IN THE HIGH COURT OF KARNATAKA,BENGALURU

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DATED THIS THE 30TH DAY OF AUGUST, 2019

BEFORE

THE HON'BLE MR. JUSTICE KRISHNA S.DIXIT

WRIT PETITION No. 40566/2015 AND CONNECTED MATTERS (EDN-RES)

IN W.P.NO.40566/2015:

BETWEEN:

MS. BUSHRA ABDUL ALEEM
AGED 24 YEARS,
D/O MR ABUDL ALEEM,
41/2-1, NETHAJI ROAD,
FRAZER TOWN,
BANGALORE-560005.
KARNATAKA.

... PETITIONER AND OTHERS

AND:

1. GOVERNMENT OF KARNATAKA,
   DEPARTMENT OF HEALTH AND FAMILY WELFARE,
   ANAND RAO CIRCLE,
   BANGALORE-560001.
   REPRESENTED BY ITS COMMISSIONER.

...RESPONDENT AND OTHERS

THESE PETITIONS HAVING BEEN HEARD AND RESERVED FOR ORDER, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

O R D E R

The Writ Petitioners in all these cases comprise of three classes of candidates viz., (i) those who were prosecuting Graduation (MBBS), (ii) some others who were doing Post-Graduation (MD/MS, etc.), and (iii) the rest who were pursuing Super-Specialty courses (DM, M.Ch. etc.); this apart a few medical colleges/institutions too are before this court; all they have knocked at the doors of Writ Court for assailing the Karnataka Compulsory Service Training by Candidates Completed Medical Courses Act, 2012 (hereafter 'the Principal Act') as amended by the Karnataka Act No.35 of 2017 (hereafter 'the Amendment Act'); the Government being the delegate under the principal Act has promulgated the Karnataka Compulsory Service Training by Candidates completed Medical Course Rules 2015 (hereafter '2015 Rules'), which too are under challenge.

2. The net effect of the impugned Act and the 2015 Rules is that, every MBBS Graduate after completion of internship course, every Post-Graduate (Diploma or Degree) candidate and every Super Specialty candidate shall render a compulsory public service of one year which

is remunerative and with the designations as 'Junior Resident', 'Senior Resident' & 'Senior Specialist', respectively; during the service period, these candidates will have temporary registration for practising medicine.

3. The challenge is founded mainly on the grounds of legislative competence, discrimination, manifest arbitrariness, unworkability & proportionality, all falling under Article 14, unreasonable infringement of Fundamental Right to profession guaranteed under Article 19(1)(g), breach of bar of *ex post facto* penal law enacted in Article 20(1), intrusion of Right to Privacy in-built collectively *inter alia* in Articles 14, 19 & 21, prohibition of forced labour contained in Article 23, interference with Rights of Religious Minorities bestowed under Article 30, arbitrary penalty, excessive delegation and of prospective operation of the Act.

4. After service of notice, the State has entered appearance through the learned Addl. Advocate General Sri.Sandesh Chouta, assisted by Addl. Government Advocate Smt.Pramodhini Kishan. It has filed a common Statement of Objections and also an Additional Statement of Objections, resisting the writ petitions. This apart, by

way of Memo, copies of certain other relevant journals are also filed throwing light on the subject matter of *lis*.

5. Learned Senior Advocate Sri. D.L.N.Rao appearing for the petitioners submitted that: (i) the State Legislature lacks competence to enact the impugned law; (ii) the impugned Act being prospective in operation, does not apply to the candidates who were admitted to medical courses before it was notified; (ii) the Presidential Assent obtained under article 254(2) does not give validity & primacy to the impugned Act over Indian Medical Council Act, 1956 (hereafter IMC Act) which is not referable to Concurrent List; the very grant of Presidential Assent itself being contrary to law declared by the Apex Court, is liable to be ignored and (iii) the impugned Act/Rules are violative of Article 19(1)(g) since they constitute an unreasonable restriction on the Fundamental Right to practise medicine.

6. Learned Sr. Advocate Sri Sajjan Poovayya appearing for the petitioners, argued on the lines of Mr. D.L.N.Rao that: (i) in view of the enactment of the IMC Act, the State Legislature is denuded of its power to enact the impugned law which impinges upon the scheme and provisions of this Central enactment; (ii) the Principal Act,

as modified by the Amendment Act, being repugnant to the IMC Act, is not saved by the Assent of the President obtained under Article 254(2) and the amendment would not cure the defect since the principal Act itself being *void ab initio*; and (iii) that permanent registration being a precondition for joining PG courses & Specialty courses, the grant of temporary registration would not do; this important factor having not been taken note of by the Legislature, the impugned Act is bad, as being manifestly arbitrary.

7. Learned Sr. Advocate Sri P.S.Rajagopal appearing for the petitioners contended that the impugned Act does not apply to such of the candidates who having completed the medical course, were otherwise waiting for formal award of the Super Specialty Degree and for subsequent grant of registration, as per the applicable MCI Regulations at the time when they had accomplished their examinations; even otherwise, the impugned Act is prospective in operation and is liable to be so construed since an argument to the contrary would lead to palpable injustice, absurdity risking its validity *inter alia* under the doctrine of *ex post facto* penal law since the criminal law elements galore in it; the Act is

unconstitutional for being inherently unworkable; candidates hailing from NIMHANS established under the NIMHANS Bengaluru Act, 2012 are not within the fold of the Act, since NIMHANS does not answer the definition of 'University' given u/s.2(g) of the impugned Act.

8. Learned Sr. Advocate Sri K.G.Raghavan appearing for the petitioner-Religious Minority Educational Institutions (i.e. Christians), submitted that the impugned Act falls foul of Article 30(1) of the Constitution as progressively interpreted by the Apex Court in a catena of decisions, since inviolable rights guaranteed thereunder are cut short; the concerned minority community which has established the educational institutions has a right to appropriate the services of its students for the benefit of Christian community anywhere in the country, that being a pre-condition for admission to the respective courses; the kernel of this valuable right is robbed off during the compulsory service period of one year under the impugned Act.

9. Learned Sr. Advocates Sri Ashok Harnahalli, Sri Dhyan Chinnappa and Sri Shashi Kiran Shetty appearing for candidates & institutions argued that:

(i) the impugned Act is discriminatory because it is only the students who complete their courses after it came into force are covered, whereas all others who having completed their courses before, are practising medicine, have been spared; Act is violative of Equality Clause since it treats the candidates who have availed Government seats on concessional rates and others, on par;

(ii) the impugned Act is bad because of compulsory extraction of service which is violative of Articles 21 & 23, especially when the candidates are required to put in one year compulsory service in Government hospitals which lack necessary infrastructure such as modern equipments, laboratories, and to reside in rural areas where basic necessities such as food & shelter of their choice, etc. scarcely avail;

(iii) the impugned Act introduces one more stage between grant of degree & registration of candidates under the KMR Act and thus elongates the period of medical course beyond what is prescribed by MCI Regulations;

(iv) the Act is made in a highly arbitrary manner without collecting necessary data such as number of personnel required, the number of vacancies available for their accommodation, amount of infrastructural facilities,

likely diversion of candidates to the institutions outside Karnataka and resultant depletion of inflow of students to the local institutions.

10. Learned Sr. Advocate Sri M.R.Naik, appearing for the petitioners submitted that the coercive provision in the Act, namely Sec.6 being 'manifestly arbitrary', apparently unjust & unreasonable, is liable to be voided if tested on the touch stone of 'principle of proportionality'; there can be myriad circumstances wherein even an honest and scrupulous candidate could be prevented from putting in a compulsory service partly or wholly, for reasons beyond his control, but even they are liable to pay fine, there being no reasonable discretion inbuilt in the Act to waive or reduce the minimum penalty of Rs.15 lakh, the maximum being Rs.30 lakh; even otherwise the impugned Act and the 2015 Rules do not provide any guidelines as to how the discretion in choosing a sum of fine between Rs.15 lakh and Rs.30 lakh is to be exercised; Section thus suffers from the vice of excessive delegation and of manifest arbitrariness.

11. Smt. Jayna Kothari, learned Senior Advocate appearing for some of the petitioners, banking upon the decisions of the Apex Court in the **Triple Talaq Case** (infra)

and other cases supported other's contention of manifest arbitrariness; she also pressed into service the decision of Apex Court in **Privacy Case** (infra) to buttress her argument that the Act is bad for bruising the Right to Privacy of candidates which includes Right to choice & the freedom to choose either to work or not, and the liberty to choose the nature of work that fall within the domain of private decision making.

12. Learned Addl. Advocate General Sri Sandesh Chouta assisted by AGA Smt. Pramodhini Kishan, refuting the petitioners' submissions, per contra, contended that:

(i) The impugned Act is referable to Entry 6 List II r/w Entries 25 & 26 List III in Seventh Schedule; it is made with the Assent of the President under Articles 200 & 254(2) of the Constitution *qua* Sections 15 & 25 of IMC Act and University Grants Commission Act, 1956, since the field was occupied by these Central Acts, albeit partially; the incidental encroachment of IMC Act by the impugned Act is not a ground for its invalidation; even whatever lacunae which the petitioners contend to have existed in the Principal Act are remedied by the Amendment Act;

(ii) The grounds urged under Articles 14 & 19(1)(g) do not avail to the petitioners, the impugned law having been enacted for giving effect to the Directive Principles of State Policy enshrined in Part IV of the Constitution as progressively construed by the Apex Court and therefor the Act enjoys protection under Article 31(C);

(iii) There is a very strong presumption, *that the legislature understands needs of its people; it devises its policies for addressing such needs; Statutes are presumed to be constitutionally valid, and a heavy burden rests on the shoulders of the challenger, to rebut such presumption*; several countries in the world have evolved policies prescribing compulsory medical service keeping in view the recommendation of the World Health Organization. The Apex Court, in more or less similar matters has upheld prescription of Compulsory Medical Service by several States including Karnataka in terms of Bonds/Undertakings executed by the candidates whilst availing Government seats; the desirability and wisdom of a legislative policy does not fall within the domain of judicial scrutiny; so contending he sought dismissal of the writ petitions.

13. Mr.C.Shashikantha, the learned Asst. Solicitor General appearing for the Union of India and Sri N.Khetty, learned Sr. Panel Counsel representing the respondent-Medical Council of India argued that the impugned enactment which prescribes compulsory one year training service lacks legislative competence since the field of medical education being referable to Entry 66 List I, is in the exclusive domain of the Parliament; even if State Act is referable to Entry 25 List III, the field having been already occupied by the IMC Act and the Rules & Regulations promulgated thereunder, the impugned Act is incompetent; the State Government, in addition, has no wherewithal to impart training in medical education; however, Mr. Shashikantha having adopted Khetty's submission hastened to add that the Government should expedite deployment of candidates for compulsory service, if the validity of the Act is upheld, lest the delay brooked therein should prejudice career advancement of the candidates concerned.

14. I have heard the learned counsel appearing for the parties and perused the petition papers. I have gone through the Written Notes/Arguments filed by both sides. I have also adverted to such of the decisions as are relevant

to the issues debated in these cases, the others duplicating/reiterating the well settled propositions, have also been looked into, but left un-referred, in this judgment.

