

(1993) 09 DEL CK 0047

In the Delhi High Court

Case No : Civil Writ Appeal No. 2603 of 1992

Jayshree Ravi and Another

APPELLANT

Vs

University of Delhi and Another

RESPONDENT

Date of Decision : 17-09-1993

Acts Referred:

Citation : (1993) 3 AD 889 : AIR 1993 Delhi 171 : (1994) 53 DLT 801

Hon'ble Judges : V.K. Jain, J;C.L. Choudhary, J;Arun Madan, J

Bench : Full Bench

Advocate : P.P. Malhotra, R.K. Saini, V.P. Chaudhary and Sushma Sachdeva, for the Appellant;

Judgement

Vijender Jain, J.

(1) Mr. P.P. Malhotra, Sr. Advocate with Mr. R.K. Saini, Adv. This is a petition by the petitioners who secured 47.75 per cent marks and 46 per cent marks respectively in their graduate examination conducted by the University of Delhi. The respondent. Faculty of Law, University of Delhi issued an advertisement declaring that admission to the LL.B. three years degree course for the academic year 1992-93 would be on the basis of Cw 2603/92 entrance test conducted by the respondents. Advertisement further said that the test was open only to the candidates who had passed Master/B.A. Degree examination securing at least 50 per cent marks in the aggregate. Subsequently, date for receipt of application and the date of entrance examination was changed to 2nd August, 1992. The petitioners submitted their application forms and they further contended that eligibility of 50 per cent marks for appearing in the entrance examination was illegal, arbitrary and irrational. By virtue of the interim orders the petitioners were allowed to take the examination provisionally subject to the final determination of the writ petition. The Division Bench of this Court (Mahinder Narain and Jaspal Singh JJ.) took divergent views while Mahinder Narain J. allowed the writ petition and declared the prescription of minimum 50 per cent marks in B.A. as a condition precedent for taking the entrance examination as

arbitrary, unreasonable and the same being vocative of provisions of Articles 14 and 21 of the Constitution of India and on this ground struck the eligibility criteria of " 50 per cent and quashed the same while another member of the Division Bench (Jaspal Singh J.) held that eligibility condition was not in violation of Article 14 of the Constitution of India and, Therefore, disagreed with the view taken by Mahinder Narain J. In view of the difference of opinion between two Judges a reference was made by the said Division Bench to refer the matter to a third Judge to the following effect:-

"IS the eligibility condition of obtaining at least 50% marks in the Graduate/ Post Graduate examination for appearing in the entrance test for admission to the first year of LL.B. course a valid consideration, keeping in view the provisions of Articles 14 and 21 of the Constitution of India ? "

(2) It is, in these circumstances, that the matter was referred to a third Judge (C.L.Chaudhry J.) who vide his order dated 22nd January, 1993 on an applications issued certain directions to the University to declare the result of the petitioners and grant them provisional admission to appear in the First Semester Examination of the LL.B. Course. On hearing the parties C.L.Chaudhry J. allowed the applications and directed the University to declare the result of the petitioners within 3 days and in case they secure more marks than the last candidate who was given admission by the University of Delhi, the petitioners would also be given admission provisionally and they will be allowed to take the 1st Semester Examination. However, it was made clear in that order that the grant of provisional admission and taking of the 1st Semester Examination shall not confer any right in favor of the petitioners in case they ultimately fail in the writ petition.

(3) Aggrieved by this order, the University filed the appeal before the Supreme Court by way of Special Leave Petition.

(4) The Supreme Court while disposing of the SLP made the following order:-

"THE two Judges thus had clearly requested the learned Chief Justice to refer the matter to a larger Bench. It, however, appears that the learned Chief Justice understood the said order to mean that the matter was to be referred to a third Judge and not to the larger bench, and referred it to the third Judge whose order is in appeals before me. It is now agreed between the parties that the main writ petitions would be referred to a larger Bench, i.e. to a Bench of more than two Judges. The learned Chief Justice should, Therefore, now constitute a larger Bench for hearing of the said writ petitions and in view of the urgency of the matter, within one week from today. The larger Bench so constituted should dispose of the matters before the commencement of the ensuing summer vacations. In the meanwhile, the interim orders passed by this Court will continue to operate. The parties will, however, beat liberty to apply to the larger Bench for modification of the said orders, if necessary. The appeals are disposed of accordingly."

(5) Thereafter, in this background the present Full Bench was constituted.

(6) The contention raised by learned Counsel for the petitioners was that the condition of eligibility of 50% marks for entrance examination being unreasonable arbitrary and irrational on the ground that unequals were treated as equals which was violative of Article 14 of the Constitution of India. The main plank of the arguments advanced by the Counsel for the petitioners was that criterion adopted by the University of fixing 50 per cent as a cut off percentage irrespective of the stream from which the students have done their graduation has no nexus with the objective of the University to have best students to maintain the high standard of legal education. Thirdly, it has been argued that fixing 50 per cent as minimum cut off percentage is whimsical, fanciful, arbitrary and without any material and has been made solely with a view to eliminate administrative inconvenience. Fourthly, it has been urged before me that after Mohini Jain's case reported in 1992 (4) Supreme Court 292 right to life as enshrined under Article 21 of the Constitution of India. right to education is inherent in it. Therefore, State must provide education to all its citizens seeking higher education.

