

K. C. Vasanth Kumar and Another

Vs

State of Karnataka

Writ Petitions Nos. 1297-98, 1407 of 1979, 4995-97 of 1980 and 402 of 1981

(CJI Chandrachud, D.A. Desai, D. Chinnappa Reddy, A.P. Sen, E.S. Venkataramiah JJ)

08.05.1985

JUDGMENT

CHANDRACHUD, C.J. -

1. My learned Brethren have expressed their respective points of view on the policy of reservations which, alas, is even figuratively, a burning issue of today. We were invited by the counsel not so much as to deliver judgments but to express our opinion on the issue of reservations, which may serve as a guide-line to the Commission which the Government of Karnataka proposes to appoint, for examining the question of affording better employment and educational opportunities to Scheduled Castes, Scheduled Tribes and other backward classes. A somewhat unusual exercise is being undertaken by the Court in giving expression to its views without reference to specific facts. But, institutions profit by well-meaning suitable tests in the matter of reservations. I cannot resist expressing the hope that the deep thinking and sincerity which has gone into the formulation of the opinions expressed by my learned Brethren will not go waste. The proposed Commission should give its close application to their

2. I would state my opinion in the shape of the following proposition :

(1) The reservation in favour of Scheduled Castes and Scheduled Tribes must continue as at present, there is, without the application of a means test, for a further period not exceeding fifteen years. Another fifteen years will make it fifty years after the advent of the Constitution, a period reasonably long for the upper crust of the oppressed classes to overcome the baneful effects of social oppression, isolation and humiliation.

(2) The means test, that is to say, the test of economic backwardness ought to be made applicable even to the Scheduled Castes and Scheduled Tribes after the period mentioned in (1) above. It is essential that the privileged section of the underprivileged society should not be permitted to monopolise preferential benefits for an indefinite period of time.

(3) Insofar as the other backward classes are concerned, two tests should be conjunctively applied for identifying them for the purpose of reservations in employment and education : One, that they should be comparable to the Scheduled Castes and Scheduled Tribes in the matter of their backwardness; and two, that they should satisfy the means test such as a State Government may lay down in the context of prevailing economic conditions.

(4) The policy of reservations in employment, education and legislative institutions should be reviewed every five years or so. That will at once afford an opportunity (i) to the State to rectify distortions arising out of particular facets of the reservation policy and (ii) to the people, both backward and non-backward, to ventilate their views in a public debate on the practical impact of the policy of reservations.

DESAI, J. –

"India embraced equality as a cardinal value against a background of elaborate, valued, and clearly perceived inequalities." "Article 14 guaranteed equality but the awareness of deep-rooted inequality in the society reflected in Articles 15 and 16. Fifteen months of the working of the Constitution necessitated amplification of Article 15(3) so to ensure that any special provisions that the State may make for the educational, economic or social advancement of any backward class citizen, may not be challenged on the ground of being discriminatory." Section 2 thereof provided for addition to clause (4) of Article 15. For a period of three and a half decades, the unending search for identifying socially and educationally backward classes of citizens has defied the policy makers, the interpreters of the policy as reflected in statutes or executive/administrative order and has added a spurt in the reverse direction, namely, those who attempted to move upward (Pratilom) in the social hierarchy have put t

4. In the early stages of the functioning of the Constitution, it was accepted without dissent or dialogue that caste furnishes a working criterion for identifying socially and educationally backward class of citizens for the purpose of Article 15(4).

5. "This was predicated on a realistic appraisal that caste as a principle of social order had persisted over millennia if much more disorderly it." Language of Article 15(4) refers to 'class' and not caste. Preferential treatment which cannot be struck down as discriminatory was to be accorded to a class, shown to be socially and educationally backward and not to the members of a caste who may be presumed to be socially and educationally backward. How do we define, ignoring the caste label, class of citizens socially and educationally backward. As we are not writing on a clean slate, let us look at judicial intervention to give shape and form to this concept of a class of citizens who are socially and educationally backward so as to merit preferred treatment or compensatory discrimination or affirmative action.

6. A brief survey of decisions bearing on the subject would reveal the confusion and the present state of malaise. This review is necessary because a serious doubt is now nagging the jurists, the sociologists and the administrators whether caste should be the basis for recognising the backwardness.

7. There has been some vacillation on the part of the Judiciary on the question whether the caste should be the basis for recognising the backwardness. Therefore, a bird's-eye view of the decisions of the Court may first be taken to arrive at a starting point as to whether the Judiciary has univocally recognised caste as the basis for recognition of the backwardness.

8. In *State of Madras v. Smt. Champakam Dorairajan*, this Court struck down the classification in the Communal G. O. founded on the basis of religion and caste on the ground that it is opposed to the Constitution and constitutes a clear violation of the fundamental rights guaranteed to the citizen.

The decision was in the heyday of supremacy of fundamental rights over Directive Principles of State Policy. The Court held that Article 46 cannot override the provisions of Article 29(2) because the Directive Principles of State Policy have to conform to and run as subsidiary to the Chapter of Fundamental Rights.

9. In *M. R. Balaji v. State of Mysore* it was observed that though caste in relation to Hindus may be a relevant factor to consider in determining the social backwardness of groups or classes of citizens, it cannot be made the sole or dominant test. Social backwardness is in the ultimate analysis the result of poverty to a very large extent. The classes of citizens who are deplorably poor automatically becomes socially backward. The problem of determining who are socially backward classes, is undoubtedly very complex, but the classification of socially backward citizens on the basis of their castes alone is not permissible under Article 15(4). The Court could foresee the danger in treating caste as the sole criterion for determining social and educational backwardness. The importance of the judgment lies in realistically appraising the situation when it uttered the harsh but more reliable yardstick for determining social backwardness because more often educational backwardness is the outcome of social backwardness.

10. In *T. Devadasan v. Union of India* the petitioner challenged the carry forward rule in the matter of reserved seats in the Central Secretariat Service as being violative of Articles 14 and 16 of the Constitution. The majority accepting the petition observed that the problem of giving adequate representation to members of the backward class enjoined by Article 16(4) of the Constitution is not adequate by framing a general rule without bearing in mind its reflections from year to year. What precise method should be adopted for this purpose is a matter for the Government to decide. The Court observed that any method to be evolved by the Government must strike a reasonable balance between the claims of the backwardness and claims of other employees as pointed out in *Balaji* case.

11. In *R. Chitralakshmi v. State of Mysore* the majority held valid the orders made by the Government of Mysore in respect of admissions to engineering and medical colleges, and observed that a classification of backward classes based on economic conditions and occupations is not bad and does not offend Article 15(4). The caste of a group of citizens may be a relevant circumstance in ascertaining their social backwardness and though it is a relevant factor to determine social backwardness of a class, it cannot be the sole or dominant test in that behalf. If in a given situation caste is excluded in ascertaining a class within the meaning of Article 15(4) it does not vitiate the classification if it satisfied other tests. The Court observed that various provisions of the Constitution which recognised the factual existence of backwardness in the country and which make a sincere attempt to promote the welfare of the weaker sections thereof should be construed to effectuate that policy and not to give weightage to

12. In *Triloki Nath Tikku v. State of J & K* reservation of 50 per cent of the gazetted posts to be filled by promotion was in favour of Muslims of Jammu & Kashmir. The Court held that inadequate representation in State services would not be decisive for determining the backwardness of the section. The Court accordingly, gave directions for collecting further material relevant to the subject. After the material as directed earlier was collected the matter was placed before the Court and the decision is reported in *Triloki Nath v. State of J & K*. The Court observed that the expression "backward class" is not used as synonymous with "backward caste" or "backward community". The members of an entire caste or community may, in the social, economic and educational scale of values at a given time, be backward and may, on that account be treated as a backward class, but that is not because they are members of a caste or community, but because they form a class. In its ordinary connotation, the expression 'class' may

13. In *A. Peeriakaruppan v. State of T. N.* this Court after referring to earlier decisions especially in *Balaji case* and *Chitralkha case* observed that there is no gainsaying the fact that there are numerous castes in this country which are socially and educationally backward. To ignore their existence is to ignore the realities of life. It is difficult to make out whether the Court accepted caste as the sole basis for determining social and educational backwardness.

14. In *State of A. P. v. U. S. V. Balram* a list of backward classes which was under challenge prima facie appeared to have been drawn up on the basis of caste. The Court on closer examination found that the caste mark is merely a description of the group following the particular occupations or professions exhaustively referred to by the Commission. Even on the assumption that the list is based exclusively on caste, it was clear from the materials before the Commission and the reasons given by it in its report that the entire caste is socially and educationally backward and therefore, the inclusion of sub-caste in the list of backward classes is warranted by Article 15(4). The caste remained the criterion for determining social and educational backwardness. The assumption that all the members of a given caste are socially and educationally backward is wholly unfounded and lacks factual support obtained by survey.

15. In *Janki Prasad Parimoo v. State of J & K* it was observed that mere poverty cannot be a test of backwardness because in this country except for a small percentage of the population, the people are generally poor-some being more poor, others less poor. In the rural areas some sectors of the population are advancing socially and educationally while other sectors are apathetic. Applying this yardstick, priestly classes following a traditional profession was held not to be socially and educationally backward. Cultivators of land designated as backward measured by the size of the holding was held to be impermissible on the ground that placing economic consideration alone above other considerations, is erroneous to determine social and educational backwardness.

16. In *State of U. P. v. Pradip Tandon* reservations in favour of rural areas was held to be unsustainable on the ground that it cannot be said as a general proposition that rural areas represent socially and educationally backward classes of citizens. Poverty in rural cannot be the basis of classification to support reservation for rural areas.

17. In *State of Kerala v. N. M. Thomas* the constitutional validity of Rule 13-AA giving further exemption of two years to members belonging to Scheduled Tribes and Scheduled Castes in the service from passing the tests referred to in Rule 13 or Rule 13-A, was questioned. The High Court struck down the rule. Allowing the State appeal, Mathew, J. in his concurring judgment held that to give equality of opportunity for employment to the members of Scheduled Castes and Scheduled Tribes, it is necessary to take note of their social, educational and economic backwardness. Not only is the Directive Principle embodied in Article 46 binding on the law makers as ordinarily understood, but it should equally inform and illuminate the approach of the court when it makes a decision as the court also is State within the meaning of Article 12 and makes law even though interstitially. Existence of equality depends not merely on the absence of disabilities but on the presence of disabilities. To achieve it differential treatm

18. In *K. S. Jayasree v. State of Kerala* it was held that the problem of determining who are socially and educationally backward classes is undoubtedly not simple. Dealing with the question whether caste can by itself be a basis for determining social and educational backwardness, the Court observed that it may not be irrelevant to consider the caste of group of citizens claiming to be socially and educationally backward. Occupations, place of habitation may also be relevant factors in determining who are socially and educationally backward classes.

19. In *Akhil Bharatiya Soshit Karamchhari Sangh (Railway) v. Union of India* this Court upheld reservation of posts at various levels and making of various concessions in favour of the members of the Scheduled Castes and Scheduled Tribes. Krishna Iyer, J. extensively quoting from the final address to the Constituent Assembly by Dr. Ambedkar held that the political democracy was not the end in view of the struggle for freedom but a social democracy was to be set up by which it was meant the social fabric resting on the principle of one man one value. Translated functionally, it means "total abolition of social and economic inequalities".

20. This brief review would clearly put into focus, the dithering and the vacillation on the part of the Judiciary in dealing with the question of reservation in favour of Scheduled Castes, Scheduled Tribes as well as other socially and educationally backward classes. Judiciary retained its traditional blindfold on its eyes and thereby ignored perceived realities. A perceptive viewer of judicial intervention observed that "the courts turned out to be more limited as a vantage-point than I naively assumed at the outset. They act as a balance wheel channelling compensatory policies and accommodating them to other commitments, but it is the political process that shapes the larger contour of these policies and gives them their motive force. Official doctrine - judicial pronouncements or administrative regulations - proved insufficient guide to the shape of the policies in action and the result they produced". The Indian social scene apart from being disturbing presented the picture of stratified society hier

Summing up, we may surmise that the gross effect of litigation on the compensatory discrimination policy has been to curtail and confine it. Those who have attacked compensatory discrimination schemes in court have compiled a remarkable record of success, while those seeking to extend compensatory discrimination have been less successful.

21. The controversy now has shifted to identifying socially and educationally backward classes of citizens. The expression "backward classes" is not defined. Courts have more or less in the absence of well-defined criteria not based on caste label veered round to the view that in order to be socially and educationally backward classes, the group must have the same indicia as Scheduled Castes and Scheduled Tribes. The narrow question that is being examined here is whether caste label should be sufficient to identify social and educational backwardness? Number of Commissions have attempted to tackle this complex problem. However, both Mandal Commission and the Havanur Commission of Karnataka and Bakshi Commission of Gujarat have finally accepted caste as the identifying criterion for determining social and educational backwardness, though it will be presently pointed out that Mandal Commission had serious reservations about caste criterion. Most of these Commissions and the Government Orders based on their r

22. What then is a caste? Though caste has been discussed by scholars and jurists, no precise definition of the expression has emerged. A caste is a horizontal segmental division of society spread over a district or a region or the whole State and also sometimes outside it. Homo Hierarchicus is expected to be the central and substantive element of the caste system which differentiates it from other social systems. The concept of purity and impurity conceptualises the caste system. Louis Dumont asserts that the principle of the opposition of the pure and the impure underlies hierarchy, which is the superiority of the pure to the impure, underlies separation because pure and the impure must be kept separate and underlies the division of labour because pure and impure occupations must likewise, be kept separate. There are four essential features of the caste system which maintained its homo hierarchicus character : (1) hierarchy; (2) commensality; (3) restrictions on marriage; and (4) hereditary occupation. Mos

23. If the transformation of the caste structure as herein indicated is realistically accepted, should the caste label be still accepted as the basis for determining social and educational backwardness. In a recent paper by the noted sociologist Shri I. P. Desai (Alas, he is no more), it has been ably argued that not a caste but the class or the social group should be examined with a view to determining their social and educational backwardness. Rejecting the recommendations of the Mandal Commission for caste based reservation, he argues in favour of class based reservation. He says that if the State accepts caste as the basis for backwardness, it legitimises the caste system which contradicts secular principles and secondly the traditional caste system has broken down and contractual relationship between individuals have emerged. This approach has been questioned in a recent paper by Mr. Ghanshyam Shah on Caste, Class and Reservation.

24. In order to appreciate the viewpoint advanced by Mr. Desai which appeals to me both for its indepth study of the problem, and a fresh outlook on this vexed problem, at the outset let me take a look at the futuristic view of the Indian Society as envisaged in the Constitution. No one is left in any doubt that the future Indian Society was to be casteless and classless. Pandit Jawaharlal Nehru the first Prime Minister of India said that Mahatma Gandhi has shaken the foundations of caste and the masses have been powerfully affected. But an even greater power than Gandhi is at work, the conditions of modern life-and it seems at last this hoary and tenacious relic of past times must die. Mahatma Gandhi, the Father of the Nation said, "The caste system as we know is an anachronism. It must go if both Hinduism and India are to live and grow from day to day". In its onward march towards realising the constitutional goal, every attempt has to be made to destroy caste stratification. Article 38(2) enjoins the Stat

A word of sociological caution. In the light of experience, here and elsewhere, the danger of 'reservation', it seems to me, is threefold. Its benefits, by and large, are snatched away by the top creamy layer of the 'backward' caste or class, thus keeping the weakest among the weal always weak and leaving the fortunate layers to consume the whole cake. Secondly, this claim is overplayed extravagantly in democracy by large and vocal groups whose burden of backwardness has been substantially lightened by the march of time and measures of better education and more opportunities of employment, but wish to wear the 'weaker section' label as a means to score over their near-equals formally categorised as the upper brackets

25. A few other aspects for rejecting caste as the basis for identifying social and educational backwardness may be briefly noted. If State patronage for preferred treatment accepts caste as the only insignia for determining social and educational backwardness, the danger looms large that this approach alone would legitimise and perpetuate caste system. It does not go well with our proclaimed secular character as enshrined in the Preamble to the Constitution. The assumption that all members of same caste are equally socially and educationally backward is not well-founded. Such an approach provides an over-simplification of a complex problem of identifying the social and educational backwardness. The Chairman of the Backward Classes Commission, set up in 1953, after having finalised the report, concluded that "it would have been better if we could determine the criteria of backwardness on principles other than caste". Lastly it is recognised without dissent that the caste based reservation has been usurped by Castes amongst Sikhs in Punjab, proving that the labelled weak exploits the really weaker. Add to this, the findings of the Research Planning Scheme of sociologists assisting the Mandal Commission when it observed : "while determining the criteria of socially and educationally backward classes, social backwardness should be considered to be the critical element and educational backwardness to be the linked element though not necessarily derived from the former". The team ultimately concluded that "social backwardness refers to

ascribed status, and it considered social backwardness as the critical element and educational backwardness to be the linked though not derived element". The attempt is to identify socially and educationally backward classes of citizens. The caste, as is understood in Hindu Society, is unknown to Muslims, Christians, Parsis, Jews etc. Caste criterion would not furnish a reliable yardstick to identify socially and educationally backward group in the aforementioned communities though eco

26. Therefore, a time has come to review the criterion for identifying socially and educationally backward classes ignoring the caste label. The only criterion which can be realistically devised is the one of economic backwardness. To this may be added some relevant criteria such as the secular character of the group, its opportunity for earning livelihood etc. but by and large economic backwardness must be the loadstar. Why I say this ?

