

Supreme Court of India

Jagdish Saran & Ors vs Union Of India & Ors on 28 January, 1980

Equivalent citations: 1980 AIR 820, 1980 SCR (2) 831

Author: V Krishnaiyer

Bench: Krishnaiyer, V.R.

PETITIONER:

JAGDISH SARAN & ORS.

Vs.

RESPONDENT:

UNION OF INDIA & ORS.

DATE OF JUDGMENT 28/01/1980

BENCH:

KRISHNAIYER, V.R.

BENCH:

KRISHNAIYER, V.R.

PATHAK, R.S.

REDDY, O. CHINNAPPA (J)

CITATION:

1980 AIR 820 1980 SCR (2) 831

1980 SCC (2) 768

CITATOR INFO :

RF 1980 SC 838 (4)

RF 1980 SC1230 (10,14,17,18,35)

R 1981 SC2045 (10,25)

R 1984 SC1420 (10,12,13,18,20,22)

RF 1984 SC1534 (13)

F 1985 SC1059 (2)

RF 1986 SC1362 (3,4,5)

E&D 1989 SC1194 (9,10,18)

ACT:

Constitution of India 1950, Articles 15 and 16-
Admission to post-graduate course in medicine-Rule of Delhi
University-Reservation of 70 per cent of seats at post
graduate level for its own university graduates-Validity of.

Practice and Procedure-Litigation on socio-legal issue-
Brief to be well researched and factually detailed.

HEADNOTE:

The University of Delhi has many post-graduate and
diploma courses in the faculty of medicine but all of them
put together provide 250 seats. The three medical colleges
in Delhi turn out annually 400 medical graduates who get
'house' jobs in the local hospitals and qualify themselves

for post-graduate courses. As the graduates from the Delhi University could not be accommodated fully or even in part for the post-graduate courses in medicine and as these graduates were not considered for admission into other universities on account of various regional hurdles such as prescription of domicile, graduation in that very university, registration with the State Medical Council, service in the State Medical service etc., the Delhi University had earmarked some seats at the post-graduate level in medicine for the medical graduates of Delhi University.

Until April 1978, the rule for selection of candidates for admission into the post-graduate classes in medicine provided that selection for 52% of the total number of seats was to be made on the basis of combined merit of Delhi University and other university medical graduates, and 48 per cent from the Delhi University graduates only. The rule was amended, reserving 70% of the seats at the post-graduate level to Delhi graduates and 30% being open to all, including graduates of Delhi.

The petitioner who was a medical graduate from the Madras University applied for the post-graduate degree in Dermatology in the University of Delhi. He passed the common entrance test for admission, but his admission was turned down because of the rule of the University reserving 70% of the seats at the post-graduate level to Delhi University graduates.

The petitioner in his writ petition under Article 32 challenged the rule as violative of Articles 14 and 16 of the Constitution and sought the court's writ to direct the University to admit him to the M.D. Course in Dermatology. It was contended that the University was sustained by Central Government finances, collected from the whole country and the benefits must likewise belong to all qualified students from everywhere. The University justified the reservation on the ground of exclusivism practised by every other University by forbidding Delhi University graduates from getting admission in their colleges and also on account of the reasonableness of institutional continuity in educational pursuits for students who enter a university for higher studies.

832

Dismissing the writ petition.

^

HELD: (per Krishna Iyer & Chinnappa Reddy, JJ.)

1. Reservation of 70% is too high at the post-graduate level. But the rule is not invalidated because the facts are imperfect, the course has already started and the court must act only on sure ground, especially when matters of policy, socio-educational, investigation and expert evaluation of variables are involved. When fuller facts are placed, the court will go into this question more confidently. [858 D-E]

2. If 70% reservation is on the high side and the

petitioner is hopefully near 'admission' going by marks it is but just that he is given a chance to do his post-graduate course. His coming to Delhi itself was a compulsion beyond his control. [858 F]

3. Petitioner directed to be admitted to the degree course this year, if the rules of attendance etc., do not stand in the way and the Medical Council makes an exception by agreeing to addition of one seat as a special case for this year. [858 G]

4. (i) The University forthwith-not later than two months from today-to appoint a time-bound committee to investigate in depth the justification for and the quantum of reservation at the post-graduate level from the angle of equality of opportunity for every Indian. That committee will study facts and figures and the reservation realities of other universities and make recommendations on the question of university-based reservations and allied aspects as well as modus operandi for implementation. The Committee will benefit if it has a constitutional expert and a representative of the Indian Medical Council on it. Its report shall be considered by the University as soon as may be, so that, if possible, the admissions for the next year may be governed by the revised decisions of the concerned organs informed by the report. [858 H-859 C]

(ii) The Union of India has a special responsibility to ensure that in higher education provincialism does not erode the integrity of India. Anyone who lives in India can never be considered an 'outsider' in Delhi. Blind and bigoted local patriotism in xenophobic exclusivism is destructive of freedom and only if compelling considerations of gross injustice, desperate backwardness and glaring inequality desiderate such a course can protective discrimination gain entrance into the portals of college campuses. [859 D, 860 A, B]

5. The philosophy and pragmatism of universal excellence through universal equal opportunity is part of our culture and constitutional creed. [843 A]

6. The Indian Constitution is wedded to equal protection and non-discrimination. Arts. 14, 15 and 16 are inviolable and Art. 29(2) strikes a similar note though it does not refer to regional restrictions or reservations. Art. 15 saves the State's power to make special provisions for women and children or for advancement of socially and educationally backward classes. [842 B]

7. University-wise preferential treatment may still be consistent with the rule of equality of opportunity where it is calculated to correct and imbalance or handicap and permit equality in the larger sense. [849 F]

833

8. What is fundamental is equality, not classification. What is basic is equal opportunity, for each according to his ability, not artificial compartmentalization and institutional apartheidisation, using the mask of handicaps.

A clanish exclusivism based upon a particular university cannot be contemplated as consistent with Article 14. [852 A]

9. A blanket ban which is the indirect result of a wholesale reservation is constitutional heresy. There must be substantial social justice as *raison d'etre* for a high percentage of alumni reservation. [853 H]

10. If equality of opportunity for every person in the country is the constitutional guarantee, a candidate who gets more marks than another is entitled to preference for admission. Merit must be the test when choosing the best, according to this rule of equal chance for equal marks. This proposition has greater importance when we reach the higher levels of education like postgraduate courses. The role of high grade skill or special talent may be less at the lesser levels of education jobs and disciplines of social inconsequence, but more at the higher levels of sophisticated skills and strategic employment. To devalue merit at the summit is to temporise with the country's development in the vital areas of professional expertise. [854 E-G]

11. The class which enjoys reservation must be educationally handicapped. The reservation must be geared to getting over the handicap. The rationale of reservation must be in the case of medical students, removal of regional or class inadequacy or like disadvantage. The quantum of reservation should not be excessive or societally injurious, measured by the over-all competency of the end-product, viz. degree-holders. A host of variables influence the quantification of the reservation. [855 B-C]

12. The higher the level of the speciality the lesser the role of reservation. M.B.B.S. is a basic medical degree and insistence on the highest talent may be relaxed by promotion of backward groups, institution-wise chosen, without injury to public welfare. It produces equal opportunity on a broader basis and gives hope to neglected geographical or human areas of getting a chance to rise. Moreover, the better chances of candidates from institutions in neglected regions getting down for practice in these very regions also warrants institutional preference because that policy helps the supply of medical services to these backward areas. [855 D, F]

13. It is difficult to denounce or renounce the merit criterion where the selection is for post-graduate or post-doctoral courses in specialised subjects. There is no substitute for sheer flair, for creative talent, for fine-tuned performance at the difficult heights of some disciplines where the best alone is likely to blossom as the best. [856 F-G]

14. Neither Delhi nor the Delhi University medical colleges can be designated as categories which warrant reservation. Reservation for Delhi graduates is not that invidious, because the students are from families drawn from

all over India. Not sons of the soil' but sons and daughters of persons who are pulled into the capital city for reasons beyond their control. This reservation, is, therefore, qualitatively different. [857 D-E]

15. Institution-wise reservation is constitutionally circumscribed and may become ultra vires if recklessly resorted to. But even such rules, until revised

834

by competent authority or struck down judicially, will rule the roost. Until the signpost of 'no admission for outsiders' is removed from other universities and some fair percentage of seats in other universities is left for open competition, the Delhi students cannot be made martyrs of the Constitution. Reservation must be administered in moderation, if it is to be constitutional. [858 B-C]

16. Litigation, on a socio-legal issue of critical constitutional moment, should not end with general assertions, affidavits of formal denials and minimal materials, but needs feeding the court with nutritive facts which build the flesh and blood of the administrative or legislative action under challenge and all other surrounding and comparative data which legitimate the 'reservation' or other procedure under attack from the constitutional angle. Ingenious or imaginative orality in court can never be a substitute for well-researched down-to-earth factuality in the brief. In the adversary system, advocacy in the superior courts which by their decisions, declare the law for all must broaden beyond the particular lis into a conspectus of sociological facts, economic factors and educational conditions so that other persons aggrieved who will potentially be bound by the decision, do not suffer by not being eo nomine parties. [841 F-G, H 837 E]

(Per Pathak J.)