(7) Relevant paragraphs of Mohini Jain's case which are relevant are reproduced below:-

"8. The preamble promises to secure justice "social, economic and political: for the citizens. A peculiar feature of the Indian Constitution is that it combines social and economic rights Along with political and justiciable legal rights. The preamble embodies the goal which the State has to achieve in order to establish social justice and to make the masses free in the positive sense. The securing of social justice has been specifically enjoined an object of the State under Article 38 of the Constitution. Can the objective which has been so prominently pronounced in the preamble and Article 38 of the Constitution be achieved without providing education to the large majority of citizens who are illiterate. The objectives flowing from the preamble cannot be achieved and shall remain on paper unless the people in this country are educated. The three pronged justice promised by the preamble is only an illusion to the teeming-million who are illiterate. It is only the education which equips a citizen to participate in achieving the objective enshrined in the preamble. The preamble further assures the dignity of the individual. The Constitution seeks to achieve this object by guaranteeing fundamental rights to each individual which he can enforce through Court of law if necessary. The directive principles in Part IV of the Constitution are also within the same objective. The dignity of man is inviolable .It is the duty of the State to respect and protect the same. It is primarily the education which brings forth the dignity of a man. The framers of the Constitution were aware that more than seventy per cent of the people, to whom they were giving the Constitution of India, were illiterate. They were also hopeful that within a period of ten years illiteracy would be wiped out from the country. It was with that hope that Articles 41 and 45 were brought in Chapter IV of the Constitution. An

individual cannot be assured of human dignity unless his personality is developed and the only way to do that is to educate him. This is why the Universal Declaration of Human Rights, 1948 emphasises "Education shall be directed to the full development of the human personality....." Article 41 in Chapter Iv of the Constitution recognises an individual's right "to education". It says that "the State shall, within the limits of its economic capacity and development, make effective provision for securing the right to education.....". Although a citizen cannot enforce the directive principles contained in Chapter Iv of the Constitution but these were not intended to be mere pious declaration. We may quote the words of Dr. Ambedkar in that respect:

"IN enacting this part of the Constitution, the Assembly is giving certain directions to the future legislature and the future executive to show in what manner they are to exercise the legislature and the executive power they will have. Surely it is not the intention to introduce in this Part these principles as mere pious declarations. It is the intention of the Assembly that in future both the legislature and the executive should not merely pay lip service to these principles but that they should be made the basis of all legislative and executive action that they may be taking hereafter in the matter of the governance of the country."

9.The directive principles which are fundamental in the governance of the country cannot be isolated from the fundamental rights guaranteed under Part III. These principles have to be read into the fundamental rights. Both are supplementary to each other. The State is under a constitutional mandate to create conditions in which the fundamental rights guaranteed to the individuals under Part Iii could be enjoyed by all. Without making "right to education" under Article41 of the Constitution a reality the fundamental rights under Chapter Iii shall remain beyond the reach of large majority which is illiterate."

"RIGHT to life" is the compendious expression for all those rights which the Courts must enforce because they are basic to the dignified enjoyment of life. It extends to the full range of conduct which the individual is free to pursue. The right to education flows directly from right to life. The right to life under Article 21 and the dignity of an individual cannot be assured unless it is accompanied by the right to education. The State Government is under an obligation to make endeavor to provide educational facilities at all levels to its citizens."

(8) The Counsel for the petitioner contended that in view of this finding of the Supreme Court every citizen has a right to education. The Counsel for the petitioner submitted that none of the graduate students in the instant case has had any prior education in laws. Therefore, the post-graduate course of 1st year in LL.B. course has to be a new course for all those who undertake study of law after having done their graduation. As such 50 per cent minimum percentage seems to have no rational connection with achievement of high standard in learning of laws by the students. The learned Counsel for the petitioner further contended that the object of the scheme ought to have been best students who

should be selected for admission to the 1st year LL.B. degree course purely on the basis of entrance examination. According to the Black's Law Dictionary the word "best" is defined as under:-

"BEST Of the highest quality; of the greatest usefulness for the purpose intended. Most desirable, suitable, useful, or satisfactory....."

(9) He further argued that even in civil service examination there is no cut off percentage and all graduates who have passed their Bachelor Degree examination are entitled to take the entrance test of such examination. However, this example, to my mind can not be made to advance a case under Article 14 of the Constitution. Civil Service Examination are conducted to provide employment. I am dealing with the case of admission in the University.

(10) To advance his proposition, the learned Counsel for the petitioners has vehemently argued that students having physics, chemistry, mathematics, statistics, accountancy, cost-accountancy etc. will always secure more marks in comparison to students who have opted in their graduate courses political science, history, economics or like subjects. According to him, Therefore, students who are in better position to secure more marks in their respective stream were a different class of students and they cannot be classified into one class with those students who have taken graduate examination with history, economics and political science or like subjects. Before, I deal with the other arguments of the learned Counsel for the petitioners I would like to discuss this argument at this stage.

(11) The case of the University is as has been set down in its reply that eligibility requirement of having obtained at least 50 per cent in the Bachelor's degree for admission to the LL.B. course is not a new innovation but the same has been in existence since the academic year 1985-86 though at that time it was 48% marks. Thus the only new thing according to the learned Counsel for the respondent which was introduced from the academic years 1991-92 was that in addition to the already existing eligibility requirement admission test was also prescribed. In other words, instead of making selection on preferential basis from the categories formed on the basis of various courses and percentage of marks, an entrance test was prescribed for all those specifying the first eligibility condition, namely, the requirement of securing minimum 50% marks. In this connection, the stand of the respondent/University is that these kind of eligibility requirements are invoked for its various other courses as well and to drive home the point it has been argued that for admission to Mbbs entrance examination candidates must have cleared in the qualifying examination with at least 50 per cent in the aggregate in the concerned subjects. It has been further argued that for two years Mba course there is an entrance examination, interview and group discussion with a further proviso that the candidate must have secured at least 50 per cent marks in the Bachelor Degree Examination in Art, Commerce or Social Science. Then the respondent/University in paragraph 5 of their counter affidavit has stated that the objects sought to be achieved by prescribing twin

condition of eligibility for admission in the LL.B. courses are:-

"(A)since the seats are limited and the number of candidates are much high, the best amongst the available candidates should be selected to promote the standard of legal education. (b) the administrative inconvenience should be reduced to the extent possible in the process of selection without scarifying objectives as at (a) above."