27. Chronic poverty is the bane of Indian Society. Market economy and money spinning culture has transformed the general behaviour of the society towards its members. Upper caste does not enjoy the status or respect, traditional, voluntary or forced any more even in rural areas what to speak of highly westernised urban society. The bank balance, the property holding and the money power determine the social status of the individual and guarantee the opportunities to rise to the top echelon. How the wealth is acquired has lost significance. Purity of means disappeared with Mahatma Gandhi and we have reached a stage where ends determine the means. This is the present disturbing situation whether one likes it or not. Rane Commission on the evidence before it and after applying the relevant tests and criteria observed as under :

We have found on applying relevant tests and criteria and on the basis of the evidence on record, that there are certain castes/communities or classes of people which are backward, but, only lower income groups amongst them are socially and educationally backward. In order to ensure that, no ambiguity remains in regard to the above aspect, we may add that, the above observations hold good even in respect of those classes which are identified as socially and educationally backward without reference to any caste.

28. Reservation in one or other form has been there for decades. If a survey is made with reference to families in various castes considered to be socially and educationally backward, about the benefits of preferred treatment, it would unmistakably show that the benefits of reservations are snatched away by the top creamy layer of the backward castes. This has to be avoided at any cost.

29. If poverty is to be the criterion for determining social and educational backwardness, we must deal with a fear expressed by sociologists. It is better to recapitulate these aspects in the words of a sociologist :

Now, if the Government changes the criteria of reservation from caste to class, persons from the upper strata of the lower castes who are otherwise not able to compete with the upper strata of the upper castes despite the reservations will be excluded from the white collar jobs. And the persons from the lower strata of lower castes will not be able to compete with their counterpart of the upper castes. They too will be excluded. This will bridge the gap which is otherwise widening between the rich and the poor of the upper castes and it will strengthen their caste identity. It will wipe out the small poor strata of the upper castes at the cost of the poor strata of the lower castes, and in the name of secularism. In course of time, the upper caste will also become the upper class. Such a process would hamper the growth of secular

forces.

This fear psychosis is effectively answered by an eminent academic. He says that if the poor can be operationally defined, categorised and sub-categorised and reservation benefits be stratified accordingly, would the scenario still haunt us ? I think not. He recognised that this point is valuable in terms of alerting everyone to the need for further refinement of the notions of poor strata. He recognised that the State is, with all its limitations and resources, to direct and plan social transformation. The (non-revolutionary) choice is between reinforcing 'caste' or reinforcing the extant constitutional values.

30. Let me conclude. If economic criterion for compensatory discrimination or affirmative action is accepted, it would strike at the root cause of social and educational backwardness, and simultaneously take a vital step in the direction of destruction of caste structure which in turn would advance the secular character of the Nation. This approach seeks to translate into reality the twin constitutional goals : one, to strike at the perpetuation of the caste stratification of the Indian Society so as to arrest regressive movement and to take a firm step towards establishing a casteless society; and two, to progressively eliminate poverty by giving an opportunity to the disadvantaged sections of the society to raise their position and be part of the mainstream of life which means eradication of poverty.

31. Let me make abundantly clear that this approach does not deal with reservation in favour of Scheduled Castes and Scheduled Tribes. Thousands of years of discrimination and exploitation cannot be wiped out in one generation. But even here economic criterion is worth applying by refusing preferred treatment to those amongst them who have already benefited by it and improved their position. And finally reservation must have a time span otherwise concessions tend to become vested interests. This is not a judgment in a lis in an adversary system. When the arguments concluded, a statement was made that the Government of State of Karnataka would appoint a Commission to determine constitutionally sound and nationally acceptable criteria for identifying socially and educationally backward classes of citizens for whose benefit the State action would be taken. This does not purport to be an exhaustive essay on guide-lines but may point to some extent, the direction in which the proposed Commission should move.

CHINNAPPA REDDY, J. –

Over three decades have passed since we promised ourselves "justice, social, economic and political" and "equality of status and opportunity". Yet, even today, we find members of castes, communities, classes or by whatever name you may describe them, jockeying for position, trying to elbow each other out, and, vying with one another to be named and recognised as "socially and educationally backward classes", to qualify for the 'privilege' of the special provision for advancement and the provision for reservation that may be made under Articles 15(4) and 16(4) of the Constitution. The paradox of the system of reservation is that it has engendered a spirit of self-denigration among the people. Nowhere else in the world do castes, classes or communities queue up for the sake of gaining the backward status. Nowhere else in the world is there competition to assert backwardness and to claim "we are more backward than you". This is an unhappy and disquieting situation, but it is stark reality.

33. Ours is a country of great economic, social and cultural diversity. Often we take great pride in the country's cultural diversity. While cultural diversity adds to the splendour of India, the others

add to our sorrow and scheme. The social and economic disparities are indeed despairingly vast. The Scheduled Castes, the Scheduled Tribes and the other socially and educationally backward classes, all of whom have been compendiously described as "the weaker sections of the people", have long journeys to make society. They need aid; they need facility; they need launching; they need propulsion. Their needs are their demands. The demands are matters of right and not of philanthropy. They ask for parity, and not charity. The days of Dronacharya and Ekalavya are over. They claim their constitutional right to equality of status and of opportunity and economic and social justice. Several bridges have to be erected, so that they may cross the Rubicon. Professional education and employment under the State are though

34. Before we attempt to lay down any guide-lines for the benefit of the Commission proposed to be appointed by the Karnataka Government, we will do well to warn ourselves and the proposed Commission against the pitfalls of the 'traditional' approach towards the question of reservation for Scheduled Castes, Scheduled Tribes and other backward classes which has generally been superior, elitist and, therefore, ambivalent. A duty to undo an evil which had been perpetrated through the generations is thought "to betoken a generosity and far-sightedness that are rare among nations". So a superior and patronising attitude is adopted. The result is that the claim of the Scheduled Castes and Scheduled Tribes and other backward classes to equality as a matter of human and constitutional right is forgotten and their rights are submerged in what is described as the 'preferential principle' or 'protective or compensatory discrimination', expressions borrowed from American jurisprudence. Unless we get rid of these superio

35. One of the result of the superior, elitist approach is that the question of reservation is invariably viewed as the conflict between the meritarian principle and the compensatory principle. No, it is not so. The real conflict is between the class of people, who have never been in or who have already moved out of the desert of poverty, illiteracy and backwardness and are entrenched in the oasis of convenient living and those who are still in the desert and want to reach the oasis. There is not enough fruit in the garden and so those who are in, want to keep out those who are out. The disastrous consequences of the so-called meritarian principle to the vast majority of the under-nourished, poverty-stricken barely literate and vulnerable people of our country are too obvious to be stated. And, what is merit ? There is no merit in a system which brings about such consequences. Is not a child of the Scheduled Castes, Scheduled Tribes or other backward classes who has been brought up on an atmosphere of penury

36. Efficiency is very much on the lips of the privileged whenever reservation is mentioned. Efficiency, it seems, will be impaired if the total reservation exceeds 50%; efficiency' it seems, will suffer if the 'carry forward' rule is adopted; efficiency, it seems, will be injured if the rule of reservation is extended to promotional posts. From the protests against reservation exceeding 50% or extending to promotional posts and against the carry forward rule, one would think that the civil service is a Heavenly Paradise into which only the archangels, the chosen of the elite, the very best may enter and may be allowed to go higher up the ladder. But the truth is otherwise. The truth is that the civil service is no paradise and the upper echelons belonging to the chosen classes are not necessarily models of efficiency. The underlying assumption that those belonging to the upper castes and classes, who are appointed to the non-reserved posts will, because of their presumed merit, 'naturally' perform better than the profession. It is so difficult for the 'superior' castes to understand and rise above their prejudice and it is so difficult for the inferior castes and classes to overcome the bitter prejudice and opposition which they are forced to face at every stage. Always on hears the word 'efficiency' as if it is sacrosanct and the - has to be fiercely guarded. 'Efficiency' is not a Mantra which is whispered by the Guru in the Sishya's ear. The mere securing of high marks at

an examination may not necessarily mark out a good administrator. An efficient administrator, one takes it, must be one who possesses among other qualities the capacity to understand with sympathy and, therefore, to tackle bravely the problems of a large segment of population constituting the weaker sections of the people. And, who better than the ones belonging to those very sections? Why not ask ourselves why 35 years after independence, the position of the Scheduled Castes, etc. has not greatly improved? Is it not a legitimate questi

The truth is that it is absurd and degrading for men to make much of their intellectual and moral superiority to each other and still more of their superiority in the arts which bring wealth and power, because, judged by their place in any universal scheme, they are infinitely great or infinitely small. . . . The equality which all these thinkers emphasise as desirable is not equality of capacity or attainment but of circumstances, and institutions, and manner of life. The quality which they deplore is not the inequality of personal gifts, but of the social and economic environment. . . . Their views, in short, is that, because men are men, social institutions-property rights, and the organisation of industry, and the system of public health and education-should be planned, as far as is possible to emphasise and strengthen, not the class differences which divide but the common humanity which unite, them. . . .

37. But the controversy between the meritarian and the compensatory principles cannot be allowed to cloud the issues before us. An intelligible consequence of the fundamental rights of equality before the law, equal protection of the laws, equality of opportunity, etc., guaranteed to all citizens under our Constitution is the right of the weaker sections of the people to special provision for their admission into educational institutions and representation in the services. Appreciating the realities of the situation, and lest there be any misapprehension, the Constitution has taken particular care to specially mention this right of the weaker sections of the people in Articles 15(4) and 16(4) of the Constitution. In view of Articles 15(4) and 16(4), the so-called controversy between the meritarian and compensatory principles is not of any great significance, though, of course, we do not suggest efficiency should be sacrificed. The question really is, who are the Scheduled Castes, Scheduled Tribes and backward

38. We are afraid the courts are not necessarily the most competent to identify the backward classes or to lay down guide-lines for their identification except in broad and very general way. We are not equipped for that; we have no legal barometers to measure social backwardness. We are truly removed from the people, particularly those of the backward classes, by layer upon layer of gradation and degradation. And, India is such a vast country that conditions vary from State to State, region to region, district to district and from one ethnic religious, linguistic or caste group to another. A test to identify backward classes which may appear appropriate when applied to one group of people may be wholly inappropriate and unreasonable if applied to another group of people. There can be no universal test; there can be no exclusive test; there can be no conclusive test. In fact, it may be futile to apply any rigid tests. One may have to look at the generality and the totality of the situation.

39. We do generally understand what we mean when we talk of the richer classes, the poorer classes, the upper middle class, the lower middle class, the ruling class, the privileged class, the working class, the exploited classes, etc., etc. In what sense is the word 'classes' used in Article 15(4) and in Article 16(4) of the Constitution? what is the meaning of the expression 'socially' and "educationally backward classes"? What does backwardness consist in? To have a clear understanding of what is meant by 'backwardness', 'backward classes' and "socially and educationally backward classes", we must have an idea of what social inequality is about. Max

Weber gives us a three-dimensional picture of social inequality. According to Weber, the three dimensions are class, status and power. A person's class-situation, in the Weber sense, is what he shares with others, similarly placed in the process of production, distribution and exchange, a definition of class which is very near to that of the Marxist conceptio

40. Any view of the caste system, class or cursory, will at once reveal the firm links which the caste system has with economic power. Land and learning, two of the primary sources of economic power in India, have till recently been the monopoly of the superior castes. Occupational skills were practised by the middle castes and in the economic system prevailing till now they could rank in the system next only to the castes constituting the landed and the learned gentry. The lowest in the hierarchy were those who were assigned the meanest tasks, the outcastes who wielded no economic power. The position of a caste in rural society is more often than not mirrored in the economic power wielded by it and vice versa. Social hierarchy and economic position exhibit an undisputable mutuality. The lower the caste, the poorer its members. The poorer the members of a other as they do are the Deus ex-Machina of the social status occupied and the economic power wielded by an individual or class in rural society. Social st

41. Shared situation in the economic hierarchy, caste gradation, occupation, habitation, style of consumption, standard of literacy and a variety of such other factors appear to go to make towards social and educational backwardness. In some situations and indeed quite often, social investigator may easily be able to identify a whole caste group as a socially and educationally backward classes; he may readily recognise people living in certain areas, say mountainous, desert or forest regions, as socially and educationally backward classes; he may freely perceive those pursuing certain 'lowly' occupations as socially and educationally backward classes; he may, without difficulty, distinguish the very poor and the destitute as socially and educationally backward classes. The social investigator may be bale to do all this by field-research, study, observation, collection and interpretation of data, application of common though not rigid standards. We will refer to these aspects of the question later in our judg

42. With these prefatory, general observations, we may now refer to the relevant constitutional provisions. Part XVI of the Constitution concerns itself with "Special provisions relating to certain classes". The classes in regard to which the Constitution-makers thought fit to make special provision are the Scheduled Castes, the Scheduled Tribes, the Anglo-Indian Community and the socially and educationally backward classes.

43. Article 330 and 332 provide for reservation of seats for Scheduled Castes and Scheduled Tribes in the Houses of the People and the Legislative Assemblies of the State. Articles 331 and 333 provide for representation of the Anglo-Indian Community in the House of the People and the Legislative Assemblies of the States. Article 334 provides that the reservation and special representation are to cease after 30 years. There is no reservation or special representation for socially and educationally backward classes either in the House of the People or in the Legislative Assemblies of the State.

44. Article 335 imposes a constitutional obligation to take into consideration the claims of members of the Scheduled Castes and Scheduled Tribes, in the making of appointments to the services and posts in connection with the affairs of the Union or of the States, consistently with the maintenance of efficiency of administration. Articles 336 and 337 make certain special provisions for the Anglo-Indian Community in certain services and with respect to educational grants for the benefit of that community. Article 341 empowers the President, with respect to any State (after consultation with

the Governor) or Union Territory, to specify, by public notification, the castes, the races or tribes or parts or groups within castes, races or tribes which shall, for the purposes of the Constitution, be deemed to be Scheduled Castes in relation to that State or Union Territory as the case may be. A notification so issued by the President is not to be varied by any subsequent notification, but may only be varied, by law,

45. Article 340 empowers the President to appoint a Commission to investigate the conditions of socially and educationally backward classes within the territory of India and the difficulties under which they labour and to make recommendations as to the steps that should be taken by the Union to remove such difficulties and to improve their conditions and as to the grants that should be made for that purpose by the Union or by the State. The report of the Commission which is to set out the facts and make recommendations is required to be laid before each House of Parliament, together with a memorandum explaining the action taken thereon.

46. Article 338 enjoins the appointment of a special officer for the Scheduled Castes and Scheduled Tribes by the President whose duty is to investigate all matters relating to the safeguards provided for the Scheduled Castes and Scheduled Tribes under the Constitution and to report to the President upon the working of those safeguards at such intervals as may be directed by the President. The reports are to be laid before each House of Parliament. Article 338(3) expressly provides that under Article 338 references to the Scheduled Castes/Scheduled Tribes shall be construed as including references to such other backward classes as the President may on receipt of the report of a Commission appointed under Article 340(1) specify and also the Anglo-Indian Community.

