A decorative border with Indian motifs, including a peacock, a temple gopuram, a chariot wheel, and a green face, surrounds the central white text area.

JANUARY 2022.

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Domicile Reservations in National Law Universities

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under the aegis of Vidhi Centre for Legal Policy.*

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Introduction

National Law Universities (NLUs) across the country follow a wide range of reservation policies which include a mix of caste-based reservations, EWS reservations, domicile reservations, gender-specific reservations, foreign-national and NRI reservations, and PWD reservations. However, there is little uniformity in the implementation of these policies. While the issue of compensatory discrimination and affirmative action in elite education spaces remains a contested one, recent developments on the issue of domicile reservations have added a new gradient to this contestation.

The Supreme Court, for example, is currently seized of the matter relating to domicile reservation by the National Law School of India University (NLSIU). Karnataka High Court, in the same matter, had found that domicile reservation is not in consonance with the intent and spirit of the National Law School of India Act, 1986, which purported to “establish, maintain and run a model law college in India”.

In light of these developments, it becomes imperative to examine the myriad of questions arising out of the implementation of domicile quotas at the NLUs established by the State legislatures. These questions include whether domicile quotas further the cause of increasing access to legal education; whether the beneficiaries stay back to work in their states; and, whether these quotas further constitutional values. The objective of this brief is to provide a comprehensive overview of the issue of domicile reservations in National Law Universities. It aims to incorporate doctrinal research, critical analysis and qualitative insights to provide a contextually appropriate background resource material for those litigating and research on this issue.

To this end, the first chapter provides the factual background into the functioning of NLUs. This involves characterising the National Law University (NLU) model of legal education, looking at issues of accessibility and diversity at the NLUs, and examining the graduate profile.

The second chapter provides a bird’s eye view of the implementation of domicile reservations at NLUs by looking at the extent of reservation at various NLUs, the stated goals and aims of such reservation and the experience of various stakeholders with such reservations.

The third chapter analyses the constitutionality of domicile reservations in educational institutions by looking at the jurisprudence on the same from various fields of education. This chapter, inter alia, examines the meaning of domicile reservations’ as distinct from institutional

reservations, looks at the various constitutional principles it may run counter to, analyses the discussions on this matter in the Constituent Assembly and explores if there may be cases of legitimate domicile reservations at educational institutions. It underlines the jurisprudential importance of the concept of backwardness in the determination of criteria for identifying beneficiaries of reservations.

The fourth chapter probes the provision for domicile reservations at NLUs by critically examining the judgement of the Karnataka High Court, followed by a discussion on the complicated relationship between the national character of NLUs and the domicile reservations.

The final chapter summarises the findings of this brief, and recommends a way forward for NLUs, the State governments and the Union government. The recommendations address the four issues that emerge from the findings: a) juridical status of NLUs; b) interaction between domicile quota and existing caste and gender-based quota policies; c) constitutional validity of domicile status as the sole criteria for identification of quota beneficiaries; and d) measures to ensure fulfilment of the purpose of domicile quotas. With respect to the contestations around the juridical status of NLUs which are established through statutes passed by State legislatures, we recommend that their demands for parliamentary recognition as institutions of national importance should be considered. This would confer legal legitimacy to the prevailing practice of implementing SC/ST quota on the basis of All-India ranks. Alternatively, if this parliamentary recognition is not granted, the admission process under Common Law Admission Test should identify beneficiaries of the SC/ST quota solely from within the State where the NLU is located. In order to confer constitutional legitimacy to the policies for grant of domicile quotas, the eligibility requirements should incorporate a dimension of social and educational backwardness. This can be achieved through two means: a) candidates from backward and remote regions within a State and b) candidates who attended government schools in regional language medium, should be eligible for availing the domicile quota. Finally, we recommend that the State Governments should formulate a legal services fellowship scheme to supplement the domicile quota. Under this scheme, the students availing of the domicile quota would undertake to serve the state legal services authority and other public institutions mandated with legal aid and education, for a period of at least four years. We hope that these recommendations contribute to the constructive public discourse and deliberation on Indian legal education.

Chapter I: Overview of the Functioning of NLUs

1. The NLU Model of Education

Presently, there are more than 1200 law colleges in India,¹ out of which only 23 are National Law Universities (NLUs).² The National Law School of India University (NLSIU), Bangalore was the first NLU, established in India in 1987. It was projected to be a model institution for future NLUs. With this, a new five-year course integrating arts and law was started for students to join directly after passing school. This was unlike the conventional three-year post-graduate law degrees prevalent at the time.³

Before its establishment, legal education was characterised by passive students and disinterested academicians, and it lacked rigour, research and practicality. Examinations were closed-book and students were required to memorise laws, without much relevance to social policy.⁴ The Law Commission of India in its 14th Report in 1958 highlighted this and lamented about the deteriorating quality of legal education.⁵ On the basis of its recommendations, the Bar Council of India (BCI) was set up in 1961 to supervise and standardize the legal profession and education in the country.⁶ BCI attempted to bring reforms in the curriculum, but these failed since law was taught in colleges teaching multidisciplinary courses under the general supervision of the University Grants Commission (UGC).⁷

Post this, the BCI made a breakthrough decision in 1982 of introducing a five-year law program.⁸ Thereafter, NLUs revolutionised legal education with their improved curriculum

¹ Prachi Shrivastava, 'In two years, number of law schools increased from 800 to 1,200: Now BCI hopes to put brake on mushrooming epidemic' (Legally India, 9 December 2014) <www.legallyindia.com/lawschools/in-two-years-number-of-law-schools-increased-from-800-to-1-200-now-bci-hopes-to-put-brake-on-mushrooming-epidemic-20141209-5408> accessed 19 April 2021.

² See "Participating Universities," *Consortium of National Law Universities* <consortiumofnlus.ac.in/clat-2021/participating_universities.html> (NLU Delhi is not a part of the Consortium).

³ Upasana Dasgupta, "The Paradox of Elite Law Schools in India – A Comparison with Canadian Legal Education" (2019) *Quebec Journal of International Law* 147,149 <papers.ssrn.com/sol3/papers.cfm?abstract_id=3500048> accessed 12 January 2021

⁴ N.R. Madhava Menon, "The Transformation of Indian Legal Education – A Blue Paper" (Harvard Law School Programme on the Indian Legal Profession, 2012) <clp.law.harvard.edu/assets/Menon_Blue_Paper.pdf>.

⁵ Law Commission of India, '14th Report: Reform of Judicial Administration', (*Ministry of Law, Government of India*, 1958) 522.

⁶ Advocates Act 1961, s 7(1)(h).

⁷ Rajeev Kadambi, "One Such Pattern in the Indian Legal Academy" (2010) 20 *Education and Law Journal* <papers.ssrn.com/sol3/papers.cfm?abstract_id=1635186> accessed 21 April 2021

⁸ *ibid.*

incorporating social relevance, different methods of teaching, interdisciplinary approach, compulsory research papers and internships, etc. In addition to this, they also encouraged co-curricular and extra-curricular activities in law schools such as mooting, debating, ADR, MUNs, student-run committees and the like.⁹

1.1. CLAT and Seat Allocation

Admission to 22 out of 23 NLUs is now through a national level competitive examination, the Common Law Admission Test (“CLAT”). The CLAT commenced in 2008 after the Supreme Court’s directions in *Varun Bhagat v. Union of India*¹⁰ in order to provide an equal opportunity for admission to NLUs to participants all over the country at the same date and at an affordable cost. The popularity of the exam has since grown manifold.¹¹ NLU Delhi is the only NLU which conducts its separate entrance examination (All India Law Entrance Test - AILET).¹²

The CLAT brochure publishes the seat allocation at each NLU every year. It is mandatory for NLUs to reserve seats for students belonging to Scheduled Castes (SC), Scheduled Tribes (STs), and Persons with Disabilities. However, domicile reservations and seats for Foreign Nationals/NRIs vary considerably.¹³

However, the test is not without controversy. Concerns have frequently risen regarding its conduct and administration. The exam has been marred with paper leaks in an offline format, and technological errors in an online format.¹⁴ Content-wise, the test is conducted only in the English language, unlike several other entrance examinations such as UPSC. In addition, there is a proposal to conduct JEE Mains and NEET in several regional languages.¹⁵

⁹ Dasgupta (n 3) 149.

¹⁰ Writ Petition (Civil) 68 of 2006.

¹¹ 'CLAT surges 30%: Record 77,000 aspirants registered, with 68k for UG alone (despite 3,000 withdrawals)' (Legally India, 4 August 2020) <www.legallyindia.com/pre-law-student/clat-surges-30-record-77-000-aspirants-registered-with-68k-for-ug-alone-despite-3-000-withdrawals-20200804-11596> accessed 12 January 2021

¹² See: nludelhi.ac.in/adm-ba.aspx.

¹³ NALSAR University of Law, 'A Study to Create Evidence-Based Proposals for Reform of Legal Education in India – Suggestions for Reforms at the National Law Universities set up under State Legislations' (2018) <doj.gov.in/sites/default/files/Final%20Report%20%20NALSAR%20.pdf> accessed 19 April 2021

¹⁴ NALSAR Report, p. 40.

¹⁵ Prashant K. Nanda 'Govt to conduct JEE Mains 4 times a year, in 13 languages' *LiveMint* (December 16, 2020) <www.livemint.com/education/news/govt-to-conduct-jee-mains-four-times-a-year-in-13-languages-11608128525437.html>; 'NEET UG 2021 to be held in 11 regional languages' *Hindustan Times*

A major portion of it also tests a candidate's proficiency in the English language. This makes it difficult for those whose medium of schooling has been in another language.¹⁶ This is evident statistically in the IDIA Diversity Survey Report, 2018-19, which surveyed the student diversity in the top 5 NLUs. The report shows a staggering 96.5% of the students come from English-medium schools. The remaining 3.5% face a disadvantage since classes as well as numerous co-curricular activities are conducted in English.¹⁷

1.2. Stated Goals of NLUs & Graduate Profile

The original goal of establishing NLUs was to improve the quality of justice for the common man by supplying well-trained lawyers to the bar and the bench. A key founding principle of NLSIU was, hence, to work towards social justice. The NLU curriculum was consequently shaped to include practical training and critical analytical abilities, in combination with social context.¹⁸ However, this stated goal has not been satisfactorily met.

The rise of the NLUs post 1990s was coupled with a rise in globalisation, privatisation and liberalisation in India. With this growth, corporate clients needed a law firm's legal services. Corporate culture has therefore become more widespread even in the field of law.¹⁹ In fact, statistics on recruitment in the corporate sector from a law school plays a major role in determining its rankings. Moreover, students commonly choose electives which boost their prospects of landing a job in a law firm.²⁰ In a study of the student demographics of NLSIU, titled "The Elusive Island of Excellence - A Study on Student Demographics, Accessibility and Inclusivity at National Law School 2015-16" (hereinafter "NLSIU 2015-16 Study"), survey showed that 37.02% of the students had planned on taking a law firm or consultancy job after graduation. In comparison, the second highest chosen career option was litigation or civil services, which stood at 18% each. The

(July 13, 2021) <www.hindustantimes.com/education/competitive-exams/neet-ug-2021-to-be-held-in-11-regional-languages-101626180229388.html#:~:text=The%20languages%20in%20which%20the,Tamil%2C%20Telugu%2C%20and%20Urdu> accessed 19 July 2021.

¹⁶ *ibid* p. 41.

¹⁷ IDIA, 'Diversity Survey Report 2018-19' 25 <www.idialaw.org/wp-content/uploads/2020/04/diversity-survey-2018-19.pdf> accessed 19 April 2021

¹⁸ Menon (n 4).

¹⁹ Jonathan Gingerich & Nick Robinson, "Responding to the Market: The Impact of the Rise of Corporate Law Firms on Elite Legal Education in India" (2014) Paper Number 2014-11, *HLS Program On the Legal Profession Research Paper Series*, Harvard Law School <https://kclpure.kcl.ac.uk/portal/files/115331594/Gingerich_Robinson_Responding_to_the_Market_P_reprint.pdf>

²⁰ Gingerich and Robinson (n 18).

percentage for a corporate job was as high as 53.4% in the fifth-year batch.²¹ This high percentage is relevant since this is the time when early career decisions are more concretised, thus indicating their preferences more clearly.

This can be because of a few reasons. Firstly, a significant portion of the student body comes from low to medium-income families. In a report commissioned by the Department of Justice, Ministry of Law and Justice of the Government of India which analysed responses to questionnaires filled by 15 NLUs, more than 75% students responded that the annual fee is ‘High’ or ‘Very High’.²² Consequently, a number of students have education loans and other debts to pay off. To cover this, they opt for high-paying corporate jobs where growth depends on number of years spent, and are hence, comparatively free from much risk.²³

Secondly, the Bar often presents several hierarchical, structural, gendered and linguistic barriers for entry, which contributed to the growth of law firms.²⁴ These barriers, particularly gender, could be a leading reason for women taking up corporate jobs. For instance, the NLSIU 2015-16 Study showed that 61.6% of those taking up a corporate job are female.²⁵

Two points of caveat have to be noted here. Firstly, not much data is available on those graduates who go for litigation after spending four to five years in a corporate job.²⁶ Secondly, it can be said that the stated objective has been at least partially successful. For instance, the NLSIU 2015-16 Study showed that 45.5% students plan on pursuing academia, civil services, litigation, and research and policy work, as compared to 37.02% pursuing a corporate job.²⁷ These fields fall into the category of furthering “social justice”. Some scholars consider the objective of an NLU to be much broader than simply strengthening the bar and the bench. One of the founders of NLSIU had explained that the goal is not just training lawyers for litigation, but also for policy and governance, social work, academia and research, etc.²⁸

²¹ Chirayu Jain and others, ‘The Elusive Island of Excellence - A Study on Student Demographics, Accessibility and Inclusivity at National Law School 2015-16’ (2016) 29 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2788311> accessed 19 April 2021

²² NALSAR Report, p. 46.

²³ Nikhil Kanekal, “Law education: Islands for excellence” (*LiveMint*, 13 Jan 2012) <<https://www.livemint.com/Politics/R3SB5J0qpaL20O78Y3k85K/Law-education-islands-of-excellence.html>> accessed 12 January 2021.

²⁴ NALSAR Report, p. 19.

²⁵ *Jain* (n 21), 133.

²⁶ Kanekal (n 22).

²⁷ *Jain* (n 21), 132.

²⁸ Gingerich and Robinson (n 18).