(12) The first condition of eligibility prescribing that the candidate must have secured at least 50 per cent marks in the examination on the basis of which he seeks admission in the LL.B. course has the purpose of:

(I)ensuring that the final selection is made from amongst those candidates who have attained a reasonable degree of proficiency in their own discipline as reflected in the percentage of marks secured by them in their respective examinations, and (ii) reducing the number of candidates from amongst whom the final selection is to be made.

(13) Therefore, the stand of the University is that grouping of those who have secured at least 50 per cent marks in the examination on the basis of which they seek admission to the course is based on an intelligible differentia.

(14) The second condition of eligibility providing for an entrance test and making admission in the order of merit on the basis of the result of that test, has the purpose of:

"(I)getting rid of the problems that arise on account of, (a) varying standards of education prevalent in various Universities; or (b) nature of courses pursued by the candidates; (ii) providing competition for evaluation of relative merits and affording equal opportunity of selection to all those who satisfy the first condition of eligibility, thus making selection according to capability."

(15) Both the conditions of eligibility have direct nexus and rational relation to either of the two objects that are sought to be achieved. I must not forget that Sec.49 of the Advocates Act provides that the Bar Council of India may make rules for discharging its functions under the Act, and, in particular, rule (af) provides that the minimum qualifications required for admission to a course of degree in law in any recognised university.

(16) In exercise of power by virtue of Section 49 the Bar Council of India made the following rules:-

"WHERE As there is almost complete unanimity of opinion in the Country that Legal Education needs to be drastically altered and improved. And whereas piecemeal changes introduced from time to time have not brought about any significant raising of standards and improvement in the quality of new entrants to the Bar. And whereas it is the statutory obligation of the Bar Council of India to promote Legal Education and to lay down standards of such education for purposes of admission to the Bar. And whereas the Legal Education Committee of

the Bar Council of India has examined the problems in great depth in consultation with the Universities and State Bar Councils and made its proposals. And where the Bar Council of India has considered the implications and merits of the said proposals. And whereas it is now recognised the world over that apart from technical knowledge of law a liberal education involving exposure to other disciplines and fields of knowledge in particular the humanities is essential to enable a lawyer to make a useful contribution to social change and development.

The Council in exercise of its powers under Sections 7(h)(i) and, 24 and 49(1) of the Advocates Act, 1961 and all other powers enabling it so to do, made the rules.

(17) Rule 5 of the Bar Council of India Rules relate to the admission of students. It provides as under:-

"ADMISSION of students, to the course of instruction in law shall ordinarily be on the basis of merit. No student shall be admitted to the course of instruction in law unless he has inter alia, obtained 45 per cent marks in the aggregate in the qualifying examination for admission"

(18) The rule was challenged before Bombay High Court on the ground that fixation of 45% as a minimum percentage was arbitrary.

(19) The Bombay High Court in *Inamdar Vahab Badasha and Others Vs. Symbiosis Society's Law Collegs, Pune and Others*, dismissed the challenge rightly. The Bombay High Court was examining the prescribing of 45% marks as an eligibility condition for admission to law degree. There was no entrance test at that time. Here I am, as stated earlier, confronted with a situation where admission is on the basis of the result of entrance test.

(20) Later on the Bar Council of India, in 1988 decided that, it may be left to the Universities to prescribe the minimum standards for entry to law courses having regard to the primary object of improving the standard of legal objections. However, as no arguments were addressed on this aspect I leave the matter as it is.

(21) The learned Counsel for the respondent has laid stress that an Expert Committee was constituted under the Chairmanship of Mr. Justice V.S. Deshpande (Retired Judge of Delhi High Court) along with other persons from Indian Law Institute, School of International Studies, Jawahars Lal Nehru University, Faculty of Law and other Professors. According to Mr. Chaudhry, learned Counsel for the respondent the Committee appointed by the Vice Chancellor under the Chairmanship of Mr. Justice V.S. Deshpande examined all the aspects and after careful consideration of merits and demerits of the present rules of admission the Committee made various recommendations some of them being :

(1) Admission to LL.B. 1st year course in all the three Law Centres should be on the basis of written admission test. (2) Eligibility requirements for admission to

LL.B. 1st year course should be a Bachelor's degree in any discipline with at least 50% marks in the aggregate, if a person has obtained the Bachelor's degree under the 10+2+3 (i.e. 15 years) pattern of education, and 55% marks under the 10+2+2 (i.e. 14 years) pattern of education. (3) All graduates in various disciplines may be treated at par for the purpose of admission test. There should be no preference given on the basis of discipline in which a candidate might have pursued his / her pre-legal studies i.e. among the graduates of Arts/ Social Science/Science/Law/ Education/Engineering etc. Similarly, no preference to be given Post-Graduate as against Under-graduate degree holders or to Honours as against Pass Course degree holders for seeking admission to the LL.B. Courses.

(22) The Committee submitted its report after about one year.

(23) The respondent also urged that after the report of the Committee was placed before the Academic Council in its meeting held on 17.1.1989. The Academic Council, Therefore, resolved that the report of the Committee be referred to the Faculty of Law for their consideration and making concrete recommendations and, Therefore, after due deliberation. Standing Committee of the University recommended admission to the 1st year of the LL.B.course in all the three centres be made through entrance test as suggested in the report and, Therefore, this procedure was followed and it was stipulated that the entrance test will be open to all those who have obtained at least 50 per cent marks in graduate/post-graduate degree examinations.

