ANDHRA PRADESH HIGH COURT

D. Neelima

Vs.

A.P. Agricultural University

W.A. Nos. 1161 and 1313 of 1992

(S.M. Majumdar and Y. Bhaskar Rao, JJ.)

12.02.1993

JUDGMENT

Y. Bhaskar Rao, J.

1. These two appeals give rise to a similar point and are, therefore, being disposed of by this common judgment.

2. Writ petitioner is the appellant in W.A. 1161 of 1992. She was born in a Reddy caste family and married an Erukala boy, Dr. Swamy. Erukala tribe is one of the Scheduled Tribes in the State of Andhra Pradesh. The marriage took place on 3-5-1990 at Luthern Church in Hyderabad and since then she is leading family life with him and his parents at Guntur. After the marriage, she sought for admission into M.Sc. (Home Science) course in the Agricultural University at Rajendranagar, Hyderabad, under reserved quota for Scheduled Tribes. Inasmuch as the University Authorities were not considering her as one, entitled to the reservation available to Scheduled Tribes, she moved this Court under Article 226 of the Constitution of India.

3. The writ petition was dismissed at the admission stage by the learned single Judge holding that the marriage is Anuloma for the girl and Prathiloma for the boy and that it is only the off-spring born to that couple alone that is entitled to the social status of the father and not the writ petitioner- wife. As regards the other incentives offered by the State Government, the learned Judge held that they are non-statutory and that the relevant G.Os (G.O. Ms. 496 dated 21-6-1975 and G.O. Ms. 583 dated 24-7-1974) have thing to do with the reservation presently claimed for. Having been aggrieved of this order, the writ petitioner filed this appeal.

4. The 3rd respondent Commissioner, Tribal Welfare) filed a counter stating that as per Circular No. 35/1/72/Rule (SCT) dated 2-5-1975 the Government of Indian directed that the guiding principle to decide the caste of an individual is to find out the caste in which he or she was born and not the caste of the person, whom he or she married. As the petitioner is claiming a seat reserved for Scheduled Tribe on the ground that she married a person of Scheduled Tribe (Erukala), her claim cant be permitted. The petitioner, who is a high caste Hindu, not subjected to any social or educational backwardness cant take advantage of the reservation available to

Scheduled Tribe people on the ground that she married a scheduled tribe person. The certificate issued by the Mandal Revenue Officer also disclosed that the petitioner is entitled to the non-statutory benefits only as enumerated in G.O.Ms. 495 dated 21-6- 1975. Accordingly, it is prayed that the writ appeal may be dismissed.

5. A counter is filed on behalf of the Agricultural University also stating that the petitioner-appellant should get the clearance from the 3rd respondent so as to have her claim for reservation for a seat under Schedule Tribe quota considered and that at their own motion, the 3rd respondent also informed them on the lines noted above referring to the contents of the counter filed by the 3rd respondent. In view of these facts, the University sought for dismissal of the writ appeal.

6. The other Appeal, W.A. No. 1313 of 1992, is one filed by the 3rd respondent challenging the orders of the learned single Judge allowing the writ petition by declaring that the writ petitioner belonged to Backward Caste 'A' Category consequent upon her marriage with a person belonging to Bestha (Fishermen) community and accordingly entitled to all the attendant benefits, including reservation for a seat in Post Graduate Medical Course (D.C.H.).

7. The relevant facts, in brief, are : The writ petitioner in W.A. No. 1313/92 was born in a Vysya community and married a person belonging to Bestha (Fishermen community falling under Backward class 'A' category. After the marriagge she obtained admission into Post Graduate Medical Course (D.C.H.) under the quota reserved for Backward Class on the ground that by virtue of the marriage she is entitled to the reservation meant for Backward Class people. This admission was complained of by the 3rd respondent (writ appellant) belonging to Backward Class 'A' category and competing for admission into the same course stating that the writ petitioner, being a Vysya by birth, can't claim for reservation available to Backward Class people. She also claimed that she being 85th rank-holder, the seat allotted to the writ petitioner, who got 67th rank but does not belong th Backward Class, should be made over to her. On receipt of this complaint, the 2nd respondent issued a memo, subject-matter of challenge before the learned single Judge, calling upon her to produce her father's caste certificate. This, according to the writ petitioner, is with a view to decide her caste as per her birth and not resultant of her marriage. The case of the writ petitioner is that she, having married a person belonging to Bestha community, should be treated as a member of that caste and not of the caste in which she was born. Consequently, she claims entitlement to the reservation available to the members of the Backward Class, as was rightly treated by the respondent-authorities while allotting the seat in her favour. The impugned notice, she challenged, is unwarranted and intended to put her interests in jeopardy.

8. Respondents No .1 and 2 filed a counter stating that the allotment of the seat was provisional and that the University has a right to issue the impugned not ice under Rule 15 of the P.G. Admission Rules, 1991-92, particularly when it was found that the certificate issued by the Mandal Revenue Officer is in respect of the caste of the husband of the writ petitioner and not that of her father. The counter also states that the Government of India, Ministry of Home Affairs, in its letter 35/1/72, RU (SCT.V) dated 2nd May, 1975 directed that if a person claims to belong to a certain reserved category, it should be verified whether the parents of that person really belong to the community claimed. In view of this circular also, they have a right to issue the memo impugned in the writ petition. The respondents accordingly prayed for dismissal of the writ petition.

