

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 30.04.2010

Judgment delivered on: 2010

W.P.(C) No. 8302/2009,

Vandana Kandari Petitioner
Through: Mr R.K.Saini, Advocate.

versus

University of Delhi.

..... Respondents
Through: Shri M.J.S. Rupal, Adv.

W.P.(C) No. 8419/2009

Aarti Meena Petitioner
Through: Mr R.K.Saini, Advocate.

versus

University of Delhi.

..... Respondents
Through: Shri M.J.S. Rupal, Adv.

W.P.(C) No. 13314//2009,

Manas Pegu Petitioner
Through: Mr Mohit Jolly, Advocate.

Versus

University of Delhi.

..... Respondents
Through: Shri M.J.S. Rupal, Adv.

W.P.(C) No. 13354//2009

Sukriti Upadhyay Petitioner
Through: Mr Hari Narayan Takkar
& Deepak Anand, Advocate.

Versus

University of Delhi.
..... Respondents
Through: Shri M.J.S. Rupal, Adv.

W.P.(C) No. 13391//2009

Rajesh Kumar Gautam Petitioner
Through: Mr R.K.Saini, Advocate.

Versus

University of Delhi.
..... Respondents
Through: Shri M.J.S. Rupal, Adv.

W.P.(C) No. 13400/2009

Sajili Vashisht Petitioner
Through: Mr. Kirti Uppal, Advocate.

Versus

University of Delhi.
..... Respondents
Through: Shri M.J.S. Rupal, Adv.

W.P.(C) No. 13410/2009

Samiya Singh Petitioner
Through: Mr. Kirti Uppal, Advocate.
Versus

University of Delhi.
..... Respondents
Through: Shri M.J.S. Rupal, Adv.

W.P.(C) No. 13427/2009

Manpreet Kaur Petitioner
Through: Mr. Dinesh Agnani, Advocate.
Versus

University of Delhi.
..... Respondents
Through: Shri M.J.S. Rupal, Adv.

W.P.(C) No. 13456/2009

Samuel S.L. Serto Petitioner
Through: Mr. A. Guneshwar Sharma,
Advocate.
Versus

University of Delhi.
..... Respondents
Through: Shri M.J.S. Rupal, Adv.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

1. Whether the Reporters of local papers may
be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported
in the Digest?

KAILASH GAMBHIR, J.

1. *“Our Colleges of law do not hold a place of high esteem either at home or abroad, nor has law become an area of profound scholarship or enlightened research”* observed Dr. Sarvepalli Radhakrishnan some decades ago. But today we have travelled a long distance since then, altering the landscape of legal education in our country. We are just marginally away from the profound scholarship and enlightened research and we must proudly admit that Dr. Radhakrishnan’s powerful and poignant words are amenable to radical restatement today. The subject matter of the present petitions is a case of an unfortunately

prevalent trend in the now otherwise highly systemized scheme of legal education that exists today.

2. This order shall dispose of a batch of nine petitions bearing nos. 8302/2009, 8419/2009, 13314/2009, 13354/2009, 13391/2009, 13400/2009, 13410/2009, 13427/2009 and 13456/2009, filed by the petitioners who are students of different semesters in Law Faculty, University of Delhi. All these petitions raise a common question and issue as all these petitioners were detained from appearing in the semester examinations on account of shortfall of their attendance. Out of these nine cases, the petitioners in W.P.(C) No 8302/2009 and W.P.(C) 8419/2009 seek relaxation in the shortfall of the attendance under Rule 2 (9)(d) of Ordinance VII of the University Ordinance read with Article 42 of the Constitution of India to give concession of attendance in all those lectures during which period they could not attend classes being at the advance stage of pregnancy. In W.P.(C) No. 13314/2009, 13354/2009, 13400/2009, 13410/2009, 13427/2009, 13456/2009, the

petitioners claim condonation of shortfall of attendance on medical grounds, while in W.P.(C) No.13391/2009, the petitioner has claimed condonation on the ground that he could not attend the classes due to the exigency of taking care of his old grandparents.

3. Adumbrated facts of each petition are as follows:

- In W.P. (C) 8302/09, the petitioner was pregnant and on 19.11.2008, she made a representation to the Professor-in-Charge of the Faculty of Law stating that since she is pregnant, she might fall short of attendance during the VIth semester commencing from January, 2010 and so in such an event she may be permitted to appear in the examinations, which representation was duly received. She gave birth to a boy on 10.1. 2009, due to which she had attendance of 54.30% as opposed to the required 66% and hence was detained from appearing in the VIth semester examination. As on date, as an interim measure she was allowed to appear in the VIth semester examination and the result was to be kept in a sealed cover subject to the outcome of the present petition. But still the university declared her result on

17.6.2009 in which she has cleared all the papers of the VIth semester securing 297 out of 500 marks.

- Similarly in W.P. (C) 8419/09 the petitioner was pregnant and gave birth to a female child on 16.2.2009, due to which her attendance in the IVth semester was 53% and was hence detained from appearing in the examinations. As on date, as an interim measure, this court had permitted her to appear in the said examination and the result to be kept in a sealed cover subject to the outcome of this writ petition.

4. Mr. R.K. Saini, counsel for the above mentioned two petitioners, submitted that under Article 42 of the Constitution of India by virtue of the Directive Principles of State Policy, a duty has been cast upon the State to make adequate provisions for securing just and humane conditions of work and for maternity relief and that the Government in compliance thereof enacted the Maternity Benefit Act , 1961(*with special emphasis on section 4 and 6*) and that the provision of Rule 2 sub rule 9(d) of Ordinance VII of the university also flows from the said Directive Principles.

He also placed reliance on the judgment of the Apex court in ***MCD vs. Female Workers AIR 2000 SC 1274*** (*with special emphasis on para 10, 24 and 30*). Mr. Saini further submitted that so far Ordinance VII is concerned, the heading of the same which reads as “Conditions for admission to Examinations” itself would show that the said ordinance deals with the conditions of all the examinations which includes LLB as well. He further submitted that so far Rule 2(9) (d) of Ordinance VII is concerned, the same remained effective even after amendment in Rule 2(8) (a) after the decision of the Division Bench in ***S.N. Singh’s (I) case (106 (2003) DLT 329***). The contention of the counsel was that so far the cases of the students of maternity leave are concerned, the said provision remained unaltered and the same continued to be applicable to all courses including the LLB Course. He further submitted that by operation of Rule 2 (9) (d) a fiction is created as if no lectures were held during the period of maternity leave of a married woman student who becomes pregnant and delivers a child during the period of her studies. Therefore by giving the

concession/benefit to a married woman student in accordance with Rule 2 (9) (d) and Rule 2 (8) (a) of University calendar relating to LLB course and Bar Council of India Rule is actually not violated in as much as both the rules require a LLB student to put in a minimum attendance of 66% in each of the subjects which obviously relates to the lectures delivered. Counsel also contended that what are the minimum lectures to be delivered by the College/University in a particular Semester/Academic year is not specified anywhere. He further placed reliance on the judgment of the Apex Court in ***Zee Telefilms Ltd & Anr vs. UOI*** ***AIR 2005 SC 2677*** in which it was held that a decision is not an authority for the proposition which did not fall for its consideration. He also relied on the case of ***UOI vs. Amritlal Manchanda*** ***AIR 2004 SC 1625*** where it reiterated the principle that each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant circumstance may alter the entire aspect. Counsel thus urged that in deciding such cases, one

should avoid the temptation to decide cases by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive.

5. Mr. Saini also placed reliance on the judgment of this Court in ***Seema Sharma vs. University of Delhi W.P. (C) No.9892/2006*** where specifically dealing with Rule 2 (9) (d) of Ordinance VII, the court has held it applicable in the case of a married women student, irrespective of the provisions contained in the rules prior to said rules relating to the requirement of attendance in her course of study, and has held it to be the right of married women students studying in University of Delhi and holding them as a special class under Ordinance VII. Counsel also placed reliance on the following judgments:

1. *Neera Gupta & Ors. vs. University of Delhi & Anr. 63 (1996) DLT 458*
2. *Nithya vs. University of Madras 1996 WLR 8029 (Madras High Court)*
3. *Mrs. Bharti Gupta vs. RITES (WPC 4798/03, Delhi High Court)*

6. Coming to the other petitions, briefly the facts are as follows:

- In W.P. (C) 13314/09, the petitioner is a student of Ist Semester and had 61.27% attendance. He could not attend college as he suffered from acute lambago (ailment of the lower back) and was advised bed rest for one month from 1.9.09 to 30.9.09. As an interim measure, the court allowed him to appear in the Ist semester examination and thereafter also permitted him to attend IInd semester classes and appear in the IInd semester examinations.
- In W.P. (C) 13354/09, the petitioner is a student of Ist Semester and her attendance was 56%. On account of suffering from backache and infection in digestive system she had returned to her hometown in Rajasthan for one month from 1.8.09 to 1.9.09 and was hence debarred from appearing in the Ist semester examinations. As an interim measure, she was allowed to take the Ist semester examinations and thereafter attend IInd semester classes and also take IInd semester examinations.
- In W.P. (C) 13391/09 the petitioner is a student of Ist semester and had 63.7% and was short of attendance on account of taking

his ailing old grandparents to hospital time and again. As an interim measure, he was allowed to appear in the Ist semester examinations and attend classes of the IInd semester.

- In W.P. (C) 13400/09 the petitioner is a student of the Ist semester and her attendance was 50.2% due to asthma attacks and was advised rest from 5.10.09 to 30.10.09. As an interim measure, the court allowed her to appear in the Ist semester examinations and attend classes of the IInd semester and also to appear in the IInd semester examinations.
- In W.P. (C) 13410/09 the petitioner is a student of Vth semester and due to suffering from dengue fever, her attendance was 61.5% as opposed to the required 66%. According to the petitioner she was marked zero attendance in the subject of Intellectual Property Laws whereas she had attended quite a number of lectures of the said subject. As an interim measure, this court had allowed her to appear in the Vth semester examinations and attend classes of the VIth semester and thereafter also to appear in the VIth semester examinations subject to the outcome of the present writ petition.

