of administration, including providing reservation—one, in the Executive Council of the Law School and the other, in the State, which could through an amendment of the Act or otherwise, administer or manage the Law School including providing reservation for the students of the respondent/Law School. This is not envisaged under the Act and any other interpretation would give rise to an unhealthy trend and it would lead to uncertainty in the management of the Law School. The same is also not the

intention of the Act as could be gathered from the provisions of the Act discussed in detail. The State Legislature, being conscious of this aspect envisaged under Section 10 thereof that, "administration, management and control" of the Law School would vest with the Executive Council. Thus, the impugned Amendment is an instance of encroachment on power and authority in the "administration, management and control" of the Law School inasmuch as the direction to the Law School through the impugned Amendment to make provision for horizontal reservation to an extent of 25% for students of Karnataka is an interference in the admission process and the power vested with the Executive Council to manage the respondent/Law School, which also includes admission of students.

129. Apart from the aforesaid discussion, there are other reasons as to why we hold that the Amendment is not sustainable. We have already noted that the Act consciously does not provide for reservation of any kind to be provided by the State Government and it has not retained any power to do so under the Act. In fact, this has also been the accepted position in the instant case for

over three decades. This is clear from the following Resolutions of the Executive Committee:

(i) Reservation for Scheduled Castes and Scheduled Tribes was made by the Executive Council on the basis of a Resolution, which was passed on 11.09.1988 at the 4th meeting of the Executive Council, by which 15% of the seats were reserved for Scheduled Castes and 7½ % of the seats for Scheduled Tribes and 5% for foreign students.

(ii) Initially, there was no reservation provided for physically challenged persons. In fact, in ***Harsha Shivaram vs. National Law School of India University [(AIR) 1999 Kar. 173]*** *(Harsha Shivaram)*, this Court categorically recorded that it is the exclusive prerogative of the University to take a decision with regard to providing reservation for persons with disabilities and dismissed the writ petition seeking a seat as a reserved candidate and thereby directing the respondent/Law University to consider providing reservation for persons with disabilities. Thereafter, in the 60th meeting of the Executive Council held on 24.02.2008, reservation of 3% of seats to physically challenged persons was provided.

Subsequently, the said percentage was increased to 5% on account of Section 32 of the Rights of the Persons with Disabilities Act, 2016.

(iii) Also, the Executive Council, which had made reservation for foreign students by resolution dated 11.09.1988 was withdrawn subsequently.

(iv) In the 90th meeting of the Executive Council of the respondent/Law School held on 27.06.2020, the Executive Council confirmed the withdrawal of admissions under the Foreign National Category, till a new admission model was developed by the University.

(v) In this regard, we may also refer to the draft minutes of the 90th meeting of the Executive Council of the respondent/Law School which was held on 27.06.2020 furnished by learned counsel for the petitioners. "Item No.5 - Any other item (with the permission of the Chair) issue No.7", pertained to *Reservation in student Admissions Policy.* A discussion about a Committee set up in the 89th Executive Council Meeting about the reservation policy in the Law School having not submitted its report to the Executive Council, was discussed and the Vice

Chancellor clarified that the Committee had been constituted and met but, had not yet finalized any report. Therefore, this would also indicate that any reservation to be provided in the admission process of the Law School would be at the behest of the Executive Council of the Law School.

130. The above being the consistent precedent, the State Government by the impugned Amendment could not have directed the respondent/Law School to horizontally reserve 25% of the seats for students of Karnataka. Hence, it is held that expression "the School shall reserve" in the impugned provision would imply the Executive Council to take a decision as to whether any kind of reservation for Karnataka students could be made. This is because, the Act does not provide for any kind of reservations to be made in the admission of students to the Law School. The State Legislature did not consciously provide for any kind of reservation of seats for students in the respondent/Law School because of the stature of the Law School as a national institution and conferred the power on the Executive Council of the respondent/Law School to administer, manage and have overall control of

the institution. The State has all along adhered to this and has never ventured to make any such amendment earlier.

131. This is not just a matter of form but substance, inasmuch as the Act does not provide for reservation of seats for students and the same has always been within the realm of the powers vested with the Executive Council. Thus, by the impugned Amendment, the Law School could not have been directed to horizontally reserve 25% of the seats for students of Karnataka. What the Act has not envisaged i.e., conferring power on the State Government to provide for reservation, the same could not have been provided by way of an amendment to the Act by insertion of a *non-obstante* clause. This is contrary to the intent and spirit of the Act and also the other provisions of the Act, which prescribes autonomy to the University. In this regard, it is useful to recall Sections 18 and 21 of the Act extracted above, which deal with the over-riding effect of the Act. Thus, when the Act has an over-riding effect, the same could not have been nullified by the impugned Amendment. In fact, the insertion of the *non-obstante* clause in the amending provision has no effect as it runs counter to the provisions of the Act.

132. Further, when a power is exercised under a statute, it must be exercised in the like manner and subject to the like sanction and conditions and same cannot be done in any other way or manner. If provision for reservation of seats for students is not expressly provided under the Act and it has always been made by the Executive Council by passing resolutions from time-to-time as referred to above, the State Government by the impugned Amendment could not have taken over the authority to provide for horizontal reservations for students of Karnataka to an extent of 25% of the seats, by directing the Law School i.e., Executive Council, to do it. As observed above, it is for the Executive Council in its wisdom and discretion to provide any kind of reservation of seats for students admitted to the Law School, which would be in exercise of its power and discretion under Section 10 of the Act. This is because, the respondent/Law School is autonomous and not functioning under the directions of the State Government. When the matter of providing reservation is vested with the Executive Council and it is at its discretion, we hold that State Government could not have directed the Law School

to provide for horizontal reservation of 25% of the seats for Karnataka students by the impugned Amendment of the Act. In this context, it is observed that use of the *non-obstante* clause in the amendment would be of no assistance so as to save it from the vice of being contrary to the main Act.

133. This can also be explained by a legal principle, which is applicable in the present case. The principle is, where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and other methods of performance are necessarily forbidden vide, ***Taylor vs. Taylor [(1875) 1 Ch D 426]***. Hence, when a statute requires a particular thing to be done in a particular manner, it must be done in that manner or not at all, vide ***Nazir Ahmed vs. King Emperor [(1936) L.R. 63 I.A. 372]***. The Hon'ble Apex Court too, has adopted this maxim in ***Parbhani Transport Co-operative Society Ltd. vs. The Regional Transport Authority, Aurangabad & others [(1960) (3) S.C.R. 177: AIR 1960 SC 801]*** and other decisions. This Rule says that an expressly laid down mode of doing something prevalent, necessarily implies a prohibition of doing it in

any other way. To this, we may add a converse principle. If power or authority is vested with a body to act in a particular way under a statute, the same cannot be exercised by some other body on the strength of *non-obstante* clause by an amendment of the statute, which would have the effect of destroying the scheme, object and purpose of the statute. In other words, an amendment to an Act cannot have the effect of adversely impacting the rest of the Statute or Act and thereby causing an uncertainty in its implementation. Therefore, the amendment is contrary to the Act.

134. Therefore, by the impugned Amendment, the State Legislature could not have directed the Law School to provide for horizontal reservation of 25% of the seats for Karnataka students. The said provision is mandatory and it takes away the power of the Executive Council of the Law School to provide for such a reservation in exercise of its wisdom and discretion. This has always been so, for over three decades. Therefore, the Amendment now made to the Act is contrary to the letter and spirit of the Act, particularly Section 10 thereof, which has been discussed above. Therefore, the conclusion is

such that a reservation could be provided by the Executive Council of the Law School by passing a resolution to that effect and the same is in the realm of discretion and wisdom of the Executive Council. Thus, in our view, the Amendment, which has the effect of commanding the Executive Council of the Law School, is wholly contrary to the scheme of the Act. An amendment cannot be contrary to the object and scheme of the main Act. It would be *ultra vires* the main Act.

135. In view of the above discussion, we would like to summarize our findings in Part I which are as follows:

(a) The State does not have the power under the Act to direct reservation in the respondent/Law School, to the extent of 25%, for students of Karnataka, in view of the limited role of the State under the Act.

(b) The impugned Amendment is contrary to the scheme of the Act and powers vested in the authorities recognized under the Act which makes the respondent/Law School an autonomous and independent body free from State control. The impugned Amendment runs counter to the Act and is hence, not valid.

(c) Any form of reservation for students at the respondent/Law School shall be provided by the Executive Committee of the Law School.

136. This takes us to **Part-II** of our judgment.

(a) Whether the impugned Amendment to the Act infringes Articles 14 and 15(1) of the Constitution of India?

(b) Whether respondent/Law School could have awarded 5% concession on the last cut off score in general merit category for "students of Karnataka" as per the Notification dated 04.08.2020?

137. On behalf of the petitioners, elaborate contentions were raised on the basis of the reservation impugned for Karnataka students with reference to the statement of objects and reasons. In other words, it was contended that the said reservation is contrary to Articles 14 and 15 of the Constitution of India. In that context, several judgments of the Hon'ble Supreme Court were adverted to on the nuances of Articles 14 and 15 of the Constitution.

138. In this part of the judgment we have discussed the doctrine of equality as enshrined in Articles 14 and 15 of the Constitution and the manner of providing horizontal reservations in both compartmentalized and overall

method. We have also discussed in detail the judgments of the Hon'ble Supreme Court emphasizing on merit as a criterion for admission to medical colleges and as to on what basis there could be a departure from the said principle of merit namely, State's interest and regional backwardness and the judgments dealing on the said aspects. We have considered the aforesaid aspects in light of the institutional preference being a basis for reservation in the instant case. Also, the judgments which deal with the same with regard to admission in medical colleges have been discussed above.

139. The definition of 'student of Karnataka' has been analyzed as well as in light of the Statement of Objects and Reasons for the amendment. We have analyzed as to how the first reason mentioned in the Statement of Objects and Reasons for the amendment has no nexus to the basis of classification namely, "student of Karnataka", as defined in the explanation to the impugned amendment. The basis of reservation in the instant case being, a combination of residence, for a period of ten years preceding the qualifying exam in an educational institution recognized by the State (institutional preference) as to

how it does not further the objects sought to be achieved. In our view, by the impugned horizontal reservation, a State quota is sought to be created which is impermissible as the amendment stands now.

140. In the above premise, we have also differentiated medical education from legal education and as to how the judgments which have been rendered by the Hon'ble Supreme Court in the context of medical education would not apply as such, to legal education particularly, in the respondent/Law School. In the circumstances, we have found that the State's interest is not in any way fortified or enhanced by the impugned reservations rather, it may be counter productive from the point of view of the respondent/Law School. Also, regional backwardness being a reason for the reservation in medical colleges would not apply in the instant case.

Articles 14 and 15 and Reservation of seats:

141. In the background of the aforesaid summary, we would briefly advert to Articles 14 and 15 of the Constitution. Article 14 of the Constitution states that the State shall not deny to any person equality before the law or equal protection of the laws within the territory of India.