9. The 3rd respondent filed a counter stating that she belongs to Backward Class (A), category and obtained 85th rank as against 67th rank obtained by the writ petitioner in the entrance test for admission into the course in question. She also stated that the certificate produced by the writ petitioner as having been belonging to Backward class 'A' category is a false one inasmuch as she is Vysya by birth and that her marriage with a Bestha reservation meant for Backward Class people. In this view of the matter, she sought for a direction to the University authorities (respondents Nos. 2 and 3) to cancel the writ petition, so that the (3rd respondent), to cancel her admission provisionally given by dismissing the writ petition, so that the (3rd respondent), being the neat ranking individual for allotment of the seat under the quota reserved for Backward Class members, would get the same.

10. After hearing all the parties concerned, the learned single Judge observed that Hindu marriage is not an agreement, that it is a Samskara and a sacrament, that after the marriage she is more a member of her parents family and becomes part and parcel of her husband's family, that the wife, a Binna Gotri at the time of marriage, enters into her husband's Gotra on her marriage and becomes a Sagotri of her husband. So observing the learned Judge held that the writ petitioner is entitled to the reservation, being Bestha pursuant to her marriage. Aggrieved of this order, the 3rd respondent preferred the present appeal.

11. As seen, the views taken by the two learned Judges in the two writ petitions are contra to each other and the earlier view taken by one learned Judge was not brought to the not ice of the learned Judge deciding the second writ petition. While adverting to the contentions, we want to make it clear, the learned Counsel appearing for the appellant in W.A.1161 of 1992 and the learned Counsel for the 3rd respondent (writ petitioner) in W.A. No. 1313' or 1992, will be referred to as 'the learned Counsel for the claimants for reservation'. As the matter involved constitutional importance in regard to the question of reservation embracing castes, tribes and religion, we requested Sri J.V. Suryanarayana Rao, a senior Counsel of this Court to assist this Court as *amicus curiae*. An organization called. 'A.P. Dalitha Maha Sabha' also sought to intervene in these proceedings realising the constitutional and far-reaching importance of the issue involved.

12. The prime contention of the learned Counsel appearing for the claimants for reservation is that on marriage the girl goes into the family of her husband snapping all her parental ties, pursuantly becomes a member of the caste or tribe of her husband and consequently entitled to the constitutional reservation envisaged by Article 15(4) of the Constitution in relation to the caste or tribe of her husband. It is also submitted that on marriage the girl becomes a Sagothra of her husband and Sapinda of her husband's family being one giving birth to the children through her husband. The view taken by the learned single Judge in W.A.1161 of 1992 that the marriage was Anuloma for the girl and Prathiloma for the boy and therefore the girl is not entitled to the social status obviously for purposes of reservation of her husband and that it is only the offspring given birth to by her that would be entitled to the social status, is sought to be assailed by her husband's family and pursuant caste or tribe of her husband, would be more than enough to clothe her with the consequent right of reservation envisaged by Article 15(4) of the Constitution. The learned Counsel for the appellant in W.A. 1313 of 1992, the respondents in W.A. 1161 of 1992, and the learned Counsel for the interveners on the other hand sought to contended that a girl of higher-caste on marriage with a boy of lower-caste would not become a member of the lower caste or tribe and would retain her original caste acquired by birth and therefore the right to

the reservation envisaged by Article 15(4) would not be available to her. It is forth er contended that the concept of marriage and religion are quite different and distinct and they will have impact on the reservations provided by Article 15(4) inasmuch as those that are socially and educationally backward alone are covered by the said provision. When once the girl belongs to a caste not included in the scheduled or not belonging to the Backward Class, she can't by virtue of her marriage by styled to be one belonging to a class socially and educationally backward for purpose of enabling her to invoke the benefit of Article 15(4) of the constitution. In other words, according to the learned Counsel the reservations covered by Article 15(4) are available only to those born in the listed caste or tribe, but not acquired such caste or tribe pursuant to marriage. The different G.Os., Circulars, Memos, etc., conferring certain benefits to the spouses of inter-caste marriages, the learned Counsel sought to clarify, are issued obviously because by marriage one does not get them. To analyse, the benefits covered by the said Circulars, etc, are already available to the members of Scheduled Caste, Scheduled Tribe and Backward Class. The benefits are, further non-statutory and do not relate to reservations. It is only because, by marriage the girl does not have the right to seek those benefits by asserting that she became a member of the Caste or Tribe, for whom the benefits were specifically extended to spouses of inter-caste marriage.

13. The learned Advocate-General appearing on behalf of the State submitted that the reservations envisaged by Article 15(4) of the Constitution are available only to those born in the relevant Caste or tribe and not to those that acquire the caste or tribe by virtue of marriage or adoption. The real intent behind classifying the Scheduled caste, Scheduled Tribes or Backward Classes is to achieve their advancement in social and educational spheres and that the Circulars, etc, are intended to promote inter-caste marriages in order to establish equality of status and opportunity comprehended by the preamble to our Constitution.