47. Thus, while there is a special provisions of reservation of seats for Scheduled Castes and Scheduled Tribes in the House of the People and the Legislative Assemblies of the States and a provision for the representation of the Anglo-Indian Community in the House of the People and the Legislative Assemblies of the States, there is no such provision for reservation of seats for socially and educationally backward classes in the House of the People or the Legislative Assemblies of the States. Again, while under Article 335 there is a constitutional obligation to consider the claims of the members of the Scheduled Castes and Scheduled Tribes in the making of appointments to services and posts in connection with the affairs of the Union and the States and there is a special provision for the Anglo-Indian Community in certain services for a limited period, there is no corresponding provision for the socially and educationally backward classes. But there is a provision under Article 340 of the Constitution for t

48. Article 14 of the Constitution, stated in positive language, guarantees to every person equality before the law and equal protection of the laws. Article 15(1) prohibits the State from discriminating against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. Article 29(2) similarly prohibits the denial of admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them. While Article 15(3) states that nothing in Article 15 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes". Article 16 deals with equality of opportunity in matters of public employment. Article 16(1) provides that there shall be equality of opportunity in matters relating to employment or appointment to any office under the State, and Article 16(2) prohibits

49. We see that while Article 15(4) contemplates "special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the

Scheduled Tribes", Article 16(4) speaks of "provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State is not adequately represented in services under the State". Now, it is not suggested that the socially and educationally backward classes of citizens and the Scheduled Castes and the Scheduled Tribes for whom special provision for advancement is contemplated by Article 15(4) are distinct and separate from the backward classes of citizens who are not adequately represented in the services under the State for whom reservation of posts and appointments is contemplated by Article 16(4)."The backward classes of citizen" referred to in Article 16(4), despite the short description, are the same as "the socially and educationally backward classes of citizens

50. Since these questions are not altogether res integra, it will be useful to refer to a few of the earlier opinions of this Court touching upon this question.

51. Until Thomas came on the scene, Balaji was considered by many as the magnum opus on reservations. Balaji was also a case from Karnataka. The very first sentence of the judgment of Gajendragadkar, J., is a revelation of the frustrating task that the Government of Karnataka has been undertaking these several years. The first sentence says :

Since 1958 the State of Mysore has been endeavouring to make a special provision of the advancement of the socially and educationally backward classes of citizens in the State of Mysore under Article 15(4) of the Constitution, and every time when an order is passed in that behalf, its validity has been challenged by writ proceedings. Four previous orders passed in that behalf were challenged by writ proceedings taken against the State under Article 226. . .

Balaji was concerned with the question of the validity of the reservation made under Article 15(4) of the Constitution in regard to admission to the medical colleges of the Mysore and Karnataka Universities. Twenty-eight per cent of the seats were reserved for backward classes so-called, 22 per cent for more backward classes, 15 per cent for Scheduled Castes and 3 per cent Scheduled Tribes, making a total of 68 per cent of the seats available described in the judgment as "merit pool". The reservation was generally made on the basis of the report of the Nagan Gowda Committee appointed by the State Government. The Court found that the Committee approached the problem of enumerating and classifying these socially and educationally backward communities on the basis that social backwardness depended substantially on the caste to which the community belonged, though it recognised that economic condition may be a contributing factor. According to the Court, the Committee virtually equated 'classes' with 'castes'. T

52. Earlier we mentioned that poverty was regarded by the Court, as the prime cause of social backwardness. It was said at page 460 :

Social backwardness is on the ultimate analysis the result of poverty, to a very large extent. The classes of citizens who are deplorably poor automatically become socially backward. They do not enjoy a status in society and have, therefore, to be content to take a backward seat. It is true that social backwardness which results from poverty is likely to be aggravated by considerations of caste to which the poor citizens may belong, but that only shows the relevance of both caste and poverty in determining the backwardness of citizens.

We only add that there is an overpowering mutuality between poverty and caste on the Indian scene. Again, referring to some scheme formulated by the Maharashtra Government for financial assistance the Court observed :

However, we may observe that if any State adopts such a measure, it may afford relief to and assist the advancement of the backward classes in the State, because backwardness, social and educational, is ultimately and primarily due to poverty.

Recognising poverty as the true source of the evil of social and economic backwardness and caste as a relevant factor in determining backwardness, the Court also noticed occupation and habitation as two other important contributing factors and finally stressed the need for a penetrating investigation. It was said :

The occupation of citizens may also contribute to make classes of citizens socially backward. There are some occupations which are treated as inferior according to conventional beliefs and classes of citizens who follow these occupations are apt to become socially backward. The place of habitation also plays not a minor part in determining the backwardness of a community of persons. In a sense, the problem of social backwardness is the problem of Rural India and in that behalf, classes of citizens occupying a socially backward position in rural area fall within the purview of Article 15(4). The problem of determining who are socially backward classes is undoubtedly very complex. Sociological, social and economic considerations come into play in solving the problem and evolving proper criteria for determining which classes are socially backward is obviously a very difficult task; it will need an elaborate investigation and collection of data and examining the said data in a rational and scientific way.

53. In Balaji this Court then proceeded to consider the question of educational backwardness. The Nagan Gowda Committee had dealt with the question on the basis of the average of the student population in the last three High School classes of all High School in the State in relation to a thousand citizens of that community. The Committee was of the view that all castes whose average was less than the State average should be regarded as backward communities and those whose average was less than 5 per cent of the State average should be regarded as more backward. The Court took the view that the adoption of the test of the last three High School classes might be a little high, but even if it was not considered high, it was not right to treat communities which were just below the State average as backward. There can be divergence of views on this question. Where the State average itself is abysmally low, there is no reason why classes of people whose average was slightly above, or very near, or just below the S

54. In fact while observing :

If the test has to be applied by a reference to the State average of student population, the legitimate view to take would be that the classes of citizens, whose average is well or substantially below the State average can be treated as educationally backward,

the Court also observed :

On this point again, we do not propose to lay down any hard and fast rule; it is for

the State to consider the matter and decide it in a manner which is consistent with the requirements of Article 15(4).

55. It was also observed in Balaji that the sub-classification made by the reservation order between backward classes and more backward classes did not appear to be justified under Article 15(4) as it appeared to be a measure devised to benefit all the classes of citizens who were less advanced when compared with the most advanced classes in the State, and that was not the scope of Article 15(4). A result of the sub-classification was that nearly 90% of the population of the State was treated as backward. The propriety of such a course may be open to question on the facts of each case, but we do not see why on principle there cannot be classification into backward classes and more backward classes, if both classes are not merely a little behind, but far far behind the most advanced backward classes; otherwise those of the backward classes who might be a little more advanced than the more backward classes might walk away with all the seats, just as, if reservation was confined to the more backward classes and

56. One may say the same thing about the adoption of the average of the student population in the last three High School classes of all High Schools in the State in relation to a thousand citizens of that community as the basis for assessing relative backwardness. Balaji thought it was a little high but surely other views are possible. In fact considering the wide spread of elementary education, one would think the basis should be pushed up higher. Having regard to the availability of elementary schools in rural areas, more and more boys of the backward classes may become literate. But it is a long way from ceasing to be educationally backward. As one goes up class by class it is a notorious fact that there are more and more 'drop-outs' from the boys of the backward classes than from the boys of the forward classes. The adoption of a lower basis to assess educational backwardness may give a wholly false picture. After all, if one is considering the question of admission to professional colleges or of appoint

57. The Balaji Court then considered the question of the extent of the special provision which the State would be competent to make under Article 15(4). Hence the Court brought in the so-called meritarian principle and thought that large reservation would inevitably affect efficiency. We may perhaps mention here what a noted sociologist had to say :

So the leading anti-reservationists try hard to find rationalizations to find nationalizations for their campaigns. A favourite one is to conjure up the image of a phony juxtaposition; on one side is 'merit' shown up by candidates on the open list; on the other side is 'incompetence', represented by those on the reserved list. Hence- so the argument runs-if reservations are maintained, standards in the medical professions (or in the professions and senior Government posts) will be deleted. Indeed (it is claimed) there is serious risk that patients will die if they are treated by 'backward' doctors who have reached their positions through reservations. (Such allegations are constantly repeated although they are patently false; in the finals at the post-graduate level, the minimum qualifying marks are identical for all candidates, irrespective of their origin.)

We should think that is a matter for experts in management and administration. There might be posts or technical courses for which only the best can be admitted and others might be posts and technical courses for which a minimum qualification would also serve. The percentage of reservations is not a matter upon which a court may pronounce with no material at hand. For a court to say that reservations should

not exceed 40%, 50% or 60%, would be arbitrary and the Constitution does not permit us to be arbitrary. Though in the Balaji case, the Court thought that generally and in a broad way a special provision should be less than 50%, and how much less than 50% would depend upon the relevant prevailing circumstances in each case, the Court confessed : "In this matter again, we are reluctant to say definitely what would be a proper provision to make." All that the Court would finally say was that in the circumstances of the case before them, a reservation of 68% was inconsistent with Article 15(4) of the Constitu

We have already noticed that the impugned order in the present case has categorised the backward classes on the sole basis of cast which, in our opinion, is not permitted by Article 15(4); and we have also held that the reservation of 68% made by the impugned order is plainly inconsistent with the concept of the special provision authorised by Article 15(4). Therefore, it follows that the impugned order is a fraud on the constitutional power conferred on the State by Article 15(4).

58. We must repeat here, what we have said earlier, that there is no scientific statistical data or evidence of expert administrators who have made any study of the problem to support the opinion that reservation in excess of 50% may impair efficiency. It is a rule of thumb and rules of the thumb are not for judges to lay down to solve complicated sociological and administrative problems. Sometimes, it is obliquely suggested that excessive reservation is indulged in as a mere vote-catching device. Perhaps so, perhaps not. One can only say "out of evil cometh good" and quicker the redemption of the oppressed classes, so much the better for the nation. Our observations are not intended to show the door to genuine efficiency. Efficiency must be a guiding factor but not a smoke-screen. All that a court may legitimately say is that reservation may not be excessive. It may not be so excessive as to be oppressive; it may not be so high as to lead to a necessary presumption of unfair exclusion of everyone else.

59. In *R. Chitralkha v. State of Mysore*, the Supreme Court upheld that classification of socially and educationally backward classes made on the basis of economic condition and occupation, without reference to caste. According to the Government Order, a family whose income was Rs. 1200 per annum or less and persons or classes following occupations of agriculture, petty business, inferior services, crafts or other occupations involving manual labour, were in general, socially and educationally backward. The Government listed the following occupations involving manual labour, were in general, socially and educationally backward. The Government listed the following occupations as contributing to social backwardness : (1) actual cultivators; (2) artisans; (3) inferior services (i.e. Class IV in Government services and corresponding class or service in private employment) including casual labour; and (4) any other occupation involving manual labour. This criteria was adopted by the Government as a temporary meas

While this Court said that caste is only a relevant circumstance and that it cannot be the dominant test in ascertaining the backwardness of a class of citizens, the High Court said that it is an important basis in determining the class of backward Hindus and that the Government should have adopted caste as one of the tests. As the said observations made by the High Court may lead to some confusion in the mind of the authority concerned who may be entrusted with the duty of prescribing the rules for ascertaining the backwardness of classed of citizens within the meaning of Article 15(4) of the Constitution, we would hasten to make it clear that caste is only a relevant circumstance in ascertaining the backwardness of a class and there is nothing in the judgment of this Court which precludes the authority concerned from determining the social backwardness of a group of citizens

if it can do so without reference to caste. While this Court has not excluded caste from ascertaining the backwardness of a class of

Later he further proceeded to explain :

This interpretation will carry out the intention of the Constitution expressed in the aforesaid articles. It helps the really backward classes instead of promoting the interests of individuals or groups who, though they belong to a particular caste a majority whereof is socially and educationally backward, really belong to a class which is socially and educationally advanced. To illustrate, take a caste in a State which is numerically the largest therein. It may be that though a majority of the people in that caste are socially and educationally backward, an effective minority may be socially and educationally far more advanced than another small sub-caste the total number of which is far less than the said minority. If we interpret the expression 'classes' as 'castes', the object of the Constitution will be frustrated and the people who do not deserve an adventitious aid may get it to the exclusion of those who really deserve. This anomaly will not arise if, without equating caste with class, caste is taken

Evidently recognising the difficulty besetting any attempt by a court to lay down inflexible criteria, he pointed out :

We do not intend to lay down any inflexible rule for the Government to follow. The laying down of criteria for ascertainment of social and educational backwardness of a class is a complex problem depending upon many circumstances which may vary from State. But what we intend to emphasize is that under no circumstances a 'class' can be equated to a 'caste', though the caste of an individual or a group of individuals may be considered along with other relevant factors in putting him in a particular class. We would also like to make it clear that if in a given situation caste is excluded in ascertaining a class within the meaning of Article 15(4) of the Constitution, it does not vitiate the classification if it satisfied other tests.

In *Minor P. Rajendran v. State of Madras*, Wanchoo, C.J., took care to say :

. . . if the reservation in question had been based only on caste and had not taken into account the social and educational backwardness of the caste in question, it would be violative of Article 15(1). But it must not be forgotten that a caste is also a class of citizens and if the caste as a whole is socially and educationally backward reservation can be made in favour of such a caste on the ground that it is a socially and educationally backward class of citizens within the meaning of Article 15(4). . . It is true that in the present cases the list of socially and educationally backward classes has been specified by caste. But that does not necessarily mean that caste was the sole consideration and that persons belonging to these castes are also not a class of socially and educationally backward citizens.

60. In *State of A. P. v. P. Sagar, Shah, J.* observed :

In the context in which it occurs the expression 'class' means a homogeneous section of the people grouped together because of certain likenesses or common traits and

who are identifiable by some common attributes such as status, rank, occupation, residence in a locality, race, religion and the like. In determining whether a particular section forms a class, caste cannot be excluded altogether. But in the determination of a class a test solely based upon the caste or community cannot also be accepted. . . . Reservation may be adopted to advance the interests of weaker sections of society, but in doing so, care must be taken to see that deserving and qualified candidates are not excluded from admission to higher educational institutions. The criterion for determining the backwardness must not be based solely on religion, race, caste, sex or place of birth, and the backwardness being social and educational must be similar to the backwardness from which the Scheduled Castes and the Scheduled Tribes suffer.

61. *Triloki Nath v. State of J & K*, the Court held that while it was open to the State to make a provision for reservation of appointments or posts in favour of socially and educationally backward classes, it could not distribute the total number of posts or appointments on the basis of community or place or residence. An order of the Government of Jammu and Kashmir reserving 50% of the vacancies for the Muslims of Kashmir (entire State), 40% for the Jammu Hindus and 10% for the Kashmiri Hindus was struck down. It was pointed out that the expression "backward class" was not used as synonymous with backward caste or backward community but it was noticed :

The members of an entire caste or community may in the social, economic and educational scale of values at a given time be backward and may on that account be treated as a backward class, but that is not because they are members of a caste or community, but because they form a class.

The Court further said :

In its ordinary connotation the expression 'class' means a homogeneous section of the people grouped together because of certain likenesses or common traits, and who are identifiable by some common attributes such a status, rank, occupation, residence in a locality, race, religion and the like. But for the purpose of Article 16(4) in determining whether a section forms a class, a test solely based on caste, community, race, religion, sex, descent, place of birth or residence cannot be adopted, because it would directly offend the Constitution.

62. In *A. Peeriakaruppan v. State of T. N.*, the Court observed : (SCC pp. 48-49, paras 25 & 29)

A caste has always been recognised as a class. . . . There is no gainsaying the fact that there are numerous castes in this country which are socially and educationally backward. To ignore their existence is to ignore the facts of life.

63. In *State of A. P. v. Balram*, the order of the Government of Andhra Pradesh enumerating the socially and educationally backward classes for the purpose of admission into the medical colleges of the State had been struck down by the High Court on the ground that the Government Order was based on the report of the Backward Classes Commission which had adopted caste as the main basis to determine who were backward classes and this was contrary to the decision of the Court in *Balaji*. It had also been held by the High Court that the Commission had committed a mistake in adopting the average of student population per thousand of a particular class or community in the tenth or eleventh classes with reference to the State average for the purpose of determining educational

backwardness. Even so the percentage of literacy of some groups included in the list of backward classes was well above the State average. The High Court had further held that the Commission had ignored the principle that the social and education.

It must be pointed out that none of the above decisions lay down that social and educational backwardness must be exactly similar in all respects to that of the Scheduled Castes and Scheduled Tribes.

