CHAPTER VI:

EDUCATION AND EXAMINATION SYSTEM

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CHAPTER : VI

EDUCATION AND EXAMINATION SYSTEM

Examination is the core of our educational system. The merit of the students always comes out through examination based on their performance. Of all the activities taking place with in the system of education what attracts the attention of the media and the public the most is examination. It may be the leakage of question papers, repeated postponement of examinations, undue delay in the publication of results, indifferent evaluation or wide spread malpractices that provide material for 'stories by the media .A defective and in efficient examination system causes great frustration to students and their parents. Almost every aspect of examination system from required attendance to the declaration of result became contentious issues mostly because of systematic failures. The present work is focused to evolve principle to make the examination system fair and to eradicate unfair means and malpractices.

A: ATTENDENCE:

Any student enrolled with an educational institution under a program of study, must remain in attendance throughout the year or session, unless excused by the institute for illness, or other good cause and must comply fully with the institutes code of conduct. From the time of official admission's acceptance, a student is under the institution regulations. Enrollment can be denied if a student participate in inappropriate behavior even when class is not session or progress. An education is critically important to the development of productive citizens. The constitution of India provides for it, the government promotes education and parents who can afford the education system will facilitate attending to educational instruction. Doing so will increase ones future earnings capacity and improve livelihood. At the very least, it is legal responsibility of parents or guardian to see that their children attend full time classes.

Students are requested to mandatorily attend the prescribed number of class and working days of the academic calendar. Leave of absence from attending classes for a day or consecutive number of days calls prior permission from the head of institution or

intimation at the very least and the circumstances for absence of the students should be acceptable to the institution warranting such absence. The following event tantamount to permissible occasion for the leave of absence from attending school:[1]

(a) Illness or injury in family when physician verifies students absence as essential;

(b) Calamity, such as fire in the home, flood family emergency upon documentation and / or approval of the principal;

(c) Death in the family, limited to three days for each occurrence to be approved by principal. Family is defined as mother; father, brother, sister, grandmother, grandfather, aunt, uncle, brother-in-law, sister-in-law, brother's child, sister's child, student's child, or any person living in the household;

(d) Death of teachers or fellow students. Funerals where the absence is approved by school officials;

(e) The child is absence from school for the purpose of receiving institution in music and the period of absence does not exceed one-half in any day in any week or as permitted by the school principal according to school policy;

(f) The child is suspended, expelled or excluded from attendance at school under any Act, rules or regulations;

(g) The child is absent on a day regarded as a holyday by the church or religious denomination to which the child belongs.

(i) UGC[2] on ATTENDENCE: Section 26(1) (f) of the Act gives power to the Commission to make regulations for maintaining the minimum standard of institution for the grants of degree by any University, as per section 14 of the Act such Regulation are binding on all the Universities and Autonomous colleges. In exercise of the powers conferred by clause (f) of sub-section (1) of Section 26 of the Act, the UGC has framed the Regulation viz. The University Grants Commission (the minimum standard of institutions for the grants of the first degree through formal education in the faculties of Arts, Humanities, Fine Arts, music, Social sciences, commerce and sciences) Regulation,

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[1] Anita Abraham, *Formation and Management of Educational Institutions*, Universal Law Publication Co. 2005, P.110

[2] University Grants Commission Act 1956 (Act 3 of 1956)

1985[3]. Regulation 3 thereof deals with " working days," Sub-regulation (5) of Regulation 3 stipulates the minimum number of instructions or lecturers which a students shall attend to make him eligible for appearing the examinations.

> *"Regulation 3(5)[4]. Minimum number of lectures, tutorials, Seminars, practicals etc. which a student shall be require to attend before being eligible for appearing at the examination shall be as prescribed by the University which, on an average shall not be less than 75% of the total number of lectures, tutorial, seminar, practice etc."*

A plain reading of the aforesaid Regulation makes it abundantly clear that the minimum number of lectures, tutionals, seminars, practicals etc. Which a student is required to attend to make him eligible for appearing at the examination shall not be less than 75% of the college can prescribe a lesser minimum than that. It is however; open for the College or university concerned to prescribed a higher percentage of minimum number of lectures etc.

The aforesaid requirement prescribed by the commission in our considered view, is not only a soluntary but also an essential one.

(ii) BCI[5] on Attendance: According to clause (h) of Section 7 of the Advocate act, 1961 it is the function of the Bar Council of India, to promote legal education and to lay down standard of such education in consultation with the University in India imparting such education and the State Bar Councils.

Further, The Bar Council of India has powers under the Advocate, Act 191, to lay down standard of legal education in India, Rule[6] 3 framed by the council read:-

> *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 courses. Provided that in exceptional cases for reasons to be recorded and communicated to Bar Council of India, the Dean of the Faculty of Law or Principal of Law Colleges may condone attendance short of those required by this, Rule if the student had*

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[3] Ibid, Notification No.F.1-117183-(CP),dt.25th November 1985
[4] Ibid.
[5] Bar Council Of India
[6] Bar Council Of India.Rules.Part-IV

attended 66% of the lectures in the aggregate for the semester or annual examination as the case may be.

The aforesaid rules of the Bar Council of India upheld by Supreme Court in *Baldev Raj Sharma v. Bar Council of India*[7] , The Hon'ble court observed in the matter pertaining to education no court can permit total violation of the norms. LL.B. Degree course expected to produce trained legal minds, ready to take the challenges of 21st century and the regular attendance of the required number of lectures, tutorials etc has a purpose. This norm of compulsory attendance remains on paper and is hardly enforced. All law colleges must be made full time colleges and regular attendance must be ensured by making students accountable in the form of internal assessment marks-consisting of orals, tutorials and projects throughout the year. The students, who neither at any classes nor perform any assignment like project work, tutorials, moot courts and practical training should not be allowed to fill-up forms for appearing at the university examination. Accountability should be fixed on the principals of law colleges in case the examination forms of these students are forwarded to the university in order to make them eligible to appear in the university examination. Necessary guidelines in this regard should be given both by Bar Council and universities to all colleges for its strict implementation[8].

In order to compel the students to attend the classes regularly and apply their mind in various legal problems, weekly assignments should be given to them. The paper product by the students in the said assignment could be corrected and marks should be awarded. The said marks should be taken into account at the time of final examination. This would not only improve their performance, but also improve the attendance in the classes. The Bar Council and the universities should see that the above system is implemented during teaching[9].

It is pertinent to note that regular attendance and attention in the classes in any educational institution is important to impart a quality of education and in most of the

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[7] AIR 1989 SC 1541, also *S.N. Singh v University of Delhi.* 106 (2003) DLT 329 (DB)
[8] K.C. Jena, *Role of Bar Councils & Universities for Promoting Legal Education in India*, JICI, Vol.44 No.4. 2002, P.562
[9] Ibid

cases it had been seen that if any step is taken towards better educational method any standard the judiciary has commanded and encouraged it.

In Akilesh Lumani v. Principal, C.R. Reddy Autonomous College Eluru[10], the court upholding the decision of the principal for not allowing the students to appear at the final examination and found ineligible due to shortage of attendance. In this case the students were failed to attend the 75% of the total Lectures and was detained. Such detention was challenged while upholding the detention of student. Justice Ramanujan J. observed:

> *It is well recognized, since ages that a student can never get complete education by merely reading the textbooks sitting at home under the personal tutors. For all-around development of one's personality it is essential that one should attend an educational institution, call it by any name-Gurukulam, Madarsa or College, along with other students who come from various cross sections of the society. This was the reason that why the great Kings and Emperors of this country always sent their sons to the Gurukulas headed by famous Masters, who were residing mostly in the deep forests. The Princes were made to sit along with the other common students, work along with them and serve the Master like the other commoners. Even Lord Krishna, who was the depository of knowledge, had to attend the Gurukulam headed by that Great Teacher Sandipani along with others including the poor 'Kuchela'. It is also well recognized that learning by attending the college, unlike learning from books, will broaden the vision of the students and develop a sort of camaraderie amongst them, which is very essential for understanding the intricate problems of the country and for its good governance. That apart, the job of a lecturer is not only teaching the subject but also to help the student in the full development of his personality. This will only be possible if a student attends the lectures regularly, enabling the teacher to constantly watch his performance an guide him in the right direction. Thus, attending the college or an educational institution, regularly, is an*

[10] AIR 2001 A.P. 86

essential element of education, which will be lost if a student fails to attend a minimum number of lectures[11].