14. Sri J.V. Suryananarayana Rao, *amicus curiae*, prefaced his submissions by saying that in India there are only castes or tribes and that there are Scheduled Castes, Schedules Tribes or Backward Classes as such. Scheduled Castes, Scheduled Tribes or Backward Classes are the resultants of the Constitutional framing intended to provide certain benefits to the members thereof keeping in view their backwardness in the spheres of education and society. He submitted that it is impermissible to resort to personal law of Hindus while interpreting the provisions of the Constitution. According to him, caste or tribe is decided by the family in which an individual is born. Be brought to our notice, the Constitution (Scheduled Castes) Order, 1950 and the Constitution (Scheduled Tribes) Order, 1950 made by the President by virtue of the powers conferred by Article 341 (1) in relation to the former Order and Article 342 (1) in regard to the latter order and submitted that if an individual is permitted to enter into the caste or tribe covered by the said Schedules by virtue of her marriage with a person belonging to such caste or tribe, it amounts to bringing in alterations to the Presidential Orders, which is not permissible under the Constitution. Any alteration to the presidential Order is only possible by way of an amendment that can be brought-in by the Parliament alone as per Article 341(2) and 342(2) of the Constitution and therefore to hold that one, by virtue of marriage, would be entitled to the benefits of Article 15 (4) is a flagrant violation of the Constitutional provision, inasmuch as that in the function of the Parliament and not that of Judiciary. The learned Counsel (*amicus curiae*) sought to caution that the ingenious attempt to gain entry into the Presidential Order by backdoor, needs to be condemned lest it may amount to permitting fraud on the Constitution besides running contra to what is envisaged by Article 46. According to him, 'birth ' alone is the 'touch-stone' to decide the caste or tribe and that caste or tribe can't be changed by violation, viz, by

reason of marriage or adoption.

15 The above rival contentions of the learned Counsel give rise to the following questions for decision in these proceedings :-

(1) Whether a girl on marriage becomes a member of her husband's family. snapping all her parental ties? and
(2) Whether the girl on marriage acquires the caste or tribe of her husband? and
(3) Whether acquisition of caste or tribe of the husband by virtue of marriage would clothe the wife with the right to reservation envisaged by Article 15(4) of the Constitution of India ?

16. Adverting to the first issue, viz., whether a girl on marriage would become a member of her husband's family snapping all her parental ties, it needs to be borne in mind that earlier to the codification and bringing-in the legislation, Hindu Marriage Act, 1955, Hindu Marriages were used to be governed by Sastric Law. Hindu marriage was a religious sacrament and not a contract, and divorce was unknown to Hindus. One of the essentialities for valid performance of Hindu marriage was Kanya Dana, i.e., gifting the bride to the bridegroom, apart from Saptapadhi. The codified law, viz., Hindu Marriage Act, 1955 through Section 7 postulates performance of solemnisation of Hindu marriage in accordance with the customary rights and ceremonies of either party therato. Therefore, whether it is earlier to or later on to the codification the essentialities, viz., Kanya Dana and Saptapadhi, remain intact and unaltered for valid performance of a Hindu marriage. By performance of Kanya the bride-groom and becomes a member of her husband's family, soon after the 7th step of Saptapadhi is complete. Under the Sastric Law as also as per the codified Law (Hindu Adoptions and Maintenance Act, 1955) it is the duty of the husband to maintain his wife. The wife is entitled to the maintenance under the provisions of the Hindu Adoptions and Maintenance Act, 1955 as also under Section 125 of the Criminal Procedure Code. The civil and criminal law went to the extend of laying down that a wife, even if divorced, would be entitled to the maintenance as long as she does not re-marry. further , under the Hindu Succession Act, wife is one of the successors as a Class-01 heir to the property of her husband. These are all the instances that go to show that a girl as soon as married would go to the family of her husband as a member thereof and would be, entitled to the different rights enunciated. Section 19 of the Hindu Adoption and Maintenance, clothes the Hindu wife with the right to seek maintenance, after the death of her husband, from her farther-in-law while Section 18 puts it against the husband, as long as he is alive. Her ties with the family of the husband are thus twinned so close by enabling her to invoke maintenance from her father-in-law as not ed above. Husband and members of husband's family are more nearer and dearer to a married woman that her parents and numbers of parental family both under the Sastric Laws as well as Codified Law. In so far as the rights of women on marriage are concerned there is thing absolutely detrimental brought-in by the Codified Law as against the Sastric Law. On the other hand, better rights are conferred on women by the Codified Law,. Keeping these factors in the background of the mind, it would now be interesting to refer to some of the decisions that have bearing on the issue.

17. The earliest of the decisions of the Privy Council on this question is the one in *Sri Raghunadha v. Sri Brojo Kishore*[1], at widow of the Zamindar of Chinnakimidy adopted a son

and brought-in a suit on his behalf to recover the Zamindary against the undivided half-brother of the Zamindar and the Government that sought to nominate a successor. In those proceedings, the Privy Council, made the following pertinent observations :-

> "The Hindu wife upon her marriage passes into and becomes a member of that family. It is upon that family that, as a widow, she has her claim for maintenance. It is in that family that in the strict contemplation of law she ought to reside. It is in the members of that family that she must presumably find such councillors and protectors as the law makes requisite for her."

These observations as regards a Hindu wife going into the family of her husband, her right to claim maintenance from that family and that she would receive Counsel from the members of that family, would indicate abundantly that she would more be nearer to her husband's family.

18. In *Mussumat Bhoobun Moyee Debia v. Ramkishore Acharj Chowdhary*[2], at 312 Lord Kingsdown made an ideal observation :-

> "In the doctrine of Hindu Law, the husband and wife are one, and that as long as the wife survives, one half of the husband surives.

This observation regarding the unification of the wife with the husband takes the thought of a Hindu to Ardha Nareeswara (Eeswara in half form and consort Parvathi the remaining half) and high-lights the women twinness of wife with the husband, while both are the unifies one.

