

**THE SUPREME COURT OF INDIA**

**CIVIL ORIGINAL JURISDICTION**

**WRIT PETITION (CIVIL) No. 600 OF 2015**

**IN THE MATTER OF :**

**SHAMNAD BASHEER**

.....Petitioner

**VERSUS**

**UNION OF INDIA & ORS.**

....Respondents

**ADDITIONAL AFFIDAVIT ON BEHALF OF THE RESPONDENT**

**No. 2 BAR COUNCIL OF INDIA**

**[PAPER BOOK]**

**ADVOCATE FOR RESPONDENT NO. 2 BAR COUNCIL OF**

**INDIA – ARDHENDUMAULI KUMAR PRASAD**

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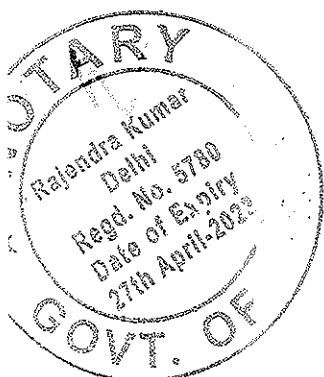
....Respondents

ADDITIONAL AFFIDAVIT ON BEHALF OF THE RESPONDENT

No. 2 BAR COUNCIL OF INDIA

I, Ashok Pandey, S/O Shri S. L. Pandey, aged about 42 years, Joint Secretary, Bar Council of India, having its office at 21, Rouse Avenue, Institutional Area, Near Bal Bhawan, New Delhi 110001, do hereby solemnly affirm and declare as under:-

1. I am working on the post of Joint Secretary, Bar Council of India and as such well acquainted and conversant with the facts and circumstances of the present case on the basis of records thereof as well as the other affairs of the Bar Council of India and duly authorized, as such competent to swear this affidavit.
2. That I have gone through the contents of the memo of Writ Petition under reply and have fully understood the same and at the very outset submit that the issues raised by the Writ Petitioner is of grave concern and require consideration by this Hon'ble Court.
3. That it is respectfully submitted that this Additional Affidavit is being filed for the purpose of clarifying the position of the answering respondent in conducting the **Common Law Admission Test ("CLAT" in short)**, which is at present

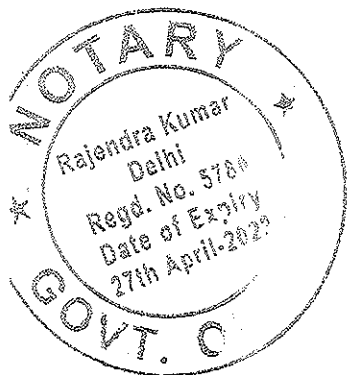


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being conducted by various National Law Universities ("NLU" in short) on rotational basis as per mutual understanding between the participating NLUs and also for the purpose of statutory role of the answering respondent vis-à-vis Legal Education in the Country.

4. That it is most humbly submitted that the applicant Bar Council of India will file an appropriate application in due course in *Disha Panchal v Union of India* [W.P Civil No. 551/2018] as the Ministry of HR&D has no role concerning conduction of entrance examination of National Law Universities (NLUs), which is the prerogative of the Bar Council of India.
5. That it is humbly stated and submitted that the Advocates Act, 1961 has conferred upon the answering respondent the role of regulating Standards of Legal Education and to frame the Rules in this regard and also the power to inspect and recognize universities imparting Legal Education.
6. That it is respectfully submitted that in another matter *Disha Panchal v Union of India* [W.P Civil No. 551/2018], this Hon'ble Court passed an interim order and held as follows :-

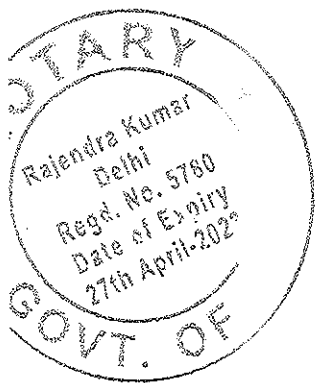
*"13. We have dealt with the matter only from the stand point of how best to compensate the candidates who lost valuable time while undergoing test. We must record that we are not at all satisfied with the way the examination was conducted. The body which was given the task of conducting the*



