

WHY INDIAN LAW SCHOOLS NEED TO ADOPT THE ONLINE LAW ENTRANCE EXAM IN 2020: THE R(E)-IMAGINATION OF THE LAW SCHOOL ADMISSIONS PROCESS

Professor (Dr.) C. Raj Kumar*
Professor Anand Prakash Mishra*

Law school entrance examinations have been critical and fundamental to building a strong legal education system worldwide. India has over two dozen law school entrance tests, which are in addition to the option of admitting students on the basis of class 12 marks. Almost all leading law schools admit students through national level entrance examinations, which in India include, the Common Law Admission Test (CLAT) of National Law Universities, All India Law Entrance Test (AILET) of National Law University Delhi, and the Law School Admission Test—India (LSAT—India) offered by the Law School Admission Council (LSAC) for Jindal Global Law School and other private law schools. Delhi University Entrance Test is another popular exam for its LLB 3-year program. In this paper, we advocate that India should adopt a common law entrance exam to be conducted in an Online AI-Enabled Remote-Proctored format for admission to law schools. We believe that this will signal a very important public policy response by the Indian law schools to the COVID-19 global pandemic crisis. This will enable the students who are aspiring to pursue legal studies to plan their educational future better. Indian law schools need to demonstrate leadership, innovation, initiative and proactive planning so that the current public health crisis does not develop into an educational planning crisis.

1. COVID-19 and Law School Admissions in 2020

A “new normal” in law school admissions is emerging from COVID-19 pandemic-related social distancing and lockdowns. At this juncture, holding entrance examinations in the traditional manner of gathering thousands of students in one location would not only be a threat to public health and safety, but also a breach of governmental guidelines. The COVID-19 crisis has already led to the postponing of both CLAT and LSAT—India examinations. Leading entrance exams like JEE of IITs and most of the other law entrance examinations have also been either postponed or their status is unknown at this time. The year 2020 is indeed a difficult and a different year for admission to universities worldwide, as physically holding entrance examinations is becoming increasingly difficult, if not impossible. Science, public policy, and international practice inform that social distancing norms will likely continue to be applicable at least until the end of 2020. Under these circumstances, leaders of institutions are reimagining how to continue to offer higher education in new ways but still based upon the principles of freedom, innovation, flexibility and adaptability

**Professor (Dr.) C. Raj Kumar, a Rhodes Scholar is the Founding Vice Chancellor of O.P. Jindal Global University & Founding Dean of Jindal Global Law School. He has obtained law degrees from the University of Delhi, University of Oxford, Harvard Law School and the University of Hong Kong. He was appointed as the founding VC of JGU at the age of 34 in 2009. He has over 200 publications to his credit and has published widely in law journals and other peer reviewed publications in Australia, Hong Kong, Japan, India, UK, and USA. Jindal Global Law School was recently recognized as India’s Number 1 Law School by QS World University Rankings By Subject 2020. Email: VC@jgu.edu.in*

** Professor Anand Prakash Mishra, who obtained his LL.B. and LL.M. degrees from the Campus Law Centre Faculty of Law, University of Delhi is the Director of Law Admissions at Jindal Global Law School at O.P. Jindal Global University. Email: apmishra@jgu.edu.in*

**Authors' Full & Complete Disclosure: The admission to Jindal Global Law School has been on the basis of LSAT-India since its inception in 2009.*

(FIFA). These principles should form the foundation for various policy changes that are hitherto unimaginable, but have, in this context become a necessary element to the very governance of universities. Law schools need to recognise that the same old norms and practices that were considered appropriate to admissions before COVID-19 cannot be applicable now, at least for the foreseeable future. A tectonic shift in the thinking needs to happen based on what's in the best interest of students so that law schools are able to admit the 2020 cohort of law students.

2. The Idea of an Independent Common Entrance Exam Separated from the Individual Law School

The idea of a common entrance examination for admission to degree programmes in India is based on the belief that in addition to the qualifying examination (class 12 or UG degree as the case may be), there should be a common entrance examination to be taken by students who wish to apply for courses at higher education institutions. A common entrance exam is vital to create a level playing field on which the performance of all applicants can be assessed. There are numerous reasons for this including the fact that a fair process of equivalency in relation to the qualifying exams (class 12 board exams) cannot be established unless all aspiring students take the same entrance exam for admission to the law schools. A number of reports of the government, including the Justice Ahmadi Committee Report of 1994 and the 184th Report of the Law Commission of India on the legal education and professional training of lawyers, 2002 have clearly prescribed a national level entrance test to admit students in law schools and not to admit on the basis of qualifying examinations (class 12).

