commercial value of famous personalities. In a recent ruling given by the WIPO complaint and arbitration centre on June 2nd 2000. The claim of Julia Roberts a famous film star was accepted by WIPO. She protested when it had come to her knowledge that an American dealer had registered a domain name as Julia Roberts Com. The dealer Russel Boyd of Princeton said that he had selected that name as "a tribute to the actress and that Julia Roberts had no trade mark registered in her name". He even claimed that no common law right can be granted over her name. Mr. Boyd made a statement before the WIPO panel that " if Julia Roberts had picked up the phone and said "Hi Russ, can we talk about the domain name of Julia Roberts.com. She would have owned it by now". The WIPO Tribunal ruled that Boyd had no rights nor 1egitimate interest in the domain name and that Boyd had registered it in bad faith. It ordered the transfer of the domain name to Julia Roberts. Julia Roberts had to justify her claim by proving either of the following elements - (1) That the domain name was identical to her name or (2) She had a trade mark right over that name or (3) That the domain owner had no legitimate right over the name or (4) That the use of domain owner was in bad faith. The argument of the plaintiff was that though she had not registered any trade mark on her name yet she could prove that her name carries a "distinctiveness" and though it was only a name it carried a secondary meaning over which she could claim a monopoly and prohibit others from using it. Evidence proved that the domain owner had no legitimate right over that name. He can neither claim exemption on the grounds of fair use. He had in fact on several occasions indulged in the business of registering domain names using the names of celebrities and selling by auction. This illegitimate practice was not approved by the WIPO panel and he was ordered to transfer the domain name in favor Julia Roberts.

Conclusion - The final question that remains unanswered is - Why must all intangible interests of economic value be given a status of a property right? It is true that the popularity of a celebrity is to be cherished and nourished yet to give them an extra right of exclusivity delinks them from their ardent fans that have raised them on a high pedestal. Taking advantage of their popularity the celebrities hike their signing amounts from the producers. Therefore it would be unfair to give them yet another source of income by granting them exclusive rights to use their name. More over the rights such as copyrights have an in built system of permitting the use of copyrights for a fair use and in cases of parody. Taking into account the public interest in the use of the name and fame and to appease the curiosity of the general public to know the details of the people they idolize absolute rights cannot be granted to the celebrities. In conclusion it would be proper to quote the statement made by Princess Diana during the course of an interview with the BBC in 1995 "they have decided that I am still a product after 15, 16 years that sells well. They shout at me. Oh Di, look up if you give us a picture I can get my children to a better school". It is therefore not surprising that as long as celebrities remain as saleable commodities, new forms of misappropriation of the good will and reputation earned by the famous personalities will emerge as there is no end to human ingenuity. Clear legislation is awaited in this regard.

UNITY IN DIVERSITY – DIVERSITY A PLUS FACTOR IN ADMISSIONS TO THE LAW SCHOOLS OF UNITED STATES

By

–Dr. T. VIDYA KUMARI,

Principal, Post Graduate College of Law, Osmania University

Introduction:—Admissions in all the Universities across the world have always being subjected to perpetual litigation, as it is at this stage that the future prospects of

students take a concrete shape when they are admitted in good colleges. The two recent judgments of the Supreme Court in the case of *Grutter v. Bollinger,* 288 F. 3d 732 (6th Circuit 2002), and *Gratz v. Bollinger,* 122 F Supp. 2d 811 ED Michigan 2000, that was decided on June 23rd 2003 have highlighted the role of the Universities in shaping the character of the students and make them worthy citizens of the Nation. The admission policies of the Michigan Law School and in the Michigan University College of Literature, Science and Arts was subjected to judicial review. While in the case of *Grutter v. Bollinger.* The admission policies were accepted as being constitutionally valid. In *Gratz v. Bollinger* the selection process of the College of Literature, Science and Arts was struck down for being discriminative and for providing extra benefit by allotting 20 marks merely on the grounds that they belong to minority races.