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examination was duty bound to ensure facilities of uninterrupted UPS and generator facility. The record indicates complete inadequacy on that point. We therefore direct Union of India in the Ministry of Human Resources and Development to appoint a Committee to look into the matter and take appropriate remedial measures including penal action, if any, against the body which was entrusted with the task. The committee so constituted shall also look into the aspect of having completely satisfactory arrangements in future so that no such instances are repeated or reoccur in coming years. We must also observe that the idea of entrusting the task of monitoring the conduct of entire examination to different Law Universities every year also needs to be re-visited. The agreement with the examination conducting body, which was placed on record indicates that as against the amount made over to such examination conducting body, the fees charged from the candidates are far in excess. **The committee shall bestow consideration to all these aspects after having inputs from such sources as it may deem appropriate including Bar Council of India and make a detailed report to this Court within three months from today.**

7. That the answering respondent Bar Council of India considered the matter in its meeting of General Council and the Council decided to seek permission of this Hon'ble Court to constitute a body of experts under the Chairmanship of a former Judge of Hon'ble Supreme Court, at least two sitting



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Chief Justices of High Courts , Some Sitting and former Judges of High Courts, Vice- Chancellors of N.L.U.s., and other reputed Universities, some noted Sr. Advocates of the Country, eminent jurists, member of various Bar Councils. In this way the irregularities as complained of by the petitioner herein would be effectively redressed.

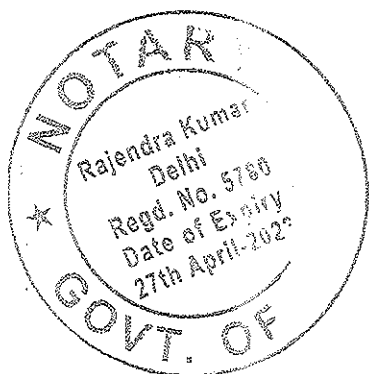
8. That it is humbly stated and submitted that the Advocates Act, 1961 has conferred upon the answering respondent the role of regulating Standards of Legal Education and to frame the Rules in this regard and also the power to inspect and recognize universities imparting Legal Education.
9. That it is most humbly stated and submitted that the answering Respondent is expressly and specifically empowered under the Act to regulate the legal Education in the Country under sections 7 and 49 of the Act. The relevant provisions are as under –

**7. Functions of Bar Council of India –**

(1) *The functions of the Bar council of India shall be*

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- h. *To promote legal education and to lay down standards of such education in consultation with the Universities in India imparting such education and the State Bar Councils*
- i. *To recognize Universities whose degree in law shall be a qualification for enrolment as an*



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*advocate and for that purpose to visit and inspect Universities or cause the State Bar Councils to visit and inspect Universities in accordance with such directions as it may give in this behalf.*

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*(ic) to recognize on a reciprocal basis foreign qualifications in law obtained outside India for the purpose of admission as advocate under this act.*

**49. General power of the Bar Council of India to make rules-**

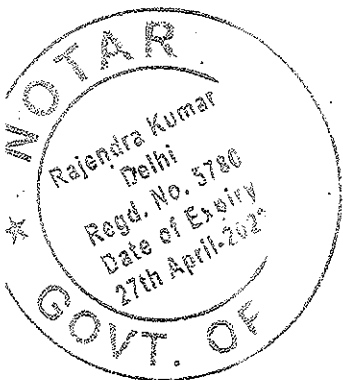
*(1) The Bar Council of India may make rules for discharging its functions under this Act and, in particular, such rules may prescribe -*

*(af) the minimum qualification required for admission to a course of degree in law in any recognized University.*

*d. The standards of legal education to be observed by university in India and the inspection of Universities for that purpose.*

*e. The foreign qualifications in law obtained by person other than citizens of India which shall be recognized for the purpose of admission as an advocate under this Act.*

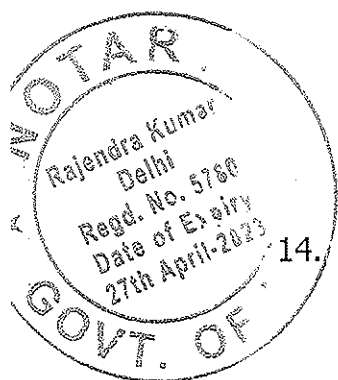
10. That in view of the above provisions, it is evident that the answering respondent is solely responsible for maintaining the standards of legal education and is also sole concerned statutory organization having interest in the legal education and profession of law. The function to conduct such Admission Tests (LL.B courses) lies with Bar Council of India and the



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Ministry of Human Resource Development, Union of India has absolutely no concern with such matters.