- In W.P. (C) 13427/09 the petitioner is a student of Ist semester and was short of attendance as she had 62.7% due to suffering from viral. As an interim measure, the court had allowed her to appear in the Ist semester examinations.
- In W.P. (C) 13456/09 the petitioner is a student of Ist semester and was suffering from acute sinusitis (frontal) due to which his attendance was 62.20%. As an interim relief, the petitioner was allowed to appear in the Ist semester examinations and consequently to attend the classes of the IInd semester and to appear in the IInd semester examinations subject to the outcome of the present writ petition.

7. In the above mentioned seven petitions, the counsel representing them jointly placed reliance on Rule 2 (9) (a) (ii) of Ordinance VII of the University Calendar. The contention of the counsel was that the said sub rule is still applicable with all force even after an amendment was brought out by the Delhi University in Rule 2 (8) (a) of Ordinance VII after bringing the same in conformity with the then Rule 3 of section B of Part IV of the Bar

Council of India Rules. The contention of the counsel was that Rule 9 of Ordinance VII deals with general students and even after the amendment brought out in Rule 8 of Ordinance VII, the said general provision cannot be rendered redundant or obliterated from the Ordinance so far its applicability to the students of LLB or LLM is concerned.

8. Mr. Mohit Jolly, counsel for the petitioner appearing in W.P. (C) No. 13314/2009, vehemently contended that this court has to interpret the said two provisions i.e. Ordinance VII Rule 2 sub rule (8) (a) and Ordinance VII Rule 2 sub rule 9(a) (ii) harmoniously. The contention of the counsel was that such interpretation would also satisfy the test of reasonableness as required under Article 14 of the Constitution of India. Counsel further submitted that any cast iron interpretation of the Statute which promotes unreasonableness must be discarded. Counsel also submitted that Rule 2 (9) (a) (ii) remained intact even after the amendment in Rule 2 8(a) which in itself manifests the intention of the university to provide relief in exceptional

deserving cases in terms of Rule 2 (9) (a) (ii) of Ordinance VII. Counsel also submitted that no directions were given by the Division Bench of this court in ***S.N. Singh's case(I)*** to the University to amend Ordinance X-C in such a manner so as to make Rule 2 (9) (a) (ii) inapplicable to the LLB course. He further submitted that the amended rule does not in any manner suggest that the same has to be read in isolation as a self-contained and independent provision or that the same negates and nullifies the operation of other rules including the said Rule 2(9) (a) (ii). In support of his arguments counsel placed reliance on the judgment of this court in ***Manjit Singh vs. University of Delhi W.P. (C) 7652/2008***. Counsel further submitted that it is a settled law that every clause of statute should be construed with reference to the context along with other clauses of the Act and a harmonious construction of such conflicting clauses is to be given so as to give a purposeful interpretation to the same. Counsel thus submitted that Rule 2 (8) (a) cannot be construed in a manner so as to render Rule 2 (9) (a) (ii) otiose and dead letter.

Counsel thus urged that the interpretation sought to be given by the university is per se unreasonable whereas the interpretation canvassed by the counsel for the petitioner would not only be just, reasonable and sensible but the same would also give real intendment of the university in enacting the said Rule 2 (9) (a) on the Statute Book. In support of his arguments, counsel placed reliance on the following judgments.

1. *Newspapers Ltd. vs. State Industrial Tribunal, U.P. & Ors.* AIR 1957 SC 532
2. *M. Pentiah 7 Ors. vs. Muddala Veeramallappa & Ors.* AIR 1961 SC 1107
3. *M/s Gammon India Ltd. vs. Union of India & Ors.* AIR 1974 SC 960
4. *Mysore State Road Transport Corporation vs. Mirja Khasim Ali Beg & Anr.*, AIR 1977 SC 747.
5. *O.P. Singla & Anr. vs. U.O.I. & Anr.*, 1984 (4) SCC 450.
6. *Philips India Ltd. vs. Labour Court, Madras & Ors.*, 1985 (3) SCC 103.
7. *Shrimant Shamrao Suryavanshi & Anr. vs. Pralhad Bhairoba Suryanvanshi*, 2002(3) SCC 676.
8. *Tinsukhia Electric Supply Co.Ltd. vs. State of Assam & Ors.*, AIR 1990 SC 123.
9. *Anwar Hasan Khan vs. Mohd. Shafi & Ors.*, 2001 (8) SCC 540.
10. *Andhra Bank vs. B. Satyanarayana & Ors.*, AIR 2004 SC 4007.
11. *Nandkishore Ganesh Joshi vs. Commissioner, Municipal Corporation of Kalyan & Dombivali & Ors.*, AIR 2005 SC 34.

12. *Nelson Motis vs. UOI, AIR & Anr. 1992 SC 1981.*
13. *Nathi Devi vs. Radha Devi Gupta, 2005 (2) SCC 271.*
14. *Kailash Chandra & Anr. vs. Mukundi Lal & Ors. AIR 2002 SC 829.*
15. *Krishan Kumar vs. State of Rajasthan & Ors., AIR 1992 SC 1789.*
16. *Madanlal Fakirchand Dudhediya vs. Shree Changdeo Sugar Mills Ltd. & Ors., AIR 1962 SC 1543.*
17. *Sultana Begum vs. Prem Chand Jain, AIR 1997 SC 1006.*
18. *State of Gujarat & Ors. vs. Dilipbhai Nathjibhai Patel & Anr., 1998 (3) SCC 234.*
19. *D.Saibaba vs. Bar Council of India & Anr., AIR 2003 SC 2502.*
20. *Lalit Mohan Pandey vs. Pooran Singh & Ors., 2004(6) SCC 626.*

9. Mr. Deepak, counsel appearing in W.P. (C) 13354/09 alleged that the petitioner had attended all the lectures in the subject of Law of Torts and Family Law but was awarded only 15% and 60% attendance on account of the fact that the attendance was marked on chit papers and not duly on attendance registers and hence in the commotion to get the attendance marked at the end of the lecture many students frequently were not able to get their attendance marked. He further submitted that the attendance rules in the Information Bulletin of the Faculty of Law clearly states that the Professor-In-

Charge *shall* have the power to strike off the name of a student who is grossly irregular in attendance in spite of warning, or, when the absence of a student is for such a long period that he cannot put in requisite percentage of attendance. His contention was that the word “shall” used in the said attendance rules is only directory in nature and not mandatory and hence the Professor-In-charge is not under compulsion by virtue of this rule to strike off the name of each and every student, but the said power is discretionary and under exceptional circumstances he can exercise such power. In support of his arguments, counsel placed reliance on the judgment of the Apex Court in ***Union of India & Ors. vs. A.K. Pandey (2009) 10 SCC 552*** where it was held that negative and prohibitory words are indicative of the legislative intent when the statute is mandatory and in the present case as the word “shall” in the attendance rules is not followed by any negative words hence the said rule word only be directory in nature and not mandatory. Counsel also placed reliance on the following judgments:

1. *Avanija Sundaramurti vs. University of Delhi & Anr. 139(2007)DLT 220*
2. *Neera Dadhwal vs. Deepak Paintal And Ors W. P. (C) No. 17455/2006 (Delhi High Court)*
3. *State of Haryana & Anr. vs. Raghubir Dayal (1995) 1 SCC 133*
4. *Lachmi Narain etc. vs. Union of India & Ors AIR 1976 SC 714*

10. Mr. Kirti Uppal, counsel for the petitioner in W.P.(C) No. 13410/2009 submitted that the petitioner was assigned zero attendance by the teacher in the subject of Intellectual Property Laws, although the petitioner did attend quite a number of lectures in the said subject. Counsel also submitted that the said averment of the petitioner has not been refuted by the Law Faculty as no separate counter affidavit has been filed by the Law Faculty in this regard and no reliance can be placed so far the affidavit filed by the Registrar representing the University of Delhi is concerned. He alleged that from a bare perusal of the attendance sheet of the petitioner produced in the court during the course of arguments it seems that the same has been manipulated/overwritten. Counsel further submitted that the

petitioner had in her representation dated 19.11.2009 specifically asked for the official attendance which was not given to the petitioner. Counsel for the petitioner strongly placed reliance on the judgment of this court in the case of ***Avijit Bhushan vs. University of Delhi 136 (2007) DLT 441***, where the court took into consideration the amended Rule 8 (a) and judgment of the Division Bench in ***S.N. Singh I case*** along with the promotion rules and gave directions to the university to promote the students to the IIIrd semester as the court found that there was no requirement of attaining 66% attendance in the IInd semester for securing promotion to the IIIrd semester. Counsel also contended that the university failed to observe the principles of natural justice as no show cause notice was given to her before taking such a harsh decision of detaining the petitioner and have thus violated the law laid down in the case of ***Avijit Bhushan***.

11. Mr. Deepak and Mr. Kirti Uppal vehemently contended that the respondents have misinterpreted the attendance and promotion rules as the shortage of attendance of the petitioners

cannot be equated with the notion of “gross irregularity” as the university has disdainfully erred in meaningful appreciation of the said term in the light of its analysis by this court in the case of ***Avijit Bhushan***.

12. Counsel for petitioner in W.P. (C) 13400/2009 and 13427/2009 alleged that the petitioners have been discriminated as the university later reduced the required attendance to 63% and other students have been allowed to appear in the examinations. Similarly, in W.P. (C) 13391/2009, the petitioner alleged that the mandatory requirement of 66% was later reduced to 64% and the petitioner had 63.7% of attendance and should have also been given the benefit of the said relaxation. Counsel also claimed relaxation in view of the Apex Court judgment in the case of ***Union Of India vs. Satya Prakash (2006)4 SCC 550*** and of this court in case of ***Madan Mohan vs. GGSIPU W.P.(C) 13035/2008*** where 0.5% has been rounded off to 1%.

13. Mr. A Guneshwar Sharma, counsel appearing for the petitioner in W.P. (C) 13456/2009 submitted that by mere

displaying the shortage of attendance at the threshold of the examination, when the student will not be having an opportunity to make up the same, cannot be termed as a justified act on the part of the respondents. He further submitted that in the event of the petitioner being detained, he will lose one academic year and will not be able to pursue his law studies at all because of the provision of Rule 12 of the ordinance which states that there shall be no readmission in the LLB first term under any circumstances including detention for shortage of attendance in that term and hence the petitioner would have to again appear in the entrance examination for seeking admission in the first year.