These cases have gained prominence as none other than the highest executive of the land, the President Bush made public pronouncements attacking the admission policies based purely on race and ethnicity. In the two cases the honourable justices laid out clearly the noble mission of the Universities to educate the students not only in the course contents but also train the students to develop virtues of "respect" and to understand different races and culture and to interact with them in a personal level. By admitting students of different races, the Universities infuse "diversity" into formal learning situations and into the curriculum on campus.

It is the responsibility of all Universities to help in developing self-confidence within the students and equip them properly to face an increasingly complex social and political realities in the country and the world at large.

Grutter v. Bollinger The Facts of the Case: The Michigan Law School ranks among the Nation's Top Law Schools it receives 3500 application every year for a class of around 350 students. The admissions are given to the most capable candidates and the Law School looks for individuals with "substantial promise for success in the Law School" and admission are granted, when there is" A strong likelihood of succeeding in the practice of Law and contributing in diverse ways to the well being of others". The Law School seeks a mix of students with varying backgrounds and experiences who will respect and learn from each other. This policy requires admissions officials to evaluate each applicant based on all information available in the personal file of the applicant and various factors including a personal statement, letters of recommendation, and an essay describing the ways in which the applicant will contribute to the life and diversity of the Law School are all considered for admitting the students. The policy as a whole after considering the scores of the admission test stresses that no applicant should be admitted unless the Law School expects and is satisfied that the applicant would do well enough to graduate with no serious academic problems. The policy makes clear however that even the highest possible scores secured in the admission test does not guarantee admission to the Law School nor does a low score automatically disqualify an applicant. The policy requires that the admission officials looks beyond grades and tests scores to other criteria that are important to the Law Schools educational objectives. The soft variables include the enthusiasm of recommenders, the quality of the under graduate institution, the quality of the applicants essay and the areas and difficulty of the under graduate course selection are all brought to bear in assessing an applicant's likely contributions to the intellectual and social life of the institutions.

When the Law School denied admission to petitioner Grutter, a white Michigan resident with a 3.8 GPA and 161 LSAT score, she filed this suit alleging that the respondents have discriminated against her on the basis of race in violation of the 14 amendment, and title VI of the Civil Rights Act of 1964 and 42 U.S. Code Section 1981 and that she was rejected because the Law School uses race as a "predominant factor" giving applicants

belonging to certain minority groups a significantly greater chance of admission than students with similar credentials from disfavored racial groups and that the respondents had no "compelling interest" to justify the use of race. The main thrust of the *amici curiae* briefs file by various institutes as a friend of the Court in support of the University of Michigan provides additional voice that supports "diversity" in higher education and lays emphasis on the necessity of race conscious admissions. The University at large contented was that racial, ethnic and other kinds of diversity provide high quality education in the fields of Engineering, Science, Social Sciences and Humanities. Progress lies in collaboration with people from different background ideals and perspectives. The survey conducted by various colleges revealed that college education contributes in an essential way to the ability of students to relate well with other individuals and when they interact with students of different races it would leave a lasting impact on the students psyche during and after college. It would also enhance the educational benefits of every student. The District Court found the admission system as unlawful for having used race as an admission factor, the 6th circuit reversed the decision upholding the decision of Bakke and allowed race as merely a potential "plus" factor. The Supreme Court confirmed the decision of the appellate Court and held that the "narrowly tailored" use of race in admissions was not unconstitutional and that there was a compelling interest to allow diverse student body and that it was not prohibited by the Equal Protection Clause, title VI of the Civil Rights Act and Section 42US Code Section 2000d or Section 1981.

The case in study shows that the *amici curiae* filed in support of the Michigan University was not restricted to only Universities but included corporate bodies such as Du Point an industrial science and engineering based company, wherein it stressed the need for training students to equip them in facing the diverse society. It stated that Diversity is a core value in all walks of life, while diverse student body helps the student to sharpen their intellectual capacities by studying their academic course from various angles with different ideas, perspectives. Using these techniques the students can later adapt themselves to various diverse work forces that leads to better understanding of markets and to develop new customer bases and market opportunities by offering greater understanding of customers who themselves represent many races, cultures experiences. Diversity leads to increased creativity productivity and success in all fields. Therefore the Courts have laid stress to adopt innovative admission policies and not confine their policies to rigid archaic practices of evaluating the students by the marks awarded in the entrance test.