15. **As to the socio-historical background of prescribing compulsory medical service:**

(i) For determining the purpose or object of the legislation in challenge, it is permissible and desirable to look into the circumstances and the social conditions which prevailed at the time when the law was enacted and which necessitated such enactment; this is important for the purpose of appreciating the background and the antecedent factual matrix that lead to the legislative process resulting into the enactment; even to sustain the presumption of constitutionality, the Apex Court states, consideration may be had to the matters of common knowledge, history of the times and "every conceivable state of facts" existing at the time of making of the law, vide **Shashikant Laxman Kale Vs. Union of India, (1990) 4 SCC 366.**

(ii) The Colonial Rulers introduced Western system of Medicine in the country largely to cater to the needs of

their settlers, servicemen and sepoys in the Army; while the elite India had the options of availing the benefits of Western Medicine, the Indian masses were left to be served by the indigenous system; the vast majority of rural population had no opportunity of coming into even occasional contact with the 'qualified doctors'; the foreign rulers in the last century, introduced the 'Licentiate Medical Practitioner Course' (LMP) and the indigenous medical practitioners were catering to the needs of small towns and rural areas, whose services were far below the minimum standard of health care; the National Planning Committee of Indian National Congress, way back in 1938 had constituted Col. Santok Singh Committee for National Health Rejuvenation; the Committee reported about the pathetic status of medical facilities and infrastructure in the country and had recommended for radical reforms; in 1946 Sir Joseph Bhore Committee recommended for the integration and restructuring of health services in the country and for the establishment of Community Health Work Force, with more focus on service to rural masse.

(iii) India has acute shortage of qualified health workers, especially doctors, and this work force is substantially concentrated in urban areas; the public

health qualified Physicians who were available in larger numbers in the first decade of Independence, have almost disappeared from the system; the norms for public health service providers though have been set long ago gradually proved inadequate by today's requirement & expectations; to this is added exponential population growth; the public health functionaries, as the official statistics reveal, are markedly short and they are militantly inadequate in rural India where the larger population of the country resides; bringing skilled health professionals to remote, rural & difficult areas remains a Herculean task; from 2006-07 and onwards, under the National Rural Health Mission (NRHM), a variety of measures have been introduced to address the shortage of skilled workers in rural and difficult areas; the impugned Act is one big leap in that direction.

16. **Community health concerns and our international commitment:**

India's concern for providing health care to its people stems not only from the constitutional mandate as progressively interpreted by the Apex Court, but also from its international commitments; Article 55(b) of the United Nations Charter calls for the promotion of solutions *inter*

alia of health problems for achieving stability and well being in the World; under Article 56 of the Charter, the Member States (India being one) pledged to co-operate with the UN in achieving the said objects; the Universal Declaration of Human Rights, 1948, declares that everyone is entitled to adequate standards of living, health and well being; Article 12 of International Covenant on Economic, Social & Cultural Rights, 1966 recognizes right of an individual *qua* his Nation State to health and medical services; the constitution of the World Health Organization, which is a principal organ of the United Nations responsible for health issues, defines health as under:

> *"Health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity. The enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion and political belief, economic or social condition".*

Article 51(C) of our constitution enacts a Directive Principle for respecting international law; the Constitution and other Municipal laws need to be construed in the light of the United Nations Charter, international treaties & conventions vide Kesavananda (AIR 1973 SC 1461 paras 155 & 156), Jolly George Verghese (AIR 1980 SC 470) & Visaka (AIR 1997 SC 3011).

17. **Directive principles: Apex Court and the Community health care obligation:**

Banking upon the provisions of Parts III & IV of our Constitution and the International Conventions as well, in several decisions the Apex Court has reiterated that the Community Right to Health emanates from the ever expanding reservoir of Article 21 coupled with the State obligations under Directive Principles enshrined in Articles 39(e), 41, 43 & 47 of the Constitution vide **Consumer Education and Research Center Vs. Union of India (1995) 3 SCC 42 at para 24**; Article 47 instructs the State to evolve the Policy *inter alia* for improving public health; the said Article specifically declares that this is a *primary duty* of the State; in this regard, it is pertinent to refer to a few important decisions of the Apex Court, mentioned below:

(i) In **Paschim Banga Khet Mazdoor Samity Vs. State of W.B. (1996) 4 SCC 37 at para 9** it is observed:

> "*The Constitution envisages the establishment of a welfare State at the federal level as well as at the State level. In a welfare State the primary duty of the Government is to secure the welfare of the people. Providing adequate medical facilities for the people is an essential part of the obligations undertaken by the Government in a welfare State. The Government discharges this obligation by running hospitals and health centres which provide medical care*

to the person seeking to avail of those facilities. Article 21 imposes an obligation on the State to safeguard the right to life of every person. Preservation of human life is thus of paramount importance. The government hospitals run by the State and the medical officers employed therein are duty-bound to extend medical assistance for preserving human life. Failure on the part of a government hospital to provide timely medical treatment to a person in need of such treatment results in violation of his right to life guaranteed under Article 21."

(ii) In **Vincent Panikurlangara Vs. Union of India, (1987) 2 SCC 165, para 16,** it is said:

"In a series of pronouncements during the recent years this Court has culled out from the provisions of Part IV of the Constitution these several obligations of the State and called upon it to effectuate them in order that the resultant pictured by the Constitution Fathers may become a reality. As pointed out by us, maintenance and improvement of public health have to rank high as these are indispensable to the very physical existence of the community and on the betterment of these depends the building of the society of which the Constitution-makers envisaged. ***Attending to public health, in our opinion, therefore, is of high priority - perhaps the one at the top****."*

(iii) In **State of Punjab Vs. Ram Lubhaya Bagga, (1998) 4 SCC 117**, a three judge Bench of the Apex Court observed:

"when we speak about a right, it correlates to a duty upon another, individual, employer, government or authority. In other words, the right of one is an obligation of another. Hence, the right of a citizen to live under Article 21 casts obligation on the State. This obligation is further reinforced under Article 47, it is for the State to secure health to its citizens as its ***primary duty****. No doubt the Government is rendering this obligation by*

opening Government hospitals and health centres, but in order to make it meaningful, it has to be within the reach of its people, as far as possible to reduce the queue of waiting list, and it has to provide all facilities for which an employee looks for at another hospital... since it is one of the most sacrosanct and valuable rights of a citizen and equally sacred obligation of the State, every citizen of this welfare State looks towards the State for it to perform its this obligation with top priority...."

(iv) A Five Judge Bench of the Apex Court in **MODERN DENTAL COLLEGE & RESEARCH CENTER Vs. STATE OF M.P, (2016) 7 SCC 353** at paras 171 & 172 observed:

"It is the obligation of the State under the Constitution to ensure the creating of conditions necessary for good health including provisions for basic curative and preventive health services and assurance of healthy living and working conditions. Under Articles 39(e), 39(f) and 42 of the Constitution, obligations are cast on the State to ensure strength and health of workers, men and women; ensure children are given opportunities and facilities to develop in a healthy manner and to secure just and humane conditions of work and for maternity relief.... Article 47 of the Constitution makes improvement of public health a primary duty of the State.... ***Maintenance and improvement of public health and to provide health care and medical services is the constitutional obligation of the State. To discharge this constitutional obligation, the State must have the doctors with professional excellence and commitment who are ready to give medical advice and services to the public at large."***

18. **Apex Court on scarcity of rural medical service and reluctance of doctors to serve:**

(i) Procurement of rural health care professionals has been a big challenge not only in India but in other advanced countries too; the shortage of health care work force is exacerbated in rural and semi-urban areas where the State struggles to attract and keep well trained clinicians; despite medical school initiatives and State Policies to train rural physicians, the rural India continues to face greater shortage of health professionals; health care delivery has been a challenging task in rural locations; in the Case of **State of U.P Vs. Dinesh Singh Chauhan, (2016) 9 SCC 749** at paras 40 & 41, the Apex Court observed that there has been a scarcity of doctors in villages and that there has been a lack of response from graduate doctors to serve in remote or difficult areas; it also referred to Rajya Sabha debates of 23.12.2014 which mentioned about the extreme shortage of qualified and skilled doctors for health care in rural areas and the Governmental measures proposing compulsory rural postings for doctors; at para 44, it said:

> *"..... The State Governments across the country are not in a position to provide healthcare facilities in remote and difficult areas in the State*

for want of doctors. In fact there is a proposal to make one-year service for MBBS students to apply for admission to postgraduate courses, in remote and difficult areas as compulsory...."

(ii) Though, after the advent of Freedom, the numerical strength of medical colleges been exponentially increased and consequently, the population of health service professionals is also bulkened, the masses in rural and semi-urban areas continue to be deprived of essential medical services; the immediate victims are the poor, the underprivileged and the depressed classes; the medical education seen in the Country today is characterized by an obsessive pursuit of Post Graduate Courses by the young graduate doctors who normally have marked disinclination to serve in the country side; about three and a half decades ago, Apex Court in **Dr.Pradeep Jain Vs. UOI, (1984) 3 SCC 654** had exhorted:

"*What is, therefore, necessary is to set up proper and adequate structures in rural areas where competent medical services can be provided by doctors and some motivation must be provided to the doctors servicing those areas."*

(iii) Decades later in **State of Punjab Vs. Shiv Ram (2005) 7 SCC 1 at para 39** it was observed:

"...***How the medical profession ought to respond:*** *Medical profession is one of the oldest professions of the world and is the most*

humanitarian one. There is no better service than to serve the suffering, wounded and the sick. Inherent in the concept of any profession is a code of conduct, containing the basic ethics that underline the moral values that govern professional practice and is aimed at upholding its dignity. Medical Ethics underpins the values at the heart of the practitioner-client relationship. ***In the recent times, professionals are developing a tendency to forget that the self-regulation which is at the heart of their profession is a privilege and not a right and a profession obtains this privilege in return for an implicit contract with society to provide good, competent and accountable service to the public. It must always be kept in mind that doctor's is a noble profession and the aim must be to serve humanity, otherwise this dignified profession will lose its true worth.....”***

19. **A glimpse of impugned 2012 Act as amended by 2017 Act:**

(i) The impugned law has been enacted by the State Legislature vide Karnataka Act No.26 of 2015 for the avowed purpose of providing "*for* ***Compulsory Service*** *by candidates completed medical courses before award of degrees or post-graduate degrees or diplomas";* the Preamble to the Act specifically mentions why such a law is made i.e., “*to provide for* ***compulsory service***”; even before the Amendment Act was made, the Statement of Objects and Reasons appended to the original Bill stated the purpose as: “*to ensure* ***availability of service*** *... in*

Government Primary Health Centres and Government Hospitals"; this Act having been reserved for and is assented to by the President under Article 254(2) of the Constitution.