11. That it is evident that the answering Respondent has been conferred sole responsibility under the statute for regulating Legal Education in the Country. The perusal of the foregoing provisions makes it evident that it is the answering respondent, which is responsible for promoting legal education and for laying down standards of legal education in consultation with the Universities imparting legal education and the State Bar Councils. **[Section 7(1)(h)]**
12. That it is also evident that the answering respondent is responsible for visiting, either by itself or through the State Bar Councils, and recognizing the Universities imparting legal education, and only the degrees in law awarded by the such Universities, recognized by the answering respondent, shall be a qualification for enrolment as an advocate. **[Section 7(1)(i)]** Presently the visiting teams are headed by some experienced former Hon'ble judges of some high courts and it also consists of two professors of law and other subjects.
13. That it is the answering respondent, which has been entrusted the duty of recognizing the law degrees obtained from outside India on reciprocal basis for the purpose of admission as advocate under the act, which a matter of important foreign policy of the Government. **[Section 7(1)(ic)].**
14. That the answering respondent has been entrusted the duty to prescribe the minimum qualification required for admission



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to a course of degree in law in any recognized University [Section 49(1)(af)] and to prescribe standards of legal education to be observed by university in India and the inspection of Universities for that purpose. [Section 49(1)(d)] and to prescribe foreign qualifications in law obtained by person other than citizens of India which shall be recognized for the purpose of admission as an advocate under this Act [Section 49(1)(e)].

15. That for the aforesaid purpose, the Statute has provided for constitution of Legal Education Committee under section 10(2)(b) of the Act, which reads as under –

**10. Constitution of committees other than disciplinary committees.—**

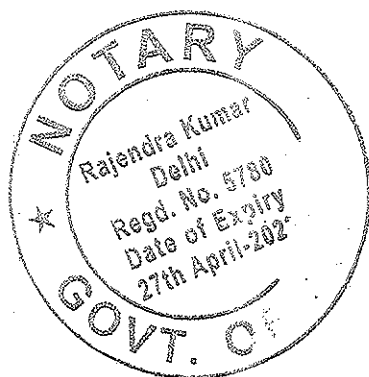
(1) A State Bar Council shall constitute the following standing committees, namely;—

(a) an executive committee consisting of five members elected by the Council from amongst its members;

(b) an enrolment committee consisting of three members elected by the Council from amongst its members.

(2) The Bar Council of India shall constitute the following standing committees, namely :—

(a) an executive committee consisting of nine members elected by the Council from amongst its members;





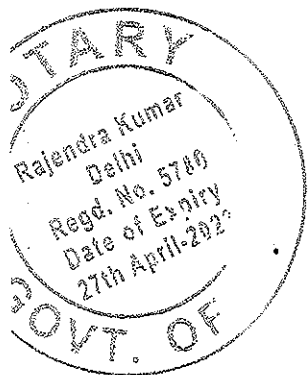
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(b) *a legal education committee consisting of ten members, of whom five shall be persons elected by the Council from amongst its members and five shall be persons co-opted by the Council who are not members thereof.*

(3) *A State Bar Council and the Bar Council of India may constitute from amongst its members such other committees as it may deem necessary for the purposes of carrying out the provisions of this Act*

16. That it is evident on perusal of the provision of section 10 of the Act that the Legal Education Committee comprises of the five members, who represent the advocates being members elected from amongst the advocates and five members, who are non-members having significant interest in legal education. At present, the Legal Education Committee is headed by a former Hon'ble Judge of this Hon'ble Court, 7 sitting Hon'ble Judges of different High Courts, one former Chief Justice of a High Court, 2 former Judges of different High Courts, 4 Vice-Chancellors of National Law Universities, 3 Law Dean, 4 Senior Advocates of Supreme Court and four other members from amongst the law educationists.

17. That the answering respondent has been successfully conducting the All India Bar Examination (AIBE) under the orders passed by this Hon'ble Court and has appointed Committee of experts to conduct the same since year 2011, there has been no complaint from any corner with regard to



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fairness or impartiality of these Exams. The monitoring committee of All India Bar Examination is headed by a former Judge of this Hon'ble Court and it also consists of noted academicians. The elected members of Bar Council of India are not involved with the process of monitoring the said examination and that the answering respondent Bar Council of India has the requisite expertise as it has been conducting AIBE without any major hiccups until now.