The decisions of the Kerala High Court in *Sojan Francis v. MG University* [12] was primarily concerned with the refusal of the college authorities to admit a student to the examination due to lack of attendance. A direction given by the controller of examination to allow the candidate to write the examination was ignored by the principal. The court upheld the decision of the principal and found that direction issued by the controller of examination was contrary to law.

The Eligibly criteria which are reasonable and aimed to achieve academic excellence are strictly enforced by the Courts. Thus the requirement of 75 per cent attendance[13] and mandatory period of training[14] were not diluted by the Courts.

Recently, in *Ashutosh Bharti and others v. Rithand Balved Education Foundation (Regd) And Other*[15]where the students, who have failed in attending the requisite 75% of classes and detained to take the examination, have challenged the provisions of clause 9 of chapter II of revised Ordinance relating to conduct and Evaluation of Examination for Programmes leading to all Bachelors/ Masters Degrees, and undergraduate and Post Graduate diplomas following semester system in Guru Gobind Singh Indraprastha University. Clause 9 reads as under:-

Attendance. "A student shall be required to have a minimum attendance of 75% or more in the aggregate of all courses taken together in a semester, provided that the Dean of the school in case of university school and principal /Director in case of university maintained / affiliated institution may condone attendance short age up to 5% for individual student for reasons to be recorded However under no conditions, a student who has an aggregate of less then 70% in the Semester end examinations"

While rejecting the contentions of the petitioner and dismissing the writ petition the High Court of Delhi held that apparently this provision has been made to ensure that students

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[11] *Supra note* 10

[12] AIR 2003 Ker. 290

[13] *Mohammad yaqub v. Vice- chancellor of Aligarh Muslim University.* AIR 2002 All 245. also Surijit *Panigrahi v. Sikkim Govt Law College.* AIR 2002 Sikkim. 4

[14] *Mirnal Joshi v. State of Rajasthan.* AIR 2002 Raj. 312

[15] WP(C) No. 19809/2004. Date of Decision 14-01-2005

maintain the standard of education and do not remain negligent in attending the classes. The court aptly observed:

> *It may be notified that the grooming up and progressing of the students at the college in an important aspect for assessing the students. Their presence is a must. That system had been recognized all over the world. If the student is not attending the classes regularly, the teacher will not be in a position to watch the progress of that student. Academic authorities are best judges in the field of education to make suitable rules, regulations or ordinances. It is for the college or the university to put the condition on the students to attend a particular number of classes so as to be satisfied that the student has attended regular classes and he has taken education at the college/school*[16].

Attendance is must. Curriculum does not mean only examination, but it includes various aspects such as discipline, behavior in the class room with the teachers and co-students, answering the questions, time taken for answering the questions etc. These are the relevant aspects to be taken into consideration by a teacher and this can be done if a student is attending the classes regularly. The university has prescribed 75% minimum for this purpose and it cannot be said that it is not in accordance with law or it is an arbitrary provision[17]. The court further observed that:

> *"If any step is taken towards better educational method and standard, not only the Court should not come in the way, but must command and encourage it. Those who fail to maintain such standard round the year may lose the very valuable year of the young career. Just as they lose if they fail in the examination. Matters of academic judgment are not for the Courts to entertain. Better standard are required for learning and it can be done only from experiences and different modalities. Educational institutions are the best judges to impose appropriate restrictions and conditions. Merely because the conditions which are imposed may be found inconvenient to some students, it cannot be challenged as being*

[16] *Supra note* 15
[17] Ibid.p.4

arbitrary. All the students who are appearing in the examination have attended classes for not less than 75%. Merely because a few students are before the courts, it cannot be said that rule or regulation is arbitrary[18].

It is a settled law that the High Court should ordinary be reluctant in interfering with the matters relating to educational institutions imparting education since the decisions taken by the academic body are in the nature of policy decisions unless the decisions are found to be unreasonable or arbitrary. It is also required to be noted that regulations have been incorporated on the basis of experience of actual day-to-day working of the educational institutions. It is also recognised that the Court has limited power to interfere with the internal working of an educational institution imparting education. It is inherent power of the educational institution to make regulations for the purpose of maintaining of not only academic standard , but the manner and method in which it should be done, including the condition of attending the classes. This has a salutary effect of keeping the students on their guard. One must attend the classes for education. If there is an interference. It would amount to permitting the students to prosecute the students or appear at the examination without attending the classes as *required.*

Thus the academic standard falls exclusively in the domain of specified bodies like. Senate, Board of Governors and syndicate etc. the Courts would normally not interfere with such prescribed standard and especially when they are intended to improve the academic standards in their respective institutes. The scope[19] of judicial review in such matters would be very limited.

B. MAINTENANCE OF DISCIPLINE

Indiscipline behaviour of students is a disturbing phenomenon in most of the educational institutions, particularly at colleges and university campuses. It results in considerable deterioration of performance in all spheres of activities. The fact that the educational

[18] *Supra note* 16

[19] *Thaper Institute of Engg.and Tech v. Gangandeep Sharma* AIR 2001, SC. 3676.

institutions are a subsystem of the society and hence reflects its values and norms of behaviour is not an *alibi* for the present state of indiscipline in colleges and universities; however, it has to be kept in mind for an appreciation of the genesis of indiscipline in the campus. Self indulgence, craze for acquisition and display of power and money, absence of moral values and adoption of easy means to achieve the desire ends, characterize the entries of a significant part of society [20].

Indiscipline at individual level of students usually manifests itself in absenteeism, bullying, ragging, eve teasing and other unsocial behavior, violation of university rules/ norms and use of unfair means at the examination. On a collective level there is a small hardcore student, usually having political connection which engages in pressure tactics and violence, and able to muster the support of other students at will. Most of these students have political ambition and work for recognition as aggressive students leaders, with a large following. Often these students use coercion, with a varying degree of success to influence the recruitment, admission and examination processes for financial and other consideration. Many times these students also have *defacto* control of University hostels, enabling them to harbour indiscipline, criminal activity and deny the residence to official allottes.

A serious aspect of students indiscipline, however is the use of unfair means on a large scale by the students in the examination; the associated criminal activity is intimidation and occasional physical assault on the invigilating faculty members and examiners. Staff members connected with examination is also subjected to bribes, threats and beating by students or others on their behalf.

Another important aspect of indiscipline in colleges and universities is political encroachments in day to day administration. The fact that the appointment of Vice-Chancellor is many times a politicized act also enforces machinations of political nature in the university. Elections to students unions provide an opportunity for the battle for recognitions among competing students groups and proxies of political parties. Leading to growth of associated indiscipline, agitations and violence etc.[21]

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[20] Kamna Srivastava, *University News* 35(29), 1997,p.1

[21] *Supra note* 20

The genesis of student indiscipline lies in the state of universities and colleges the academic programmes offered by them and the facilities available to undertake the programmes. The academic programme is devoid of challenge and does not require much effort to undertake it; even this programme is not offered in a professional manner (not regularly either).The facilities for academic works (library, laboratories, computer facilities etc.) sports, co-curricular activities and residence (hostels) are poor; the teachers and staff are at best indifferent to problems of individual nature. The archaic and academic calendar (with provision for excessive number of holidays) Mammoth preparation leaves and gaps between examination combined with an outdated evaluation system, based on limited number of standard textbook question (often expected year after year) discourage serious studies throughout the year it hardly requires serious work for a couple of months. The absence of variety makes studies monotonous. Most of the academic programmes are not related to employment and the studies have little to look forward after studies. In such an environment the students have plenty of motivation and time to indulge in activities bordering on or amounting to indiscipline.

Educational institutions over the years have followed a tradition of tempering firmness with a reformative approach for acts of indiscipline by students. Where, the Discipline Committee of an institution has not hesitated to recommend such extreme forms of action. The Vice-Chancellor of a University is vested with a power relating to discipline and disciplinary action [22] In the interest of maintaining discipline the Vice-Chancellor may order or direct disciplinary steps for specified instance of gross indiscipline such as:[23]

- Physical assault or threat to use physical force, against any member of the teaching and non-teaching staff of any Institution/Department and against any student within the University;
- Carry of, use of, or threat of use of any weapons;
- Any violation of the provisions of the Civil rights Protection Act, 1976;
- Violation of the status, dignity and honour of students belonging to the scheduled castes and tribe;

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[22] This can be further delegated to the proctor of the University or other specified persons (Ordinance XVB- Delhi University).
[23] *Supra note* .1.p.122

- Any practice-whether verbal or otherwise-derogatory of women;
- Any attempt at bribing or corruption in any manner;
- Willful destruction of institutional property;
- Creating ill-will or intolerance on religious or communal grounds;
- Causing disruption in any manner of the academic functioning of the University system;
- Ragging.