(ii) Sec.1 of the impugned Act gives it's title, extent and commencement; the Government has notified the Principal Act w.e.f. 24.07.2015; Sec.2 being the *Dictionary Clause* enlists definitions; Sec.3 prescribes to the MBBS Graduates one year compulsory service in Government Primary Health Centres/Hospitals in **rural areas** as **Junior Residents**; Sec.4 prescribes to the Post-Graduate Diploma candidates one year compulsory service in Government hospitals in **urban areas** as **Senior Residents,** and similarly, Sec.5 prescribes to the Super Specialty candidates one year compulsory service in **District Government hospitals** as **Senior Specialists**; these sections guarantee their monthly stipend almost on par with the gross salaries admissible to the comparable posts/positions in the cadre minus Rs.100/-; the Act also provides for temporary registration enabling practice of medicine; Sec.6 being the enforcing provision prescribes a maximum penalty of Rs.30 lakh, the minimum being 15 lakh for violation of the provisions of the Act; Sec.7 gives

over-riding effect to the Act *qua* conflicting '*other law*'; Sec.8 vests in the Government the 'power to remove difficulties' during the initial period of three years of working of the Act, and Sec.9 vests in it the 'rule making power'; accordingly the impugned 2015 Rules have been promulgated for carrying out the purposes of the Act.

This completes a brief outline of the Act in challenge.

20. **Interim stay order against 2012 Act, and consequential legislative amendment in 2017:**

In an avalanche of petitions laying challenge, a Co-ordinate Bench of this Court having heard the matter, had issued Rule and granted interim order on 06.10.2015, staying the operation of the Principal Act and interdicting "*all further proceedings, orders, actions, notifications including the Rules etc., pursuant to the Act";* the concerned respondents were directed to issue appropriate degrees and grant registration to the petitioners, subject to result of the writ petitions; petitioners were asked to furnish an undertaking that in the event, the writ petitions fail, they would comply with the provisions of the Act; the said order of stay fleetingly treated many of petitioners' contentions; the State Legislature presumably taking note of this order, has enacted the Amendment Act vide Karnataka Act No.35

of 2017 which came into effect vide Notification dated 11.07.2017; by virtue of amendment the words "training" & "trainee" stood omitted from the Principal Act, except in sub-section (4) of Sec.3; the amendment also removes embargo on the grant of degree and temporary registration under the provisions of the Karnataka Medical Registration Act, 1961 (hereafter KMC Act) and the IMC Act, which otherwise was interdicted under the Principal Act; this amendment has removed some arguable grounds against vires of the Act.

21. CONTENTIONS AS TO LEGISLATIVE COMPETENCE:

(a) **The approach to the issue of constitutionality of law:** It has now been well settled that in cases involving questions of legislative competence, the enquiry should always be, as to the true nature and character of the challenged legislation and it is the result of such investigation, and not it's form that will determine as to whether or not, the said legislation relates to a subject, which is within the power of the Legislature. In such investigation, the Courts do examine the effect of the legislation and take into consideration its object, purpose

or design for the purpose of ascertaining it's true character & substance and, the class of subjects of legislation to which it really belongs, and not for finding out the motives which prompted the legislature to make such legislation; a Five Judge Bench of the Apex Court in **R.K.DALMIA vs. JUSTICE TENDOLKAR, AIR 1958 SC 538** ruled that *there is always a presumption in favour of the constitutionality of an enactment and the burden to rebut the same lies on him who attacks it.*

(b) **IMC Act and Legislative Lists & Entries:** Petitioners' contention that the IMC Act, having been originally enacted prior to 42nd Amendment to the Constitution is referable to only Entry 66 List I in Seventh Schedule, is bit difficult to accept; post 42nd Amendment w.e.f. 3.1.1977, Entry 25 List III which had a restrictive text earlier as "*vocational and technical training of labour*" has been broadened with the new text now reading: "*Education, including technical education, medical education and universities, subject to the provision of entries 63, 64, 65 and 66 of List I; vocational and technical training of labour*"; although predominantly, the IMC Act deals with ***medical education*** referable to Entry 66 List I is true; going by the text & context of several of its provisions, it

cannot be denied that the Act also deals with certain aspects of ***medical profession*** as well, and to that extent, is referable to Entry 26 List III which reads "***Legal, medical and other professions***"; this was the stand of learned Sr. Advocate Mr. Poovayya too, in his Written Submissions, upto a particular point, although in a bit different context;

(i) it has been the concrete case of all the petitioners that the impugned Act has curtailed their statutory right to practise medicine which is protected under Article 19(1)(g); Sec.15 of the IMC Act gives exclusive right of practice in favour of enrolled medical graduates; practising medicine sans enrolment attracts penalty; Sec. 20A gives power to the IMC to prescribe Standards of Professional Conduct & Etiquette and a Code of Ethics for medical practitioners; Sec.25 provides for provisional registration as a *sine qua non* for gaining entry to the profession, and entitles the registered candidates to practise medicine; Sec.27 extends this right throughout the country, in favour of persons possessing recognised medical qualifications once their names are borne on the Indian Medical Register; thus, the IMC Act deals with two subjects namely ***medical education*** referable to Entry 66 List I may be read with

Entry 25 List III, and ***medical profession*** referable to Entry 26 List III; this view is consistent with the decision of the Apex Court in **Dr. Preethi Srivastava Vs. State of M.P., AIR 1999 SC 2894** and in **Modern Dental College** (supra);

(ii) The contention that the IMC Act is referable only to Entry 66 List I is founded more on its historicity, than on any canons of constitutional jurisprudence; since the constitutional law operates as an organic system of fundamental rules of binding conduct, ideally speaking, coherent with each other, addition, deletion or the change of one ordinarily casts its light or shadow on the rest, subject to all just exceptions; Entry 26 List III, post 42nd Amendment does this, *inter alia* to the IMC Act that was enacted prior to 42nd Amendment; thus, the IMC Act being referable to Entry 66 List I (i.e., Education) & Entry 26 List III (i.e., profession) falls in the class of "***ragbag legislations***" in the words of M.N.Venkatachalaiah J, in **M/S UJAGAR PRINTS vs. UNION OF INDIA (1989) 3 SCC 488**.

22. **Impugned Act & the Legislative Entries:**

(i) It has been a settled principle of constitutional jurisprudence that the Entries in the three Lists in the Seventh Schedule need to be given the **widest interpretation** possible; **H M Seervai**, in his **Constitutional Law of India**, Fourth Edition, Vol-I, Para 2.12 writes "*The golden rule of interpretation is that, words should be read in their ordinary natural and grammatical meaning subject to the rider that in construing words in a Constitution conferring legislative power the most liberal construction should be put upon the words so that they may have effect in their widest amplitude.*"; this has been the legal position at least, since **Navinchandra Mafatlal Vs. CIT, Bombay, (1955) 1 SCR 829**; the impugned Act which prescribes one year compulsory public service in the Government hospitals is referable to Entry 6 List II which reads "***Public health and sanitation; hospitals and dispensaries***", the Apex Court in **Paschim Banga Khet Mazdoor Samity** supra has held:

> "*In a welfare State the primary duty of the Government is to secure the welfare of the people.* ***Providing adequate medical facilities for the people is an essential part of the obligations undertaken by the Government in a welfare State. The Government discharges this obligation by running hospitals and health centres which provide medical care to the person seeking to avail of those facilities.*** *Article 21 imposes an obligation on the State to*

> *safeguard the right to life of every person. Preservation of human life is thus of paramount importance";*

Consistent with the above observation of the Apex Court, the said Entry 6 List II needs to be construed as having a far more wider import than otherwise, failing which would be "**much ado signifying nothing**", to borrow the words of Shakespeare;

(ii) There is one more angle which the Bar did not much advert to, in the course of hearing; impugned Act is also referable to Article 309 & Entry 41 List II, which speak of *inter alia* ***State public services;*** the Five Judge Bench of the Apex Court in the Case of **I.N.SAKSENA Vs. STATE Of M.P, AIR 1976 SC 2250** while construing the width and depth of this Entry observed:

> *31. Entry 41, List II, reads as under:*
>
> *"41. State public services; State Public Service Commission."*
>
> *32. It is well settled that the entries in these legislative lists in Schedule VII are to be construed in their widest possible amplitude, and each general word used in such Entries must be held to comprehend ancillary or subsidiary matters. Thus considered, it is clear that* ***the scope of Entry 41 is wider than the matter of regulating the recruitment and conditions of service of public servants under Article 309. The area of legislative competence defined by***

> ***Entry 41 is far more comprehensive than that covered by the proviso to Article 309***. *By virtue of Articles 246, 309 and read with Entry 41, List II, therefore, the State legislature had legislative competence not only to change the service conditions of State Civil Servants with retrospective effect but also to validate with retrospective force invalid executive orders retiring the servants, because such validating legislation must be regarded as subsidiary or ancillary to the power of legislation on the subject covered by Entry 41.*"

Since the impugned Act also is referable to multiple entries like the IMC Act, as mentioned above, it too is another classic case of 'ragbag legislations' vide **Ujagar Prints** (supra).

23. **Compulsory service and *vinculum juris* of employer - employee:**

Since the State is employing these candidates in public service for a certain ***period***, on a certain monthly ***remuneration*** (regardless of it's nomenclature) and with a certain ***designation***, there are all the indicia of public employment; ordinarily an employment, be it private or public, arises from a ***contract*** which may graduate to ***status*** depending upon the law regulating the same; but compulsory employment is also not unknown to Service Jurisprudence; in all civilized jurisdictions, compulsory

defence services, do obtain; even the debates of **Dr.Ambedkar** and others in the Constituent Assembly mention about this vide **CAD Vol.VII, 3rd December, 1948**; there is nothing in service jurisprudence that spurns at *employer-employee* relationship even in a compulsive engagement of services, especially when Article 23(2) of the Constitution itself sanctions "***imposing compulsory service for public purposes***", the impugned Act frugally and the 2015 Rules abundantly speak of Service Law concepts such as 'service', 'rural service', 'service period' 'vacancy', 'list of vacancies', 'eligibility', 'entrance test', 'selection', 'merit list', 'appointment', 'posting', 'working hours', 'nature of work', 'control & supervision', 'stipend', 'travelling allowance & daily allowance', 'leave', 'medical leave', 'attendance certificate', 'certification of completion of service', etc.; thus, in pith & substance, elements of public service abound in the impugned law.

24. **True object of impugned Act; construing its objectionable parts as otiose: amendments:**

(i) **Words 'training' & 'trainee' and the provision delaying degree were insignificant**: The title and the provisions of the Principal Act had originally employed the

terms 'training' & 'trainee'; it had provisions that had the effect of delaying the grant of degree or distinction; over-stressing these, the petitioners contended that the Act was referable to Entry 66 List I i.e., medical education which is exclusively the domain of Parliament; now that these words are omitted and the provisions delaying grant of degree are removed by the Amendment Act, the said contention having lost its substratum does not merit consideration; the related contention that, corresponding changes are not brought about in the impugned 2015 Rules, does not advance their case any further, either; the Rules being subordinate legislation, regardless of arguably their wide text, need to be construed in the light of parent Act as amended.