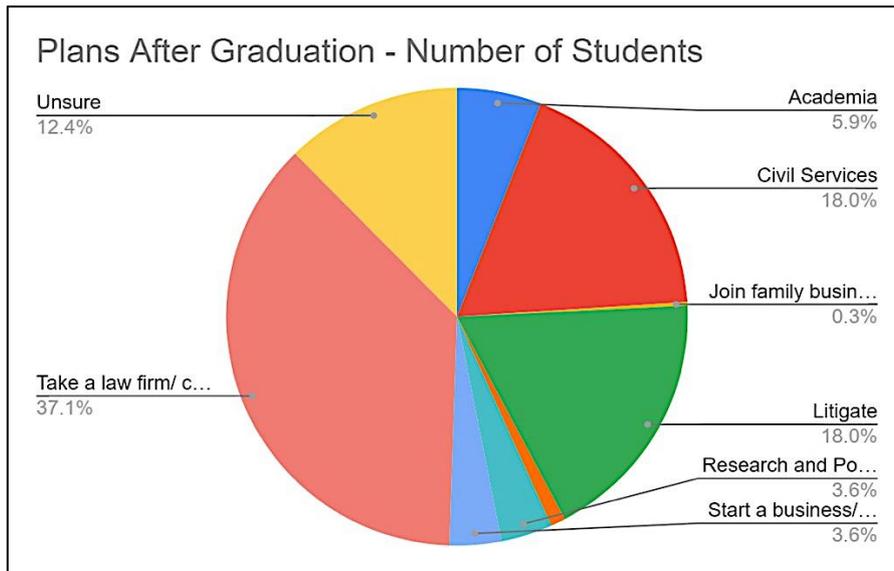
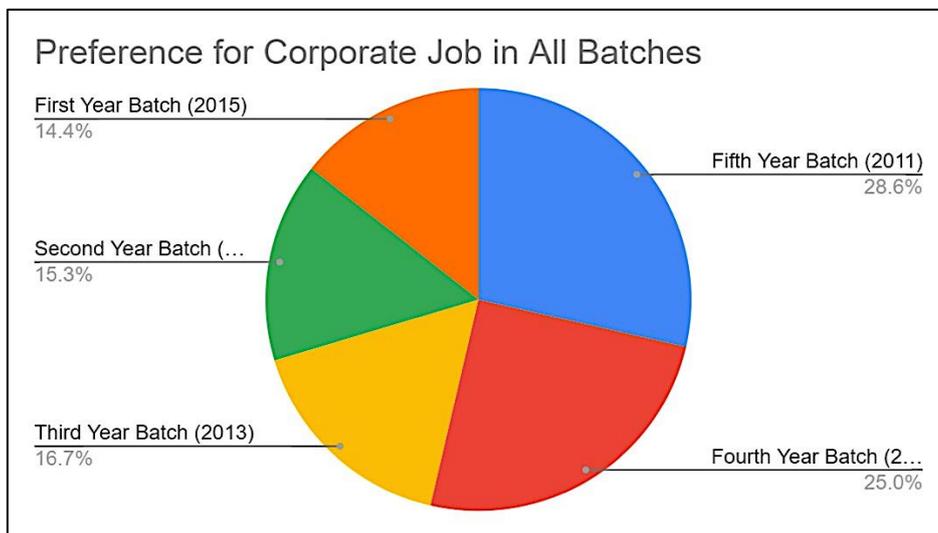


Figure 1.²⁹

This chart shows the plans after graduation of all students as seen in the NLSIU 2015-16 Study.³⁰ As seen in Figure 1, the majority of the students are inclined towards a law firm job.



²⁹ Jain (n 21), 132.

³⁰ Jain (n 21), 132.

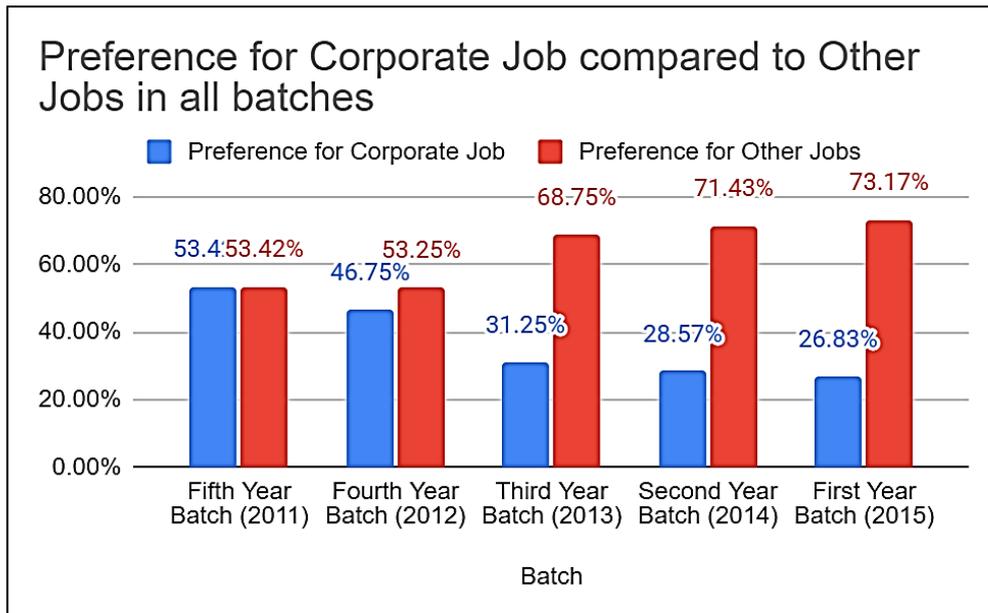


Figure 2.³¹

Figure 2 demonstrates the distribution of the population that prefers a law firm job as compared to other career choices across batches from the First Year (2015) to the Fifth Year (2011).³² It can be observed that the number of students vying for a corporate job increases steadily across the batches.

2. Student Diversity & Elitism

Before establishment of the NLUs, the field was dominated by ‘familial elite of high court and supreme court advocates’. They were all trained on an ‘exaggerated’ British model. Success in this field was anchored in connections to an ‘elite legal family’. This connection increased the chances of being able to get apprenticeships and important cases, all crucial to build a respectable name in the field. After establishment of NLUs, a radical change has been seen. These Universities are attracting students who do not necessarily have legal connections within their family. However, the ‘legal-familial-advocate establishment’ which wields the ‘power of the elite bar’, remains dominant.³³

³¹ Jain (n 21), 133.

³² Jain (n 21), 133.

³³ Bryant G. Garth, ‘Having it Both Ways, The Challenge of Legal Education Innovation and Reform at UCI and Elsewhere: Against the Grain and/or Aspiring to Be Elite’ (2020) 10 U.C. IRVINE L. REV. 373, 3939 <<https://scholarship.law.uci.edu/cgi/viewcontent.cgi?article=1422&context=ucilr>> accessed 19 April 2021

From this, we see that law as a profession from its advent has been one for the elites. This elitism has also flown into the composition of the student bodies across the National Law Universities (NLUs). NLUs have known to be described as “islands of excellence in a sea of mediocrity”.³⁴ However, these islands are becoming elusive for a large portion of the Indian population. The institutions are often termed as ‘elite’, given the privileged backgrounds of majority of its students and lack of meaningful diversity.³⁵

2.1. Pre-Admission Accessibility Issues with NLUs

The elite-status of NLUs stems from the increasing inaccessibility thereto. It can be seen that at each stage before entry, there exist barriers. Foremost among them is the exorbitant fees charged by the Universities. While respective state governments technically provide funding to NLUs, it has been reported to be abysmally low and insufficient for the continuous functioning of their academic and research programs. Therefore, they are forced to charge high fees from students to make ends meet.³⁶

Even prior to admission in the NLUs, aspirants bear the burden of high fees at coaching institutes. The rise in popularity of the CLAT has also mushroomed the growth of private expensive coaching classes. Close to 50% of the respondents in the Department of Justice Report are of the opinion that coaching services either make a significant difference or are absolutely essential to clearing the exam.³⁷ On the subject of the entrance exam, the application fee for the CLAT has also been rated as ‘High’ or ‘Very High’ by 73% of the respondents.³⁸ Consequently, those from a disadvantaged backgrounds who cannot afford such classes face barriers even in the preparation of and registration to admission tests.³⁹ Evidently, among the students joining the top 5 NLUs in 2018-19, approximately 51% belong to households earning an annual income of ₹10

³⁴ Alok Prasanna Kumar, ‘Domicile Reservations in National Law Universities’ (2020) 55 Economic Political Weekly

³⁵ Shamnad Basheer, K.V. Krishnaprasad, Sree Mitra and Prajna Mohapatra, “The Making of Legal Elites and the IDIA of Justice” (2014) Paper Number 2014-18, *HLS Program On the Legal Profession Research Paper Series*, Harvard Law School <<https://ssrn.com/abstract=2433036>>.

³⁶ Aditya AK, ‘Smoke and Mirrors: Has the NLU model proven to be no more than a pipe dream?’ (Bar and Bench 19 September 2017) <<https://www.barandbench.com/columns/smoke-mirrors-nlu-model-proven-pipe-dream>> accessed 10 January 2021.

³⁷ NALSAR Report, p. 142.

³⁸ NALSAR Report, p. 151.

³⁹ NALSAR Report, p. 146.

lakh and above. In comparison, hardly 7.5% students come from households earning ₹ 1 lakh or less annually.⁴⁰

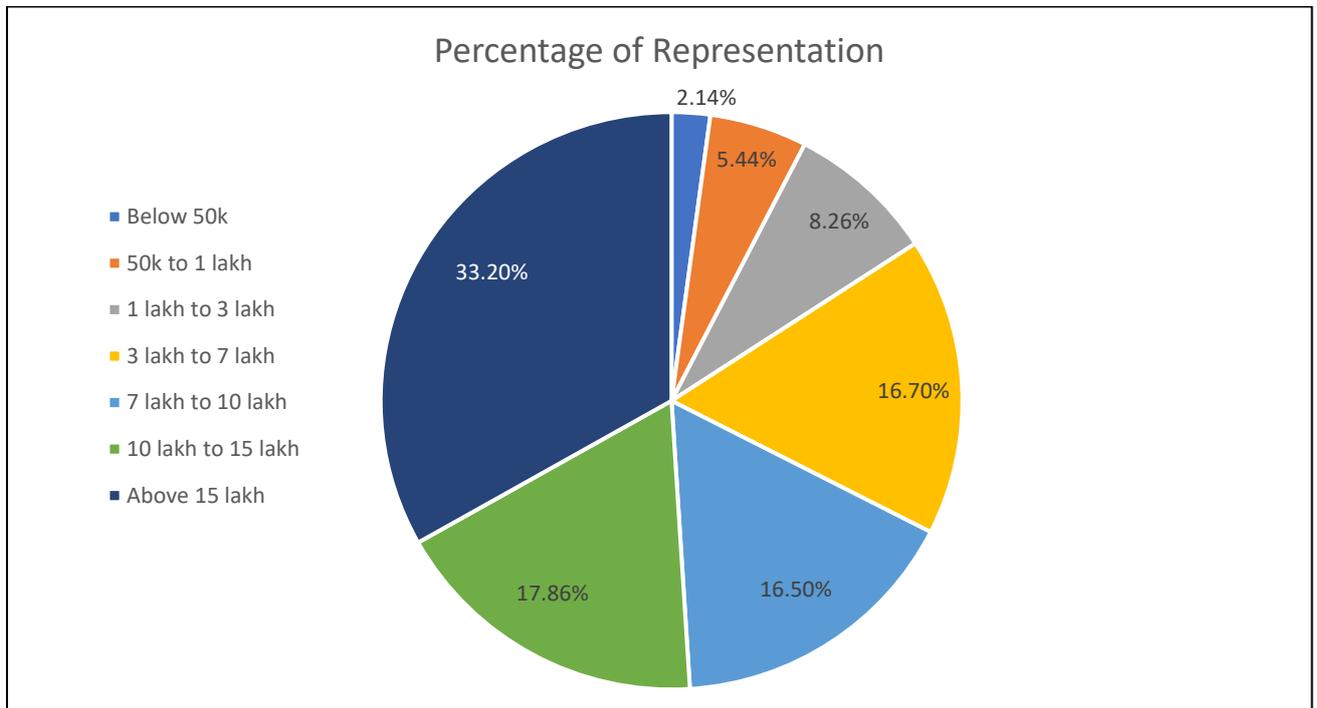


Figure 3. Percentage of Representation by Income

2.2. Diversity at NLUs

a. Regional Diversity

In the NLSIU 2015-16 Study, regional diversity was a key indicator to study the representative character of the student body. It reflected that Uttar Pradesh was the home-state of the majority of the students. This was followed by Maharashtra, Karnataka, Madhya Pradesh, Rajasthan and Delhi. A comparison with the top-5 NLUs showed similar results with high number of students from Uttar Pradesh, Karnataka and Delhi.⁴¹

The survey also collected data for the cities the students belonged to. In the batch, which took admission in 2011, 50% of their batch belonged to a Tier-1 city. However, for the batch which joined in 2015, this number had fallen to around 30%.⁴²

⁴⁰ IDIA Diversity Survey 2018-19 (n 17), 29.

⁴¹ Jain (n 20).

⁴² Jain (n 20), 31.

A similar study conducted at the National University of Juridical Sciences, Kolkata (NUJS) in 2019, also returned similar results. In terms of regional composition of the student body, states of West Bengal, Uttar Pradesh, Rajasthan, Maharashtra, Madhya Pradesh and Delhi dominated. There were not many students from the North-East. Further, while 458 respondents (84.1%) were from cities, only 79 (14.5%) were from towns and a mere 7 respondents (1.4%) were from villages.⁴³

A 2016 study of the first-year batches of the top 5 NLUs, conducted by Increasing Diversity by Increasing Access (IDIA), showed that there was barely any representation of students from the North-Eastern states. There was no representation at all from states of Assam, Manipur, Mizoram, and Tripura. The state of Goa had no representation either. Similarly, there was no representation from Union Territories (UTs) such as Pondicherry, Lakshadweep, Daman and Diu, Dadra and Nagar Haveli, and Andaman & Nicobar Islands.⁴⁴ Majority students were found to be from Madhya Pradesh, Uttar Pradesh, Rajasthan, West Bengal, Maharashtra and Delhi.

The IDIA diversity report of 2018-19 portrayed similar results. However, a marginal increase of students from the North East with 5 students: two from Assam and one each from Manipur, Meghalaya and Tripura.⁴⁵

b. Linguistic Barriers

Linguistic barriers and fluency are difficult to measure. Nonetheless, there are some helpful indicators: medium of schooling, family's proficiency in English and language of communication with family.

First, all four reports mentioned above found that an overwhelming majority of the students had studied at English medium schools. 96.76% students had attended English-medium high schools as per the NLSIU 2015-16 Study,⁴⁶ and over 97.5% of all students in the first-year batches of five different NLUs according to the 2016-17 IDIA Survey.⁴⁷ The 2018-19 IDIA Survey⁴⁸ and the

⁴³ NUJS, 'NUJS Diversity Report, 2019' 14 <<https://drive.google.com/file/d/1f97wORWRT95BB7b3svVg4XZYznB4K2cT/view>> accessed 19 April 2021

⁴⁴ IDIA, 'Diversity Survey 2016-17' 5 <<https://www.idialaw.org/wp-content/uploads/2020/04/2016-17-diversity-survey-.pdf>> accessed 19 April 2021

⁴⁵ IDIA Diversity Survey 2018-19 (n 17), 13.

⁴⁶ Jain (n 21), 35.

⁴⁷ IDIA Diversity Survey 2016-17 (n 40), 24.

⁴⁸ IDIA Diversity Survey 2018-19 (n 17), 25.

2019 NUJS Report⁴⁹ affirmed this trend by reporting this number to be 96.5% and 83.8% respectively.

Second, not just English education, but family’s proficiency in English is also significant. Around 76.5% students at NLSIU reported that both their parents are highly fluent in English.⁵⁰ Following is the data provided by the IDIA Surveys:

English Proficiency of Parent	% Representation (2016-17 IDIA Survey)⁵¹	% Representation (2018-19 IDIA Survey)⁵²
Both of them proficient	53.50%	49.90%
Only one of them proficient	24.01%	20.78%
Neither of them proficient	22.50%	29.32%

Third, the dominant language of communication with family is Hindi as per both the IDIA Surveys, indicating the dominance of number of students hailing from Hindi-speaking belt of the country.⁵³ On the other hand, representation from several union territories and north-eastern states continues to be either underwhelming or totally absent.

c. Caste Diversity

The NLSIU 2015-16 Study found that a majority of students come from urban upper-caste families.⁵⁴ Only 15-17% of SCs and STs come from families having more than three generations of graduates. This is in contrast to more than 34% of the Brahmins in the same category.⁵⁵

In the 2016-17 survey, it was found that among the Hindu students, majority identified themselves as Brahmin.⁵⁶ A similar result was seen in the 2018-19 IDIA survey.⁵⁷ In WBNUJS Survey, it was found that 145 respondents (26.7 %) were Brahmins and 173 respondents (31.9%) were from other Upper Castes.⁵⁸

⁴⁹ NUJS Diversity Survey (n 39), 73.