Consequences for indiscipline

The fall out for an act of indiscipline can include any of the following:-[24]

That any student or students

- be expelled; or
- be, for a stated period, rusticated; or
- be not for a stated period, admitted to a course or courses of study in a College, department or institution of the University; or
- fined with a sum of rupees that may be specified; or
- be debarred from taking a University or College or Department Examination or Examinations for one or more years; or
- that the result of the student or students concerned in the Examination or Examinations in which he/she or they have appeared be cancelled.

Judicial opinions, in this context have been remarkable in discouraging such indiscipline activities of the students at the temple of learning as and when it was approached. In *Abhay Kumar Yadav v. Srinivasan*[25] the Delhi High Court had an occasion to consider such problem. Here, a student was prosecuted under section 307, penal code, for stabbing a co-student. The principal of the concerned institutions passed an order debarring the delinquent student from entering the premises of the institution and from attending the classes till the pendency of the criminal case against him, though the Disciplinary Committee had recommended the penalty of expulsion. The Court held that order of the

[24] Ibid. P. 23
[25] AIR 1981 Del. 381

principal rational and judicious. The main object of such order was to maintain peace in the campus. The Court further pointed out that. The delinquent student was therefore, not entitled to any prior notice or opportunity of hearing.[26]

Violence, unfair examination practices, frequent strikes have plagued many universities and technical institutions problem of controlling these elements has become majour problem for the authorities. Honest taxpayers money is assigned by the state for establishing and running these institutions. The entire student community is held at ransom by these elements. The student community includes girl students, scheduled class students, and students whose first generation wants to avail of higher education.

The court further observed in the above case that unfair practices on large scale (accompanied by violence) completely demoralized serious hard working students. Admissions to higher studies are limited and employment opportunities very scares. It is like an adulteration of food-stuff driving the honest trader out of competition[27]

It is necessary, therefore, that the student community are properly protected and encouraged to resolve these problems by appropriate measures on the campus itself and such authorities should deal effectively with indiscipline and violence on the campus within the framework of law[28]

The next important authority on this point is *Peerzada Ahmad Saleem Khan v. V.C. Aligarh Muslim University.*[29]Where the petitioner a student of IV year BSc. Engineering of Aligarh Muslim University was rusticated for five years by the vice-chancellor on the ground of indisciplined activities. It was alleged that the petitioner was guilty of having incited the students of violence and organized the raid by students on Vice-chancellor's lodge, the residence of Vice-Chancellor was badly damaged by brick batting and the T.V. camera was stolen and consequently hampering running of university. The petitioner

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[26] *Anil Kumar Sheal v. Principal Madam Mahan Malviya Engg. College.* AIR 1991 All 120 where the student rusticated from the college for the offence u/s 377/504 IPC. The court held reasonable opportunity of hearing was a must

[27] Ibid p.122

[28] *Vijay Kumar Goel v. University of Delhi* AIR 1979 SC 1519

[29] AIR 1982 All. 76

challenged the validity of the aforesaid order on the ground that it violate the right to freedom to read under Articles 19 and 21 of the Constitution.

The court held that freedom to read does not confer upon student the right to indulge in indiscipline and lawlessness. It is the atmosphere that makes a university. It is a mistake to suppose that freedom to read confers upon him the right to indulge in indiscipline and lawlessness[30]

Sojan Francis Case[31]in this context, however became the focal of an animated debate both within and outside the State of Kerla because of the pronouncements of the court on campus politics[32]. It was held that college authorities were competent to prohibit political activities within the campus. Students could be prohibited even from organizing or attending meetings other than official ones within the campus. Going one step further the court observed that the state government should come out with appropriate regulatory measures for making the campus of government educational institutions free from, politics. While every one would share the court's anxiety to maintain discipline in the campus, many would disagree with the court's prescription of the remedy. Whether a blanket ban on campus politics, including even meetings, is the proper remedy is a really debatable issue. Much of academic and intellectual activity has got a political flavour and banishing political activities altogether from the campus appears to be counter productive.

Similarly in *Sushil Kumar v. M.D. University Rohtak*[33] the vice-chancellor exercises his exceptional disciplinary power when "[A] reign of terror prevailed in the university. The entire atmosphere was surcharged with tension. The girl students were feeling insecure." Further that, "[T]here would have been large scale agitations and destruction of the University property"[34]. Though no show cause notice was given to the petitioner, still the court did not turn down the order of the vice-chancellor, expelling the alleged student

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[30] Ibid P.77
[31] *Sojan Frances v. M.S. University* AIR 2003 Ker. 290
[32] *Satyavan v. Kerla* (1997)1 KLT 130 the Kerla High Court prohibited political activities in the school campus and else where so as to affect or disrupt the functioning of the school.
[33] AIR 2000 P&H 72 also *S. Jeeva v. Shree S.A. College,* AIR 2000 Madras 437.
[34] Ibid P.73

from the university. However, the High Court required the University to give the petitioner post–decisional opportunity, holding a fact finding enquiry. It may be pointed out that a vice-chancellor is the highest academic authority in the university. He looks to the general interest of the university. It is on his shoulders that the responsibility of preserving peace and discipline in the university rests. Any laxity would defeat these purpose and bring lawlessness in the campus. Insisting on criminal trial process in the alleged cases of rape and kidnapping of girls, as was alleged in the alleged in the instant case, would only encourage habitual discipline power by the Vice- Chancellor, it is submitted, must not be equated by the court with a normal routine process.

It is pertinent to prefer the decision of Rajasthan High Court in *Rajendra Chopra v. University of Rajasthan* [35] which involved high level student indiscipline. An FIR was lodged against students for giving slap on face of the principal of the college and was under suspension and not allowed to appear in the examination by the college authorities due to shortage of attendance. The Court, dismissing the petition observed.

> *"A University campus is the one place where virtues of discipline and non-violence should be written as with a sunbeam in every student's mind but now a days many indiscipline students are seen wandering in the campus who are well qualified to adopt the words KONARD LORENZ, the noble prize winning naturalist," I believe I have found The missing link between animals and civilized man – it is we." The Facts of the instant Writ petition disclose an act of high degree indiscipline of a student leader who alleged gave a slap on the face of the principal of his college.*

The expulsion, rustication and use of police force, it is submitted is not sufficient to curb indiscipline in educational institutional institutions. Action by police may lead to students unrest, unless executed with firmness, tact and care to see that the innocent are not harassed. The University should recognize itself as a student friendly system. The academic programme, evaluation systerm s regulation procedures, method of teaching,

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[35] AIR 2002 Raj. 245

teachers commitment towards students, and other facilities should be redesigned to have maximum value for the students.

Another important aspects of alienating students unrest is an effective credible mechanism by which grievance of students are heard on an individual and/ or collectively basis and genuine sincere efforts made to alienate these in time bound expeditious manner. The administration should make all out efforts to establish credibility sincerity and efficiency in students relations. Meaningful communication with students should be pursued continuously. If these basic issues of educational reforms are not seriously addressed there is little hope of mainatince of discipline at educational institutional institutions.

C. UNFAIR MEANS AND MALPRACTICES

Examination is an integral part of our educational system. The merits of the students always come out through examination based on their performance. But purity of examination has been twilighted because of the various reasons such as adoption of unfair means and malpractices at examination by the examinees. Unfair means at examination have taken a very bad shape but these have not been accepted by our society as a part of its cultural ethos. However, the most important reason for unfair means at examination was general political and social deterioration in society, students are not doing sufficient students, lack of teaching[36] and too much emphasis on results as an indicator of teachers efficiency.

Now the question is what is the general code of conduct which has to be observe while giving an examination? What amounts to misconduct by a student during examination?