14. Mr. Rupal, counsel for the respondent, University of Delhi submitted that so far the LLB students are concerned, under Ordinance VII Rule 2(8) (a) read with Bar Council of India Rules, the student must secure 66% attendance in each subject in each semester. Counsel further submitted that under the proviso of the said rule, only in exceptional cases, the Dean, Faculty of Law/Professor In-charge of Law Centre concerned may condone

attendance short of those required by the said rule, if such student had 66% of attendance in aggregate and for that the said Dean or the Professor In-charge has to record reasons for communication of the same to the Bar Council of India. He further submitted that after the judgment in the case of ***S.N. Singh I*** dealing specifically with the issue of attendance with regard to LLB students, Rule 2 sub rule 9(a) of Ordinance VII cannot come to the rescue of the LLB students. He submitted that the position was again reiterated by this court in the judgment of the division Bench in ***S.N Singh II*** and again by Justice S.K Misra in the case of ***Satyendra Singh vs. University of Delhi W.P. (C) 3225/2008***. Further elaborating his arguments, counsel submitted that Rule 2(9) (a) of Ordinance VII would be only applicable to the students of other courses excluding the LLB course. He also submitted that similarly Rule 2 sub rule 9 (d) of Ordinance VII dealing with the maternity leave is not applicable so far the LLB students are concerned.

15. Mr. Rupal placed reliance on the judgment of this Court in the case of ***Kiran Kumari vs. Delhi University & Ors W.P. (C) No. 9143/2007*** where it was held that the students still have 34% of lectures to deal with the emergent situations like sickness or such other reasons beyond control and certainly the maternity period can also be taken care of in this percentage. He also placed reliance on the judgment of the Division Bench of this court in ***Komal Jain vs. University of Delhi W.P. (C) 8534/2008*** where the court reiterated the law as settled by the previous judgments.

16. Also, refuting the submissions of counsel for the petitioners, Mr. Rupal said that the judgment in the case of ***Avijit Bhushan*** would not come to help the petitioners as the fact situation was entirely different in that case. It was further submitted by the counsel for respondent that the attendance is regularly displayed on the notice board and hence there is no question of there being violation of principles of natural justice so far the petitioners are concerned. He further submitted that the

allegation of the mandatory requirement of 66% being reduced to 64% or 63% before the commencement of the examinations is completely fallacious as there is no ground for raising such an argument and no records to prove the same. He also submitted that in the case of married students who were pregnant, Rule 2 (9)(d) of ordinance VII would not be applicable as there is a requirement of obtaining maternity leave for the operation of the said sub rule which has not been done in the case at hand.

17. Mr.Mohit Jolly, on the other hand, rebutting the arguments of Mr. Rupal submitted that it is to be noted that in the case of ***S.N Singh II***, the Division Bench of this court merely reiterated the ratio of ***S.N Singh I*** and directed the university to follow the same and in none of the judgments relied upon by the respondents the power vested with the Dean in Rule 2(9) (a) (ii) has been held to be inapplicable to LLB students and in fact there is no discussion , observation or finding so far the said rule is concerned in any of the judgments.

18. I have heard learned counsel for the parties at considerable length and given my anxious consideration to the facts of each case and import of various judgments cited by the counsel for the parties.

19. Eminent jurist Nani Palkhivala once remarked that *lawyers' education is a process extending over a whole career. It starts with the academic stage, extends through training in courts and continues through a mix of self education and learning from peers for long as a person is involved in legal work.* The stress is on the importance of the capacity to learn, which must be developed at the earliest possible stage i.e. the law school. It is this vital capacity, in my opinion, which marks the distinction between getting a degree and having an education.

20. Before advertng to the pleas raised by the counsel for the parties, it would be appropriate to garner the metamorphosis of the rule that is the bone of contention here.

RULE 2 (8)(a), ORDINANCE VII, UNIVERSITY OF DELHI

21. Shri S.N.Singh, Professor of Law Centre-II, Faculty of Law, University of Delhi had filed a Public Interest Litigation after he found mass indiscriminate promotion of students from first year to second year and then from second year to third year, although such students had cleared only 14 papers, which was in violation of the promotion rules but still were being exempted by the Standing Committee (Students) of the University from time to time. The Division Bench of this court after taking into consideration the contentions raised by Mr. S.N. Singh and the respondents therein and the then existing Rule 2 (8) (a) of Ordinance VII and Rule 3 of Bar Council of India Rules gave directions to the University of Delhi to amend the attendance rules to bring them in conformity with the rules framed by the Bar Council of India (*for short BCI*). The Division Bench was of the view that the permissible relaxation, so far the requirement of attendance in the LLB course was concerned, should be strictly as per the Rules framed by the Bar Council of India. It would be

pertinent to reproduce the observations of the Division Bench in the said judgment, known as ***S.N. Singh I***, here:

"27. We find force in the submission of the learned counsel for the petitioner in respect of the first four submissions noted by us above. A law course cannot be equated with a normal academic course. Attendance of lectures, tutorials and seminars is very essential to train the law students. Under the Advocates Act 1961, the Bar Council of India has been empowered, amongst others, "to promote legal education and to lay down standards of such education". The Bar Council of India has framed statutory rules which bind all institutions conferring LL.B. Degree Course which are recognised by the Bar Council of India. Section 4 of the Delhi University Act 1922 empowers the University to confer degrees of students who have pursued a course of study in the University or in any college attached or affiliated to the University. No student can be deemed to have pursued a course of study who does not comply with the various requirements prescribed under the Act, Statute, Ordinances or Rules framed by the Academic Council. Needless to state that the Academic Council is the Supreme Academic Body of the University. Clause 8 of Ordinance 7 clearly provides that no student shall be deemed to have pursued a regular course of study unless he has attended at least two-thirds of the total number of lectures delivered in each year. The proviso permits relaxation of shortage of attendance up to 10%. Thus, as per the attendance norms prescribed under the Ordinances, pertaining to LL.B. Degree Course, shortage of attendance beyond 10% is not permissible. However, the Academic Council in exceptional cases is empowered to grant a further relaxation. The examination Rule framed by the Bar Council of India also provides for relaxation, but makes a different provision for relaxation. The Bar Council of India Rule requires 66% attendance in each paper and empowers relaxation in a particular paper, provided however total attendance in all the papers is 66%. The Academic Council decision to accept the Justice V.S. Deshpande Committee recommendation is thus a resolution limiting the exercise of power of relaxation unanimously adopted by the Academic Council. The Academic Council would thus be bound by its own resolution. The decision not to grant relaxation was a conscious decision

taken for which even a high powered Committee was constituted and was taken in the interest of legal education.

28. Since the Bar Council of India recognises the LL.B. Degree Course of the University of Delhi and the Bar Council of India is a statutory body constituted under the Advocates Act 1961 and is empowered to lay down standards of legal education, University of Delhi would be required to bring its rules in conformity with the rules of the Bar Council of India.

29. The respondent No. 1 is thus issued a direction to amend its examination and promotion Rules in the matter pertaining to attendance to bring them in conformity with the corresponding rules framed by the Bar Council of India."

It further held:

36. In matters pertaining to education no court can permit total violation of the norms. LL.B. Degree Course is expected to produce trained legal minds, ready to take on the challenges of the 21st Century. Decline in education norms in professional law courses was noted by the Supreme Court as far back as 1989. In the judgment: [1989]2SCR862 titled Baldev Raj Sharma Vs. Bar Council of India, it was observed that there is a substantial difference between a course of study pursued as a regular student and a course of study pursued as a private candidate. It was observed that regular attendance for the requisite number of lectures, tutorials etc. has a purpose. Rules framed by the Bar Council of India were upheld.

37. For future, directions contained above, namely, no relaxation would be given from the requirement of clearance of 5 or 15 papers as the case may be for promotion to the third and fifth term shall be adhered to by the University. Further, the attendance rules shall be amended by the University of Delhi and shall be brought in conformity with the attendance rules framed by the Bar Council of India. The permissible relaxation would be as per the rules framed by the Bar Council of

India and manner of exercise shall be as so framed there under.

22. Pursuant to the aforesaid directions given by the Division Bench, Rule 2 (8) (a) of Ordinance VII was amended so far as it was inconsistent with Rule 3 of the Bar Council of India Rules and the said amended Rule of Ordinance VII is reproduced as under:

“2(8) (a) The students shall be required to put in minimum attendance of 66% of the lectures on each of the subjects as also at the moot courts and practical training course.

Provided that in exceptional cases for reasons to be recorded and communicated to the Bar Council of India, the Dean of the Faculty of Law/ Professor-in-Charge of the Law Centre may condone attendance short of those required by this Rule, if the student had attended 66% of the lectures in the aggregate for the semester examinations.

Provided further that no person shall be deemed to have satisfied the required conditions in respect of his instructions unless, in addition to the requirement regarding attendance and other conditions, he has appeared and satisfied by his performance the Professor-in-Charge of the Law Centre in such test, written and/or oral, as may be held by him in his discretion.

The Professor-in-Charge shall have, and shall be deemed always to have had, the power to detain a student in the same class in which he has been studying, or not to send him up for the University Examination, in case he did

not appear at the tests aforesaid or his performance was not satisfactory.

The Professor-in-Charge of the Law Centre shall have power to strike off the name of a student who is grossly irregular in attendance inspite of warning, or, when the absence of the student is for such a long period that he cannot put in requisite percentage of attendance.”