⁵⁰ *Jain* (n 21), 35.

⁵¹ IDIA Diversity Survey 2016-17 (n 40), 19.

⁵² IDIA Diversity Survey 2018-19 (n 17), 20.

⁵³ IDIA Diversity Survey 2016-17 (n 40), 19; IDIA Diversity Survey 2018-19 (n 17), 21.

⁵⁴ *Jain* (n 21), 44.

⁵⁵ *ibid*, 54.

⁵⁶ IDIA Survey 2016-17 (n 48), 17.

⁵⁷ IDIA Diversity Survey 2018-19 (n 17), 19.

⁵⁸ NUJS Diversity Survey (n 39), 14.

d. Gender Diversity

NLUs generally see a greater proportion of males (nearly 57%) than females (nearly 42%). The gender ratio in the top 100 rank holders is skewed, as only 36 females appeared. The representation from the transgender community remains minimal, with only 0.39% of the population identifying themselves under this category.⁵⁹

The IDIA Diversity Report 2018-19 has shown that nearly 54% of the student population has faced discrimination/prejudice by their peers on the grounds of caste, gender, sexual orientation, skin colour, language, religious and political beliefs, etc. This is a massive increase from the 28% of such students in the 2016-17 report.⁶⁰

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This overview of the challenges of diversity and inclusion at NLUs can be helpful in appreciating how and to what extent domicile reservations can impact the resolution of these challenges. The importance of scrutinizing these implications before deciding to implement domicile quotas cannot be emphasized enough.

⁵⁹ IDIA Diversity Survey 2018-19 (n 17), 15.

⁶⁰ IDIA Diversity Survey 2018-19 (n 16), 33.

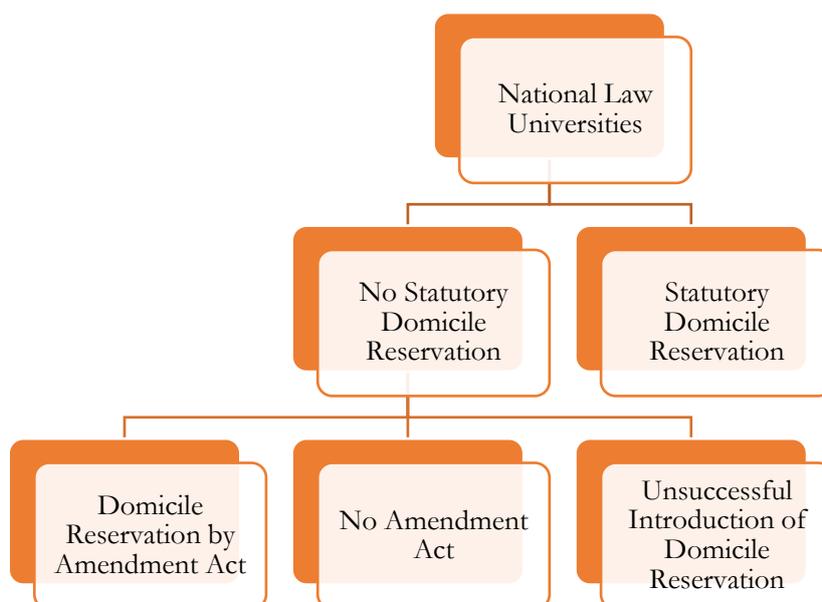
Chapter II: Domicile Reservation at NLUs

NLUs are essentially state, and not central, universities since they come under their respective state governments. Therefore, the state governments also control their reservation policies. Out of 23 NLUs, only 3 - NLSIU Bangalore, NLU Delhi, and NLU Jodhpur – do not have domicile reservation. Interestingly, domicile reservations of 25% and 50% were introduced in NLSIU Bangalore and NLU Delhi respectively in 2020. However, both of these were quashed by their respective High Courts.⁶¹

The implementation of domicile reservations varies across NLUs. In this background of such variation, it is also important to examine which NLUs provide a statutory basis to domicile reservation.

1. Statutory Basis of Domicile Reservation

Among the NLUs that provide for domicile reservation, only a few have statutory backing for the same. Therefore, we can divide these NLUs, into two groups – first, whose statutes explicitly provide for the power of the Executive Council or the University to make provisions for domicile reservation. Second, NLUs whose statutes do not explicitly provide for such power.



⁶¹ Rintu Mariam Bajju, 'NLSIU Amendment Act is contrary to parent Act, does not satisfy twin tests of Art 14: Karnataka HC quashes 25% domicile reservation' (Bar and Bench, 29 September 2020) <<https://www.barandbench.com/news/litigation/karnataka-hc-quashes-25-domicile-reservation-at-nlsiu-bangalore>> accessed 12 January 2021.

1.1. *NLUs with statutory provisions for domicile reservation*

Some NLUs have statutory provisions for domicile reservation; these include:

- ✚ National Law Institute University, Bhopal (NLIU)
- ✚ Ram Manohar Lohia National Law University, Lucknow (RMNLU)
- ✚ National Law University and Judicial Academy, Assam (NLUJA)
- ✚ Tamil Nadu National Law University, Tiruchirappalli (TNNLU)
- ✚ Dr Bhimrao Ramji Ambedkar National Law University, Haryana (DBRANLU)
- ✚ Dharamshastra National Law University, Jabalpur (DNLU)
- ✚ Himanchal Pradesh National Law University, Shimla (HPNLU)
- ✚ Damodaram Sanjivayya National Law University, Vishakhapatnam (DSNLU)
- ✚ National University of Study and Research in Law, Ranchi (NUSRL)
- ✚ Maharashtra National Law University, Mumbai, Nagpur, Aurangabad (MNLU)
- ✚ National University of Advanced Legal Studies, Kochi (NUALS)

Apart from these, some NLUs have statutory provisions that may accommodate domicile reservation without express reference thereto; these include:

- ✚ National Law University, Odisha (NLUO)
- ✚ Chanakya National Law University, Patna (CNLU)
- ✚ Hidayatullah National Law University, Raipur (HNLU)

While the statute of National Law University, Odisha (NLUO) does not explicitly provide for domicile reservation, it allows the Executive Council to provide reservation for “*any other categories of person as may be notified by the State Government*” under Section 11.⁶² NLUO issued a notification in January 2020 which declared that they will be introducing a 25% domicile reservation.⁶³ In case of Chanakya National Law University, Patna (CNLU), it confers powers on the University to make reservation for women persons with physical disabilities or persons belonging to socially and educationally backward classes of the society or for the Scheduled Castes or the Scheduled Tribes.⁶⁴ The brochure further provides that admission will be subject to reservations as per Bihar (In Admission in B.B.A., LL.B. (Hons.) Course Educational Institutions) Reservation Act, 2003 (Bihar

⁶² The National Law University Orissa Act, s 11 <<https://www.nluo.ac.in/wp-content/uploads/2019/07/NLUO-ACT-with-Amendments.pdf>> accessed 11 January 2021

⁶³ Registrar, National Law University Orissa, ‘Notification’ <<https://www.nluo.ac.in/wp-content/uploads/2020/07/NOTIFICATION-Website.pdf>> accessed 11 January 2021

⁶⁴The Chanakya National Law University Act, 2006 (Bihar Act 24, 2006), s 7, <<http://www.bareactslive.com/BIH/BH052.HTM>> accessed 11 January 2021

Act 16 of 2003).⁶⁵ Similarly, Hidayatullah National Law University, Raipur (HNLU), the statute provides for reservation for Scheduled Castes, Scheduled Tribes, and girl students as per the Chhattisgarh Educational Institutions (Reservation in Admission) Act, 2012 and guidelines issued by Government of Chhattisgarh, Higher Education Department on 24.05.2019.⁶⁶

1.2. NLUs without statutory domicile reservation

Within the second group of NLUs without original statutory provisions for domicile reservation there are Universities such as NLSIU Bangalore, National Academy of Legal Studies and Research, Hyderabad (NALSAR), NLU Delhi, Gujarat NLU (GNLU), Rajiv Gandhi National University of Law (RGNUL), NUJS. This group can be divided further with reference to subsequent efforts to introduce domiciliary provisions in their founding statutes.

a. Domicile Reservation provided via Amendment Acts.

This includes NALSAR Hyderabad and WBNUJS. Out of these, only the amending act of NALSAR locates the power to introduce domicile reservation in the power of Section 10(1)(ii) of NALSAR University Act, 1998. This Section provides that General Council shall be the plenary authority of the University. It has the power to make statutes concerning the administration of the affairs of the University.⁶⁷ An amending Act was passed in 2010 which provided for domicile reservation for residents of Telangana.⁶⁸ The amending Act of NUJS does not mention any particular authority of the University.⁶⁹ This was an enactment by the state government which does not mention where they are drawing the power to amend this statute. The statute of RGNUL too has provision for a General Council which has plenary authority.⁷⁰ The Regulations of RGNUL

⁶⁵ Chanakya National Law University, 'Brochure' (2021) <<https://consortiumofnlus.ac.in/clat-2021/nlus/brochure/CNLU.pdf>> 3, Bihar (In Admission in Educational, Institutions) Reservation Act, 2003

(Bihar Act No. 16 of 2003), s 2 <<http://www.bareactslive.com/BIH/bh665.htm>> accessed 12 January 2021

⁶⁶ Hidayatullah National Law University, 'B.A. LL. B (HONS.) Intake and Reservation' <hnlul.ac.in/hnlul/programs/b-a-ll-b-hons/> accessed 13 January 2021

⁶⁷ National Academy of Legal Studies and Research University (Amendment) Act, 2010, s 5 <www.nalsar.ac.in/Admissions%202011/StatuteV%20Admission%20Procedure%20for%20admission%20of%20Resident%20Students%20of%20A.P.pdf> accessed 12 January 2021.

⁶⁸ NALSAR Amendment Act (n 59), 1.

⁶⁹ See, *Shreya Sinha v. West Bengal National University for Juridical Science* for The West Bengal National University of Juridical Sciences (Amendment) Act, 2018, s 4A (3) <main.sci.gov.in/supremecourt/2020/1636/1636_2020_35_1501_23840_Judgement_09-Sep-2020.pdf> accessed 10 January 2021

⁷⁰ The Rajiv Gandhi National University of Law Punjab Act 2006, s 11 <<https://rgnul.ac.in/PDF/72e14666-9dbc-4351-8a85-7331dc758f72.pdf>> accessed 10 January 2021

framed under Section 29 of the RGNUL Act, 2006, provides for 10% reservation for Punjab residents and this has been approved by the Executive Council.⁷¹

a. **Domicile Reservation not provided via Amendment Acts.**

GNLU falls under this category. The notification which declares domicile reservation cannot be found for this college. However, their websites provide for the same.⁷² The statute of GNLU does not vest similar power of statute-making in the General Council as the NALSAR statute. However, it provides for the Executive Council to make certain regulations which determine the eligibility of students.⁷³ Currently, the regulations are not available online.

b. **Unsuccessful Introduction of Statutory Domicile Reservation**

i. **National Law University, Delhi**

The NLU statute confers on the Governing Council the power to make Statutes concerning the administration of the affairs of the University including prescribing the procedures to be followed by the authorities and the officers of the University in the discharge of their functions.⁷⁴ Perhaps, the similar power to introduce domicile reservation could be traced here. However, the decision of NLU Delhi to introduce domicile reservation has been stayed in *Balvinder Sangwan vs NCT of Delhi & Ors.*⁷⁵

ii. **National Law School of India University, Bengaluru**

The Act confers power on the Executive Council to enact regulations which determine eligibility for admission.⁷⁶ It does confer any power of statute-making. The National Law School of India Amendment Act did not locate the power of amendment in this statute. It relied on the fact that NLS is a creature of the State Legislature.⁷⁷ The Amendment was however struck down in *Master*

⁷¹ RGNUL Regulations 'Intake and Reservation' 95-96 <<https://www.rgnul.ac.in/PDF/b50614d3-b419-4d1f-b3fe-45e7aa4fa9a2.pdf>> accessed 10 January 2021

⁷² Gujarat National Law University, 'Intake and Reservations for UG Programme' <<https://www.gnlul.ac.in/GNLU/Under-Graduate-Programme>> accessed 10 January 2021

⁷³ Gujarat National Law University Act, 2003, s 46(1)(f) <gnlu.ac.in/Document/content-docs/7f39e670-1a97-449c-9038-c41788031460.pdf> 10 January 2021

⁷⁴ National Law University of Delhi Act 2007, s. 12(1)(b) <nlu-delhi.ac.in/download/act/Act.pdf>

⁷⁵ *Balvinder Sangwan vs NCT of Delhi & Ors.*, <www.livelaw.in/pdf_upload/pdf_upload-377233.pdf>

⁷⁶ National Law School of India Act, 1986, s 28; s 13 <[http://dpal.kar.nic.in/pdf_files/22%20of%201986%20\(E\).pdf](http://dpal.kar.nic.in/pdf_files/22%20of%201986%20(E).pdf)> accessed 10 January 2021

⁷⁷ National Law School of India (Amendment) Act, 2020, 1 <[https://dpal.karnataka.gov.in/storage/pdf-files/ao2020/13%20of%202020%20\(E\).pdf](https://dpal.karnataka.gov.in/storage/pdf-files/ao2020/13%20of%202020%20(E).pdf)> accessed 10 January 2021

Balachandar Krishnan v. The State Of Karnataka. The Karnataka High Court held that it failed the twin-test Article 14.⁷⁸

Therefore, we see that there is no clear-cut provision for domicile reservation across all NLUs and there is considerable discrepancy. This discrepancy also extends to distribution of seats within domicile reservation.