(ii) The further contention that the Principal Act, in pith & substance, dealt with the field of 'medical education' referable to Entry 66 List I, and therefore the same being incompetently enacted, is as good as a still-born child and could not have been revived by the Amendment Act, appears to be too farfetched an argument. *A law is amended when it is in the whole or in part permitted to remain and something is added to, or taken from it or it is in some way changed or altered in order to make it more*

complete or perfect or effective; however, where the replacement of amendment theory prevails, the original Act is blotted out and is superseded by the amendatory Act, leaving it alone in effect; technically, an amended statute is not a new and independent statute since a part of the original Act remains; the question whether a statute which is unconstitutional in its entirety can be amended may be debatable because if the original enactment is completely unconstitutional, there may be nothing to amend; but where a statute is unconstitutional in part only, it may be laid down as a general rule undoubtedly in all jurisdictions that the statute may be amended by obliterating the invalid provisions or by correcting those which violate the Constitution, says **Crawford** in "**THE CONSTRUCTION OF STATUTES**" at paragraphs 115 & 117 (2014 Reprint, Pakistan Law House).

(iii) The argument that the Principal Act having been enacted incompetent is *void ab initio* and therefore, could not have been amended is structured *inter alia* on the basis of the words 'training' & 'trainee', and an erstwhile provision deferring the grant of degree and permanent registration to the students even after completion of the course; now that all this having been removed/diluted by

the Amendment Act, keeping in view the observations made in the interim stay order dated 06.10.2015, as already discussed above, the substratum for maintaining such a contention no longer exists.

(ii) **Objectionable parts of law & their interpretative mellowing down**: True it is, that the Principal Act had employed the terms 'training' and 'trainee'; there was also a provision for delaying grant of degree even after completion of course; all that did not make the Principal Act, any the less referable to Entries 6 & 41 in List II and Entry 26 in List III as already discussed above; these words could not have had any significance or meaning; It is open to the courts to ignore certain words and even certain provisions of a statute by interpretative techniques so that the statute remains functional and the risk of its invalidation is avoided; **Maxwell** on 'The Interpretation of Statutes' Twelfth Edition by P.St.J.Langan at page 228 writes:

> "*WHERE the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity which can hardly have been intended, a construction may be put upon it which modifies the meaning of the words and even the structure of the sentence.* ***This may be done by departing from the rules of grammar, by giving an unusual meaning to particular words, or by rejecting them***

> ***altogether,*** *on the ground that the legislature could not possibly have intended what its words signify, and that the modifications made are mere corrections of careless language and really give the true meaning. Where the main object and intention of a statute are clear, it must not be reduced to a nullity by the draftsman's unskilfulness or ignorance of the law....."*

(iii) **Imperfection in the language & expression of law:** Ordinarily, the operation of Statute is not automatic and like all legal rules, it has to take effect through the interpretation of the courts, when challenge is laid; in their task of literal or grammatical interpretation, courts are constantly reminded, to their unfeigned chagrin, of the imperfection of human language; the provisions of the Act should not confuse it's main issue and the purpose; a legislation should be maturely considered, and construed as having practical utility. In **Cramas Properties Ltd., Vs. Cannaught Fur Trimmings Ltd, (1965) 1 WLR 892 at p.899** Lord Reid has said "*the canons of construction are not so rigid as to prevent a realistic solution*". **C.K.Allen** in "**LAW IN THE MAKING**" Seventh Edition (Oxford), at page 484 opines:

> *".... To demand perfection of expression and sense is to expect infallibility not only of human foresight but of human language..... this defect may be inevitable, but that only makes it all the more inherent in the very nature of legislation....";*

(iv) **Ignoring some words or amputing some objectionable provisions in statutes**: History of Legislations in U.K and in India is replete with cases where Courts have ignored not only certain words employed in Statutes but even certain provisions which otherwise would have exposed the Statutes to absurdity or invalidation; Harman J. **in Re Lockwood, deceased (1959) Ch. 231** ignored certain words in Sec.47(5) of the Administration of Estates Act, 1925, when to have taken them into account would have resulted in preferring first cousins twice removed to the nephews and nieces of a person dying intestate; Ungoed- Thomas J. in **Wynn Vs. Skegness Urban District Council, (1967) 1 WLR 52** ignored the word "Charitable" employed in Sec.11(1)(a) of the Rating and Valuation Act, 1961, keeping in view the dominant purpose of the Act; referring to a provision of an enactment, Lord Goddard CJ. said in **Bebb Vs. Frank, (1939) 1 KB 568** "*For myself I am not ashamed to admit that I have not the least idea what sub-s. 8 means.* ***I cannot give any meaning to it*** *in the least satisfactory in my own mind*"; Lord du Parcq in **Cutler Vs. Wandsworth Stadium Ltd., (1949).C.398, 410** had ridiculed an enactment observing "*There are no doubt reasons which*

inhibit the legislature from revealing its intention in plain words. I do not know, and must not speculate, what those reasons may be....."; Hon'ble Supreme Court in **Delhi Development Authority Vs. Virender Lal Bahri, (2019) SCC online SC 279 at para 1**, faced with *prima facie* unsatisfactory structuring of a provision in Section 24 of the Right to Fair Compensation, etc. Act, 2013 quoted:

"I'm the Parliament's draftsman,
I compose the country's laws,
And of half the litigation
I'm undoubtedly the cause !"

(v) If the impugned Act is construed in the light of what is discussed above, no significance could have been attached to the erstwhile words "training" & "trainee" in the principal Act, nor to the provision which had deferred the grant of degree & permanent registration to the candidates completing the medical course; however, now in view of the Amendment Act which removed those words and diluted the provisions that made deferment of grant of degree & permanent registration, all this pales into insignificance inasmuch as the amended statute needs to be construed as if it had been originally passed in its amended form or at least the parts unrepealed in the amendatory statute should be regarded as a continuance of existing law.

25. Contentions as to occupied field, repugnancy, validity of Presidential Assent:

(i) The contentions of the petitioners that the doctrines of 'occupied field' & of 'repugnancy' invalidate the impugned Act, do not merit acceptance since this Court in the discussion supra has already held that the impugned Act, in pith & substance is referable to Entries 6 & 41 in List II and Entry 26 in List III and not to Entry 25 in List III, especially after the objectionable parts and words therein are omitted by amendment; thus the subject matter of impugned Act is miles away from that of IMC Act, which is primarily referable to Entry 66 List I; for the same reason, the argument vociferously put forth from the side of the petitioners that once the Parliament by the IMC Act evinced an intent to occupy the field, the State could not have enacted the impugned law does not merit consideration; however, this Court hastens to add that, as already discussed above, the provisions of the impugned Act and of the IMC Act to the extent they regulate grant of registration & medical practice is referable to Entry 26 List III, as the KMC Act too is; this necessitated Assent of the President to the impugned Act under Article 254(2); the

Assent Order specifically mentions Secs. 15 & 25 of IMC Act, and the UGC Act, 1956.

(ii) The contention that the Presidential Assent is vitiated by the absence of due consideration of the matter by the agencies involved, has not been substantiated; there are no pleadings in the writ petitions in this regard, either; true it is, the Assent of the President is susceptible to judicial review albeit in a restrictive way vide **KAISER -I-HIND (P) LTD., Vs. N.T.C., AIR 2002 SC 3404**; but having perused every page in the **Original File,** that graciously was made available by the learned AAG even to the counsel for the petitioners, this Court is convinced that there was due deliberation of the matter that culminated into the Assent; both the agencies involved in the Assenting process are high constitutional functionaries i.e., the office of the President of India (the Decision Maker) and the office of the Governor of the State (the Input Provider); Article 261(1) of the Constitution states - "*Full faith and credit shall be given throughout the territory of India to public acts, records and judicial proceedings of the Union and of every State*"; keeping all this in mind, this contention is liable to be rejected.

26. Temporary Registration under KMR Act r/w IMC Act, and scope of coverage of Presidential Assent:

(i) The petitioners next contended that the Assent of the President granted under Article 254(2) is confined to Secs. 15 & 25 of IMC Act is the case of the State itself; that there are other provisions i.e., Secs.21, 23, 26 & 27 in the IMC Act in respect of which admittedly the Presidential Assent has not been secured; that these provisions give right to registration under KMR Act 1961 and right to medical practise, and consequently, the impugned Act to the extent it curtails those rights is constitutionally bad; this contention does not gain acceptance because- Sec.21 which requires maintaining of Indian Medical Register, does not inhere in the candidates a substantive right to registration & medical practice as such; Sec.23 which speaks of registration in the Indian Medical Register also does not give such a right; Sec.26 speaks of registration of additional qualifications secured by a registered medical practitioner; Sec.27 speaks of privileges of persons enrolled in the Indian Medical Register; all these sections apparently have Sec.15 as their substratum, in varying degrees; going by their text & context they are not "stand

alone" provisions; therefore, the Presidential Assent grants primacy to the impugned law.

(ii) **Incidental encroachment:** The above apart, assuming that there is a conflict between the provisions of the impugned Act and those of IMC Act, the same being not substantial, the former are saved under the '**doctrine of incidental encroachment**' since the intent & effect of these provisions are to sub-serve the dominant purpose of the impugned Act i.e., to secure candidates for compulsory medical service in the Government Hospitals; the Apex Court in **Hoechst Pharmaceuticals Ltd. Vs. State of Bihar, (1983) 4 SCC 45, para 57** observed:

> *"It is well settled that the validity of an Act is not affected if it incidentally trenches upon matters outside the authorized field and therefore it is necessary to inquire in each case what is the pith and substance of the Act impugned. If the Act, when so viewed, substantially falls within the powers expressly conferred under the Legislature which enacted it, then it cannot be held to be invalid merely because it incidentally encroaches on matters which have been assigned to another Legislature.".*

(iii) True it is, that the permanent registration is deferred till after the candidate completes one year compulsory service, but not denied; deferral and denial are poles apart (are different from each other); to enable the

petitioners to practise medicine during this period of one year, the impugned Act provides for temporary registration; there is nothing unreasonable in it; no Fundamental Right is absolute in the scheme of Part III of the Constitution; the Act which creates a public duty of the kind for the first time, need to have a reasonable provision for its enforcement; without a penal provision it will be toothless; in addition to this, the power to enact law includes power to make necessary provisions for its implementation; after all, sanction is an ingredient of "*Austinian Notion of Law*"; therefore, there is nothing incompetent or incongruous in making such a provision in addition to the penal provision for ensuring compliance of the provisions of impugned Act; the further contention that the provisions of Secs. 4 & 5 of the impugned Act suffer from "manifest arbitrariness" inasmuch as they ignore an important factor that the permanent registration in the State Medical Register is a *sine qua non* for pursuing PG Degree/Diploma & Super Specialty Courses, is not substantiated by referring to any provisions in the MCI Regulations or the like; even otherwise, this temporary registration would satisfy the pleaded requirement, if any, for the purpose of admission to higher courses.