23. After the above stated special amendment was introduced by the university in the said Ordinance, Mr. S.N. Singh again filed a writ petition to ensure strict compliance of the attendance rules by all the law centers of Delhi University and vide order dated 5.12.2006, the Division Bench in unequivocal terms upheld the contentions of Mr. S.N. Singh and held that for obtaining the degree of LLB, a student necessarily has to have a minimum attendance of 66% of lectures in each subject, and so far the contention with regard to the shortfall of attendance was concerned, the same was directed to be strictly adhered to by all the law centers of Delhi University in terms of the amended rule. It would be pertinent to refer to the relevant para of the said judgment, known as ***S.N. Singh II***, here:

"The Bar Council of Delhi (in short referred to as the 'BCD' and BCI are also represented by their counsels. They have drawn our attention to the provisions of aforesaid Rule 4. They have also placed before us the BCI Rules made under the provisions of the Advocates Act, 1961. Reference was made to Rule 4 thereof which reads as under:

"4. The student shall be required to put in minimum attendance of 66% of the lectures on each of the subjects as also at the moot courts and practical training courses:

Provided that in exceptional cases for reasons to be recorded and communicated to the Bar Council of India, the Dean of the Faculty of Law or the Principals of Law Colleges may condone attendance short of those required by this rule, if the student had attended 66% of the lectures in the aggregate of the semester or examination as the case may be."

In view of the aforesaid stand now taken by all the parties hereto, we are of the considered opinion that to be able to appear in the examination for obtaining the degree of LLB, a student has to have a minimum attendance 66% of the lectures on each of the subjects. However, there is a proviso added thereto that in exceptional cases for reasons to be recorded and communicated to the Bar Council of India the Dean of the Faculty of Law and the Principals of the Law Colleges shall have the power and the jurisdiction to condone attendance short of what is required by the rule, if the student have attended 66% of the Lectures in the aggregate for the semester or examination as the case may be. The aforesaid provision mandates that a candidate must have minimum attendance of 66% of the lectures on each of the subject to enable him to appear in the LLB examination, subject to the condition mentioned in the proviso."

24. The law having been authoritatively settled by the above said two judgments of the Division Bench, the students

were still being irked by the attendance prescripts and therefore this issue again came up for consideration before the Hon'ble Division Bench of this court in the matter of ***Kiran Kumari vs. Delhi University & Ors W.P.(C) No. 9143/2007***. The court once again, after taking note of the earlier two decisions in ***S.N. Singh I*** and ***S.N. Singh II*** and also after having taken into consideration the observations of the Apex Court in the case of ***Baldev Raj Sharma vs. Bar Council of India, 1989 Supp (2) SCC 91*** and ***Bar Council of India & Anr. vs. Aparna Basu Mallick & Ors., 1994 (2) SCC 102***, found no illegality in the said amended Rule 2 (8) (a) of Ordinance VII or in the Bar Council of India Rule fixing the criteria of fulfillment of minimum 66% attendance in each subject as a condition of eligibility for appearing in the examination in each semester. It would be apt to refer to the relevant paras of the said judgment here:

"The only question therefore, is whether there is anything illegal or unconstitutional about the requirement subject to which the power to condone can be exercised by the competent authority.

In fairness to Mr. Mittal, we must mention that he did not canvass that the Rule or the proviso was beyond

the rule making power of the Bar Council of India or the University. In any case, such an argument may not have been available to Mr. Mittal in the light of the decisions rendered by the Supreme Court in cases of B.R. Sharma and Aparna Basu Mallick (supra), where the Supreme Court has clearly accepted the scheme of the Bar Council Rules and recognized that the same lays great emphasis on regular attendance by the students of the lectures during the time the students are undergoing the course. The decision in S.N. Singh Versus Union of India & Ors. 2003 IV AD (Delhi) 378 (supra) hereinafter referred to as S.N. Singh-I had also emphasized the importance of lectures, tutorials and seminars in the process of training the law students. It had noticed the provisions of the University studies framed by the Academic Council which at that time permitted relaxation of shortage of attendance up to 10% making further relaxation permissible only in exceptional cases. The court had however found a disparity between the Rules framed by the Bar Council of India and those framed by the University and directed the University to amend the same in order to bring them in conformity with the corresponding Rules framed by the Bar Council of India. While doing so, the Court noticed that the Rules framed by the University had resulted in creating an anomalous situation in as much as the requirement of attendance had been dispensed by the university authorities for every conceivable reason and permitted students with as low an attendance as 32% to appear in the examination. The Court declared that attendance of lectures delivered during the course was an essential requirement which alone would entitle the candidate to qualify in the examination and get enrolled as a Member of the Bar. That position was reiterated in S.N. Singh Versus University of Delhi & Ors. (decided on 5.12.2006) (supra) hereinafter referred to as S.N. Singh II case where another Division Bench of this Court had held that the provisions of the Rule were mandatory in nature and had to be strictly adhered to. This court observed:

"Considering the aforesaid position, we are also of the opinion that the aforesaid provision being mandatory in nature should be strictly adhered to and be complied with by the respective colleges. If there is any violation of the said rules, it would be open to the petitioner to bring it to the notice of the University Authorities and

also to the notice of the Bar Councils and when such violation is noticed, appropriate remedial measures shall be taken by the University Authorities, BCD and the BCI. It is also made clear that the University Authorities shall not allow any deviation from the requirements of Rule 4 of Section A of Part IV of the Bar Council of India Rules unless they receive specific permission from the BCI."

In the light of the above, we find it difficult to appreciate as to how the requirements of 66% in each subject or as a condition of eligibility for appearance in the examination of the requirement of 66% attendance in the aggregate for purposes of granting the benefit of condonation in the shortfall can be said to be either illegal or arbitrary. The decisions delivered by the Supreme Court and by this Court to which we have referred above have in our view authoritatively held that the LLB course was a professional course in which the candidates have to ensure regular attendance of lectures and those who do not attend the stipulated percentage of lectures would not even be eligible for enrolment as members of the Bar. Such being the importance given to the attendance of lectures, there is no question of the requirement stipulated by the Rules being irrational, unconstitutional or illegal in any manner. The quality of training which a candidate gets during the time he undergoes the course is directly proportional to the number of lectures that he attends. The failure of a candidate to attend the requisite number of lectures as stipulated by the relevant rules can legitimately disentitle him to claim eligibility for appearing in the examination.

That brings us to the contention vehemently urged by Mr. Mittal that insistence upon 66% lectures in the aggregate as a condition precedent for the exercise of the power of condonation was irrational, for it amounts to empowering the competent authority on the one hand and denuding him of that power on the other. We do not think so. **What is the minimum percentage of lectures which a candidate must attend in each subject or on the aggregate is a matter on which the academic bodies like the university and the Bar Council of India are entitled to take a decision. If in the opinion of the Bar Council and the University, a**

candidate cannot be said to have taken proper instructions or meaningfully undergone the course, unless he attends a minimum of 66% lectures in the aggregate, this court cannot but respect that opinion. In matters relating to academics and standards of education, the Court would show deference to the opinion of the academicians unless a case of patent perversity is made out by the petitioners. The present is not, however, one such case where the requirement of the rule can be said to be so perverse or irrational as to call for the intervention of this Court. As a matter of fact, the minimum percentage of lectures having been fixed at 66%, still gives to the students freedom to miss or abstain from 34% of such lectures. That is a fairly large percentage of lectures which a student may miss for a variety of reasons including sickness or such other reasons beyond his control. No student can however claim that apart from 34% lectures which he is entitled to miss even without a cause the shortage to make up 66% should be condoned if he shows good cause for the same.

25. As would be manifest from the above judgment, the Division Bench was of the clear view that the minimum percentage of lectures having been fixed at 66% still give the students the freedom to miss or abstain from 34% of such lectures which as per the Hon'ble Division Bench is a fairly large percentage of lectures which a student may miss for a variety of reasons including sickness or such other reasons beyond his/her control. The necessary import of the said observation would be

that besides such 34% of the lectures which is understood to be a legitimate right of the students to miss, the criteria is to have 66% of attendance in aggregate in a particular semester to entitle a student to seek further relaxation to meet the shortfall in attendance in exceptional cases.

26. As still the wayward lot of students try to wriggle relief by knocking the door of the court of law, in yet another case of ***Komal Jain vs. University of Delhi W.P. (C) No. 8534/2008*** the Division Bench of this court was confronted with the same situation where again the candidate had challenged the constitutional validity of the rules concerning the promotion of students of the LLB course. In the facts of the said case, the petitioner, because of suffering from typhoid, could not attend her classes for 22 days in her Vth semester of LLB course and due to that she had only 53.41% attendance instead of the prescribed minimum 66% attendance. The Division Bench, not finding any merit and substance in the pleas raised by the student and after

placing reliance on the earlier decisions of this court, dismissed the petition with the following observations:

"We cannot lose sight of the fact that education is not available to every citizen of India. The State allocates large sums of money on higher education and professional courses, such as the Law Degree. For every student who is fortunate to gain admittance to a professional course, at least four persons are disappointed. Education, so far as in Delhi University is concerned is so highly subsidized by the government that it is unfortunately taken for granted by a large section of the student community. It is this section which thinks that it is not necessary to attend all the lectures delivered in the Faculty; they even challenge the minimum of 66 per cent established by the University of Delhi as well as by the Bar Council of India. The constitutional validity of the Rules has been considered and upheld by the Division Bench of this Court in WP(C) No.91432/2007 titled Kiran Kumari vs Delhi University decided on 16.5.2008. Precedents emanating from the Apex Court, including those titled Baldev Raj Sharma vs Bar Council of India, 1989Supp (2) SCC 91, Bar Council of India vs Aparna Basu Mallick,(1994)2SCC102 and S.N. Singh vs Union of India, 2003 IV AD (Delhi) 378, were analysed and applied. It has been opined that the fixation of the minimum percentage of attendance is a matter on which academic bodies, like the University of Delhi and the Bar Council of India, are most competent to decide. It has also been opined that the freedom to abstain from attending 34 per cent of lectures adequately covers eventualities of sickness etc. It appears to us that is beyond cavil that every citizen must comply with the attendance criteria in order to be eligible for promotion to the next academic year. We are in respectful agreement with the decisions mentioned above. The vicissitudes and vagaries of life often cause a delay in achieving an objective that a person has set for himself. It would be foolish to think that such a delay inexorably leads to ruination of the career. For a Mandamus to issue it is imperative for the Petitioner to show the existence of an undisputable right; or the impugned decision should partake of a perverse or indefensible character. Rather than falling in this category, the decision of

the Respondents to insist on adherence to minimum attendance criteria is calculated to achieve excellence in academic standards. We find no reason to exercise extraordinary powers vested under Article 226 of the Constitution of India. Dismissed."