Article 14 is an enunciation of equality of all persons, which would mean that no person would have any special privilege or position in law. However, the doctrine of equality being a dynamic concept has evolved over the decades. The general enunciation of equality under Article 14 has its specific facets in Articles 15 to 18 of Part III of the Constitution as well as in certain provisions of the Directive Principles of State Policy (Part IV of the Constitution). The object of Article 14 is to attain justice—social, economic and political, which is enshrined in the Preamble of the Constitution. In short, equality would mean that all equals would be treated equally in law, which translates that unequals cannot be treated as equals and equals cannot be treated as unequals. However, the concept of equality would not prohibit reasonable classification to be made which should be on the basis of an intelligible differentia having a rational nexus to the object sought to be achieved by legislation. Thus, the conferment of special benefits to a particular group of people must have a rational basis, so as to achieve real equality. While making a classification, the same must be reasonable and not discriminatory and having a rational nexus sought to be achieved. In other words,

reasonableness means that it should not be arbitrary or irrational but, the basis for classification should be distinct. It could be due to a historical justification, geographical or on the basis of economic criterion or on an empirical survey conducted by the State. If classification is based on a well defined class and thus, on an intelligible differentia having a rational relation to the object sought to be achieved by the enactment, it cannot be set aside on the ground that it is violative of Article 14 of the Constitution. Hence, in order to prove infringement of the said Article, it is necessary to demonstrate or prove that the aforesaid twin tests have not been complied with while making the said classification. At the same time, while providing a benefit such as, reservation for a certain class of persons, it is necessary to ensure that the said benefit in an educational institution is reasonable and therefore, cannot exceed 50% of the available seats or intake capacity, unless exceptional circumstances warrant such a reservation vide ***M.R.Balaji vs. State of Mysore [AIR 1963 SC 649].***

142. According to the Hon'ble Supreme Court, classification on the basis of residence for the purpose of

public employment should be based on a scientific study and not on some broad generalization, artificial differentiation and irrelevant assumptions. There must be collection of relevant data and a scientific study must be conducted or it would amount to creating an artificial distinction having no legitimate connection to objects sought to be achieved and would be discriminatory, *vide* ***Kailash Chand Sharma vs. State of Rajasthan, [(2002) 6 SCC 562, para 31]*** *(Kailash Chand Sharma).* The same requirement would also apply to reservation made in education institutions.

143. As already noted, Articles 14, 15 and 16 of the Constitution form a code guaranteeing equality under the Constitution and the aforesaid Articles embody the principle of non-discrimination. Courts have always applied the twin-test in order to ascertain whether a statute is violative of Article 14 of the Constitution or not. At the same time, where the law makes a protective discrimination, such as in favour of the Scheduled Castes and Scheduled Tribes which is a part of the constitutional scheme of social and economic justice, the same being permitted under the Constitution, it would be upheld. In

other words, the real inequality in society have to be taken into consideration for giving any preference by way of an affirmative action to the socially and economically disadvantaged persons/citizens. Such affirmative action would not be *per se* discriminatory as it is in order to achieve equal opportunity guaranteed under the Constitution. Thus, unequals have to be treated differently which is a requirement under the Constitution. In the said context, reservation or preference to a reasonable extent in the matter of admission to educational institutions in favour of the backward classes or backward areas is permitted.

144. Further, Article 15(1) of the Constitution categorically states that the State shall not discriminate against any citizen on grounds only of religion, race, sex and place of birth or any of them. Having said so, Article 15(4) of the Constitution states that the State can make a special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes. Thus, the Constitution itself recognizes certain class of citizens who could be recipients of affirmative action on the part of the

State. On a reading of the above, it is observed that Article 15(1) of the Constitution does not prohibit discrimination on the ground of residence and as the position of law stands now, it is permissible for a State to prescribe residence in the State to be entitled to a concession in the matter of fees in a State medical college or to prescribe that admission to a University shall be restricted to persons' residence in a particular area in the State. But, discrimination on the ground of residence will be invalid where it is not found on a reasonable classification.

145. Also, Article 15(4) of the Constitution permits reservation for the socially and educationally backward classes of citizens as well as Scheduled Castes and Scheduled Tribes. This is an enabling provision and while acting under the said provision, the State cannot ignore the fundamental rights of the rest of the citizens. The special provision in Article 15(4) of the Constitution must, therefore, strike a reasonable balance between the several relevant considerations and proceed objectively, *vide* ***State of Andhra Pradesh vs. U.S.V. Balaram [(1992) 1 SCC 660],*** *(U.S.V. Balaram).* It follows that while

making special provisions for the weaker sections, the State cannot weaken the standard of education or lower the efficiency of skills to the detriment of the national interest. Thus, it has been held by the Hon'ble Supreme Court that there ought to be no reservation for admission to the highest technical courses called super-specialties, *vide* ***Preeti Srivastava (Dr.) vs. State of Madhya Pradesh, [(1999) 7 SCC 120],*** *(Dr.Preeti Srivastava).* Differentiation in classification for special preference to the persons grouped must be clearly distinct from those left out of the favoured groups, *vide* ***Ashoka Kumar Thakur vs. Union of India, [(2007) 4 SCC 361],*** *(Ashoka Kumar Thakur).* Thus, less meritorious candidates could be considered under the reserved category only where an object is sought to be achieved.

146. Article 15(5) was added by the 93rd Constitution (Amendment) Act, 2005 with effect from 20.01.2006. The said Article states that nothing in Article 15 or in sub-clause (g) of Clause (1) of Article 19 shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or

the Scheduled Tribes insofar as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in Clause (1) of Article 30. Article 15(5) of the Constitution was inserted as an enabling provision in response to the judgment of the Hon'ble Supreme Court in *P.A.Inamdar's case (supra).* It has been held that Article 15(5) of the Constitution does not violate the basic structure of the Constitution and is constitutionally valid, *vide* ***Pramati Educational and Cultural Trust and others vs. Union of India [(2014) 9 SCC 1]*** *(Pramati Educational and Cultural Trust).*

147. Clause 6 of Article 15 which has been inserted by the Constitution (103rd Amendment) Act, 2014 with effect from 14.01.2019 states, the State can make a special provision for advancement of any economically weaker Sections of citizens, other than the classes mentioned in Clauses (4) and (5) of Article 15, insofar as it relates to their admission to educational institutions including private education institutions, whether aided or unaided by the State, other than minority educational

institutions referred to in Clause (1) of Article 30, which in the case of reservation would be in addition to the existing reservations and subject to a maximum of ten per cent of the total seats in each category. This provision is irrespective of the other clauses of Article 15 or sub-clause (g) of clause (1) of Article 19 or clause (2) of Article 29 of the Constitution. The expression "economically weaker sections" has been explained to be such as may be notified by the State from time to time on the basis of family income and other indicators of economic disadvantage.

148. In ***Indra Sawhney vs. Union of India, [AIR 1993 SC 477],*** *(Indra Sawhney),* a nine Judge Bench of the Hon'ble Supreme Court discussed about the vertical and horizontal reservations at paragraph 95 of the judgment. Though the said matter arose in the context of Article 16 of the Constitution, yet it would be applicable to reservations of seats for students during their admission process. While holding that reservation contemplated under Article 16(4) of the Constitution in the matter of appointments as well as any other form of reservation under Article 16(1) of the Constitution should not exceed 50% unless there are extraordinary situations inherent

which might require greater relaxation of the strict rule, it was clarified that, the Rule of 50% would apply in all other cases. In that regard, it was further clarified that there are two types of reservations which may, for the sake of convenience, be referred to as vertical reservations and horizontal reservations. Reservations in favour of the Scheduled Castes and Scheduled Tribes and Other Backward classes [under Article 16(4)] may be called vertical reservations, whereas reservations in favour of the physically handicapped [under Clause (1) of Article 16)] can be referred to as horizontal reservations. According to the Hon'ble Supreme Court, horizontal reservations cut across vertical reservations in what is called as inter-locking reservations. Reservations in favour of physically handicapped persons is relatable to Clause (1) of Article 16, and persons selected in that quota would be placed in the appropriate category; if he belongs to the Scheduled Castes category, he would be placed in that quota by making necessary adjustments. If he belongs to the General category, he would be placed in that category. Even after providing for these horizontal reservations, the percentage of reservations in favour of the citizens should remain the same. Applying the aforesaid principle

reservation based on domicile or residential requirement or, as in the instant case, on the basis of institutional preference, as contended by learned Advocate General also would have to be read within Article 15(1) and must comply with Article 14 of the Constitution. Such reservation cannot be traced to Article 15(4), Article 15(5) or Article 15(6) of the Constitution. Also, reservation made for women on the strength of Article 15(3), which is a horizontal reservation or for that matter, for persons with disability under the Rights of Persons with Disabilities Act, 2016, would be under Article 15(1) and ought not to violate Article 14 of the Constitution and must satisfy the twin test.

149. In ***Anii Kumar Gupta vs. State of Uttar Pradesh, [(1995) 5 SCC 173],*** (*Anil Kumar Gupta)*, the Hon'ble Supreme Court was considering a policy of reservation in the matter of admission to medical courses issued by the Government of Uttar Pradesh for the Academic year 1994-95. In the said case, reservation for special categories (special reservation) on over-all reservation basis and compartmentalized reservation basis were explained. It was held that where the seats reserved

for horizontal reservations are proportionately divided among the vertical (social) reservations and are not inter-transferable, it would be a case of compartmentalised reservations. As against this, in the over-all reservation while allocating the special reservation students to their respective social reservation category, the over-all reservation in favour of special reservation categories has yet to be honoured. It was observed in paragraph 18 as under:

> "18. ……. If the quota fixed for horizontal reservations is already satisfied – in case it is an over-all horizontal reservation – no further question arises. But, if it is not so satisfied, the requisite number of special reservation candidates shall have to be taken and adjusted/accommodated against their respective social reservation categories by deleting the corresponding number of candidates therefrom. (If, however, it is a case of compartmentalised horizontal reservation, then the process of verification and adjustment/ accommodation as stated above should be applied separately to each of the vertical reservations. In such a case, the reservation of fifteen percent in favour of special categories, overall, may be satisfied or may not be satisfied)."

150. The Hon'ble Supreme Court also noted, in that case, the State Government was not conscious of the

distinction between the overall horizontal reservation and compartmentalised reservation. It was further held that 15% of seats reserved for special categories in that case was very high. It was observed by placing reliance on *Indra Sawhney,* that if reservations are made both under Clause (4) as well as Clause (1) of Article 15 of the Constitution, the vacancies available for free competition as well as reserved categories would be correspondingly whittled down and that is not a reasonable thing to do. The aforesaid observation is more true if 10% reservation under Article 15(6) of the Constitution is also to be provided.