The West Bengal Council of Higher Secondary Education (Examinations), Regulations, 1999 enumerates specific behaviors which constitute misconduct or malpractice during examinations. These include the following:[37]

. A candidate shall be held guilty of misconduct or malpractice (constituting misconduct if-

[36] *Y.P. Aggarwal University News,* 35(3), Jan. 20, 1997 P. 11
[37] *Supra Note* 1 P. 117

(i) he or she is found to be in possession inside the examination hall of any book, or page of any book, or scribbling, or written note, or typed sheet, that may have a bearing on the subject in which he or she is appearing, irrespective of whether such book, or page of any book or scribbling, or written note, or typed sheet is used or nor, or

(ii) he or she writes answer on another candidate's answer-script or helps another candidate to write answer on his or her own answer-script or helps him or her in any other manner in writing answer or tries to obtain from, or to render to, any other candidate or any other person inside or outside the examination hall, any help in any manner, or

(iii) any indecorous writing or indecorous drawing are found in his or her answer-script or in his or her possession related to examination or if he or she is found at any stage whether during examination or thereafter, to have submitted answer-script or answer not written by him or her, or

(iv) he or she leaves the examination hall without submitting the answer-script or willfully submits mutilated answer-script, or

(v) he or she leaves the examination hall before one hour, taking with him or her answer-script or carries from the examination hall question paper during the hours of examination without submitting the answer-script or gets possession of question papers outside the examination hall during the hours of examination or is not found in possession of complete question paper after its distribution in the examination hall or passes or tries to pass the question paper out of the examination or leaves the examination hall taking with him or her blank answer paper or loose sheet, or

(vi) he or she allows somebody else to be present in the examination hall and to write answers on his/her behalf during examination, or

(vii) he or she leaves the examination hall without recording his or her attendance on the attendance roll, or

(viii) he or she encloses currency note(s) with an answer-script or offers illegal gratification or inducements to the invigilators(s) or other persons connected with the examination, or in anyway, tries to take illegal or unfair advantages, or

(ix) he or she distorts his or her name, roll number or registration number in his or her answer-script, or

(x) he or she is found to be in possession of any question paper or any other paper containing relevant answer or answer written on it, or[38]

(xi) he or she indulges in any kind of misbehavior, or intimidates, or assaults, or attempts to assault, or intimidates, an invigilator or any other person connected with the conduct of the examination either inside or outside the examination hall, or damages, or attempts to damage, articles or furniture, equipment, stationery or any other property of the venue, or creates disturbances in the venue or refuses to comply with the instruction of the Centre Supervisor or Invigilator regarding seating arrangements or with any other requirements in the examination hall, or

(xii) any page(s) of the written answer-script(s) of a candidate is/are found to have been replaced/torn mutilated or found to contain handwriting different from that of the candidate, or

(xiii) he or she attempts to violate any other provisions of these regulations, or

(xiv) if he/she discloses his /her identity in any manner other than that provided in the answer-script.[39]

As the trend of such social evil is mountaining, the judiciary is coming forward to prevent and curb out such problems through its judicial pronouncement as and when it was approached. In *Debadutta Singh Deo v. Berhampur University,*[40] the university authority cancelled the whole M.B.A. Part II examination on the ground that there have been extensive and wide spread malpractices including mass copying of the scripts in various papers and unfair practice in the preparation of the dissertation of the said examination. The petitioner contended that by taking the drastic measure of canceling the entire M.B.A. Part II examination, 1995, the authority have marred the career of 193 students without duly and properly applying their mind to the facts and circumstances.

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[38] Supra note 37
[39] Ibid. P.119
[40] AIR 1988 Ori. 156

The court held that, the positions is well settled that the problem of adoption of unfair means which educational institutions very often face these days is a serious problem and unless there is justification to do so, courts should be slow interfering with the decisions of the Domestic Tribunal appointed by educational bodies like universities. The decision to cancel the entire examination at a particular centre is equally serious and drastic. It affects the career and life of large number of students. The power of authority in charge of academics and administration in the university is vast and should be enjoyed by them without being unnecessarily interfered with by courts and by other outside agencies. But it has to be remembered, larger the extent of power more is the necessity to exercise it with care and caution.[41] In case it was found that due care and caution was not been exercised in exercising the power and in taking the drastic measure to cancel the examination of all the examinees of a centre, the decision will be unsustainable and has to be set aside on the ground that cancellation order was not supported by any evidences at all.

However, the Supreme Court considering the case of mass copying in the case of *Bihar School Examination Board v. Subhash Chandra*[42] held that where the Bihar School Examination Board, on being satisfied that a mass majority of the examinees of a particular centre have adopted unfair means, it is not necessary for the Board, before canceling the examination as whole of that centre to give an opportunity to all the candidate to represent their cases.

Decisions on copying cases by examinees in examinations is usually taken on by the Standing Committee of a University. Conclusions arrived at by this Committed are final and a court of law can re-examine the same only on very restricted grounds.

In Prem Prakash Kaluniya v. Punjab University.[43] Certain general propositions regarding handling of copying cases was put for by the Supreme Court:

(a) The examinee must be adequately informed of the case he has to meet and be given a full opportunity of meeting it;

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[41] *Supra Note* 40 p. 159
[42] AIR 1970 SC 1269
[43] AIR 1972 SC 1408

(b) The extent and content of information that should or ought to be provided to the student would depend on the facts of each case;

(c) The examinee can ask for more information or detail with regard to the material or evidence which may be sought to be used against him and normally if he makes a request in that behalf, the University authorities in order to inform him adequately of the case he has to meet, would supply him the necessary particulars or detail of the evidence;

(d) There is no hard and fast rule that can be laid down and so long as the court is satisfied that the opportunity which was, afforded to the examinee was adequate and sufficient it will not interfere with any orders prejudicial to him which may have been made by the University authorities.

However, an interesting question before the Madhya Pradesh High Court in *Kiran Sisodia v. Jiwaji University, Gwalior,* was whether an examination of a student appearing for B.A. Part I was cancelled due to use of unfair means by the student during the examination the action of the Kulpati of the University in not allowing the student for B. A Part II examination can be challenged on the ground of violation of principle of natural justice. The court opined that in matter of concerning academic standards of university principle of natural justice cannot be allowed to have a long rope so as to enable students to use the rope to make hoops and loops encouraging them to escape them to escape the consequences of using unfair means. The limit must be drawn to which the rope can allow the petitioner to shake her claim.

The next question which needs to be discussed is can possession of an incriminating document be termed as use of unfair means? The Supreme Court in *Vineeta Mahajan v. Cen. Board of Sec. Edu.*[44] took a rigid stand and held that possession of material inside the examination hall is enough to prove the charge of using unfair means. Moreover, Allahbad High Court in *Umendra Sahu v. Scy. Exam. Committee,*[45] supported the stand of

[44] AIR 1994 SC 733
[45] AIR 1994 All. 358

the Supreme Court[46] and held that irrespective of use or no use of material, mere possession of incriminating material was enough to amount use of unfair means.

Thus, it will be unfair to inflict same penalties in both the cases in view of the differences in the nature of the acts. It is submitted that the educational institutions must change such rules and provide separately for possession and actual use of the incriminating material and also the distinct penal provisions.[47]

In T.K. Ahmed v. Director of Govt. Exam.[48] the decision of the educational authority which debarred the candidate from appearing in future examinations for three sessions besides canceling two papers in which she appeared was challenged. The only fault of candidate was that she wrote answers on the answer book not in proper format. Baktarastalam J. did not hesitate to set aside the aforesaid impugned order given the fact that the school authorities themselves had opined that supplying of such answer book was "not uncommon."

Recently, in *Mohd. Tufail Khan v. Director of Education, U.P.*[49] where the chit found lying near desk of candidate. Guidelines providing that material found near desk shall be treated to be in possession of candidate if it is verified that same was used by the candidate while giving detail of the charge it has been specifically noted that said chit could not have been used for solving any question. The court held that authority could not implicate student in the case of use of unfair means and punish him.

The question whether talking with co-examinee inside the examination hall is amount to unfair means came up before the Allahbad High Court in *Banaras Hindu University v. Vikas Jain*[50] where the management of the BHU cancelled the admission and further debarred him on the ground that the candidate talked with co-examinee during the examination is amount to unfair means.