The contention that backward classes were classified on the basis of caste was met with the following observation : (SCC pp. 685-89, paras 82, 86 & 94)

No doubt, we are aware that any provision made under this clause must be within the well defined limits and should not be on the basis of caste alone. But it should not also be missed that a caste is also a class of citizens and that a caste as such may be socially and educationally backward. If after collecting the necessary data, it is found that the caste as a whole is socially and educationally backward, in our opinion, the reservation made of such persons will have to be upheld notwithstanding the fact that a few individuals in that group may be both socially and educationally above the general average. There is no gain saying the fact that there are numerous castes in the country, which are socially and educationally backward and therefore a suitable provision will have to be made by the State, as charged in Article 15(4) to safeguard their interest. . . the members of an entire caste or community may in the social, economic and educational scale of values, at a given time be backward and may on that

The Court then proceeded to observe that the question before them was whether the Backward Classes Commission had relevant data and material before it for enumerating the classes of persons to be included in the list of backward classes was a real question and not whether the Commission was scientifically accurate in conclusion. The Court expressed its satisfaction that there was sufficient relevant material to justify the Commission's conclusions and added : (SCC p. 686, para 83-A)

No doubt there are a few instances where the educational average is slightly above the State average, but that circumstance by itself is not enough to strike down the entire list. In fact, even there it is seen that when the whole class in which that particular group is included, is considered the average works out to be less than the State average. Even assuming there are a few categories which are a little above the State average, in literacy, that is a matter for the State to be taken note of and review the position of such categories of persons and take suitable decision.

Referring to the observations in Balaji regarding the test of average student population in the last three High School classes it was said : (SCC p. 687, para 87)

These observations made by this Court in the above decision have, in our opinion, been misapplied by the High Court to the case on hand. It has proceeded on the basis that it is axiomatic that the educational average of the class should not be calculated on the basis of the student population in the last three high school classes and that only those classes whose average is below the State average, that can be treated as educationally backward. This Court has only indicated the broad principles to be kept in view when making the provision under Article 15(4).

64. In Janki Prasad Parimoo v. State of J & K the Court noticed the link between economic

backwardness and social and educational backwardness and observed : (SCC p. 434, para 24)

In India, social and educational backwardness is further associated with economic backwardness and it is observed in Balaji case referred to above that backwardness, socially and educationally, is ultimately and primarily due to poverty.

Having said this the Court was not prepared to lay down poverty as the exclusive test on the ground that a large proportion of the population in India was poverty stricken and if poverty was made the sole test for reservation, a resourceless situation might arise. It was said : (SCC p. 434, para 24)

But if poverty is the exclusive test, a very large proportion of the population in India would have to be regarded as socially and educationally backward, and if reservations are made only on the ground of economic considerations, an untenable situation may arise because even in sectors which are recognised as socially and educationally advanced there are large pockets of poverty. In this country except for a small percentage of the population the people are generally poor-some being more poor, others less poor. Therefore, when a social investigator tries to identify socially an educationally backward classes, he may do it with confidence that they are bound to be poor. His Chief concern is, therefore, to determine whether the class or group is socially and educationally backward. Though the two words 'socially' and 'educationally' are used cumulatively for the purpose of describing the backward class, one may find that if a class as a whole is educationally advanced, it is generally also socially advanced b

The State of Jammu & Kashmir had declared six classes of citizens as socially and educationally backward. They were (1) persons whose traditional occupation was one of the sixty-two mentioned; (2) persons belonging to 23 social castes; (3) small cultivators; (4) low paid pensioners; (5) residents in areas adjoining the cease-fire line; (6) persons belonging to "bad pockets". The Court found that some of the sixty-two enumerated occupations were not traditional occupations at all and that list required review. The Court also found that 19 out of the 23 castes had been identified by the Committee as suffering from social disabilities and also educationally and economically backward. In the case of the remaining four castes, there was nothing to indicate that they were backward classes. Referring to the third category of small cultivators, it was observed that they could not be said to be "a homogeneous social section of the people with common trades and identifiable by some common attributes". All that could be

65. In State of U. P. v. Pradip Tandon, the Court recognised poverty as a relevant factor but observed that it was not the determining factor discovering poor socially and educationally backward classes. Even so the backwardness of the hill and Uttrakhand areas in Uttar Pradesh was sustained on economic basis. It was said : (SCC pp. 274-75, paras 19 & 20)

The hill and Uttrakhand areas in Uttar Pradesh are instances of socially and educationally backward classes of citizens for these reasons. Backwardness is judged by economic basis that each region has its own measurable possibilities for the maintenance of human numbers, standards of living and fixed property. From an economic point of view the classes of citizens are backward when they do not make effective use of resources. When large areas of land maintain a sparse, disorderly and illiterate population whose property is small and negligible the specialisation is not possible in the absence of means of communication and technical processes a in the

hill and Utrakhand areas the people are socially backward classes of citizens. Neglected opportunities and people in remote places raise walls of social backwardness of people.

Educational backwardness is ascertained with reference to these factors. Where people have traditional apathy for education on account of social and environmental conditions or occupational handicaps, it is an illustration of educational backwardness. The hill and Utrakhand areas are inaccessible. There is lack of educational institutions and educational aids. People in the hill and Utrakhand areas illustrate the educationally backward classes of citizens because lack of educational facilities keep them stagnant and they have neither meaning and values nor awareness for education.

The Court struck down the reservation for candidate from rural areas on the ground that rural population which constituted 80% of the population of the State could not be a homogeneous class. Some people in the rural areas might be educationally backward, some might be socially backward, there may be few who were both socially and educationally backward but it could not be said that all citizens residing in rural areas were socially and educationally backward.

66. The Court while noticing the difficulty of defining the expression 'socially' and 'educationally' backward classes of citizens allowed itself to make the observation, "the traditional unchanging occupations of citizens may contribute to social and educational backwardness. The place of habitation and its environment is also a determining factor in judging the social and educational backwardness".

67. In *K. S. Jayasree v. State of Kerala*, what was in question was a Government Order specifying that only citizens who were members of families which had an aggregate income of less than Rs. 6000 per annum and which belonged to the caste and community mentioned in the annexures to the Government Order would constitute socially and educationally backward classes for the purposes of Article 15(4). The Court upheld the order and held : (SCC pp. 735-36, paras 21 & 22)

In ascertaining social backwardness of a class of citizens it may not be irrelevant to consider the caste of the group of citizens. Caste cannot however be made the sole or dominant test. Social backwardness is in the ultimate analysis the result of poverty to a large extent. Social backwardness which results from poverty is likely to be aggravated by considerations of their caste. This shows the relevance of both caste and poverty in determining the backwardness of citizens. Poverty by itself is not the determining factor of social backwardness. Poverty is relevant in the group constitutes socially and educationally backward classes. The basis of the reservation is not income but social and educational backwardness determined on the basis of relevant criteria. If any classification of backward classes of citizens is based solely on the caste of the citizen it will perpetuate the vice of caste system. Again, if the classification is based solely on poverty, it will not be logical... social backwardness which *kha v. State of Mysore* this Court said that the classification of backward classes based on economic conditions and occupations does not offend Article 15(4).

68. *State of Kerala v. N. M. Thomas* is a very important case decided by a Bench of seven Judges consisting of Ray, C.J., Khanna, Mathew, Beg, Krishna Iyer, Gupta and Murtaza Fazal Ali, JJ. The question was about the exemption given to members of the Scheduled Castes and Scheduled Tribes,

for a limited period, from passing a certain departmental test to qualify for promotion from the post of Lower Division Clerk to the post of Upper Division Clerk. The rule providing for the exemption was attacked on the ground that it was violative of Article 16(1). One of the arguments in support of the attack was that the result of application of the rule would be to enable the members of the Scheduled Castes and Scheduled Tribes to claim more than 50% of the posts immediately available for promotion. The rule was upheld by Ray, C.J., Mathew, Beg, Krishna Iyer and Murtaga Fazal Ali, JJ. and struck down by Khanna and Gupta, JJ. Ray, C.J. observed that the equality of opportunity took within its fold "all stages of service f

The High Court was wrong in basing its conclusion that the result of application of the impeached rule and the orders is excessive and exorbitant namely that out of 51 posts, 34 were given to the members of the Scheduled Castes and Scheduled Tribes. The promotions made in the service as a whole are nowhere near 50% of the total number of posts. The Scheduled Castes and Scheduled Tribes constitute 10% of the State's population. Their share in the gazetted service of the State is said to be 2% namely 184 out of 8780. Their share in the non-gazetted appointments is only 7% namely 11, 437 out of 1,62,784. It is, therefore, correct that Rule 13-AA and the orders are meant to implement not only the direction under Article 335 but also the Directive Principle under Article 46.

69. One other important statement in Ray C.J.'s judgment is worth noticing. He said, "Scheduled Castes and Scheduled Tribes are not a caste within the ordinary meaning of caste". He referred to *Bhaiyalal v. Harikishan Singh* where it had been held that an enquiry was not permissible into the question whether a particular caste was a Scheduled Caste or not in view of the provision of Article 341.

70. Mathew, J. who agreed with the conclusions of Ray, C.J., observed that resort to some sort of proportionate equality was necessary in many spheres to achieve justice. Equality of opportunity was not simply a matter of legal equality, it depended not merely on the absence of disability but on the presence of abilities. The Government has an affirmative duty to eliminate inequalities and to provide opportunities for the exercise of human rights and claims. The Government has an affirmative duty to eliminate inequalities and to provide opportunities for the exercise of human rights and claims. The Government has an affirmative responsibility for elimination of inequalities, social, economic or otherwise. There was no reason for the Court not to require the State to adopt a standard of proportional equality which took account of the differing conditions and circumstances of a class of citizens whenever those conditions and circumstances stood in the way of their equal access to the enjoyment of basic rights

71. Beg, J., however, thought that Article 16(4) was designed "to reconcile the conflicting pulls of Article 16(1) representing the dynamics of justice, conceived of as equality in conditions under which candidates actually compete for posts in Government service, and of Articles 46 and 335 embodying the duties of the State to promote the interests of the economically, educationally and socially backward so as to release them from the clutches of social injustice". According to Beg, J. the encroachments on the field of Article 16(1) could only be permitted to the extent they were warranted by Article 16(4) and to read broader concept of social justice and equality into Article 16(1) might stultify the provision itself and make Article 16(4) otiose. We must straight away demur. There is no reason whatever to narrow the concept of equality in Article 16(1) and refuse to read into it broader concepts of social justice and equality. In fact, it is necessary to read Article 16(1) so as not to come into any confli

72. Krishna Iyer, J., while upholding the validity of Rule 13-AA made it quite clear that Article

16(4) was to be viewed not as a saving clause but as a clause inserted in Article 16 due to the over-anxiety of the emphatic that Article 16 applied to appointments and promotions as well. He expressed his agreement with Fazal Ali, J. that the arithmetical limit of 50% in one year set by some earlier rulings could not be pressed too far recruitment in a particular year, but the total strength of a cadre. He also agreed with Fazal Ali, J.'s construction of Article 16(4) and his view about the "carry forward" rule. But we must point out that Krishna Iyer, J. also made certain observations indicating that he to fell into the elitist trap of viewing the question as one of "protective discrimination". The question to which he addressed himself was "Is Rule 13-AA valid as protective discrimination to the Harijans". Viewing the question in that light, he proceeded to utter some words of purported caution about the evil

A word of sociological caution. In the light of experience, here and elsewhere, the danger of 'reservation', it seems to me, is threefold. Its benefits, by and large, are snatched away by the top creamy layer of the 'backward' caste or class, thus keeping the weakest among the weak always weak and leaving the fortunate layers to consume the whole cake. Secondly, this claim is overplayed extravagantly in democracy by large and vocal groups whose burden of backwardness has been substantially lightened by the march of time and measures of better education and more opportunities of employment, but wish to wear the "weaker section" label as a means to score over their near-equals formally categorised as the upper brackets. Lastly, a lasting solution to the problem comes only from improvement of social environment, added educational facilities and cross-fertilisation of castes by inter-caste and inter-class marriages sponsored as a massive State programme, and this solution is calculatedly hidden from view by the

One cannot quarrel with the statement that social science research and not judicial impressionism should form the basis of examination, by courts, of the sensitive question of reservation for backward classes. Earlier we mentioned how the assumption that efficiency will be impaired if reservation exceeds 50%, if reservation is extended to promotional posts or if the carry forward rule is adopted, is not based on any scientific data. One must, however, enter a caveat to the criticism that the benefits of reservation are often snatched away by the top creamy layer of backward class or caste. That a few of the seats and posts reserved for backward classes are snatched away by the more fortunate among them is not to say that reservation is not necessary. This is bound to happen in a competitive society such as ours. Are not the unreserved seats and posts snatched way, in the same way, by the top creamy layer of society itself? Seats reserved for the backward classes are taken away by the top layers amongst them

73. Fazal Ali, J. expressed his satisfaction that the classification made by the Government by Rule 13-AA was fully justified by Article 16 of Constitution. He held that Article 16(4) was not to be read in isolation or as an exception to Article 16(1), but was to be read as part and parcel of Article 16(1) and (2). Dealing with the question of the so-called excessive reservation, he emphatically observed : (SCC p. 387, para 191)

This means that the reservation should be within the permissible limits and should not be a cloak to fill all the posts belonging to a particular class of citizens and thus violate Article 16(1) of the Constitution indirectly. At the same time clause (4) of Article 16 does not fix any limit on the power of the Government to make reservation. Since clause (4) is a part of Article 16 of the Constitution it is manifest that the State cannot be allowed to indulge in excessive reservation so as to defeat the policy contained in Article 16(1). As to what would be a suitable reservation within permissible limits will depend upon the facts and circumstances of each case and no

hard and fast rule can be laid down, nor can this matter be reduced to a mathematical formula so as to be adhered to in all cases. Decided cases of this Court have no doubt laid down that the percentage of reservation should not exceed 50%. As I read the authorities, this is, however, a rule of caution and does not exhaust all categories.

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Fazal Ali, J. next considered the validity of the "carry forward" rule and upheld that rule also. He said that if in fact the carry forward rule was not allowed to the adopted, it might result in inequality to the backward classes of citizens.

74. Thus, we see that all five Judges who constituted the majority were clear that Article 16 applied to all stages of the service of a civil servant, from appointment to retirement, including promotion. Four out of seven Judges Ray, C.J., Beg, Krishna Iyer and Fazal Ali, JJ., were also of the clear view that the so-called fifty per cent rule would apply to the total number of posts in the service and not to the number of posts filled up at different times on different occasions. The reservation in appointments made on any single occasion might well exceed 50%. Four out of seven Judges, Ray, C.J., Mathew, Krishna Iyer and Fazal Ali, JJ., further expressed the view that Article 16(4) was not an exception to Article 16(1) and that it was merely an emphatic way of stating that reservation was one of the modes of achieving equality for the backward classes of citizens.

75. In *Akhil Bharatiya Soshit Karamchari Sangh v. Union of India*, the Court had to consider the question of reservation of posts under the State in favour of Scheduled Castes and Scheduled Tribes and the "carry forward rule". The reservation and the rule were upheld by the Court. One of the arguments vigorously advanced was the usual plea that efficiency would suffer. Krishna Iyer, J. meeting the argument observed : (SCC p. 296, paras 91 and 93)

The sting of the argument against reservation is that it promotes inefficiency in administration by choosing substandard candidates in preference to those with better mettle. Competitive skill is more relevant in higher posts, especially those where selection is made by competitive examinations. Lesser classes of posts, where promotion is secured mechanically by virtue of seniority except where the candidate is unfit, do not require a high degree of skill as in the case of selection posts. It is obvious that as between selection and non-selection posts the role of merit is functionally more relevant in the former than in the latter. And if in Rangachari reservation has been held valid in the case of selection posts, such reservation in non-selection posts is an a fortiori lesser merit, how can you rationally argue that for the posts of peons or lower division clerks reservation will spell calamity ? The part that efficiency plays is far more in the case of higher posts than in the appointments to the lower p

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Trite arguments about efficiency and inefficiency are a trifle phony because, after all, at the higher levels the harijan/girijan appointees are a microscopic percentage and even in the case of Classes III and II posts they are negligible. The preponderant majority coming from the unreserved communities are presumably efficient and the dilution of efficiency caused by the minimal induction of a small percentage of 'reserved' candidates cannot affect the overall administrative efficiency significantly. Indeed, it will be gross exaggeration to visualise a collapse of the Administration because 5 to 10 per cent of the total number of officials in the various classes happen to be

substandard. Moreover, care has been taken to give in-service training and coaching to correct the deficiency.

76. While we agree that competitive skill is relevant in higher posts, we do not think it is necessary to be apologetic about reservations in posts, higher or lower, so long as the minimum requirements are satisfied. On the other hand, we have to be apologetic that there still exists a need for reservation. Earlier we extracted a passage from Tawney's Equality where he bemoaned how degrading it was for humanity to make much of their intellectual and moral superiority to each other. Krishna Iyer, J. once again emphasised that Article 16(4) was one facet of the multi-faceted character of the central concept of equality. One of us (Chinnappa Reddy, J.), in the same case, explained how necessary it was to translate the constitutional guarantees given to the Scheduled Castes, Scheduled Tribes and other backward classes into reality by necessary State action to protect and nurture those classes of citizens so as to enable them to shake off the heart-crushing burden of a thousand years' deprivation from their shoulders.