27. With the three Division Bench judgments in the backdrop, the petitioners, in the present petitions, have shown valiance in approaching this court with the hope that their truancy would be pardoned. It is well settled legal principle that a smaller Bench cannot override a decision of the larger Bench. It would be worthwhile here to refer to the recent judgment of the Apex Court in the case of ***State Of Karnataka vs. G.V Chandrashekar (2009)4 SCC 342*** where Hon'ble Justice S.B Sinha has discussed this rule in the following light:

"The Bench in Official Liquidator vs. Dayanand(2008)10 SCC 1 noticed several judgments/orders of different Benches taking a view contrary to Uma Devi (3) (supra) to opine that those cases were illustrative of non-adherence to the rule of judicial discipline which is sine qua non for sustaining the system. It was opined:

90. We are distressed to note that despite several pronouncements on the subject, there is substantial increase in the number of cases involving violation of the basics of judicial discipline. The learned Single Judges and Benches of the High Courts refuse to follow and

accept the verdict and law laid down by coordinate and even larger Benches by citing minor difference in the facts as the ground for doing so. Therefore, it has become necessary to reiterate that disrespect to constitutional ethos and breach of discipline have grave impact on the credibility of judicial institution and encourages chance litigation. It must be remembered that predictability and certainty is an important hallmark of judicial jurisprudence developed in this country in last six decades and increase in the frequency of conflicting judgments of the superior judiciary will do incalculable harm to the system inasmuch as the courts at the grass root will not be able to decide as to which of the judgments lay down the correct law and which one should be followed.

91. We may add that in our constitutional set up every citizen is under a duty to abide by the Constitution and respect its ideals and institutions. Those who have been entrusted with the task of administering the system and operating various constituents of the State and who take oath to act in accordance with the Constitution and uphold the same, have to set an example by exhibiting total commitment to the Constitutional ideals. This principle is required to be observed with greater rigour by the members of judicial fraternity who have been bestowed with the power to adjudicate upon important constitutional and legal issues and protect and preserve rights of the individuals and society as a whole. Discipline is sine qua non for effective and efficient functioning of the judicial system. If the Courts command others to act in accordance with the provisions of the Constitution and rule of law, it is not possible to countenance violation of the constitutional principle by those who are required to lay down the law.

We feel bound by the observations made therein."

Hence, in the present case also this court is bound by the aforesaid decisions of the Division Bench of this Court.

BAR COUNCIL OF INDIA & ITS RULES

Justice A.M Ahmadi once remarked that *"We have waited long enough to repair the cracks in the legal education system of this country and it is high time that we rise from arm-chairs and start the repair in the right earnest"*. Hence, the Bar Council of India sought to introduce regulations of law courses through out the country. BCI derives its power under the Advocates Act, 1961 which has its source from Entries 77, 78 of List I which deal with the subject of persons entitled to practice before Supreme Court and the High Courts. Section 7 of the Indian Advocates' Act 1961 states the functions of the Bar Council of India and a glance at sub clause (h) and (i) of the same show that one of the important functions of the BCI and the State Bar Councils is to promote legal education in the country and to lay down standards of the

legal education in the Law Universities of India. It is under the aegis of this section that the Bar council of India Rules, 1975 have been enacted. In imparting such legal education, under clause (i) of Section 7, it is the function of the BCI to recognize the universities whose degree in law shall be a qualification for enrolment as an advocate. It would be, therefore, quite apparent that whereas the formal education in the field of law is given by various universities and colleges, it is the Bar Council of India which is the statutory body which grants affiliation to such universities or colleges and is also responsible to maintain the standards of professional conduct and etiquettes of the advocates. It is thus manifest that the BCI alone is endowed with the responsibility to act as a sentinel of the professional standards and conduct of the advocates in the country. Rule 21 of the Bar Council of India Rules, 1975 provides that no college shall impart instructions in a course of study of law until its affiliation is approved by the BCI. Sub Rule (g) of Rule 21 provides that if the Legal Education Committee of the Bar Council is satisfied with

the standards of legal education; and /or the rules for affiliation or continuance of affiliation provided for in these rules are not complied with; and/or the examination are not such so as to secure to persons undergoing legal education the knowledge and training requisite for the competent practice of law, then the Legal Education Committee shall recommend to the BCI disapproval of affiliation of the continuation of the legal education in such a university or college. Hence, indisputably, it is the BCI which has the power and the responsibility to regulate the goings in the field of legal education.

28. The rule under scanner here is Rule 4 of Part IV, Section B of the Bar Council of India Rules, 1975 mandating that the students undergoing three year LLB Course would be required to put in a minimum attendance of 66% in each subject. By way of proviso to the Rule, an exception was made that the Dean of the Faculty of Law or Principal of the Law College would be empowered to condone shortage of attendance under two eventualities i.e. (i) Such a case is an exceptional case and, (ii)

Such a student has attended 66% of the lectures in aggregate. It would be relevant to reproduce the said rule of Bar Council of India as under:

“The students shall be required to put in a minimum attendance of 66% of the lectures on each of the subjects as also at tutorials, moot courts and practical training course.

Provided that in exceptional cases for reasons to be recorded and communicated to the Bar Council of India, the Dean of the Faculty of Law and the Principal of law colleges may condone attendance short of those required by the Rule, if the student had attendance 66% of the lectures in the aggregate for the semester or examination as the case may be”

29. Now in the aforesaid backdrop, dealing with the contentions raised by the counsel for the parties, let me first deal with the legal position and background of facts in the case of ***Avijit Bhushan(Supra)*** on which much emphasis was placed by the counsel for the petitioners. In this matter the court was dealing with the promotion rules of the University for the LLB course. The facts of the said case were that the petitioner was not allowed to appear in the examination of the IInd semester as his attendance in the IInd semester in each of the subject was not 66% as contemplated under the attendance rules. The grievance

of the petitioner was that since he had qualified in 5 out of the 10 subjects of the Ist and IInd semester taken together, therefore, he became eligible for promotion to the IIIrd semester, even though he did not fulfill the criteria of securing 66% attendance in each of the subjects in the IInd semester. On the representation of the petitioner, the university stated that as his case was a case of gross irregularity and hence the Professor-In-Charge had the power to strike off his name from the attendance rolls. The court in the said case, after considering the attendance criteria and examining the promotion rules found that there was nothing in the promotion rules providing for minimum attendance requirement of 66% in the IInd semester for promotion from the IInd semester to the IIIrd semester. The Court also opined that the finding of the respondent that the case of the petitioner was of *gross irregularity* was vitiated as the petitioner was not given a reasonable opportunity to show cause and the order of striking off his name was passed without proper application of mind. Hence directions were accordingly given by the court to promote the

petitioner to the IIIrd semester of the next session and in the meanwhile he was also allowed to attend classes of the IInd semester where after completing his attendance of minimum percentage of 66% he would become eligible to appear in the examination of the IInd semester. As would be evident from the facts of ***Avijit Bhushan's case (Supra)*** and the decision thereon taken by the Court, this Court in the present batch of writ petitions is not confronted with the issue of striking off the names of the students on the ground of gross irregularity on their part. But here the court is concerned whether the students who have been detained due to the shortfall in their attendance because of not fulfilling the target of minimum requirement of 66% attendance in aggregate of all the subjects can still be considered for granting relaxation under Rule 2 (9) (a) (ii) of Ordinance VII, being exceptionally hard cases.

30. Justice B.D Ahmed while dealing with a batch of writ petitions decided by him on 20.4.2007 in the matter of ***Smt. Deepti & Ors. vs. Vice Chancellor University of Delhi***

W.P.(C) 18051/2006 noticed the inconsistency in interplay of the promotion rules with the requirement of attendance, after having taken into account the observations made by this court in ***Avijit Bhushan's*** case. However, in the ultimate analysis, Justice Ahmed disposed of all the writ petitions keeping in view the directions given by the Division Bench in ***S.N. Singh I*** and ***S.N.Singh II***. It would be worthwhile to refer to the observations in the said judgment here:

"13. To make matters more complicated, there is an apparent conflict between Clause 2(8) (a) of Ordinance VII and the provisions governing the promotion of students. The Promotion Rules as mentioned in the Bulletin of Information (2006/ 2007) issued by the Faculty of Law, University of Delhi reads as under:-

Promotion Rules

A student of the First Term LL.B Programme will be promoted to the Second Term, irrespective of the number of courses in which he/she has failed to pass or failed to appear in the First Term Examinations, provided that he or she has not been detained on account of shortage of attendance in First Term Examinations. A student will be promoted to Third Term LL.B. Programme only in those cases where he/she has passed at least five courses offered by him/her at the LL.B. First and Second Term Examinations taken together.

14. The Promotion Rules stipulate that a student would be promoted to the following year of the LL.B. Programme so long as the student has passed at least five courses out of the ten to be taken by the student in the first and second semesters combined, irrespective of the attendance in the second semester. A plain reading of the said Promotion Rules in conjunction with the provisions of clause 2(8) (a) would indicate that a student having less than 66% attendance in each of the subjects in the first term would not be permitted to take the examination of the 1st Semester. Consequently, the student would not proceed to the second semester. Resultantly, he/she would not be taking the 2nd Semester examination also. Thereby, the student would be out of the LL.B Course and would have to seek admission the next year as a fresh entrant after qualified in the entrance examination because, according to the University, re-admission to the first year of the LL.B. Programme is not permissible. On the other hand, if a student has over 66% attendance in the 1st Semester, he/she would be in a position to take the 1st Semester examination and, if he/she passes all the five papers, he/she would be promoted to the 2nd year without him/her attending a single lecture in the 2nd Semester or appearing in any paper in the 2nd Semester examination. This does creates an anomalous situation, being heavily loaded against students who miss out in the first Semester.

.....

Reading the above observations made in Avijit Bhushan (*supra*), it is apparent that promotion from the first semester to the second semester requires the student to have a minimum 66% attendance, the same requirement is not there for promotion from the 2nd to 3rd as the only condition of promotion to the 3rd semester is that the student should have passed in five courses in the first year, the 1st and 2nd semesters taken together. This also in accentuates the anomalies in the promotion rules from semester to semester in its interplay with the requirement of attendance.