In fact, the need for a common entrance examination is critical, as many students who aspire to study law or for that matter any discipline may not have a stellar academic performance in their qualifying examination. Most such qualifying examinations are based upon rote learning and do not necessarily test the suitability or otherwise of a student specifically in relation to higher education study. An entrance examination overcomes these challenges and creates a fair and inclusive process to select students into the law schools and other university programmes. However, the subject matter included in entrance examinations is a matter of high importance, particularly when it comes to admission to programmes like law, engineering and medicine. For example, while the knowledge of mathematics, usually a common subject matter in all entrance examinations, may be useful in the practice of law in some instances, it is difficult to make a case that these subjects are fundamental to the study of law.

A practice common among higher education institutions in India is that the institutions themselves conduct entrance examinations, which are either indigenously developed or outsourced. This has been the case with many institutions, including a few leading law schools in India. To a certain extent, law schools find themselves well positioned when it comes to deciding the form and substance of entrance examination. However, as much as there is merit in individual practices, such approach is not superior over the standardised entrance examinations. That is to say not only is this practice not healthy and conducive for the conceptualisation of the entrance examination, it is also not the best way to assess students. Below, we submit five reasons supporting the idea of an independent common entrance examination separated from the law school.

a. Entrance Exams Need Specialised and Multi-Domain Knowledge

The formulation of entrance examination questions requires both specialised knowledge and multi-domain knowledge. It requires expert understanding of psychometrics as well as other fields of knowledge, which universities or law schools are not expected to have. There are scientific and evidence-based approaches that are involved in determining the suitability of each question asked in good entrance examinations. The language used, the answer choices for multiple choice questions, and the determination of the difficulty level of each question is commensurate with the type of

students who will be taking the examination. This cannot be an activity in which questions are copied from other entrance examinations and used by an individual law school instead of generating its own unique entrance exam. Unfortunately, such practices exist in many law entrance exams.

b. The Preparation for the Entrance Examinations is a Year-Long Activity

There is a particular reason why the organisations, which are involved in preparing students for law school entrance examinations, conduct their work as a continuous and year long activity. The syllabus of many existing law entrance examinations generally makes it coachable, prompting rote learning by the aspirants. By contrast, an assessment designed using psychometric analysis and testing, with questions on reasoning and reading skills, assesses the skills students have learned over a lifetime to determine the likelihood of the students' law school success, rather than just rote learning or memorization. Therefore, aptitude-based testing needs to be adopted by the law schools in India, instead of an examination that encourages coaching and rote learning of facts.

c. Potential Conflict of Interest and Appearance of Impropriety

When universities or law schools conduct their entrance exams independently, the trustworthiness of the entrance test is also challenged very often by unsuccessful students and their parents. A culture of mistrust and risk of corruption surrounding admissions process develops. The incentive to exercise some influence over the entrance examination and its outcomes is writ large when an institution is involved in designing and formulating the question paper, assessing and evaluating the answers and ultimately, selecting the students for admission to the law school. Where a neutral and independent professional agency conducts all of these things in relation to the law entrance examination, the above said issues are addressed within the objective and impartial framework that these agencies have created over time.

d. Freedom for the Student from Taking Multiple Entrance Examinations

A standardised test accepted by a large number of law schools or universities is always a preferred choice for students. However, the test should not be organised and administered by any one law school or a consortium of law schools in India, and instead should be designed and conducted by an independently established organisation that has technical and professional expertise to conduct such test. In a country with over 1,600 law schools, one cannot imagine a scenario whereby every college administers its own entrance examination. This would not be in the best interest of students or the legal education system as a whole. An independent entrance examination is not only a fairer measure of assessing students' skills, but is a way to help students (and law schools) save time and money, while creating a national standard in accordance with national and internationally established good practices.

e. Accountability is Strengthened with the Adoption of an Internationally Accepted Entrance Examination

When an independent professional agency conducts the admission test, onus is on that organisation and its expert psychometricians to ensure sufficient research is done to create questions that are fair, valid, and reliable. This is unlike a university conducting a test where everything is done by its administration and faculty members who might not have the relevant expertise. An independent, professional organization can insure accountability for every question asked in the entrance exam. These testing practices have evolved over a period of time and there are specific qualifications, expertise and experience needed to be engaged in this effort.