Article 16(4) is not in the nature of an exception to Article 16(1). It is a facet of Article 16(1) which fosters and furthers the idea of equality of opportunity with special reference to an underprivileged and deprived class of citizens to whom *egalite de droit* (formal or legal equality) is not *egalite de fait* (practical or factual equality). It is illustrative of what the State must do to wipe out the distinction between *egalite de droit* and *egalite de fait*. It recognises that the right to equality of opportunity includes the right of the underprivileged to conditions comparable to or compensatory of those enjoyed by the privileged. Equality of opportunity must be such as to yield "Equality of Results" and not that which simply enables people, socially and economically better placed, to win against the less fortunate, even when the competition is itself otherwise equitable. John Rawls in *A Theory of Justice* demands the priority of equality in a distributive sense and the setting up of the Social System "s

The statement that equality of opportunity must yield equality of results was the philosophical foundation of the fulfilment of Article 16(1) in Article 16(4).

77. So we have now noticed the historical and sociological background of class and caste, the philosophy, the reason and the rehistoric behind reservation and anti-reservation, the constitutional provisions and the varying judicial stances. What emerges from these three decades of parliamentary, executive, judicial, political and practical wisdom? Clearly there exist large sections of people who are socially and educationally backward who stand midway between the forward classes such as the landed, the learned, the priestly and the trading classes on the one side and the outcaste and depressed classes, i.e. the Scheduled Castes and the Scheduled Tribes on the other. Poverty, castes, occupation and habitation are the principal factors which contribute to brand a class as socially backward. The customs which they honour and observe, the rituals which they fear and practise, the habits to which they adapt and conform, the festivals which they enjoy and celebrate and even the gods that they revere and worship a

78. Dress habits also throw light, while it is difficult to imagine, persons belonging to upper caste or occupational groups going about their daily work bare-backed it is not an uncommon sight to see persons belonging to lower caste or occupational groups so going about. Work habits also give an indication. Women belonging to higher social groups would not generally care to serve in other people's homes or fields. Again children of lower social groups take to domestic and field work quite

early in their lives. There are certainly good economic reasons for all these factors. As we said economic situation and social situation often reflect each other. We mentioned earlier that even the gods that they worship give occasional clues. While the Hindu Gods proper, Rama Krishna, Shiva etc. are worshiped by all Hindus generally there are several local gods and goddesses in each village worshiped only by the inferior castes. In Andhra Pradesh, for example, in every village the so-called inferior castes worship the god

79. There are many other customs, rituals or habits of significance which if one only cares to study them mark out the socially backward classes. The weight to be attached to these factors depends upon the circumstances of the case which can only be revealed by thoughtful, penetrating investigation and analysis. It cannot be done by means of mathematical formulae but only by looking in the round or taking a look at the entire situation. Sometimes it may be possible to readily identify certain castes or social groups as a whole as socially forward or socially backward classes. Poverty, of course, is basic, being the root cause as well as the rueful result of social and educational backwardness. But mere poverty it seems is not enough to invite the constitutional branding, because the vast majority of the people of our country are poverty-struck but some among them are socially and educationally forward and others backward. In a country like India where 80% of the people live below the breadline, even the

80. Class poverty, not individual poverty, is therefore the primary test. Other ancillary tests are the way of life, the standard of living, the place in the social hierarchy, the habits and customs, etc. Despite individual exceptions, it may be possible and easy to identify social backwardness with reference to caste, with reference to residence, with reference to occupation or some other dominant feature. Notwithstanding our antipathy to caste and sub-regionalism, these are facts of life which cannot be wished away. If they reflect poverty which is the primary source of social and educational backwardness, they must be recognised for what they are along with other less primary sources. There is and there can be nothing wrong in recognising you see it as a caste group, a sub-regional group, or occupational group or some other class. Once the relevant factors are taken into consideration, how other class. Once the relevant factors are taken into consideration, how and where to draw the line is a question for

A. P. SEN, J. –

In view of the importance of the question involved, I would like to add a few words of my own.

82. The real question raised is not of excessive reservation for the advancement of socially and educationally backward classes of citizens or for the Scheduled Castes and Scheduled Tribes under Articles 15(4) or for reservation of appointments or posts in favour of any backward classes of citizens under Article 16(4) which, in the opinion of the State, is not adequately represented in the services under the State, but the question is as to the identification of the socially and educationally backward classes of citizens for whose advancement the State may make special provisions under Article 15(4) like those for the Scheduled Castes and Scheduled Tribes. Conceptually, the making of special provisions for the advancement of backward classes of citizens under Article 15(4) and the system of reservation of appointments or posts as envisaged by Article 16(4) as guaranteed in the Constitution, is a national commitment and a historical need to eradicate age-old social disparities in our country. But unfortunatel

83. After 37 years of attainment of independence it cannot be seriously disputed that poverty is the root cause of social and economic backwardness. The problem is about identification of the backward classes for whose benefit the State may make special provisions under Article 15(4) or for reservation of appointments or posts under Article 16(4). In view of the widespread public unrest in the State of Madhya Pradesh and Gujarat in recent days, the Government at the Centre must have a second look at the whole system of reservation. It is true that mere economic backwardness would not satisfy the test of educational and social backwardness under Article 15(4) but the question is as to the criteria to be adopted. Economic backwardness is only one of the tests to determine social and educational backwardness. If that test were to be the sole criterion of social and educational backwardness, the reservation for the advancement of such classes to special treatment under Article 15(4) would fail.

84. In retrospect, the answer to the question as to who are the members of socially and educationally backward classes for whose advancement the State may make special provisions under Article 15(4) still eludes us. Why should not the expression "backward classes" be treated as synonymous with the weaker sections of the society ? Does the word 'class' denote a caste or sub-caste among Hindus so far as Hindus are concerned, or a section or a group so far as Muslim, Christian or other religious communities and denominations are concerned ? In my considered opinion, the predominant and the only factor for making special provisions under Article 15(4) or for reservations of posts and appointments under Article 16(4) should be poverty, and caste or a sub-caste or a group should be used only for purposes of identification of persons comparable to Scheduled Castes or Scheduled Tribes, till such members of backward classes attain a state of enlightenment and there is eradication of poverty amongst them and they beco

85. In this context, I must point out that the adequacy or otherwise of representation of the backward classes in the services has to be determined with reference to the percentage of that class in the population and the total strength of the service as a whole. The representation does not have to exactly correspond to the percentage of that class in the population; it just has to be adequate. Moreover, in the case of services the extent of representation has to be considered by taking into account the number of members of that class in the service, whether they are holding reserved or unreserved posts. I cannot over-emphasize the need for a rational examination of the whole question of reservation in the light of the observations made by us. The State should give due importance and effect to the dual constitutional mandates of maintenance of efficiency and the equality of opportunity for all persons. The nature and extent of reservations must be rational and reasonable. It may be, and often is, difficult fo

86. Questions as to the validity or otherwise of reservations have been agitated several times before this Court and resolved. The frequency and vigour with which these questions are raised is a disturbing indication of the tension and unease in society in regard to the manner in which Article 15(4) and Article 16(4) are operated by the State. The Preamble to our Constitution shows the nation's resolve to secure to all its citizens : Justice-social, economic and political. The State's objective of bringing about and maintaining social justice must be achieved reasonably having regard to the interests of all. Irrational and unreasonable moves by the State will slowly but surely tear apart the fabric of society. It is primarily the duty and function of the State to inject moderation into the decisions taken under Article 15(4) and 16(4), because justice lives in the hearts of men and a growing sense of injustice and reverse discrimination, fuelled by unwise State action, will destroy, not advance, social just

87. The extent of reservation under Article 15(4) and Article 16(4) must necessarily vary from State

to State and from region to region within a State, depending upon the conditions prevailing in a particular State or region, of the backward classes. I do feel that the Central Government should consider the feasibility of appointing a permanent National Commission for backward classes which must constantly carry out sociological and economic study from State to State and from region to region within a State. The framers of the Constitution by enacting Article 340 clearly envisaged the setting up of such a high-powered National Commission for backward classes at the Centre. These problems can never be resolved through litigation in the courts.

88. I wish to add that the doctrine of protective discrimination embodied in Article 15(4) and 16(4) and the mandate of Article 29(2) cannot be stretched beyond a particular limit. The State exists to serve its people. There are some services where expertise and skill are of the essence. For example, a hospital run by the States serves the ailing members of the public who need medical aid. Medical services directly affect and deal with the health and life of the populace. Professional expertise, bon of knowledge and experience, of a high degree of technical knowledge and operational skill is required of pilots and aviation engineers. The lives of citizens depend on such persons. There are other similar fields of governmental activity where professional, technological, scientific or other special skill is called for. In such services or posts under the Union or States, we think there can be no room for reservation of posts; merit alone must be the sole and decisive consideration for appointments.

89. Reasons for this decision will follow.

VENKATARAMIAH, J. –

The constitutional validity of certain Government Order issued by the Government of the State of Karnataka making provisions for reservation of some seats in technical institutions and some posts in the Government services respectively under Article 15(4) and Article 16(4) of the Constitution of India for being filled up by students/candidates, as the case may be, belonging to certain castes, tribes and communities which in the opinion of the State Government constituted backward classes (other than the Scheduled Castes and the Scheduled Tribes) is questioned in these petitions.

91. The questions involved in these cases are delicate ones and have, therefore, to be tackled with great caution. The issues raised there and the decision rendered on them are bound to have great impact on society. They are indeed highly sensitive issues. A superficial approach to the problem has, therefore, to be avoided. The questions have to be tackled with sympathy of persons who are really in need of the benign assistance at the hands of the State and with due regard to the interests of the general public.

92. "India's vast and unparalleled experiment with 'protective' or 'compensatory' discrimination in favour sections of her population betokens a generosity and farsightedness that are rare among nations. The operation of such a preferential principle involves formidable burdens of policy-making and administration in a developing nation. It also places upon the judiciary tasks of great complexity and delicacy. The courts must guard against abuses of the preferential principle while at the same time insuring that the Government has sufficient leeway to devise effective use of the broad powers which the Constitution places at its disposal." These are the wise words of Marc Galanter, a member of the faculty of Social Sciences, University of Chicago, who has made a special study of the problem of the Indian backward classes. The very fact that the governmental agencies and "above all the courts have been obliged to examine the constitutional principles in the light of the egalitarian pressures has in its turn ope

93. In this case, the Court is called upon to resolve the conflict between "the meritarian principle and the compensatory principle" in the matter of admissions into institutions imparting higher education and of entry into Government service in the State of Karnataka. All the contestants depend upon one or the other clauses of the Constitution in support of their case. Hence the problem is rendered more difficult.

94. Those who argue in support of merit contend that the State should remove all man-made obstacles which are in the way of an individual and allow him to attain his goal in an atmosphere of free competition relying upon his own natural skill and intelligence. Those who argue for compensatory principle contend that in order that the competition may be "fair and not just free" it is the duty of the State to take note of the unequal situation of the individuals concerned which has led to unequal capacities amongst them and to reduce the rigours of free competition which may, unless looked into by the State, lead to perpetual denial of equality of opportunity to the weak and the neglected section of society. This argument is based on the well-founded assumption that unequal conditions of cultural life at home because unequal cultural development of children belonging to different strata of society. The need for social action is necessitated by the environmental factors and living conditions of the individuals and Williams establishes the above statement :

Suppose that in a certain society great prestige is attached to membership of a warrior class, the duties of which require great physical strength. This class has in the past been recruited from certain wealthy families only; but egalitarian reforms achieve a change in the rules, by which warriors are recruited from all sections of the society, on the results of a suitable competition. The effect of this, however, is that the wealthy families still provide virtually all the warriors, because the rest of the populace is so undernourished by reason of poverty that their physical strength is inferior to that of the wealthy and well-nourished. The reformers protest that equality in fact it has, and that the poor now have the opportunity of becoming warriors-it is just bad luck that their characteristics are such that they do not pass the test."We are not", they might say, "excluding anyone for being poor, we exclude people for being weak, and it is unfortunate that those who are poor are also weak".

This answer would seem to most people feeble and even cynical. This is for reasons similar to those discussed before in connexion with equality before the law; that the supposed equality of opportunity is quite empty-indeed, one may say that it does not really exist-unless it is made more effective than this. For one knows that it could be made more effective; one knows that there is a causal connexion between being poor and physically weak. One supposes further that something could be done-subject to whatever economic conditions obtain in the imagined society-to alter the distribution of wealth. All this being so, the appeal by the wealthy to the 'bad luck' of the poor must appear as disingenuous.

95. The former princely State of Mysore which now forms part of the State of Karnataka is one of the earliest State in the country in which the system of reservation for backward classes in public services was introduced. In 1918, the Government of His Highness the Maharaja of Mysore appointed a committee under the chairmanship of Sir Leslie C. Miller, Chief Justice of the Chief Court of Mysore to investigate and report on the problem of backward classes. The questions referred to that committee were (i) changes needed in the then existing rules of recruitment to the public services; (ii) members of backward classes and (iii) any other special measures which might be taken to increase the representation of backward communities in the public services without

materially affecting the efficiency, due regard being paid also to the general good accruing to the State by a wider diffusion of education and feeling of increased status which will thereby be produced in the backward communities. It is significant that

The backwardness under Article 15(4) must be social and educational. It is not either social or educational, but it is both social and educational; and that takes us to the question as to how social and educational backwardness has to be determined.

Let us take the question of social backwardness first. By what test should it be decided whether a particular class is socially backward or not? The group of citizens to whom Article 15(4) applies are described as "classes of citizens", not as castes of citizens. A class, according to the dictionary meaning, shows division of society according to status, rank or caste. In the Hindu social structure, caste unfortunately plays an important part in determining the status of the citizen. Though according to sociologists and Vedic scholars, the caste system may have originally begun on occupational or functional basis, in course of time, it became rigid and inflexible. The history of the growth of caste systems shows that its original functional and occupational basis was later overburdened with considerations of purity based on ritual concepts, and that led to its ramifications which introduced inflexibility and rigidity. This artificial growth inevitably tended to create a feeling of superiority and inferiority

Besides, if the caste of the group of citizens was made the sole basis for determining the social backwardness of the said group, that test would inevitably break down in relation to many sections of Indian society which do not recognise castes in the conventional sense known to Hindu society. How is one going to decide whether Muslims, Christians or Jains, or even Lingayats are socially backward or not? The test of castes would be inapplicable to those groups, but that would hardly justify the exclusion of these groups in toto from the operation of Article 15(4). It is not unlikely that in some States some Muslims or Christians or Jains forming groups may be socially backward. That is why we think that though castes in relation to Hindus may be a relevant factor to consider in determining the social backwardness of groups or classes of citizens, it cannot be made the sole or the dominant test in that behalf. Social backwardness is on the ultimate analysis the result of poverty, to a very large extent. The

The occupations of citizens may also contribute to make classes of citizens socially backward. There are some occupations which are treated as inferior according to conventional beliefs and classes of citizens who follow these occupations are apt to become socially backward. The place of habitation also plays not a minor part in determining the backwardness of a community of persons. In a sense, the problem of social backwardness is the problem of Rural India and in that behalf, classes of citizens occupying a socially backward position in rural area fall within the purview of Article 15(4). The problem of determining who are socially backward classes is undoubtedly very complex. Sociological, social and economic considerations come into play in solving the problem and evolving proper criteria for determining which classes are socially backward is obviously a very difficult task; it will need an elaborate investigation and collection of data and examining the said data in a rational and scientific way. That

96. Dealing with the question of determination of the classes which were educationally backward, Gajendragadkar, J. (as he then was) observed in the same case at pages 463-464 thus :

It may be conceded that in determining the educational backwardness of a class of citizens, the literacy test supplied by the Census Reports may not be adequate; but it

is doubtful if the test of the average of student population in the last three High School classes is appropriate in determining the educational backwardness. Having regard to the fact that the test is intended to determine who are educationally backward classes, it may not be necessary or proper to put the test as high as has been done by the Committee. But even assuming that the test applied is rational and permissible under Article 15(4), the question still remains as to whether it would be legitimate to treat castes or communities which are just below the State average as educationally backward classes. If the State average is 6.9 per thousand, a community which satisfies the said test or is just below the said test cannot be regarded as backward. It is only communities which are well below the State average that can properly be regarded

98. Applying the above rule the Court held that the inclusion of members of the Lingayat community in the list of backward classes was erroneous. On the question of extent of reservation that can be made, this Court observed in the aforesaid case at pages 469-471 thus :