19. The decision in *Lalloo Bhoy v. Cassibai*[3], deals with Sapinda relationship to decide the succession for the property of Mooljee Nandlall, who died issueless, and when his wife pre-deceased him. The suit was brought-in against the wife of the parental-cousin of Mooljee Nandlall, who preferred the appeal to the Bombay High Court against the judgment of the trial Court decreeing suit. The Bombay High Court reversed the judgment of the trial Court holding that the wife of the paternal cousin of Mooljee Nandlall (defendant-Mancooverbai) is the nearest Gotraja-Sapinda of Nandlall and therefore entitled to inherit the property. Thereupon, the plaintiffs preferred the appeal to the Privy Council. Their Lordships dealing with the concept of Sapinda relationship found that the relationship depends on having the partcles of the body of some ancestor in common. In so far as the wife is concerned it is held that she is the Spinda of her husband,

[1](1876) 3 I.A.page 154 [3](1879-80) 7 IA page 212
[2](1865) 10 MIA page 279

because they together get one body, i.e., son. In this connection, their Lordships of the Privy Council quoted the following passage from Achara Kanda of the Mitakshara :-

> "(He should marry a girl) who is non-Sapinda, i.e., (1) a Sapinda (with himself). She is called his Sapinda who has (partcles of the body)(of some ancestor) in common (with him). Non-Sapinda means not his Sapinda. Such an one (he should marry). Sapinda relationship arises between two people, through their being connected with particles of one body. Thus the son stands in Sapinda relationship to his father, because of particles of

his father's body having entered (his). In like (manner stands the grandson in Spinda relationship) to his paternal grandfather and the rest, because through his father, particles of his (grand father's) body have entered (into his) .... So also the wife and the husband are Sapinda relations to each other, because they together be get one body (he son). In like manner brother's wives also are (Sapinda relation to each other..... Therefore one ought to know that wherever the word Sapinda is used, there exists (between the persons to whom it is applied) a connection with one body, either immediately or by descent."

Ultimately the Privy Council held :-

.....the wife upon her marriage enters the Gotra of her husband, and thus becomes constructively in consanguinity or relationship with him, and through him, with his family....:.." (page 234)

Again at page 238, it is held :
-

".....the series taken as a whole undoubtedly recognises and affirms the right of the widow to inherit as a Gotraja-Sapinda to members of her husband's family."

The Privy Council accordingly affirmed the decision of the Bombay High Court.

20. In *Bai Kesser Bai v. Hunsraj Morarji*[4], Lord Davey held at page 188 :-

" There can be reasonable doubt that according to the Mitakshara definition of Sapinda husband and wife are Sapindas to each other." (p.188)

" The identity of the wife with her husband being accepted as a leading principle of Mitakshara, the rule seems on the whole most consonant to it whereby precedence in heritable relation to him gives a like precedence and order of succession in relation to his widow." (page 189)

21. In *Narayani Dasi v. Administrator-General of Bengal*[5], the testator died leaving behind him two daughters and one son. The 2nd daughter was unmarried minor while the son was just four years by the date of his death. After the marriage, the 2nd daughter brought-in the suit, claiming monthly annuity bequeathed under the will. The construction of the will was the subject-matter of interpretation. The Privy Council having found the daughter plaintiff to be not one reduced to property and married a man of means observed

[4](1906) 33 IA page 176
[5](1884) 21 ILR (Cal) 683

at page 298 :-

"Consequently, it was not in contemplation of her fa not her, a Hindu, that she should under any circumstances receive a separate allowance from his estate to the reduction of the means of his son, the residuary legatee."

They further sought to fortify the above observations in the following words :-

"When a Hindu girl marries, she completely ceases to have anything to do with her father and his family. She becomes one with her husband and belongs to his family." (stress supplied)

22. From these principles laid down in the above decisions it is clear that pursuant to the marriage, the bride becomes one with her husband, their oneness or unification is highly significant, husband in fact is half of his wife, and her claims for maintenance, etc, lay against the husband and in case of his death against her father-in-law, she on marriage passes into and becomes a member of her husband's family, and that she acquires the Gotra of her husband besides being a Sapinda since she begets children through her husband, who are Sapindas of their father. These principles hold good even after codification of Hindu Law inasmuch as thing contra in enacted in the codified legislations. We, therefore, hold that on marriage a girl becomes a member of her husband's family and acquires his Gotra and Sapindaship, ceasing all her ties with her parental family.

23. At this stage it is to be noticed that Sri Tarakam, the learned Counsel appearing on behalf of Dalitha Maha Sabha (an intervener), submitted that there is Gotra for Sudras and therefore question of acquiring the Gotra of her husband on marriage does not arise. This is obviously is due misconception of the facts inasmuch as Sudras also have Gotras. Of-course they do not have Pravara. Even otherwise also, the question relevant is not acquisition of Gotra, but becoming a member of her husband's family and that we found, for the reasons assigned to be necessary and mandatory transcedence that takes place in deed. In holding this view, we are further fortified by the decisions we will presently refer while dealing with the second question frames supra.

24. Adverting to the second question, whether the bride on marriage acquires the caste or tribe of her husband, it is to be noted at the outset that caste system is in vogue in this country since centuries and centuries together. Caste, generally, is decided by the birth of an individual. He or she acquires the caste of his or her father by birth. There are, doubt, instances where an individual opts a particular caste, and by that volition or option he acquires that caste, if only the elders of that opted caste accepts his volition. Acquisition of caste, therefore, need not necessarily be by birth but by volition also, provided it is accepted by that caste elders. Acquisition of caste by marriage, of course, is of a different form from volition, since marriage itself is the transcendental factor.