1. Classification is a feature of the very core of equality. It is a vital concept in ensuring equality, for those who are similarly situated form a class between themselves, and the classification is not vulnerable to challenge if its constituent basis is reasonably related to achieving the object of the concerned law. An institutional preference as in the instant case does not offend the constitutional guarantee of equality. [861 D-E]

2. The basis of the reservation is that the candidate for admission to the post-graduate classes is a medical graduate of the same university. The relation-ship is institutional. There is sufficient validity in that criterion as a basis of classification under Article 14. [860 F, G]

It is not beyond reason that a student who enters a medical college for his graduate studies and pursues them for the requisite period of years should prefer on graduation to continue in the same institution for his post-graduate studies. There is the strong argument of convenience, of stability and familiarity with an

educational environment which in different parts of the country is subject to varying economic and psychological pressures. But much more than convenience is involved. There are all the advantages of a continuing frame of educational experience in the same educational institution. In the post-graduate class, it is not an entirely different course of studies which is contemplated; it is a specialised and deeper experience in what has gone before. The student has become familiar with the teaching techniques and standards of scholarship, and has adjusted his responses and reactions accordingly. The continuity of studies ensures a higher degree of competence in the assimilation of knowledge and experience. Not infrequently some of the same staff of Professors and Readers may lecture to the post-graduate classes also. Over the under-graduate years the teacher has come to understand the particular needs of the student, where he excels and where he needs an especial encouragement in the removal of deficiencies. There is good reason in an educational institution extending a certain degree of preference to its graduates for admission to its post-graduate classes. [860 C]

835

3. Medical courses are not all necessarily to be found only in New Delhi. They are located in other parts of India and some are well-known centres of medical education. The proposition that because New Delhi is the political, legislative and judicial capital of India, an education of quality is not to be found in other cities is not acceptable. Merely because New Delhi is the new Capital of Delhi does not justify a disproportionate treatment of the claim to equality on a national level made by its medical graduates. [862 C-D]

4. But too excessive a reservation could result in preference to graduate candidates of severely limited aptitude and competence over meritorious candidates from other institutions whose exclusion could result in aborting a part of the national talent. [861 F]

5. Whether or not a reservation of 70% was called for has not been established conclusively. There is hardly anything to show that the authorities applied their mind to a cool dispassionate judgment of the problem facing them. The judgment and decision of the authority must be evolved from strictly concrete and unemotional material relevant to the issue before it. [862 F]

JUDGMENT:

ORIGINAL JURISDICTION: Writ Petition No. 214 of 1979. (Under Article 32 of the Constitution) S. Balakrishnan and M. K. D. Nambodiri for the Petitioners.

Lal Narain Sinha Attorney General and Miss A. Subhashini for Respondent No. 1.

Shanti Bhushan, Jitendra Sharma, V. P. Choudhry and R. L. Gupta for the Respondents Nos. 3, 4 & 5.

The Judgment of Krishna Iyer, and O. Chinnappa Reddy, JJ was delivered by Iyer, J., R. S. Pathak, J. gave a separate concurring Opinion.

KRISHNA IYER, J.-Many a case in this Court is the dramatisation. on the forensic stage, of social stress or community conflict which seeks resolution or release through the litigative process. This Writ Petition turns the focus on one such tense issue and ventilates a widespread grievance which deserves constitutional examination.

The petitioner, Dr. Ramesh, is a medical graduate from the Madras University. His father, an officer under the Central Government, was transferred to Delhi and the son, desirous of taking a post-graduate degree in Dermatology, applied for admissions to the University of Delhi which offers that course. He took the common entrance test and secured enough marks to qualify for admission but was turned down because of a rule reserving 70% of the seats, at the post-graduate level, to Delhi graduates (if we may use that abbreviation for describing student-applicants who have taken their M.B.B.S. degree from the University of Delhi). The remaining 30% was open to all, including graduates of Delhi. This rule was made in April 1978 in modification of the earlier reservation of 48%.

Had this inflation (from 48% to 70% plus) not been made, the petitioner admittedly would have been granted admission. So what blocked his right to post-graduate entry was this rule of institutional quota of 70% which accorded a disproportionate premium in favour of Delhi graduates. The other petitioners are no longer in the race having secured lesser marks at the entrance test, and so the judicial lens must be fixed on the validity of such a considerable reservation or virtual monopoly for the Delhi graduates. The petitioner challenges its vires as violative of Arts. 14 to 16 and seeks the court's writ to direct the respondent University to admit him to the M.D. course (Dermatology). While litigating for his right to a seat in the postgraduate degree course in dermatology, he is now doing his diploma course in the same subject in the same University, which is inferior to his aspiration and entitlement if the right to equality is fatal to the quota policy.

We are not investigating the plea based on Art. 16 because it is not clear whether the stipend paid to a post-graduate student makes the course an employment and, apart from that, the meat of the matter is whether there is discrimination. If there is, Arts. 14 and 15 are lethal enough, without resort to Art. 16.

The University of Delhi (we may use the shorthand form 'Delhi University' hereafter) refutes this challenge and justifies the reservation in the concrete educational plight of Delhi graduates as an inevitable evil, if it be evil because of the exclusivism practised by every other university. An institutional quota is not invariably a constitutional anathema and, in the present case, the Delhi University offers an explanation for this recourse to higher institutional reservation. Many

universities now adopt the exclusionary or segregative device of de facto monopoly of seats for higher medical courses to its own alumni, Indians from other Indian Universities being treated as aliens. This xenophobic trend has forced the Delhi University to reciprocate with high reservation.

If reservation of seats, as a strategy of admission to technical colleges, is void there may be a wider impact on a number of the institutions and individuals than on the parties here. The law laid down by this Court binds other institutions because Art. 141 is imperative. Sri Shanti Bhushan, appearing for the University, assertively suggested to the contrary remembering only the rule of *res judicata*, but later realised the obvious error and recanted. He agreed that if this Court invalidated reservation, as such, many universities would be upset in their admission processes, although they were not party-a weakness of the adversary system which needs remedying. So, we invited the learned Attorney General also to help the Court, which he did and we record our gratitude. Unfortunately, the petitioner has not been able to present, the social facts, the educational milieu, the statistical materials and other vital data bearing on the constitutional vice of the rule of excessive reservation, and the respondent University, despite our repeated suggestions to its counsel, has not enriched its brief with sufficient facts which enlighten the court, although some additional information has been brought in. On the other hand, counsel's submissions were scary, if we may say so with respect, to the effect that when students went on a fast unto death, Government had to intervene and save the situation and provide larger reservation. As the Attorney General agreed, hunger strikes cannot amend the Constitution, and Government, if impressed with the grievance which has led to the protest fast, must set in motion changes in the basic law, as was done in the first constitutional amendment and later for States Reorganisation. When this flaw was pointed out to the respondent, some more materials were placed before the court in justification of the increase in the reservation quota from a constitutional angle, and we will deal with them. In the adversary system, advocacy in the superior courts, which, their decisions, declare the law for all must broaden beyond the particular *lis* into a conspectus of sociological facts, economic factors and educational conditions so that other persons aggrieved who will potentially be bound by the decision, do not suffer by not being co-nominee parties. Surely, on the available material, counsel have done their best.