The learned Advocate-General has suggested that reservation of a large number of seats for the weaker sections of the society would not affect either the depth or efficiency of scholarship at all, and in support of this argument, he has relied on the observations made by the Backward Classes Commission that it found no complaint in the States of Madras, Andhra, Travancore-Cochin and Mysore where the system of recruiting candidates from other backward classes to the reserve quota has been in vogue for several decades. The Committee further observed that the representatives of the upper classes did not complain about any lack of efficiency in the offices recruited by reservation (p. 135). This opinion, however, is plainly inconsistent with what is bound to be the inevitable consequence of reservation in higher university education. If admission to professional and technical colleges is unduly liberalised it would be idle to contend that the quality of our graduates will not suffer. That is not to say that rese

99. The petition was thus allowed by this Court.

100. Then came the Government Order dated July 26, 1963 which directed that 30 per cent of the seats in professional and technical colleges and institutions should be reserved for backward classes as defined in that order and that 18 per cent of the seats should be reserved for the Scheduled Castes and Scheduled Tribe. The criteria laid down in that order for determining social and economic backwardness were twofold-income and occupation. It stated that those who followed occupations of agriculture, petty business, inferior service, crafts or other occupations involving manual labour and whose family income was less than Rs. 1200 per annum were to be treated as belonging to backward classes. This order was questioned before the High Court in *D. G. Viswanath v. Government of Mysore* by some petitioners on various grounds. While dismissing the said petitions, the High Court observed that the determination of the backward classes without reference to caste altogether was not correct and it expressed the hope tha

Two principles stand out prominently from the said observations, namely, (i) the caste of a group of citizens may be a relevant circumstance in ascertaining their social backwardness; and (ii) though it is a relevant factor to determine the social backwardness of a class of citizens, it cannot be the sole or dominant test in that behalf. The observations extracted in the judgment of the High Court appear to be in

conflict with the observations of this Court. While this Court said that caste is only a relevant circumstance and that it cannot be the dominant test in ascertaining the backwardness of a class of citizens, the High Court said that it is an important basis in determining the class of backward Hindus and that the Government should have adopted caste as one of the tests. As the said observations made by the High Court may lead to some confusion in the mind of the authority concerned who may be entrusted with the duty of prescribing the rules for ascertaining the backwardness of classes of citizens wi

101. Proceeding further, Subba Rao, J. (as he then was) observed at pages 388-389 thus :

The important factor to be noticed in Article 15(4) is that it does not speak of castes, but only speaks of classes. If the makers of the Constitution intended to take castes also as units of social and educational backwardness, they would have said so as they have said in the case of the Scheduled Castes and the Scheduled Tribes. Though it may be suggested that the wider expression 'classes' is used in clause (4) of Article 15 as there are communities without castes, if the intention was to equate classes with castes, nothing prevented the makers of the Constitution from using the expression "backward classes or castes". The juxtaposition of the expression "backward classes" and "Scheduled Castes" in Article 15(4) also leads to a reasonable inference that the expression 'classes' is not synonymous with castes. It may be that for ascertaining whether a particular citizen or a group of citizens belong to a backward class or not, his or their caste may have some relevance, but it cannot be either the sole or t

This interpretation will carry out the intention of the Constitution expressed in the aforesaid articles. It helps the rally backward classes instead of promoting the interests of individuals or groups who, though they belong to a particular caste a majority whereof is socially and educationally backward, really belong to a class which is socially and educationally advanced. To illustrate, take a caste in a State which is numerically the largest therein. It may be that though a majority of the people in that caste are socially and educationally backward, an effective minority may be socially and educationally far more advanced than another small sub-caste the total number of which is far less than the said minority. If we interpret the expression 'classes' as 'castes', the object of the Constitution will be frustrated and the people who do not deserve any adventitious aid may get it to the exclusion of those who really deserve. This anomaly will not arise if, without equating caste with class, caste is taken

102. In 1972, the State Government appointed the Karnataka Backward Classes Commission under the chairmanship of Shri L. G. Havanur which after an elaborate enquiry submitted its Report on November 19, 1975 in four massive volumes, the first volume containing two parts. It is stated that the Commission conducted a socio-economic survey of 378 villages and town/city blocks in their entirety covering more than 3,55,000 individuals belonging to about 171 castes and communities with the help of more than 425 investigators and supervisors. About 365 witnesses were examined by the Commission. The Report of the Commission is full of tabular statements and it refers to a number of writings by sociologists, demographers, jurists and persons well versed in social sciences. The work of the Commission deserves to be commended as such an extensive investigation into the conditions of backward classes had not been conducted in the State so far. Perhaps till then in no other part of India, such an elaborate investigation h

(i) Backward communities 16% (ii) Backward castes 10%(iii) Backward tribes 6%
----- Total : 32% -----##

103. The above reservation of 32 per cent along with 18 per cent reserved for Scheduled Castes and Scheduled Tribes together amounted to 50 per cent of the total seats or posts, as the case may be. The Commission further recommended that if seats/posts remained unfilled in the quota allotted to backward tribes, they should be made over to backward communities and backward castes. Similarly if seats/posts remain unfilled in the quota allotted to backward castes, they should be made over to backward communities and backward tribes. If, however, seats/posts remain unfilled in the quota allotted to any of those three categories, they should be made over to Scheduled Castes and Scheduled Tribes. In the event of seats/posts remaining unfilled by any of these categories, they should be transferred to the general pool.

104. After considering the Report of the Backward Classes Commission, the State Government issued an order dated February 22, 1977, the material part of which read as follows :

1. After careful consideration of the various recommendations made by the Commission, Government are pleased to direct as follows :

I. The Backward Communities, Backward Castes and Backward Tribes as mentioned in the list appended to this Order shall be treated as Backward Classes for purposes of Article 15(4) and Article 16(4) of the Constitution of India. Only such citizens of these Backward Classes whose family income per annum from all sources is Rs. 8000 (Rupees eight thousand only) and below shall be entitled to special treatment under these articles.

II. The following five categories of citizens shall be considered as a special group and such citizens of this Special Group whose family income is Rs. 4800 (Rupees four thousand eight hundred only) and below per annum shall be eligible for special treatment under these articles :

(i) an actual cultivator;

(ii) an artisan;

(iii) a petty businessman;

(iv) one holding an appointment either in Government service or corresponding services under private employment including casual labour; and

(v) any person self-employed or engaged in any occupation involving manual labour.

Note. - Family income under sub-paras I and II above means income of the citizen and his parents is dead, his legal guardian.

III. To fix the reservation for purpose of Articles 15(4) and 16(4) of the Constitution in respect of the Backward Classes and the Special Group of citizens at 40 per cent, the allocation being as follows :

#(a) Backward Communities 20 (twenty per cent)(b) Backward Castes 10 (ten per cent)(c) Backward Tribes 5 (five per cent)(d) Special Group 5 (five per cent)##

105. In the list of backward communities mentioned in the Government Order, the State Government included 'Muslims' thus making a total of 16 backward communities. In the list of backward castes, there were 129 castes including converts into Christianity from Scheduled Castes/Scheduled Tribes up to second generation and 62 Scheduled Tribes. The reservation for backward classes was 40 per cent and taken along with 18 per cent for Scheduled Castes and Scheduled Tribes, the total reservation of seats/posts came to 58 per cent leaving only 42 per cent for merit pool. By an order dated May 1, 1979, the reservation for backward communities was reduced to 18 per cent for purposes of Article 16(4). By an order dated June 27, 1979, the State Government modified the Government Order dated February 22, 1977 by increasing the reservation for "Special Group" from 5 per cent to 15 per cent both for purposes of Article 15(4) and Article 16(4) of the Constitution. Thus as on date, the total reservation for purposes of Article

106. In these writ petitions filed under Article 32 of the Constitution the above Government Orders dated February 22, 1977 as modified by the Government Orders dated May 1, 1979 and June 27, 1979 are challenged.

107. It should be stated here that the Government Orders dated February 22, 1977 and another notification dated March 4, 1977 issued for purposes of Article 16(4) had also been challenged in a number of writ petitions filed under Article 226 of the Constitution before the High Court of Karnataka in S. C. Somashekarappa v. State of Karnataka. The High Court allowed the writ petitions in part. It quashed the inclusion of 'Arasu' community in the list of "backward communities" both for purposes of Article 15(4) and Article 16(4). It also quashed inclusion of the (i) Baliya, (ii) Devadiga, (iii) Ganiga, (iv) Nayinda, (v) Rajput and (vi) Satani in the list of backward communities and the inclusion of (1) Banna, (2) Gurkha, (3) Jat (4) Konga, (5) Kotari, (6) Koyava, (7) Malayali, (8) Maniyanani or (Muniyani), (9) Padarti, (10) Padiyar, (11) Pandavakulam (12) Raval and (13) Rawat in the list of backward castes for purposes of Article 16(4) of the Constitution. Reservation of 20 per cent made for backward communities

108. Volumes have been written on the caste system prevailing in India. The caste (Varna) has its origin in antiquity. We find reference to it in the vedic lore and in the great epics, in the Smritis and in the Puranas. Purusha Sukta refers to the prevalence of the four Varnas (caste) (see Rig Veda X-90-12). The Lord says in the Bhagavadgita (IV-13) that the fourfold caste was created by him by the varying distribution of guna and karma. Varna Dharma is extolled in many ancient treatises. However laudable the division of society into different castes at the commencement might have been, during the several centuries that followed these castes became petrified making mobility from one caste to another almost impossible. The caste of a person was known by his birth. There arose in course of time a social hierarchy built upon the caste system. The stigma of low caste was attached to a person during his whole life with all the attendant disadvantages. Karna, the tragic hero of the Mahabharata though born of a Ksh

109. There were many sub-castes of different degrees in the hierarchy. Some were even treated as untouchables. People of low castes became socially backward and they in their turn neglected studies. Thus they became socially and educationally backward. This part of the Indian history is dismal indeed. A page of history is worth a volume of logic.

110. We are aware of the meanings of the words caste, race, or tribe or religious minorities in India.

A caste is an association of families which practise the custom of endogamy i.e. which permits marriages amongst the members belonging to such families only. Caste rules prohibit its members from marrying outside their caste. There are sub-groups amongst the castes which sometimes inter-marry and sometimes do not. A caste is based on various factors, sometimes it may be a class, a race or a racial unit. A caste has nothing to do with wealth. The caste of a person is governed by his birth in a family. Certain ideas of ceremonial purity are peculiar to each caste. Sometimes caste practices even led to segregation of same castes in the villages. Even the choice of occupation of members of a particular caste were prohibited from engaging themselves in other types of callings, professions or occupations. Certain occupations were considered to be degrading or impure. A certain amount of rigidity developed in some

The conception and practice of caste embodied the aristocratic ideal and was obviously opposed to democratic conceptions. It had its strong sense of noblesse oblige, provided people kept to their hereditary stations and did not challenge the established order. India's success and achievements were on the whole confined to the upper classes; those lower down in the scale had very few chances and their opportunities were strictly limited. These upper classes were not small limited groups but large in numbers and there was a diffusion of power, authority and influence. Hence they carried on successfully for a very long period. But the ultimate weakness and failing of the caste system and the Indian social structure were that they degraded a mass of human beings and gave them no opportunities to get out of that condition-educationally, culturally, or economically. That degradation brought deterioration, all along the line including in its scope even the upper classes. It led to the petrification which became a do

111. An examination of the question in the background of the Indian social conditions shows that the expression "backward classes" used in the Constitution referred only to those who were born in particular castes, or who belonged to particular races or tribes or religious minorities which were backward.

112. It is now necessary to ascertain the true meaning of the expression "backward classes" found in Article 15, Article 16, Article 338(3) and Article 340 of the Constitution. Article 338 and Article 340 are in Part XVI of the Constitution entitled "special provisions relating to certain classes". The corresponding part in the Draft Constitution was Part XVI entitled "special provisions relating to minorities" which contained nine articles, Articles 292 to 301. Article 292 of the Draft Constitution referred to reservation of seats for minorities in the House of the People, the minorities being, the Muslim Community and the Scheduled Castes, certain Scheduled Tribes and the Indian Christian Community. Article 293 of the Draft Constitution made special provision regarding the representation of the Anglo-Indian Community in the House of the people Article 294 of the Draft Constitution dealt with reservation of seats for the Muslim Community, Scheduled Castes, certain Scheduled Tribes and the Indian Christian C

301. (1) The President may by order appoint a Commission consisting of such persons as he thinks fit to investigate the conditions of socially and educationally backward classes within the territory of India and the difficulties under which they labour and to make recommendations as to the steps that should be taken by the Union or any State to remove such difficulties and to improve their condition and as to the and the conditions subject to which such grants should be given, and the order appointing such Commission shall define the procedure to be followed by the

Commission.

(2) A Commission so appointed shall investigate the matters referred to them and present to the President a report setting out the facts as found by them and making such recommendations as they think proper.

(3) The President shall cause a copy of the report so presented, together with a memorandum explaining the action taken thereon to be laid before Parliament.

113. The Constituent Assembly after considering the report of the Advisory Committee appointed on July 24, 1947 for the purpose of making its recommendations on the provisions contained in Part XIV of the Draft Constitution referred to above adopted a resolution moved by Sardar Vallabhbhai Patel which read as follows :

Resolved that the Constituent Assembly do proceed to take into consideration the report dated May 11, 1949 on the subject of certain political safeguards for minorities submitted by the Advisory Committee appointed by the resolution of the Assembly on January 24, 1947.

Resolved further -

(i) that notwithstanding any decisions already taken by the Constituent Assembly in this behalf, the provisions of Part XIV of the Draft Constitution of India be so amended as to give effect to the recommendations of the Advisory Committee Contained in the said report; and

(ii) that the following classes in East Punjab, namely, Mazhabis, Ramdasias, Kabirpanthis and Sikligars be included in the list of Scheduled Castes for the Province so that they would be entitled to the benefit of representation in the Legislatures given to the Scheduled Castes.

114. In the Revised Draft Constitution which was introduced in the Constituent Assembly on November 3, 1949, the provisions relating to minorities were incorporated in Part XVI and the title of the Part read as "Special Provisions Relating to Minorities" and it contained thirteen articles, Article 330 to Article 342. Article 330 provided for reservation of seats for Scheduled Castes and certain Scheduled Tribes in the Lok Sabha and Article 332 provided for reservation for them in the Legislative Assemblies of States. Article 331 and Article 333 dealt with nomination of representatives of the Anglo-Indian Community respectively to the Lok Sabha and the Legislative Assemblies of States. Article 334 fixed the period during which reservations and nominations could be made under the above said articles. Article 335 required the Union and the States to recognise the claims of members of the Scheduled Castes and the Scheduled Tribes consistently with the maintenance of efficiency of administration in the making of

115. It is significant that the expression "backward classes" used in Part XVI of the Constitution and in particular in Article 338(3) is used along with the Scheduled Castes, the Scheduled Tribes and the Anglo-Indian Community. In the original Draft Constitution, the Muslim Community and the Indian Christian Community also had been referred to in Part XVI. In the course of the debates, the question of the members of the Sikh Community was also considered along with these communities. The meaning of backward classes has, therefore, to deduced having regard to the other words preceding it. It is a rule of statutory construction that where there are general words following

particular and specific words, the general words must be confined to things of the same kind as those specified. It is true that this rule which is called as the *ejusdem generis* rule or the rule *noscitur a sociis* cannot be carried too far. But it is reasonable to apply that rule where the specific words refer to a distinct genus or category. backward. This view also gains support from the resolution regarding the aims and objects of the Constitution moved by Pandit Jawaharlal Nehru in the Constituent Assembly on December 13, 1946. He said :

I beg to move :

- (1) This Constituent Assembly declares its firm and solemn resolve to proclaim India as an Independent Sovereign Republic and to draw up for her future governance a Constitution;
- (2) Wherein the territories that now comprise British India, the territories that now form the Indian States, and such other parts of India as are outside British India and the States as well as such other territories as are willing to be constituted into the Independent Sovereign India, shall be a Union of them all; and
- (3) Wherein the said territories, whether with their present boundaries or with such others as may be determined by the Constituent Assembly and thereafter according to the Law of the Constitution, shall possess and retain the status of autonomous units, together with residuary powers, and exercise all powers and functions as are vested in or assigned to the Union, or as are inherent or implied in the Union or resulting therefrom; and
- (4) Wherein all power and authority of the Sovereign Independent India, its constituent parts and organs of Government, are derived from the people; and
- (5) Wherein shall be guaranteed and secured to all the people of India justice, social, economic and political; equality of status, of opportunity, and before the law, freedom of thought, expression, belief, faith, worship, vocation association and action, subject to law and public morality; and
- (6) Wherein adequate safeguards shall be provided for minorities, backward and tribal areas, and depressed and other backward classes; and
- (7) Wherein shall be maintained the integrity of the territory of the Republic and its sovereign rights on land, sea, and air according to justice and the law of civilised nations; and
- (8) This ancient land attains its rightful and honoured place in the world and make its full and willing contribution to the promotion of world peace and the welfare of mankind.