25. It is apposite here to refer to the case-law on this proposition giving rise to the transcedence in the matter of caste or tribe. The first case cited in this behalf is the one in Maharaja of *Kolhaour v. Sundaram Ayyar*[6], The question there was, whether the family of

[6] AIR 1925 Mad 497

Raja of Tanjore, belongs to Kshatriya or Sudra caste. The Subordinate Judge gave a finding that Tanjore Rajas were Sudras by caste. It was in fact conceded that "caste is the result of birth and not of choice or volition, though a person may lose caste, he can't by any act of his rise to a higher caste." After referring to different Smritis including those of Manu, Yognavalkya, it is summarized at page 541 :-

"All the test-writers and commentators are agreed that in the case of Sudra there is not

only Upanayana or the investiture of sacred thread which is the exclusive privilege of the three higher classes but there is also recitation of the Vedic mantras in respect of any rites which they are enjoined to perform by the Shastras."

After an extensive discussion, it was opined that members of the Tanjore Royal family are Sudras and not Kshatriyas. It is also relevant to notice here that according to Manu and Yagnavalkya there are only four castes, namely Brahmana, Kshatriya, Vaisya and Sudra, the first three commanding the privilege of Upanayana, while the last excluded from such privilege.

26. In *V.V.Giri v. D.S. Dora*[7], at p.1327, the question was whether the 1st respondent therein, was a member of scheduled tribe at the material time to render the declaration made therefore to be true and correct, so as to uphold his election under the Representation of People Act as valid one. Dealing with this question, the Supreme Court held in para 24 thus :-

"(24) The evidence adduced by respondent No. l shows that all the documents from 1885 to 1928 consistently described him as a Mukha Dora or a member of the scheduled tribe. The appellant has however produced documentary evidence which indicates that from 1928 onwards respondent No. 1 has described himself and the members of his family as belonging to the Kshatrya caste ..... It shows that marriages in the family of respondent 1 are celebrated as they would be amongst the Kshatriyas, and Homa is performed on such occasions .....The caste-status of a person in the context would necessarily have to be determined in the light of the recognition received by him from the members of the caste into which he seeks an entry. There is evidence on this point at all. Besides, the evidence produced by the appellant merely shows some acts by respondent No. l which doubt were intended to assert a higher status, but unilateral acts of this character can't be easily taken to prove that the claim for the higher status which the said acts purport to make is established."

It is, thus, clear that mere volition or unilateral acts of an individual are of consequence to decide his caste, but it is the approval or recognition of the caste-members into which he seeks entry is the prime and mandatory factor to hold that the individual belongs to the caste he entered into.

27. The question in *Rajagopal v. C.M. Amugam*[8], is, whether a person on reconversion to Hindu religion would become a member of the caste to which he originally belonged. The

[7] AIR 1959 SC 1318
[8] AIR 1989 SC 101

Supreme Court in paragraph 21 laid down (at page 109 of SC) :

"....on reconversion to Hinduism, a person can become a member of the same caste in which he was born and to which he belonged before having been converted to another religion. The main basis of the decisions is that, if the members of the caste accept the reconversion of a person as a member, it should be held that he does become a member of that caste even through he may have lost membership of that caste on conversion to a not her religion."

Therefore, according to this decision, a reconvert to Hinduism would be a member of that caste to which he belonged before conversion, if his reconversion is accepted by the members of that caste.

28. In *Ganpat v. Presiding Officer*[9], the election of the respondent to the reserved seat was challenged on the ground that he was a Buddhist and not a Hindu and hence was not a member of the Scheduled Caste. Finding that some of the members of the Scheduled Caste change their religion to remove the indignity of being branded as untouchables, the Supreme Court held :-

> " We have evidence in this case that people who claim themselves to have become Buddhists have taken advantage of scholarships and other facilities granted by Government to members of Scheduled Castes. Whether such concession to members of Scheduled Castes should also be extended to members of those castes who have changed their religion is a different question. Whether the Scheduled Castes Order should also describe such persons as members of the Scheduled Castes is very relevant to the present question....."
> "13..... it is difficult to say from a man's attitude in respect of certain questions whether he is a Hindu or a Buddhist. Religion is essentially a highly personal matter and there the open assertion by a person especially an educated member of the society about the religion he professes should be given considerable weight over the interested testimony of others based on stray instances. We should therefore, in agreement with the High Court hold that the respondents Nos. 2, 6 and 9 are not Buddhist but continue to be members of the Scheduled Castes."

The Supreme Court further held that Hinduism in so tolerant and Hindu religious practices so varied and electric that one would find it difficult to say whether one is practising or professing the Hindu religion or not. It ruled that the fact that a born Hindu goes to a Buddhist temple or a Church or Durgah cannot be said to show that he is more a Hindu unless it is clearly proved that he has changed his religion from Hinduism to some other religion. It was for want of such evidence, the Supreme Court held that the respondents before it were continuing as members of the Scheduled Castes and were not Buddhists.

29. The Supreme Court in *Arumugam v. Rajgopal*[10], was dealing with the question of coming back to the original scheduled caste after embracing Christianity and its validity. The argument before the Supreme Court was that once the 1st respondent therein

[9] AIR 1975 SC 420
[10] AIR 1976 SC 939

renounced Hinduism and embraces Christianity, he could not go back to the Adi Dravida caste on reconversion to Hinduism. Answering this, the Supreme Court held :-

> "On reconversion to Hinduism, a person can once again become a member of the caste in which he was born and to which he belonged before conversion to a not her religion, if the members of the caste accept him as a member.....