This preliminary narration leads upto the constitutional problem that confronts the court in this petition under Art. 32 and stresses how it deserves, for its solution, serious and sensitive judicial and administrative statesmanship enlivened by legal fundamentals, since the crucial issue springs from the pervasive and protective tendency for institutional reservation of post-graduate seats, which, if left uncanalised and indulged in excess, may well imperil the integrated status of higher national education and make a mockery of equal opportunity. Basically, great constitutional issues cannot be divorced, even while being viewed from a legal perspective, from their national overtones and individual impact, since passionate provincialisation and addiction to institutional xenophobia, even in higher education, have a suicidal fascination beyond myopic political perception. And, on the contrary, elitist exaggeration of 'national' considerations and personal merit, where local protection is essential for the humbler people's interests, has a depressing repercussion if pushed beyond a point-an aspect which expert policy-makers sometimes overlook in unwitting promotion of their group interest. The problem is complex and thorny, charged with practical difficulties and fraught with explosive possibilities. A short cut, in such situations may well prove a wrong cut and so we are

circumspect in our assessment and tentative in our conclusions, especially because counsel, in our adversary system, often do not travel beyond the narrow needs of the case and, despite our prodding, we have not received the social-statistical wealth of material to help us take a comprehensive overview of the issue. Law, constitutional law, is not an omnipotent abstraction or distant idealisation but a principled, yet pragmatic, value-laden and result-oriented, set of propositions applicable to and conditioned by a concrete stage of social development of the nation and aspirational imperatives of the people. India To-day-that is the inarticulate major premise of our constitutional law and life. We highlight these basics because Shri Shanti Bhushan, for the University, pleaded for a practical appreciation of the lot of the Delhi graduates excluded from everywhere else while Shri Balakrishnan for the petitioner, pressed for a national approach to high-grade talent vis-a-vis courses in specialities. A synthesis of both is where the truth lies. The key to this case, if we may anticipate ourselves, is in harmoniously blending developmental necessities of backward regions via institutional reservations-and national considerations of everybody's equal opportunity for higher education being ensured regardless of geographical, institutional or other inhibition. We must never forget two values synthesised in our constitutional culture, as set out in the Preamble-unity and integrity of the nation and equality of opportunity of weaker sections. Without the latter becoming a sure reality the former may be mere rhetoric ! An epitome of the social background leading upto the controversy will give a hang of the case and elaboration may await a later stage. Post Independence India has many universities with facilities for higher learning. Most of them give institutional preferences in the allocation of seats for technical courses and this tendency sometimes reaches the morbid point of total cornering of seats at post-graduate level, especially in the coveted and competitive branches like medicine.

The Delhi University which has M.B.B.S. and post- graduate medical courses, exercises academic jurisdiction over the affiliated colleges in the capital of the country, enjoys great prestige for its schools of learning and excellence in teaching and is founded by the Central Government. It has at once a territorial limitation and national complexion and it caters to a population, by and large, drawn from all over the country because of the vast official, political, parliamentary judicial, educational, commercial and other gravitational pulls which the capital of the country inevitably exerts. This population is fluid because of movements, transfers and a host of other factors. The indigenous denizens of Delhi are perhaps over-run by these super-imposed layers and the student community of the Delhi University is not made up so much by the 'sons of the soil' as in universities in other places but is accounted for by the inflow of groups drawn from all over the country. In a limited sense, it is a microcosm if India is a macrocosm. This national demographic composition is relevant to the examination of the 'reservation' problem.

The capital city is not just a part of India. It is miniaturised India, a fact often forgotten by the administration in the field of culture and education, especially vis-a-vis regional minorities. It is magapolitan and people from all parts flock to this outsized city. But we cannot exaggerate this factor, for the presence of the farther regions like the South and the North East, population-wise, is minimal and precarious. Shri Balakrishnan insisted that the University was sustained by Central Government finances, collected from the whole country, and the benefits must likewise belong to all qualified students from everywhere. These are valuable aspects to shape policy but the court must test constitutionality and no more. To that extent alone we will weigh these factors in moulding our

verdict.

We will now identify the issues emerging from the matrix of facts. Since Shri Shanti Bhushan laid stress on these factors, viz. the satyagraha crisis created by the students, the obdurate, may be, even obscurantist, exclusiveness of other Universities forbidding Delhi graduates from getting admission in their colleges and the reasonableness of institutional continuity in educational pursuits for students who enter a university for higher studies, we must dilate on the foundational facts more fully. Since Sri Balakrishnan emphasised the pathetic plight of meritorious students if 'apartheid' policies were practised by universities, contrary to the cultural unity and constitutional mandates of our nation, we must weave into the legal fabric of 'admission' regulations strands of national integration and equal opportunity for higher education. These rival contentions justify, albeit a little repetitively, the recapitulation of recent events, parochial realities and institutional behaviour, bearin on admissions to colleges in the Delhi University, with some comparative glance at others in the country.

We are concerned with three medical colleges, two being affiliated to, and one being maintained, by the Delhi University. Together they turn out annually around 400 medical graduates. These graduates get house jobs in the local hospitals and qualify themselves for post-graduate courses. The University has many post-graduate degrees and diploma courses but all of them put together come to only 250 seats. Naturally, the graduates from the Delhi University cannot be accommodated fully or even in part for the post-graduate degree courses. If, out of the available seats for the post-graduate courses, a large slice is thrown up for open competition and students from all over the country swarm to take the entrance examination, the Delhi graduates' prospects become bleaker. The further case of the University is that there is a harsh handicap for these graduates in that they are not considered for admission in other universities on account of various regional hurdles such as prescription of domicile, graduation in that very university, registration with the State Medical Council, service in the State Medical Service and the like. The necessary consequence of these road-blocks in the way of getting into post-graduate courses is dissatisfaction frustration, fury and pressure for exclusive earmarking of all seats at the post-graduate level in the Delhi University for the Delhi graduates. Reservation elsewhere breeds reservation here. Good and evil become contagious and indivisible and eventually over powering. The chain reaction had led to the principle of reservation being accepted by the Delhi University, first in moderate measure and next immoderately, maybe, because the pressure of militant Delhi graduates forced the University's hands or because Government, which virtually forced this solution of 70% plus reservation, acted on the easy guidelines : Nothing succeeds like excess. Reservation begins as a mild remedy but becomes, unless leashed, a Frankenstein's monster.

The rule for selection of candidates until April 1978 was as follows :

- (a) For the first 52% seats of the total number of seats available, the selection was to be made on the basis of combined merit of Delhi University and other Universities medical graduates.

(b) The selection of the remaining 48% seats was to be made from the Delhi University graduates only.

By this method, approximately half the number of seats were reserved for the Delhi graduates. But having regard to the figures of seats and turn-out of graduates earlier mentioned, this did not meet the requirements of the aspirants for post-graduate degrees from Delhi. It must be remembered that Delhi is the seat of the elite, of high officials, of prosperous professionals, of rich businessmen, of important politicians and echelons of consequence and other men of money-power.

Their sons and daughters, already fed on superior facilities and coached in special schools beyond the reach of most other students in the rest of the country, have an appetite and opportunity for excellence in education ahead of others and wish to lap up all the post-graduate seats, if possible. The cream must belong to the cream, generation to generation, may be a cynical social scientists 'comment,' Inevitably, a larger number of Delhi medical graduates, relatively speaking, must be ambitiously wanting to continue their studies in post-graduate medical courses which are prized for their career potential. It is significant that these courses are not easily available elsewhere and the standards and prestige of these degrees in the Delhi University are high. Taking a post-graduate medical degree thus opens up further vistas for studies abroad or employment at home. When we remember these factors and the reduced chance for bright Delhi graduates to gain admission into the Delhi post-graduate courses in the face of All- India competition, we can mildly appreciate the mood and demand of the student community for enlargement of their quota. But all grievances are not constitutional. Also, by remedying one group's misfortune other groups may be hurt. The Court can only view rights and wrongs, through the constitutional prism. The various universities show concern for their backward regions and alumni in the name of equal opportunity. But the Indian Medical Council, apprehensive of fall of standards lays stress on academic merit. This dilemma of the law between equality of opportunity and excellence of performance leads us to a demand for full facts, but, of course, we are left to speculate on many aspects of the problem because even the Delhi University and the Union of India have left us in the lurch. Litigation, on a socio-legal issue of critical constitutional moment, should not end with general assertions, affidavits of formal denials and minimal materials but, as stated earlier, needs feeding the court with nutritive facts which build the flesh and blood of the administrative or legislative action under challenge and all other surrounding and comparative data which legitimate the 'reservation' or other procedure under attack from the constitutional angle. 'Reservation' jurisprudence is a tangled knot carefully to be developed and counsel cannot invite judges to make hunches as a cover- up for party's failure. And ingenious or imaginative orality in court can never be a substitute for well-researched, down-to-earth factuality in the brief. Many a case is lost or won because counsel and court engage in the game of blind man's buff since investigative undertakings and presentation of constitutionally vital data do not find a place in the brief and our forensic process inhibits travels beyond the paper books in court ! Nevertheless, for the nonce, we have to make do with the record.