116. Clause (6) of the above resolution which was alter adopted by the Constituent Assembly pledged to make adequate safeguards in the Constitution for "minorities, backward and tribal areas and depressed and other backward classes". The above resolution and the history of the enactment of Part XVI of the of the Constitution by the Constituent Assembly lead to the conclusion that backward classes are only those castes, races, tribes or communities, which are identified by birth, which are backward. It is, therefore, difficult to hold that persons or groups of persons who are

backward merely on account of poverty which is traceable to economic reasons can also be considered as backward classes for purposes of Article 16(4) and Part XVI of the Constitution.

117. The word 'backward' was not there before the words "class of citizens" in Article 10(3) of the original draft of the Constitution [the present Article 16(4)]. The Drafting Committee presided over by Dr. B. R. Ambedkar deliberately introduced it. Dr. Ambedkar gave the reason for introducing that terms as follows :

Supposing, for instance, reservations were made for a community or a collection of communities, the total posts under the State and only 305 are retained as the unreserved, could anybody say that the reservation of 30% as open to general competition would be satisfactory from the point of view of giving effect to the first principle, namely that there shall be equality of opportunity ? It cannot be in my judgment. Therefore the seats to be reserved, if the reservation is to be consistent with sub-clause (1) of Article 10, must be confined to a minority of seats. It is then only that the first principle could find its place in the Constitution and effective (sic) in operation. If Honourable Members understand this position then we have to safeguard two things, namely, the principle of equality of opportunity and at the same time satisfy the demand of communities which have not had so far representation in the State, then, I am sure they will agree that unless you use some such qualifying phrase as 'backward'

118. The Drafting Committee by qualifying the expression "classes of citizens" by 'backward' in Article 16(4) of the Constitution tried to reconcile three different points of view and produced a workable proposition which was acceptable to all, the three points of view being (1) that there should be equality of opportunity for all citizens and that every individual qualified for a particular post should be free to apply for that post, to sit for examinations and to have his qualifications tested so as to determine whether he was fit for the post or not and that there ought to be no limitations, there ought to be no hindrance in the operation of the principle of equality of opportunity; (2) that if the principle of equality of opportunity was to be operative there ought to be no reservations of any sort for any class or community at all and that all citizens if they are qualified should be placed on the same footing of equality as far as public services were concerned and (3) that though the principle of equa

119. In Balaji case and in Chitrlekha case this Court exhibited a lot of hesitation in equating the expression 'class' for purposes of Article 15(4) and Article 16(4) of the Constitution. It observed, as stated earlier, that while caste might be a relevant circumstance to determine a backward class, it could not, however, be a dominant test. One of the reasons given for not accepting caste insofar as Hindus Community in which caste system was prevalent was concerned as a dominant test for determining a backward class was that as there were communities without castes, nothing prevented the makers of the Constitution to use the expression "backward classes or castes". The juxtaposition of the expression "backward classes" and "Scheduled Castes" in Article 15 of the Constitution, according to the above two decisions, led to a reasonable inference that expression 'classes' was not synonymous with 'caste'. The Court while making these observations did not give adequate importance to the evils of caste system whi

120. It is of significance that the views expressed by this Court, however, stood modified by the decisions of this Court in Minor P. Rajendran v. State of Madras, State of A. P. v. P. Sagar, Triloki Nath v. State of J & K, A. Peeriakaruppan v. State of T. N. and State of A. P. v. U. S. V. Balram. In

Rajendran case while holding that the allocation of seats in medical colleges on the basis of the district to which a candidate belonged was not warranted by Article 15(4), the Court observed that a caste was also a class of citizens and if the caste as a whole was socially and educationally backward reservation could be made in favour of such caste under Article 15(4). In Sagar case reservation of seats was done solely on the basis of caste or community. There appeared to be no determination of the fact whether members belonging to such castes or communities were in fact socially and educationally backward. The Court struck down the reservation as being outside Article 15(4) of the Constitution. The Court, howe

In the context in which it occurs the expression 'class' means a homogeneous section of the people grouped together because of certain likenesses or common traits and who are identifiable by some common attributes such as status, rank, occupation, residence in a locality, race, religion and the like. In determining whether a particular section forms a class, caste cannot be excluded altogether. But in the determination of a class a test solely based upon the caste or community cannot also be accepted. By clause (1), Article 15 prohibits the State from discriminating against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. By clause (3) of Article 15 the State is, notwithstanding the provision contained in clause (1), clause (4) a special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and Scheduled Tribes is outside the purview of clause (1). But clause (4) a an exception to clause (1). Being an

121. In Triloki Nath case which was a case in which Article 16(4) came up for consideration, a Constitution Bench of this Court observed at page 105 thus :

Article 16 in the first instance by clause (2) prohibits discrimination on the ground, inter alia, of religion, race, caste, place of birth, residence and permits an exception to be made in the matter of reservation in favour of backward classes of citizens. The expression "backward class" is not used as synonymous with "backward caste" or "backward community". The members of an entire caste or community may in the social, economic and educational scale of values at a given time be backward and may on that account be treated as a backward class, but that is not because they are members of a caste or community, but because they form a class. In its ordinary connotation the expression 'class' means a homogeneous section of the people grouped together because of certain likenesses or common traits, and who are identifiable by some common attributes such as status, rank, occupation, residence in a locality, race, religion and the like. But for the purpose of Article 16(4) in determining whether a section forms a

122. In Peeriakaruppan case Hedge, J. observed at page 443 thus : (SCC p. 48, paras 25 to 27)

A caste has always been recognised as a class. In construing the expression "classes of His Majesty's subjects" found in Section 153-A of the Indian Penal Code, Wassoodew, J., observed in Narayan Vasudev Phadke v. Emperor, (AIR 1940 Bom 379) :

In my opinion, the expression "classes of His Majesty's subjects" in Section 153-A of the Code is used in restrictive sense as denoting a collection of individuals or groups bearing a common and exclusive designation and also possessing common and exclusive characteristics which may be associated with their origin, race or religion,

and that the term 'class' within that section carries with it the idea of numerical strength so large as could be grouped in a single homogeneous community.

In Paragraph 10, Chapter V of the Backward Classes Commission's Report, it is observed :

We tried to avoid caste but we find it difficult to ignore caste in the present prevailing conditions. We wish it were easy to dissociate caste from social backwardness at the present juncture. In modern times anybody can take to any profession. The Brahman taking to tailoring, does not become a tailor by caste, nor is his social status lowered as a Brahman. A Brahman may be a seller of boots and shoes, and yet his social status lowered as a Brahman. A Brahman may be a seller of boots and shoes, and yet his social status is not lowered thereby. Social backwardness, therefore, is not today due to the particular profession of a person, but we cannot escape caste in considering the social backwardness in India.

In Paragraph 11 of that Report it is stated :

It is not wrong to assume that social backwardness has largely contributed to the educational backwardness of a large number of social groups.

Finally in Paragraph 13, the Committee concludes with following observations :

All this goes to prove that social backwardness is mainly based on racial, tribal, caste and denominational differences.

122-A. The learned Judge then proceeded to state at page 444 : (SCC p. 49, para 29)

There is no gainsaying the fact that there are numerous castes in this country which are socially and educationally backward. To ignore their existence is to ignore the facts of life. Hence we are unable to uphold the contention that impugned reservation is not in accordance with Article 15(4). But all the same the Government should not proceed on the basis that once a class is considered as a backward class for all times. Such an approach would defeat the very purpose of the reservation because once a class reaches a stage of progress which some modern writers call as take-off stage then competition is necessary for their future progress. The Government should always keep under review the question of reservation of seats and only the classes which are really socially and educationally backward should be allowed to have the benefit of reservation. Reservation of seats should not be allowed to become a vested interest. The fact that candidates of backward classes have secured about 505 of the seat in the general judicial review.

123. In Balram case the State was the appellant. It had come up in appeal against the judgment of the High Court of Andhra Pradesh which had struck down its order making reservation of seats under Article 15(4). This Court allowed the appeal upholding the Government Order. Vaidialingam, J. in the course of his judgment observed at page 280 thus : (SCC p. 685, para 82)

. . . Article 15(4) will have to be given effect to in order to assist the weaker sections of the citizens, as the State has been charged with such a duty. No doubt, we are aware that any provision made under this clause must be within the well defined limits and should not be on the basis of caste alone. But it should not also be missed

that a caste is also a class of citizens and that a caste as such may be socially and educationally backward. If after collecting the necessary data, it is found that the caste as a whole is socially and educationally backward, in our opinion, the reservation made of such persons will have to be upheld notwithstanding the fact that a few individuals in that group may be both socially and educationally above the general average. There is no gainsaying the fact that there are numerous castes in the country, which are socially and educationally backward and therefore a suitable provision will have to be made by the State, as charged in Article 15(4) to safeguard their interest.

124. The learned Judge felt that the Backward Classes Commission on the basis of whose report the Government Order had been passed had given good reasons in support of its recommendations. Accordingly the Government Order was upheld.

125. If we depart from the view that caste or community is an important relevant factor in determining social and educational backwardness for purposes of Article 15(4) and Article 16(4) of the Constitution, several distortions are likely to follow and may take us away from the sole purpose for which those constitutional provisions were enacted. Several factors such as physical disability, poverty, place of habitation, the fact of belonging to a freedom fighter's family, the fact of belonging to the family of a member of the armed forces might each become a sole factor for the purpose of Article 15(4) or Article 16(4) which were not at all intended to be resorted to by the State for the purpose of granting relief in such cases. While relief may be given in such cases under Article 14, Article 15(1) and Article 16(1) by adopting a rational principle of classification, Article 15(4) and Article 16(4) cannot be applied to them. Article 15(4) and Article 16(4) are intended for the benefit of those who belong to

126. In *D. N. Chanchala v. State of Mysore* a classification based on some of these factors was upheld but not under Article 15(4). The observation made in *State of Kerala v. T. P. Roshana* that "the principle of reservation with weightage for the geographical area of Malabar District has our approval in endorsement of the view of the High Court" is outside the scope of Article 15(4) even though it may be sustained under Article 14. While caste or community is a relevant factor in determining the social and educational backwardness, it cannot be said that all members of a caste need be treated as backward and entitled to reservation under Article 15(4) or Article 16(4). Caste-cum-means test would be a rational test in identifying persons who are entitled to the benefit of those provisions. This principle has received acceptance at the hands of this Court in *K. S. Jayasree v. State of Kerala*. In that case a Commission appointed by the Government of the State of Kerala to enquire into the social and economic con

In ascertaining social backwardness of a class of citizens it may not be irrelevant to consider the caste of the group of citizens. Caste cannot however be made the sole or dominant test. Social backwardness is in the ultimate analysis the result of poverty to a large extent. Social backwardness which results from poverty is likely to be aggravated by considerations of their caste. This shows the relevance of both caste and poverty in determining the backwardness of citizens. Poverty by itself is not the determining factor of social backwardness. Poverty is relevant in the context of social backwardness. The Commission found that the lower income group constitutes socially and educationally backward classes. The basis of the reservation is not income but social and educational backwardness determined on the basis of relevant criteria. If any classification of backward classes of citizens is based solely on the

caste of the citizens it will perpetuate the vice of caste system. Again, if the classification is

127. When once the relevance of caste is not adhered to several difficulties might arise as can be seen from the decision in the State of U. P. v. Pradip Tandon. In that case the Court had to examine the validity of a Government Order which had made reservation of seats under Article 15(4) in favour of two classes of students-(1) those who came from rural areas and (2) those who came from hill areas and Uttarakhand. The High Court of Allahabad upheld the said reservations in Subhash Chandra v. State of U. P. without noticing its earlier decision in Subhash Chandra case. When the same question came before this Court in an appeal preferred by the State Government, the State Government attempted to justify the classification of students for admission into medical colleges as stated above on the ground that it was a notorious fact that rural, hill and Uttarakhand areas were socially backward because of extreme poverty; that those areas were backward educationally because the standard of literacy was poor and the

In Balaji case this Court said that social backwardness is on the ultimate analysis the result of poverty to a large extent and that the problem of backward classes is in substance the problem of rural India. Extracting these observations the Attorney-General contended that poverty is not only relevant but is one of the elements in determining the social backwardness. We are unable to accept the test of poverty as the determining factor of social backwardness.

128. Then it held that reservation for rural areas on the ground of poverty was unconstitutional. In doing so it observed at page 769 thus : (SCC p. 277, para 29)

The reservation for rural areas cannot be sustained on the ground that the rural areas represent socially and educationally backward classes of citizens. This reservation appears to be made for the majority population of the State. Eighty per cent of the population of the State cannot be a homogeneous class. Poverty in rural areas cannot be the basis of classification to support reservation for rural areas. Poverty is found in all part of India. In the instructions for reservation of seats it is provided that in the application form a candidate for reserved seats from rural areas must submit a certificate of the District Magistrate of the District to which he belonged that he was born in rural area and had a permanent home there, and is residing there or that he was born in India and his parents and guardians are still living there and earn their livelihood there. The incident of birth in rural areas is made the basic qualification. No reservation can be made on the basis of place of birth, as this would off

129. But it upheld the reservation made in favour of the hill and Uttarakhand areas with these observations at page 767 : (SCC pp. 274-75, paras 19 & 20)

The hill and Uttarakhand areas in Uttar Pradesh are instances of socially and educationally backward classes of citizens for these reasons. Backwardness is judged by economic basis that each region has its own measurable possibilities for the maintenance of human numbers, standards of living and fixed property. From an economic point of view the classes of citizens are backward when they do not make effective use of resources. When large areas of land maintain a sparse, disorderly and illiterate population whose property is small and negligible the element of social backwardness is observed. When effective territorial specialisation is not possible in

the absence of means of communication and technical process as in the hill and Uttarakhand areas the people are socially backward classes of citizens. Neglected opportunities and people in remote places raise walls of social backwardness of people.

Educational backwardness is ascertained with reference to these factors. Where people have traditional apathy for education on account of social and environmental conditions or occupational handicaps, it is an illustration of educational backwardness. The hill and Uttarakhand areas are inaccessible. There is lack of educational institutions and educational aids. People in the hill and Uttarakhand areas illustrate the educationally backward classes of citizens because lack of educational facilities keep them stagnant and they have neither meaning and values nor awareness for education.

130. The reading of the above passages shows that there is inherent inconsistency between one part of the decision and the other. The Court could not have arrived at the two divergent conclusions set out above since many of the reasons urged by the State Government were almost identical. This is due to the earlier approach adopted by the Court to the question. If caste had been taken into consideration as a relevant test which could not be ignored in determining the classes entitled to the benefit of Article 15(4) and Article 16(4), there would have been no room for the above inconsistency.