.....

However, the issue with regard to attendance has been settled by a decision of another Division Bench of this Court in the case of S.N. Singh V. Delhi University (WP (C)No. 7701/2005) (hereinafter referred to as S.N. Singh-

II). In this decision the Division Bench observed as under:-

We are of the considered opinion that to be able to appear in the examination for obtaining the degree of LL.B., a student has to have a minimum attendance 66% of the lectures on each of the subjects. However, there is a proviso added thereto that in exceptional cases for reasons to be recorded and communicated to the Bar Council of India the dean of the Faculty of Law and the Principals of the Law Colleges shall have the power and the jurisdiction to condone attendance short of what is required by the rule, if the student have attended 66% of the Lectures in the aggregate for the semester or examination as the case may be. The aforesaid provision mandates that a candidate must have minimum attendance of 66% of the lectures on each of the subject to enable him to appear in the LL.B. examination, subject to the condition mentioned in the proviso.

The Division Bench also directed that:

Considering the aforesaid position, we are also of the opinion that the aforesaid provision being mandatory in nature should be strictly adhered to and be complied with by the respective colleges. It is also made clear that the University Authorities shall not allow any deviation from the requirements of Rule 4 of Section A of Part IV of the Bar Council of India Rules unless they receive specific permission from the Bar Council of India.

The position, therefore, has been crystallized by the decision of the Division Bench in S.N. Singh II (supra) that attendance is to be calculated semester-wise and subject-wise. Furthermore, the relaxation in attendance can only be granted if the conditions prescribed in the proviso itself or as prescribed under the Bar Council of India Rules referred to above are satisfied.

19. This being the position, the present writ petitions are disposed of with the direct that those of the petitioners, who fall within the Rules of relaxation, as prescribed under Clause 2(8) (a) of the Ordinance read with Rule 3 of Section B of Part IV of the Bar Council of India Rules and who have appeared in the semester examinations held in 2006, would be entitled to have their results declared. Those who do not fall within the criteria of relaxation would obviously not have been eligible to sit for the semester examinations held on December, 2006 and there would

be no question of the declaration of the result of the papers in which they have appeared pursuant to interim orders passed by this Court. However, because of the contradictions, anomalies and confusion created with regard to the promotion rules read with the attendance provisions, it is directed that those petitioners who are first year students and who are not entitled to any relaxation under the Rules, would not be required to appear in the Entrance Examination for the next year but would be provided re-admission to the first semester of the next Academic Session. The petitioners, who were to appear in the 3rd and 5th semester examination but fell short of attendance, would be required to complete their regular course of study by making up the attendance in the next year. It must be re-emphasized that the requirement of a regular course of study is an essential condition for the grant of the LL.B. Degree. This implies that students must attend lectures regularly in respect of each subject in each semester. The minimum requirement being 66% attendance. Relaxation to a certain degree is permissible but that is only to the extent provided by the Proviso in Clause 2(8) read with the Bar Council of India Rules. The exercise of considering the grant of relaxation to the extent permissible shall be concluded by the university within one week."

31. The eloquent dictums of the aforesaid judgments would unequivocally demonstrate that primacy has been given to the Rules set by the Bar Council of India.

32. Now dealing with the University Rules, Ordinance VII of Chapter III of the University of Delhi which governs the conditions of admission to examination in various courses envisages different parameters of attendance for different

courses. So far the LLB degree examination is concerned, the unamended sub rule 8(a) of Ordinance VII mandated attendance of at least 2/3 of the total number of lectures delivered in each year and relaxation by not more than 10%, if for reasons to be recorded by the Dean, such student was found entitled to such a relaxation. In the said rule it was also provided that such a student will have to make up the deficiency in the attendance of the previous year in the next following year in which he was admitted failing which such a student shall not be deemed to have fulfilled the attendance requirement of a year.

33. Encapsulating the entire scenario, this very rule which was under challenge in ***S.N.Singh I***, was recommended to be amended by the Division Bench so as to bring the same in conformity with Rule 3 of Bar Council of India Rules. The Division Bench in ***S.N. Singh's case I*** clearly stated that a law course cannot be equated with a normal academic course and therefore, in a law course, attendance of lectures, tutorials and seminars is very essential to law students. The Division Bench

also observed that the Bar Council of India has framed statutory rules which are binding on all the institutions conferring LLB degree course which are recognized by the Bar Council of India and in this background the Division Bench thought it fit that the University of Delhi would be required to bring its rules in conformity with the Rules of Bar Council of India and accordingly directions were given to the University to amend its rules in the matter pertaining to attendance to bring them in conformity with the corresponding rules framed by the BCI. Needless to mention, the University of Delhi pursuant to the said directions given by the Division Bench, amended its earlier sub rule 8(a) and replicated it in conformity with Rule 3 of Bar Council of India. After amending sub rule 8(a) of Ordinance VII, which has already been reproduced above, the said amendment now in place which is in complete conformity with the Bar Council of India Rules and BCI being the apex statutory body governing the professional standards of the lawyers in the country, no case of shortfall of

attendance can be entertained and allowed unless the same strictly falls in the aforesaid norms.

34. To qualify for relaxation of attendance the first prerequisite is that the student must have 66% of attendance in aggregate in a particular semester in which relaxation is being sought and secondly, in case of such a student the Dean must feel satisfied that it falls in any of the exceptional cases. Thirdly, the Dean is required to record reasons spelling out such exceptional circumstances and, fourthly such reasons are required to be communicated by the Dean to the Bar Council of India. What exceptional cases could warrant such relaxation would depend upon the facts of each case. To illustrate, it could be because of ill health, accident cases or any other medical ground, bereavement in the family or such other extenuating or compelling circumstances where under the student is not in a position to attend his/her classes. No hard and fast rule can be laid down to spell out such exceptional cases as it would be for the Dean to feel satisfied that the nature of facts spelled out by

the student were such that they genuinely prevented him/her to attend the classes. The rule for communication of the reasons by the Dean to the BCI again demonstrates that in the category of law students there is a definite role of the Bar Council of India and their admission to examinations in the case of shortfall of attendance is no more left to the discretion of the Professor In Charge or the Dean. The LLB degree course thus cannot be equated with the other courses for which different criteria for admission to examination has been laid down in Ordinance VII. Therefore, placing reliance on sub rules (i) and (ii) of rule 2 (9)(a) will be of no help to the petitioners. No doubt the said rule 2(9)(a) of Ordinance VII deals with all the categories of courses as have been referred to in Ordinance VII and the said rule is of general nature, but the same cannot be held applicable to the LLB course, which has been held to be a special course.

35. For the sake of repetition, it is reiterated that the Division Bench in ***S.N. Singh's cases*** was of the clear view that the University of Delhi would be required to bring its rules in

conformity with the rules of BCI and by virtue of the Advocates Act, 1961, it is the Bar Council of India which has been empowered to promote legal education and to lay down standards of such education. Sub rule 9 of Ordinance VII, therefore, cannot be construed as a further proviso to rule 2 (8) (a) of Ordinance VII to confer further discretion with the Dean of the college to grant necessary relaxation in exceptionally hard cases of the students who had fallen seriously ill or who had met with an accident during the year disabling them from attending the classes for certain period. Even otherwise, sub rule (ii) of rule 2 (9) (a) has already been taken care of in the proviso of rule 2 (8) (a) of Ordinance VII and there cannot be any duplicity to deal with the same situations under two different sub rules. Under the proviso of rule 2 (8) (a) also the Dean can deal only with those cases which are of exceptional nature and again in sub rule (ii) of rule 2 (9) (a) the cases to be dealt are again exceptionally hard cases.

36. The argument advanced by the counsel for the petitioners invoking sub rule (ii) of rule 2 (9) (a) of Ordinance VII

although looked attractive at first blush, but after examining the entire scheme of the Act as well as after taking into consideration the import of the aforesaid judgments, I do not find any substance in the said submissions. In ***Kiran Kumari's case (Supra)*** the Division Bench has clearly observed that 34% of the lectures can take care of all the situations, the lectures which a student may miss for a variety of reasons including sickness or such other reasons beyond his/her control. So far as 34% attendance is concerned, every student can miss or skip the classes and the same can take care of various unforeseen and exceptional situations. Though it is not expected of a student who is a serious student of law not to attend his classes regularly, yet to meet with unforeseen situations, a student can claim relaxation of attendance but such a relaxation can be given only in exceptional circumstances and not as a matter of right that too in a case where a student has put in 66% of lectures in aggregate in a particular semester.

37. A catena of judgments were cited by Mr. Mohit Jolly, counsel for the petitioner in W.P. (C) 13314/2009, in support of his arguments that sub rule (ii) of rule 2(9) (a) of Ordinance VII and the sub rule 9 itself cannot be rendered otiose or dead letter and also that the said provision require a harmonious construction when interpreted along with rule 2 (8) (a) of Ordinance VII. But all these arguments do not cut any ice when construed in the face of the amendment introduced by amending rule 2 (8) (a) in conformity with the Bar Council of India Rules. Indisputably, neither there is such Rule like rule 2(9) (a) in the BCI Rules and nor any such direction was given by the Division Bench to the BCI to amend their rules, therefore, in such circumstances sub rule 9 has to be read with its applicability to all other courses excluding the LLB Course.

38. Mr. Jolly also placed reliance on the judgment of this court in the case of ***Manjit Singh (supra)*** but in this case while dealing with the case of a LLM student for which promotion rules are different than LLB course and also the rule applicable is Rule

2(8)(b) of Ordinance VII, and therefore the Single Bench of this court finding no merit in the petition dismissed it in the light of the decision of this court in S.N Singh's case and hence this would not be of any help to the petitioners.