2. Distribution of Domicile Reserved Seats

The discrepancy seems to continue when one examines the distribution of the domicile seats across the NLUs that do provide for domicile reservation. This section attempts to categorize the current domicile seat distribution pattern in various NLUs into the following sub-categories:

2.1. Horizontal Domicile Reservation

NLIU, Bhopal ⁷⁹ (excl. 18 NRI students)	Category	All India	Domicile
	General	52	50% horizontally reserved.
	SC	16	
	ST	20	
	OBC	14	
GNLU, Gandhinagar ⁸⁰ (excl. 6 Foreign Nationals)	Category	Total No.	Domicile
	General	115	25% horizontally reserved.
	SC	27	
	ST	14	
	EWS	18	
	NRI	18	
RGNUL, Punjab ⁸¹ (excl. 5 Foreign Nationals)	Category	Total No.	Domicile
	General	133	10% horizontally reserved.
	SC	27	
	ST	14	
	Ancestral Resident of Village Sidhuwal	01	
	Category	Total No.	Domicile
	General	46	25% horizontally reserved

⁷⁸ [180] <https://images.assettype.com/barandbench/2021-01/4e8851b5-12db-4e04-88af-00cc5e048fa9/Karnataka_HC_NLSIU_25_Reservation.pdf> accessed 12 January 2021

⁷⁹ NLIU Bhopal, 'Brochure 2021' 2 (Participating Universities CLAT Consortium, 2021) <consortiumofnlus.ac.in/clat-2021/nlus/brochure/NLIU.pdf> accessed 19 April 2021

⁸⁰ GNLU, 'Brochure 2021' 3 (Participating Universities for CLAT 2021) <consortiumofnlus.ac.in/clat-2021/nlus/brochure/GNLU.pdf> accessed 19 April 2021

⁸¹ RGNUL, 'Brochure 2021' 2 (Participating Universities for CLAT 2021) <consortiumofnlus.ac.in/clat-2021/nlus/brochure/RGNLU.pdf> accessed 19 April 2021

HPNLU, Shimla ⁸²	SC	09	
	ST	05	
NLUO, Cuttack ⁸³	Category	All India	Domicile 25% horizontally reserved
		B.A. LL.B.	
	General	64	
	SC	10	
	ST	06	
		BBA. LL.B.	
	General	32	
	SC	04	
	ST	03	

2.2. Domicile-Based ST/SC/OBC Reservation

RMLNLU, Lucknow ⁸⁴		All India
	Unreserved	80
	Foreign National/NRI	16
	Category	Domicile
	SC	34
	ST	03
	OBC	43
EWS	09	
CNLU, Patna ⁸⁵		All India
	Unreserved	66
	Category	Domicile
	SC	21
	ST	01
	Extremely Backward Classes of Bihar	24
	Backward Classes of Bihar	16
Women of Backward Classes of Bihar	04	
MNLU, Mumbai ⁸⁶		All India
	Unreserved	37
	Category	Domicile
	SC	13
	ST	07
De-notified Tribes (A)	03	

⁸² HPNLU, Brochure 2021' 4 (Participating Universities for CLAT 2021) <consortiumofnlus.ac.in/clat-2021/nlus/brochure/HPNLU.pdf> accessed 19 April 2021

⁸³ NLUO, 'Brochure 2021' 6 (Participating Universities for CLAT 2021) <consortiumofnlus.ac.in/clat-2021/nlus/brochure/NLUO.pdf> accessed 19 April 2021

⁸⁴ RMLNLU, 'Brochure 2021' 2 (Participating Universities CLAT Consortium, 2021) <consortiumofnlus.ac.in/clat-2021/nlus/brochure/RMLNLU.pdf> accessed 19 April 2021

⁸⁵ CNLU, 'Brochure 2021' 3 (Participating Universities for CLAT 2021) <consortiumofnlus.ac.in/clat-2021/nlus/brochure/CNLU.pdf> accessed 19 April 2021

⁸⁶ MNLU, Mumbai, 'Brochure 2021' 6-7 (Participating Universities for CLAT 2021) <consortiumofnlus.ac.in/clat-2021/nlus/brochure/MNLU.pdf> accessed 19 April 2021

	Nomadic Tribes (B, C, D)	09
	OBC	19
	Specially-Backward Classes	02
	EWS	10
MNLU, Nagpur ⁸⁷		All India
	Unreserved	46
	Category	Domicile
	SC	16
	ST	08
	De-notified Tribes (A)	04
	Nomadic Tribes (B, C, D)	09
	OBC	23
	Specially-Backward Classes	02
	EWS	12
MNLU, Aurangabad ⁸⁸		All India
	Unreserved	23
	Category	Domicile
	SC	08
	ST	04
	De-notified Tribes (A)	02
	Nomadic Tribes (B, C, D)	05
	OBC	11
	Specially-Backward Class	01
	EWS	06
DNLU, Jabalpur ⁸⁹		All India
	Unreserved	60
	Category	Domicile
	SC	19
	ST	24
	OBC	17
	EWS (supernumerary)	12

2.3. Domicile Reservation in Unreserved Category

NUALS, Kochi ⁹⁰ (excl. 2 Specially-Abled Persons)		All India	Domicile
	General	31	05
	SC	-	05
	ST	-	01

⁸⁷ MNLU Nagpur 'Brochure 2021' 5 (Participating Universities for CLAT 2021) <consortiumofnlus.ac.in/clat-2021/nlus/brochure/MNLUN.pdf> accessed 19 April 2021

⁸⁸ MNLU, Aurangabad, 'Brochure 2021' 8 (Participating Universities for CLAT 2021) <<https://consortiumofnlus.ac.in/clat-2021/nlus/brochure/MNLUA.pdf>>

⁸⁹ DNLU, 'Brochure 2021' 2 (Participating Universities CLAT Consortium, 2021) <<https://consortiumofnlus.ac.in/clat-2021/nlus/brochure/DNLU.pdf>> accessed 19 April 2021

⁹⁰ NUALS, Brochure 2021' 4 (Participating Universities for CLAT 2021) <<https://consortiumofnlus.ac.in/clat-2021/nlus/brochure/NUALS.pdf>> accessed 19 April 2021

	Socially and Economically Backward Classes of Kerala	-	18
NLUJA, Assam ⁹¹		All India	Domicile
	Unreserved	31	05 ⁹²
	SC	-	04
	ST (Plains) of Assam	-	06
	ST (Hills) of Assam	-	03
	Other Backward Classes of Assam/ Minorities	-	16
DSNLU, Vishakhapatnam ⁹³ (excl. 12 Foreign Nationals/NRIs)		All India	Domicile
	General	48	30
	SC	-	09
	ST	-	04
	BC	-	17
	EWS	06	06

2.4. Domicile Reservation in All-India ST/SC Reserved Seats, Only Domicile-Based OBC Reservation

NALSAR, Hyderabad ⁹⁴		All India	Domicile
	General	75	11
	SC	14	04
	ST	07	01
	OBC	-	08
WBNUJS, Kolkata ⁹⁵ (excl. 4 Foreign Nationals, and 18 NRIs)		All India	Domicile
	General	44	22
	SC	10	08
	ST	05	02
	EWS	06	04
	OBC-A	-	01
	OBC-B	-	01
	PWD [horizontal]	03	02
HNLU, Raipur ⁹⁶ (excl. 2 Foreign Nationals,		All India	Domicile
	General	62	33

⁹¹ NLUJA, 'Brochure 2021' 5 (Participating Universities for CLAT 2021) <<https://consortiumofnlus.ac.in/clat-2021/nlus/brochure/NLUJA.pdf>> accessed 19 April 2021

⁹² Horizontal Reservation for Permanent Residents of Assam

⁹³ DSNLU, 'Brochure 2021' 6 (Participating Universities CLAT Consortium, 2021) <<https://consortiumofnlus.ac.in/clat-2021/nlus/brochure/DSNLU.pdf>> accessed 19 April 2021

⁹⁴ NALSAR, 'Brochure 2021' 10 (Participating Universities CLAT Consortium, 2021) <<https://consortiumofnlus.ac.in/clat-2021/nlus/brochure/NALSAR.pdf>> accessed 19 April 2021

⁹⁵ WBNUJS, 'Brochure 2021' 4 (Participating Universities CLAT Consortium, 2021) <<https://consortiumofnlus.ac.in/clat-2021/nlus/brochure/WBNUJS.pdf>> accessed 19 April 2021

⁹⁶ HNLU, 'Brochure 2021' 5 (Participating Universities CLAT Consortium, 2021) <<https://consortiumofnlus.ac.in/clat-2021/nlus/brochure/HNLU.pdf>> accessed 19 April 2021

and 8 NRIs)	SC	12	10
	ST	06	26
	OBC	-	11
NUSRL, Ranchi ⁹⁷		All India	Domicile
	General	27	27
	EWS	03	03
	SC	09	06
	ST	05	16
	EBC	16	05
	BC	-	03
TNNLS, Tiruchirappalli ⁹⁸		All India	Domicile
	General	44	18
	SC (O and A)	09	02 & 08
	ST	04	01
	MBC	-	11
	BC (Muslim)	-	02
	BC (Others)	-	15

2.5. No All-India OBC Reservation, No ST Domicile Reservation

DBRANLU, Sonapat ⁹⁹		All India	Domicile
	General	63	12
	SC	13	02
	ST	07	-
	EWS	07	01
	Wards of landowners of RGEC, Sonapat	-	06
	DSC	-	02
	BC (A and B)	-	07

3. Student & Administration Experience

In order to gauge the experience of the student bodies and administrations across NLUs, a questionnaire was sent to those universities where domicile reservation has been implemented. Following are some conclusions drawn from their responses. An important note of caution here is that responses have been received only by 11 NLUs, and the scenario in others may differ.

⁹⁷ NUSRL, 'Brochure 2021' 4 (Participating Universities CLAT Consortium, 2021) <<https://consortiumofnlus.ac.in/clat-2021/nlus/brochure/NUSRL.pdf>> accessed 19 April 2021

⁹⁸ TNNLU, 'Brochure 2021' 4 (Participating Universities CLAT Consortium, 2021) <<https://consortiumofnlus.ac.in/clat-2021/nlus/brochure/TNNLU.pdf>> accessed 19 April 2021

⁹⁹ DBRANLU, 'Brochure 2021' 4 (Participating Universities CLAT Consortium, 2021) <<https://consortiumofnlus.ac.in/clat-2021/nlus/brochure/DBRANLU.pdf>> accessed 19 April 2021

Additionally, some of the questionnaires have been answered by the administration of the universities, and others by members of the student community. The responses to several questions are subjective, and consequently, the answers may differ from person to person.

1. Aim of introducing domicile reservations: The founding statutes of some universities do not state any reasons and objectives of introducing domicile reservation. In other universities, two broad reasons can be seen (either explicitly given, or interpreted from other provisions): *first*, the upliftment of weaker sections of society, and/or *second*, adequate representation of the state population, usually with a hope that the local population will stay in the respective state and work for its benefit. That being said, in some universities, domicile reservation can be availed only by backward classes (with different metrics of backwards being applied in different NLUs), while in others, domicile seats are reserved horizontally across all categories. What stands out is the Amending Act of NUJS, where the stated object is to make the reservation of seats in consonance with the NLU Acts in other states.

2. Any objection to the introduction of domicile quota by students/ faculty/ alumni/ administration: In several universities, the introduction of the quota was initially objected to by the student body (and in some by the faculty). Objections include loss of “national character”, losing out on meritorious students, lower standards of overall talent and academics, unconstitutionality of domicile reservation, among others.

On the other hand, there has been minimal or no opposition to its introduction in other universities. In some of these universities, domicile reservation has been a part since their inception.

3. Any consultation/negotiation with the state and grant of additional funds after the introduction of domicile reservation: On the issue of consultation, much information is not available. Only one University responded that certain negotiations had taken place between the state government and the University. Another commented that the quota was introduced without any needful consultation with the stakeholders. In NLUs where the quota was introduced as an amendment to the founding act, either no additional grants were provided by the state, or information is not available.

4. Impact on intake of students and demographic profile: It is observed that in those NLUs where the quota was introduced at a later stage since the inception of the university, there has not been any impact on the number of students admitted via the CLAT.

With respect to changes in the demographic profile, opinions vary. Some NLUs quote that domicile reservation has led to a “balanced demographic profile” in the student body, and there has been adequate representation of students across different social strata. A particular NLU notes that even though quantitatively, there has been a concentration of individuals from the state, there still exists significant socio-cultural diversity. On the other hand, a lack of diversity has also been observed in other NLUs. Another NLU, where 65-70% of the students belong to its state, has mentioned the concentration of the state population. Consequently, social events primarily focus on the culture of the state and adjacent areas.

5. Response of the students/ whether there is any stigma attached: This again considerably varies. On one hand, some NLUs note that there is no stigmatisation or othering of the students admitted through the domicile quota. A few NLUs report that the student community is accepting and understanding of the differences in culture and circumstances. On the other hand, discontent is present in certain sections or circles of the student body of other universities. Nonetheless, they delineate this stigma to be suppressed and not a characteristic of the entire body. One particular NLU reports that students in general might be averse to the policy of reservation in general, but not to the domicile reservation in the University, which might be because the quota is capped at only 10%.

6. Impact on legal aid programmes and other social engagement activities: This question *mostly* received a positive response in terms of a beneficial impact of domicile reservations. The local students admitted via the domicile quota are well-versed with local issues, fluent in local language, and aware of the prevailing social conditions. Additionally, one NLU reported that they had contacts with local businesses, which helped in securing sponsorships. Another NLU commented that the introduction of domicile reservations has resulted in more discussions and awareness around numerous socio-political and policy issues. On the contrary, fewer NLUs report no substantial impact.

7. Impact on “national character”: The outlook on this significantly differs, because of different benchmarks set for determining the national character of an NLU. *Mostly*, the universities are of the belief that domicile reservation has negatively affected the national character. Only a few believe that there has been no influence. According to different responses, the benchmarks include the percentage of domicile reservation, concentration of the state’s students, diversity and adequate representation from across the country.

A few NLUs described that since there is an “over-representation” of the state’s students, or the student community is “predominantly regional”, or more than 50% of the university’s population is from the state, the national character has been severely impacted. A particular university also interestingly pointed out that the domicile reservation has not impacted the national character since the quota is capped at 10%, which is significantly lower than many other universities. Another pointed out that using different benchmarks will lead to different results: if the benchmark is diversity, then that has not been affected. However, if adequate representation from all states is measured, then clearly there is an under-representation of certain states. According to another response, national character could have been protected by increasing the student intake. Further, only one NLU considers that domicile quota has in fact contributed to its national character in terms of social mandate.

Nonetheless, at least three universities recognise that NLUs have not been nationalised but are administered by the states, which is why domicile reservation can be justified.

8. Impact on employment opportunities: For newly instituted universities, this is yet to be seen in the long run. For others, correlation is mostly difficult to establish. A few universities responded that there appear to be no particular inclination of local students towards specific careers. For the most part, there is lack of evidence on the same. However, one NLU conjectures that students belonging to the state normally discourage corporate jobs, and “favour jobs at public sector undertakings, state judiciary and civil services”. Another University opines that the aim of domicile reservation of retaining talent within the state has been beneficial, as a significant number of graduates are practicing in the state.

Chapter III: Reviewing Landmark Judicial Decisions on Domiciliary Reservations

This section undertakes a review of the landmark judicial decisions on domiciliary reservations, with a particular focus on the field of education. Primarily decided in the context of medical education, these judgements have laid down the contours of constitutionally permissible domiciliary reservations in both undergraduate and postgraduate courses.

The section first analyses the distinction between the concepts of domiciliary reservation and institutional reservation in education, as laid down by the Supreme Court. It then delves into the constitutional prohibition of residence as a ground for discrimination under Article 16. Even though Article 16 itself is inapplicable to domiciliary reservations in educational institutions, the analysis thereof can provide some immensely relevant insights for the constitutionality of such reservations, as will be discussed. The chapter then examines the primary constitutional challenges raised against domiciliary reservations in educational institutions, specifically with respect to the Right to Equality.

Lastly, it discusses the Indian judiciary's approach towards the constitutional permissibility of domiciliary reservations in education, and the situations in which such reservations have been held to be justifiable. Given that the landmark judgements in this field relate to medical education, the focus of this section will be on cases related to this field, though the section also refers to some of the challenges raised against domiciliary reservations in NLUs in recent times that await final adjudication.