Let us go back to the basics. The Indian Constitution is wedded to equal protection and non-discrimination. Arts. 14, 15 and 16 are inviolable and Art. 29(2) strikes a similar note though it does not refer to regional restrictions or reservations. Art. 15 saves the State's power to make special provisions for women and children or for advancement of socially and educationally backward

classes. Reservations under Art. 15(4) exist and are applied. There is no dispute about that and the whole debate has left that pattern and policy of 'reservation' out of controversy. We zero-in only university-wise quotas, reservations and preferences from the constitutional stand- point.

The primary imperative of Arts. 14 and 15 is equal opportunity for all across the nation to attain excellence- and this has burning relevance to our times when the country is gradually being 'broken up into fragments by narrow domestic walls' in politics, economics and education, undoing the founding faith of an undivided integrated India by surrender to lesser appeals and grosser passions. What is fundamental, as an enduring value of our polity, is guarantee to each of equal opportunity to unfold the full potential of his personalities. Anyone anywhere, humble or high, agrestic or urban, man or woman, and whatever his religion or irreligion, shall be afforded equal chance for admission to any secular educational course or school for cultural growth, training facility, speciality or employment. Each according to his ability, is of pervasive validity, and it is a latent, though radical, fundamental that, given propitious environments, talent is more or less evenly distributed and everyone has a prospect of rising to the peak. Environmental inhibitions mostly 'freeze the genial current of the soul' of many a humble human whose failure is 'inflicted', not innate. Be it from the secular perspective of human equality or the spiritual insight of divinity in everyone, the inherent superiority cult with a herrenvolk tint, is contrary to our axiom of equality. That is why 'equal protection of the laws' for full growth is guaranteed, apart from 'equality before the law'. Even so, in our imperfect society, some objective standards like common admission tests are prescribed to measure merit, without subjective manipulation or university-wise invidiousness. In one sense, it is a false dilemma to think that there is rivalry between equality and excellence, although superficially they are competing values. In the long run, when every member of the society has equal opportunity, genetically and environmentally, to develop his potential, each will be able, in his own way, to manifest his faculty fully. The philosophy and pragmatism of universal excellence through universal equal opportunity is part of our culture and constitutional creed.

This norm of non-discrimination, however, admits of just exceptions geared to equality and does not forbid those basic measures needed to abolish the gaping realities of current inequality afflicting socially and educationally backward classes' and 'the Scheduled Castes and the Scheduled Tribes'. Such measures are rightly being taken by the State and are perfectly constitutional as the State of Kerala v. N. M. Thomas⁽¹⁾ has explained. Equality and steps towards equalisation are not idle incantation but actuality, not mere ideal but real, life. But can a university, acting within the constitutional parameters, create a new kind of discrimination viz., reservation for students of a particular university? The literal terms of Art. 14 do not tolerate it, the text of Art. 15 does not sanction it. Can we carve out a fresh ground of preference? Delhi University students, as such, are not an educationally backward class and, indeed, institution-wise segregation or reservation has no place in the scheme of Art. 15, although social and educational destitution may be endemic in some parts of the country where a college or university may be started to remedy this glaring imbalance and reservation for those alumni for higher studies may be permissible. We will explain this further but, speaking generally, unless there is vital nexus with equal opportunity, broad validation of university-based reservation cannot be built on the vague ground that all other universities are practising it-a fact not fully proved before us either. Universality of illegality, even if the artists of discrimination are universities, cannot convert such praxis into constitutionality. Nor, indeed, can

the painful circumstance that a batch of medical graduates demonstratively fasted in front of the Health Minister's house, ipso facto, legalise reservation of seats in their favour. Shri Shanti Bhushan vividly described his role as Law Minister in meeting the student satyagrahis who were honestly hungry for post-graduate seats and the crisis which stampeded government to intervene and make the University revise its reservation upward to save the lives of the 'fasters'. We have sympathy for students, especially for those who sacrifice their comforts to claim an opportunity to take post-graduate medical degrees. We even feel that the student community often resorts to direct action of the satyagraha model when the pachydermic disposition of authorities drives them to such drastic heroics. But what if non-Delhi students start a rival starvation exercise? That will lead to testing the rule of law on the immolative or masochist capabilities of affected groups and not on the Articles of the Constitutional or provisions of the legislation. Protest fasting, a versatile weapon in our cultural armoury, is meant to sensitize or conscientize the soul of the Administration when it is too paper-logged or callous to look at human problems from the angle of human justice. Beyond that, this great Gandhian technique cannot be blunted by promiscuous use, so long as democratic mechanisms are alive and not impervious to legitimate grievances and can be sparked into action not merely by sensational, though sincere, tactics like fasting unto death. While recognising, even reverencing, the role of soul force in quickening the callous conscience of authorities to grave injury and need for urgent remedy, we cannot uphold the Delhi University's 'reservation' strategy merely because Government was faced with student 'fasts' and ministers desired a compromise formula and the University bodies simply said 'Amen'. The constitutionality of institutional reservation must be founded on facts of educational life and the social dynamics of equal opportunity. Political panic does not ipso facto, make constitutional logic.

Prima facie, equal marks must have equal chance for medical admissions, as urged by the practitioner. And neither university based favoured treatment nor satyagraha-induced quota policy can survive the egalitarian attack. To repulse the charge, equality oriented grounds must be made out. Constitutional equality itself is dynamic, flexible, and moulded by the variables of life. For instance, if a region is educationally backward or woefully deficient in medical services, there occurs serious educational and health-service disparity for that human region which must be redressed by an equality and service minded Welfare State. The purpose of such a policy is to remove the existing inequality and to promote welfare-based equality for the denizens of the backward regions. The specific strategy to ameliorate the unequal societal condition is left to the State, provided it is geared to producing equality in the quality of life of that handicapped area subject, of course, to basic recognition of individual quality and criteria of efficiency.

If the State, for example, seeks to remove the absence of opportunity for medical education of adivasis or islanders who have no inclination or wherewithal to go to far-off cities and join medical colleges, by starting a regional university and medical college in the heart of such backward region and reserves a high percentage of seats there to 'locals' i.e. students from that university, it cannot be castigated as discriminatory. What is directly intended to abolish existing disparity cannot be accused of discrimination.

Again, if the State finds that only students from the backward regions, when given medical graduation, will care to serve in that area, drawn towards it by a sense of belonging, and those from

out-side will, on graduation, leave for the cities or their own regions, it may evolve a policy of preference or reservation for students of that University. That strategy ensures the probability of their serving the backward people for whose benefit the medical courses were opened. Such measures which make for equality of opportunity for medical education and medical service for backward human sectors may be constitutionalised even by Arts. 14 and 15. But it must be remembered that exceptions cannot over-rule the rule itself by running riot or by making reservations as a matter of course, in every university and every course. For instance, you cannot wholly exclude meritorious candidates as that will promote sub- standard candidates and bring about a fall in medical competence, injurious, in the long run, to the very region. It is no blessing to inflict quacks and medical midgets on people by wholesale sacrifice of talent at the threshold. Nor can the very best be rejected from admission because that will be a national loss and the interests of no region can be higher than those of the nation. So, within these limitations, without going into excesses, there is room for play of the State's policy choices.