(24) The learned Counsel for the University has also placed before me the report of the Committee appointed by the Vice Chancellor under the Chairmanship of Mr. Justice Deshpande. Normally, it would not have been proper and open for me to go behind the report or the deliberation of the University Authorities but once the report of Deshpande Committee which has been made available to me, does not throw light as to how these questions were deliberated upon neither in the said report, nor any other material has been placed by the University to justify its policy to having 50 per cent eligibility criterion for the students seeking entrance test for the LL.B. course. Though in para 3 of its report as reproduced above it has been recommended that no preference be given to a candidate on the basis of discipline in which a candidate has studied. I have not been shown any material whatsoever that this aspect of the matter that the students appearing in subjects like economics, history, political science etc. always tend to secure less marks on account of the nature of their markings in comparison to the students who come from the stream like Physics, Chemistry, Maths, Accountancy, Commerce etc. was considered either by the Deshpande Committee or by the Academic Council or the Standing Committee of the University. The high profile of the members of the Committee will not give legitimacy if these were not taken into consideration for fixing eligibility condition on the basis of materials already in the knowledge of the respondent-University. Moreover, it cannot be understood as to how student getting 48 per cent marks in

B.A.(Hons.) History from Delhi University and a student from Meerut University securing 50 per cent marks in B.A Pass Course could be evaluated only on the basis of aggregate of marks for taking the entrance examination. It is common knowledge that Delhi University standard of marking as well as standard of education is different than in Meerut University. There is a vast difference between an Honours student of Delhi University than a student having Pass Course or even Honours in History in Meerut University or other like universities. In my opinion Committee failed to appreciate whiles giving its recommendation that it was not the marks obtained in the Bachelor Degree Examinations which were important but the calibre, aptitude and general knowledge of a student which was of paramount importance forgetting a place in the merit list of the entrance test which would secure a seat for him in the first year LL.B. degree course. It is to be understood that the aggregate of marks be it 50% or 80% secured by a student would not be enough for him to get admission into LL.B. 1st year course. It is the result of the entrance examination and the merit list prepared thereafter which will give a student right for admission in the 1st year LL.B. Degree Course. So, the fallacy in the argument of learned Counsel for the respondent that 50 per cent cutoff percentage is to get the best student is neither here nor there. In the course of arguments it was pointed out that in case a student gets 80 percent marks in his Bachelor Degree Examination but cannot make up in the merit list prepared on the basis of entrance examination would he be entitled to admission to LL.B. 1st year, the answer was in the negative. Therefore, what is important is not the percentage of marks received in the degree examination but the position secured by the candidate in the entrance examination. If that is so, then it does not stand to reason as to how it is justifiable to exclude the degree-holders from competing with others in the entrance test solely on the ground of 50 % cut off percentage. It is to be remembered that the admission to LL.B. 1st year is on the basis of merit list prepared on the basis of entrance test/examination and not on the basis of marks obtained by a student in its degree course. In the present petition itself these students who were given provisional permission to take entrance examination have qualified the entrance test over and above others who had higher percentage of marks in their degree examination. It is the entrance examination which takes care of varying standard of education in different Universities, the aptitude of the candidate, its over all performance vis-a-vis aptitude regarding learning of legal studies. It is a peculiar situation on account of law being not a subject taught at under-graduate level. Therefore, the example of minimum percentage in Mbbs entrance test will also not help the case of respondent as students seeking admission in Medicine have even in their schools Biology as a subject. Therefore, it is expected from them that they must have minimum percentage in those subjects.

(25) I would also like to place excerpts from a Report of National Commission on Teachers-11 (1983-85) which was an Expert Body consisting of eminent economists of the country. They had to deal with the varying standard of

academic achievements and its evaluation and this Commission recommended a National Eligibility test for appointment of teachers for higher education in the following terms:-

"CATEGORICAL statements have been made by various Committees and Commissions that the examination results are neither reliable nor valid and comparable. It is recognised that the standards of performance vary from University to university, and that Universities which are a little more exacting are less generous with their scores. Evidently, a way has to be found to ensure not only that justice is being done but also that it appears to be done. (b) The National Yardstick-An All-India Merit Test....."

(26) In the case *Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others*, ; cited by the Counsel for the respondent it was held-

"IT is now well established that while Art 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. In order, however; to pass the test of permissible classification two conditions must be fulfilled ,namely, (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (ii) that that differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification may be founded on different bases, namely, geographical, or according to objects or occupations or the like. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration. It is also well established by the decisions of this Court that Art. 14 condemns discrimination not only by a substantive law but also by a law of procedure."

(27) Another argument raised by the petitioner was that the object sought to be achieved by the Faculty of Law has no relevance with the eligibility criteria as a student desires of taking law as a subject for their profession or career in the field of Law are denied admission as non-interested students having no interest in Law take admission to the Law course and then go out for various civil service examinations and in the process interested students who want to pursue their career in law are denied admission to the law courses. Though this argument may not be germane to the controversy in question but I would like to recall that the representative of law faculty who was present in Court informed the Court that out of the total students admitted in the 1st year normally by the time they reach final year, i.e. 3rd year only 50% remain and rest opt out. I certainly feel that University should take note of this in formulating their future policy regarding admission to Law Course so that these 50% seats are not wasted. The learned Counsel for the respondent has drawn my attention to paragraph 27 in *Jalan Trading Co. (Private Ltd.) Vs. Mill Mazdoor Union*, which reads as follows:-

"WHETHER the scheme for payment of minimum bonus is the best in the circumstances, or a more equitable method could have been devised so as to

avoid in certain cases undue hardship is irrelevant to the enquiry in hand. If the classification is not patently arbitrary, the Court will not rule it discriminatory merely because it involves hardship or inequality of burden. With a view to secure particular objects a scheme may be selected by the Legislature, wisdom whereof may be open to debate; it may even be demonstrated that the scheme is not the best in the circumstances and the choice of the Legislature may be shown to be erroneous, but unless the enactment fails to satisfy the dual test of intelligible classification and rationality of the relation with the object of the law, it will not be subject to judicial interference under Art. 14. Invalidity of legislation is not established by merely finding faults with the scheme adopted by the Legislature to achieve the purpose it has in view. Equal treatment of unequal objects, transactions or persons is not liable to be struck down as discriminatory unless there is simultaneously absence of a rational relation to the object intended to be achieved by the law. Plea of invalidity of Section 10 on the ground that it infringes Art.14 of the Constitution must, Therefore, fail."