1. Differentiating 'Domiciliary Reservations'

In the jurisprudence surrounding domiciliary reservations in education, the term has been employed to denote the earmarking of seats in educational institutions for students residing in the state where the institution is located, based on such residence. In this context, the term 'domicile' does not bear the connotation associated with it in private international law, where it denotes a uniform legal system (with there being only one 'domicile' of India as a whole).¹⁰⁰ In fact, this incongruence in meaning has led the Supreme Court to highlight the infelicity of the term in the

¹⁰⁰ *Dr Pradeep Jain and others v Union of India and others* (1984) 3 SCC 654 [8].

context of residence-based reservations, and has instructed states to desist from using it.¹⁰¹ Nevertheless, the usage of the term has continued.

Over time, different forms of domiciliary reservations have been implemented in various medical educational institutions. These primarily include (a) reservations requiring the candidate's residence in the state concerned for a certain period of time; (b) for reservations to undergraduate courses, rules mandating that the candidate complete a certain portion of their schooling from educational institutions located in that state.¹⁰² While the latter category of reservations is not *prima facie* based on residence in the state, it effectively requires such residence for the candidate to comply with the attendance and other requirements of the educational institution. Even in the context of NLUs, both these forms of domiciliary reservations have been implemented across institutions.¹⁰³

Domiciliary reservations have often been conflated with institutional reservations. Such confusion was manifest in the Statement of Objects and Reasons of the National Law School of India (Amendment) Act 2020, where the Karnataka Legislature termed the domiciliary reservations introduced in NLSIU as an 'institutional reservation'.¹⁰⁴ The Supreme Court, however, has maintained a categorical distinction between both these terms. In the conception of the Court, as was articulated in *Pradeep Jain v Union of India* and upheld in later judgements, 'institutional reservation' must be understood in "*the sense that a student who has passed MBBS course from a medical college or university, may be given preference for admission to the post-graduate course in the same medical college or university.*"¹⁰⁵ There is hence a clear difference between domiciliary reservations, which are directly or indirectly based on residence within the state, and institutional reservations, which are based on a candidate's undergraduate *alma mater*. Given the scope of this policy brief, only the Court's approach with respect to the former will be analysed in this chapter.

¹⁰¹ *ibid.*

¹⁰² For a summary of the different forms of residence-based reservations that have been adjudicated on, *see Pradeep Jain* (n 1) [9].

¹⁰³ *See* Chapter 1 of this policy brief.

¹⁰⁴ The National Law School of India (Amendment) Act 2020, Statement of Objects and Reasons. [available at www.barandbench.com/news/the-national-law-school-of-india-amendment-bill-passed-by-the-assembly-25-reservations-to-locals-read-bill]

¹⁰⁵ *Pradeep Jain* (n 1) [22].

2. Explicit Constitutional Prohibition against Domiciliary Discrimination: Article 16(2) & 16(3)

Of the various provisions of the Constitution, only Article 16 explicitly bars discrimination on the basis of residence (and creates an exception thereto). This provision is admittedly inapplicable to domiciliary reservations in educational institutions, given the explicit limitation of its scope to “*matters of public employment*”.¹⁰⁶ However, an analysis of the Constituent Assembly’s approach to the relevant parts of the provision, as well as the Supreme Court’s approach towards their rationale and place in the Indian Constitutional framework, still bears immense relevance for the purposes of this chapter. This is because such analysis provides crucial general insights into the status and permissibility of domicile as a ground for reservations in the Indian Constitutional regime. These insights have further reflected in the reasoning of the Court in the adjudication of the constitutional challenges to domiciliary reservations in educational institutions.

Article 16(1) of the Constitution provides all citizens with the fundamental right to equality of opportunity with respect to jobs under the State.¹⁰⁷ Article 16(2) further substantiates this guarantee and lists 7 specific grounds on which citizens cannot be declared ineligible for, or be discriminated against with respect to, any government job.¹⁰⁸ These include, *inter alia*, ‘residence’. The use of the word ‘only’ in the provision implies that these grounds cannot form the sole basis of disparate treatment by the State authority concerned, as is often the case in domiciliary reservations.

Article 16(3) provides an exception to the prohibition in Article 16(2).¹⁰⁹ It vests Parliament with the power to provide for residence requirements for government jobs in any state or Union Territory.¹¹⁰ Hence, providing for domiciliary reservations for state jobs is the sole prerogative of Parliament, and no state government can permissibly allow the same.

¹⁰⁶ See the Constitution of India 1950, art 16. This position of law has also been upheld by the Supreme Court in *Pradeep Jain* (n 1) [6].

¹⁰⁷ The Constituent of India 1950, art 16(1).

¹⁰⁸ *ibid* 16(2).

¹⁰⁹ *A V S Narasimha Rao and others v the State of Andhra Pradesh* (1969) 1 SCC 839 [4].

¹¹⁰ The Constitution of India 1950, art 16(3).

2.1. *Constituent Assembly Debates on Articles 16(2) & 16(3)*

The inclusion of residence as a prohibited ground under Article 16(2), as well as the creation of the exception under Article 16(3), were both carried out through amendments to the draft constitution.¹¹¹ A perusal of the relevant debates surrounding the respective amendments is hence crucial to understand their respective rationales.

The inclusion of ‘residence’ as a ground under 16(2) was primarily driven by the conception of a single citizenship for the whole country, as well as the desire to uphold the unity and integrity of the nation.¹¹² It was argued by those favouring the amendment that the adoption of a single citizenship implied an “*unfettered right and privilege*” for a citizen to gain employment in any part of the country, regardless of residence.¹¹³ Further, it was articulated that domiciliary reservations signalled an unsalutary form of provincialism that had the potential to endanger the unity of the country.¹¹⁴

These views were not unanimously shared among the members of the Assembly. Recognising the views of those favouring domiciliary reservations in government jobs, Dr. B.R. Ambedkar agreed that it might not be permissible to allow people with no roots or connection in a state to benefit from posts therein.¹¹⁵ Article 16(3) emerged as the middle ground in this context. It allowed domiciliary reservations, but made the implementation thereof the sole prerogative of Parliament. Some scholars have interpreted this provision as a “*clever piece of constitutional engineering*” to ensure that domiciliary reservations would effectively sparsely be made.¹¹⁶ Further, the adoption of the clear prohibition against domiciliary reservations prescribed in 16(2) shows that the arguments of those favouring the amendment found acceptance among a substantial portion of the Assembly.

¹¹¹ See CONSTITUTIONAL ASSEMBLY OF INDIA DEBATES (PROCEEDINGS), VOL. 8, Speeches by M. Ananthasayanam Ayyangar (7.63.53) and Alladi Krishnaswami Ayyar (7.63.64) < https://www.constitutionofindia.net/constitution_assembly_debates/volume/7/1948-11-30> accessed 14 April 2021.

¹¹² *ibid* Speech by M Ananthasayanam Ayyangar (7.63.54); *ibid* Speech by Jaspat Roy Kapoor (7.63.56).

¹¹³ *ibid* Speech by M Ananthasayanam Ayyangar (7.63.54).

¹¹⁴ *ibid*.

¹¹⁵ *ibid* Speech by Dr. B.R. Ambedkar (7.63.203).

¹¹⁶ Pratap Bhanu Mehta, ‘The Haryana bill is constitutionally indefensible, politically cynical’ (*The Indian Express*, 5 March 2021) < <https://indianexpress.com/article/opinion/columns/haryana-bill-local-candidates-reservation-7214632/>> accessed 16 April 2021.

2.2. *The Supreme Court on Domicile Reservation in State Jobs*

The Supreme Court has held as unconstitutional the domiciliary reservations in government jobs made by state governments solely based on residence, citing the prohibition in Article 16(2).¹¹⁷ However, it has also gone beyond this provision, and analysed the permissibility of such reservations in India's constitutional framework.

A clear exposition of the Supreme Court's views on this aspect is found in the case of *Pradeep Jain v Union of India*. In this case, the domiciliary reservations provided by various states in medical educational institutions, in undergraduate as well as postgraduate courses, were challenged. Ruling on the permissibility of domiciliary reservations under the Indian constitutional framework, the Court held:

If India is one nation and there is only one citizenship, namely, citizenship of India, and every citizen has a right to move freely throughout the territory of India and to reside and settle in any part of India, and... is entitled to equality before the law and equal protection of the law with other citizens in every part of the territory of India, it is difficult to see how a citizen having his permanent home in Tamil Nadu or speaking Tamil language can be regarded as an outsider in Uttar Pradesh... He must be held entitled to the same rights as a citizen having his permanent home in Uttar Pradesh or Karnataka, as the case may be.

To regard him as an outsider would be to deny him his constitutional rights and to derecognise the essential unity and integrity of the country by treating it as if it were a mere conglomeration of independent States [...] ¹¹⁸ "sons of the soil" claims, though not altogether illegitimate if confined within reasonable bounds, are breaking as under the unity and integrity of the nation by fostering and strengthening narrow parochial loyalties based on language and residence within a State.¹¹⁹

The Court in *Pradeep Jain*, hence, found the claims for domiciliary reservations that were based solely on residence in the state concerned as militating against the constitutional guarantees and ethos. However, it did not rule on the constitutionality of any of the domiciliary reservation policies existing in government jobs at the time, even as it expressed that many of them were *prima facie* unconstitutional for violating Article 16(2).¹²⁰ This is because the legal issue before the Court was different: namely, the constitutionality of various domiciliary reservation policies in educational institutions, to which Article 16(2) is inapplicable.¹²¹ However, the approach and reasoning in

¹¹⁷ See *Narasimha Rao* (n 10).

¹¹⁸ *Pradeep Jain* (n 1) [3]

¹¹⁹ *ibid* [4].

¹²⁰ *ibid* [5].

¹²¹ See *ibid* [6].

Pradeep Jain has been cited and followed in subsequent judgements dealing with domiciliary reservations in government jobs as well. The intention of Article 16(2) has been held to be to ensure, *inter alia*, that the employment opportunities in one part of India are open to the residents of other parts of the country.¹²² Further, arguments for preferential treatment based merely on residence in an area have been held to be marked by “*overtones of parochialism*”.¹²³ It has been upheld that residence alone cannot be a ground to accord preferential treatment to any citizen, save as provided under Article 16(3).¹²⁴ Even the language of Article 16(3) has been interpreted narrowly, citing its status as an exception to an emphatic prohibition-rule under 16(2), as well as the intention of the framers.¹²⁵

Given that Article 16 is not applicable to the field of education, the prohibition thereunder is not directly pertinent for the purposes of this chapter. Nevertheless, the abovementioned approach of the Constituent Assembly, and the views of the Supreme Court regarding domiciliary reservations, have also been reflected in the adjudication of the constitutional challenges to such reservations in educational institutions. These challenges, and the Court’s response thereto, will subsequently be discussed.

3. On the Constitutionality of Domiciliary Reservations in Education

3.1. Primary Constitutional Challenges

In Courts, provisions mandating domiciliary reservations in education have primarily been challenged on the anvil of the Right to Equality, specifically with respect to Articles 14-16. This is because they create two classes of aspirants, those residing in the State and those from outside the State, and earmark some seats for the former. However, the arguments relating to articles 15 and 16 have been dismissed at the outset. With respect to Article 15, the Supreme Court has maintained a categorical distinction between ‘place of birth’ and ‘residence’, with the latter not being a prohibited ground under the provision.¹²⁶ With respect to Article 16, the provision’s focus on

¹²² *Narasimha Rao* (n 10) [4].

¹²³ *Kailash Chand Sharma v State of Rajasthan and others* (2002) 6 SCC 562 [13].

¹²⁴ *ibid.*

¹²⁵ *Narasimha Rao* (n 10) [9]; *ibid* [15].

¹²⁶ *Pradeep Jain* (n 1) [6].

employment, and not education, has been noted to substantiate its inapplicability.¹²⁷ Hence, the fundamental rights challenge that has been sustained, and succeeded on occasion, is the Article 14 challenge.

The scope of the fundamental right under Article 14 hence becomes immensely relevant. Over time, two tests have been evolved by the Supreme Court to analyse whether a State action is permissible under Article 14: the ‘reasonable classification’ test and the ‘arbitrariness’ test.¹²⁸ Both have been applied with respect to domiciliary reservations.

Under the reasonable classification test, the classificatory rule must satisfy two conditions:¹²⁹

1. The Classification must be Founded on an Intelligible Differentia

In the original version of test (see *State of West Bengal v Anwar Ali Sarkar*), this component only mandated a real and substantial distinction between the members of a group and those outside the same.¹³⁰ Hence, if the distinction was such that there was no reasonable doubt about the group to which a particular person belonged, the classification was held to have satisfied this component.¹³¹ However, through cases such as *Subramanian Swamy v Director, CBI and Ors*, the justifiability of the object/purpose for the classification has also been included as an essential condition for the differentia to be ‘intelligible’.¹³² This becomes important in the context of domiciliary reservations, where the judiciary has clearly specified the purposes for which domiciliary reservations can justifiably be made.

2. Rational Nexus between Classification and the Object of State Action

This condition probes whether the classification is connected to, and geared towards achieving, the purpose/ object of the State action. Under this question, Indian Courts generally inquire whether the classification is appropriately framed to be able to achieve the object.¹³³

¹²⁷ *ibid.*

¹²⁸ V N Shukla, *Constitution of India* (first published 1950, 13th edn, EBC 2017) 52, 80-81.

¹²⁹ *ibid.* 52.

¹³⁰ *State of West Bengal v Anwar Ali Sarkar* AIR 1952 SC 75 [44].

¹³¹ Tarunabh Khaitan, ‘Equality: Legislative Review under Article 14’ in Sujit Choudhary, Madhav Khosla and Pratap Bhanu Mehta (eds), *The Oxford Handbook of the India Constitution* (OUP 2016).

¹³² *Subramanian Swamy v Central Bureau of Investigation* (2014) 8 SCC 682 [68], [70]; *ibid.*

¹³³ Tarunabh Khaitan (n 32).

Under the arbitrariness test, any State action must be just, fair and reasonable, and not arbitrary and fanciful.¹³⁴ In the context of domiciliary requirements, this requirement has been held to be satisfied where the conditions laid down by the Court, as will subsequently be discussed, have been met.

Over time, the Supreme Court has laid down the contours of permissible domiciliary reservations in education under Article 14. In the medical field, such reservations have only been allowed in undergraduate courses. For postgraduate and super-speciality courses, it has been held that the requirements of skill and expertise in these courses preclude any deviations from merit that are based on residence.¹³⁵ The following sections will hence focus on the judicial interpretation regarding constitutionally permissible domiciliary reservations in undergraduate medical courses.

3.2. The Supreme Court's Analysis in the Light of Article 14

The constitution bench judgement in *DP Joshi v The State of Madhya Bharat* is often cited to support the claim that domiciliary reservations aimed at the benefit of the state's residents are justified under Article 14.¹³⁶ However, this approach is erroneous on two counts. *Firstly*, the ratio of the case framed by its facts, which, in this case, related to the imposition of a capitation fee on students who were not *bona fide* residents of Madhya Bharat.¹³⁷ The challenge was thus about the unconstitutionality of the capitation fee, and did not relate to domiciliary reservations: the concept of domicile was only involved as the same was pertinent to the determination of *bona fide* residents of the state.¹³⁸ The case can hence not be cited for blanket justifications of domiciliary reservations of seats in educational institutions.

Secondly, as has been witnessed in this case and also subsequent Supreme Court judgements, there has been no blanket and unqualified endorsement of residence-based classifications in educational institutions. On the contrary, domiciliary reservations based only on residence have been held to be generally impermissible under the Indian constitutional framework. Even as India adopted a federal model, the Constitution specifies that there is to be only one citizenship in India: that of the country, not of the states.¹³⁹ Further, under the Constitution, the Right to free movement and

¹³⁴ *EP Royappa v State of Tamil Nadu and another* (1974) 4 SCC 3 [85].