151. In ***Rajesh Kumar Daria vs. Rajasthan Public Service Commission and others, [(2007) 8 SCC 785],*** *(Rajesh Kumar Daria),* the Hon'ble Supreme Court has explained as to how the social reservations in favour of Scheduled Castes and Scheduled Tribes and other backward classes are vertical reservations and special reservations in favour of physically handicapped persons, women, etc., are horizontal reservations and as to how the horizontal and vertical reservations have to be worked out in a recruitment. In that case, there is also

reference to paragraph 18 of *Anil Kumar Gupta* extracted above.

Reservation of seats in Medical Colleges:

152. We shall now consider the cases cited, particularly by Sri.Raghavan, learned Senior Counsel for the petitioners, on the aspect of reservation in medical colleges on the basis of domicile/residence or on institutional preference and as to how they apply in the instant case. But we would preface the same by extracting Paragraph No.4 of *Dr.Pradeep Jain*, as under:

> " 4. But, unfortunately, we find that in the last few years, owing to the emergence of narrow parochial loyalties fostered by interested parties with a view to gaining advantage for themselves, a serious threat has developed to the unity and integrity of the nation and the very concept of India as a nation is in peril. The threat is obtrusive at some places while at others it is still silent and is masquerading under the guise of apparently innocuous and rather attractive clap-trap. The reason is that when the Constitution came into operation, we took the spirit of nation-hood for granted and paid little attention to nourish it, unmindful of the fact that it was a hard-won concept. We allowed `sons of the soil' demands to develop claiming special treatment on the basis of residence in the concerned State, because

> recognising and conceding such demands had a populist appeal. The result is that `sons of the soil' claims, though not altogether illegitimate if confined within reasonable bounds, are breaking asunder the unity and integrity of the nation by fostering and strengthening narrow parochial loyalties based on language and residence within a state. Today unfortunately, a citizen who has his permanent residence in a state entertains the feeling that he must have a preferential claim to be appointed to an office or post in the state or to be admitted to an educational institution within the state *vis-à-vis* citizen who has his permanent residence in another state, because the latter is an outsider and must yield place to a citizen who is a permanent resident of the state, irrespective of merit. This, in our opinion, is a dangerous feeling which, if allowed to grow, indiscriminately, might one day break up the country into fragments, though, as we shall presently point out, the principle of equality of opportunity for education and advancement itself may justify, within reasonable limits, a preferential policy based on residence."

(a) In *Dr.Pradeep Jain*, the Hon'ble Supreme Court considered the question, whether, residential requirement or institutional preference in admissions to technical and medical colleges can be regarded as constitutionally permitted. While dealing with medical colleges, it was

observed that the primary consideration in selection of candidates for admission to medical colleges must be merit. Following ***Jagadish Saran (Dr.) vs. Union of India, [(1980) 2 SCC 768]*** *(Dr.Jagadish Saran)*, it was observed that exclusion of more meritorious students on the ground that they are not resident within the State would be likely to promote sub-standard candidates and bring about a fall in medical competence and injurious in the long run to the very region. Nor can the very best be rejected from admission because that will be a national loss and the interests of no region can be higher than those of the nation.

(b) In *Dr.Jagadish Saran,* Krishna Iyer J., in his inimitable style also observed that litigation, on a socio-legal issue of critical constitutional moment, should not end with general assertions, affidavits of formal denials and minimal materials but, as stated earlier, needs feeding the Court with nutritive facts which build the flesh and blood of the administrative or legislative action under challenge and all other surrounding and comparative data which legitimate the 'reservation' or other procedure under attack from the constitutional angle.

(c) In ***Minor P. Rajendran vs. State of Madras, [AIR 1968 SC 1012]***, *(Minor P.Rajendran),* the rule which permitted the State of Madras to allocate seats in medical colleges on district-wise basis was struck down by observing that better qualified candidates from one district may be rejected while less qualified candidates from other districts may be admitted from either of the two sources.

(d) Similarly, in ***Periakaruppan vs. State of Tamil Nadu, [(1971) 1 SCC 38]*** *(Perikaruppan)*, the scheme of selection of candidates for admission to medical colleges in the State of Tamil Nadu for the year 1970-71, which was a unit-wise scheme, under which the medical colleges in the city of Madras were constituted as one unit and each of the other medical colleges in the mofussil was constituted as a unit and a separate selection committee was set up for each of these units, was struck down.

153. In *Dr.Pradeep Jain*, on considering the aforesaid decisions, it was observed that the two specific instances of intra-state discrimination between citizens residing within the same State, was violative of Article 14 on the ground that it has no rational relation to the object

of selection, namely, to get the best and most meritorious students and, in fact, tends to defeat such object. It was further observed that any valid scheme of admissions must be to "select the best candidates for being admitted to medical colleges" and that if any departure is to be made "from the principle of selection on the basis of merit", it must be justified on the touchstone of Article 14 of the Constitution. While considering the departure from the principle of selection based on merit, according to the Hon'ble Supreme Court, two considerations may weigh with the Courts: one is, State's interest and the other is, described as a region's claim of backwardness.

154. As far as State's interest is concerned, the following decisions are cited by learned Advocate General appearing for the State:

(a) In *D.P. Joshi,* the legitimacy of claim of State's interest was recognised in the matter of fee concession. In that case, it was observed that the concession given to the residents of the State (State of Madhya Bharath) in the matter of fees was obviously calculated to serve the interest of students who were residents of Madhya Bharat to serve the State or need of the locality after passing out

of the College as doctors. It was held that the classification between the students of Madhya Bharath and non-Madhya Bharath students had a reasonable relationship to the subject matter of the legislation and thus, was valid. Thus, classification on a geographical basis was just and reasonable when it related to education which was then a State subject.

(b) Similarly, in *Vasundara*, Rule 3 of the Rules for selection of candidates for admission to the professional course leading to M.B.B.S. degree in the Government medical colleges in the then State of Mysore which provided that "*no person who is not a citizen of India and who is not domiciled and resident in the State of Mysore for not less than ten years at any time prior to the date of the application for a seat, shall be eligible to apply*" was upheld on the basis of the judgment in *D.P. Joshi*. It was observed that the object of the Rule was to impart medical education to the best talent available to the students who were inhabitants of the State of Mysore as it could be foreseen reasonably that they would serve as doctors in the State although, they had the fundamental right to settle anywhere in India. The object and purpose of the

said Rule was to provide broad-based medical aid to the people of the State and to provide medical education to those who are best suited for such education. Hence, reservation based on residence requirement of not less than ten years was held to be non-discriminatory though it denied equality of opportunity for admission to the medical colleges in the State to all those who did not satisfy this residence requirement. It was based on the above objective of providing broad-based medical aid to the people of the State and reservation based on residence requirement of not less than ten years was upheld as a valid reservation.

(c) The same reasoning was reiterated in *D.N. Chanchala,* wherein university-wise reservation under which preference for admission to a medical college run by a university was given to students who had passed the Pre-University Course (PUC) examination of that university and only 20% of seats were available to those passing the PUC Examination of other universities, was upheld.

155. The aforesaid decisions are on the principle of selection. Though the Hon'ble Supreme Court had not approved of intra-State discrimination between the

persons residing at different districts or regions of a State, has, nevertheless, upheld institutional reservation effected through university-wise distribution of seats for admission to medical colleges in *D.N.Chanchala* and reservation based on residence requirement within a State for the purpose of admission to medical colleges in *Vasundara*.

156. The second consideration which has weighed with Courts in diluting the principle of selection based on merit is the claim of backwardness made on behalf of any particular region. In *Jagdish Saran,* it was observed that the provision of a high ratio of reservation for students hailing from largely backward areas, would not militate against the equality mandate-viewed in the perspective of social justice. The following decisions illustrate the above principle:

(a) In ***State of Uttar Pradesh vs. P.Tandon, [(1975) 1 SCC 267],*** *(P.Tandon),* the Hon'ble Supreme Court allowed reservation in medical admissions for people of the hilly and Uttarakhand areas of the State of Uttar Pradesh on the ground that those areas were socially and educationally backward.

(b) Similarly, in ***Nookavarpu Kanakadurga Devi vs. The Kakatiya Medical College, [AIR 1972 AP 83],*** *(Devi),* the Andhra Pradesh High Court held that preferential treatment of Telangana students in medical admissions to Kakatiya Medical College which was started for the spread of medical education mainly for Telangana region of the then Andhra Pradesh State which was educationally backward in the State, was approved.

Reservation in Postgraduate Medical Courses:

157. As far as reservation in *post-graduate courses* are concerned, once again quoting from *Dr.Jagadish Saran*, in *Dr. Pradeep Jain,* it was opined that insofar as post-graduate medical courses are concerned, equality, measured by matching excellence, has more meaning and cannot be diluted much without grave risk. It was further observed that it would be eminently desirable not to provide for any reservation based on residence requirement within the State or on institutional preference. It was observed that institution-wise reservation is constitutionally circumscribed and may become *ultra vires* if recklessly resorted to. The same observations were made applicable to B.D.S. and M.B.B.S. courses *mutatis*

mutandis. The following two decisions are apposite in the context of the instant case:

(a) In ***AIIMS Students' Union vs. AIIMS and Others [(2002) 1 SCC 428],*** (*AIIMS Students' Union)*, the facts were that the Delhi High Court had struck down 33% quota carved out in favour of AIIMS in-house candidates both at the entry level and also discipline-wise in respect of the post-graduate courses. It was observed that the reservation of seats from the Institute's in-house candidates was a super-reservation and not a source of entry. Reference was made to *Dr.Pradeep Jain* to opine that there was general disapproval of reservations in post-graduate courses on the ground of institutional preference.

In the aforesaid case, Hon'ble Supreme Court observed that when protective discrimination for promotion of equalization is pleaded, the burden is on the party who seeks to justify the ex facie deviation from equality. Merit must be the test when choosing the best, according to the rule of equal chance for equal marks. Reservation, as an exception, may be justified subject to discharging the burden of proving justification in favour of the class which must be educationally handicapped, reservation geared up

to getting over the handicap. The rationale of reservation in the case of medical students must be removal of regional or class inadequacy or like disadvantage. Further, any *'reservation'*, apart from being sustainable on the constitutional anvil, must also be reasonable to be permissible. In its conclusion, the Hon'ble Supreme Court observed that institutional '*reservation'* is not supported by the Constitution or constitutional principles. A certain degree of '*preference'* for students of the same institution intending to prosecute further studies therein is permissible on grounds of convenience, suitability and familiarity with an educational environment. Such preference has to be prescribed without making an excessive or substantial departure from the rule of merit and equality. It has to be kept within limits. Minimum standards cannot be so diluted as to become practically non-existent.

According to the Hon'ble Supreme Court, in the case of institutions of national significance such as AIIMS, additional considerations against promoting '*reservation'* or '*preference'* of any kind destructive of merit become relevant. Adverting to AIIMS particularly, the Hon'ble

Supreme Court observed that medical graduates of AIIMS are not "sons of the soil". They are drawn from all over the country. They were chosen for entry into the Institute because of their having displayed and demonstrated excellence at all-India level competition where thousands participate but only a mere 40 or so are chosen. It was further observed that one who justifies *'reservation'* must place on record adequate material, enough to satisfy an objective mind judicially trained, to sustain the *'reservation'*, its extent and qualifying parameters.