> If a person who has embraced a not her religion can be converted to Hinduism, there is rational principle why he should not be able to come back to his caste, if the other members of the caste are prepared to readmit him as a member. It stands to reason that he should be able to come back to the fold to which he once belonged, provided of course the community is willing to take him within the fold."(para 17)

The only pre-condition for one to come back to his original caste on reconversion is that the members of that caste should be willing to take him back within the fold.

30. The decision in *Guntur Medical College v. Y. Mohan Rao*[11], is one relating to the caste of a person whose parents were Christian converts on such reconversion person's to Hinduism. While, approving the earlier decision in Armugam's case,the Constitution Bench of the Supreme Court held :-

> "It will be seen that on conversion to Hinduism, a person born of Christian converts would not become a members of the caste to which his parents belonged prior to their conversion to Christianity, automatically or a matter of course but he would become such member if the other members of the caste accept him as a member and admit him within the fold."

Thus, issues of converts to other religion can come back to their original caste on conversion to Hinduism provided only the members of that caste admit such of them back to their fold.

31. In *Khazansingh v. Union of India*[12], the Delhi High Court was dealing with the question of caste of adopted child. It held ".....the adoptee is to be treated from the date of his adoption as if he were born in the adoptive family for all practical purposes. Therefore, on adoption as in the case of a birth, the adoptee acquires the caste of the adoptive parents ..... The adoptee does not require sanction of the adoptive community for treating him a member thereof.Para I. The facts in that case reveal that the adoptee originally belonged to a higher caste while the adoptive father belonged to Scheduled Caste. On those facts it was held that the adoptee gets the caste of the adoptive father and for this the sanction of the adoptive community was not required.

32. The decision in *Kailash Sankar v. Maya Devi*[13], is also one dealing with the caste of a progeny, whose parents happened to be converts to a different religion from Hinduism, on such progeny's conversion to Hinduism, just as it happened to be before the Constitution Bench in Guntur Medical College case. The Supreme Court held that such progeny could

[11] AIR 1976 (2) SC 1904
[12] AIR 1980 Delhi 60
[13] AIR 1984 (1) SC 600

revive his parents' caste before their conversion, provided the intention of the progeny for conversion is a ginuine one by abjuring his new religion and completely disassociating from it.

33. From the principles laid down above, we are inclined to hold that on marriage the bride acquires the caste or tribe of her husband and the question whether there was acceptance for such acquisition of caste or tribe from the members of that caste or tribe, as the case may be, is

irrelevant inasmuch as this is not an acquisition on reconversion to Hinduism nor a change over simpliciter, but by virtue of her marriage.

34. Now remains the constitutional aspect of the proceedings covered by the 3rd issue framed, viz., whether acquisition of caste or tribe of the husband would entail the female spouse to reservation envisaged by Article 15(4) of the Constitution of India.

35. At the outset, it is necessary to have a view of the relevant provisions in the Constitution having a bearing on the present question. The preamble to the Constitution envisages securing to all the citizens 'equality of status and of opportunity'. Article 14, dealing with Right to Equality, postulates that person shall be denied equality before the law or equal protection of the laws within the territory of India, while Article 15 prohibits discrimination against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. Clause (4) or Article 15 further states : -

> "(4) Nothing in this article or in clause (2) of Article 29 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."

This Article 15(4) is in consonance with the object envisaged by the preamble, viz., securing to all the citizens equality of status and of opportunity, in providing reservations for the advancement of backward classes of citizens, for the members of Scheduled Castes and Scheduled Tribes, so that ultimately among all the citizens the status as well opportunity would be equal. similarly Article 16 further runs :-

> "(4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizen which, in the opinion of the State, is not adequately represented in the service under the State."

Article 46 mandates protection of Scheduled Castes, Scheduled Tribes and other weaker sections from social injustice and all forms of exploitation. It states that the State shall promote with special care the educational and economic interests of the weaker sections of the people and shall protect them from social injustice and different forms of exploitation. Article 341 provides that the President may by public not ification specify the castes, races, tribes, eta, to be deemed to be Scheduled Castes. Likewise under Article 342 the President may specify the tribes or tribal communities to be deemed to be Scheduled Tribes. Clause (2) to both Articles 341 and 342 authorises the Parliament alone to include in or exclude from the specified castes, races or tribes notified by the President. The Constitution (Scheduled Castes) Order, 1950 was made by the President by virtue of the power conferred by Article 341. Clause (3) of the said order, it is to be noticed, declares that person who professes a religion different from the Hindu or the Sikh religion shall be deemed to be a member of a Scheduled Caste. Similarly in exercise of the powers conferred by Article 342 (1), the President has made the Constitution (Scheduled Tribes) Order, 1950. However, there is clause similar to clause (3) of scheduled Castes order in Scheduled Tribes order. Therefore, for a person to be a member of Scheduled Caste he must be a Hindu or Sikh by religion whereas it need not be so far a person to be a member of the Scheduled Tribe. In view of the making of these two Orders by the President any variation to the list of such

Castes, Races or Tribes can be effected only by the Parliament, i.e., by virtue of clause (2) or Articles 341 and 342. Keeping in view these pre-cautions embodied in the Constitution in the matter of enlisting the castes, tribes or races for purposes of their advancement as envisaged by Article 15(4) and the preamble to the Constitution as also the protection granted to them from exploitation under Article 46, it is the sacred duty of the Courts to adjudicate questions like the present one, viz, whether on marriage having acquired the caste or tribe the female-spouse would be entitled to the reser-ations made under Article 15(4).