(28) The learned Counsel for the respondent has also said that in view of the decision of the Supreme Court in Dr. Dinesh Kumar and Others Vs. Motilal Nehru Medical College, Allahabad and Others, pursuant to which a scheme was prepared and was approved by the Supreme Court wherein certain eligibility conditions regarding percentage of marks were laid down. All these cases belong to students who have studied either in their under-graduate examination subjects like Biology relating to medicine. Therefore, that will not be helpful for determining the criterion of eligibility as fixed for the students who have not studied law at under graduate level.

(29) The learned Counsel for the respondent also cited Anand Kumar Dwivedi Vs. Director, Allahabad Agricultural Institute, Naini, Allahabad and Others, but the facts and circumstances of that case are totally different what is the question before me. The learned Counsel for the respondent has cited the Division Bench decision of this Court reported in Jayunt Sud v. Faculty of Law through the Dean, University of Delhi, 47(1992) DLT 182. As discussed earlier the Division Bench on account of the eminence of the persons associated with the Committee without going into the report of the Committee or other material on record finding in paragraph 15 of the said judgment as follows:-

"IT at once be seen that the members are all ex-parte in the field of legal education. The report of the Committee has been shown to us and we find that the rules now laid by the Law Courses Admission Committee are based on the report. We do not think it was necessary for the Law Course Admission Committee or for any other authority to give reasons or to record any minutes as to why it decided to hold admission test and to lay criteria for the same and why they did away with the sports quota. The Law Course Admission Committee was not performing any quasijudicial functions and the Act or Statutes of the University did not require it to perform its -functions in any particular way."

(30) I have already discussed that nowhere in the recommendations of the

Committee it has been mentioned that they have considered the aspect of treating students equals who are otherwise unequals. May be the finding of the Division Bench was based without going through the recommendations/deliberations of the Deshpande Committee. Even otherwise the Division Bench was dealing with a question of reservation of 5 per cent total seats under sports quota and not giving relaxation/weight age in the eligibility conditions accordingly for appearance in the entrance test.

(31) My attention has also been drawn to a decision of the Division Bench in Civil Writ Petition No. 285 of 1992 (Monika Garg v. University of Delhi) where the eligibility requirement for B.A. (Hons) Economics with 50 per cent or more marks for entrance test for admission to M.A.(Economics) Course of Department of Economics of the University of Delhi was challenged. The Division Bench of this Court was considering the question of fixation of 50% as eligibility criterion in B.A.(Economics) for seeking admission in M.A. (Economics). I am in agreement with the view taken in the said case as the University was within their right to take best candidates who had studied Economics in their under-graduation degree course. This authority, I am afraid, cannot be successfully canvassed in support by the University in this case as admittedly Law as a subject is not taught in under-graduate courses. Therefore, this authority does not help the case of the respondent. In my opinion, eligibility criterion is the determination of excellence of the candidates seeking admission to the LL.B. course. The determining factor is the qualifying result of the entrance examination and list prepared pursuant thereto.

(32) I would also like to mention that even for M.B.A., Post Graduate Degree, Course of Faculty of Management Studies, University of Delhi the eligibility condition for admission for Mba (Full Time) programme is following :-

"(A)Admission to the first year of the M.B.A. (Full Time) Programme is open to candidates who have passed Bachelor's Degree Examination in Arts, Commerce or Social Sciences under the 10+2+3 Scheme of Examination of University of Delhi or an examination recognized by the University of Delhi as equivalent thereto securing at least 50% of marks in aggregate. Or Candidates who have passed Degree Examination in Arts, Commerce or Social Sciences under a Scheme of Examination other than 10+2+3 securing at least 55% of marks in aggregate. Or Candidates who have passed Degree Examination in any branch of Science under 10+2+3 Scheme of Examination of University of Delhi or an examination recognised by University of Delhi as equivalent thereto securing at least 55% of marks in aggregate. Or Candidates who have passed Degree Examination in any branch of Science in a Scheme of Examination other than 10+2+3 securing at least 60% of marks in aggregate. Or Candidates who have passed Degree Examination in any branch of Medicine, Engineering or Technology securing at least 60% of marks in aggregate. Or Candidates who have passed Degree Examination in Mathematics, Statistics or Operations Research under the 10+2+3 Scheme of Examination of the University of Delhi or an examination

recognized by the University of Delhi as equivalent thereto securing at least 60% of marks in aggregate. Or Candidates who have passed Degree Examination in Mathematics, Statistics, Medicine or Operations Research under a Scheme of Examination other than 10+2+3 securing at least 65% of marks in aggregate. Or Post-Graduate or 2nd Degree Examination or Post-Graduate Diploma in Administrative Management of the Faculty of Management Studies, University of Delhi, Delhi, provided he or she secured at least 60% of marks in such examination.

(33) Thus, it would be seen that the University has taken into consideration that those candidates who have passed degree examination in any branch of medicine, engineering or technology, the eligibility percentage for entrance examination is 60%. Whereas candidates who have passed degree examination in any branch of science under 10+2+3 examination of University of Delhi or an examination recognised by the University of Delhi as equivalent thereto securing at least 55% of marks in aggregate. For other candidates for admission to the 1st year of the M.B.A. (Full Time) Programme is for those who have passed Bachelor Degree Examination for Arts, Commerce, Social Science under 10+2+3 Scheme of examination of University of Delhi or an examination recognised by the University of Delhi as equivalent thereto securing at least 50% of marks in aggregate. These classifications seem to be reasonable and rational keeping in view the facts that Certain subjects are high scoring subjects whereas others are not so.