Affirmative Action Versus Diversity - Affirmative action was rejected by the US Courts. The legislations and the Courts have rejected policies that lead to intentional segregation.

The Equal Protection Clause of the fourteenth Amendment explains that "no State shall..... deny to any person within its jurisdiction, the equal protection of the laws"

"42 US Code Section 2000d.No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, or denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal Financial Assistance".

US Code Section 1981. Equal Rights Under the Law: (a) All persons within the jurisdiction of United States shall have the same rights in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

(b) "Make and enforce contracts" defined for purposes of this section, the term make

and enforce contracts includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.

(c) Protection against impairment: The rights protected by this section are protected against impairment by non-governmental discrimination and impairment under color of State Law.

While undue preferences, quotas, separate tracks are rejected as forms of affirmative action however, "diversity" has always being encouraged in the Landmark Case of Regents of the *University of California v. Bakke,* 438 US 265 (1978),. The Supreme Court permitted continuation of race-conscious policies in colleges and universities by a single vote. The Court was so fragmented between the supporters and opponents of the race-conscious policies that in the Case 6 of 9 justices put forth divided perspectives, only one justification for continuing the admission policy in pursuit of diversity was given by Justice Powell. In the *Bakke's* case the "compelling interest" identified by justice Powell in adopting the racial policy was that "the attainment of a diverse student body is a constitutionally permissible goal of the university. In his decision Justice Powell quoted the ratio in *Sweezy v. New Hampshire*, 354 US 234 (1957)" it is the business of a University to provide that atmosphere which is most conducive to speculation, experiment and creation. It an atmosphere in which there prevails the four essential freedoms of a University - to determine for itself on academic grounds who may teach, what may be taught, how it shall be taught, and who should be admitted to study. He also pointed out another important precedent laid down in *Brown v. Board of Education*, 347 US 483, 493 (1954), wherein the importance of education was highlighted - "Education is the very foundation of citizenship". Since 1989 this judgment has been in vogue narrowing the policies based on race. While the Supreme Court had not undertaken any review of its earlier decisions, the Courts strongly attacked the validity of diversity in the case of *Hopwood v. State of Texas*, 1996 76 F 3d 932 at 945 5th circuit 1996, where in the University Texas Law School policies were rejected forbidding any consideration of race in admissions similarly. In the year 2000 in states such as Georgia the affirmative admissions policies of the University of Georgia was also prohibited. The California referendum forbidding affirmative action at public universities has been accepted as valid by a federal Court. The race conscious policies should establish a "compelling interest" to prove its validity. It also should be "narrowly tailored" to achieve constitutional goals.

Special emphasis made for legal education- In the case of *Sweatt v. Painter*, 339 US 629 (1950), the Supreme Court held that, although Law is a highly professional course it is also an intensely practical one. Law School the proving ground for legal learning practice cannot be effective in isolation from the individuals and the institution with which the law interacts. Few students and no one who has practiced law would choose to study in an academic vacuum, removed from the interplay of ideas and the exchange of views with which the law is concerned". This decision has reiterated the fact that law is an area in which effective analysis and advocacy is required for which a deep understanding of a various points of view on key legal issues are necessary. Social and economic realities have to be dealt in great depth. It needs personal contacts relationships during the training period, which forms a vital and invaluable resource for succeeding in this profession. In consonance with the above decision Justice Powell in the *Bakke's* case accepted the admission program of the Harvard University. The University while describing its program stated that "when the committee on admissions reviews the large middle group of applicants who are deemed capable of doing good work in their courses, the race of the applicant may tip the balance in his favor just as geographic origin or a life spent on a farm may tip the balance in other candidates cases. A farm boy can bring something to the Harvard College that a