Before moving to the next aspect we may touch upon a slightly different angle which opens up a new point of view. What is merit or excellence ? If potential for rural service or aptitude for rendering medical attention among backward people is a criterion of merit and it, undoubtedly, is in a land of sickness and misery, neglect and penury, wails and tears-then, surely, belonging to a university catering to a deprived region is a plus point of merit. Excellence is composite and the heart and its sensitivity are as precious in the scale of educational values as the head and its creativity and social medicine for the common people is more relevant than peak performance in freak cases. Marks on this basis will take us to the same preference as reservations for in-university candidates. Here we are not preferring one with less marks, but adopting a holistic manner of marking linked up with backward settings, institution oriented and like considerations has some meaning.

A caveat or two may be sounded even in this approach lest exception should consume the rule. The first caution is that reservation must be kept in check by the demands of competence. You cannot extend the shelter of reservation where minimum qualifications are absent. Similarly, all the best talent cannot be completely excluded by wholesale reservation. So, a certain percentage, which may be available, must be kept open for meritorious performance regardless of university, State and the like. Complete exclusion of the rest of the country for the sake of a province, wholesale banishment of proven ability to open up, hopefully, some dalit talent, total sacrifice of excellence at the altar of equalisation-when the Constitution mandates for every one equality before and equal protection of the law-may be fatal folly, self- defeating educational technology and antinational if made a routine rule of State policy. A fair preference, a reasonable reservation, a just adjustment of the prior needs and real potential of the weak with the partial recognition of the presence of competitive merit-such as the dynamics of social justice which animates the three egalitarian articles of the Constitution.

Flowing from the same stream of equalism is another limitation. The basic medical needs of a region or the preferential push justified for a handicapped group cannot prevail in the same measure at the highest scale of speciality where the best skill or talent, must be handpicked by selecting according to capability. At the level of Ph.D., M.D., or levels of higher proficiency, where international measure of talent is made, where losing one great scientist or technologist in the making is a national loss the considerations we have expanded upon as important lose their potency. Here equality, measured by

matching excellence, has more meaning and cannot be diluted much without grave risk. The Indian Medical Council has rightly emphasised that playing with merit for pampering local feeling will boomerang. Midgetry, where summitry is the desideratum, is a dangerous art. We may here extract the Indian Medical Council's recommendation, which may not be the last word in social wisdom but is worthy of consideration:

Student for post-graduate training should be selected strictly on merit judged on the basis of academic record in the undergraduate course. All selection for post-graduate studies should be conducted by the Universities.

Another casuistry needs to be exposed before we proceed. Backward regions and universities in consequence are miles away from forward cities with sophisticated institutions. The former, for a equalisation, need crutches and extra facilities to overcome injustices. The latter already enjoy all the advantages of the elite and deserve no fresh props. That will be double injury to claims of equality of the capable candidates coming from less propitiously circumstanced universities and societies. Law is no absolute logic but the handmaid of current social facts of life.

We hasten to keep aloof from reservations for backward classes and Scheduled Castes and Tribes because the Constitution has assigned a special place for that factor and they mirror problems of inherited injustices demanding social surgery which if applied thoughtlessly in other situations may be a remedy which accentuates the malady.

At this stage it is appropriate to refer to one ruling of this Court which relates partly to university-wise reservation in the context of backward areas. Support from precedents for the propositions implicit in the above discussion can be derived, but we need not cover many rulings and may confine ourselves to one or two which have closer bearing than the rest. In Chanchala's case⁽¹⁾ university-wise reservation was challenged as unconstitutional. There was reference to earlier decisions such as *Rajendran v. Madras*⁽²⁾ and *Periakaruppan v. Tamil Nadu*⁽³⁾ and their ratio was distinguished to reach the conclusion that under certain circumstances university-wise classification and reservation was constitutionally permissible. In *Rajendran's* case (*supra*) district-wise quota for medical college admissions was struck down notwithstanding the argument that "if selection was made districtwise, those selected from a district were likely to settle down as practitioners in that district, so that the districts were likely to benefit from their training".⁽⁴⁾ The Court did not consider this to be intrinsically irrelevant but negated the contention.

"On the ground that it was neither pleaded in the counter-affidavit of the State, nor had the State placed any facts or figures justifying the plea that students selected district-wise would settle down as medical practitioners in the respective district where they resided."

The emphasis in both the cases (*Rajendran* and *Periakaruppan*) was on the reasonable nexus with the object of the rules of selection, namely, to get the most meritorious among the candidates for imparting medical education. In *Chanchala's* case the basis of classification was different: "in that it is neither district-wise nor unit-wise, but is university- wise."⁽⁵⁾ The justification for university-wise

reservation was the educational need and paucity of medical service in the area where the university was set up. Certain regions poorly served with medical facilities and with few doctors needed to produce more medical men who would settle down there. Likewise, in those backward regions the absence of medical colleges effectively inhibited the needs of medical education of the local student community. The question was whether these grounds would suffice for providing reservation institution-wise. In this setting, the Court observed:

"Since the universities are set up for satisfying- the educational needs of different areas where they are set up and medical colleges are established in those areas, it can safely be presumed that they also were so set up to satisfy the needs of medical training of those attached to those universities. In our view there is nothing undesirable in ensuring that those attached to such universities have their ambitions to have training in specialised subjects, like medicine, satisfied through colleges affiliated to their own universities. Such a basis for selection has not the disadvantage of district-wise or unit-wise selection as any student from any part of the state can pass the qualifying examination in any of the three universities irrespective of the place of his birth or residence, Further, the rules confer a discretion on the selection committee to admit outsiders upto 20% of the total available seats in any one of these colleges, i.e.

those who have passed the equivalent examination held by any other university not only in the State but also elsewhere in India."(1) In the course of the Judgment, Shelat, J. speaking for the Court, was inclined to broaden the principle of equalisation implied in Art. 15(4).(2) "Once the power to lay down classifications or categories of persons from whom admission is to be given is granted, the only question which would remain for consideration would be whether such categorisation has an intelligible criteria and whether it has a reasonable relation with the object for which the Rules for admission are made. Rules for admission are inevitable so long as the demand of every candidate seeking admission cannot be complied with in view of the paucity of institutions imparting training in such subjects as medicine. The definition of a 'political sufferer' being a detailed one and in certain terms, it would be easily possible to distinguish children of such political sufferers from the rest as possessing the criteria laid down by the definition. The object of the rules for admission can obviously be to secure a fair and equitable distribution of seats amongst those seeking admission and who are eligible under the University Regulations. Such distribution can be on the principle that admission should be available to the best and the most meritorious. But an equally fair and equitable principle would also be that which secures admission in a just proportion to those who are handicapped and who, but for the preferential treatment given to them, would not stand a chance against those who are not so handicapped and are, therefore, in a superior position. The principle underlying Art. 15(4) is that a preferential treatment can validly be given because the socially and educationally backward classes need it, so that in course of time they stand in equal position with the more advanced sections of the society. It would not in any way be improper if that principle were also to be applied to those who are handicapped but do not fall under Art. 15(4)." Another observation by Dua, J. in his separate opinion also has pregnant meaning (1):

"The object of selection for admission to the Medical Colleges, considered in the background of the directive principles of State policy contained in our Constitution, appears to be to select the best material from amongst the candidates in order not only to provide them with adequate means of livelihood, but also to provide the much needed medical aid to the people and to improve public health generally."

(emphasis added) The conclusion that we reach from this ruling which adverts to earlier precedents on the point is that university-wise preferential treatment may still be consistent with the rule of equality of opportunity where it is calculated to correct an imbalance or handicap and permit equality in the larger sense.

This extensive excursion is necessitated by the subtle tendency of advantage groups to exploit propositions applicable to disabled categories to good account. Now, let us look at the raw realities of the Delhi University medical graduates and their claim for larger reservation for M.D. and M.S. Facts, and only facts, must be the guide, of course, within the framework of Part III, and this Court has to play the role not only of the sentinel on the qui vive but also of the 'hound of heaven', not merely watch but chase, to set things right if any constitutional wrong has been committed. So we must enquire whether 70% reservation for Delhi graduates which is prima facie discriminatory can be extricated by any amelioratory constitutional logic or ethic implicit in Arts. 14 and 15. We have set out the parameters within which alone reservation is permissible.