Again, referring to AIIMS, it was observed that the way merit has been made a martyr by the institutional *'reservation'* policy of AIIMS, the high hopes on which rests the foundation of AIIMS are belied. It was further observed that *'reservation'* based on institutional *'preference'* or institutional continuity in the observance of any relevant evidence in justification thereof was unconstitutional and violative of Article 14 of the Constitution and therefore, to be struck down. That the *'reservation'* made thereunder was held to be obnoxious to merit and failed to satisfy the twin test under Article 14. Having taken common entrance test there was no

intelligible differentia which distinguishes the institutional candidates from others; and there is no nexus sought to be achieved with the objects of AIIMS by such *'reservation'*. The Hon'ble Supreme Court further observed as under:

> "Mediocracy over meritocracy cuts at the roots of justice and hurts right to equality. Protective push or prop, by way of reservation or classification must withstand the test of Article 14. Any overgenerous approach to a section of the beneficiaries, if it has the effect of destroying another's right to education, more so, by pushing a mediocre over a meritorious, belies the hope of our founding fathers on which they structured the great document of the Constitution and so must fall to the ground. To deprive a man of merit of his due, even marginally, no rule shall sustain except by the aid of the Constitution; one such situation being when deprivation itself achieves equality subject to satisfying the tests of reason, reasonability and rational nexus with the object underlying deprivation."
>
> ***(underlining by us)***

In the said case, institutional *'reservation'* for AIIMS candidates was declared *ultra vires* the Constitution and hence, was struck down. By way of institutional *'preference'* the institutional candidates i.e., who have graduated from the Institute could be preferred. Thus, in this case, the Hon'ble Supreme Court has clearly

pronounced on the distinction between the institutional '*reservation'* or institutional *'preference'*.

(b) In later judgments, such as in *Preeti Srivastava (Dr.)*, it was observed that the element of public interest in having the most meritorious students at the postgraduate level of education demands selection of right calibre. In the case of institutions of national significance such as AIIMS, additional considerations against promoting reservation or preference of any kind destructive of merit become relevant. It was further observed that permissible reservation at the lower or primary rung is a step in the direction of assimilating the lesser fortunate in the mainstream of society by bringing them to the level of others which they cannot achieve unless protectively pushed. Further, the Hon'ble Supreme Court observed, any reservation, apart from being sustainable on the Constitutional anvil, must also be reasonable to be permissible. In assessing the reasonability, one of the factors to be taken into consideration would be-whether the character and quantum of reservation would stall or accelerate achieving the ultimate goal of excellence enabling the nation to constantly rise to higher levels. In

an era of globalization, where the nation as a whole has to compete with other nations of the world so as to survive, excellence cannot be given an unreasonable go-by and certainly not compromised on its entirety

Impugned Reservation in the instant case:

158. Section 4(3) is impugned herein as well as the revised seat matrix, as per Notification dated 04.08.2020, issued by the respondent/Law School are extracted hereunder for immediate reference:

> **"4. The Objects of the School etc.–**
>
> X X X
>
> (3) Notwithstanding anything contained in this Act and the regulations made thereunder, the school shall reserve horizontally twenty five percent of seats for students of Karnataka.
>
> **Explanation:** For the purpose of this section "student of Karnataka" means a student who has studied in any one of the recognized educational institutions in the State for a period of not less than ten years preceding to the qualifying examination."

159. In the instant case, the impugned Amendment while making institutional *'preference'* has nevertheless ventured to make *'reservation'* of seats horizontally to an extent of 25% for the students of Karnataka. If institutional preference is the basis for promoting students

of Karnataka, then whether there could be *'reservation'* to an extent of 25% of the seats i.e., totally 30 seats out of a total intake capacity of 120 seats in the undergraduate programme and a similar proportion in the postgraduate programme is the question.

160. We have read carefully the impugned Amendment Act. We find that sub-section (3) to Section 4 which has been inserted by the amendment speaks about *"horizontal reservation",* but the explanation relates to institutional *'preference'*. *'Reservation'* and *'preference'* are not one and the same. Hence, to unravel the conundrum and to ascertain the intention of the State Legislature, we have studied the statement of objects and reasons in order to consider the *vires* of the impugned Amendment. Consideration of statement of objects and reasons for an amendment as an instance of external aid to the interpretation of the provisions is permissible. This becomes all the more pertinent when an amendment is made to the main Act as one of the questions that would also arise is, whether, the amendment is contrary to the objects and spirit of the main Act. The judgments in this regard cited at the Bar are as under:

(a) Learned Advocate General placed reliance on ***State of Haryana vs. Chanan Mal and others, [(1977) 1 SCC 340]***, *(Chanan Mal)* to contend that statement of objects and reasons are relevant only when the object or purpose of the enactment is in dispute or uncertain. They can never over-ride the effect which follows logically from the explicit and unmistakable language of its substantive provisions. The statement of objects and reasons is not a part of the statute and therefore, it is not even relevant in a case in which the language of the operative parts of the Act leaves no room whatsoever, to doubt what was meant by the legislators.

(b) In ***A. Manjula Bhashini vs. Managing Director, Andhra Pradesh Women's Cooperative Finance Corporation Limited and another [(2009) 8 SCC 431]***, cited by learned Senior Counsel for the petitioners, it has been stated that the statement of objects and reasons can be looked into as an external aid for appreciating the true intent of the legislature and/or the object sought to be achieved by enactment of the particular Act or for judging reasonableness of the classification made by such Act.

(c) Similarly, in ***State of Gujarat vs. Mirzapur Moti Kureshi Kassab Jamat and Others [(2005) 8 SCC 534],*** cited on behalf of the petitioners it has been observed that the facts stated in the preamble and the Statement of Objects and Reasons appended to any legislation are evidence of the legislative judgment. They indicate the thought process of the elected representatives of the people and their cognizance of the prevalent state of affairs, impelling them to enact the law. These, therefore, constitute important factors which amongst others will be taken into consideration by the Court in judging the reasonableness of any restriction imposed on the fundamental rights of the individuals. The Court would begin with a presumption of reasonability of the restriction, more so when the facts stated in the Statement of Objects and Reasons and the preamble are taken to be correct and they justify the enactment of law for the purpose sought to be achieved.

161. In the instant case, we are of the view that much reliance has been placed by both sides on the statement of objects and reasons for either assailing or

defending the impugned reservation and hence, it is necessary to consider the same.

162. The aforesaid catena of cases cited at the Bar have been referred to in detail in order to examine as to whether the horizontal reservation to an extent of 25% of seats could be provided for students of Karnataka in the respondent/Law School on the touchstone of Articles 14 and 15 of the Constitution. While considering the said question, we need to bear in mind the differentia or the basis of classification -- whether it is intelligible or impermissible? Secondly, what is the object sought to be achieved? Whether it is a legitimate or not? What is the rational nexus or connection between the impugned reservation and the object sought to be achieved and to what extent the object would be achieved by the impugned reservation? While considering the aforesaid aspects, it is also necessary to bear in mind the consequences that would ensue if the impugned reservation is to be implemented. In other words, what is its impact?

Statement of Objects and Reasons:

163. In doing so, at the outset, the statement of Objects and Reasons for the amendment has been closely

perused by us. The main object mentioned therein for the amendment is National Law Schools in other States have prescribed reservation on the basis of domicile/residence in those States to a certain extent. As a result, meritorious students of Karnataka who intend to study in those institutions have been deprived of an opportunity to do so. Consequently, 25% reservation is being provided to students of Karnataka in the respondent/Law School. The same was also argued by the learned Advocate General appearing for the State. However, we find that the said argument is fallacious for the following reasons:

(i) Firstly, it is only when students of Karnataka, who prefer National Law Schools in other States as their preference and have lost out on account of the reservation based on domicile or residence in those law schools, would be deprived of such an opportunity. But, those students do not stand on the same footing as the students of Karnataka, who have opted respondent/Law School as their first preference. Thus, the students of Karnataka losing an opportunity to study in law schools of other States on account of the reservation made on the basis of the domicile or residence by those law schools in our view,

cannot be the reason for extending reservation to such students to study in the respondent/Law School. This is because Karnataka students who have preferred other Law Schools and those students who have preferred respondent/Law School form distinct classes and cannot be treated on par. In other words, if students of Karnataka have opted Law Schools in other States as their first preference, then the reservation provided to them in respondent/Law Schooi would have no meaning. Therefore, reservation based on domicile of students in the respective State provided in Law Schools of other States has no nexus to the object of providing reservation for students of Karnataka in the respondent/Law School on the premise that student of Karnataka have lost opportunity.

(ii) Second and more importantly, it has already been held that the respondent/Law School cannot be on par, nor is it in the same league with the National Law Schools in other States. It has been elaborately discussed above that the conception, incorporation and establishment of the respondent/Law School, the nature of its curriculum, the system of conducting trimester

examinations, its reservation policy and all other aspects clearly distinguish the respondent/Law School from other National Law Schools in various parts of the country. The respondent/National Law School is a national-level institution. It is the National Law School of India. Its structure, functioning, management, etc., are all under the aegis of the BCI, BCI Trust and Society. That is not so in the case of other National Law Schools. Therefore, a Karnataka student intending to study in respondent/Law School cannot be equated with a Karnataka student wanting to study in any other Law School.

(iii) Thirdly, merely because National Law Schools in other States have provided reservation on the basis of domicile or residence in those States is no reason to simply follow the same in the respondent/Law School. There must be a purpose or object to be fulfilled in accordance with Articles 14 and 15 of the Constitution. In other words, it is pertinent to note that on account of high level of competition amongst students for securing a seat in the respondent/Law School, which initially had only 80 seats in its under-graduate programme and now has 120 seats, led to disappointment amongst the interested

students. Further, the success of the experiment of five year Law Courses through the model of the respondent/Law School encouraged other States to set up such law schools in their own States to meet the demand of students of those States. Therefore, the National Law School in other States provided reservation on the basis of domicile or residence in those States so that the students of those States would benefit from such reservation. Such reasons do not apply in the case of the respondent/Law School as the objects of setting up the said Law School are distinct and they have been discussed above.

(iv) Fourthly, as already noted, the respondent/Law School is a national-level institution and is a result of the endeavours of the BCI—which is a national professional body of Advocates in India. The role of the BCI in establishing other National Law Schools is not known. Thus, the National Law Schools in other States cannot be compared with or put on par with the respondent/Law School. In fact, the respondent/Law School could be compared with institutions such as AIIMS, Delhi or IITs and IIMs, where the reservation in the admission process are provided not by the respective State Governments

wherein the said institutions are located, but by a uniform policy adopted by the Central Government or an apex body. In the instant case, the BCI has a deep presence and influence in the administration, management and control of the respondent/Law School and the Executive Council of the respondent/Law School is guided by the General Council and other authorities, including the Chancellor being Hon'ble the Chief Justice of India. Therefore, merely because reservation on the basis of domicile or residence is provided in National Law Schools in other States is no reason to provide such a reservation for students of Karnataka in respondent/Law School as it does not in any way advance any object for providing the same.