3. Responsibility to Formulate Questions and Administer the Exam

In the Indian higher education system, universities or colleges have conducted entrance examinations for a long time. Central universities like the University of Delhi, Jawaharlal Nehru University, and Banaras Hindu University have conducted their own entrance tests. Sometimes universities or colleges also form consortiums and conduct entrance examinations for all member institutions (e.g., JEE of IITs, CAT of IIMs and CLAT of NLUs). The faculty resources in universities are meant to be used for academic and research purposes; they are not meant to be used for conducting entrance examinations. Internationally, admissions to the most prestigious institutions have been made through the entrance examinations conducted by independent organisations, be it the SAT or ACT at the undergraduate level, or GRE, GMAT or LSAT at the postgraduate level. Independent, professional, not-for-profit corporations, which have expertise and resources in testing and psychometric assessments, have been responsible for conducting entrance examinations: organisations like The College Board has administered the SAT since 1926, the Graduate Management Admission Council (GMAC) has administered the GMAT for MBA admissions worldwide since 1953, and the Law School Admission Council (LSAC) has conducted LSAT examinations since 1947. The National Testing Agency (NTA) set up by Government of India is a move in a similar direction.

The idea that individual universities must not devote their time and resources in conducting entrance examinations should be applied to Indian law schools. Responsibilities of setting the entrance test question paper, hiring examination halls, invigilation, evaluation, and declaration of results should be vested with the experts and independent organisations. Therefore, we must find an independent, trusted organisation with resources and expertise to deliver the high-stakes admission test for Indian law schools.

4. The Effort to Identify an Appropriate Law School Admission Test?

There are five criteria to identify the right admission test for law schools and they align with these standards: transparency, accessibility, efficiency, integrity, and safety.

Transparency: Online tests being fully recorded and stored in the computer for each candidate have the highest degree of transparency. The public trust on an entrance examination is foundational to establish the credibility of the exam. This credibility is established when the standards of the exam is benchmarked with the global best practice to ensure transparency.

Accessibility: An online exam is most accessible if one has a computer and a secure internet connection which the majority of students have as a part of their higher education learning. We need to create the necessary higher education ecosystem that makes this available for students.

Efficiency: This is a very important factor for determining the appropriateness of a test. Efficiency of the test administration has a direct bearing on the ability of students to take the test and the institutional capacity of law schools to adopt the test for the purpose of admission. At this time when there is tremendous uncertainty about the schedule of the admissions process and the timeline of admitting students in law schools, an efficient law entrance examination will send the right signals to all stakeholders. Online exam is always more efficient as there is no transport of answer sheet and question papers to and from multiple cities. There is no waste of time in conduct of the test, its evaluation and declaration of results. Further, there is no human intervention possible in management of the exam and any issue of leak of question paper, etc. is not possible.

Integrity: Integrity of the test is ensured by AI-enabled, remote-proctoring technology. High quality remote-proctoring ensures that violators of examination ethics and code of conduct, and those who

deviate from protocols are immediately caught and stopped—they lose their examination. There are well established standards and globally recognised practices to ensure that the use of technology can reduce the risk of cheating and enhance the practice of integrity in the examination process.

Safety: Safety of test takers is highest when they can take the test at home. Conducting an entrance test in the present format—the paper-pencil test—which requires gathering larger numbers of students and parents at one venue is a threat to individual and social safety in the context of COVID-19. At least in the foreseeable future, law enforcement officials and the government will not allow such a gathering. Even if such a possibility exists, the legitimate fears and concerns of students and their parents in relation to the inherent risks associated with the physical conduct of law entrance examinations will discourage students to take the exam in this manner.