27. **Impugned Act vs. Right to Profession under Article 19(1)(g)**:

(i) As already discussed above, State's concern for providing health care to the citizens arises *inter alia* under Parts III & IV of the Constitution as progressively interpreted by the Apex Court in the light of relevant International Law & Conventions; the acute shortage of health care workers particularly in rural and semi-urban areas was recognized by the Apex Court more than three decades ago vide Dr.Pradeep Jain Case (1984) supra and in the recent past in Dinesh Singh Chauhan Case (2016) supra; several States have already evolved legislative & executive policies for addressing this requirement, and Karnataka is one of them; right to medical practice is given by the IMC Act; this right is protected under Article 19(1)(g) of the Constitution, is undeniable; but no Fundamental Rights are absolute and they admit as of necessity, reasonable restriction & regulation in larger public interest; none of the provisions of the impugned Act breaches the right to practise; on the contrary, the Act provides for medical practice soon after the course is complete, that too with designation, dignity &

remuneration and for a short period of one year only; all this is in public interest.

(ii) In a Welfare State, it is the obligation of the State to ensure the creation and sustaining of conditions congenial to good health; it has been a long settled position of law that the *private rights of citizens when in conflict with public interest, have to yield to the greater good; the Apex Court in* **Sayyed Ratanbhai Sayeed Vs. Shirdinagar Panchayat, (2016) 4 SCC 631 at paras 58 & 59 observed:**

> "58. *The emerging situation is one where private interest is pitted against public interest. The motion of public interest synonymises collective welfare of the people and public institutions and is generally informed with the dictates of public trust doctrine – res communis i.e. by everyone in common. Perceptionally health, law and order, peace, security and a clean environment are some of the areas of public and collective good where private rights being in conflict therewith has to take a back seat. In the words of Cicero "the good of the people is the chief law".*
>
> *59. The Latin maxim 'Salus Populi Suprema Lex' connotes that health, safety and welfare of the public is the supreme in law. Herbert Broom, in his celebrated publication 'A Selection of Legal Maxims' has elaborated the essence thereof as hereunder:*
>
> *"This phrase is based on the implied agreement of every member of the society that his own individual welfare shall, in cases of necessity, yield to that of the community; and that his property, liberty and life shall, under*

certain circumstances, be placed in jeopardy or even sacrificed for the public good.

The demand of public interest, in the facts of the instant case, thus deserve precedence."

(iii) In **M.R.F. Ltd. Vs. Inspector, Kerala Govt. (1998) 8 SCC 227**, the Apex Court has laid down the following principles in adjudging the validity of restrictions on right to profession guaranteed u/a 19(1)(g).

"*On a conspectus of various decisions of this Court, the following principles are clearly discernible*

(1) While considering the reasonableness of the restrictions, the Court has to keep in mind the Directive Principles of State Policy.

'2) Restrictions must not be arbitrary or of an excessive nature so as to go beyond the requirement of the interest of the general public.

3) In order to judge the reasonableness of the restrictions, no abstract or general pattern or a fixed principle can be laid down so as to be of universal application and the same will vary from case to case as also with regard to changing conditions, values of human life, social philosophy of the Constitution, prevailing conditions and the surrounding circumstances.

(4) A just. balance has to be struck between the restrictions imposed and the social control envisaged by clause (6) of Article 19.

(5) Prevailing social values as also social needs which are intended to be satisfied by restrictions have to be borne in mind. (See: State of U.P. vs. Kaushailiys, (1964) 4 SCR 1002 = AIR 1964 Sp 416) (6) There must be a direct and proximate nexus or a reasonable connection between the

restrictions imposed and the object sought to be achieved. If there is a direct nexus between the restrictions, and the object of the Act, then a strong presumption in favour of the constitutionality of the Act will naturally arise."

(iv) A Five Judge Bench of the Apex Court in **Sanjeev Coke Manufacturing Company Vs. M/s Bharat Cooking Co. Ltd, (1983) 1 SCC 147** at para 16 referring to the views of Bhagavathi J. in **Minerva Mills Vs. Union of India (1980) 3 SCC 625** has held that if a law is enacted for the purpose of giving effect to a Directive Principle of State Policy, it would be difficult to condemn such law as unreasonable and not in public interest, if it imposes a restriction on a Fundamental Right u/a 19; that, amended Article 31C grants immunity to a law enacted "*really and genuinely*" for giving effect to Directive Principles enshrined in Part IV, eliminating time consuming controversy as to contravention of Fundamental Rights under Articles 14 & 19; none of the petitioners argued that the impugned law is made not for giving effect to Directive Principles; therefore, no case is made out as to violation of Article 19(1)(g), as rightly contended by learned AAG Mr.Chouta.

(v) In a recent decision of 19.08.2019 in **ASSOCIATION OF MEDICAL SUPER SPECIALITY ASPIRANTS** (infra), the Apex Court disagreed with the grievance of similarly placed litigants that prescription of compulsory service is a breach of their Fundamental Right to Profession and that the restrictions placed on their choice of place of work are unreasonable. The Court having discussed the scope of right to profession, right to life & liberty and right to privacy vide **Puttaswamy** (supra) and the Government's International commitment vide Universal Declaration of Human Rights and the International Covenant on Economic, Social & Cultural Rights, repel the contention as to violation of these rights and upheld even Executive Policies of the State prescribing compulsory medical service to give effect to Directive Principles.

28. **Impugned Act Vs. Equality Clause:**

(i) The contention that the impugned Act enclasps only the candidates post its enactment, all others having been left out and thus being discriminatory, is liable to be invalidated for violating the Equality Clause enacted in Article 14, appears to be too farfetched an argument; it has long been settled in all civilized constitutional jurisdictions

that *classification necessarily implies discrimination between persons classified and those who are left out of the class; that, it is the essence of a classification that upon the class are cast duties and burdens, others having been left out; indeed the very idea of classification is that of inequality so that it goes without saying that the mere fact of inequality in no manner determines the constitutionality;* when new legislative policies are evolved, the State as of necessity has to fix a cut-off date w.e.f. which new duties are loaded on the shoulders of the citizens falling into a class; such matters essentially fall within the domain of executive wisdom gained through experience; the reason for not casting the duty on the doctors who are already in practice are not far to seek; if all they too were within the embrace of the Act, arguably challenge could have been laid on the grounds of manifest arbitrariness, over-inclusiveness, too-much-retrospectivity and the like; it hardly needs to be said, that the power of the State to legislate includes power to discriminate on intelligible differentia connected with the object sought to be achieved; in such matters, the State power has a larger latitude, subject to all just exceptions into which case of the petitioners does not fit; every breach of equality does not

spell disaster as a lethal violation of Article 14 warranting award of death penalty to a plenary legislation; what a Five Judge Bench of the Apex Court observed in **Namit Sharma Vs. UOI, (2013) 1 SCC 745 at para 15** needs to be borne in mind; it said:-

> *"15. It is a settled canon of constitutional jurisprudence that the doctrine of classification is a subsidiary rule evolved by courts* ***to give practical content to the doctrine of equality****. Overemphasis on the doctrine of classification or anxious or sustained attempt to discover some basis for classification may gradually and imperceptibly erode the profound potency of the glorious content of equality enshrined in Article 14 of the Constitution. .."*

(ii) The contention that the impugned Act treats petitioner-candidates on par with those who have availed the benefit of "Government Seats" and therefore, this falls foul of Equality Clause which shuns *dissimilars* being treated similarly, does not impress the Court; the government-seat-allottee-candidates again are subject to a compulsory three year service as per the bonds executed by them in terms of Rule 15 of Karnataka Conduct of Entrance Test for Selection and Admission to Post Graduate Medical and Dental Degree and Diploma Courses Rules, 2006; challenge to this obligation is already negatived by this court in the case of **Dr.Swamy**

Manjunath & Others Vs. State & Others vide judgment dated 21.12.2018 in W.P.Nos.46917-47025/2018 which is affirmed by the Division Bench on 15.02.2019 in the case of **Dr. Varun B R & Others vs. STATE OF KARNATAKA & OTHERS IN W.A.No.32/2019** (Edn-Res) and later upheld by the Apex Court vide order dated 19.8.2019 in **Association of Medical Super specialty Aspirants and Residents vs. UOI and others,** W.P.(C) No.376/2018 & connected matters; the contention that those candidates form a class apart, is true, but that does not advance the case of petitioners since they too are liable to serve one year under the impugned Act, in addition to three years in terms of their Bond, as a quid pro quo for securing the Government seat; the other contention that because of the impugned Act, the inflow of students for admission to medical courses in the colleges within the State will be considerably affected possibly striking their death knell, is an argument in despair; such a contention does not merit even cursory examination *inter alia* in the absence of necessary statistical data; this apart, the contention touches the market forces assessment of which ordinarily is beyond the pale of judicial scrutiny; even otherwise, for challenge on this assertion, Article 14 does

not much avail since the Act secures shelter under the protective umbrella of Article 31(C) vide **Sanjeev Coke** supra.

29. Impugned Act Vs. Right to Privacy:

(i) The contention of Smt. Jayna Kothari, learned Sr Advocate that the impugned Act enacting a compulsion render public service is violative of citizen's Fundamental Right to Privacy vide **Puttaswamy Vs. UOI, (2017) 10 SCC 1**, is bit difficult to sustain; true it is, in the said case, the Apex Court broadly explained and illustrated what **"privacy"** is, although, an exhaustive enumeration or catalogue of entitlements or interests comprised in right to privacy is left undetermined; *Privacy includes at its core, the preservation of personal intimacies, sanctity of family life, marriage, procreation, home and sexual orientation.* ***"Privacy also connotes right to be left alone"***; *Privacy safeguards individual autonomy and recognizes ability of individual to control vital aspects of his or her life. Personal choices governing way of life are intrinsic to privacy*; learned Sr. Counsel Kothari specifically banks upon the observations of the Apex Court at paragraphs 373 & 424, in Puttaswamy Case supra, which are as under:

> *"Similarly, the freedom to choose either to work or not and the freedom to choose the nature of the work are areas of private decision making process"* (para 373)
>
> *"To exercise one's right to privacy is to choose and specify on two levels. It is to choose which of the various activities that are taken in by the general residue of liberty available to her she would like to perform, and to specify whom to include in one's circle when performing them. It is also autonomy in the negative, and takes in the choice and specification of which activities not to perform and which persons to exclude from one's circle. Exercising privacy is the signaling of one's intent to these specified others – whether they are one's co-participants or simply one's audience – as well as to society at large, to claim and exercise the right. To check for the existence of an actionable claim to privacy, all that needs to be considered is if such an intent to choose and specify exists, whether directly in its manifestation in the rights bearer's actions, or otherwise."*
> (para 424).

Learned Sr. Advocates M/s Ashok Haranahalli, P.S. Rajagopal, Dhyan Chinnappa, Shashikiran Shetty and Jayna Kothari banking upon the above observations submitted: that the impugned law falls foul of this right inasmuch as the 'choice' in-built in privacy is robbed off; that the petitioners cannot be asked to work in ill-infrastructured/nil-infrastructured Govt. hospitals against their willingness, and may not be required to reside, eat & work in places which are not of their 'choice & convenience.'