We must go to the roots of the creed of equality and here the case of *State of Kerala v. N. M. Thomas*(1) has critical relevance. That decision dealt with the Scheduled Castes and Art. 16 and certain facilities other than reservation. But the core reasoning has crucial significance in all cases of protective discrimination. The process of equalisation and benign discrimination are integral, and not antagonistic, to the principle of equality. In a hierarchical society with an indelible feudal stamp and incurable actual inequality, it is sophistry to argue that progressive measures to eliminate group disabilities and promote collective equality are anathema on the score that every individual has entitlement on pure merit of marks. This narrow 'unsocial' pedantry subverts the seminal essence of equal opportunity even for those who are humble and handicapped. Meritocracy cannot displace equality when the utterly backward masses labour under group disabilities. So we may weave those special facilities into the web of equality which, in an equitable setting, provide for the weak and promote their levelling up so that, in the long run, the community at large may enjoy a general measure of real equal opportunity. So we hold, even apart from Art. 15(3) and (4), that equality is not negated or neglected where special provisions are geared to the larger goal of the disabled getting over their disablement consistently with the general good and individual merit. Indeed, Art. 14 implies all this, in its wider connotation, and has to inform the interpretation of Art. 15.

Mathew J. in *Thomas's* case (supra) quoted from the Moynihan Report and continued with some insightful comments which we may excerpt: (2) "Here a point of semantics must be grasped. The demand for equality of opportunity has been generally perceived by White Americans as a demand for liberty, a demand not to be excluded from the competition of life- at the polling place, in the scholarship examinations, at the personnel office, on the housing market. Liberty does, of course, demand that everyone be free to try his luck, or test his skill in such matters. But these opportunities

do not necessarily produce equality. On the contrary, to the extent that winners imply losers, equality of opportunity almost insures inequality of results.

The point of semantics is that equality of opportunity now has a different meaning for Negroes than it has for Whites. It is not (or at least no longer) a demand for liberty alone, but also for equality-in terms of group results. In Barard Rustin's terms, 'It is now concerned not merely with removing the barriers to full opportunity but with achieving the fact of equality.' By equality Rustin means a distribution of achievements among Negroes roughly comparable to that among Whites.(1) Beginning most notably with the Supreme Court's condemnation of school segregation in 1954, the United States has finally begun to correct the discrepancy between its ideals and its treatment of the black man. The first steps, are reflected in the decisions of the courts and the civil rights laws of Congress, merely removed the legal and quasi-legal forms of racial discrimination. These actions while not producing true equality, or even equality of opportunity, logically dictated the next steps: positive use of government power to create the possibility of a real equality. In the words of Professor Lipset: "Perhaps the most important fact to recognise about the current situation of the American Negro is that (legal) equality is not enough to insure his movement into larger society."(2) (emphasis added) We agree with this approach and feel quite clearly that the State's duty is to produce real equality, rather egalitarian justice in actual life.

If university-wise classification for post-graduate medical education is shown to be relevant and reasonable and the differential has a nexus to the larger goal of equalisation of educational opportunities the vice of discrimination may not invalidate the rule.

Even so, what is fundamental is equality, not classification. What is basic is equal opportunity, for each according to his ability, not artificial compartmentalisation and institutional apartheidisation, using the mask of handicaps. We cannot contemplate as consistent with Art. 14 a clanish exclusivism based upon a particular university, without more. Alive to these major premises let us examine the merits of the charge of 'admission' discrimination in the present case, Justice Brennan, in a different social milieu, but with a spiritual secular meaning which may not be lost on us, stated:(1) "Lincon said this Nation was 'conceived in liberty and dedicated to the proposition that all men are created equal'. The Founders' dream of a society where all men are free and equal has not been easy to realize. The degree of liberty and equality that exists today has been the product of unceasing struggle and sacrifice. Much remains to be done-so much that the very institutions of our society have come under challenge. Hence, today, as in Lincoln's time, a man may ask 'whether (this) nation or any nation so conceived and so dedicated can long endure'. It cannot endure if the Nation falls short on the guarantees of liberty, justice, and equality embodied in our founding documents. But it also cannot endure if our precious heritage of ordered liberty be allowed to be ripped apart amid the sound and fury of our time. It cannot endure if in individual cases the claims of social peace and order on the one side and of personal liberty on the other cannot be mutually resolved in the forum designated by the Constitution. If that resolution cannot be reached by judicial trial in a court of law, it will be reached elsewhere and by other means, and there will be grave danger that liberty, equality, and the order essential to both will be lost."

Another national risk we run was sounded in words of caution in Khosa's case by Chandrachud, J. (as he then was):(2) ".....let us not evolve, through imperceptible extensions, a theory of classification which may subvert, perhaps submerge, the precious guarantee of equality. The eminent spirit of an ideal society is equality and so we must not be left to ask in wonderment: what after all is the operation residue of equality and equal opportunity?"

Thus the constitutional principles and limitations are clear and the norms are belighted by the precedents but their application to the specific situation is an exacting task. The burden, when protective discrimination promotional of equalisation is pleaded, is on the party who seeks to justify the ex facie deviation from equality. What has the Delhi University stated here? The learned Attorney General frankly admitted that student agitation, without more, could not validate 'reservation' and that excessive reservation was an obvious inequality. Nor, indeed, is it a good plea that illegal reservation is being practised by other universities and the Delhi University is forced to act illegally in self-defence. Lawlessness, under our system, is corrected by the law, not by counter-lawlessness. So it is strange for the Delhi University to say our disorderly behaviour is orderly because other universities behave similarly. Once these misguided defences of direct action by students or reprisals against other universities are brushed aside, we come to grips with the real issues. Is there circumstantial justification for constitutionalising the reservation strategy, especially of 70% plus?

The case for reservation argues itself once we establish an operational relationship between the benign basis of such classified quota or like preference and the object to be achieved viz. promotion of better opportunities to the deprived categories of students or better supply of medical service to neglected regions of our land. But the Delhi University, city or students, do not fit into the criteria.

When a university or other institution may usefully be made the instrument for promotion of facilities for equal educational opportunity for a class or a region, the State may legitimately resort to institutionally classified reservation but Delhi fails to qualify. Again, the integral yoga of equality and excellence at the service of society as already stated, has another rider. In the higher scales of specialised knowledge, be it art, science or technology, superior performance must be accorded recognition, for a variety of consideration. Who but humanity suffers if a rare genius, with a greater flair for or mastery of a key branch of natural or social science, is forced to wither away by a rule of total reservation for its own alumni and proscription of outsiders, by a house of higher learning? Can 'unapproachability', a cultural anathema now in India, attain respectability by being labelled as 'reservation'? No. Therefore, a blanket ban which is the indirect result of a wholesale reservation is constitutional heresy. There must be substantial social justice as *raison d'être* for a high percentage of alumni reservation. The argument urged in answer is that the doors for admission to post-graduate medical courses are almost completely closed for Delhi graduates by all other universities. So, protective reservation becomes necessary as the only hope of Delhi students for post graduate studies. Those real-life factors which show that Delhi graduates are denied *de facto* equality on a national scale by the exclusionism of other universities and that, therefore, they deserve sheltered equal opportunity in actuality by barriers of reservation of a high percentage of seats-such being the University's defence must be made out and not merely asserted. This contention deserves close examination, not summary rejection.

The mechanics of merit measurement is simple. All applicants, whichever the University from where they have taken M.B.B.S. degree, must apply for a common entrance test. The yard-stick of merit is the marks obtained. Thereafter 70% of the seats is allotted to Delhi graduates and the balance 30% is selected from out of all the remaining applicants, Delhi graduates included. So much so, Delhi graduates get much more than 70% of the total seats. Although the stage of application of reservation may bear upon the effective quantum of advantage, the principal question is as to whether a minimum of 70% for the Delhi graduate alone is not far too excessive, based on extraneous agitational factors and essentially contradicting Arts. 14 and 15?