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[46] *Veena Mahajan v. CBSE.* AIR 1994 SC 733
[47] C.M. Jariwala, . *Law of Education*, XXX, ASIL (1994)p. 249
[48] AIR 1994 Mad. 188
[49] AIR 1999 All. 95
[50] AIR 1998 All. 324

The Court held that the decision of the university to debar him from any future examination was illegal. It was further held that it was not conclusively proved that the writ petition talked to another student and even assuming that he had done so it could not lead to an inference that he had resorted to unfair means.

Court do not generally show any leniency to students who had resorted to unfair means in the examinations. But the principle is well established that even those who are alleged to have indulged in malpractice are entitled to a fair hearing. The strict approach of the court is seen in *Sardar Patel University v. Minal R. Jogi.*[51] Here a student was fond to be in possession of a ruler with some writings pertaining to the subject of examination. Her result was cancelled and she was debarred from appearing in any university examination for one year. The single judge of the high court quashed the university order accepting her defense that she had written down something on the ruler after she completed the work of answering questions. Reserving this decision a division bench of the Gujrat High Court held:[52]

> *"Mere finding of incriminating material is sufficient to hold the examinee guilty of misconduct.... It is irrelevant whether the student has used the material for the purpose of answering the question or not. It is not necessary that the material which was found from the student must have been utilized for the purpose of answering the question. To hold the student guilty of misconduct it is sufficient if the material is found from the student pertaining to the subjects."*

In Babitha Nugala,[53] serious allegation like "conspiracy," crime syndicate," "education mafia" or the examination centre "was a part of the larger game plan of the mafia" were raised against the conduct of common entrance examination for the engineering, medical and dental courses. The Karnataka High Court, in the absence of "any conclusive documentary or circumstantial evidence," did not support the allegations. The facts in this case were very surprising to the effect that the performance of the

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[51] AIR 2002 Guj. 13
[52] Ibid p. 14
[53] *Babitha Nugala v. Comm.. E.T. Cell.* AIR 1999 Kaut. 182

students of room number 8, where mass copying was alleged was almost similar and of high frequency as compared to other rooms where there was lot of vacations in marks secured. These candidate who scored high marks in the entrance test were "a average or below" or had taken years to pass the qualifying exam +2 (intermediate exam)," providing thereby that their academic caliber was incompatible with all India level entrance test. The Karnataka High Court up held the action of cancelling the result of the petitioners. Is it not surprising that educational authorities slept on this serious matter and when woke up raised the plea to uphold its action? Were not they, under the duty of educational excellence, bound to book the education mafias and keep the environment of the temples of learning clean? No mafia can flourish, as has been rightly pointed out by Kumar Rajaratnam J, without any shelter of protection.

From within the educational institution and to this must be added the direct administration as well. Is it not the duty of all members of that educational community to identified the blacksheep and see that are punished?

Unless this is done, the population of educational polluters will increase, shaking the very foundation of education.

How the educational institutions are becoming places of corruption was exposed by the *Aarti Sharma case*[54] . In this case the petitioner initially did not solve question numbers III, IV & V and the first examiner evaluated only those questions which are answered at the time and put the indications in the appropriate columns accordingly. "But at the time of revaluation of script, it was deducted by the examiners that answer to the question number III, IV & V were added after the first evaluation. For such act of unfair means the petitioner was debarred for four years from appearing in any examination of the University. It was upheld by the Punjab and Harayana High Court. The court, it may be pointed out, had no hesitation even to uphold more deterrent punishment than one imposed in the instant case through there was no direct evidence to this effect. Still the court held that the circumstances in this case were such that no other view could be possible in this manner. In this case involvement of the concerned staff of the

[54] *Arti Sharma v. Punjab University*, AIR 2000 P & H 142

examination centre for the consideration cannot be rule out, and important aspect on which the court's order is silent. The University cannot and should not remain a silent spectator after the present exposure otherwise the corruption virus will eat away the sanctity of examination.

Now the question is how to curb this evil? It may be suggested that there is a need to educate public against copying and to impose anti-copying legislation strictly. Threat or use of force by or on behalf of an examinee should be made cognizable offence; wherever such a provisions exists, an effective machinery for implementation should be evolved. The use of multiple question paper and problem oriented through provoking question for which answer are not available in the traditional text books, can also be discouraged, copying and above all improvement of teaching is an important step for curbing unfair means of examination.

D. CANCELLATION OF EXAMINATION AND REMEDY

Cancellation of examination is one of the easier tools in the hand of examination. Examination authorities to eradicate copying. But sometimes they exceed the powers, destroying the career of students. While any mal practices in the examination by the students is to be strongly condemned and curtailed, the authorities are expected to act fairly and dealing with allegations of mal practices. Courts do not generally insist on a strict compliance with all the norms of natural justice in situation involving an educational authorities and delinquent student. But where even the resemble of fairness thrown to the winds the court has to intervene. *In Kiran Sisodia v. Jiwaji University, Gwalior*[55]. Where the student appearing B.A. Part II examination was not allowed to appear in the examination by the *Kulpati* of the University, on the ground that her B.A. Part I examination was cancelled for using unfair means. The court upheld that the cancellation of the examination by the Kulpati on the ground that the emergency power of the Kulpati vested under Section 15(4) of the University Ordinance to cancel the examination without waiting the decision of the executive council. It was held proper and justified on the ground of urgency in the matter of education.

[55] AIR 1989 M.P. 18

Cancellation of result on flimsy grounds, that two after the candidates has been declared passed in the First Class was, the question raised in *Sudeep Kumar v. Vikram University, Ujjain*[56]. The petitioner after passing LL.B examination in the first class had joined the LL.M courses when a show cause notice was issued to him alleging that he did not sit at the allotted place in the examination hall. The date of incident given in the notice was wrong. Cancellation of his result was quashed by the court observing that such severity of punishment called for greater degree of care and circumspection.

When a person missed an opportunity of natural justice, he later on cannot take that plea . *P. Umesh Rao v. Banglore University.*[57] shows that in an inquiry against the student for alleged mal practice. The petitioner merely denied the charge and stated that his answer scripts was taken by a student next to him without his knowledge. He was invited to offer defence in writing and also given an opportunity for personal hearing by the Inquiry Committee, but he did not make use of opportunity. Subsequently when his examination was cancelled and was debarred from appearing two or more examinations the order was challenged as violative of natural justice. The Karnataka High Court, not finding any merit in the contentions of the petitioner, rightly rejected the petition.

However, when the adoption of unfair means by the students was detected by the invigilators and other authorities who conducted examination at the examination hall itself and the student immediately after being detected for misbehaviour or using unfair means walked out of examination hall the Madhya Pradesh High Court in *Patiram Singh Yadav v. Principal government Polytechnic,*[58] held that the cancellation of examination is valid and such students were not entitled even to show cause notice or opportunity of hearing. The court further observed that disciplinary action was taken under administrative rules framed by the Board of Technical Education which were binding on the student when they agreed to take up the examination in accordance with those rules. One may agree with the court upto this point but the observation of the court that the rules are binding on the student as terms of contract between the examinees and the

[56] AIR, 1990 M.P. 110
[57] AIR 1990 NOC 151 Kant
[58] AIR 1990, MP 129

authorities is open to doubt. If there is statutory obligation there is not need to establish contractual relationship or to bring in the analogy of a contract.

In Ram Janam Ram v. Kul-Sachiv, Allahbad University,[59] a flying squad reported that it had recovered a piece of paper containing handscript from inside the desk on which the petitioner had placed his answer book. In his explanation the petitioner alleged that the paper was recovered from the ground and it was thrown by some other students. Further the paper was not in his writing and he has not copied anything from the paper. Quashing the decision of the University canceling the examination of the petitioner, the court held that the order can not be sustained for the reason that no finding has been recorded on the vital aspect involved in the case as to whether the paper actually belonged to the petitioner the court pointed out that the university was under an obligation to record reasons to justify its action against the petitioner on the basis of material before it. The university was directed to declare the result of the petitioner.

Even if a malpractice is proved, too harsh an attitude may be unwarranted. Very often the quantum of punishment is left to the discretion of the authorities with practically no guidelines fixed by the law. In *Shiv Shanker Taller v. Mysore University,*[60] some engineering students were involved in malpractice in an examination held in September, 1989. After an enquiry the university debarred them from taking any university examination upto march 1994. Though the petitioner was guilty, the court said that the quantum of punishment imposed was most arbitrary, unreasonable and excessive. Such punishment despite of reforming the students would make them frustrated and convert them into anti-socials.