(ii) The Right to Privacy being of nascent origin is gathered *inter alia* from Part III read with Preamble of the Constitution; if Part III 'Explicit Rights' can be regulated & restricted by law, albeit on certain permissible grounds, it hardly needs to be stated that the right to privacy which is derived therefrom cannot claim immunity from such regulation and restriction; in the very same decision, the Apex Court has clarified that *like other rights which form part of fundamental freedoms protected by Part III including right to live and personal liberty under Article 21, privacy is not an absolute right*; therefore, what applies to the Fundamental Rights in respect of regulation/restriction *a priori* applies to this right, and in the case of conflict, it has to yield to the larger public interest for achieving which the impugned Act is designed; the Apex Court in the second **K.S. Puttaswamy (Adhaar) Vs. UOI, 2019 (1) SCC 1** has held that *the Right to Privacy can be abridged by a just, fair & reasonable law as any other Fundamental Rights can be; such abridgment has to fulfill the test of proportionality i.e., it should be proportionate to the need for such interference; in addition to this, the law in question must also provide procedural guarantees against abuse of such interference;* abridgment has to be co-terminus with true requirement;

going by this standard, it is difficult to countenance petitioners' argument that the impugned Act is constitutionally invalid, especially when State's power to compel citizens to render public service is sanctioned under Article 23(1) of the Constitution.

(iii) The contention that the candidates are required to go to even remote and difficult areas to work and to reside there, where they may encounter some difficulties as to availability of food & shelter of their choice may be true, but it is too feeble a ground for invalidating the law made for effectuating the constitutional imperatives i.e., Directive Principles and also for addressing the concern of the Apex Court as to non-availability of medical services to the rural masses & to the under privileged classes; the petitioners reliance on the decision of **Chattisgarh High Court in Dr.Atin Kundu Vs. State, AIR 2003 Chh 1,** is not well founded since the Rule in challenge there apparently related to Post Graduate medical education to the advantage of the students unlike the law impugned herein whose focal point is public service in Govt. hospitals; that apart, this Court is not very sure whether the ratio in the said decision if at all is invocable in view of the latest decision of the Apex Court in the case of **Association of**

Medical Super Speciality Aspirants (supra); however, this does not allow the respondent authorities to turn Nelson Eye to the affliction the candidates deployed for compulsory services in rural and difficult areas are put to; if there are genuine difficulties, the authorities functioning under the impugned Act/Rules are required to address the same at the earliest after hearing the concerned; the contention that the candidates may not get posting to the hospitals which are reasonably infrastructured to suit to their qualifications, again is a matter which the authorities would address subject to pragmatics; a Grievance Redressal Cell, if created would be of considerable value; it hardly needs to be mentioned that nothing in the impugned Act comes in the way of doing that, since the Government being the guardian of the citizens has *parens patria* power even *de hors* the Act; these observations will take care of the apprehensions expressed by the petitioners.

30. Impugned Act vs. Forced Labour:

(i) The contention of the Petitioners that the impugned Act compelling the citizens put in Public Service is hit by prohibition of forced labour and therefore falls foul of Articles 21 & 23(1) of the Constitution cannot be

accepted. True it is that the Apex Court has given an expansive significance to the term 'forced labour', in the case of ***People's Union for Democratic Rights v. Union of India*** **(Asiad Case), AIR 1982 SC 1473**. Bhagwati J. added that "*where a person provides labour or service to another for remuneration which is less than the minimum wage, the labour or service provided by him clearly falls within the scope and ambit of the words 'forced labour' under Article 23*". That the Article prohibits ***'bonded labour'***, is true; but, the concept as such has different connotations in which case of the petitioners is not covered; the plea of ***beggar***, again is misplaced. '*Begar*' as employed in Article 23(1) means a labour or service that is exacted by the State or its instrumentality without giving reasonable remuneration for it. This is prohibited by the said Article, is undesirable. In this case, admittedly, the Government has fixed a monthly remuneration almost on par with comparable regular recruits gross salary when the minimum fixed as wages under the provisions of Sec.3 r/w Sec.5 of Minimum Wages Act, 1948 for this class of health care workers is only Rs.45,000/- per month.

(ii) The above apart, clause (2) of Article 23 in so many words permits the State to impose compulsory

service for "public purposes", which expression is wide enough to include not only military or police service but also other social services like the medical services, that too, for a short period of one year and with remuneration & designation. This aspect of the matter was discussed in the Constituent Assembly. Mr. H. V. Kamath had suggested that the phrase "public purpose" be replaced with "national or social purpose", arguing that it has a "wider and a higher, a more comprehensive connotation." The Chief Architect of the Constitution, Dr. Ambedkar replied that the word 'public' was "wide enough to cover both 'national' as well as 'social'". **CAD Vol. VII, 3rd December, 1948; t**he phrase "public purpose" was explained by the Apex Court in ***State of Bihar v. Kameshwar Singh*, AIR 1952 SC 252**, observing:

> "*whatever furthers the general interests of the community as opposed to the particular interests of the individual must be regarded as a public purpose... **The words "public purpose" used in article 23(2) indicate that the Constitution uses those words in a very large sense**. In the never ending race the law must keep pace with the realities of the social and political evolution of the country as reflected in the Constitution.*"

(iii) Justice Krishna Iyer speaking for the Apex Court, in ***Jolly George Verghese v. Bank of Cochin*, 1980 AIR**

470, held that "*it is a principle generally recognised in national legal system that, in the event of doubt, the national rule is to be interpreted in accordance with the State's international obligations.*" Therefore, it is pertinent to note that **the International Covenant on Civil and Political Rights**, which has been ratified by our nation in 1979, states that "*work or service that forms part of normal civil obligations*" is not forced labour (Article 8). According to the ICCPR Human Rights Committee, in order to be a normal civil obligation, "*the labour in question must, at a minimum, not be an exceptional measure; it must not possess a punitive purpose or effect; and it must be provided for by law in order to serve a legitimate purpose*" vide ***Faure v. Australia*, Communication No. 1036/2001, U.N. Doc. CCPR/C/85/D/1036/2001 (2005)**. Even in liberal and advanced constitutional jurisdictions, the compulsory public service is upheld by the courts. The US Supreme Court in ***Butler v. Perry*, 240 US 328 (1916)** held that a law requiring able-bodied men to perform a reasonable amount on public roads was not in violation of the Thirteenth Amendment of the US Constitution, which prohibits involuntary servitude; the Court reasoned that every individual owed certain duties to the State, such as

services in the army, militia, the jury, etc., and that the Amendment did not intend to bar the enforcement of those duties.

(iv) The provisions relating to Fundamental Rights guaranteed under Part III of the Constitution have to be viewed keeping in view the Directive Principles of State Policy enshrined in Part IV which impose certain obligations on the State. S.R. DAS J. in ***Kameshwar Singh***, *supra,* observed "*[i]f […] the State is to give effect to these avowed purposes of our Constitution we must regard as a public purpose all that will be calculated to promote the welfare of the people as envisaged in these directive principles of State policy whatever else that expression may mean.*" In ***Minerva Mills*** (supra) it is held "*The significance of the perception that Parts III and IV together constitute the core of commitment to social revolution and they, together, are the conscience of the Constitution is to be traced to a deep understanding of the scheme of the Indian Constitution. […] In other words, the Indian Constitution is founded on the bed-rock of the balance between Parts III and IV. To give absolute primacy to one over the other is to disturb the harmony of the Constitution.*" Therefore, all the

Fundamental Rights need to be read harmonized the Directive Principles.

31. Impugned Act Vs. Fundamental Rights of minorities:

(i) Learned Sr. Advocate Mr.K.G.Raghavan in his inimitable style made a novel argument that: petitioner institution is established by a Religious Minority Community i.e., Christians; since 1974 its Academic Curriculum/Prospectus, as a pre-condition for admission to medical courses requires the students to execute a bond for serving *inter alia* in the Rural Community Health Centres recognised by the petitioner CBCI Society; the Fundamental Right of the Minority Community guaranteed u/a 30 of the Constitution is interpreted by the Apex Court as having widest amplitude; petitioners' right to have the services of the candidates (passing out from its institutions) exploited for the benefit of the Community is a part of its Fundamental Right to establish and administer the institution; this right becomes exercisable in its essence only when the objective for which it has set up the institutions reaps fruition i.e., when the candidates after completion of course make their services available to the

Christian community not only in the State but outside also; this important right having been curtailed by the impugned Act, the same is liable to be struck down; he hastens to add that unlike the Fundamental Right to profession guaranteed u/a 19(1)(g) which can be restricted u/a 19(2), the Minority Right guaranteed u/a 30(1) does not admit restriction other than the ones enlisted in **TMA Pai Foundation Case, (2002) 8 SCC 481** i.e. only for the purpose of: serving the interest of teachers & the taught, maintaining standards of education in the institutions, preventing mal-administration of institutions and interdicting profiteering; restriction on this important right effected under the impugned Act not having been founded on any of these four factors, unauthorizedly infringes the Minority Right, contended Mr.Raghavan, banking upon the decisions referred to below.

(ii) True it is that, the second petitioner is an unaided religious minority educational institution established and administered by Christians; all minority institutions have a host of Fundamental Rights assured under Article 30(1) of the Constitution, is also true; from ***In re*** **The Kerala Education Bill, AIR 1958 SC 956** to **St. Xavier's College Society (1974) 1 SCC 717, TMA Pai**

Foundation (2002) 8 SCC 481 to **P.A.Inamdar, (2005) 6 SCC 537** and to **Christian Medical College (2014) 2 SCC 305**, it has been iterated & reiterated by the Apex Court that: *the right of minority communities to establish and administer an educational institution of their choice in Article 30(1) gives the right a very wide amplitude; this right must mean to establish real institutions which will effectively serve the needs of the community, and not a mere and pious abstract sentiment; this right cannot be reduced to a mere husk, and it cannot be exercised in vaccuo;* these rights u/a 30(1) are not subject to restrictions in the manner in which those guaranteed u/a 19 are; these and other such observations show the importance which our Constitution gives to the rights of religious & linguistic minorities; these rights being sacrosanct are guarded by the Courts with zeal and zest, as the survey of judicial precedents shows.

(iii) Mr.Raghavan's contention that the law relating to Fundamental Rights of Minority Communities has marched from April to May and now to June of its life and that the rights of the community to have the services of students passing out from their institutions need to be recognized as of necessity, and as a collective corollary to other cognate rights emanating from Article 30(1) is

difficult to countenance; the right which the petitioner institution claims is referable to a Pact between the Management and the students, at the time of admission to the course; it has nothing to do with the Minority Rights guaranteed under this Article; a reading from the above decisions does not support too broad a contention so forcefully put forth by Mr. Raghavan; no ruling having even persuasive value nor any *opinio juris* is brought to the notice of this Court which even remotely promotes such a contention; conceding such a right to the minority community amounts to expanding the scope of Article 30(1) beyond its wide contours as fixed by the Apex Court in a catena of decisions including those referred to above; this apart, the contention that the products of Minority Institution should be available for the exclusive use and benefit of the said minority only, has communal overtones; it is vitiated by unconscionability as well; this apart, it militates against the larger public interest which the impugned Act having been enacted to give effect to the Directive Principles, intends to serve.