If equality of opportunity for every person in the country is the constitutional guarantee, a candidate who gets more marks than another is entitled to preference for admission. Merit must be the test when choosing the best, according to this rule of equal chance for equal marks. This proposition has greater importance when we reach the higher levels of education like post-graduate courses. After all, top technological expertise in any vital field like medicine is nation's human asset without which its advance and development will be stunted. The role of high grade skill or special talent may be less at the lesser levels of education, jobs and disciplines of social inconsequence, but more at the higher levels of sophisticated skills and strategic employment. To devalue merit at the summit is to temporise with the country's development in the vital areas of professional expertise. In science and technology and other specialised fields of developmental significance, to relax lazily or easily in regard to exacting standards of performance may be running a grave national risk because in advanced medicine and other critical departments of higher knowledge, crucial to material progress, the people of India should not be denied the best the nation's talent lying latent can produce. If the best potential in these fields is cold-shouldered for populist considerations garbed as reservations, the victims, in the long run, may be the people themselves. Of course, this unrelenting strictness in selecting the best may not be so imperative at other levels where a broad measure of efficiency may be good enough and what is needed is merely to weed out the worthless.

Coming to brasstacks, deviation from equal marks will meet with approval only if the essential conditions set out above are fulfilled. The class which enjoys reservation must be educationally handicapped. The reservation must be geared to getting over the handicap. The rationale of reservation must be in the case of medical students, removal of regional or class inadequacy or like disadvantage. The quantum of reservation should not be excessive or societally injurious measured by the over-all competency of the end-product, viz. degree-holders. A host of variables influence the quantification of the reservation. But one factor deserves great emphasis. The higher the level of the speciality the lesser the role of reservation. Such being the pragmatics and dynamics of social justice and equal rights, let us apply the tests to the case on hand.

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

M.B.B.S. is a basic medical degree and insistence on the highest talent may be relaxed by promotion of backward groups, institutionwise chosen, without injury to public welfare. It produces equal

opportunity on a broader basis and gives hope to neglected geographical or human areas of getting a chance to rise. Moreover, the better chances of candidates from institutions in neglected regions setting down for practice in these very regions also warrants institutional preference because that policy helps the supply of medical services to these backward areas. After all, it is quite on the cards that some out of these candidates with lesser marks may prove their real mettle and blossom into great doctors. Again, merit is not measured by marks alone but by human sympathies. The heart is as much a factor as the head in assessing the social value of a member of the profession. Dr. Samuel Johnson put this thought with telling effect when he said :

"Want of tenderness is want of parts, and is no less a proof of stupidity than of depravity".

We have no doubt that where the human region from which the alumni of an institution are largely drawn is backward, either from the angle of opportunities for technical education or availability of medical services for the people, the provision of a high ratio of reservation hardly militates against the equality mandate-viewed in the perspective of social justice.

We have two weighty differentiating factors here. Delhi is in no sense an educationally or economically backward human region, measured against the rest of our country. The students of Delhi, who are likely to seek admission to medical colleges, belong to classes higher in the scale than in most parts of India. As explained earlier the presence of huge central administrative establishments and higher echelons of the public services, members in numbers of the political aristocracy, thanks to Delhi being the seat of Parliament, countless executives clustering around big business and industrial houses and offices and many educational, research and other institutions, professional organisations, the Supreme Court, the High Court, and their natural human concomitants in the upper socio-educational scale, make Delhi and the Delhi University the cynosure of the privileged species in a land of under-privileged penury. Of course, like in any megalopolis of a developing country, slums and other symptoms of deprivation show up and the desperately poor denizens below the visibility line ubiquitously abound. But they are not the potential candidates for medical admission or service and cannot be used as 'alibi' for reservation. In what sense, regard being had to over-all Indian conditions, can it be said that Delhi or the Delhi University, is backward or serves, through the medical colleges of its University, the students who will settle down to alleviate suffering in that region, Secondly, and more importantly, it is difficult to denounce or renounce the merit criterion when the selection is for post-graduate or post-doctoral courses in specialised subjects. There is no substitute for sheer flair, for creative talent, for fine-tuned performance at the difficult heights of some disciplines where the best alone is likely to blossom as the best. To sympathise mawkishly with the weaker sections by selecting sub-standard candidates, is to punish society as a whole by denying the prospect of excellence say in hospital service. Even the poorest, when stricken by critical illness, needs the attention of super- skilled specialists, not humdrum second-rates. So it is that relaxation on merit, by over-ruling equality and quality altogether, is a social risk where the stage is post- graduate or post-doctoral.

Of course, we should not exaggerate this factor. Post- graduate studies are not all that great and demanding as to invite only geniuses.

We cannot be scared by glorifying merit nor be hypnotised by the cult of talent, seeing as we do, crowds of M.Ds, M.Ss and their foreign analogues. Nor, indeed, are the entrance tests any but the feeblest yardsticks to measure innate capabilities. Is it not the wildest hostage to fortune to swear by marks alone which are so freakish and determined by a chancy variety of variables ? We find different modes of examining faculties in different universities, commissions and countries and may, on closer scrutiny, pick holes in the scientific basis of our entrance tests themselves. We repeat all this only to stress the limitations on the current system of selection so that we may not be swept off our feet by the elitist feeling that something sacred or scientific is being jettisoned for the sake of accommodating nitwits of backward regions institutions or classes when marks are slightly slurred over. Even so, being realists, we go by existing methodology until better modes are devised.

In the light of this discussion about the know-how and know-why of reservations, what are the conclusions that emerge vis a vis the Delhi graduates ? Neither Delhi nor the Delhi University medical colleges can be designated as categories which warrant reservation. But there is one weighty circumstance which must be in our remembrance. Reservation for Delhi graduates is not that invidious because, as stated in the beginning, the students are from families drawn from all over India. Not 'sons of the soil' but sons and daughters of persons who are willy nilly pulled into the capital city for reasons beyond their control. This reservation is, therefore, qualitatively different.

There is another pathological condition affecting 'medical admissions' which is at the back of the desperate 'satyagraha' of the students and this factor tilts the scale a great deal. Counsel for the University, supported by fragmentary material pointing to a pan-Indian tendency, argued that all the country round every university bangs, bars and bolts the doors of medical admission to outsiders and if Delhi alone were to keep its doors hospitably ajar where are the Delhi graduates to go for higher studies if squeezed out by All-India competition ? If reservation is evil, the embargo everywhere must be lifted, lest evil should beget evil. So long as other universities are out of bounds for Delhi graduates, exposure to all-India competition becomes intense and prejudices their chances. This indirect, real yet heavy handicap creates an under- current of discrimination and cannot be wished away and needs to be antidoted by some percentage of reservation or other legitimate device.

Another consideration which justifies some measure of reservation is the desire of students for institutional continuity in education.

Parents, pupils and teachers will usually prefer such continuity and it has its own value.

We recognise that institution-wise reservation is constitutionally circumscribed and may become ultra vires if recklessly resorted to. But even such rules until revised by competent authority or struck down judicially, will rule the roost. That is why we have to concede that until the signpost of 'no admission for outsiders' is removed from other universities and some fair percentage of seats in other universities is left for open competition the Delhi students cannot be made martyrs of the Constitution.

Even so, 'reservation' must be administered in moderation, if it is to be constitutional. Some central technical institutions like the All India Institute of Medical Sciences, Delhi and Chandigarh and the Pondicherry Medical College have a much smaller fraction. Their circumstances may be different and we do not have the full facts, neither side having furnished more than fragments. Judicial surmise is too weak to be of decisional certainty. For reasons we have assigned 70% plus is too high at the post-graduate level in the half-proved circumstances. But we stop short of invalidating the rule because the facts are imperfect, the course has already started and the court must act only on sure ground, especially when matters of policy, socio-educational investigation and expert evaluation of variables are involved. Judges should not rush in where specialists fear to tread. We spare the impugned regulation even though we are, *prima facie*, sceptical about the vires thereof. To doubt is not enough to demolish. When fuller facts are placed, the court will go into this question more confidently.

While reluctantly repelling the challenge of the petitioner we think two directions must be made in this case. If 70% reservation is on the high side and the petitioner is hopefully near 'admission' going by marks and reservation, it is but just that he is given a chance to do his post-graduate course. Indeed, his coming to Delhi itself was a compulsion beyond his control, as we have noted earlier.