131. Article 14 of the Constitution consists of two parts. It asks the State not to deny to any person equality before law. It also asks the State not to deny the equal protection of the laws. Equality before the law connotes absence of any discrimination in law. The concept of equal protection required the State to mete out differential treatment to persons in different situations in order to establish an equilibrium amongst all. This is the basis of the rule that equals should be treated equally and unequals must be treated unequally if the doctrine of equality which is one of the corner-stones of our Constitution is to be duly implemented. In order to do justice amongst unequals, the State has to resort to compensatory or protective discrimination. Article 15(4) and Article 16(4) of the Constitution were enacted as measures of compensatory or protective discrimination to grant relief to persons belonging to socially oppressed castes and minorities. Under them, it is possible to provide for reservation of posts in the higher cadre as such but only involved the classification of employees of Government into two groups—those belonging to Scheduled Castes and Scheduled Tribes and those who did not belong to Scheduled Castes and Scheduled Tribes for purposes of giving exemption from possessing one of the minimum qualification i.e. from passing the prescribed tests during a further period of two years. Ray, C.J. upheld the rule by upholding the classification under Article 14 and Article 16(1). The learned Chief Justice observed at page 933 thus : (SCC p. 338, para 46)

All legitimate methods are available for equality of opportunity in services under Article 16(1). Article 16(1) is affirmative whereas Article 14 is negative in language. Article 16(4) indicates one of the methods of achieving equality embodied in Article 16(1). Article 16(1) using the expression 'equality' makes it relatable to all matters of employment from appointment through promotion and termination to payment of pension and gratuity. Article 16(1) permits classification on the basis of object and purpose of law or State action except classification involving discrimination prohibited by Article 16(2). Equal protection of laws necessarily involves classification. The validity of the classification must be adjudged with reference to

the purpose of law. The classification in the present case is justified because the purpose of classification is to be enable members of Scheduled Castes and Tribes to find representation by promotion to a limited extent. From the point of view of time a differential treatment

132. Khanna, J. who upheld the judgment of the High Court was of the view that since the impugned rule did not get the protection of Article 16(4) which was the only provision under which preferential treatment could be given to members belonging to backward classes, Scheduled Castes and Scheduled Tribes, the rule could not be upheld on the basis of classification under Article 14 and Article 16(1) of the Constitution. The learned Judge observed at pages 939-940 thus : (SCC p. 394 para 207)

It has been argued on behalf of the appellants that equality of treatment does not forbid reasonable classification. Reference in this context is made to the well accepted principle that Article 14 of the Constitution forbids class legislation but does not forbid classification. Permissible classification, it is equally well established, must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and the differentia must have a rational relation to the object sought to be achieved by the statute in question. It is urged that the same principle should apply when the court is concerned with the equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. In this respect I may observe that this Court has recognised the principle of classification in the context or clause (1) of Article 16 in matters where appointments are from two different sources, e.g., guards and st

132-A. Khanna, J. proceeded to observe at page 944 thus : (SCC p. 399, para 216)

The matter can also be looked at from another angle. If it was permissible to accord favoured treatment to members of backward classes under clause (1) of Article 16, there would have been no necessity of inserting clause (4) in Article 16. Clause (4) in Article 16 in such an event would have to be treated as wholly superfluous and redundant. The normal rule of interpretation is that no provision of the Constitution is to be treated as redundant and superfluous. The Court would, therefore, be reluctant to accept a view which would have the effect of rendering clause (4) of Article 16 redundant and superfluous.

133. Mathew, J. more or less agreed with Ray, C.J. He said at pages 954-955 thus : (SCC p. 346, para 75)

It is said that Article 16(4) specifically provides for reservation of posts in favour of backward classes which according to the decision of this Court would include the power of the State to make reservation at the stage of promotion also and therefore Article 16(1) cannot include within its compass the power to give any adventitious aids by legislation or otherwise to the backward classes which would derogate from strict numerical equality. If reservation is necessary either at the initial stage or at the stage of promotion or at both to ensure for the members of the Scheduled Castes and Scheduled Tribes equality of opportunity in the matter of employment, I see no reason why that is not permissible under Article 16(1) as that alone might put them

on a parity with the forward communities in the matter of achieving the result which equality of opportunity would produce. Whether there is equality of opportunity can be gauged only by the equality attained in the result. Formal equality of opportunity simply

134. Beg, J. (as he then was) agreed with the view of Khanna, J. that the principle of classification could not be extended to cases of this nature but upheld the rule as squarely falling within the scope of Article 16(4) itself. He observed at page 959 : (SCC p. 350, para 92)

Strictly speaking, the view adopted by my learned brother Khanna, that the ambit of the special protection of "equality of opportunity in matters relating to public service", which can be made available to members of backward classes of citizens, is exhausted by Article 16(4) of the Constitution, seems inescapable. Article 16 is, after all, a facet of the grand principles embraced by Article 14 of the our Constitution. It guarantees : "Equality of opportunity in matters of public appointment". It does so in absolute terms. It is a necessary consequence and a special application of Article 14 in an important field where denial of equality of opportunity cannot be permitted. While Article 16(1) sets out the positive aspect of equality of opportunity in matters relating to employment by the State, Article 16(2) negatively prohibits discrimination on the grounds given in Article 16(2) in the area covered by Article 16(1) of the Constitution. If Scheduled Castes do not fall within the ambit of Article 16(2), but,

135. Beg, J. (as he then was) proceeded to hold at page 961 thus : (SCC p. 352, para 96)

Members of a backward class could be said to be discriminated against if severer tests were prescribed for them. But, this is not the position in the case before us. All promotees, belonging to any class, caste, or creed, are equally subjected to efficiency tests of the same type and standard. The impugned rules do not dispense with these tests for any class or group. Indeed, such tests could not be dispensed with for employees from Scheduled Castes, even as a backward class, keeping in view the provisions of Article 335 of the Constitution. All that happens here is that the backward class of employees is given a longer period of time to pass the efficiency tests and prove their merit as determined by such tests. It has been, therefore, argued that, in this respect, there is substantial equality. In other words, the argument is that if Article 16(1) could be interpreted a little less rigidly and more liberally the discrimination involved here will not fall outside it. Even if this was a tenable view, I would

136. Krishna Iyer, J. after recording the statement of the Advocate-General for Kerala that the rule could not be sustained under Article 16(4) upheld it under Article 14 and Article 16(1) as it related to members belonging to the Scheduled Castes and Scheduled Tribes. Perhaps he would have struck down the rule if the benefit of the rule had been extended to other backward classes as can be seen from the following passage occurring at page 981 : (SCC p. 370, para 143)

If Article 14 admits of reasonable classification, so does Article 16(1) and this Court has held so. In the present case, the economic advancement and promotion of the claims of the grossly underrepresented and pathetically neglected classes, otherwise described as Scheduled Castes and Scheduled Tribes, consistently with the maintenance of administrative efficiency, is the object, constitutionally sanctioned by

Article 46 and 335 and reasonably accommodated in Article 16(1). The differentiate, so loudly obtrusive, is the dismal social milieu of harijans. Certainly this has a rational relation to the object set out above. I must repeat the note of caution earlier struck. Not all caste backwardness is recognised in this formula. To do so is subversive of both Article 16(1) and (2). The social disparity must be so grim and substantial as to serve as a foundation for benign discrimination. If we search for such a class, we cannot find any large segment other than the Scheduled Castes and Scheduled Tribes. Any ot

137. Gupta, J. agreed generally with Khanna, J. and upheld the judgment of the High Court. Gupta, J. after referring to Article 335 observed at page 986 thus : (SCC p. 402, para 227)

This article does not create any right in the members of the Scheduled Castes and the Scheduled Tribes which they might claim in the matter of appointments to services and posts; one has to look elsewhere, Article 16(4) for instance, to find out the claims conceded to them. Article 335 says that such claims shall be considered consistently with administrative efficiency, this is a provision which does not enlarge but quality such claims as they may have as members of the Scheduled Castes or Scheduled Tribes. Article 335, it seems clear, cannot furnish any clue to the understanding of Article 16(1).

138. Fazal Ali, J. also upheld the impugned rule under Article 16(1). The learned Judge said at page 1001 thus : (SCC p. 383, para 181)

Article 335 of the Constitution contains a mandate to the State for considering the claims of the members of the Scheduled Castes and the Scheduled Tribes consistently with the maintenance of efficiency of administration. By giving the special concessions to the promotees this mandate is sought to be obeyed by the Government. Mr. T. S. Krishnamoorthy Iyer, counsel for the respondent 1 submitted that the mandate given in Article 335 is violated because by granting exemption to the members of the Scheduled Castes and Tribes the standard of efficiency of the services would be impaired. We are, however, unable to agree with this argument. Both respondent 1 and the promotees were members of the same service and had been working as Lower Division Clerks for a pretty long time. The promotees who were members of and have gained more experience. Further the rule does not grant complete exemption to the promotees from passing the test; it only provides for grant of extension of time to enable them to clear the test. I

139. But Fazal Ali, J. was, however, of the view that Article 16(4) of the Constitution was a complete code so far as reservation of posts was concerned. The learned Judge observed at page 1002 thus : (SCC p. 384, para 184)

Clause (4) of Article 16 of the Constitution cannot be read in isolation but has to be read as part and parcel of Article 16(1) & (2). Suppose there are a number of backward classes who form a sizable section of the population of the country but are not properly or adequately represented in the services under the State the question that arises is what can be done to enable them to join the services and have a sense of equal participation. One course is to make a reasonable classification under Article 16(1) in the manner to which I have already adverted in great detail. The other

method to achieve the end may be to make suitable reservations for the backward classes in such a way so that the inadequate representation of the backward classes in the services is made adequate. This form of classification which is referred to as reservation, is, in my opinion, clearly covered by Article 16(4) of the Constitution which is completely exhaustive on this point. That is to say clause (4) of Article 16 is not an exception reservation can be made under Article 16(1).

140. The result is that at least according to four learned Judges - Khanna, Beg, Gupta and Fazal Ali, JJ. no reservation of posts can be made in Government services for backward classes including Scheduled Castes and Scheduled Tribes under Article 14 or Article 16(1). According to Krishna Iyer, J. preferential treatment as was done in this case on the basis of classification ordinarily could be given under Article 16(1) to the Scheduled Castes and Scheduled Tribes only. Other backward classes could not, except in exceptionally rare cases be extended the same benefit and their only hope was Article 16(4) of the Constitution.

141. Now reverting to the power of the Government to make reservations under Article 15(4) and Article 16(4) of the Constitution, we may state thus : The determination of the question whether the members belonging to a caste or a group or a community are backward for the purpose of Article 15(4) and Article 16(4) of the Constitution is no doubt left to the Government. But it is not open to the Government to call any caste or group or community as backward according to its sweet will and pleasure and extend the benefits that may be granted under those provisions to such caste or group or community. The exercise of uncontrolled power by the Government in this regard may lead to political favouritism leading to denial of the just requirements of classes which are truly backward. The power of the Government to classify any caste or group or community as backward has to be exercised in accordance with the guide-lines that can be easily gathered from the Constitution. It is now accepted that the expressions "social

Therefore, we are not satisfied that the State was justified in taking the view that communities or castes whose average of student population was the same as, or just below, the State average, should be treated as educationally backward classes of citizens. If the test has to be applied by a reference to the State average of student population, the legitimate view to take would be that the classes of citizens whose average is well or substantially below the State average can be treated as educationally backward.

142. This was further explained by Shah, J. (as he then was) in Sagar case when he observed that the criterion for determining the backwardness must not be used solely on religion, race, caste, sex or place of birth and the backwardness being social and educational must be similar to the backwardness from which the Scheduled Castes and the Scheduled Tribes suffered. A Constitution Bench of this Court reiterated the above principle in Janki Prasad Parimoo v. State of J & K in which it was observed at page 252 thus : (SCC p. 434, para 25)

That accounts for the *raison d'etre* of the principle explained in Balaji case which pointed out that backward classes for whose improvement special provision was contemplated by Article 15(4) must be comparable to Scheduled Castes and Scheduled Tribes who are standing examples of backwardness socially and educationally.

143. This view is in conformity with the intention underlying clause (6) of the resolution regarding the aims and objects of the Constitution moved by Jawaharlal Nehru on December 13, 1946 which

asked the Constituent Assembly to frame a Constitution providing adequate safeguards for minorities, backward and tribal areas and depressed and other backward classes and also with the provisions of Article 338 and Article 340 of the Constitution. Unless the above restriction is imposed on the Government to call any caste or group or community which constitutes a powerful political lobby in the State as backward even though in fact it may be an advanced caste or group or community but just below some other forward community. There is another important reason why such advanced castes or groups or communities should not be included in the list of backward classes and that is that if castes or groups and communities which are really backward classes and that is that if castes or groups and communities which are fairly

144. Since economic condition is also a relevant criterion, it would be appropriate to incorporate a "means test" as one of the tests in determining the backwardness as was done by the Kerala Government in Jayasree case. These two tests namely, that the conditions of caste or group or community should be more or less similar to the conditions in which the Scheduled Castes or Scheduled Tribes are situated and that the income of the family to which the candidate belongs does not exceed the specified limit would serve as useful Article 15(4). For the purpose of Article 16(4) however, it should also be shown that the backward class in question is in the opinion of the Government not adequately represented in the Government services.

145. There is one other basis on which a classification made for purposes of Article 15(4) or Article 16(4) of the Constitution has received the approval of this Court in Chitralkha case. In that case the Court was concerned with a list of backward classes prepared on the basis of economic condition and occupation. According to that Government Order, persons whose family income was Rs. 1200 per annum or less and who were engaged in occupations such as agriculture, petty business, inferior services, crafts or other occupations involving manual labour were treated as belonging to backward classes. The petitioner who had filed the petition in the High Court did not challenge the validity of the said classification. But on a submission made on behalf of the State Government, the Court expressed its general approval to the method of classification. Even in the case before us now, there is a reservation of 15% of seats or posts in favour of members falling under a classification styled as "special group" which is

146. Next comes the vexed question relating to the extent of reservation that can be made under Article 15(4) and Article 16(4) of the Constitution. In Balaji case this Court took the view that since Article 15(4) is an exception to Article 15(1) and Article 16(4) is an exception to Article 16(1) and (2) any reservation made under Article 15(4) and Article 16(4) should not exceed 50% of the total number of seats or posts, as the case may be. The Court held that reservation of 68% of seats under Article 15(4) which was a special provision was invalid. The Court further held that "speaking generally and in a broad way a special provision should be less than 50%, how much less than 50% would depend upon the relevant prevailing circumstances in each case". This statement was understood by a Constitution Bench of this Court in T. Devadasan v. Union of India as laying down the rule that reservation under Article 15(4) or Article 16(4) could not be more than 50% of seats or posts. In that case Mudholkar, J. speakin

Even if the Government had provided for the reservation of posts for Scheduled Castes and Tribes a cent per cent reservation of vacancies to be filled in a particular year or reservation of vacancies in excess of 50% would, according to the decision in Balaji case, not be constitutional.

147. But in the State of Kerala v. N. M. Thomas the question relating to the permissible extent of

reservation arose for consideration. Ray, C.J. came to the conclusion that taking into consideration the entire Government service, there was no excessive concession shown to the employees belonging to the Scheduled Castes and Scheduled Tribes. Beg, J. (as he then was) was also of the same view. Fazal Ali, J. observed at page 1005 thus : (SCC p. 387, para 191)

This means that the reservation should be within the permissible limits and should not be a cloak to fill all the posts belonging to a particular class of citizens and thus violate Article 16(1) of the Constitution indirectly. At the same time clause (4) of Article 16 does not fix any limit on the power of the Government to make reservation. Since clause (4) is a part of Article 16 of the Constitution it is manifest that the State cannot be allowed to indulge in excessive reservation so as to defeat the policy contained in Article 16(1). As to what would be a suitable reservation within permissible limits will depend upon the facts and circumstances of each case and no hard and fast rule can be laid down, nor can this matter be reduced to a mathematical formula so as to be adhered to in all cases. Decided cases of this Court have no doubt laid down that the percentage of reservation should not exceed 50%. As I read the authorities, this is, however, a rule of caution and does not exhaust all categories.

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148. Krishna Iyer, J. in the same case observed at page 981 thus : (SCC p. 371, para 143)

I agree with my learned brother Fazal Ali, J. in the view that the arithmetical limit of 50% in any one year set by some earlier rulings cannot perhaps be pressed too far. Overall representation in a department does not depend on recruitment in a particular year, but the total strength of a cadre. I agree with his construction of Article 16(4) and his view about the "carry forward" rule.

149. After carefully going through all the seven opinions in the above case, it is difficult to hold that the settled view of this Court that the reservation under Article 15(4) or Article 16(4) could not be more than 50% has been unsettled by a majority on the Bench which decided this case. I do not propose to pursue this point further in this case because if reservation is made only in favour of those backward castes or classes which are comparable to the Scheduled Castes and Scheduled Tribes, it may not exceed 50% (including 18% reserved for the Scheduled Castes and Scheduled Tribes and 15% reserved for "special group") in view of the total population of such backward classes in the State of Karnataka. The Havanur Commission has taken the number of students passing at S. S. L. C. examination in the year 1972 as the basis for determining the backwardness. The average passes per thousand of the total population of the State of Karnataka was 1.69 in 1972. The average in the case of the Scheduled Castes was 0.

150. At this stage it should be made clear that if on a fresh determination some castes or communities have to go out of the list of backward classes prepared for Article 15(4) and Article 16(4), the Government may still pursue the policy of amelioration of weaker section of the population amongst them in accordance with the directive principle contained in Article 46 of the Constitution. There are in all castes and communities poor people who if they are given adequate opportunity and training may be able to compete successfully with persons belonging to richer classes. The Government may provide for them liberal grants of scholarships, free studentships, free boarding and lodging facilities, free uniforms, free mid-day meals etc. to make the life of poor students comfortable. The Government may also provide extra tutorial facilities, stationery and books free of cost and library facilities. These and other steps should be taken in the lower classes

so that by the time a student appears for the qualifying ex

151. The State Government shall now proceed to redetermine the whole question of reservation of seats/posts under Article 15(4) and Article 16(4) of the Constitution in the light of this judgment.

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