(iv) The contention that the minority institutions' right to make exclusive use of the services of its passing out students in terms of the Pact being protected by Article

30(1), the impugned Act falls foul of it, is liable to be rejected also because:

(a) the Constitution Bench of the Apex Court in **St. Xavier's College Society Case** supra, at para 173 stated as under:

> *"The application of the term 'abridge' may not be difficult in many cases but the problem arises acutely in certain types of situations. The important ones are where a law is not a direct restriction or the right but is designed to accomplish another objective and the impact upon the right is secondary or indirect. Measure- which are directed other forms of activities but which have a secondary or indirect or incidental effect upon the right do not generally abridge a right unless the content of the right is regulated. As we have already said, such measures would include various types of taxes, economic regulations, laws regulating tile wages, measures to promote health and to preserve hygiene and other laws of general application. By hypothesis, the law, taken by itself, is a legitimate one, aimed directly at the control of some other activity. The question is about its secondary impact upon the admitted area of administration of educational institutions. This is especially a problem of determining when the regulation in issue has an effect which constitutes an abridgement of the constitutional right within the meaning of Article 13(2). In other words, in every case, the court must undertake to define and give content to the word 'bridge' in Article 13(2)(1). The question to be asked and answered is whether the particular measure is regulatory or whether it crosses the zone of permissible regulation and enters the forbidden territory of restrictions or abridgement.* ***So, even if an educational institution established by a religious or linguistic minority does not seek recognition, affiliation or aid, its activity can be regulated in various ways provided the regulations do not take away or abridge the guaranteed right. Regular tax measures, economic regulations, social welfare***

legislation, wage and hour legislation and similar measures may, of course have some effect upon the right under Article 30(1). But where the burden is the same as that borne by others engaged in different forms of activity, the similar impact on the right seems clearly insufficient to constitute an abridgement*...."*

(b) the Apex Court in **Ali Bihar Christian Schools Association Vs. State of Bihar, (1988) 1 SCC 206** at para 9 observed:

".....Minority institutions may be categorised in three classes, (i) educational institutions which neither seek aid nor recognition from the State, (ii) institutions that seek aid from the State, and (iii) educational institutions which seek recognition but not aid. Minority institutions which fall in the first category are free to administer their institution in the manner they like, the State has no power under the Constitution to place any restriction on their right of administration This does not mean that an unaided minority institution is immune from operation of general laws of the land. ***A minority institution cannot claim immunity from contract law tax measures, economic regulations, social welfare legislation, labour and industrial laws and similar other measures which are intended to meet the need of the society****....."*

(c) In **ST.JOHN'S TEACHERS TRAINING INSTITUTE vs. STATE OF TAMIL NADU, 1993 (3) SCC 595** it is held that *even unaided institutions are not immune from the operations of general laws of the land such as Contract Law, Tax measures, Economic Laws, Social Welfare Legislations, Labour and Industrial Laws and similar other laws which*

are intended to meet the need of the society. After all, the Act prescribes only one short year of compulsory service in public interest i.e., to give effect to the Directive Principles, in tune with international commitment as discussed by the Apex Court in the decisions supra; it is always open to the beneficiaries/parties to the contract to enforce the obligation arising therefrom after the compulsory service period is over; the intervention of new legislation does not impair the contractual rights of these minority institutions *qua* the students who have made a pact for serving the community post their courses; the enforceability of contractual obligation arguably having been postponed by one year, the rest of the years are free for availment in favour of the minority institutions; there is no cause for panic nor for a hue & cry.

32. **Penalty clause in impugned Act vs. Rule of Proportionality; manifest arbitrariness:**

(i) Learned Sr. Advocate Mr.M.R.Naik's contention that the enormity of the penalty amount prescribed under Sec.6 of the Act falls foul of the 'doctrine of proportionality', is bit difficult to accept; the socio-legal history of the law prescribing compulsory service has already been discussed above; the Apex Court in a few decisions having painfully

noted the acute unavailability of medical services in rural and semi-urban areas, has expressed its anguish about the reluctance of medical professionals to render services in rural & difficult areas; even the Parliament and the MCI too have discussed this aspect of the matter; were men/women perfectly rational, so as to act invariably in accordance of an enlightened estimate of consequences, the question of the measure of penalty would present no difficulty; perhaps a draconian simplicity and severity would be perfectly effective, but, they seldom are; several States have already evolved Legislative & Executive Policies prescribing compulsory medical service and fixing heavy sums of penalty for defaulters; with this backdrop of fact matrix, the impugned law having been enacted, Sec.6 thereof prescribes Rs.15 lakh as the minimum fine, Rs.30 lakh being the maximum; it need not be reiterated that the plenary power to enact law includes the power to enact coercive provisions for its implementation. The Apex Court in **STATE OF U.P. vs. SUKHPAL SINGH BAL, (2005) 7 SCC 615** while dealing with some aspects of penalty has observed "... *Everything which is incidental to the main purpose of a power is contained within the power itself. The power to impose penalty is for the purpose of*

vindicating the main power which is conferred by the Statute in question.....";

(ii) The Constitution Bench of the Apex Court in **R.K.Dalmia** (supra) stated that *the Legislature understands and correctly appreciates the need of its people; that its laws are directed to problems made manifest by experience.* **Thomas M Cooley**, in his **'A TREATISE ON THE CONSTITUTIONAL LIMITATIONS'** (First Edition 1868) Indian Reprint 2005, Hindustan Law Book Company, Calcutta at page 168 stated:

> *"The rule of law upon this subject appears to be, that, except where the Constitution has imposed limits upon the legislative power, it must be considered as practically absolute, whether it operate according to* ***natural justice or not*** *in any particular case. ..... The remedy for* ***unwise or oppressive legislation****, within constitutional bounds, is by an appeal to the justice and patriotism of the representatives of the people. If this fail, the people in their sovereign capacity can correct the evil; but Courts cannot assume their rights.* ***The judiciary can only arrest the execution of a statute when it conflicts with the constitution. It cannot run a race of opinions upon points of right, reason, and expedi*****ency with the law- making power****....".*

The above proposition may be too broad *qua* our constitutional jurisprudence; but in matters relating to legislative decisions as to what should be the amount of fine, normally, Courts do not substitute their view for that

of the law-maker; a lot of wisdom drawn from experience lies behind the making of the penal provisions for securing compliance to law; viewed from any angle, this case is not the one for judicial intervention.

(iii) The Apex Court in **Association of Medical Super Speciality Aspirants** (supra) at para 19 has mentioned about the rates of fine fixed by some States and by the Central Government in default of compulsory service; in West Bengal fine amount is Rs.30 lakh, period of compulsory service being three years; in Tamil Nadu the fine amount is Rs.50 lakh, the period of compulsory service being two years; for candidates passing out from Armed Forces Medical Colleges, the Central Government has fixed a fine of Rs.25 lakh, period of compulsory service being five years; in Kerala the minimum liquidated damages (ie., fine amount) is Rs.20 lakh, the compulsory service period being one year vide AYISHA BEGUM vs. STATE, LAWS (KER) 2018(3) 105; in Maharashtra the fine amount is Rs.25 lakh, the minimum service period being two years vide VINOD SHANKAR LAL SHARMA vs. STATE OF MAHARASHTRA, LAWS (BOM) 2012 (11) 33 DB; in Gujarat, the fine amount is Rs.20 lakh, the service period being one year; going by these contemporary standards of

several States and of the Central Government, it cannot be gainsaid that the fine amount prescribed by Sec.6 of the impugned Act, ranging between Rs.15 lakh & Rs.30 lakh is arbitrary, unreasonable or disproportionate; the problem of acute shortage of medical service to the rural & disadvantaged masses and a manifest reluctance of medical practitioners to serve them eminently justify the size of fine amount, the intent being both, firstly the deterrence against default of compliance and secondly the recompense to the State for the service lost.

(iv) There is some force in the contention Mr.Naik that the award of penalty being imperative on the violation of Sec.6 per se works out enormous injustice and hardship even to the scrupulous candidates who are disabled from joining compulsory service for reasons beyond their control and not otherwise attributable to them; however, regardless of text of this provision, always there is some discretion left with the authorities to mitigate the hardship within the bounds of law; if there are *bona fide* reasons for the candidates for not reporting for public duty immediately, reprieve may be granted by way of deferred service or split service as the case may be; recovery of fine amount in instalments, of course, with banking rate of

interest also mitigate hardship; however, in no case, the candidate shall be permitted to escape from the compulsory service; the Govt. may lay down some guidelines for considering the cases of such candidates deserving grant of reprieve; these observations allay the fears of the scrupulous and sincere candidates.

(v) The contention that Sec.6 vests unbridled & unguided power in the authorities and therefore the same is liable to be shooted down on the ground of excessive delegation of power to the executive *sans* regulatory norms, is again bit difficult to cotton with; true it is, that the impugned Act and the Rules do not in so many words lay down the guidelines as to how the fine amount ranging between the minimum of Rs.15 Lakh and the maximum of Rs.30 Lakh is to be determined; but the object, text and context of the provisions of the Act do provide some guidance; it is a settled legal position that the abuse potential of law *per se,* is not a ground for hanging it to death, especially when it is possible to bring down the extent of likely abuse, to reasonable limits, by judicial techniques; the fears of the petitioners in this regard can be assuaged by creating a **High Level Committee** *inter alia* comprising of a legally trained official not below the

rank of Deputy Secretary, Dept. of Law, as a participatory body in adjudication of disputes relating to fine amount, and by mandamusing the Govt. to issue guidelines for regulating the exercise of 'arguably' wide discretion.

33. **Impugned Act, whether creates criminal liability?**

(i) Petitioners contended that Sec.6 of the impugned Act has abundant criminal law elements and it is punitive in nature, and therefore, is hit by prohibition of making *ex post facto* criminal law, as enacted in Article 20(1) of the Constitution; they further contended that the law cannot be made applicable to the candidates who had already secured admission to the medical courses before it came into force; in other words, the impugned Act having penal provision i.e., Sec.6 applies only to those candidates who join the medical course after it was notified for enforcement inasmuch retrospective penal statutes cannot be enacted because of constitutional bar.

(ii) A sovereign legislature has the power to enact prospective as well as retrospective law; however, our Constitution enacts some limitations on the legislative power, one such being Article 20(1) which prohibits enactment of *ex post facto* criminal law; to put it differently,

the legislature cannot make an act/omission a crime for the first time and then make that law retrospective to cover such act/omission later; this prohibition is not merely against enacting retroactive law but also against conviction under such law; however, such a prohibition has no application to a civil liability unless the statute makes the failure to discharge such liability an offence vide **Cf. HATHI SINGH Mfg. Co. vs. UOI, 1960(3) SCR 528.** Therefore, the statute in question needs to be properly construed before invoking such prohibition; to decide the nature of a statute i.e., whether it is civil law or criminal law, is not an easy task as discussed by Jeremy Bentham in "Limits of Jurisprudence Defined" and in Salmond's Jurisprudence; one has to see a host of factors such as the text, context, intent, content & effect of the law in question for determining it's true nature.