(v) No doubt, in several other decisions including *Dr.Pradeep Jain*, reservation on the basis of domicile/residence has also been recognized as a departure from the selection of students on the basis of merit. But, what distinguishes those cases from the present case is, in all those cases, the Hon'ble Supreme Court was considering reservation in medical colleges, whether at the level of under-graduate or post-graduate

courses. In that context, it has been the view of the Hon'ble Supreme Court that reservation on the basis of domicile is *per se* not unconstitutional and would be within the scope and ambit of Article 15(1) read with Article 14 of the Constitution, provided it is not otherwise arbitrary or unreasonable. The reason as to why such reservation has been approved in the medical colleges is on account of the reasoning provided by the Hon'ble Supreme Court in the earlier decisions, namely in *D.P.Joshi, Vasundara and D.N.Chanchala*. This is because medical education forms a class apart. Medical graduates are persons who would ultimately serve the society and thereby achieve the goals of the Constitution inasmuch as under Articles 41 and 47 of the Constitution, it is the duty of the State to assist in old age, sickness and disablement and to raise the level of nutrition and the standard of living and to improve public health. This is regarded as one of the primary duties of the State. It is on the touch-stone of Articles 41 and 47, which are Directive Principles of State Policy, that the Hon'ble Supreme Court opined that the doctors who emerge from the institutions in a particular State, when they belong to that State, would ultimately reside in the State and serve the State. In other words, reservation on

the basis of domicile or residence was accepted in medical colleges, as the students who would have the benefit of such reservation, may reside in the State and serve the society of that State. According to the Hon'ble Supreme Court, there was a reasonable likelihood of the same. Consequently, this would aid in achieving one of the primary duties of the State which is to raise the standard of living by improving public health, by having sufficient number of doctors who would serve in the State itself. Whether the said consideration would arise in respect of legal education?

(vi) *De hors* the statement of objects and reasons, what is the justification for reservation provided by the State in the instant case? According to learned Advocate General the justification is that if the students of Karnataka are provided reservation up to a maximum of 30 seats in the under-graduate course, this would enhance the State's interests as ultimately they would practice in law courts in the State or by joining the State Judiciary or by involving in legal reforms in the State etc. It was argued by the learned Advocate General that the State's interest is protected in the aforesaid manner. We think that,

lawyers/Advocates and their profession cannot be equated with doctors and medical profession. By this, we are not undermining the role of lawyers/advocates in our society. That is not the import of our observation. What we emphasize is, improving public health by making available greater number of doctors is a primary goal of the Constitution. This is because imperatives exist for a State such as providing doctors in rural or backward areas of a State for making such a departure in the case of selection of students for medical education. In our view, such a goal is not envisaged for legal education. This can be demonstrated by the following facts:-

(a) Although, medical graduates and doctors have the option to move away from the State in which they pursued medical education and translocate in any other part of the country or even over-seas, the Hon'ble Supreme Court in *D.P. Joshi* and other cases felt that there was a reasonable likelihood of such doctors remaining in the State in which they studied so as to serve the society of the State. But, in our view, such an expectation cannot be made of law graduates who ultimately would be advocates. In this regard, Section 30 of the Advocates

Act, 1961 is relevant as has been pointed out by the learned counsel on behalf of the petitioners. It states that if a law graduate is enrolled as an advocate in one Bar Council, he is entitled to practice in any other part of the country or even before the Hon'ble Supreme Court. Further, the law graduates may also join corporate law firms and not be engaged in advocacy, but involved in transactional and other non-litigation work, academia or public policy roles. We are highlighting the metamorphosis in the legal profession and as to how the justification or object for such a reservation sought to be proffered on behalf of the State does not appear to be so.

(b) Moreover, in today's Indian economic ethos, where liberalisation, privatisation and globalisation is the triple mantra, particularly, after the reforms in the economy post 1991, it is unfair to expect of Karnataka students to remain in and practice in Karnataka only. Their aspirations cannot be confined to Karnataka, when opportunities are available in other parts of India and overseas. They cannot be tied to this State alone, when avenues are available all over India as well as abroad for higher education or for professional work. Therefore, any

horizontal reservation provided to students of Karnataka would not advance the State's interest. There is no compulsion for students of Karnataka to remain in the State nor can such a promise be imposed on them for the purpose of fostering the impugned reservation as it would violate their freedom under Article 19(1)(g) of the Constitution.

(c) Further, the interest of the State is not advanced by such a reservation except to deny Students, who are more meritorious from other parts of India or even those who do not fit into the definition of *student of Karnataka* although they may be from Karnataka being admitted in the respondent/Law School.

164. Thus, in our view, the object and reason for such a reservation in the respondent/Law School is not achieved in the instant case. We observe, if any reservation has to be made for students in the respondent/Law School, it should be on a more concrete, focused and realistic basis so that the benefit of reservation would reach those students who are really in need of it such as under clauses (3) or (6) of Article 15 of

the Constitution for women or economically weaker Sections of Society.

165. That apart, in *Dr.Pradeep Jain*, another reason provided for making a departure from the principle of admission purely on merit is regional backwardness. Such principle was accepted in the case of *Dr.Pradeep Tandon,* where the students who hailed from Uttarakhand were said to be from a backward region and reservation for such students was permitted by the Hon'ble Supreme Court. We do not think that such is the intention of the State Legislature in the instant case. The entire State of Karnataka cannot be considered to be backward so as to provide reservation for students of Karnataka in the respondent/Law School.

166. Further, it is also not the case of the State, that there is inadequate representation of Karnataka students in the respondent/Law School. This is because all seats reserved for students who belong to Scheduled Castes and Scheduled Tribes are filled by Karnataka students only, which is 22.5% of the seats. Also, there has been a sizeable representation of Karnataka students in the respondent/Law School who have made it purely on

their merit and not on the basis of any reservation, i.e., general category candidates. On an average around 9% of the seats in the General category are filled from amongst students of Karnataka, which would imply that over 40 seats out of 120 seats in the respondent/Law School in the under-graduate programme is filled up by students from Karnataka. In this regard, Sri.C.K.Nandakumar, learned counsel for the petitioners, in the public interest litigation, drew our attention to certain statistics/data submitted by the respondent/Law School for National Institutional Ranking Framework (NIRF), which is as under:

> (i) For the Academic Year 2016-17 out of the total students studying in all years for all programmes being 422, there were 35 students from within Karnataka, which is around 9% in the undergraduate programme. In the postgraduate programme, out of the 54 being total number of students studying in all years of all programmes, there was none from the State.
>
> (ii) For the year 2019-20, out of a total number of 423 students, 33 were from Karnataka, as far as the undergraduate programme is concerned. In the postgraduate programme, out of 50 students, one was from the State of Karnataka.
>
> (iii) For the Academic Year 2020-21, out of a total number of 417 students for the undergraduate programme, 35 are from the State

and out of 54 students from the postgraduate programme, 2 students are of the State. This means, the other students are from outside the State being the majority and a few from outside the country.

167. In the Report of a study conducted on student demographics, accessibility and inclusivity at NLS 2015-16 called *"Elusive Island of Excellence"*, with a foreword by Prof.Marc Galanter, it has been brought out that Karnataka has 5.05% share of the National population and there were 37 students in the respondent/Law School, comprising of 9.34% of the total student body. This is as per 2011 Census. Hence, we also think there is adequate admission of students from Karnataka in the respondent/Law School, as per the aforesaid figures. Thus, State's interest, if any, is secured.

168. Further, there has been no scientific study or survey conducted by the State Government, so as to conclude that there is inadequate admission of students from Karnataka in the respondent – Law School and that the increase in number of students from Karnataka would enhance the State's interest and therefore, reservation ought to be provided for students of Karnataka.

169. Now, we discuss the other reason stated in the Statement of Objects and Reasons, which is, in *Saurabh Choudri, Saurabh Dwivedi* and *Yatinkumar Jasubhai Patel*, (which are cases pertaining to medical colleges), the Hon'ble Supreme Court has approved institutional preference as a basis of reservation and hence, on that basis, the reservation is being provided for students of Karnataka horizontally to an extent of 25% of seats by defining such a student to be one who has studied for not less than ten years, in any of the recognized educational institutions in the State, preceding the qualifying examination. Therefore, the basis for reservation for students of Karnataka is institutional preference as contended by learned Advocate General. We shall consider the said judgments as under:

(a) In *Saurabh Chaudri,* the question considered was whether the reservation made by way of institutional preference is *ultra vires* Articles 14 and 15 of the Constitution of India in the matter of admission to post-graduate courses in Government-run medical colleges and also, whether, any reservation, be it on residential or institutional preference, is constitutionally permissible. It

was held that the reservation on the basis of institutional preference was valid. On considering a catena of cases, it was opined that the test to uphold the same must be based on the touch-stone of reasonableness. In the said case, *inter alia* it was observed that in the case of Central educational institutions and other institutions of excellence in the country, the judicial thinking has veered around the dominant idea of national interest with its limiting effect on the constitutional prescription of reservations. The result is that in the case of these institutions the scope of reservations is minimal.

(b) In *Dr.Saurabh Dwivedi,* the first question considered was whether the institutional preference in the Aligarh Muslim University (AMU) and Banaras Hindu University (BHU) to students who have studied in the said Universities could be given for post-graduate medical seats or, whether, the seats had to be filled up from institutions, universities and colleges in the State of Uttar Pradesh. The Hon'ble Supreme Court noted that in Central Universities, 100% admissions for M.B.B.S. course are based on All India Entrance Examination (AIEE). There is no State Quota for seats in Central Universities like AMU,

BHU and AIIMS. Therefore, the State can have no control over the seats in those medical colleges which are part of the Central Universities/institutions.

(c) In *Yatinkumar Jasubhai Patel,* once again the institutional preference for post-graduate medical admission was the core question involved. The Hon'ble Supreme Court noted that the introduction of NEET scheme had nothing to do with any preference/institutional preference. That the object and purpose of NEET was to conduct a uniform entrance examination for all medical educational institutions at the under-graduate and post-graduate levels and admissions are to be given solely on the basis of merit and/or marks obtained in the NEET examination only. The only obligation by virtue of introduction of NEET is that, once the centralized admission test is conducted, the State, its agencies, universities and institutions cannot hold any separate test for the purpose of admission to Post-Graduate and Diploma Courses and such seats are to be filed up by the State agencies, universities/institutions as per the merit list in accordance with the score obtained by the candidates in NEET. In the said case, it was held that

providing 50% of the total number of seats reserved for institutional preference (in the State quota), would not be *ultra vires* Section 10D of the Medical Council of India Act. That the filling up of the seats on institutional preference would be on the basis of the merit and marks obtained in NEET Examination.