39. Mr. Deepak, counsel for the petitioner in W.P.(C) 13354/2009 placed reliance on the judgments of the Apex Court in the case of ***A.K Pandey , Raghubir Dayal , Lachmi Narain (supra)*** to emphasize that the word 'shall' used in the attendance rules as provided in the Information Bulletin is directory and not mandatory in nature. These judgments would not be of any help as in the present case the names of the students have not been struck down, but they have only been detained from appearing in the examinations of the respective semesters. He also placed reliance on the judgment of this court in ***Avanija Sundaramurti (supra)***, but this case was where the petitioner was granted admission late by 20 days in the LLB course and hence that period was excluded for calculating the attendance as the situation was beyond her control, but the case

at hand cannot be equated with this case because if a student is not given admission then how can he/she be expected to attend classes which is not the situation in the present writ petitions. He also placed reliance on the judgment of this court in the case of ***Neera Dhadhwal (supra)*** but in this case the student was not allowed to appear in one of the papers and the court giving primacy to the attendance requirement did not grant her permission to appear without making up for the attendance of the last semester.

40. In W.P.(C) 13410/2009, Mr. Kirti Uppal alleged that the petitioner was marked absent in the subject of Intellectual Property Laws, but no reasons have been spelled attributing any motive on the part of the concerned teacher. Whether there was any vindictiveness or malafide or any other reason due to which the teacher of this particular subject would give zero attendance to the petitioner has not been brought forth. Also, why would any teacher deliberately mark the petitioner absent is beyond the comprehension of this court. During the course of arguments, the

attendance record of the petitioner was produced by the respondent university and Mr. Kirti Uppal had alleged, on a cursory glance, tampering/overwriting of "P" as "A" in the records. However, a perusal of the records show that only at two places "P" has been changed to "A" in the subject of Intellectual Property Laws for the month of October. This change only at two places is a genuine change or due to extraneous reasons can not be commented upon with any exactness in the absence of any allegations of malafides or vindictiveness. However, even if the petitioner is given the benefit of these two lectures, she makes her attendance to 62.05% which is still short of the required 66%. It is worth mentioning that in the month of September also the petitioner had 28.5% attendance in the subject of Intellectual Property Laws. In the subject of Environmental Law as well, the petitioner has zero attendance for the month of November but has not raised any contention for the same which only goes to show that the petitioner remained absent continuously in these two subjects. Mr. Uppal also objected to the filing of the affidavit

by the Registrar of the University as the same in his view should have been filed by the Dean, Faculty of Law. However, the Statute 11-K (3) (a) of the University of Delhi provides that the Registrar of the university is the custodian of all the records of the university and hence by virtue of the said power, he is the appropriate person to have filed the said affidavit. Hence in the light of the said rule, the contention of the counsel does not hold good.

41. The counsel for the petitioners have also raised some disputed questions of facts in the present petitions. In W.P.(C) 13400/2009 , 13427/2009 and 13391/2009 the counsel alleged that at the very threshold of examinations, the attendance requirement was reduced below 66% and a number of students were allowed to appear in the examinations who did not meet the attendance requirement of 66%. It is a settled position of law that the High Court will not determine the disputed question of facts while exercising its jurisdiction under Article 226 of the

Constitution of India and hence no indulgence of this court is called for in this regard.

42. Standard of legal education is a yardstick to measure the Rule of law which is the foundation of modern democracy. In 1954 the Setalvad Commission in its report (XIVth report of the Law Commission) while making scathing remarks on the status of legal education, gave suggestions for the reforms in legal education. Two scores and nine years ago it was lamented in Setalvad Commission's Report that:

There are already plethora of LLBs, half baked lawyers who do not know even the elements of law and who are let loose upon the society as drones and parasites in different parts of the country. Several of them did not even know what subjects were prescribed in the LL.B. programme, did not know the names of the prescribed books.....

43. But there is a marked change in the scenario than what it was when the above observations were made. The oft quipped statement that many students enter into the portals of a law college because they cannot be any where else seems is far

from truth today as law now ranks high in the list of highly preferred professions. But, alas, the problem of absenteeism has taken the face of a chronic disease plaguing the edifice of the legal education system. Those students who do not attend classes have a strong conviction that they are not suffering significantly by their absence and the absenteeism does not affect their clearing the examinations with good grades. But the status of legal profession is directly linked with the legal education process. It is high time that the law students understand that there is no royal road to education and education teaches only those in attendance. Lawyers are always going to be students and the learning does not stop in law school. The quality and standard of legal education acquired at law school is reflected through the standard of the Bar and the Bench and consequently affects the legal system. Hence a student who is habitual to not attending classes in law school would seek adjournments later in his cases thus infesting the whole system.

44. Before giving my final conclusion, it would be imperative to bring to the fore certain crucial changes that have taken place after the filing of these petitions. Mr. Saini, counsel for the petitioners, raised the argument that it is nowhere specified that how many are the minimum lectures to be delivered in a particular year/semester of a law course. It would be useful to point out here Rule 10 of Chapter II, Part IV of the BCI Rules which states as follows:

“10. Semester system

The course leading to either degree in law, unitary or on integrated double degree, shall be conducted in semester system in not less than 15 weeks for unitary or on integrated double degree, shall be conducted in semester system in not less than 15 weeks for unitary degree course or not less than 18 weeks in double degree integrated course with not less than 30 class-hours per week including tutorials, moot room exercise and seminars provided there shall be at least 24 lecture hours per week.

Provided further that in case of specialized and/or honours law courses there shall be not less than 36 class-hours per week including seminar, moot court and tutorial classes and 30 minimum lecture hours per week.

Provided further that Universities are free to adopt trimester system with appropriate division of courses per trimester with each of the trimester not less than 12 weeks.”

45. LLB in Delhi University is one of the oldest courses in the field of law. The first national law school was set up in 1986 in Bangalore as a model law school by the BCI imparting the five year integrated law course. But in Delhi, this course entered much later under the I.P. University and later on when National Law University under the aegis of Delhi High Court at Dwarka was set up. The National Law Schools or Universities (*NLU's as they are popularly called*), till a very long time were few and far between, but now as the corporate culture with big pay packets is luring the young , the craze for this profession has increased manifold. This would be evident from the mammoth number of students appearing for entrance examination this year alone. In the five year law course the minimum attendance required is 75% while in Faculty of Law, Delhi University, the same is 66%. In the subject matter of the present writ petitions, the students have not

been able to make up 66% of the attendance in the respective semesters, the percentage which was in conformity with the Bar Council of India Rules. But now this rule has been further amended as Rule 12, Chapter II, Part IV by the BCI as follows:

“12. End Semester Test

No student of any of the degree program shall be allowed to take the end semester test in a subject if the student concerned has not attended minimum of 70% of the classes held in the subject concerned as also the moot court room exercises, tutorials and practical training conducted in the subject taken together.

Provided that if a student for any exceptional reasons fail to attend 70% of the classes held in any subject, the Dean of the University or the Principal of the Centre of Legal Education, as the case may be, may allow the student to take the test if the student concerned attended at least 65% of the classes held in the subject concerned and attended 70% of classes in all the subjects taken together. The similar power shall rest with the Vice Chancellor or Director of a National Law University, or his authorized representative in the absence of the Dean of Law.

Provided further that a list of such students allowed to take the test with reasons recorded be forwarded to the Bar Council of India.”

46. It would also be befitting to mention here that the BCI has recently announced conducting of the Bar Examination for

entry into the legal profession. The vision statement for 2010-2012 of the BCI states that the Indian legal profession today consists of approximately 11 lakh (1.1 million) registered advocates, around 1,000 law schools and approximately 5 lakh (0.5 million) law students across the country. Every year, approximately 60,000 law graduates join the legal profession in India. With that kind of gigantic numbers, this entry is to winnow the grain from the chaff.

47. All the above only depicts that the BCI is making efforts to make the legal education open only to those who are genuinely interested in entering the folds of the legal fraternity.

48. The Law Faculty of Delhi University has been a premier institution imparting legal education. It has to be borne in mind that with the introduction of five years law course the students of three year law course have to compete with the students of five years law courses, hence the norms and the standards as laid down by Bar Council of India have to be strictly adhered to by all the law students and for which no compromise

or undue sympathy can be shown. If the rules are given a go-by then I am afraid that the Law Faculty will become an island of institutionalized mediocrity among a sea of excellence.

49. Hence, in the light of the aforesaid discussion, the students in the seven writ petitions of W.P.(C) 13314/2009 , 13354/2009, 13391/2009, 13400/2009, 13410/2009, 13427/2009 and 13456/2009 are not entitled to any relief. These petitions are hereby dismissed with the following directions:

- That the petitioners in all the five writ petitions bearing Nos. W.P.(C) 13314/2009 , 13354/2009, 13391/2009, 13400/2009 and 13456/2009 were students of the Ist semester at the time of the filing of the writ petitions and as an interim measure they were allowed to appear in the Ist semester examinations and thereafter to attend the classes of the IInd semester and then also allowed to appear in the examinations of the IInd semester and their results were directed to be kept in a sealed cover. However, in W.P. (C) No. 13427/2009, the petitioner was also a student of the Ist

semester at the time of filing of the present writ petition and was allowed to appear in the Ist semester examination but she did not seek the interim relief to attend either the classes of the IInd semester or to appear in the IInd semester examinations. Be that as it may, as this court is of the view that these six petitioners are not entitled relaxation for the shortfall of attendance as they were not eligible to sit for the examination of the Ist semester, therefore they are not entitled to get their results of the Ist or even the IInd semester declared, in which exams they had appeared pursuant to the interim orders passed by this court. However, in the peculiar facts of the case at hand, these six students would not be required to appear in the entrance examination for admission in the Ist semester but would be given re-admission to the Ist semester in this academic year beginning July,2010. However, this order shall not be treated as a precedent.

- That the petitioner in W.P.(C) No. 13410/2009 was a student of the Vth semester at the time of filing of the present writ petition and as an interim measure was allowed to attend the classes of the VIth semester and consequently to appear in the VIth semester examinations. However, as she is not entitled to the grant of relaxation, her result of the Vth and the VIth semester shall not be declared. Be that as it may, she would be re admitted to the Vth semester in the present academic session of July, 2010.
- That though stated in the counter affidavit by the respondent university that the attendance is regularly displayed on the notice board, there was still some ambiguity regarding the same. Hence in this circumstance, it would only be proper to direct the respondent to display the attendance at the end of each month, subject wise and also overall for every semester so that the students are aware as to their status of attendance and can point if any discrepancy persists.