The order of cancellation of examination on the ground that the candidate did not satisfy the condition of one year's gap between two examinations was quashed by the High Court.[61] However, the above trend of the Punjab & Haryana High Court, it is submitted, is not in consonance with keeping up the standard of education.

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[59] AIR 1991 All. 322
[60] AIR 1991 Kant 169
[61] *Harinder Kr. v. Punjab School Examination Board,* AIR 1988 P & H 244

Most recently, in *Kumari Rani Swati Monalisa v. Chairman, Council of Higher Secondary Education & Another.*[62]The petitioner had appeared at the Annual Higher Secondary Examination (Science), 1999 from Rajendra College, Bolangir with Physics, Chemistry and Mathematics as optional subjects and Statistics as fourth optional subject. But the Mathematics paper-II examination held on 30.3. 1999 had been cancelled on the basis of the report of the flying Squad for mass malpractice in the centre and the examinees were awarded "00" marks in that paper. According to the petitioner she had never adopted any malpractice nor violated any of the rules of examination inasmuch as there was not report against her for any infringement of examination rules as specified0 in the Admit Card, either by any Invigilator, Superintendent or Examination Supervisors and, as such, in absence of any specific allegation against the petitioner, without affording an opportunity to know the allegations, the penalty is illegal and malafide.

The Division Bench of Orissa High Court held that: In view of the report of the flying squad, the examining authority, having found that the examination was not at all conducted in accordance with the rules and norms prescribed by the council and the examinees had resorted to mass scale malpractices, it could not have any alternative than to cancel the said paper and direct awarding "00" marks to such candidates. It is well settled principle of law that in a case of mass malpractice, where all students appearing at the examination had resorted to malpractice, question of affording opportunity of hearing is inapplicable. The decision of the council to cancel the examination cannot be faulted.

When an innocent student is penalized for no fault of his, the court rightly comes to his rescue, either by way of allowing compensation or asking appropriate authorities to provide suitable remedy. *In D. Anarati Deendayal v. Convenor EAMCET Examination Hyderabad*[63] where defective question book mixing code B and D was given to a candidate. She lost one hour fifteen minutes by this confusion. No extra time was given. Eventually she could not get the requisite rank or admission. She filed writ petition seeking directions to admit to MBBS course. It has been held that petitioner may get

[62] AIR 2006 Orisa 112
[63] AIR 1999 AP 138

another chance of competing and get selected. But she lost a year and suffered the agony for which Rs. 50,000/- is awaited as compensation.

In Md. Obaidulla v. Bihar Intermediate Education Council.[64] The question before the court was whether the petitioner was entitled to compensation for the lacks and negligence of the respondents? When the first result was published in 1999 he was declared fail on the ground that he absented in Urdu Paper examination which fact was shown as an incorrect on an inquiry and verification. It was in August, 2000 he was declared pass. It has not been disputed that due to gross negligence of the respondents the petitioner not only became late by two academic sessions but he has been pushed two years back in the entire future career of his life.

The petitioner therefore suffered serious loss and irreparable injury and for the gross lacks and the negligence of the respondents they were liable to be imposed compensatory cost or compensation to meet the ends of justice. Respondents were directed to pay a sum of Rs. 50,000/- to the petitioner.

Again a compensation of Rs. 25,000/- was awarded to the petitioner who lost one year because the authorities had wrongly marked her attendance as absent at the time of her examination. The M.P. High Court also directed the Board of Secondary Education to trace the answer book and to declare the result after valuation.[65]

When an examination is cancelled on the ground of mass copying, courts have not been eager to adhere to the requirement of a fair hearing for every candidate affected by the decision.[66] But when the cancellation of examination on the ground of mass copying was not supported by any material, it cannot be upheld. In one such case[67] the result of the petitioner was cancelled on the ground of mass copying and the court found that the cancellation was ill founded and was not substantiated by any material. The respondent

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[64] AIR 2002 Jhar. 46
[65] *Harishankar Viswakarma v. Board of Secondary Educatio*n M.P., AIR 2004 M.P.
[66] *Bihar School Examination Board v. S.C. Sinha,* AIR 1970 SC 1269
[67] *Badri Vishal Tewari v. Secy. Non Collegiate Education,* AIR 2004 M.P. 121

was directed to pay Rs. 5,000/- to the candidate as the cancellation was a blot on the performance of the petitioner.[68]

(i)Remedy under Consumer Forum

The Brinder Nath case[69] brings an important issue in the examination litigations: whether conduct of examination and related matters by the controller of examination came within the definition of 'service', attracting the jurisdiction of the consumer forum? In this case, the consumer forum of Jammu and Kashmir awarded compensation of Rs. 200000/- to the respondent who wrongly not allowed to appear in the examination. Against this order, the university moved successfully the Jammu and Kashmir High Court. The high court took the stand that acts concerning of results, did not amount to rendering any service for hire. And further, a student who appeared in examination could hardly be said to be a 'consumer'. Thus, according to the court, the forum had not jurisdiction in this matter.

However, in the *Madurai Kamarjar University case,*[70] a wrong declaration of result, entailing a compensation of Rs. 11,145/- by the forum was subjected to challenge. The Madras High Court allowed the jurisdiction of the consumer forum as the university itself had subjected to the two authorities under the Consumer Protection Act, 1986and suffered orders against it.

It may be pointed out that university is a place for imparting *vidya dana* and there exists a pious relationship between the teacher and the taught. Bringing a service oriented concept and treating the students as consumers would only make the educational institutions commercial shops where the rich will get ample service and the poor nothing. It is sad that capitation fees, payment seats and self-financing courses, requiring exorbitant fees, have already commercialized education, further, there had been sililar question raised earlier where the National Consumer Disputes Redressal Commission did not treat such activities as 'service.'[71] The Jammu and Kashmir forum in the present

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[68] Ibid. p. 122
[69] *University of Jammu v. Brinder Nath* AIR 2000 J&K 93
[70] *Registrar, Madurai University v. SCDR. Commission,* AIR 2000 Mad. 222
[71] *Chairman, Board of Exam v. M.A. Kader.*(1997) II CPJ 49

case[72] did not look to the rulings of the National Forum but followed only a state commission case to decide the issue. On this court also the Jammu and Kashmir Consumer Forum, it is submitted, failed to maintain the minimum standard of educational justice.

E. RE-VALUATION OF ANSWER SCRIPTS

The next important part of the examination is evaluation of answer scripts. There is not doubt that evaluation is an integral part of examination and it prevails every where, and in all the educational institution. But the problems arise in regards to the system of revaluation of answer scripts which vary from institution to institution. There is divergence of opinion of the court in this regards. The question before the Madhya Pradesh High Court, in *Manoj Kumar v. Ravishankar University Raipur*[73] was whether revaluation is a part of examination the court was of the opinion that revaluation is an integral and inseparable part and parcel of process of the main examination and the Executive Committee of University is bound to take notice of revalued result, while notifying the Merit List.

The court further added that[74] 'it gives fresh appraisal of the performance of a student by other examiner. In case the marks increased as a result of revaluation the increase is binding on the University which is obliged to vary result on that basis. The Court further said, result of revaluation, whatever it has to be accepted as correct and final by all concerned and for all purposes guided after revaluation the result of original valuation is erased. To hold otherwise would be against the basic concept of revaluation. Thus, it is submitted that revaluation is a part of examination. The declaration of results would be incomplete without revaluation if and where demanded or applied for by the examinee.

Another problem relating to revaluation came up before the court in *Sheodhari Prasad Sah v. Bihar*[75] the answer paper was not available for revaluation. The court in this

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[72] *Brinder Nath v. V.C. University of Jammu,* (1995) III CPJ 464 (J&K)
[73] AIR 1989 M.P. 1
[74] Ibid p.5
[75] AIR 1990 Pat. 196

situation directed that either average marks obtained in the other subjects be granted to the petitioner or he may be permitted to take up fresh examination within 60 days.

The regulations relating to revaluation framed by the Punjab University came up before the court for interpreting in *Jagat Narayan Gupta v. Punjab University* [76]. According to the regulation result of the candidate would be charged on revaluation only if the character of the result is changed or where the score increased or decreased by five percent marks allotted to the paper. The petitioner got an increase of the three percent marks on revaluation of one paper in LLB fifth semester examination. He contended that by adding three marks to the total marks obtained in the fifth and sixth semester examination, he would have got 699 marks and scored a position in the university merit list. This contention was rejected by the court on the ground that the University Merit list is prepared only in sixth semester examination. Since the marks were to be increased on revaluation in the fifth semester examination, credit for the same would not be given in the sixth semester examination.