(iii) There is no provision in the impugned Act even remotely suggesting that the act of a medical graduate in denying or delaying his service to the public is an 'offence' required to be investigated into by the police, or tried by the criminal court; the object of the Act is to secure medical candidates for serving in Govt. hospitals; if the legislature intended to prosecute these persons, it would

have made the act of escaping from public service a punishable offence by appropriate text; God forbid such a law being made; the Act does not intend to drive the unscrupulous doctors to prosecution lest it should waste medical resources meant for the public at large; thus, the impugned law which does not create a criminal liability cannot be classified as penal law, some coercive elements present therein notwithstanding; this apart, if a genuine doubt arises in the mind of the Court as to whether the statute creates a criminal liability or a civil obligation, it is prudent to resolve the same by leaning towards the latter.

(iv) How the legislature intends to treat the violators of the impugned Act is expressed by the following text of Sec.6:

> *"6. Penalty:- Whoever contravenes any of the provisions specified in this Act shall be punished with a fine not less than rupees fifteen lakhs but may extend upto rupees thirty lakhs".*

The Apex Court in Sukhpal Singh Bal supra observed:

> *"penalty is a slippery word and it has to be understood in the context in which it is used in a given statute. A penalty may be the subject matter of a breach of statutory duty or it may be the subject matter of a complaint. In ordinary parlance, the proceedings may cover penalties for avoidance of civil liabilities which do not constitute offences against the State. This distinction is responsible for*

any enactment intended to protect public revenue. Thus, all penalties do not flow from an offence as is commonly understood but all offences lead to a penalty. Whereas, the former is a penalty which flows from a disregard of statutory provisions, the latter is entailed where there is mens rea and is made the subject matter of adjudication....."

(v) The absence of the ingredient of a traditional crime namely *mens rea* such as guilty mind, culpable negligence or the like is yet another factor that strengthens the view that the Act is not a penal legislation; the *malus in se* and *malus prohibita* which traditionally inhere in criminal legislations are conspicuous by their absence in this Act, added to this, the text of the impugned Act is distinct from the standard penal legislations such as Indian Penal Code or the like; the hugeness of penalty ranging between Rs.15,00,000/- and Rs.30,00,000/- goes to show that the same is not punitive but is in the nature of recompense; this is the written stand of the State in its Memo dated 13.08.2019 which *inter alia* reads: " *....."fine" to be clarified as compensation.*" May be that with the amount of penalty/fine, the Govt. may hire the services of willing doctors who otherwise are not covered by the Act; this penalty itself has some punitive elements may be true; but it is only for ensuring that the candidates are deterred from fleeing away from the public duty and nothing

beyond; such deterrence in varying degrees lies in several laws fastening civil obligations, is undeniable; therefore, the attack on the Act founded on the ground of *ex post facto*, criminal law, fails.

34. **Whether the Act imposing civil liability is retroactive in operation?**

(i) The contention that the impugned Act is prospective in operation and in any event it needs to be so construed for saving it from being struck down as being manifestly arbitrary, has some force; there is a strong presumption that all statutes creating rights & obligations are prospective in operation since ordinarily the vested rights of the citizens are not intended to be altered to their detriment'. Retroactive legislation even in civil matters is looked upon with disfavour because of its tendency to be unjust and unreasonable; even in the absence of constitutional provisions, unlike in the case of penal law, statute with but few exceptions should be construed so that they shall have only prospective operation; indeed, there is a strong presumption that the legislature intended its enactments to be effective only *in futuro,* in the absence of a clear indication to the contra; authorities on statutory construction like Earl T. Crawford suggest that *if perchance*

any reasonable doubt exists in this regard, it should be resolved in favour of prospective operation unless its language must imperatively and clearly require the contrary; as a general rule, a statute expressed in general terms and in the present tense will be given prospective effect and considered applicable to conditions coming into existence subsequent to its enactment even though such conditions were not actually known at the time of enactment.

(ii) The rule of prospectivity of statutes is founded on the proposition that since every citizen is presumed to know the law and to enter into business engagements in accordance with its provisions, it would be unjust, even where the legislature has the power to enact a law with retroactive effect, to allow the enactment to operate in retrospection, unless it is very clear that the contra is the legislative purpose; every statute, it has been said, which takes away or impairs vested rights acquired under existing laws or attaches a new disability in respect of transactions or considerations already passed, must be presumed, out of respect to the Legislature, to be intended not to have a retrospective operation, vide: **People Vs. Dilliard [298 N.Y.S 296, 302, 252, Ap.Div 125]**; our Apex Court in **National Agricultural Co-op Marketing**

Federation of India Vs. Union of India, (2003) 5 SCC 23

observed:

> *"The retrospectivity is liable to be decided on a few touch stones such as: (i) the words used must be expressly provided or clearly implied retrospective operation, (ii) the retrospectivity must be reasonable and not excessive or harsh, otherwise it runs the risk of being struck down as unconstitutional; (iii) where the legislation is introduced to overcome a judicial decision, the power cannot be used to subvert the decision without removing the statutory basis of the decision. There is no fixed formula for the expression of legislative intent to give retrospectivity to an enactment ..."*

(iii) There is a lot of force in the contention of the petitioners that all they had already joined the medical courses before the impugned law was conceived in or enacted; many of them have organized the financial and other resources for prosecuting the course of studies keeping in view that they would come out of the campus and enter the free market soon after accomplishment of the course as prescribed by the MCI Regulations; many of them might have had the idea of prosecuting higher studies with the legal regime that obtained prior to enactment of the impugned Act; may be there are cases that metaphorically fit into 'beg, borrow & steal' for gaining entry to the campus; there is also force in the argument

that to some extent, the impugned Act has affected their 'choice' post facto; had they known that such a law was in the offing, they would have taken an 'informed decision' as to whether they should have entered medical course or not. Thus, the application of the Act to all such candidates would mete out enormous injustice and hardship and all this justifies their submission that the impugned Act is and be construed as being prospective in operation, than to risk its validity on the ground of 'manifest arbitrariness', as expounded by the Apex Court in the case of **Shayara Bano Vs. Union of India (2017) 9 SCC 1**. This appears to be the stand of the State in its letter dated 30.08.2019 infra.

35. **Whether NIMHANS is a University qua the impugned Act?**

The contention of learned counsel Mr.P.S.Rajagopal that Act cannot be applied to the candidates who having been duly admitted to medical courses in the NIMHANS at Bengaluru come out with value addition, has some force. Sec.2(g) of the impugned Act defines the University to mean 'a University established by law in the State or a University declared as deemed University under the UGC Act'. The Legislature has power to define a word even artificially,

either extensively or restrictively. When a word is defined to 'mean' such & such, the definition is *prima facie* restrictive and needs to be treated as exhaustive vide **Inland Revenue Commissioner vs. Joiner, (1975) 3 All E.R. 1050 at 1061.** It cannot be disputed that the definition of 'University' given u/s.2(g) of the impugned Act falls in this category and therefore suffice it to say, that the NIMHANS was a society registered under the Karnataka Societies Registration Act, 1960 on 27.12.1974; now it is a body corporate constituted under Sec.4 of The National Institute of Mental Health and Neuro-Sciences, Bengaluru Act, 2012. There is nothing either in the impugned Act or under the NIMHANS Act to suggest that the said body corporate answers the definition of University u/s.2(g) of the impugned Act. Consequently, the provisions of Sec.4 & 5 of the impugned Act do not apply to the candidates accomplishing the courses in NIMHANS. However, this does not mean that they are exempted from the provisions of Sec.3 of the Act.

36. **Government letter offering some reprieve:**

(i) On 28.08.2019, all these matters having been heard and reserved, were posted for pronouncement of

judgment this afternoon; the learned Addl. Advocate General Sri Sandesh Chouta on the forenoon of this day sought for further hearing, by placing on record a Government Letter dated 30.08.2019 (approved by the Principal Secretary of the Department); the content portion of the same reads as under:

> *"The original Act i.e., "The Karnataka Compulsory Service by Candidates Completed Medical Courses Act, 2012" came into force on 3/06/2015 and the amendment Act i.e. "The Karnataka Compulsory Service by Candidates Completed Medical Courses (Amendment) Act, 2017" came into force on 3/06/2017*
>
> *The original Act covered all candidates who were doing their medical course/post graduate medical course/super specialty graduate course as on 3/06/2015.*
>
> *However in view of the conditional interim order dated 6/10/2015, the candidates have not undergone the mandatory service.*
>
> *Looking into the workability of the Act and the object which it seeks to achieve, the State proposes (without prejudice to its contention in support of the vires of the Act) that even if the Act is made applicable for candidates who had taken their admission post the commencement of the Act i.e., 3/06/2015 (i.e. candidates would pass out in the year 2020-21), the object which the Act seeks to achieve will be achieved. This would also satisfy the petitioners before the court since most of the petitioners (if not all) would have completed their course well before this cut of period of 2020-21.*
>
> *Proposal/concession given by the State Government would not inure to the benefit to such of the candidates who have already opted and paid penalty/compensation in lieu of not undergoing mandatory service.*

> *However if for any reason the petitioners and similar placed candidates agree to mandatorily serve the State, even for 6 months, the State would endeavor to commence the process of counseling and post the candidates for compulsory service accordingly."*

(ii) Apparently, going by its text and context, the above letter not being a 'Government Order' as rightly submitted by learned ASG Mr.Shashikantha may or may not *proprio vigor* create any right in favour of the candidates. However, the proposal in the letter is only an expression of Government's intent of granting some reprieve to the deserving candidates who may make use of it, in accordance with law. Suffice it to say that, the legality aspects of the said letter have not been gone into by this Court; whether such a letter has legal efficacy and whether it fits into the "REMOVAL OF DIFFICULTY" clause enacted in the impugned Act, are a matter for consideration, but not in this case.

In the above circumstances, these Writ Petitions are disposed off as under:

(a) The challenge to the validity of Karnataka Compulsory Service Training by Candidates Completed Medical Courses Act, 2012 as amended by the Karnataka Act No.35 of 2017, and to the Karnataka Compulsory

Service Training by Candidates completed Medical Course Rules 2015, fails;

(b) The impugned Act and the Rules being prospective in operation do not apply to the candidates who had already been admitted to the respective medical courses, i.e., Graduation, Post-Graduation or Super Specialty courses before 24.07.2015 i.e., the date on which the Karnataka Act No.26 of 2015 came into force;

(c) The Government of Karnataka is directed to lay down guidelines within two months:

(i) for regulating the exercise of discretion in determining the penalty amount ranging from minimum of Rs.15 lakh to the maximum of Rs.30 lakh, as provided u/s.6 of the Act, and for the payment of the fine amount in just & reasonable installments, with current banking rate of interest on such delayed payment, and,

(ii) for deferring the compulsory service for a short period or for providing for the split of service period in cases of genuine difficulty not arising from the fault of the candidates, subject to reasonable riders so that the hardship is mitigated, on proof of reasonable grounds, and,

(d) The Government of Karnataka shall within two months, constitute a High Level Committee/Grievance Redressal Cell for addressing the complaints of aggrieved candidates in the matter of imposition of fine, working conditions, infrastructural facilities, requirement of residence, commutation or the like.

No costs.

Sd/-
JUDGE

Snb/Bsv/cbc