The petitioner, going by marks, deserves admission to the postgraduate degree course although he is now in the post-graduate diploma course. So we direct him to be admitted to the degree course this year, if the rules of attendance etc., do not stand in the way and the Medical Council makes an exception by agreeing to addition of one seat as a special case for this year.

More importantly, we direct the University forthwith- not later than two months from to-day-to appoint a time- bound committee to investigate in depth the justification for and the quantum of reservation at the post- graduate level from the angle of equality of opportunity for every Indian but taking into consideration other constitutionally relevant criteria we have indicated in this judgment. That committee will study facts and figures and the reservation realities of other universities and make recommendations on the question of university-based reservations and allied aspects as well as the *modus operandi* for implementation. The Committee will be richer if it has a constitutional expert and a representative of the Indian Medical Council on it. Its report shall be considered by the University as soon as may be, so that, if possible, the admissions for next year may be governed by the revised decisions of the concerned organs informed by the report.

We are disturbed by the tendency to wall of each university as an insulated island of education, mindless of the integrated unity and equal opportunity which are an inalienable part of our constitutional value system. There is good reason for reservation in many cases but the promiscuous, even profligate application of an exception as a rule of educational life by forward cities and universities will boomerang on the nation in the long run. The Union of India has a special responsibility to ensure that in higher education provincialism does not erode the integrity of India. Who lives if India dies, is a poignant interrogation with cultural projections in many dimensions which our administrators are not, we hope, innocent of : Mutations in reservations in other universities need not await litigation but can be undertaken before the court process is set in

motion. The dialectic of constitutional protection in the dynamic context of equality in a developing country has been presented by us at some repetitive length so that the voyage of re-thinking may not suffer from navigational errors.

The Indian Medical Council is the statutory body at the national level whose functional obligations include setting standards for as well as regulation and coordination of medical education. What with a growing number of universities with divergent settings, standards and goals and a motley crowd of students with diverse academic and social backgrounds and ambitions, the prescription and invigilation of flexible yet principled norms regulating the entrance into medical courses and training of medical graduates at various levels of specialization are a demanding and dynamic task. The I.M.A. cannot be a silent spectator or a static instrument but must initiate, activist fashion, steps to make Indian medical education a meaning asset to the nation's healing and hospital resources and a discipline with broad uniformity and assured standard. The Central Government, witness to a deteriorating situation, cannot but act to negate the confusing trend of fall in quality and conflict among universities.

We may wind up by articulating the core thought that vitalises our approach. Anyone who lives inside India can never be considered an 'outsider' in Delhi. The people in the States are caught in a happy network of mutuality, woven into a lovely garment of humanity, whose warp and woof is India. This is the underlying fundamental of the preambular resolve registered in our National Parchment. So we insist that blind and bigoted local patriotism in xenophobic exclusivism is destructive of our Freedom and only if compelling considerations of gross injustice, desperate backwardness and glaring inequality desiderate such a purposeful course can protective discrimination gain entrance into the portals of college campuses. The Administration has a constitutional responsibility not to be a mere thermometer where mercury rises with populist pressure but to be a thermostat that transforms the mores of groups to stay in the conscience of the nation, viz. the Constitution.

We dispose of the petition with these twin directions leaving the parties to suffer their costs.

PATHAK, J. I have had the benefit of reading the judgment prepared by my learned brother V. R. Krishna Iyer and while I agree with him that the writ petition should be dismissed, I propose to state my own reasons.

The validity of a reservation of 70% of the seats in the post-graduate classes by the Delhi University in favour of its own medical graduates is assailed in this writ petition. The basis of the reservation is the consideration that the candidate for admission to the post-graduate classes is a medical graduate of the same University. No question of backward classes, scheduled castes and scheduled tribes, is involved. Criteria pertinent to reservation concerning them are, it seems to me, not relevant at all. Nor strictly is the test requiring a territorial nexus -the University does not insist that the candidate should hail from any particular region or State for the purpose of the 70% reservation. The relationship is entirely institutional- those who have graduated from the medical colleges run by the Delhi University are favoured for admission to the post- graduate classes. In my opinion, there is sufficient validity in that consideration. It is not beyond reason that a student who enters a medical

college for his graduate studies and pursues them for the requisite period of years should prefer on graduation to continue in the same institution for his post-graduate studies. There is the strong argument of convenience, of stability and familiarity with an educational environment which in different parts of the country is subject to varying economic and psychological pressures. But much more than convenience is involved. There are all the advantages of a continuing frame of educational experience in the same educational institution. It must be remembered that it is not an entirely different course of studies which is contemplated; it is a specialised and deeper experience in what has gone before. The student has become familiar with the teaching techniques and standards of scholarship, and has adjusted his responses and reactions according. The continuity of studies ensures a higher degree of competence in the assimilation of knowledge and experience. Not infrequently some of the same staff of Professors and Readers may lecture to the post-graduate classes also. Over the under-graduate years the teacher has come to understand the particular needs of the student, where he excels and where he needs an especial encouragement in the removal of deficiencies. In my judgment, there is good reason in an educational institution extending a certain degree of preference to its graduate for admission to its post-graduate classes. The preference is based on a reasonable classification and bears a just relationship to the object of the education provided in the postgraduate classes. The concept of equality codified in our constitutional system is not violated. It has been said sometimes that classification contradicts equality. To my mind, classification is a feature of the very core of equality. It is a vital concept in ensuring equality, for those who are similarly situated alone form a class between themselves, and the classification is not vulnerable to challenge if its constituent basis is reasonably related to achieving the object of the concerned law. An institutional preference of the kind considered here does not offend the constitutional guarantee of equality.

But the question really is : Is the degree of reservation excessive ? Is 70% too much ? Too excessive a reservation could result in preference to graduate candidates of severely limited aptitude and competence over meritorious candidates from other institutions whose exclusion could result in aborting a part of our national talent. The determining factor, it appears to me, is the measure of reciprocity prevailing between the different educational institutions in India regarding the availability of admission to graduates of other institutions. It can hardly be supposed that if the medical graduates of the Delhi University are shut out from adequate consideration for admission to the post-graduate courses of other institutions merely because they did not graduate from those institutions they should not think it unjust that the hospitality of their own University to outside medical graduates leaves insufficient provision for them. Not to be able to take post-graduate studies at all implies the termination of their medical studies. This is a problem which can be tackled only on a national level, with all Universities and other medical institutions coming together around a common table with the object of fashioning out a mutual reasonable quota reservation. A wise and far-sighted exercise, eschewing narrow parochial considerations, is called for. It is only by a joining of hands across the entire nation that a suitable and enduring solution can be evolved and the turbulence which disturbs the student body set at rest.

My learned brother has referred to the considerable attraction which an educational institution in New Delhi exerts over students from other parts of the country. I confess I do not share the view entirely. So much, I think, depends on the choice of a particular subject or course of studies by the

candidate. And medical course are not all necessarily to be found only in New Delhi. They are located in other parts of India and some of those well-known centres of medical education have at least an equal reputation in certain fields of specialised study. I am reluctant to accept the proposition that because New Delhi is the political, legislative and judicial capital of India, an education of quality is not to be found in other cities. Merely because New Delhi is the new Capital of Delhi does not justify a disproportionate treatment of the claim to equality on a national level made by its medical graduates.

The question remains : Is a reservation of 70% excessive ? We have travelled through the record, and I agree with my learned brother that the material is so scanty, fragmentary and unsatisfactory that we are prevented from expressing any definite decision on the point. Although we gave sufficient opportunity to the parties, the requisite material has not been forthcoming. Whether or not a reservation of 70% was called for has not been established conclusively. Indeed, there is hardly anything to show that the authorities applied their mind to a cool dispassionate judgment of the problem facing them. Popular agitation serves at best to arouse and provoke complacent or slumbering authority; the judgment and decision of the authority must be evolved from strictly concrete and unemotional material relevant to the issue before it. Unfortunately, there is little evidence of that in this case. For that reason, I join my learned brother in the directions proposed by him.

The petitioners have raised other contentions also, principally resting on the allegation that the University of Delhi is a centrally administered institution, but I see no force in those submissions.

Accordingly, subject to the two directions proposed by my learned brother the writ petition is dismissed and the parties shall bear their own costs.

N.V.K.

Petition dismissed.