5. Exploring Alternatives for Admitting Students into Law Schools

The COVID-19 situation has created a crisis in relation to the governance of universities and law schools in the world. India is no exception, although we tend to be much slower and less innovative in responding to this crisis. The law schools in India need to rise to the occasion to respond to this crisis. There is no doubt that conducting an entrance examination at this time poses huge challenges. In the face of such challenges, there is also an emerging view that we can altogether avoid entrance examinations for admission to law schools. Instead, can the law schools use the class 12 marks for admission to their institutions? This suggestion might have some logic and justification, if it is applied to all students coming from the same city or state for taking the class 12 examination under the same state board of examination. Even then, the class 12 marks alone do not fully capture the competencies and abilities of students aspiring to study law. Given the uncertainty and understandable anxiety in relation to the feasibility of conducting the law entrance exam in a physical manner and the reluctance to embrace and accept the AI-enabled remote proctored method of undertaking the law entrance exam, the idea of using the class 12 exam result for law school admission is gaining traction. However, this option is neither feasible nor desirable for the following reasons:

1. The leading law schools of India are premier institutions of higher learning and have to a large extent admitted students on the basis of national competitive entrance examinations. In this regard, the law schools have adopted the best practices of other professional disciplines in India such as medicine, engineering and architecture – all of which have an entrance exam. Using the class 12 exam results will go against the vision, mission, and reputation of these law schools.
2. India has over 20 higher secondary education boards, including the CBSE, ICSE, State Boards and even international boards like IB and CIE. Each board has a different examination pattern and marking standard. Establishing equivalence among these boards and their grading criteria and patterns is easier said than done. They are also at variance when it comes to the exam, grading structure and even the objectives of assessment. It is not fair to use one yardstick and develop any form of equivalency in developing a selection criterion for admission to law schools. Marking varies significantly in different boards. We have seen students securing 99% and even 100% marks in few board exams whereas some other board exams have toppers getting 90-95% marks. Entrance Test therefore, is the only way to provide the same yardstick to everyone.
3. The class 12 marks are not academic stream-neutral. That is to say, students of the PCBM (physics, chemistry, biology and maths) academic stream tend to get scores higher than those studying social sciences and humanities. This fails to create a level playing field as the grading patterns vary across different state boards as well. In fact, the idea of a common law entrance exam to select students to law schools in India is to precisely overcome these challenges of dealing with assessing equivalency of

grades across subjects, boards, states and even schools, as there are also internal school given grades that get added to the overall scores obtained by the student.

6. Towards Law Schools Adopting a Global Independent Test such as the LSAT—India

In our view, all law schools in India and in particular the leading law schools of India must consider using LSAT—India. The LSAT—India was established by an independent, not-for-profit organization, the Law School Admission Council (LSAC), which was created by a coalition of the top law schools in the United States for the explicit purpose of levelling the playing field for law school applicants from different undergraduate institutions, different regions, different socioeconomic backgrounds, and different fields of study. The examinations designed and delivered by the LSAC are rigorously developed in consultation with law schools to assess the most important skills needed for success in legal education.

The LSAT is scientifically proven to have a high correlation to students' performance in law school. This will also ensure that Indian law schools will be relieved from the unnecessary burden of designing and formulating the law entrance exam question paper and also the unwarranted responsibility of conducting these exams across different cities in India. For more than 70 years, LSAC provided entrance tests for the students who seek admission to the world's leading law schools such as Harvard Law School, Yale Law School, Stanford Law School, Cornell Law School, Columbia Law School, and Michigan Law School. The LSAT--India as a test for admitting students to law school fulfils all five standards: transparency, safety, accessibility, efficiency, and integrity.

7. The New AI-Enabled, Remotely-Proctored Online LSAT—India 2020 Exam

Necessity is the mother of all inventions. The COVID-19 pandemic has compelled us to follow public health and safety guidelines and protocols, including social distancing, wearing masks, etc. The situation is worsening with each passing day with nearly 1,00,000 cases in India as of 21 May 2020 and over 4.1 million cases worldwide. At this juncture, an online, AI-enabled remote-proctored examination appears to be the only way to organise entrance exams. LSAT—India has launched this exam this year with a lot of innovation and farsightedness, keeping in mind the best interests of students to take the entrance exam in safe and secure environs.

Recently one of the Indian Institutes of Management (IIM) (IIM Sambalpur) has announced that it will be the first IIM in the country to conduct the examination using the online proctoring system, where each student will be monitored and invigilated during the examination through an AI tool to ensure they do not receive any external help for writing their answers. The director of IIM expressed so much trust in the remote-proctored exam that he said that his institute is also planning to conduct all its examinations online henceforth even after the situation, caused by the lockdown in the wake of Covid pandemic, returns to normal.