¹³⁵ *Saurabh Chaudri and ors v Union of India and ors* (2003) 11 SCC 146 [48].

¹³⁶ See, for example, Alok Kumar, 'Domicile Reservations in National Law Universities' (2020) 55(28) *Economic and Political Weekly* 12, 12.

¹³⁷ *DP Joshi v The State of Madhya Bharat* [1955] 1 SCR 1215 [1].

¹³⁸ *ibid* [4].

¹³⁹ *Pradeep Jain* (n 1) [3].

residence throughout the territory of India (subject to reasonable restrictions) is guaranteed.¹⁴⁰ As highlighted by the Supreme Court,¹⁴¹ in such a constitutional framework, persons from a state cannot claim preference for admission to educational institutions over other, more meritorious students (as per the qualifying examination) on the sole ground of belonging to the federal unit concerned. This principle is reflected in the Supreme Court's observations in *Pradeep Jain*, where the Court, while discussing the constitutionality of domiciliary reservations, held:

It would run counter to the basic principle of equality before the law and equal protection of the law if a citizen by reason of his residence in State A, which ordinarily in the commonality of cases, would be the result of his birth in a place situate within that State, should have opportunity for education or advancement which is denied to another citizen because he happens to be resident in State B... no citizen can legitimately, without serious detriment to the unity and integrity of the nation, be regarded as an outsider in our constitutional set-up.¹⁴²

Based on this reasoning, the Court held domiciliary reservations to be unconstitutional as a general rule, except in specified circumstances as will subsequently be discussed.¹⁴³ Similar observations were made in *Dr. Jagdish Saran v Union of India*, where the Court emphasised the constitutional value of “*equal opportunity for all across the nation to attain excellence*” (emphasis added) especially in an era when the “*country is gradually being 'broken up into fragments by narrow domestic walls' in politics, economics and education*”.¹⁴⁴

Hence, domiciliary reservations have been permitted in the medical field only when the classification is geared towards the achievement of some constitutionally permissible and legitimate objects. The Court has recognised two such legitimate purposes, which broadly relate to substantive equality of opportunity (in the Court's words, “*equality of opportunity for education and advancement*”).¹⁴⁵ Further, it has also ruled on the factors that govern the extent of permissible domiciliary reservations, in terms of the percentage of seats reserved. These aspects will be discussed in the next section.

¹⁴⁰ The Constitution of India 1950, art 19(1)(d) and 19(1)(e).

¹⁴¹ See *Pradeep Jain* (n 19) and (n 20).

¹⁴² *Pradeep Jain* (n 1) [10].

¹⁴³ *ibid* [10], [11], [13], [14].

¹⁴⁴ *Dr. Jagdish Saran and others v Union of India* (1980) 2 SCC 768 [16].

¹⁴⁵ *Pradeep Jain* (n 1) [4].

4. On the Constitutional Contours of Permissible Domiciliary Reservations

4.1. *The Legitimate Purposes for the Introduction of Domiciliary Reservations in Education*

The Supreme Court has identified two purposes for which domiciliary reservations can permissibly be introduced under the Indian constitutional framework.

1. States' Benefit from Graduates Residing there post graduation

The first constitutionally permissible object for a domicile classification is the benefit of the state from some of the students practicing in the state after the completion of their studies. Even *DP Joshi* had considered the capitation fee requirement as constitutionally permissible on similar grounds. As the Supreme Court noted in *Pradeep Jain* about *DP Joshi*, “*here discrimination was based on residence within the State of Madhya Bharat and yet it was held justified on the ground that the object of the State in making the Rules was to encourage students who were residents of Madhya Bharat to take up the medical course so that "some of them might, after passing out from the college, settle down as doctors and serve the needs of the locality"* and the classification made by the Rule had rational relation to this object. This justification of the discrimination based on residence obviously rest on the assumption that those who were bona fide residents of Madhya Bharat would after becoming doctors settle down and serve the needs of the people in the State”.¹⁴⁶ Even in cases adjudicating squarely on domiciliary reservations, the states’ right to introduce domiciliary reservations have been traced to their entitlement to formulate “*just schemes for classification... which would serve the purpose to provide medical aid to the people of the state*”.¹⁴⁷ In such permitted classifications, the object sought to be achieved is that the student serves the state concerned.¹⁴⁸

2. Equality of Opportunity in Education for Students from Backward Regions

The second purpose for which domiciliary reservations can legitimately be introduced is to ensure equality of opportunity in medical education, in light of the backwardness of (a) the regions or (b)

¹⁴⁶ *ibid* [14].

¹⁴⁷ *Kumari N Vasundara v State of Mysore and another* 1971 (2) SCC 22 [7].

¹⁴⁸ *Rajdeep Ghosh v State of Assam and another* (2018) 17 SCC 524 [31].

the state in favour of which the provision is made.¹⁴⁹ It has been recognised that to ensure equality of opportunity for students from such areas, who might not have had adequate opportunities for personal and professional development, domiciliary reservations may be necessary.¹⁵⁰

4.2. *Extent of Permissible Domicile Reservations*

As the preceding discussion shows, the Court has emphasised on equality of opportunity (to access to medical aid for the people of a state, or to educational opportunities) being the foundation for permissible domiciliary reservations. This conception has also been reflected in the Court's analysis regarding the permissible extent of domiciliary reservations. It has been held that the exact percentage of seats that can legitimately be reserved for the residents of a state has to be decided on a case-to-case basis.¹⁵¹ In such a determination, various factors have been taken into account, such as the opportunities for professional development in that state, and the level of educational development of the area where the institution is located.¹⁵² In specific, the Court has held that a relatively high percentage of domiciliary reservations would be permissible in an educational institution located in an area that does not have adequate opportunities for education, and is socially and educationally backward.¹⁵³

4.3. *Legal Implications of Demarcating 'Permissible Objects'*

The legal implications of such a demarcation of permissible objects are twofold. *Firstly*, classifications not introduced for the abovementioned purposes are liable to be struck down as unconstitutional, for the lack of an intelligible differentia. The process of finding the object of a piece of legislation was discussed in *Shashikant Laxman Kale and others v Union of India and others*. In this case, the Supreme Court explained how the purpose/object of any Act could be framed as providing a remedy for a malady that the Act was intended to cure.¹⁵⁴ To understand the nature of the malady and the purpose of a piece of legislation, it was held permissible to look at the circumstances that prevailed when the law was passed and which, in the legislature's eyes, necessitated the passing of that law. In the process, even the social and historical context of the

¹⁴⁹ *Pradeep Jain* (n 1) [18].

¹⁵⁰ *Pradeep Jain* (n 1) [18]; *Saurabh Chaudri* (n 36) [51].

¹⁵¹ *Pradeep Jain* (n 1) [21]; *Dr. Dinesh Kumar and others (II) v Motilal Nebru Medical College, Allahabad and others* (1986) 3 SCC 727 [1].

¹⁵² *ibid.*

¹⁵³ *ibid.*

¹⁵⁴ *Shashikant Laxman Kale and others v Union of India and others* AIR 1990 SC 2114 [15].

law, which could not be used for statutory interpretation, could be utilised.¹⁵⁵ The Statement of Objects and Reasons of the law could be examined for appreciating the background of the law and the factual matrix leading to it.¹⁵⁶

An example of a domiciliary reservation that was not introduced for the constitutionally specified purposes was the NLSI (Amendment) Act. An examination of the background of the Act and the arguments put forth by the Government at various points, as well as the Statement of Objects and Reasons, reveals the object of the Amendment Act to be remedying the supposed ‘deprivation of opportunity’ faced by Karnataka students because of the lack of domicile reservations in NLSIU, the ‘opportunity’ here referring to domiciliary reservations (and not to educational opportunities).¹⁵⁷ The Statement presents domicile in NLSIU as a right of Karnataka students by citing the presence of the same in nineteen other NLUs and making the assertion that “National Law School of India University, Bangalore is a creature of the State Legislature”.¹⁵⁸ Hence, the Amendment Act was not framed for the purpose of securing state benefit from graduates’ settling down there after graduation, or equality of opportunity for students from backward regions.

Secondly, even if classifications are framed for the aforementioned purposes, they might not facilitate the achievement of such objects. In such a case, they would be liable to be struck down for the lack of a rational nexus between the classification and the object. In the context of the object of state benefit, such a situation could arise where the assumption that the graduates of a state would settle down in that state after graduation is rendered untenable by available data. Such an assumption has been argued to be untenable in the context of legal education.¹⁵⁹ If the assumption is disproved in court through concrete data, the rational nexus between the classification and the object could be negated. With respect to the second object of equality of opportunity in medical education, such a situation could arise where the classification effectively operates to earmark seats for the privileged sections within the area concerned. Such a possibility was highlighted by the Karnataka High Court in the context of the NLSI (Amendment) Act, and will be further discussed in the next chapter.

¹⁵⁵ *ibid* [16], [17].

¹⁵⁶ *ibid* [16].

¹⁵⁷ The National Law School of India (Amendment) Bill 2020, Statement of Objects and Reasons. [available at www.barandbench.com/news/the-national-law-school-of-india-amendment-bill-passed-by-the-assembly-25-reservations-to-locals-read-bill]

¹⁵⁸ *ibid*.

¹⁵⁹ Saumya Singh and Devansh Kaushik, ‘The state domicile in the ‘National’ Law School’ (*Bar and Bench*, 10 May 2020) <www.barandbench.com/apprentice-lawyer/the-state-domicile-in-the-national-law-school> accessed 27 June 2020.

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In the context of domiciliary reservations in NLUs, there have been various constitutionality challenges before different courts in the recent past. In specific, the reservations in NLSIU, NLUD, and NUJS have been challenged before the respective High Courts. However, as of the present date, only the petition challenging the NLSI (Amendment) Act has been adjudicated on merits. The judgement in the case will be discussed in the next section.

Chapter IV: Critical Comment on the Karnataka High Court Judgment

The Karnataka HC judgement dated 29th September, 2020, involves petitioners who have clubbed writ petitions and 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.¹⁶⁰ 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. Sub-section (3) to Section 4 of the National Law School of India Act, 1986 (Karnataka Act No.22 of 1986) is also challenged.¹⁶¹

The following section will discuss some of the most important issues that have been discussed and analysed in the judgement.

NLSIU: An Institute of National Importance?

The respondents made an argument that only the Executive Council has the discretion to make reservations. This is flawed because reservation cannot be a “discretion” of the Executive Council. For instance, the Central Educational Institutions (Reservations in Admissions) Act, 2006 and University Grants Commission (UGC) Guidelines mandate the Universities to implement 27 per cent reservation for OBCs both in admissions and in recruitment. This is something which National Law School of India University (NLSIU), one of the respondents, should also follow but it has failed to do so till date. Therefore, this is not something which can be the discretion of the Executive Council but needs to be mandatorily reserved. The National Commission for Backward Classes in line with the above has also directed the UGC to act against NLUs not following OBC, domicile reservations.¹⁶²

Another argument made was about the role which the Bar Council of India (BCI) played in setting up NLSIU, in order to highlight the “national importance” of the law school and exclude State

¹⁶⁰ *Master Balachandran Krishnan v. The State of Karnataka*, In Writ Petition No. 8788 of 2020.

¹⁶¹ Sub-section (3) to Section 4 reads, “Notwithstanding anything contained in this Act and the regulations made thereunder, the school shall reserve horizontally twenty five percent 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.”

¹⁶² “High time NLUs set right their admission process”, NCBC directs UGC to act against NLUs not following OBC, domicile reservations” *Bar and Bench* (11 June, 2020) available at www.barandbench.com/news/ncbc-directs-ugc-to-act-against-nlus-not-following-obc-domicile-student-reservations <last accessed 18 August, 2021>.

Legislature from making laws with respect to NLSIU. It also says that the BCI did not play such an active role in the establishment of any other Universities. The level of BCI's involvement cannot be the sole decisive factor to understand the "national importance" which is to be accorded to NLSIU and to consequentially exclude the State Legislature from making laws with respect to the same. The emphasis on 'model' and 'national' nature of the Institution to emphasise that it is not a State-institution even if UGC considers it as such, to not let the State enter into the picture is based on shaky legal grounds.

CLAT: A Metric of Merit?

The respondents claim in support of their argument that "the admission of students to the respondent institution is by an All-India Test, namely CLAT" to point out to the fact that "meritorious students are drawn from all over India which adds to the diversity of the student base."

However, recent studies, at both the NLSIU and at NUJS show how unrepresentative the student body at these institutions are of the wider population of India. "National" entrance exams, such as the CLAT tend to favour the already privileged students and reinforce existing inequalities in society. The emphasis on merit and ranking gives students a heightened sense of entitlement and a superiority complex based on their CLAT ranking and the relative ranking of their institution in the wider scheme of things.¹⁶³

The idea that domicile reservations affect the "standards" of the institution is a flawed argument based on the belief that a CLAT ranking is an accurate assessment of the "merit" of the students taking up the study of law. The unstated argument is that an NLU is only as good as the sum total of the CLAT ranks of the students who get in. This is only a repackaging of the "merit" argument used to argue against reservations for Dalits and Adivasis and deserves to be rejected for the same reasons. In a diverse country with states divided on a linguistic basis, this has led to the creation of literal islands i.e., institutions whose students fly in and fly out, forming little by way of long-lasting bonds with communities around them.¹⁶⁴

¹⁶³ Alok Prasanna Kumar, 'Domicile Reservations in National Law Universities' (2020) 55(28) Economic and Political Weekly.

¹⁶⁴ Chirayu Jain, Spadika Jayaraj, Sanjana Murleedharan, Harjas Singh, Marc Galanter, 'The Elusive Island of Excellence – A Study on Student Demographics, Accessibility and Inclusivity at National Law School 2015-16' (2016) Available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2788311.

Conceptualizing Legal Education as Radically Different from Medical Education

The court in arriving at the conclusion it did, discussed numerous cases regarding reservation in the medical field. However, it distinguished it from reservation in the present case giving the rationale that medical field forms a class apart. This is because medical graduates are people who would ultimately serve the society and thereby achieve the goals of the Constitution.¹⁶⁵ Therefore, 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. Additionally, the court also said that Court said that they can't expect lawyers/ advocates to stay in the same state like doctors – Section 30 of the Advocates Act, 1961 allows them to practise anywhere they want in the country.¹⁶⁶

The conceptualisation of legal education as something radically different from medical education fails to acknowledge the nature of legal aid (Art 39 a)¹⁶⁷ with legal education as analogous to the case of public health and medical education. There is an argument made that lawyers can practice under State Bar and so one cannot be sure if they will stay in the same state to help achieve these constitutional goals. This fails to consider that even without the encouragement (or sometimes in the face of the hostile antagonism of) their universities, students have been able to work with local communities to help them with their problems. That said, these instances stand far apart as exceptions, and not the rule.¹⁶⁸

Overriding Effect of *Non-obstante* Clause

The National Law School of India (Amendment) Act, 2020 sought to amend Section 4 of the National Law School of India Act, 1986 by introduction of sub- section (3), in the form of a non-obstante clause which mandates twenty five percent horizontal reservation.¹⁶⁹ The court said that

¹⁶⁵ The Constitution of India 1950, Articles 41 and 47: *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.*

¹⁶⁶ *Master Balachandran Krishnan v. The State of Karnataka*, In Writ Petition No. 8788 of 2020, para 140.

¹⁶⁷ The Constitution of India 1950, Article 39a.