(d) In ***Dr. Tanvi Behl and Shrey Goel and others, [2019 SCC Online SC 1576]*** *(Dr. Tanvi Behl)*, the question relating to the legality and validity of the domicile/residence-based reservation for admission to the Post Graduate Medical Courses (MD/MS Courses 2019) in Government Medical College and Hospital, Chandigarh came up for consideration. While considering the question whether reservation in admission on the basis of domicile/residence is permissible or impermissible in post-graduate medical courses within the State Quota, the question as to what extent and manner such reservation could be provided if it is permissible in the context of merit and rank obtained in NEET examination, was considered by the Hon'ble Supreme Court. Also, if domicile or residence-based reservation in admission to post-graduate medical courses was impermissible, then as to how the State Quota

seats could be filled up, was also raised and the matter has now been placed before Hon'ble the Chief Justice of India for constitution of a Larger Bench. The aforesaid order was made on 09.12.2019. In the said order, it has been noted that in *Saurabh Chaudri*, the Constitution Bench of the Apex Court had expressed desirability on merit based admission to medical courses and the said decision was a sequel to ***Magan Mehrotra vs. Union of India, [(2003) 11 SCC 186],*** *(Magan Mehrotra),* wherein it was held that apart from institutional preference, no other preference including reservation on the basis of residence was envisaged in view of the decision in *Dr.Pradeep Jain*.

(e) In ***Nikhil Himthani and others vs. State of Uttarakhand and others, [(2013) 10 SCC 237],*** *(Nikhil Himthani),* it was held that no preference could be given to the candidates on the basis of domicile to compete for institutional quota of the State.

(f) In ***Vishal Goyal and others vs. State of Karnataka and others, [(2014) 11 SCC 456],*** *(Vishal Goyal)* and also ***Dr.Kriti Lakhina vs. State of Karnataka, [(2018 SCC Online SC 324],*** *(Dr.Kriti Lakhina),* cited by the learned senior counsel for the

petitioner/student, only "a candidate of Karnataka origin" was provided to be eligible to appear for an entrance test and the expression had been defined in such manner so as to exclude a candidate who had otherwise completed M.B.B.S. or B.D.S. in an institution in the State of Karnataka. Such a stipulation was not approved as being in conflict with the decision in *Dr.Pradeep Jain*.

170. Thus, whether reservation on the basis of study for a period of ten years in any recognized educational institution in the State has any nexus to the object sought to be achieved, which according to learned Advocate General is to have more legal professionals to remain in the State of Karnataka and serve the people in this State itself, shall be examined by us in light of the aforesaid judicial dicta and facts of the instant case.

171. Prior to 42nd Amendment of the Constitution, education as a subject was in the State List (List-II) of the VII Schedule of the Constitution, but with the 42nd Amendment the subject – education including technical education, medical education and universities, subject to the provisions in Entries 63 to 66 of List-I, has been placed in the Concurrent List (List-III) of the VII Schedule.

Consequently, the Central Government has, by making necessary Amendments to Section 10-D of the Medical Council of India Act, 1956, introduced NEET (National Eligibility Entrance Test) for conducting an Entrance Examination for all medical institutions at the under-graduate and post-graduate levels in the country and admissions to be given solely on the basis of merit or marks obtained in NEET examination only. In that context, provision for reservation on institutional preference is provided only in the State quota and not in the All India Quota, as the total seats in medical colleges are so divided. But, in the instant case, when the Entrance Test to the respondent/Law School is by an All India test, and there is only one Quota namely All India Quota for general category students, provision of reservation exclusively for students of Karnataka in our view would be contrary to the scheme of admission as it presently exists in the respondent/Law School. This is because there is no provision of a State Quota in the respondent/Law School. In fact, provision for reservation of seats for Scheduled Castes and Scheduled Tribes made by the Executive Council of the respondent/Law School initially did not provide that those seats must be filled by students

belonging to those categories from Karnataka only. It is only by a judicial precedent in the case of *Lolaksha,* it has been held that the Scheduled Caste and Scheduled Tribe students who belong to the State of Karnataka only can fill up those seats and not the students from other States who belong to those categories. This is following the judgment of the Hon'ble Supreme Court in the case of ***Marri Chandra Shekhar Rao v. Dean, Seth G.S. Medical College, [(1990) 3 SCC 130].***

172. Whether, the decisions of the Hon'ble Supreme Court providing for reservation on the basis of institutional preference in medical colleges could have been the basis for providing a similar reservation in the respondent/Law School shall be examined. Generally, institutional preference as a basis of reservation is applicable to post-graduate courses and generally not at the under-graduate level. As already noted, medical education and doctors who emerge from the medical colleges cannot be equated with legal education and lawyers who emerge from law colleges or law schools, including the respondent/Law School. They form distinct classes of their own. Further, the *raison d´être* or the rationale for providing reservation

on the basis of institutional preference in medical colleges is having regard to Articles 41 and 47 of the Constitution of India. They are Directive Principles of State Policy and it is one of the primary duties of the State to improve public health and hence, reservation for students on the basis of domicile/residence or institutional preference has been permitted by the Hon'ble Supreme Court. But, can the same be simply replicated in the context of legal education and legal profession?

173. Learned Advocate General adverted to State's interests being protected and enhanced by providing 25% horizontal reservation to students of Karnataka and hence institutional preference i.e., ten years' study in the educational institutions recognized in the State is the basis of reservation. Hence, it is necessary to consider whether the State's interests are considerations which could have weighed with the State Legislature for providing horizontal reservation for Karnataka students to an extent of 25%, as a departure from admission of students on the basis of merit vis-à-vis respondent/Law School. In other words, the State for the first time, is creating what may be called "State Quota" (as opposed to All India Quota) by making a

horizontal reservation for students of Karnataka, particularly, in the general category in the interest of the State. The same has to be tested in light of the twin test under Article 14 of the Constitution. At the outset, we note that the admission process of the respondent/Law School is through an entrance test which is an All India entrance test and where there is no provision for a State quota as such, insofar as respondent - Law School is concerned. In this regard, learned Advocate General pointed out to various State enactments incorporating private universities in the State under which there is a provision for 40% of the admission in all the courses of such private universities to be reserved for students of Karnataka State and admissions to be made through a Common Entrance Examination by the Central Government or State Government or its agencies, as the case may be, and the said seats to be allotted as per the merit and reservation policy of the State Government from time to time. Therefore, in all the private universities established by State enactments, provision is made in the various Acts establishing such universities, for a State quota, comprising of 40% of the seats being reserved for students of Karnataka to be filled by the State Government as per

its reservation policy. But such a provision does not find a place under the Act in question vis-à-vis respondent/Law School. It is for the first time that the State has attempted to carve a State quota in the form of 25% of the seats being reserved horizontally for students of Karnataka by the impugned amendment. In our view, the same is impermissible having regard to the scheme and object of the Act and the manner in which reservation has been provided by the Law School itself insofar as the Scheduled Castes and Scheduled Tribes as well as for persons with disabilities are concerned.

174. Further, the student-aspirants for the respondent/Law School are from all over the country, i.e., from every State or Union Territory, urban or rural areas, developed or backward areas and the same is based purely on merit, with the only exception being filling up of the seats for Scheduled Castes and Scheduled Tribes and persons with disability on the basis of their *inter se* merit. As already noted, the seats kept apart for students belonging to Scheduled Castes and Scheduled Tribes can only be filed up by students of Karnataka as per the judgment of this court in the case of *Lolaksha*. But, the

reservation of 5% for persons with disability is filled on the basis of All India merit. The students of Karnataka also compete with students from across the country to secure admission in the respondent/Law School in the general category. When such is the position, can the State, by the impugned reservation, in substance create a separate quota of seats to be reserved for being filled by the students of Karnataka? In other words, a State quota is being created by the impugned horizontal reservation when none exists. We think this is impermissible by the impugned amendment, as it is not envisaged in the general scheme of admission of students in the respondent/Law School. That, except reservation as per Article 15(4) and as per the Disabilities Act, no other kind of reservations has been made in the respondent/Law School. The aforesaid reservations are permitted under the Constitution having regard to Article 15(4) read with Article 15(1) and Article 14 of the Constitution. They are constitutionally recognized basis of reservation. But, reservation on the basis of domicile/residence or institutional preference, must be justified in each case and we have observed above that there is no justification made

out in the instant case for the following reasons, which we have discussed in detail above.

175. The next question that would have to be considered is, what is the object sought to be achieved and whether classification has a rational nexus to the object? We have in detail discussed about the object of providing reservations for students of Karnataka. We are not convinced that the object or purpose of reservation is valid. Infact, the purpose of reservation does not enhance the State's interest. Further, there is no scientific study conducted in that regard or to the effect that reservation made for students of Karnataka in the respondent – Law School would ultimately enhance the State's interest. On the other hand, it is necessary to bear in mind the consequences of the impugned reservation or its impact. We reiterate that in the undergraduate programme, out of the proposed intake capacity of 120 students, 27 students (27 seats), are from Scheduled Caste and Scheduled Tribe, who are from the State of Karnataka only, which forms 22.5%. That apart, students from Karnataka, who would secure a seat in the respondent – Law School on the basis of their merit in All India Examination is also not negligible.

Thus, at any point of time, there would be around 40 students from the State of Karnataka itself, which should be about 1/3rd of the total intake capacity. When around 30% of the students in the respondent – Law School are from Karnataka, it is wholly unnecessary to provide further reservation to an extent of 25% to the students from Karnataka in the absence of valid reasons to do so.

176. Moreover, such reservation for students of Karnataka is to be provided by awarding 5% grace marks to them, which would only improve the scores and ranking of those students from Karnataka, who would be just below the cut-off score in the general merit category and with the aid of 5% grace marks they would enter the merit category and in that process displace more meritorious students, who would not have the benefit of grace marks. Such an attempt being made by the respondents is not only illegal, but contrary to all norms of fairness and has an adverse impact on the purity of an All India Competitive Examination.

177. It is also to be noted that if horizontal reservation in the instant case is to be on a compartmentalized basis, then even in the category of

Scheduled Caste and Scheduled Tribe "student of Karnataka", "who would have the benefit of 5% grace marks" would displace more meritorious Scheduled Caste or Scheduled Tribe candidate, who is not "a student of Karnataka". This is also not fair and infact, tinkers *inter se* merit of students of those categories. Such an effect or impact of the reservation on the *inter se* merit of candidates has not been envisaged by the State as well as respondent/Law School.

178. In light of the above discussion, we find that there is no object which is sought to be achieved by the impugned reservation. Reservation is a means to an end i.e., for upliftment of the beneficiaries of reservation, so that there could be relaxation in the admission process for those who are in need of reservation. But we find that the impugned reservation does not achieve such a purpose, rather, it is discriminatory and does not seek to achieve any object or purpose in the instant case. Hence, we find that the impugned reservation does not satisfy the twin test under Article 14 of the Constitution. Also, we do not find any other object sought to be achieved by the impugned amendment nor any mischief to be remedied by

the same except permitting less meritorious students to gain admission in the respondent/Law School.