Bostonian cannot offer. Similarly a black student can bring something which a white person cannot offer". Therefore, the Harvard report reasoned that faced with the dilemma of choosing among a large number of qualified candidates it is not possible to use only one method of taking into consideration the scores awarded in the entrance examination. This approach would affect the vitality quality and the intellectual excellence that has to be offered to the students. Therefore, the Harvard consistently believed that diversity is a fundamental requirement for imparting best education to the students so that the students may relate well with other students and with the society at large. This decision in the *Bakke's* case was discarded in 1996 by the 5 Circuit Court of appeal in the *Hopwood* case and similarly in 1999 *Tracy v. Board of Regents of the UGA,* 59 F. Supp. 2d 1314, 1322 (S.D. Ga 1999), the District Court did not accept diversity justification for affirmative action. Justice *B. Avant Endfield* was skeptical about the efficacy of diversity justification for affirmative action and held that diversity does not foster any educational benefits.

In this background of fundamentally differing interpretations of social reality, the Supreme Court in *Grutters* case reacted cautiously and after strict scrutiny gave its stamp of legality to the race conscious policy of the Michigan Law School. The policies were therefore subjected to strict scrutiny which is highest standard of Judicial review in which the Courts assess both the importance of the goals underlying the policy and the means by which those goals are attained. The Supreme Court evaluated the policy by applying two tests (i) The Compelling Governmental Interest (ii) The Narrow Tailoring Test

(1) The policy should serve a **Compelling Governmental Interest.** The governmental interest can be divided into remedial interest and non-remedial interest.

(a) **RemediaI Interest:**

(i) ***Remedying the present effects of past discrimination:*** The US Courts have uniformly held that the government has a compelling interest in remedying the present effects of its past discrimination for example - A University that had denied admission to African American Applicants because of race for several years can now have a compelling interest in remedying a the current lack of African American students in its student body and can employ a race conscious policy so that the neglected race would find a place in the institution. This is the form of correcting the past sins.

(b) **Non-Remedial Interest:** In case preferential treatment is given not to rectify the past discrimination but encourage a diverse student body it is a form of compelling governmental interest. The Harvard University had adopted in its admission pattern a means to promote diversity in the colleges. When this policy was challenged in the case of Regents of the *University of California v. Bakke Justice Powell* adopted the test of compelling interest by suggesting that race could be a factor in higher education admissions if the goal of the admission policy is to promote diverse student body. He emphasized on educational diversity rather than racial or ethnic diversity.

The Narrow Tailoring Test: This test is designed to evaluate whether a race conscious policy is necessary to satisfy a legally valid objective. The Narrow Tailoring Test evaluates all policies under 4 main headings as given in the Supreme Court decision of *U.S. v. Paradise*, 480 US 149 (1987), (1) the necessity for the relief and the efficacy of alternate remedies (2) The flexibility and duration of the relief including the availability of waiver provisions (3) the relationship of numerical goals to the relevant market and (4) the impact of the relief on the rights of third parties.

(1) The necessity for the relief and the efficacy of alternative remedies: As stated earlier the scheme of admission policies was to encourage a diverse student body. To achieve this goal the other alternate remedies can be in the form of quotas, by lottery or by the lowering the required points to minority

classes necessary to qualify in the entrance examination. Quotas impose a fixed number or percentage that should be achieved and given to a fixed number of minority groups irrespective of the fact whether the candidate is suitable to the course or not. Such blatant discrimination has not been accepted by the US Courts; similarly admitting by way of lottery is also not beneficial. Lowering admission standards to a minority class can also have a serious impact on the quality and excellence of the institution therefore the Michigan Law School had adopted a policy which enhances the academic excellence by providing a flexible approach which considers both racial and non-racial factors. It maintained a special commitment to attain a "a Critical Mass" of un-represented minority students which reflects the goal of attaining a considerable diversity that exceeds a mere token number so that all races participate in the academic program of the University.