Further, the Universities Grants Commission (UGC) expert panel recommendation committee, in April 2020 submitted a report containing new and updated guidelines for university exams amid the coronavirus lockdown. The committee has recommended conducting the university exams including entrance tests through the online mode for 2020-21. On 17 May 2020, Finance Minister Nirmala Sitharaman has further pushed for promotion of digital-education in India in a post-coronavirus era and announced 'PM eVIDYA' programme for multi-mode access to e-education under which top 100 universities would be permitted to start online courses by May 30 without seeking any fresh approval from the education regulators to offer online degree courses. In such an environment when the entire

focus of the government and particularly the Ministry of HRD shifted to digital and e-learning, the future lies indeed in online and digital modes of testing for admission to law schools and universities.

8. Decoding the AI-Enabled, Remote-Proctored Online Admission Test

This is a technologically advanced admission solution that provides students a seamless way to move forward in their law school journeys by having available in one stop all they need to complete the admission process to the various programmes of their choice. The system records the candidate's entire examination for review. This test implements a rigorous data forensics programme to identify and act on misconduct and other validity issues. If misconduct is detected, the examination is terminated. Artificial Intelligence helps ensure the transparency, efficiency, and integrity of the admission test process as AI-enabled testing requires candidates to complete a virtual self-check-in process, which includes enhanced identification and authentication. Only after successful validation will candidates be approved to take the test. With auto proctoring, candidates will be monitored live through their device's webcam with the assistance of AI tools. This disruption will not only reduce the overhead on our faculty, but will also enable students to take this examination from the safety of their homes or elsewhere to complete the admission process in an efficient and timely manner.

9. A SWOT Analysis of the Online LSAT—India Exam

Strengths of the online LSAT are many. Amid the global pandemic, we have several reasons to rely upon an online examination instead of a paper-and-pencil test, as noted already. With this system, the students can appear for the tests by logging in through their laptop/desktop at their homes in different parts of the country. This system of conducting tests online allows more transparency in the process. Moreover, with the help of Artificial Intelligence (AI), there is no scope of human error in invigilation during the exam. Concerns around wastage of paper and handwriting will also be addressed. With this system, each student will be monitored and invigilated during the examination through an AI tool to ensure they do not receive any external help for writing their answers. The interface will also capture the retina movement of the prospective candidates. The exam disrupts even if an examinee attends a phone call.

The only weakness of adopting an independent test for a university is the potential loss of revenue generated through a university-produced entrance test fee. However, universities and law schools will not have to incur any cost for question paper setting, hiring of examination halls in cities across India, sending faculty members as invigilators, and other costs associated with the conduct and evaluation of the examination. Most importantly, the faculty-time can be saved and utilized in more constructive ways. Another obstacle or threat could be in relation to the approval process of a new examination like the LSAT—India with the relevant authorities like the CLAT Committee or the authorities of the national law universities. Given the urgency of the matter and, importance of making LSAT—India available and accessible to all potential law aspirants of the country, a time-bound decision is needed.

10. Revenue from the Law Entrance Test Fee Has Incentivised Law Schools to Conduct Separate Entrance Tests

While some universities conduct entrance exams to earn revenue, we must strongly discourage this practice. Public universities must get their funding from the government and private universities should have their funds from endowments and student fees. Why should students be required to take school specific entrance tests, and parents pay for them, when instead we could offer a common test to achieve the same result at a fraction of the time and cost? We have seen many law schools and universities conducting a separate test despite a common national level test in place. Such a tendency must be discouraged.

Not only are multiple entrance examinations an unnecessary stress point for students, but also an added economic burden, which is only further aggravated by the current crisis. A single, and centralized online examination (LSAT-India) will represent a united approach of Law Schools across India to support students alleviate their concerns regarding the commencement of their legal education to fulfil their aspirations of a legal career in times of uncertainty created by COVID-19.

The Way Forward

Further postponement of CLAT, AILET and other law school entrance exams in hopes of better days ahead will be an exercise in futility as there is no degree of certainty that the COVID-19 crisis will be better by July or August or September. Our goal and aspiration should be to admit students and commence our academic sessions on time while maintaining the integrity of the academic calendar in the best interests of our students.

Therefore, all Indian law schools should seriously consider and decide to conduct the LSAT—India 2020 examination as an online, AI-enabled, and remote-proctored test for admitting law students this year. This will ensure that we are able to successfully complete our admission process and commence the new 2020 academic year on schedule. This could be in the best interest of thousands of law aspirants, their parents, and the law schools themselves. After this year, consideration should be given for continuing the LSAT-India or other independent common entrance exam.