179. No doubt, reservation is an exception to the general rule of admission on the basis of merit. But the question is, how and in what manner reservation could be provided to those students, who are really in need of it, in the respondent/Law School. Also, which category of Karnataka students would benefit from such a reservation? It is definitely not the ones who would really require or benefit from such reservation. As things stand, Scheduled Caste and Scheduled Tribe students who are entitled to reservation are only from Karnataka, which comprises 27 seats out of 120 seats. Now, again 30 seats are being reserved for students of Karnataka. If this is adjusted within the vertical reservation, it may be within the permissible limits but not otherwise. Surely, by this amendment the State has no intention to diminish the respondent/Law School, which has a national stature and an international reckoning.

180. For the aforesaid reasons, the impugned reservation is struck down as the intelligible differentia has

no nexus to the objects to be achieved and therefore, does not meet the twin-test under Article 14 of the Constitution.

Definition of "Student of Karnataka":

181. There are also reasons as to why the definition of "student of Karnataka" in the explanation to the amended provision is fraught with vagueness and is discriminatory in its present form. The explanation to sub-section (3) of Section 4 of the Act, which is now sought to be inserted, states that for the purpose of that Section, "student of Karnataka" means a student who has studied in any one of the recognized educational institutions in the State for a period of not less than ten years preceding the qualifying examination.

(i) Firstly, the explanation does not indicate as to whether ten years preceding the qualifying examination must be of continuous education or there could be a hiatus. In other words, if for a total period of ten years preceding the qualifying examination, (which is PUC or 12th Standard, so far as undergraduate course is concerned and LL.B. Degree insofar as post-graduation course is concerned,) whether a student could have studied *in toto* for ten years in the State in any one of the recognized

educational institutions even though it may not be continuous period of ten years is not clear. However, learned Advocate General submitted that it need not be a continuous period of ten years prior to the qualifying exam.

(ii) Secondly, there is no mechanism provided for confirming as to whether the educational institution/s in which a student has studied for ten years preceding the qualifying examination is/are recognized educational institution/s in the State. The provisions for recognition of educational institutions in the State are provided under the Karnataka Education Act, 1983 and the Rules made thereunder only where the institution is registered under the said Act (vide Section 36 read with Section 30). Whether the educational institutions in which a student has studied must be a recognized institution at the time when an aspirant is applying for the entrance test in the respondent/Law School or at the time when the student was studying in the particular educational institution, is also not clear.

(iii) Thirdly, preferring students only from "recognized educational institution in the State" is

discriminatory and arbitrary. This is because the recognition of educational institutions in Karnataka, in the case of schools, is governed by Chapter VI of Karnataka Education Act, 1983. The definition of "educational institution" for the purpose of the Karnataka Education Act is set out in Section 2(14) read with Section 1(3) of the said Act. The term "recognized educational institution" is defined under Section 2(30) of the said Act to mean an educational institution recognized under the said Act and includes one deemed to be recognized thereunder. Section 36 deals with recognition of educational institutions, while Section 39 speaks about withdrawal of recognition. The Karnataka Education Act, 1983 does not apply to certain institutions, such as schools affiliated to by the Council of Indian School Certificate Education or Central Board of Secondary Education (ICSE/ISC or CBSE). Hence, would those students also come within the ambit of the definition of "students of Karnataka" or the students of only State Board (SSLC) would be covered under the definition as only such schools have to be registered and recognized under the Karnataka Education Act, 1983? Therefore, only those schools falling within the definition of "educational institution" can seek recognition under the

Karnataka Education Act since the same applies to such schools. Section 1(3)(iii-a) of the Karnataka Education Act specifically states that schools affiliated to ICSE and CBSE Board are excluded from its purview, but subject to condition that the provisions of Sections 5-A, 48, 112-A and 124-A of the said Act, which apply to those institutions. [Section 5-A deals with safety and security of students; Section 48 speaks about fees, penalty of contravention of Section 5-A is dealt with in Section 112-A and penalty of contravention of Section 48 is dealt with in Section 124-A]. Therefore, provisions related to recognition of schools under the Karnataka Education Act do not apply to CBSE and ICSE schools as they are not recognized under the Karnataka Education Act. These schools receive affiliation by ICSE/CBSE Boards and governed by the Bye-Laws framed by these Boards. Therefore, schools which are recognized by the Karnataka Education Act are all those schools, except ICSE and CBSE schools, which are essentially those affiliated to SSLC syllabus. Read in this light, "recognized educational institution in the State" in the definition is nothing but schools other than ICSE and CBSE schools and therefore the institutional preference does not extend to ICSE and

CBSE schools in the State. That would mean a student who has studied in an ICSE/CBSE school leading to ISC/CBSE-Class XII qualifying exam for ten years preceding thereto, would not be a "student of Karnataka" since such schools are not eligible for preference as per the definition. The definition of student of Karnataka, therefore, discriminates against ICSE and CBSE schools in the State and hence the students studying therein who wish to take admission to respondent/Law School and the same would be arbitrary. Therefore, we interpret the expression "recognized educational institution in the State" to also include ICSE/CBSE schools recognised and affiliated to the ICSE and CBSE Boards for the purpose of Section 4(3) of the Act.

(iv) Fourthly, even for students who are from "recognized institutions" there is no list/database of such institutions recognized by the State to which such student can look to, to determine if he/she is eligible for the preference or for the respondent/Law School to verify from.

(v) Fifthly, according to Sri Shridhar Prabhu, learned counsel for BCI, normally, when reservation is

provided, whether for Scheduled Caste, Scheduled Tribe or other backward classes or for persons with disability or for rural candidates as provided in the State of Karnataka etc., the candidates claiming such a reservation would have to provide authenticated documents or an authentication from the governmental or other authority endorsing the fact that the student is entitled to claim such a reservation. In the instant case, no such mechanism has been provided for such an authentication. Whether the respondent/Law School would obtain a list of all the recognized educational institutions in the State and crosscheck as to whether the student of Karnataka claiming such horizontal reservation comes within the definition as provided in the impugned explanation and thereafter, provide such reservation is a matter which leaves much in doubt. The respondent/Law School does not also have the data-base to confirm as to whether a student claiming reservation as a student of Karnataka by crosschecking with a list of recognized educational institutions in the State.

(vi) Sixthly, linking institutional preference to recognition obtained by the institution in which such student studied is fraught with many anomalies. For

instance, some institutions may be de-recognized at the time of an aspirant seeking admission but was otherwise recognized. A student cannot be denied preference on account of institution he studied in being de-recognized.

(vii) Seventhly, many a time, private educational institutions would not have recognition initially but, subsequently, would have it. Moreover, for violations in law, private educational institutions could also lose their recognition.

Hence, the definition of `student of Karnataka" could have meaning only if a mechanism by way of Rules had been formulated to take care of the aforesaid aspects.

182. In view of the above discussion, we find that the basis of classification made in the instant case is ten years study in any of the recognized institutions in the State of Karnataka preceding the qualifying exam. The said basis is a combination of residence for a period of ten years in the State as well as institutional preference, inasmuch as study of student in one of the recognized educational institutions in the State forms part of the eligibility criteria. We hold that the said basis of classification *per se* is not unconstitutional and it may be

considered as a broad guide provided the observations made above to operationalise the same are put into effect.

Notification dated 04.08.2020:

183. This takes us to Notification dated 04.08.2020. The respondent/Law School has notified revised seat-matrix of B.A., LL.B.(Hons) and LL.M. programmes. Under the said Notification, students of Karnataka are to be provided 5% concession on the general merit cut-off score in CLAT-2020. The same benefit shall also be provided to Karnataka students who belong to Scheduled Caste, Scheduled Tribe or persons with disability categories. In other words, 5% marks or weightage in the form of grace marks would be provided to the Karnataka students as defined in the explanation to Section 4(3) of the Act, with the object of improving their merit so that such students could be provided horizontal reservation.

184. The above procedure is not legally sustainable and is flawed for the following reasons:

Firstly, if Karnataka students on their own merit secure admission in the general merit category, then it

would be unnecessary to provide 5% concession to such students.

Secondly, reservation of seats for Scheduled Caste and Scheduled Tribe are filled by students only from Karnataka, which would mean 27 out of 120 seats. The aforesaid students of Karnataka do not require any concession to be given to them as they are meritorious students within the quota earmarked for them and are admitted on the basis of their *inter se* merit.

Thirdly, seats comprising 5% of total seats of 120 seats, are horizontally reserved for persons with disability i.e., 6 seats of 93 seats, which is in general category, and they are filled on All India merit which may also include a Karnataka student.

185. Now, 25% of the seats i.e., up to 30 seats is sought to be reserved for the students of Karnataka. In other words, if students from Karnataka do not secure admission in the respondent/Law School, on their own merit, in the All India Merit List as per the common rank list of CLAT, then 5% marks are added to such Karnataka students to boost their merit, so as to come within the

general merit cut-off score. If, despite adding such 5% of the marks, Karnataka students are not able to rank above the cut-off score for general merit, how will reservation be provided to them? In other words, it is implied that even for Karnataka students to be admitted by way of horizontal reservation, they would have to have the requisite merit, i.e., attain a score above the cut-off score. That would mean, if after the provision of 5% of the marks of the cut-off score of general merit to those who need the same, the Karnataka students are still below the cut-off score provided for general merit students, will they still admitted as general category students? These aspects are not clear on a reading of the Notification.

186. What then, is the object of providing 5% concession of marks to the Karnataka students? The Notification does not say that a separate merit list would be prepared for such Karnataka students. It implies that if the Karnataka students are less meritorious, in the sense, that their score is below the cut-off score in the general category, 5% of the cut-off marks (grace marks) would be added. Ultimately, whether, horizontal or vertical reservation is provided, the students must have the

requisite *inter se* merit within the reservation categories to be able to seek admission in the respondent/Law School. Therefore, the object of providing 5% grace marks on the general merit cut-off score to the students of Karnataka is in order to ensure that they obtain the requisite merit to be considered in the general category as they would secure marks above the cut-off score, in which event, they would displace those students, who would obviously not be Karnataka students and who do not have the benefit of grace marks in the general merit category, but who are more meritorious than Karnataka students. This mechanism of providing grace marks is nothing but tampering with merit and the marks secured by the candidates in the All India Examination which is wholly impermissible, it is also unjust. The whole object of appearing in the national level entrance test would be lost if, after appearing in the said examination, a student of Karnataka would be peppered with 5% grace marks on the cut-off score of general merit category so as to ensure that he is admitted to the respondent/Law School while a more meritorious student who does not fit into the definition of student of Karnataka is ousted from admission in the respondent/Law School. In fact, such a student may be

originally from Karnataka, but would not have studied for ten years in the State. It may be less than ten years such as, the student – writ petitioner Such a student cannot have the benefit of grace marks or reservation even though he may be more meritorious. Is this the intention of the Law School while implementing the amendment to the Act?