- It is also directed that the teachers would not take any attendance on chits and papers and attendance would be duly marked only in the attendance registers maintained for this purpose.
- It is also observed that the students after knowing that they are short of attendance at the last moment rush to the doctors who can make their medical certificates to claim condonation of attendance on medical grounds. Therefore, if a student seeks to avail the benefit of relaxation bringing his case within the four corners of *an exceptionally hard case* in terms of the proviso of Rule 2(8) (a), then in such circumstances it is directed that such a student after returning from medical leave should submit the medical certificate for the same period immediately on rejoining the college and not at the end of the semester so that the university has a record of the period the student was on medical leave.

50. Now dealing with the two students in W.P.(C) No.8302/2009 and W.P.(C) No. 8419/2009 who could not fulfill the eligibility criteria of attending 66% of the lectures in aggregate due to their being in the advanced stage of pregnancy and subsequent delivery of the child. To claim relaxation for these candidates, the counsel placed reliance on sub rule (d) of rule 2 (9) of Ordinance VII, but this court, as discussed above, is of the view that rule 2 (9) of Ordinance VII, so far LLB students are concerned, would not be applicable. Therefore, sub rule (d) of rule 2 (9) of Ordinance VII would not come to the rescue of these two students as well. Counsel for the petitioners placed reliance on the judgment of this court in the case of ***Seema Sharma(supra)*** wherein sub rule 9(d) of Ordinance VII was held applicable in case of a married woman student. This case however would not help the petitioners as the petitioner in the said case was a student of Masters in Pharmacy and this court in the present case is of the view that the said sub rule would be applicable to all courses excluding the LLB course.

51. However, the Directive Principles of State Policy contained in Part IV of the Constitution of India, under Article 41 requires the State to make effective provision for securing the right to work and to education and Article 42 requires that the State shall make provision for securing just and humane conditions of work and for maternity relief. Mr. R.K Saini, counsel appearing for these petitioners placed reliance on the judgment of the Apex Court in the case of ***MCD vs. Female Workers (supra)*** and it would be worthwhile to reproduce the relevant para of the said judgment here:

"Since Article 42 specifically speaks of "just and humane conditions of work" and "maternity relief, the validity of an executive or administrative action in denying maternity benefit has to be examined on the anvil of Article 42 which, though not enforceable at law, is nevertheless available for determining the legal efficacy of the action complained of.

.....

A just social order can be achieved only when inequalities are obliterated and everyone is provided what, is legally due. When who constitute almost half of the segment of our society have to be honoured and treated with dignity at places where they work to earn their livelihood. Whatever be the nature of their duties, their avocation and the place where they work; they must be provided all the facilities to which they are entitled. To become a mother is the most natural phenomena in the life of a woman. Whatever is needed

to facilitate the birth of child to a woman who is in service, the employer has to be considerate and sympathetic towards her and must realise the physical difficulties which a working woman would face in performing her duties at the work place while carrying a baby in the womb or while rearing up the child after birth. The Maternity Benefit Act, 1961 aims to provide all these facilities to a working woman in a dignified manner so that she may overcome the state of motherhood honourably, peaceably, undeterred by the fear, of being victimised for forced absence during the pre or post-natal period."

52. Article 15(3) empowers the State to make special provisions for women. Women constitute 50% of the country's population and without making education a reality for them, fundamental rights shall remain beyond the reach of a large majority of population of this country which is illiterate. The Supreme Court in a catena of judgments has held that right to education is implicit in right to life and personal liberty guaranteed by Article 21 and now with the Right to Education Act in force, education cannot be kept outside the reach of any citizen. Education is the greatest leveler of all inequalities and only if women are given equal opportunity for education they can stand on an equal footing with men.

53. Of all the rights of women, to be a mother is the greatest. Long ago, the Universal Declaration of Human Rights, by Article 25 had declared that everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control. Article 25(2) provides that:

2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

54. It would, while on the topic, also be essential to refer to the Convention for Elimination of All Forms of Discrimination Against Women (CEDAW). The Vienna Convention on the Elimination of all forms of Discrimination Against Women was ratified by the U.N.O. on December 18, 1979. The Government of India who was

an active participant to CEDAW ratified it on June 19, 1993 and acceded to CEDAW on August 8, 1993 with reservation on Articles 5(e) 16(1) 16(2) and 29 thereof. The Preamble of CEDAW reiterates that discrimination against women, violates the principles of equality of rights and respect for human dignity; is an obstacle to the participation on equal terms with men in the political, social, economic and cultural life of their country; hampers the growth of the personality from society and family and makes it more difficult for the full development of potentialities of women in the service of their countries and of humanity. It would be pertinent to quote the relevant provisions here:

11(2). In order to prevent discrimination against women on the ground of marriage or maternity and to ensure their effective right to work, states parties shall take appropriate measures;

(a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;

(b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;

In the case of ***Madhu Kishwar & Ors. vs. State of Bihar & Ors. (1996) 5 SCC 125***, the Apex court held that though the Directive Principles and Fundamental Rights provide the matrix for development of human personality and elimination of discrimination, these conventions (CEDAW) add urgency and teeth for immediate implementation. Hence, it is this court which has been enjoined upon the duty to put life into the provisions of these international conventions.

55. At this stage, it would also be significant to mention the case of ***Air India vs. Nergesh Mirza (1981)4 SCC 335*** where the Apex Court was confronted with the constitutional validity of Regulation 46(i) (c) of Air India Employees' Services Regulations which provided that the services of the Air Hostesses would stand terminated on first pregnancy. It would be pertinent to quote the relevant para of the said judgment here:-

"Having taken the AH in service and after having utilised her services for four years, to terminate her service by the Management if she becomes pregnant amounts to compelling the poor AH not to have any children and thus interfere with and divert the ordinary course of human nature. It seems to us that the termination of the services of an AH under such circumstances is not only a callous and cruel act but an open insult to Indian womanhood the most sacrosanct and cherished institution. We are constrained to observe that such a course of action is extremely detestable and adhorrent to the notions of a civilised society. Apart from being grossly unethical, it smacks of a deep rooted sense of utter selfishness at the cost of all human values. Such a provision, therefore, is not only manifestly unreasonable and arbitrary but contains the quality of unfairness and exhibits naked despotism and is, therefore, clearly violative of Article [14](#) of the Constitution.

In Sharron A. Frontiero v. Filliot L. Richardson 36 L. Ed. 2d 583 the following observations were made:

Moreover, since sex, like race and national origin, is an immutable characteristic determined solely by the accident of birth, the imposition of special disabilities upon the members of a particular sex because of their sex would seem to violate "the basic concept of our system that legal burdens should bear some relationship to individual responsibility.

What is said about the fair sex by Judges fully applies to a pregnant woman because pregnancy also is not a disability but one of the natural consequences of marriage and is an immutable characteristic of married life. Any distinction therefore, made on the ground of pregnancy cannot but be held to be extremely arbitrary".

56. In the light of the above discussion, if any female candidate is deprived or detained in any of the semester just on the ground that she could not attend classes being in the advanced stage of pregnancy or due to the delivery of the child, then such an act on the part of any of the university or college would not only be completely in negation of the conscience of the Constitution of India but also of the women rights and gender equality this nation has long been striving for. It is a saying that “*Motherhood is priced of God, at price no man may dare to lessen or misunderstand*”. By not granting these students relaxation, we will be making motherhood a crime which no civilized democracy in the history of mankind has ever done or will ever do. We cannot make them pay the price for the glory that is motherhood.

57. It would not be inappropriate to mention at this juncture the recent rulings of the Apex Court in the cases of ***Lata Singh vs. State Of U.P AIR 2006 SC 2522*** and ***S. Khushboo vs. Kanniamal & Anr MANU/SC/0310/2010*** where it has given liberty to the live-in relationship from the shackles of being an

offence and also in the latter case where it has held that pre-marital sex is not an offence. The society today is changing at a rapid pace and we must be in tune with the realities and not hold on to archaic social mores. Once such a right, however unpopular, is recognized then it cannot be ruled out that there can be more cases of girl students proceeding on maternity leave when while they are still in college. Law should be an instrument of social change and not a defender of it. Motherhood is not a medical condition but a promise. We all kowtow to our mothers to whom we owe our existence and to punish a woman for becoming a mother would surely be the mother of all ironies.

58. Hence, a female student cannot be deprived from her student status or can be detained in any semester on account of the fact that she could not attend the classes because of her pregnancy and therefore so far these two students in W.P. (C) No. 8302/2009 and W.P.C No. 8419/2009 are concerned, they deserve relaxation under the mandate of the Constitution. These petitions are accordingly allowed with the following directions:

- In W.P.(C) No. 8302/ 09, the petitioner, at the time of filing of the writ petition, was a student of the VIth semester and her result of this semester was also declared wherein she has passed the semester. Hence, she must now be awarded the final degree of L.L.B.
- In W.P.(C) No. 8419/09, the petitioner was a student of IVth semester at the time of filing of the writ petition and as an interim measure she was allowed to appear in the examination of the IVth semester and it was directed that her result be kept in a sealed cover. The interim application (C.M No. 12580/09) for direction to let the petitioner provisionally attend the classes of the Vth semester was filed on 8.10.2009, but there is visibly no order regarding the said application. Therefore, in the present circumstances, now as the petition is being allowed, it is directed to declare the result of the petitioner for the IVth semester and she be promoted to the next semester in conformity with the promotion rules.

- Bar Council of India, although not a party in the present writ petitions, is hereby suggested to make rules for women students claiming relaxation on ground of maternity relief so that they are not deprived of appearing in the LLB examinations due to pregnancy.

59. College is a time when students are able to grow and mature before going into the real world. At omega, it would be in the right earnest to hope that the students understand that attending college is important in the context of their future plans and goals, not just in terms of grades and academic success. Nevertheless, law colleges would still remain places where pebbles are polished and not where diamonds are dimmed and law students not bottles to be filled but candles to be lit.

JULY __, 2010

KAILASH GAMBHIR, J