36. We have extracted clause (4) of Article 15 supra. Before analysing and interpreting the same, it is relevant to te the legislative history that warranted its introduction into the Constitution. In the year 1927 the Tamil Nadu Government issued a G.O., popularly known as 'Communal G.O., making reservations for various communities. In 1950 one Smt. Champakam Dorairajan, claimant for a seat in the medical college, having found that the proportion fixed in the old Communal G.O., had been adhered to even after commencement of the Constitution filed a writ petition seeking mandamus restraining the State of Madras from enforcing the said G.O., on the ground that it infringes the fundamental rights guaranteed under Articles 15(1) and 29(2). A Full Bench of the Madras High Court having heard the writ petition allowed in. Thereupon, the State preferred an appeal to the Supreme Court in *State of Madras v. Smt. Champakam Dorairajan*[14], A seven Judges' Constitution Bench of the Supreme Court having heard the appeal dismissed it holding that the said Communal G.O., is inconsistent with Articles 29(2) and 15(1) of the Constitution. Thereupon, in order to over-ride the effect of this decision, Dr. Ambedkar as the Minister of Law introduced the 1st Amendment Bill to the Constitution, which was passed and added clause (4) to Article 15 by the Constitution (First Amendment) Act. The object of the newly introduced clause (4) to Article 15 was to bring Articles 15 and 29 in line with Articles 16(4), 46 and 340 to make it constitutionally valid for the State to reserve seats for backward class of citizens, scheduled castes and scheduled tribes in the public educational institutions as well as to make other special provisions as may be necessary for their advancement.

37. Adverting to the meaning of the term 'socially and educationally backward classes of citizens' occurring in Clause (4) of Article 15, it is to be not iced that Article 340 provides for appointment of a Commission to investigate conditions of backward classes by the President. In exercise of this power vested by Article 340, the 1st Backward Classes Commission, viz, Kalekar Commission, was appointed. The commission gave its report. According to the Commission, the causes of education backwardness amongst the educationally and socially backward communities were : -

[14]1951 SCR 525

1. Traditional apathy for education on account of social and environment conditions or occupational handicaps,

2. Poverty and lack of educational institutions in rural areas, 3. Living in inaccessible areas,

4. Lack of adequate educational aids, such as free studentship, scholarships and monetary grants,

5. Lack of residential hostel facilities,

6. Unemployment among the educated which acts as a damper on the desire of the members to educate their children; and

7. Defective educational system which does not train students for appropriate occupations

and professions."

It appears that having considered several criteria which may be relevant for determining which classes are backward the Committee ultimately decided to treat the status of caste one of the important factors in that behalf and it is on that basis the Committee proceeded to make a list of Backward Communities which were specified in Volume-II of the Report. Again in the year 1979, by an Order made by the President of India under Article 340, a second Commission was appointed, popularly known as 'Mandal Commission' to investigate the conditions of socially and educationally backward classes within the territory of India. The Commission gave its report evolving eleven 'Indicators' or 'criteria' for determining social and educational backwardness. Those eleven indicators, grouped under (a) Social (b) Educational and (c) Economic, are as follows : -

"A. Social :-
(i) Castes/Classes considered as socially backward by others.
(ii) Castes/Classes which mainly depend on manual labour for their livelihood,
(iii) Castes/Classes where at least 25% females and 10% males above the State average get married at an age below 17 years in rural areas and at least 10% females and 5% males do so in urban areas,
(iv) Castes/Classes where participation of females in work is at least 25% above the State average
B.Educational :-
(v) Castes/Classes where the number of children in the age group of 5-15 years who never attended school is at least 25% above the State average.
(vi) Castes/Classes where the rate of student drop-out in the age-group of 5-15 years is at least 25% above the State average.
(vii) Castes/Classes amongst whom the proportion of matriculates is at least 25% below the State average.
C.Ecomic :-
(viii) Castes/Classes where the average value of family assets is at least 25% below the State average,
(ix) Castes/Classes where the number of families living in Kuccha houses is at least 25% above the State average.
(x) Castes/Classes where the source of drinking water is beyond half of kilometer for more than 50% of the households.
(xi) Castes/Classes where the number of households having taken consumption loan is at least 25% above the State average."

Besides the criteria and indicators found out by the two Commissions, it is pertinent to notice the case law on the subject. After introduction of Clause (4) to Article 15, the first case that came-up before the Supreme Court was *Balaji v. State of Mysore*[15], where the scope and extent of the expression 'Backward classes' occuring in Article 15(4) was considered. It is observed :-

"21. In considering the scope and extent of the expression "Backward classes" under

Article 15(4), it is necessary to remember that the concept backwardness is not intended to be relative in the sense that any classes who are backward in relation to the most advanced classes of the society should be included in it. If such relative tests were to be applied by reason of the most advanced classes, there would be several layers or strata of backward classes and each one of them may claim to be included under Article 15(4).