(34) It is on these premises I feel that University Authorities have applied same cut off minimum percentage for different streams for LL.B entrance test, which goes to show that the scheme of respondent is irrational and arbitrary. Unequals have been treated as equals. The objective sought to be achieved as stated in the counter is merely an exercise on paper and has no intelligible differentia.

(35) There are 1500 seats to be filled by the University of Delhi in the 1st year LL.B. Course in all the centres and the determining factor is the entrance test on the basis of which the merit list is to be prepared it would be unreasonable and unfair to exclude the students who are graduates implicate from taking the entrance examination. The imposition of the condition of 50% eligibility to take the entrance test has no nexus with the brilliance of the students and for maintaining high standard of legal education because it is the result of the entrance test which entitles a candidate to be eligible for admission and not vice versa. Therefore, the imposition of 50% aggregate marks in the B.A. Examination/Post Graduate Examination for entrance examination is arbitrary and violative of Article 14 of the Constitution of India. It has no intelligible differentia with the object sought to be achieved by the University as discussed above. As a matter of fact what has prevailed with the University to keep 50% as minimum percentage is administrative exigencies. Time and again my attention was drawn that it would be difficult for Faculty of Law to conduct entrance examination of many more students if eligibility condition of 50% marks is

withdrawn. Administrative inconvenience can be given due weightage in certain matters regarding administering State, law and order or other relevant factors, but I am not impressed with this argument in the case before me. To participate in a selective process for determining brilliance and aptitude for law course is a right which every degree holder of BA/MA enjoys and University cannot deny them this right on account of administrative inconvenience. I am in agreement with the view expressed by Mahinder Narain J. on this aspect which reads as under:-

"IN my view there is no need of cut off point of 50% marks for eligibility to take LL.B. entrance examination as the said cut off point will not ensure that every one who gets to sit in the entrance examination, will qualify for one of the seats in the LL.B. 1st Year course, each of those with over 50% marks are competing for one seat. None has previously studied law, so there is no possibility of asserting that the ones with the greatest aptitude for law are going to be selected .The merit must also relate to law-if merit is relevant to the law course. In any case, there is also no guarantee that even after qualifying in the entrance examination any person would qualify for the law degree at the end of the 3-Year LL.B. course."

(36) Counsel for the petitioner has also urged before me that there is no uniformity of standard in the various Universities of the country and having a cut off percentage irrespective of taking into consideration the standard of education in the University is not a reasonable classification as our Universities and Institutions of learning have varied degree of standard and the best course to find the best students is to make all the degree-holders of BA/MA eligible for taking an entrance examination. This view finds support in the case of State of Kerala and Another etc. Vs. Miss Rafia Rahim etc., which reads as under:-

"AS a result of our discussion, we are of the opinion, that the scheme of selection for admission to the Medical Colleges on an assessment of merit of students drawn from different Universities with no uniformity of standards is objectionable and vocative of Art. 14 of the Constitution. We grant a declaration to the writ petitioner to that effect. We deny effective relief to the writ petitioner on account of non-joinder of the selected candidates, and the futility and ineffectiveness of upsetting the selections and directing fresh admissions at this stage. We consider that the best scheme of selection in the circumstances would be the method of selection of candidates by holding a uniform Entrance Examination to secure uniformity of standards, as recommended by the Indian Medical Council-Vide Exts. P- 5 and P-8 -and as endorsed by the University Authorities (vide Ex. P-7). We direct the State Government to forthwith devise a scheme of selection by holding such an Entrance Examination and publish the same within three months from today, so that the candidates, wishing to apply for selection to the Medical Colleges of this State for the next academic year, have due notice of the scheme of selection. The object being to secure uniformity of standards for assessment and evaluation of students drawn from different Universities, our direction should

not be understood as unalterably and in elastically fixing the limits for Governmental action. Methods for securing uniformity of syllabus, pattern of examination, and mode of evaluation in the different Universities, would well be within the province of the Government to undertake."

(37) Counsel for the petitioner has also cited Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others, which is set out here below;-

"THE philosophy and pragmatism of universal excellence through equality of opportunity for education and advancement across the nation is part of our founding faith and constitutional creed. The effort must, Therefore, always be to select the best and most meritorious students for admission to technical institution and medical colleges by providing equal opportunity to all citizens in the country and no citizen can legitimately, without serious detriment to the unity and integrity of the nation be regarded as an outsider in our constitutional set up. However, departure may justifiably be made from the principle of selection based on merit. The concept of equality under the Constitution is a dynamic concept. It takes within its sweep every process of equalisation and protective discrimination. In a hierarchical society with an inflexible feudal stamp and incurable actual inequality, it is absurd to suggest that progressive measures to eliminate group disabilities and promote collective equality are antagonistic to equality on the ground that every individual is entitled to equality of opportunity based purely on merit judged by the marks obtained by him. Equality of opportunity is not simply a matter of legal equality. Its existence depends not merely on the absence of disabilities but on the presence of abilities. Where, Therefore, there is inequality, in fact, legal equality always tends to accentuate it. Equality in law must produce real equality; de jure equality must ultimately find its raison d'être in de facto equality."

(38) It has also been urged before me by the Counsel for the petitioners that the fixation of eligibility of marks for admission to entrance examination for engineering and medical courses are guided by the factors that the institutions would like to have best students who have studies vis-a-vis Chemistry, Maths for purposes of higher education in engineering or Physics, Chemistry and Biology for students who would like to go for medical institution. Therefore, according to them the fixation of 50% eligibility or any other percentage has direct nexus with achieving brilliance of standard for Engineering as well as Medical Colleges but in a case like the present one where under-graduate had not to study any subject relating to law, the percentage of that subject for the purpose of allowing such students to take the entrance examination for admission to LL.B. Degree Course has no intelligible differentia and, Therefore, squarely hit by Article 14 of the Constitution of India.