¹⁶⁸ Alok Prasanna Kumar, 'Domicile Reservations in National Law Universities' (2020) 55(28) Economic and Political Weekly.

¹⁶⁹ Section 2 of The National Law School of India (Amendment) Act, 2020: *"In section 4 of the National Law School of India Act, 1986 (Karnataka 22 of 1986) after sub- section (2), the following shall be inserted, namely:- (3) Notwithstanding anything contained in the Act and the regulations made thereunder, the school shall reserve horizontally twenty five percent of seats of seats for students of Karnataka."*

in their view the non-obstante clause in the amendment cannot be pressed into service so as to give it an over-riding effect. This is particularly so, when Section 21 of the National Law School of India Act, 1986 has an overriding effect over all other laws or any instrument having effect by virtue of any law other than the Act.¹⁷⁰ 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.¹⁷¹

The court's reasoning does not hold ground as an Amendment act is a later law which came after the introduction of the Act (including all its sections). It was held in the Supreme Court case of *State of West Bengal and Anr. v. Madan Mohan Ghosh and Ors.*, that when there is a conflict between prior and subsequent law, it is the latter that prevails.¹⁷² Therefore, the amendment act will prevail irrespective of the non- obstante clause and section 21. An amendment is a new position of law, so when that amendment is passed, it is presumed that legislature kept in mind the non-obstante clause and chose to create an exception to it. So, amendment will prevail in case of conflict. This is contradictory to what the court has ruled.

The issue pertaining to the constitutionality of the amendment introducing twenty five percent horizontal reservation for students completed 10 years of schooling in Karnataka is a separate issue which merits further analysis. The same should not be conflated with the established legal principle of amendment prevailing over the statute.

‘National Character’ and Domicile Reservation

The proponents of the NLU-model of legal education argue that the NLUs established by the enactments of their respective state legislatures are analogous to ‘institutions of national importance,’ (INIs) at par with the roster of the Indian Institute(s) of Technology (IITs), the Indian Institute(s) of Management (IIMs), and the All-India Institute(s) of Medical Sciences(s). As INIs, the NLUs are argued to be autonomous bodies that should be governed with a national vision in mind, and not limited by the State boundaries where they may have been incorporated/established. However, such arguments conflate the normative character of the NLUs with their actual institutional and legal form, as discernible from a matrix of laws summarized in the following

¹⁷⁰ Section 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.*

¹⁷¹ *Master Balachandran Krishnan v. The State of Karnataka*, In Writ Petition No. 8788 of 2020, para 126.

¹⁷² *State of West Bengal and Anr. v. Madan Mohan Ghosh and Ors.*, Appeal (civil) 3195 of 2002.

section – which, *first*, differentiates NLUs from INIs on the basis of their constituent statutes; and, *second*, discuss the subject of reservation within this institutional framework.

1. *On the Institutional Form of NLUs*

A simple distinction that can be drawn between the NLUs and the INIs is one along the lines of the grammar of ‘institution of importance’ that pervades the parent statutes of the INIs – in terms of long titles and declarations to this effect: this is true for *inter alia* the IITs,¹⁷³ the IIMs,¹⁷⁴ the NITs,¹⁷⁵ and the AIIMS¹⁷⁶ – (emphasis supplied). However, skepticism about the national character of NLUs and the legislative intent behind actualizing the NLSIU’s founders’ vision for a premier law institute at par with the institutions that were or have since been declared INIs – would warrant a more detailed investigation of these institutional designs, which are admittedly similar in a structural sense. However, the distinction between the two sets of institutions becomes immediately apparent by looking at how they are treated by the University Grants Commission (UGC).

In Section 2(f) of the University Grants Commission Act, 1956 (‘UGC Act’), a ‘university’ has been defined to mean: “...*a University established or incorporated by or under a Central Act, a Provincial Act or a State Act, and includes any such institution as may, in consultation with the University concerned, be recognized by the Commission in accordance with the regulations made in this behalf under this Act;*” vide Section 3 of the Act, the Central Government is also empowered to “...*on the advice of the Commission, declare by notification in the Official Gazette, that any institution for higher education, other than a University, shall be*

¹⁷³ The Indian Institute of Technology Act, 1961, **long title** “*An Act to declare certain institutions of technology to be institutions of national importance and to provide for certain matters connected with such institutions and the Indian Institute of Technology, Kharagpur*”; §2 – “*Whereas the objects of the institutions known as the Indian Institute of Technology, Bombay [...] are such as to make them institutions of national importance, it is hereby declared that each such institution is an institution of national importance*” ... (emphasis supplied)

¹⁷⁴ The Indian Institute of Management Act, 2017, **long title** “*An Act to declare certain Institutes of management to be institutions of national importance with a view to empower these institutions to attain standards of global excellence in management, management research and allied areas of knowledge and to provide for certain other matters connected therewith or incidental thereto*”; §2 – “*Whereas the objects of the Institutes mentioned in the Schedule¹⁷⁴ are such as to make them institutions of national importance, it is hereby declared that each such Institute is an institution of national importance*” ... (emphasis supplied)

¹⁷⁵ The National Institutes of Technology, Science Education and Research Act, 2007, **long title** – “*An Act to declare certain institutions of technology, science education and research to be Institutions of national importance and to provide for instructions and research in branches of engineering, technology, management, education, sciences and arts and for the advancement of learning and dissemination of knowledge in such branches and for certain other matters connected with such institutions*”; §2 – “*Whereas the objects of the institution mentioned in the First Schedule, the Second Schedule and the Third Schedule are such as to make them Institutions of national importance, it is hereby declared that each such institute is an Institution of national importance*” ... (emphasis supplied)

¹⁷⁶ The All-India Institute of Medical Sciences Act, 1956, §5 – “*It is hereby declared that the institute shall be an institution of national importance*” ... (emphasis supplied)

deemed to be a University for the purposes of this Act, and on such a declaration being made, all the provisions of this Act shall apply to such institution as if it were a University within the meaning of clause (f) of section 2.”

In exercise of its power under the UGC Act,¹⁷⁷ UGC has made regulations prescribing the minimum standard of instructions to be observed at a ‘university’, within the meaning of Sections 2(f) and 3 of the Act.¹⁷⁸ However, the UGC recognizes INIs as a different class of degree-conferring institutes from the Universities defined in Sections 2(f) and 3; this is evident from Section 22(1) of the Act which reads:

“The right of conferring or granting degrees shall be exercised only by a University established or incorporated by or under a Central Act, a Provincial Act or a State Act **OR** an institution deemed to be a University under section 3 **OR** an institution specially empowered by an Act of Parliament to confer or grant degrees”
..... (emphasis supplied)

The UGC identifies three classes of degree conferring institutions: those under Section 2 clause (f), those under Section 3, and a third ‘*institution specially empowered by an Act of Parliament to confer or grant degrees.*’ Under Section 12A of the UGC Act, the UGC may only treat such institutions as ‘universities’ for the limited purpose of Section 12A,¹⁷⁹ whereby the UGC may prescribe necessary enhancements and caps on the fees that these institutions can charge. Beyond this the UGC Act does not envisage a more integrated functional role of the UGC in the functioning of such INIs. On the contrary, the UGC plays a much more significant and extensive role in the functioning of NLU, as can be exemplified by reviewing the functioning of the NLSIU.

The powers of the General Council of the NLSIU were modified in compliance with the recommendations of the UGC, in 1993¹⁸⁰ – suggesting that the NLSIU remains within the purview of the UGC despite its apparent autonomy. The UGC acknowledges as much when it declares the NLSIU fit to receive its grants under Section 12B of the UGC Act,¹⁸¹ in a roster of universities

¹⁷⁷ University Grants Commission Act, 1956, §26(1)(f)

¹⁷⁸ UGC Regulations, 1985 Regarding the Minimum Standards of Instruction for the Grant of the First Degree through Formal Education, UGC Letter No. F. 1-117/83(CP) (25th November 1985) (hereinafter ‘UGC Regulations, 1985’); See: Regulation 2

¹⁷⁹ University Grants Commission Act, 1956, §12A(1)(h) – “*In this section [...] “university” means a university or institution referred to in sub-section (1) of section 22*”

¹⁸⁰ National Law School of India Amendment Act, 1993 – “*Under section 9 of the National Law School of India Act, 1986, the General Council is described as the supreme authority of the school. Since the role of the General Council is advisory in nature it is proposed to describe the General Council as chief advisory body and it is also considered necessary to modify the powers of the General Council suitably. The proposal is in pursuance of the suggestion made by the University Grants Commission. This Bill seeks to replace the National Law School of India (Amendment) Ordinance, 1992. Hence the Bill.*” (Obtained from L.A. Bill No. 20 of 1992).

¹⁸¹ University Grants Commission Act, 1956, §12B – “*No grant shall be given by the Central Government, the Commission, or any other organisation receiving any funds from the Central Government, to a University which is established*

which includes other NLUs but not any of the aforementioned IITs, IIMs, NITs or AIIMSs.¹⁸² Clearly, there is a functional difference between the INIs and other Universities established by State legislations – such as the NLUs – despite appeals to a principled and even structural similarity between the two sets of institutions.

Since INIs can be differentiated from ‘universities’ (as under Section 2 clause (f) and Section 3 of the UGC Act), a number of UGC regulations do not apply to them in the same way they may be applicable to other NLUs. It is for this reason that any statutory provisions for reservation at these institutions are aimed at a diverse array of differently defined classes. For instance, the enabling provision envisaging reservations at the IITs is framed as a general clause protecting against any structural disadvantage that an individual may face on the grounds of a protected identity attribute, as indicated by the Indian Institute of Technology Act, 1961.¹⁸³ This language is mirrored by the National Institutes of Technology, Science Education and Research Act, 2007,¹⁸⁴ which establishes the NITs. On the other hand, such a provision – or any other provision discussing reservation in any form – is altogether absent from the All-India Institute of Medical Sciences Act, 1956. More notably, the Indian Institute of Management Act, 2017, comprehensively provides for special provisions to be made in the process of employment or admission.¹⁸⁵ The texture of such reservation provisions is markedly different from the statutory reservation approach followed by NLUs; this has been discussed in detail in the following sub-section.

2. The Implications for Reservation at NLUs

Having differentiated the NLUs from INIs, and having shown the oversight of the UGC over the functioning of the NLUs – it needs to be shown how reservations play out in this institutional matrix. Under regulation 2 of the minimum standards of instruction regulation of the UGC dealing

after the commencement of the University Grants Commission (Amendment) Act, 1972, unless the Commission has, after satisfying itself as to such matters as may be prescribed, declared such University to be fit for receiving such grant”

¹⁸² List of State Universities which are included under Section 12(B) of the UGC Act, 1956 and are eligible to receive Central assistance as on 14.12.2020

[<www.ugc.ac.in/oldpdf/State%20University/State%20University%2012\(B\).pdf >](http://www.ugc.ac.in/oldpdf/State%20University/State%20University%2012(B).pdf)

¹⁸³ The Indian Institute of Technology Act, 1961, §7(1) – “*Every Institute shall be open to persons of either sex of whatever race, creed, caste or class, and no test or condition shall be imposed as to religious belief or profession in admitting or appointing members, students, teachers or workers or in any other connection whatsoever.*”

¹⁸⁴ The National Institutes of Technology, Science Education and Research Act, 2007, §7(1)

¹⁸⁵ The Indian Institute of Management Act, 2017, §8(3) – “*The admission to every academic course or programme of study in each Institute shall be based on merit assessed through transparent and reasonable criteria disclosed through its prospectus, prior to the commencement of the process of admission by such Institute; Provided – that nothing in this section shall be deemed to prevent the Institute from making special provisions for the employment or admission of women, persons with disabilities or for persons belonging to any socially and educationally backward classes of citizens and, in particular, for the Scheduled Castes and the Scheduled Tribes.*”

with admissions and students¹⁸⁶ – it is stated that: “...*The admission shall be made on merit on the basis of criteria notified by the institutions after taking into account the reservation order issued by the government from time to time.*” Whereas a modified version of the regulations does confer upon the UGC the right to exempt a University from the application of these regulations for a specified time, such relaxation is not absolute.

The University Grants Commission shall have right to grant relaxation to a university in regard to the date of implementation or for admission to the first-or-second-degree courses or to give exemption for a specified period in regard to other clauses in the regulations on the merit of each case.¹⁸⁷

Evidently, the UGC cannot exempt any University from the applicability of government-notified reservation provisions – in exercise of its power to grant relaxation, it may merely ease administrative difficulties for universities if it sees fit. To this effect, NLUs, which are creatures of State legislations, are bound to observe any reservation provisions enacted by the government as regards their admission procedures. Para 7(b) of UGC Guidelines for Strict Implementation of Reservation Policy of the Government in Universities, Deemed-to-be Universities, Colleges and other Grant-In Aid Institutions and Centres – reads:

“Without prejudice to the provisions contained in the clause (a) above, in all the educational institutions referred to in clause (a) above, and functioning within any State shall follow the percentage of reservation prescribed by the respective State Government.”

This is reiterated by the University Grants Commission through their circulation of the Central Educational Institutions (Reservation and Admission) Act, 2006 (Gazette Notification dated 04-01-2007) and the 2012 Amendment thereof (Gazette Notification dated 20-06-2012), *prior to the commencement of these enactments*,¹⁸⁸ called for strict adherence to the notified reservation policies in all the Central Universities, State Universities, deemed to be Universities and others.

In fact, in a 2019 petition before the National Commission for Backward Classes¹⁸⁹ – against the Vice Chancellors of all the NLUs – demanding SEBC reservation under sub-clause (a) & (b) of clause (5) of Article 338B of the Indian Constitution:¹⁹⁰ the NCBC, *vis-à-vis* OBC reservations, held

¹⁸⁶ *supra* UGC Regulations, 1985

¹⁸⁷ Partial Modifications of UGC Regulations, 1985 regarding the Minimum Standards of Instructions for the Grant of First Degree, UGC Letter No. F.1-117/83(CPP) (30th May 1986)

¹⁸⁸ *vide* Letter No. F-1- 5/2006(SCT) (25 August 2006), Letter No. F-59- 6/2012(CU) (3 June 2016) respectively

¹⁸⁹ Sri Ramesh Babu Viswanathula v Vice Chancellor, National Law School of India University and Ors <images.assettype.com/barandbench/import/2019/06/NLU-Petition-NCBC.pdf>

¹⁹⁰ Constitution of India, 1950, Article 338B (5) “*It shall be the duty of the Commission— (a) to investigate and monitor all matters relating to the safeguards provided for the socially and educationally backward classes under this*

that the flouting of notified reservation provisions is at odds with the minimum standards of instruction prescribed by the UGC,¹⁹¹ which have already been shown to include the admission and reservation criteria notified by the university.¹⁹²

Therefore, without an enabling parliamentary legislation providing for a comprehensive reservation framework – as is the case for INIs – NLUs must observe and adhere to the State legislature’s reservation provisions, whatever they may be. To this extent, the NLUs’ ‘national character’ *per se* does not deliver them from the regulatory oversight and reservations prescribed by the relevant State Governments.

3. Implications for Domicile Reservation and the NLSI Amendment Act, 2020

However, with respect to the recent NLSI Amendment enacted by the Karnataka State Legislature, the ‘national character’ argument takes another form – to challenge the State Legislature’s legislative competence to amend the NLSI Act to introduce *domicile* reservations at the NLSIU. This subsection addresses the constitutional question of legislative competence in light of Schedule VII of the Constitution and discusses the issue of domicile reservation within this federal structure.