(2) The flexibility and duration of the relief: The admission policy was flexible as it used race as only a plus factor among various other admission factors it did not lay out any fixed number nor did it set out separate tracks to insulate minorities from the general class. In fact the admission policies evaluated each applicant as an individual and the applicants race or ethnicity was not considered as a defining feature of his or her applications. All the factors that are taken into consideration ensure that the candidate contributes meaningfully to the diverse student body.

(3) The relationship of numerical goals to the relevant market: The benefits of diverse student body includes concrete educational benefits that includes discarding stereo type mind set within minority groups and help in developing a socially integrated society. The representation made by the military also is a highlight of this case, wherein the military asserted that a highly qualified racially diverse officer Corps is essential to fulfill the principal mission of the military to provide National security. The Supreme Court clearly gave its ruling that we have repeatedly acknowledged the over riding importance of preparing students for work and citizenship, described "education as pivotal to sustaining our political and cultural heritage with a fundamental role in maintaining the fabric of society".

(4) The impact of the relief on the rights of third parties: The Law School engaged in a highly individualized, holistic review of each applicants file had taken into consideration to all factors where by an applicant might contribute to a diverse educational environment. It did not give any bonus points based on race or ethnicity. Therefore, the Supreme Court held that the use of race as a plus factor without giving any greater weightage cannot have a detrimental impact on the rights of non-minority students seeking admission into the same course.

The Supreme Court therefore on applying the two above said tests came to the conclusion by taking into consideration the special features of the course offered. Being a law course interaction with diverse cultural backgrounds is very essential for this particular profession. It also considered the impact of these policies on non-minority students the Supreme Court stated that this program should be for a limited period and the limit stipulated by the Court was 25 years. It stated that though an institution conducting a law program may have a permanent benefit of diverse student body, it emphasized that it should be terminated with in a reasonable period so as to assure that there would not be any deviation from the basis norm of equal treatment. All special benefits should be for a temporary period and it should sub-serve the goal of equality. The Court concluded that the effectiveness of the policies should be periodically revaluated and reviewed and should prove beneficial to the society at large.

Gratz v. Bollinger: Facts of the case - Petitioners Gratz and Hamacher were Michigan residents and had applied for admission to the University of Michigans College of Literature, Science and Arts (LSA). The petitioners were denied admission to the courses conducted by this college they filed the present suit challenging the admission policies. Although LSA considered Gratz to

be well qualified and Hamacher to be with in the qualified range both were denied admission. The main contention of the plaintiffs was that the selection policy adopted undue preference to racial and ethnic minority groups by automatically awarding 20 out of 100 marks needed to guarantee admission to the courses offered by the institution. The petitioners sought declaratory and injunctive relief. The admission policy stipulated that while 150 points is the maximum points for admission to the course it considered various factors including grades (upto 80 points), standardized test scores, socio-economic status, geographic factors, Alumini relation ship, personal achievements, leadership and service skills, Writing an outstanding essay. However, the offending part of this scheme of admission was in awarding automatically 20 points to the unrepresented minority racial and ethnic groups. These 20 points was also available to individuals from socio economically disadvantaged backgrounds, students of predominantly minority high schools, scholar ethnics, individuals with special qualities identified by the University provost.

This case gained great significance with the brief submitted by the government and with the public announcement of President Bush.