18. That it is also relevant to mention here that judiciary has the foremost interest in the standard of legal education as well as legal profession, as ultimately the purpose of having a legal system in place is to serve the cause of justice and to dispense the same effectively.
19. That it is most humbly submitted that regarding usage of powers under Article 142 of the Constitution, a Constitution Bench of this Hon'ble Court in *Supreme Court Bar Association v Union of India* [(1998) 4 SCC 409] has held as follows :-

*"56. As a matter of fact, the observations on which emphasis has been placed by us from the Union Carbide's case, A. R. Antulay's case and Delhi Judicial Services Association case (supra) go to show that they do not strictly speaking come into any conflict with the observations of the majority made in Prem Chand Garg's case (supra). **It is one thing to say that "prohibitions or limitations in a statute" cannot come in the way of exercise of jurisdiction under Article***

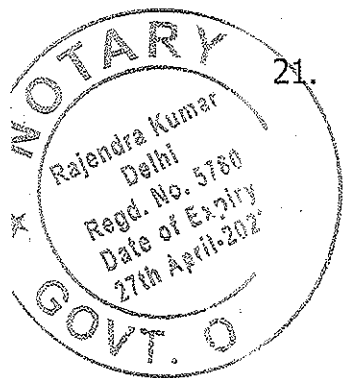


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142 to do complete justice between the parties in the pending 'cause or matter arising out of that statute, but quite a different thing to say that while exercising jurisdiction under Article 142, this Court can altogether ignore the substantive provisions of a statute, dealing with the subject and pass orders concerning an issue which can be settled only through a mechanism prescribed in another statute. This Court did not lay so in Union Carbide's case either expressly or by implication and on the contrary it has been held that the apex court will take note of the express provisions of any substantive statutory law and regulate the exercise of its power and discretion accordingly. We are, therefore, unable to persuade ourselves to agree with the observations of the Bench in V.C. Mishra's case that the law laid down by the majority in Prem Chand Garg's case is "no longer a good law"."

20. That in view of the facts narrated herein above, it is most humbly submitted that the Hon'ble Court may consider the issues raised by the petitioner and suggest and evolve a procedure and issue necessary guidelines for conducting such admission tests for entry into law courses.

21. That the contents of the present additional affidavit is being filed for clarifying the legal position governing the education of law without making any averment in respect of the disputes



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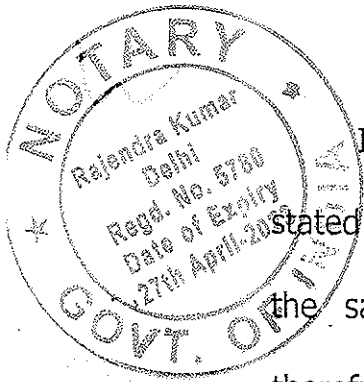
and contentions raised by the petitioner in respect of mal-administration and other such issues of irregularities in conducting CLAT. That the answering respondent craves leave of this Hon'ble Court to file further affidavits/documents if and when required or directed.

22. That the facts stated herein above are true to my knowledge as derived from the records of the case and no part of it is false and no material facts have been concealed therefrom.

23. That the annexure is true copy of its respective original.

**DEPONENT**

**VERIFICATION**



I, the abovenamed deponent do hereby verify that the facts stated in the above affidavit are true to my knowledge. No part of the same is false and nothing material has been concealed therefrom.

Verified at New Delhi on this 28<sup>th</sup> of September, 2018.

ATTESTED

RAJENDRA KUMAR,  
NOTARY, DELHI-R-5780  
GOVERNMENT OF INDIA  
SUPREME COURT OF INDIA  
COMPOUND, NEW DELHI  
Register Pg./Sl. No. ....

**DEPONENT**

CERTIFIED THAT THE CONTENTS EXPLAINED TO THE DEPONENT EXECUTIVE WHO IS SEEMED PERFECTLY TO UNDERSTAND & AFFIRMED DEPOSED BEFORE ME AT DELHI ON..... IDENTIFIED BY.....

IDENTIFY THE EXECUTIVE / DEPONENT WHO HAS SIGNED IN MY PRESENCE

Filed by:  
**[ARDHENDUMAULI KUMAR PRASAD]**  
**ADVOCATE FOR RESPONDENT No. CODE: 1800**  
**A-52, Sector – 17A**  
**NOIDA – 201301**

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