The Division bench also agreed with the view and dismissed the appeal of the petitioner. But since the final result of the LL.B course is declared on the basis of aggregate marks obtained in the fifth and sixth semester examination, it is submitted that there is substance in the argument raised by the aggrieved student in this case. The court seems to have take a highly technical attitude in interpreting relevant provision.

However, the question whether revaluation entitled a student to claim a corresponding change in the order of merit on the award of scholarship prizes or medals was raised in *Rajendra Kumar Madkari v. University of Bombay.*[77] There was provision in the university ordinance which denied any such claims of students.[78] Relying on the earlier decision of the Karnataka High Court,[79] the Bombay High Court held there is not reason to restrict the result of revaluation to the mere declaration of class and full benefit

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[76] AIR, 1990 P&H.84.

[77] AIR 1991 Bom. 126

[78] Ordinance 237A of the Ordinances and Regulation of the university of Bombay reads. "The revised marks obtained by the candidate after the revaluation as accepted by the University shall be taken into account for the purpose of amendment of his result in accordance with the rules of the University in that behalf, but these marks shall not be taken into account for the purpose of award of scholarship prozes medals and for the order of merit."

[79] *Ajay Bansal v. Banglore University* AIR 1990,Kant. 225

or revaluation has to be awarded to the student for the purpose of scholarship prizes, medals and also for deciding the order of merit.[80]

The rule which debars the candidate to be eligible for award of gold medals consequent upon the revision in the result due to revaluation has been held to be *ultravires.*[81] A subsequent change in the university regulation providing for the order of merit after taking into account the result of revaluation may affect accordingly the result of new students. However such student cannot claim to be governed by the earlier regulation.[82]

Is there a fundamental right to revaluation was the question before the Supreme Court in *Maharastra SBOS and HS Education v. Paritosh,*[83] the court in this case upheld the validity of a regulation providing that no revaluation of answer scripts can be done and negatived the right to evaluation. The court also rejected the view taken by the High Court that the right to fair play contemplated the right to demand revaluation.[84] The court was of the opinion that if the right to demand revaluation was acceded there would be no finality of the result of public examinations.

As the Supreme Court in the above decision was interpreting the statuary provision providing no revaluation and to uphold such a provision negatived the right to revaluation. In this context it is submitted that the above decision did not put any embargo upon the university to provide for the revaluation by the Examination Board.

The above view was subsequently followed by the Madras High Court.[85] the court held that a candidate sitting for examination, conducted by any university has not got a fundamental right to insist for revaluation of his papers. This is a matter that has got to be settled by the rules governing the examination in question. Once the rules got formulated, it is not possible to travel beyond the rules.

In *Rebhuraman v. Mahatma Gandhi University*[86] the petitioner demanded an independent team of experts from outside a university for revaluation of his answer script. The court

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[80] *Fatch Kumari Sisodia v. State of Rajasthan,* AIR 1997 Raj. 191
[81] Ibid p. 193
[82] *Mangalbhai A Patel v. Gujrat University* AIR 1991 Guj. 59
[83] AIR 1984, SC. 1543
[84] Ibid p. 1558
[85] *B. Rajappa v. Addl. Controller of Education, University of Madras,* AIR 2000 Mad. 241
[86] AIR 1999 Ker. 91

held that student can not seek such revaluation in absence of any statutory rule conferring such right.

Recently in Ku. *R. Shubha Snageetha v. Rajeev Gandhi University of Health Sciences*[87] the petitioner asked for revaluation, retotalling and supply of Photostat copy of their answer scripts in the absence of any such statutory provision, which was rejected by the court.

The court further held that it is not open for the petitioner to claim the benefit of revaluation or retotalling in respect of the matter not provided either under the Act or under the regulation.

It is clear that the intention of the legislature is not to provide for any revaluation or retotalling or giving any grace marks which is a healthy sign to maintain the standard of education.

In *Akash Bhandari v. Jai Narain Vyas University*[88] the Rajasthan High Court was confronted with a quite different issue. In revaluation the appellant got his marks increased for two subjects and decreased for one subject. He pleaded that instead of considering the decreased marks after evaluation the university may consider the marks before re-evaluation for the third subject. But the court held that "if the appellant is taking advantage of increased marks, he must also accept the disadvantage of decreased marks on re-evaluation."

Once the answer script is evaluated it leaves many aspects to be agitated, leading to litigations. The general allegations made are: lower marking, wrong totaling or incorrect evaluation. The request for reevaluation of the answer script is generally subjected to a time schedule. The educational institution, following mathematical calculation, did not take into consideration the undue delay on its parts in declaration of result of an individual. On the contrary it counted the limitation period from the date of declaration of the main result. The Madhya Pradesh High Court adopting a pragmatic approach quashed such rejection and ordered the institution to make arrangement for re-evaluation/rechecking and declare the results of the petitioners within a time-schedule.

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[87] AIR 1999 Kant. 49

[88] AIR 2004 Raj. 243

In the *Murlidharan case*[89] one finds negative aspect of re-evaluation which was the subject matter of litigation. In this case the respondent got initially 76% marks and expecting more marks he went for the second and third re-evaluations which resulted in 50.6 and 34.66% marks respectively. But when asked for the fourth chance, the university rejected his request as there was no such provision in the university rules. The matter came up before Kerala High Court where the single judge bench directed the university either to take average of the first two evaluations. But the division bench, on appeal, set aside the above judgment as the university rules did not provide for the fourth evaluation. It may be pointed out that the respondent had gone for the third evaluation with open eyes that its award would be final with no further evaluation. And still he took the risk, and, therefore, he had to suffer for it.

The evaluation case law also involved a new dimension where a first position holder, fearing that his position would be affected resulting in denial of the award of gold medal to him because of the next merit position holder's opting for re-evaluation, knocked the door of the Rajasthan high court[90] to stop the revaluation request of the student second in the rank. The ground was that the request for re- evaluation was time barred. The High Court, taking the facts that the time period in the present case would start from the date of declaration of the result of the respondent, directed the university to declare his re-evaluation result and award merit. The Rajasthan High Court did not leave the opportunity to blame the petitioner for his action which was, according to the court ,"not at all proper and befitting to a brilliant student like the petitioner".

It is however important to note that the plea of *mala fide* is generally taken by those who failed or missed a rank in the examination to gain sympathy of the court. A student of BHMS Ist year failed in one paper of homeopathy pharmacy not once but thrice and as such he was not promoted to the higher class. He took the plea that as he had taken leading part in several agitations against the college, the college became inimical towards him. The court[91] did not grant any relief to him. There is nothing in which shows that his answer scripts were sent to outside experts. Further his scholastic record is also not given. However, the fact that he had passed all other papers in first attempt, the question

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[89] *University of Kerala v. EK.Murlidharan.*AIR 2000 Kev.165
[90] *Manhish Singhvi v. J.N.V. University Jodhpur.*AIR.2000 Raj 383
[91] *K.P.Jeyapaul Asau v. MGR.Medical University*, AIR 1999 Mad 387

remains why he failed in the same paper thrice when he had sufficient time to prepare one paper enquiry to deliver judicious justice.[92]

Re-evaluation of answer scripts has its own problems and merit as well. But the educational institutions have been gradually abolishing such system, leaving no scope for review of marking already done by the initial examiner. The court refused to help the petitioners[93] . It is suggested that in the environment of factory production of evaluated answer scripts, corruption, arm chair manipulations and evaluation, etc there should be some mechanism to weed out any intentional or unintentional mistake in evaluation of answer scripts.

In this context *B N Mandal Case*[94] exposes the examination sections mistake even at the stage of re-evaluation. The petitioner apply for re-evaluation of answer scripts of paper 12 and 14 of B. Com part I. the copy of even paper 11 was also , it was alleged ,re-evaluated where by his original marks of 90 came down to 37. It was urged on behalf of petitioner that such decrease was affected behind his back and should be quashed. On the other hand, the university took the successful stand that it was not a case of revaluation but correction of their own mistake which occurred while transferring the marks to the final list, since the act was uni-lateral, the court directed the university that the petitioner should be afforded an opportunity of applying for re-evaluation of paper 11. This case where had the petitioner not called for re-evaluation of other papers the mistake would not have been detected and the same would have remained unexposed. But the judicial sword fell on nobody, and wrong doer went scot-free.