(39) Another case cited before me is Kanishka Aggarwal Vs. University of Delhi and others, , which has no bearing on the questions agitated before me. In that case the Court was asked to interpret the power of Admission Committee appointed under Ordinance II of the Delhi University Act.

(40) Learned Counsel for the respondents then argued that it was out of the bounds of the Courts to examine whether the qualifying minimum percentage imposed by the University was right. In support of this view he referred to a decision of the Supreme Court in *Dr. Jagadish Saran and Others Vs. Union of India (UOI)*, .

"WE are aware that measurement of merit is difficult and the methods now in vague leave so much to be desired, that swearing by marks as measure of merit may even be stark superstition. But, for want of surer techniques, we have to make-do with entrance tests, and at any rate, save in clear cases of perversity or irrationality, this is ordinarily out of bounds for courts."

(41) I am afraid that I cannot agree with the arguments of the learned Counsel for the respondents because in this case the Supreme Court was considering a Rule reserving 70% of the seats at the post-graduate level in Dermatology and even in that matter the Supreme Court directed the University forthwith to appoint a time-bound Committee to investigate in depth the justification for and the quantum of reservation at the post graduate level from the angle of equality of opportunity for every Indian but taking into consideration other constitutionally relevant criteria which the Court indicated in that judgment.

(42) Another case referred to by the counsel for the respondent was *Kedar Nath Bajoria Vs. The State of West Bengal*, ; to support his arguments that:

"THE argument overlooks the distinction between those cases where the Legislature itself makes a complete classification of persons or things and applies to them the law which enacts, and others where the Legislature merely lays down the law to be applied to persons or things answering to a given description or exhibiting certain common characteristics, but being unable to make a precise and complete classification, leaves it to an administrative authority to make a selective application of the law to persons or things within the defined group, while laying down the standards or at least indicating in clear terms the underlying policy and purpose, in accordance with, and in fulfillment of, which the administrative authority is expected to select the persons or things to be brought under the operation of the law."

(43) I am afraid that this authority also cannot help the contention of learned Counsel for the respondent as in the present case neither the deliberation of the Academic Council nor the report of the Committee takes into consideration the aspect which I have discussed in detail in the foregoing paragraphs and I feel that laying down the criteria of minimum 50% marks in B.A./M.A. examinations for LL.B. 1st year entrance test is irrational, improper and arbitrary and deserves to be struck down.

(44) In view of the above discussion I hold that fixation of 50% as a precondition for taking the entrance test is violative of Art. 14 of the Constitution of India. The criteria to select students who are "best amongst the best" can be achieved without such precondition, on the basis of performance and relative merits in the

entrance test, otherwise there is no object of providing entrance test.

(45) However, in the reference as well, both the parties have advanced their arguments on the applicability of Art. 21 of the Constitution of India. I would like to deal with that aspect of the matter. The arguments have been advanced on account of the recent decision of the Supreme Court in *Miss. Mohini Jain Vs. State of Karnataka and others*, ; which held as under:- The fundamental rights guaranteed under Part Iii of the Constitution of India including the right to freedom of speech and expression and other rights under Article 19 cannot be appreciated and fully enjoyed unless a citizen is educated and is conscious of his individualistic dignity.

We hold that every citizen has a "right to education" under the Constitution. The State is under an obligation to establish educational institutions to enable the citizens to enjoy the said right. The State may discharge its obligation through state-owned or state-recognised educational institutions. When the State Government grants recognition to the private educational institutions it creates an agency to fulfill its obligation under the Constitution. The students are given admission to the educational, institutions - whether state-owned or state-recognised-in recognition of their "right to education" under the Constitution. Charging capitation fee in consideration of admission to educational institutions, is a patent denial of a citizen's right to education under the Constitution."

(46) In view of Mohini Jain's case and the view expressed by Supreme Court, according to the petitioners, these petitioners have got a right to have education in law. The State cannot limit or take away the right of the petitioners to take legal education.

(47) According to the learned Counsel for the University Mohini Jain's case has been watered down in another judgment of the Supreme Court in *Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc.*, . In paragraph 68 of the said judgment the Supreme Court held:-

"HAVING regard to the fundamental significance of education to the life of an individual and the nation, and adopting the reasoning and logic adopted in the earlier decisions of this Court referred to hereinbefore, we hold, agreeing with the statement in *Bandhua Mukti Morcha*, that right to education is implicit in and flows from the right to life guaranteed by Article 21. That the right to education has been treated as one of transcendental importance in the life of an individual has been recognised not only in this country since thousands of years, but all over the world. In *Moihini Jain*, the importance of education has been duly and rightly stressed. The relevant observations have already been set out in para 11 hereinbefore. In particular, we agree with the observation that without education being provided to the citizens of this country, the objectives set forth in the Preamble to the Constitution cannot be achieved. The Constitution would fail. We do not think that the importance of education could have been better emphasised than in the above words. The importance of education was

emphasised in the "Neethishatakarn" by Bhartruhari (First Century B.C. in the following words: "Translation; Education is the special manifestation of man; Education is the treasure which scan be preserved without the fear of loss; Education secures material pleasure, happiness and fame; Education is the teacher of the teacher; Education is god incarnate; Education secures honour at the hands of the State, not money. A man without education is equal to animal.

" 69.The fact that right to education occurs in as many as three Articles in Part-IV viz.. Articles 41, 45 and 46 shows the importance attached to it by the founding fathers. Even some of the Articles in Part-111 viz., Articles 29 and 30 speak of education.