1. The Legislative Competence of the Karnataka State Legislature

‘Education’¹⁹³ and the ‘legal profession’¹⁹⁴ are contained in the Constitution as Entries 25 and 26 respectively, in List III of the Seventh Schedule. Article 246 provides for the Union and State Legislatures’ competence to enact laws in this regard as follows. The State Legislature has the power/legislative competence to make laws “*with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the "Concurrent List")*”,¹⁹⁵ subject to any laws made

Constitution or under any other law for the time being in force or under any order of the Government and to evaluate the working of such safeguards; (b) to inquire into specific complaints with respect to the deprivation of rights and safeguards of the socially and educationally backward classes”

¹⁹¹ National Commission for Backward Classes, Non-Implementation of Rule of Reservation with respect to OBC/BC Category in Admission of National Law University/School-Reg, F. No. NCBC/06/10/113/2019-CP/AT (20 January 2020) <kanoonyat.com/wp-content/uploads/2020/06/Final_Recommendations_of_NCBC_to_NLUs.pdf>

¹⁹² *supra* UGC Regulations, 1985

¹⁹³ The Constitution of India, 1950, Schedule VII, List III, *Concurrent List*, Item 25 (Education, including technical education, medical education and universities, subject to the provisions of entries 63, 64, 65 and 66 of List I; vocational and technical training of labour) – [*ins by the Constitution (Forty-Second Amendment) Act, 1976, §57*]

¹⁹⁴ The Constitution of India, 1950, Schedule VII, List III, *Concurrent List*, Item 26 (Legal, medical and other professions)

¹⁹⁵ Constitution of India, 1950, Article 246(2)

by the Parliament.¹⁹⁶ Moreover, it must be noted that the State legislature’s power to enact laws on Entry 25 (‘education’) is “*subject to the provisions of entries 63, 64, 65 and 66 of List P*”¹⁹⁷ – these entries empower the Parliament to (a) establish/declare institutions to be of ‘national importance’; (b) manage and regulate agencies that administer purposive vocational training illustratively to police officers and forensic experts; or (c) prescribe the *standards* for higher education.¹⁹⁸ Evidently, none of these concerns restrict the State Legislature’s ability to prescribe the quantum of reservation at education institutions.

The National Law School of India University is a creature of the State Legislature *qua* its establishment *vide* the National Law School of India Act 1986, and it is institutionally recognized as such.¹⁹⁹ The previous sections have shown that it is not an ‘institution of national importance’ since it is neither established by an Act of Parliament (*vide* Entry 64, List I of the Seventh Schedule),²⁰⁰ nor recognized as autonomous by the UGC in a sense comparable with INIs.²⁰¹

2. Reconciling the NLSIU’s National Character with Domicile Reservation

Insofar as the National Law School of India University has been fashioned a ‘national level institution’ in the long-title of the corresponding act, it must be noted that the same is not equivalent to an *institution of ‘national importance’ declared by an Act of Parliament* which may be entitled to side-step the reservation schema, as applicable to the NLSIU per the Single Judge judgment by the Karnataka High Court in *Lolaksha v The Convenor (CLAT 2009)*.²⁰² So far as the State

¹⁹⁶ Constitution of India, 1950, Article 246(1)

¹⁹⁷ **63.** The institutions known at the commencement of this Constitution as the Benares Hindu University, the Aligarh Muslim University and the [Delhi University; the University established in pursuance of article 371E;] any other institution *declared by Parliament by law* to be an institution of *national importance*; **64.** Institutions for scientific or technical education financed by the Government of India *wholly or in part and declared by Parliament by law* to be institutions of *national importance*; **65.** Union agencies and institutions for— (a) professional, vocational or technical training, including the training of police officers; or (b) the promotion of special studies or research; or (c) scientific or technical assistance in the investigation or detection of crime; **66.** Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions.

¹⁹⁸ *See:* University Grants Commission Act, 1956, §12

¹⁹⁹ List of State Universities which are included under Section 12(B) of the UGC Act, 1956 and are eligible to receive Central assistance as on 14.12.2020, s. no. 88

<[www.ugc.ac.in/oldpdf/State%20University/State%20University%2012\(B\).pdf](http://www.ugc.ac.in/oldpdf/State%20University/State%20University%2012(B).pdf)>

²⁰⁰ *c/f* Indian Institutes of Technology Act, 1961, §2; Indian Institutes of Management Act, 2017, §2

²⁰¹ *See:* University Grants Commission Act, 1956, §12A(1)(h), §22(1)

²⁰² 2009 SCC OnLine Kar 446, [26]

implements reservation to remedy some disability of its residents, to the exclusion of residents of other States – such a reservation scheme may itself be valid.²⁰³

The question then remains whether the ‘deprivation of opportunity,’ purportedly necessitating the impugned ‘domicile reservation,’ is in fact comparable to the social disability suffered by people belonging to marginalized castes and tribes as recognized by the State of Karnataka vide the Presidential Order of 1950 under Article 341 of the Constitution. This can be answered with reference to Chapter III of this report which has considered the constitutional doctrine around the subject of ‘domicile reservation’ in depth: in this chapter – securing ‘equality of opportunity’ for ‘backward regions’ – has been found to be a legitimate reason to provide for domicile reservation in such backward region/state.²⁰⁴

Insofar as the alleviation of ‘backwardness’ is the cause for the introduction of reservation – such domiciliary provisions are comparable to other existing reservation provisions, providing equality of opportunity to other marginalized groups. The Constitutional Bench judgments of the Supreme Court in *Marri Chandra Shekhar Rao*²⁰⁵ & *Action Committee*²⁰⁶ have already laid down how this latter set of SC and ST reservations are only available to residents of a State which recognizes these marginalized groups vide a Government Order as mentioned above; and, it shall not be available to migrants from other States who may bear a similar SC/ST identity in another state, notwithstanding even identical case/tribe names.

It therefore follows that the State Government is empowered to notify reservations for the benefit of its own residents, to alleviate backwardness in the interest of equality of opportunity, *to the exclusion of* migrants from other states – who may not avail of the same. Having thus established the validity of the premise of domicile reservation, it may be relevant to consider the ‘backwardness’ at Karnataka warranting such reservations to be introduced in the focal case of NLSIU.

It must be noted that reservations in Karnataka predate the Constitution. The State of Mysore issued an order under Article 15(4) of the Constitution declaring all the communities, except the Brahmin community, as *socially and educationally backward* and reserving a total of 75 per cent seats in Educational Institutions in favour of SEBCs and SCs/STs. Such orders were issued every year,

²⁰³ *Lolaksha*, [29] (abstracting from the judgment with respect to SC/ST reservations); *S Pushpa v Sivachanmugavelu* (2005) 3 SCC 1 (as quoted in *Lolaksha*)

²⁰⁴ *Dr Pradeep Jain v Union of India* 1984 AIR 1420

²⁰⁵ *Marri Chandra Shekhar Rao v Dean, Seth G.S. Medical College* (1990) 3 SCC 130

²⁰⁶ *Action Committee v Union of India* (1994) 5 SCC 244

with minor variations in the percentage of reservations granted to different communities. Later a similar order was issued wherein 68 per cent of the seats in all Engineering and Medical Colleges and Technical Institutions in the State were reserved in the favour of the SEBCs, SCs and STs. SEBCs were again divided into two categories: backward classes and more backward classes.²⁰⁷ Historically speaking, therefore, the backwardness in the state is not a question of debate; and, whether the ‘domicile reservation’ enacted by the State Government is purported to or effective for the alleviation thereof – are questions of fact.

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Within the doctrinal scope of this segment, it can be concluded that the institution of domicile reservation by the Karnataka State Legislature *vide* the NLSI Amendment Act 2020, is squarely within *vires* of the Constitution.

²⁰⁷ Karnataka Scheduled Castes, Scheduled Tribes and Other Backward Classes (Reservation of Appointment etc) Act, 1990.

Chapter V: Recommendations

The preceding chapters show that the issue of domicile reservations is multi-dimensional, polycentric, and complicated. This brief has delved deep into these dimensions of this crucial question. The first chapter provides a critical overview of the evolution of legal education in India, the significance of the NLUs, and the concerns about equity and inclusion within these elite institutions. The analysis in the second chapter shows that domicile reservations are implemented through divergent means with different objectives that have been crystallized by the negotiations between the university administrators and the relevant State Government. These include upliftment of weaker sections of society, and adequate representation of the state population, usually with a hope that the local population will stay in the respective state and work for its benefit. The chapter further provides comprehensive information about how the implementation of domicile quota interacts with other forms of vertical and horizontal quotas, leading to the conclusion that while many NLUs implement SC/ST and OBC quotas on an All India basis, some accord these caste-based quotas solely to candidates domiciled in the State. At the same time, domicile reservation is implemented horizontally across caste categories in multiple NLUs while in some it is only applicable to those who are admitted through SC, ST, and OBC quotas.

The third chapter on the constitutional scrutiny of these quotas brings to light the importance of criteria of 'backwardness' and shows that while domicile reservations have been upheld in many medical education cases, they are either justified on the basis of benefit to the State or the disadvantage (backwardness) of candidates belonging to remote regions within the State. The fourth chapter discusses the judgment of the Karnataka High Court about the domicile reservation in NLSIU shows how the factual appreciation of NLSIU's student diversity was flawed. This is particularly so in the case of non-implementation of previous court orders with respect to granting SC/ST quota only to candidates domiciled in Karnataka. It also shows that the Court unduly disregarded the State Legislature's power to amend the admission criteria of NLSIU. In this context, the concerns raised in the section on the national character of NLUs assume importance. They show that without the parliamentary recognition as an institution of national importance, NLUs would remain duty bound to implement UGC guidelines that in turn mandate implementation of reservation policies as notified by the State Government. Hence, the implementation of SC/ST quota on All India basis, as well as irregular implementation of OBC quota would need a resolution at the federal level.

In this light, the attempts by NLSIU governing bodies and the State Government to resolve the dispute after a short-lived Supreme Court appeal proceedings, are laudable. The NLSIU Inclusion and Expansion Plan 2021-2025 commits to implementation of a horizontal compartmentalised quota of 25 % for students domiciled in Karnataka. In addition to the same, it commits to implementing the mandated quota for Other Backward Classes, Persons with Disability as well as Economically Weaker Sections. While this addresses the concerns raised in the State Government's Special Leave Petition against the Karnataka HC's judgement, larger policy issues pertaining to interaction between quotas and their proper implementation remains.

The recommendations address the four issues that emerge from the findings:

a) Juridical status of NLUs: With respect to the contestations around the juridical status of NLUs which are established through statutes passed by State legislatures, we recommend that their demands for parliamentary recognition as institutions of national importance should be considered. The University Grants Commission, the Union Ministry of Human Resource Development, the Bar Council of India, State Bar Councils, State Departments and Judicial stakeholders should review the institutional character of the NLUs as creatures of their respective State Legislatures. A robust debate on the possibility of conferral of the INI status through a parliamentary enactment has the potential of resolving a number of long standing legal issues.

b) Interaction between domicile quota and existing caste and gender-based quota policies: The grant of INI status to all NLUs would confer legal legitimacy to the prevailing practice in most NLUs which implement SC/ST and OBC quota on the basis of All-India ranks. In such a scenario, horizontal application of the domicile quota would be justifiable. However, as long as this parliamentary recognition is not granted, the admission process under Common Law Admission Test should identify beneficiaries of SC/ST and OBC quota solely from within the State where the NLU is located. Besides complying with the law of the land, this would imply that a significant portion of student intake would be from the State. In such a scenario, the present variance with regard to implementation of domicile quota in unreserved seats can be preserved.

c) Constitutional validity of domicile status as the sole criteria for identification of quota beneficiaries: In order to confer constitutional legitimacy to the policies for grant of domicile quotas, the eligibility requirements should incorporate a dimension of social and educational backwardness. Considering the constitutional salience of this criteria for identification of beneficiaries of affirmative action policies like quotas, the State Governments should link the of domicile quota to a metric of backwardness – educational, economic, linguistic or regional. The

criteria for this identification should be based on scientific data and contextual sensitivity.²⁰⁸ This would go a long way in establishing the legitimacy and acceptability of these measures, and differentiate them from parochial, vote-bank politics. In view of the ongoing litigations and the student-alumni resistance to these quotas in the top NLUs,²⁰⁹ the need to establish this legitimacy could not be more acute. Another approach to establish this legitimacy can be to give consideration to people from backward regions within the state – under the constitutional scheme of article 371 J and the like.²¹⁰ A useful criteria for determination of beneficiaries would be to limit it to students who have studied in regional language medium government schools or low budget private schools.²¹¹

d) Measures to ensure fulfilment of the purpose of Domicile Quotas: We recommend that the State Governments should formulate a legal services fellowship scheme to supplement the domicile quota. Under this scheme, the students availing of the domicile quota would undertake to serve the State and District Legal Services Authorities and other public institutions mandated with legal aid and education, for a period of at least four years. The implementation of the similar scheme in medical education in Tamil Nadu should be studied in this regard, particularly with respect to its impact on democratising access to public healthcare.²¹² There might be an argument made that this impedes Article 19, but this practice could be sustained as reasonable as it is only

²⁰⁸ Cf Narendra Pani and Soundarya Iyer, 'Towards a Framework to Determine Backwardness: Caste, Inequality and Reservations in India' (2015) 10(1) *Journal of South Asian Development* 48–72.

²⁰⁹ See Chapter 2; Narendra Pani, 'Reservations, Exclusion, and Conflict: Some Insights From Mandal and Mysore' (2010) 9:4 *India Review*, 397-424, DOI: 10.1080/14736489.2010.523617.

²¹⁰ Article 371J of the Constitution of India (c) allows the President to grant the Governor the special responsibility to make provisions for (c) equitable opportunities and facilities for the people belonging to the [Hyderabad-Karnataka] region, in the matters of public employment, education and vocational training, subject to the requirements of the State as a whole.

(2) An order made under sub-clause (c) and (1) may provide for -

(a) reservation of a proportion of seats in educational and vocational training institutions in the Hyderabad-Karnataka region for students who belong to that region by birth or by domicile; and

(b) identification of posts or classes of posts under the State Government and in any body or organisation under the control of the State Government in the Hyderabad-Karnataka region and reservation of a proportion of such posts for persons who belong to that region by birth or by domicile and for appointment thereto by direct recruitment or by promotion or in any other manner as may be specified in the order.]

²¹¹ 'Tamil Nadu Issues GO Giving 7.5% Medical Quota to Govt School Students | Chennai News - Times of India' (no date) <<https://timesofindia.indiatimes.com/city/chennai/tamil-nadu-issues-go-giving-medical-quota-to-govt-school-students/articleshow/78935066.cms>> accessed 30 April 2021.

²¹² A Kalairasan and M Vijaybhaskar, *The Dravidian Model* (Cambridge University Press, 2021) 102-104; P m Yazhini and Jeyannathann Karunanithi, 'Rulings that Impact a State's Medical Infrastructure', *The Hindu* (23 September 2021) <<https://www.thehindu.com/opinion/op-ed/rulings-that-impact-a-states-medical-infrastructure/article36619937.ece>> accessed 24 September 2021.

for a few years and in furtherance of the legitimate aim of actualising constitutional directives of access to justice.²¹³ This facilitation mechanism would ensure retention of talent through government fellowships, and go a long way towards actualising the social role of law graduates. This structural incentivisation to pursue career pathways that closely contribute to social justice would help remedy some limitation of the existing legal education model that were highlighted in the first chapter.

²¹³ Article 39A, Constitution of India.