The Government Brief- The case has gained great importance due to the remarks made by the President Bush before submitting the Brief challenging the admissions in the Michigan University. He stated that "America is a diverse country, racially, economically and ethnically". The institution of higher education should reflect the diversity of the country. A college education should teach respect and understanding and goodwill, all these values are strengthened when students live and learn with people from many backgrounds yet quota systems that use race to include or exclude people from higher education and the opportunities it offers are divisive, unfair and impossible to square to the constitutions. In the programs under review by the Supreme Court, the University of Michigan has established an admissions process based on race. At the undergraduate level African American students and some Hispanic students and native American students receive 20 points out of a maximum of 150 not because of any academic achievement or life experience, but solely because they are African American Hispanic or native American. To put this in perspective, a perfect SAT score is worth only 12 points in the Michigan System. The Student who accumulate 100 points are generally admitted so those 20 points awarded solely based on race are often the decisive factor. At the Law School some minority students are admitted to meet percentage targets while other applicants with higher grades and better scores are passed over. This means that students are being selected or rejected based primarily on the colour of the skin. The motivation for such admission policy may be very good but its result is discrimination and that discrimination is wrong. Some states are using innovative ways to diversify their student bodies. Recent history has proven that diversity can be achieved without using quotas. System in California, Florida and Texas have proven that guaranteeing admissions to top students from high schools through out the state, including low-income neighbor hoods, colleges can attain broad racial diversity. In these States, race neutral admission policies have resulted in levels of minority attendance for incoming students that are close to, and in some instances slightly surpass those under the old race based approach. The schools should seek diversity by considering a broad range of factors in admissions including a students potential and life experiences the University Officials have therefore, the responsibility and the obligation to make a serious, effective effort to reach out to students from all walks of life, without falling back on unconstitutional quotas". In his lengthy discourse he highly condemned the admission policy of the Michigan University.

The majority opinion of the Supreme Court authorized by chief justice Renhnquist, found that the undergraduate policy to be unconstitutional because it automatically assigned points to members of unrepresented minority groups. It lacked the flexibility and

individualized consideration mandated in the *Bakke* and *Grutter* case. It did not indicate a lower allocation of points to the minority groups, and expressed clear disapproval of allotting l/5th of the points needed to guarantee admission solely on race. Such methods were held to be similar to quotas and separate tracks, which was declared always as unconstitutional. While Justice Souter in his dissenting judgment opined that an equivalent number of points was available to other socio economic disadvantaged class. The policy at large was rejected, as allotting marks to other classes would not serve any beneficial purpose other than creating a strong minority applicant pool.

Conclusion: The decision of the US and the various surveys and records placed before it including an extensive report in the form of Gurin report (see the case of *Daubert v. Merrell Dow Pharm Inc,* 509 US 579, 597 (1993), that form a part of the petition for seeking diversity show an unflinching support to the policies of the universities that focus on the development of the students as worthy citizens of the nation. While money and power are keys to gain admission in good institutes surveys have proved that it is not a proper method of educating students. The experience gained in Gurukuls of ancient days have been reported as the best form of education which had permitted the king's son to study along with the son of a poor peasant. Education is not merely knowledge it is a means to develop the character of an individual as a human being to serve mankind. These cases are of considerable importance and can have a great impact on education policies across the world. There has been a considerable spurt of National Law Schools in India catering to the needs of the elite, without any provision for the minority sections of the society. The moot question that now remains in the minds of the society is whether educational institutions are shops selling their wares in accordance with the investments made to run different courses. These judgments will hopefully be an eye-opener that cannot be ignored or discarded in this global era. These decisions are of vital importance to all the educational institutions that have to be noted at the earliest so that the policy makers take into consideration the significance of diversity. There is an imminent need to admit students on their **individual capacity**. There are several factors that are ignored in the educational policies. The president of United States placed before the Supreme Court various factors, for example: the highest marks scores awarded to the student from each institution regardless of the facilities granted to them - be it an urban or rural institute. This is a welcome feature and the author is of the view that this point has to be considered and is very essential in the Indian scenario as students who are intelligent yet due to lack of funds study in rural areas. Despite the fact that there are no adequate facilities yet prove their caliber and secure high marks such students have to be encouraged. Similarly students with special skills also have to be given some extra points to get admissions into good colleges. The two cases are different and as the courses offered are also different, therefore, the Courts examined them as per their requirements. This also has to be noted and a vibrant campus is the need of the hour. The students have to be taught basic moral science to treat their colleagues with respect and prove themselves worthy citizens of the Nation.

MEDICAL NEGLIGENCES V. COMPENSATORY JURISPRUDENCE

By

—CH. VENKAIAH, B.A., L.L.B., D.E.E.,
Advocate, Eluru

Preserving human life is given paramount importance in a welfare state. To discharge constitutional obligation of preserving human life, various health centers and Government