However, in *Priyanka Pande v. Secretary Board of Secondary Education M.P and another* [95], the High Court of Madhya Pradesh not only rescued a victim student but also blacklisted the evaluator who had negligently and wrongfully evaluated an answer sheet of brilliant student and had to fail. In this case the appellant undertook classX examination conducted by Board of Secondary Education, Bhopal in the year 2005. in the subject of Sanskrit she was awarded 28 marks out of 50 , being aggrieved by the said evaluation , she applied for scrutiny of the answer paper. The board on scrutiny found

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[92] *Rehbhuraman v. M.G.University* .AIR 1999 Kev.91
[93] *R.S. Sangeetha v.R.G.University of Health Science* AIR 1999. Kaut 49
[94] B.*N. Mondal v. Vidyasagar University.* AIR 1999 .Cal.283.
[95] AIR 2007 .M.P. 237

that their had been no error in tabulation or computation and accordingly rejected the prayer.

Being dissatisfied and aggrieved by the aforesaid action of the board, the petitioner preferred a writ appeal. The Court appointed first and second evaluator to evaluate the sheet. Both evaluator marked 45 and 47 respectively and the marks awarded to the appellant in the subject of Sanskrit is enhanced to 45. The court observed,[96]

> *As a general rule, the Court has no power to order re-evaluating of the paper since the rules do not provide for re-evaluation. How ever, in extra ordinary cases where the student is bright and where injustice has been done in the case of evaluation of the marks specially in cases like mathematics and science, it is sometimes open to the Court to have a look at the answer sheet and compare with the model answer papers and if there are gross discrepancies in awarding marks, it is always open to the Court to direct the board to re-evaluate the marks"*

Further the court held that[97]the teacher who had initially valued the answer sheet is a government teacher. The valuer has to be careful, circumspect and should not show slightest attitude of callousness because of fate of a student is dependent on valuation. It is of relevance to state that when a young student appears in an examination, he expects that he shall be awarded appropriate marks and not be dealt within a manner, to borrow a line from William Shakespeare, like a fly to the wanton boys. They cannot be left with the mercy of such irresponsible valuers.

It is submitted that, in order to reduce the no. of allegations on valuation and application for revaluation the model answers should be circulated to be examiners. The implementation of this suggestion would definitely go a long way in eliminating the anomalies in evaluation. Still there may be room for allegations and complaints and even the correctness of the model answers may come under a shadow.

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[96] Ibid. p. 236
[97] Id .p.237

F: GRACE MARKS

Another important aspect of examination system in our country is grant of grace marks for the student who marginally failed or could not secure position because of narrow margin. The term grace marks as the name itself indicated is a matter of grace and not of right. Thus it is purely prerogative of the authorities to grant or not by the rules, it can not be claimed as a matter of right by the students who is just on the border line of success.

An attempt by some students to extend the benefit of grace marks was not viewed favorably by the Punjab and Haryana High Court in *Rajkumar v. State Board of Technical Education*[98]. The rules framed for grant of grace marks clearly provided that grace marks shall be given to marginal candidates only if awarding vain that the rule was discriminatory because it did not provide for the grant of grace marks for the preparation of earning compartment examinations.

According to Karnataka Two Year Pre-University Course Regulation, Course of study and Scheme of Examination and Syllabus, 1974, Students in Science faculty were required to answer theory subject with 75 marks and practical with 25 marks. Minimum marks required to pass was not less than 20 marks in theory. The pre-university board by a resolution amended the regulation increasing theory marks to go and reducing practical to ten marks. Minimum marks required for pass in theory was increased from 20 -24. Accepting the contention that this resolution was beyond the powers of the board, the court further held that the petitioner who had obtained 19 marks in theory, was entitled to get one grace marks in order to clear the subject.[99]

The Supreme Court[100] considered one significant question, can grace marks concession be denied to a candidate whose examination has been cancelled for violation of examination rules. The court without probing the matter in detail answered the question in positive and opined that there was no reasonableness. In the present case there was mass mal-practice in one paper and the said examination of that center was cancelled. There was nothing to show that the petitioner was identified for using unfair means. Can the provision for violation of examination rule be applicable to the petitioner

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98 AIR 1991.P & H 1 (FB)

99 AIR 1990 NOC 42 (Kant) also Law of Education,XXVI,ASIL1990.p204

100 *Council Of Higher Secondary Education v. Dyuti Prakesh Das* . AIR 1994 SC 594

also? In view of the above facts, the reply should be no. when the rule did not make a distinction between the above two situations the Supreme Court should have adjudged the same as unreasonable.[101]

The provision for grace marks is included to encourage students who show proficiency in extra-curricular activities. The Supreme Court in *MS Board of Secondary and Higher Secondary Education v. Amit*[102] expressed the firm view that such provision should not result in diluting academic standards. Here the regulation provided that a candidate obtaining not less than 105 marks in maths and science taken together at one and the same examination and obtaining not less than 38 marks in the subject or subjects of failure shall be entitled the benefit of combined passing in maths and science. A candidate who got 20 grace marks for sports claimed the benefit of this regulation, by adding the grace marks to the marks obtained by him. Reversing the High Court the Supreme Court held that the regulations make a distinction between the marks 'obtained' and grace marks 'granted'. The grace marks cannot therefore, be added to the marks obtained by the candidates so as to enable him the benefit of the regulation.

Whether a student can claim the benefit of grace marks as a matter of right is a mute question. It is generally understood that even when there is a provision of awarding grace marks it is within the discretion of authority to award grace marks or not, and if it is decided to award grace marks how much marks should be awarded. In *Bhupendera Singh v. Baba Farid University Of Health Sciences,*[103]petitioner is the student of government medical college,patiala and appeared in the final MBBS examination held in Nov,1999.he passed in all the papers except in the subject of Ophthalmology. He secured 34 marks out of 65 in the theory paper and 15 marks out of 35 in the clinical, (practical). The aggregate marks obtained by him in the subject of Ophthalmology 49 out of 100. Whereas the pass marks were 50. This college was affiliated to Punjab University and after July, 1999 it was transferred to the Baba Farid University. The examination held by this college was governed by the regulations of the Punjab University. According to the regulations of the Punjab University, the minimum requirement of passing the examination is that a candidate must have 50% in aggregate of the subject and at the same time should also

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[101] C.M Jariwala,*Law Of Education* .XXX.ASIL1994.p251
[102] AIR 2002 SC.2686.
[103] AIR *2001 P$H 103*

have 50% in clinical in each subject. The petitioner was short by 2-1/2 marks in the clinical and was therefore, declared to have failed in the subject in which he was required to re-appear. Regulation 26(B) (i) of the ordinances for MBBS examination as framed by the Punjab university reads as under:-

> *26(B)(i) a candidate who fails in one or more papers/subject and/or aggregate may be given grace marks, upto 1 percent of the total aggregate marks(including the marks for practical and internal assessment) to his best advantage in order to be declared to have passed the examination. Provided that the no. of grace marks to be given in the individual subject should not exceed five."*

A reading of the aforesaid regulation makes it clear that a candidate is entitled to grace marks in one or more subjects upto 1% of the total aggregate marks including the marks for practical and internal assessment to the best of his advantage in order to be declared to be passed in the examination provided that the maximum no, of grace marks which could be given in an individual subject could not exceed 5, in this case before us the petitioner required only 2-1/2 marks in clinical in order to pass in a subject and also in the examination. The action of Baba Farid University in not awarding these grace marks to the petitioner cannot, therefore, be sustained and it is held that the petitioner was entitled to 2-1/2 grace marks in order to pass the examination[104] and baba farid university is directed to award the requisite grace marks to the petitioners as claimed by them in each of the subjects in which they have now been asked to reappear and declare them to have passed in the examination.

The decision seriously impedes the discretionary power of examination boards and other university authorities to take an appropriate decision on grace mark after taking relevant circumstances. The Court can not interfere, it is submitted in academic matters unless the decision of the authorities is so perverse, unreasonable or arbitrary.

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[104] *Supra note* 103