74.In the above State of law, it would not be correct to contend that Mohini Jain was wrong in so far as it declared that "the right to education flows directly from right to life." But the question is what is the content of this right? How much and what level of education is necessary to make the life meaningful? Does it mean that every citizen of this country can call upon the State to provide him education of his choice? In other words, whether the citizens of this country can demand that the State provide adequate number of medical colleges, engineering colleges and other educational institutions to satisfy all their educational needs? Mohini Jain seems to say, yes. With respect, we cannot agree with such a broad proposition. The right to education which is implicit in the right to life and personal liberty guaranteed by Article 21 must be construed in the right of the directive principles in Part Iv of the Constitution. So far as the right to education is concerned, there are several articles in Part Iv which expressly speak of it. Article 41 says that the "State shall within the limits of its economic capacity and development make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want." Article 45 says "the State shall endeavor to provide within a period of ten years from the commencement of this Constitution for free and compulsory education for all children until they complete the age of fourteen years." Article 46 commands that "the State shall promote with special care the educational and economic interest of the weaker sections of the people, and in particular, of the Scheduled Castes and the Scheduled Tribes and shall protect them from social injustice and all forms of exploitation. Education means knowledge and knowledge itself is power." As rightly observed by John Adams, " the preservation of means of knowledge among the lowest ranks is of more importance to the public than all the property of all the rich men in the country." (Dissertation on canon and feudal law, 1765). It is this concern which seems to underlie Article 46. It is the tyrants and bad rules who are afraid of spread of education and knowledge among the deprived classes. Witness Hitler railing against universal. He said: "Universal education is the most corroding and disintegrating poison that liberalism has ever invented for its own destruction." (Rauschning, The Voice of Destruction: Hitler speaks). A true democracy is one where education is universal, where people understand what is good for them and the nation and

know how to govern themselves. The three Articles 45, 46 and 41 are designed to achieve the said goal among others. It is in the light of these articles that the content and parameters of the right to education have to be determined. Right to education, understood in the context of Articles 45 and 41, means; (a) every child /citizen of this country has a right to free education until he completes the age of fourteen years; and (b) after a child/citizen complete 14 years, his right to education is circumscribed by the limits of the economic capacity of the State and its development. We may deal with both these limbs separately.

78.Be that as it may, we must say that at least now the State should honour the command of Article 45. It must be made a reality-at least now. Indeed, the National Education Policy - 1986 says that the promise of Article 45 will, be redeemed before the end of this century. Be that as it may, we hold that a child (citizen) has fundamental right to free education up to the age of 14 years.

84-85.The right to education further means that a citizen has a right to call upon the State to provide educational facilities to him within the limits of its economic capacity and development. By saying so, we are not transferring Article 41 from Part Iv to Part Iii - we are merely relying upon Article 41 to illustrate the content of the right to education flowing from Article 21. We cannot believe that any State would say that it need not provide education to its people even within the limits of its economic capacity and development. It goes without saying that the limits of economic capacity are, ordinarily speaking, matters within the subjective satisfaction of the State.

175.Education is enlightenment. It is the one that lends dignity to a man as was rightly observed by Gajendragarkar, J (as he then was) in University of Delhi and Another Vs. Ram Nath, :

"EDUCATION seeks to built up; the personality of the pupil by assisting his physical, intellectual, moral and emotional development."

176.If life is so interpreted as to bring within it right to education, it has to be interpreted in the light of directive principles. This Court has uniformly taken the view that harmonious interpretation of the fundamental rights vis-a-vis the directive principles must be adopted. We will now refer to some of the important cases.

187.No doubt, the above extract from Mohini Jain's case (supra) states "education at all levels", but we consider the law has been somewhat broadly stated and, Therefore, must be confined to what is envisaged under Article 45.

189.Higher education calls heavily on national economic resources. The right to it must necessarily be limited in any given country by its economic and social circumstances. The State's obligation to provide it is, Therefore, not absolute and immediate but relative and progressive. It has to take steps to the maximum of its available resources with a view to achieving progressively the full realization of the right of education by all appropriate means. But, with regard to

the general obligation to provide education, the State could be said to have violated the same. If it deliberately started its educational system by resources that it manifestly had available unless it could show that it was allocating them to some even more pressing programme. Therefore, by holding education as a fundamental right up to the age of 14 years this Court is not determining the priorities. On the contrary, reminding it of the solemn endeavor, it has to take, under Article 45, within a prescribed time, which time limit has expired long ago."

(48) In view of the law laid down by the Supreme Court in Unnikrishnan case the petitioners have right to education within the limits of economic capacity and priorities of the State. In view of this, I hold that there is no absolute right to education under Article 21 of the Constitution. I answer this point accordingly.

(49) I am afraid that I cannot agree with the arguments of the learned Counsel for the respondents because in this case the Supreme Court was considering a Rule reserving 70% of the seats at the post-graduate level in Dermatology and even in that matter the Supreme Court directed the University forthwith to appoint a time-bound Committee to investigate in depth the justification for and the quantum of reservation at the post graduate level from the angle of equality of opportunity for every Indian but taking into consideration other constitutionally relevant criteria which the Court indicated in that judgment.

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(51) I am afraid that this authority also cannot help the contention of learned Counsel for the respondent as in the present case neither the deliberation of the Academic Council nor the report of the Committee takes into consideration the aspect which I have discussed in detail in the foregoing paragraphs and I feel that laying down the criteria of minimum 50% marks in Ba /MA examinations for LL.B. 1st year entrance test is irrational, improper and arbitrary and deserves to be struck down.

(52) In view of the discussion above, I issue a mandamus to that effect to the University of Delhi and allow the writ petition but in the facts and circumstances of the case without costs.

(53) The petitioners who have been given permission to take the examinations of 1st Semester under orders of this Court will be entitled to be admitted for further study for their LL.B. degree course as per the rules of the Faculty of Law.