187. In view of the pattern of marks of the students who seek admission to respondent/Law School wherein the difference in the marks of first ranker and last ranker, being very narrow, unless a student of Karnataka student has secured very high marks in the All-India exam, adding 5 marks will not advance his/her prospects and make him/her eligible for admission to Respondent/Law School. On the other hand, if a student of Karnataka has anyway obtained marks within the narrow range, there would be no need to grant grace marks because such student will get admission in her/her own right. Thus, Notification dated 04/08/2020 has been issued with the object of providing grace marks to a student of Karnataka, who has not secured the requisite merit to be admitted in the general category, but the Law School seeks to prop up a

student of Karnataka by awarding 5% marks on the marks secured by the last candidate in the general merit category. Such a procedure in our view, is antithetical to the principle of equal opportunity. In fact, it is an instance of blatant discrimination against another student, who is more meritorious. If, after adding 5% concession on the last cut-off score of a general category candidate to a student of Karnataka, he or she still does not acquire marks above the last cut-off score in the general merit list then, how would the horizontal reservation be worked out? Secondly, if the students of Karnataka on their own merit have secured a seat in the general category, then will such students be further awarded marks by way of concession. Ultimately, the question is staring at us. If students of Karnataka are not able to secure admission even with award of grace marks whether there is any purpose in awarding the same by discriminating against more meritorious students.

188. We find that adding marks to students of Karnataka to prop up their merit in order to ensure that they fit into the merit list is discriminatory and in violation of Article 14 of the Constitution. This is nothing but

bolstering mediocracy over meritocracy, which violates the equality clause in the Constitution. In ***Thapar Institute of Engineering and Technology vs. State of Punjab and another [(1997) 2 SCC 65],*** it has been observed that when admission is on the basis of marks obtained in the Entrance Examination, drawing up of a separate list for reservation of seats based on preferential treatment of certain candidates would be unconstitutional.

189. We do not think that really meritorious students of Karnataka would require such concession to be made to them and on the other hand, less meritorious students of Karnataka cannot be admitted to the Law School with the help of such grace marks being given after the national level examination is conducted and a common rank list is prepared. The same is an anathema to Article 14 of the Constitution. The sanctity of a national level entrance test would be lost if the respondent/Law School is permitted to tinker with the marks obtained by students of Karnataka only for the purpose of elevating their merit artificially so as to displace other more meritorious students who have appeared at the national level entrance test who incidentally may also be students from

Karnataka, but not coming within the scope and ambit of the explanation to the amended provision. Provision of reservation for certain categories of students in accordance with the Constitution is one aspect of the matter but displacing meritorious students in the general category by awarding extra grace marks to certain categories of students only, is not in accordance with the equality clause as envisaged under the Constitution. As a result, as many as thirty (30) more meritorious students than "students of Karnataka" as per the explanation, may lose an opportunity to seek admission to the respondent/Law School despite appearing in the national level entrance test being more meritorious than them. The above contrivance cannot be adopted to implement reservation in the instant case. Therefore, the Notification dated 04.08.2020 is liable to be quashed while the increase in the intake capacity prescribed in the Notification is not interfered with by us.

190. However, we hasten to add that the above would not in any way come in the way of the Executive Council of the respondent/Law School providing any form of reservation in the respondent/Law School as it deems fit.

191. There is only one other aspect of the matter which requires consideration and that is the timing of the provision of the impugned reservation. On 01.01.2020, the announcement was made by the respondent/Consortium for conducting CLAT for the purpose of filling up of the seats of the National Law Schools which are members of the Consortium including the respondent/Law School. Accordingly, the aspiring students have submitted their applications and have given their preferences. In the midst of the said process, in the last week of April 2020, the impugned reservation was provided by way of the Amendment Act. It is noted that when CLAT was announced on 01.01.2020, no provision was made for any reservation on the basis of domicile or institutional preference in Karnataka State, as has been pointed by the learned counsel for the petitioners. After the passing of the impugned Amendment Act, the Consortium had to again announce for change of preference of colleges to be made by the students. The examination was to be conducted later as it had been postponed on account of the Corona virus-COVID-19 pandemic and the consequent lockdown ordered by the

Central Government and State Governments with effect from the midnight of 25th March 2020. Thus, when the process of admission had already commenced, the provision of reservation in the respondent/Law School could not have been altered. Even though, it is a provision for the benefit of Karnataka students, one cannot lose sight of the fact that the same is detrimental to the students who do not fulfill the eligibility criteria provided by the impugned Amendment. As a result, these students, who are more meritorious than the students of Karnataka as defined by the impugned Amendment would be displaced.

192. Such a change in the admission process could not have been made after commencement of the process. In this regard, we could draw analogy from a recruitment process made by way of selection, by placing reliance on ***Hemani Malhotra vs. High Court of Delhi [(2008) 7 SCC 11]; Tamil Nadu Computer Science B.Ed. Graduate Teachers Welfare Society (I) vs. Higher Secondary School Computer Teachers Association and others [(2009) 14 SCC 517]; Rekha Chaturvedi vs. University of Rajasthan & others [1993 (1) LLJ***

818] and ***A.P.Public Service Commission, Hyderabad vs. B. Sarat Chandra & Ors [(1990) 2 SCC 669]***. In all the aforesaid decisions, it has been held that once the process for selection commences—admission in the instant case—which consists of various steps such as inviting applications, scrutiny of applications, conducting of examination and preparation of list of selected candidates, all are different steps in the process of selection and hence, there can be no change or departure made in the said process. In this regard, reference could also be made to ***Dolly Chhanda vs. Chairman, JEE, [(2005) 9 SCC 779]***. Therefore, in our view, applicability of the Amendment Act to the current admission process is also improper.

193. Recently, in ***Janahit Abhiyan vs. Union of India,*** in ***Writ Petition (Civil) No.596 of 2019,*** by interim order dated ***30.05.2019,*** the Hon'ble Supreme Court has observed that there is a time-tested principle of law that the modalities of selection cannot be changed after initiation of the process. While referring to reservation of 16% seats for socially and economically backward classes including the Maratha community in the

educational institutions in the State of Maharashtra in terms of provisions of the Maharashtra State Reservation (of Seats for Admission in Education Institutions in the State and for Appointments in the Public Services and Posts under the State) for Socially and Educationally Backward Classes (SEBC) Act, 2018, the Bombay High Court had taken a view that the said Act, having come into force with effect from 30.11.2018, could not be made applicable to the very same admission process as the same had been initiated earlier i.e , on 02.11.2018. Also, the special leave petition against the said order of the Bombay High Court had been dismissed by the Apex Court.

194. For the aforesaid reasons, we quash the Notification dated 04.08.2020 issued by the respondent/Law School insofar as it makes reservation as per the impugned Amendment as per revised seat-matrix. Consequently, the conferring of 5% concession in the form of weightate or marks to students of Karnataka envisaged in the said Notification also stands quashed. The process of admission shall be in terms of what was envisaged in the seat matrix issued prior to the impugned Amendment Act but for the increase in the number of seats.

195. Before we conclude, we wish to quote Krishna Iyer J., from *Jagadish Saran* as under:

> "22. A fair preference, a reasonable reservation, a just adjustment of the prior needs and real potential of the weak with the partial recognition of the presence of competitive merit – such is the dynamics of social justice which animates the three egalitarian articles of the Constitution."

Such be the object and purpose of any form of reservation.

SUMMARY OF CONCLUSIONS:

196. In view of the above, we arrive at the following conclusions:

(1) The role of BCI, BCI Trust and the Society in the establishment and functioning of the respondent/Law School is significant and pervasive and the respondent-State has been only a facilitator in granting the respondent/Law School deemed University status through the Act.

(2) The State Legislature has no power or authority under the Act to direct the respondent/Law School to provide reservations for students in view of the limited role of the State under the Act. Hence, the impugned Amendment by insertion of sub-section (3) of Section 4 of the Act is declared illegal.

(3) The impugned Amendment in sub-section (3) of Section 4 of the Act is contrary to the scheme of the Act and powers vested in the authorities recognized under the Act which makes the respondent/Law School an autonomous and independent body free from State's control. Hence, the impugned Amendment which encroaches upon the power of the authorities under the Act is contrary to the Act.

(4) Clause 2.1 of the Notification dated 04.08.2020 issued by the respondent/Law School providing horizontal reservation to an extent of 25% of the total seats by a

revised seat matrix by following the aforesaid amendment is illegal and hence quashed.

(5) Further, the respondent/Law School has no authority to award 5% concession of marks on the last cut off score in the General merit category for the "students of Karnataka" as defined in the explanation to the Amending Section and hence, Clause 2.2 of the Notification dated 04.08.2020 is quashed.

(6) Recognising the fact that respondent/Law School in an autonomous entity, any form of reservation for students to be admitted to it shall be provided by the Executive Council of the Law School bearing in mind the fact that it is an institution of national importance.

(7) The category of students namely "Students of Karnataka" for whom reservation horizontally to an extent of 25% of the seats has been made has no nexus to the

objects sought to be achieved and is hence, in violation of Article 14 of the Constitution.

(8) Further, institutional preference being the basis of reservation and the criteria mentioned in the expianation to the impugned amendment in sub-section (3) to Section 4 of the Act to identify the beneficiary namely, "students of Karnataka" cannot be operationalised in its present form.

(9) However, we clarify that the increase in the intake capacity made by the respondent/Law School by Clause (1) of Notification dated 04.08.2020 is not interfered with. But, the revised seat matrix incorporating the impugned reservation is quashed.

(10) The respondent/Consortium shall publish the results of the CLAT examination in terms of reservation made prior to the impugned amendment bearing in mind the

increase in the intake capacity insofar as respondent/Law School is concerned.

(11) Consequently, the respondent/Law School shall follow the seat matrix issued *de hors* the impugned reservation for students of Karnataka, bearing in mind the increased intake capacity and the reservation made for the Scheduled Castes and Scheduled Tribes and for persons with disability.

(12) I.A. No.1 of 2020 in Writ Petition No.8788 of 2020 is *disposed of*. Applicant in the said I.A. in Writ Petition No.8788 of 2020 is permitted as an intervenor in these proceedings. But, I.A. No.2 of 2020 in Writ Petition No.8788 of 2020, I.A. No.1 of 2020 in Writ Petition No.8951 of 2020 and I.A. No.1 of 2020 in Writ Petition No.9145 of 2020 by the applicants are *dismissed*. The above is by separate order.

(13) Writ Petition No.8788 of 2020 filed by a student who had applied pursuant to the

notification issued on 01.01.2020 by the respondent/Consortium to appear in CLAT is allowed and disposed in the aforesaid manner.

(14) Writ Petition No.8951 of 2020 and 9145 of 2020 are allowed in the aforesaid terms.

Parties to bear their own costs.

Sd/-
JUDGE

Sd/-
JUDGE

**mvs/ S* RK/- PSG/-*
Ct: RM