38. In a similar context, viz., considering, the scope and ambit of the expression 'classes' of citizens in Articles 15(4) of the Constitution the Supreme Court observed :-

"The group of citizens to whom Article 15(4) applies are described as "classes of citizen", not as castes of citizens. A class according to the dictionary meaning, shows division of society according to status, rank, of caste..... Therefore, in dealing with the question as to whether any class of citizens is socially backward or not, it may not be irrelevant to consider the caste of the said group of citizens. In this connection, it is, however, necessary to bear in mind that the special provision is contemplated for classes of citizens and not for individual citizens as such, and so, though castes of the group of citizens may be relevant, its importance should not be exaggerated. If the classification of backward classes of citizens was based solely on the caste of the citizen, it may. not always be logical and may perhaps contain the vice of perpetrating the castes themselves.

Besides, if the caste of the group of the citizens was made the sole basis for determining the social backwardness of the said group, that test would inevitably breakdown in relation to many sections of Indian society which do not recognise castes in the conventional sense known to Hindu society..... That is why, we think that though the castes in relation to Hindus may be relevant factor to consider in determining the social backwardness of groups or classes of citizens, it can't be made the sole or the dominant test in that behalf."

39. In *Triloki Nath v. State of Jammu and Kashmir*[16], adverting to the expression "backward class", the Supreme Court held:-

"The expression "Backward classes" is not used as synonymous with 'backward caste' or 'backward community'. The expression 'class' in its ordinary contation may mean 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 purposes or Article 16 (4) in determining whether a section forms a class, a test solely based on caste, community, race, religion, sex, descent,

[15] AIR 1963 SC 649

[16] AIR 1969 SC 1 : 1969 (1) SCR 103,

place of birth or residence, can't be adopted, because it would directly offend the Constitution. The members of an entire caste or community may, in the social, economic

and educational scale of value 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 *Janki Prasad v. State of J & k*[17] dealing with the expression "backward class of citizens", the Supreme Court held: "(A) Mere educational backwardness for the social backwardness does not by itself make a class of citizens backward. In order to be identified as belonging to such a class, one must be both educationally and socially backward. Backward classes must be comparable to Scheduled Castes and Scheduled Tribes."

Again in *Kumari K.S. Jayasree v. Kerala*[18]*,* dealing with the reservation of seats under Article 15(4), "the Supreme /Court laid down : -

"The basis of the reservation is not income but social and educational backwardness. Backward classes for whose improvement special provisions are contemplated by Article 15(4) are in the matter of their backwardness comparable to Scheduled Castes and Scheduled Tribes. Backwardness under Article 15 (4) must be both social and educational. In ascertaining social backwardness of a class of citizens, the caste of backwardness of a class of citizens, the caste of a citizen can't be the sole or dominant test. Just as caste is not the sole or dominant test, similarly poverty is the decisive and determining factor of social backwardness.

The object of the reservation under Article 15(4) is to recognise the factual existence of "socially and educationally backward classes in the country and to make a sincere attempt to promote the welfare of the weaker sections of community. Article 15(4) gives effect to this principle. The concept of backwardness is not intended to be relative in the sense that classes who are backward in relation to the most advanced classes of society should be included in it.

In ascertaining social backwardness of a class of citizens it may not be, relevant to consider a caste of the group of citizens. Caste can't however be made the whole 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 caste. This shows the relevance of both caste and poverty in determining the backwardness of citizens. In evolving proper criteria for determining the socially and educationally backward classes, sociological and economic considerations come into play. This determination is the function of the State. The Court's jurisdiction is to be decided whether the tests applied are valid. In dealing with the question as to whether any class of citizens is socially backward or not, it may not be irrelevant to consider a caste of the said group of citizens. Special provision is contemplated for classes of citizens and not for individual citizens as such, and so, though the caste of the group of citizens may be relevant, its importance should not be exaggerated. If the classification is based solely on caste of the citizen, it may not be logical. When the Commission had

[17] AIR 1973 SC 930: 1973 Lab IC 565

[18] AIR 1976 SC 2381: 1977(1) SCR 194

> determined a class to be socially and educationally backward and it was not on the basis of income alone, and the determination was based on the relevant criteria laid down by this Court. Article 15(4) which speaks of backwardness of classes of citizens indicates that the accent is on the classes of citizens. Article' 15(4) also speaks of Scheduled Castes and Scheduled Tribes. Therefore, socially and educationally Backward Classes of citizens in Article 15(4) can't be equated with castes."

40. In *Pradip Tandon v. State of Uttar Pradesh*[19], a decision under Article 15(4), Ray, C.J., speaking for the Division Bench of three Judges opined :-

> "Broadly stated, neither caste nor race nor religion can be made the basis of classification for the purposes of determining social and educational backwardness within the meaning of Article 15(4). When Article 15(1) forbids discrimination on grounds only of religion, race, caste, caste can't be one of the criteria for determining the social and educational backwardness. If caste or religion is recognised as a criteria of social and educational backwardness. If caste or religion is recognises as a criteria of social and educational backwardness Article 15(4) will stultify Article 15(1). It is true that Article 15(1) forbids discrimination only on the ground of religion, race, caste, but when a classification takes recourse to caste as one of the criteria in determining socially and educationally backward classes the expression 'classes' in that case violates the rule of expression uninus est exchusio alterius. The socially and educationally backward classes of citizens are groups other that groups based on caste."

Again in *Indra Sawhney v. Union of India*[20], dealing with the identification and significance of "Backward Class of Citizens" occurring in Article 16(4), a Constitution Bench of the Supreme Court referred to the respective contentions starting from page 603 thus :-

> "What does the expression 'Backward Class of Citizens' in Article to(4) signify and how should they be identified ? This has been the single-most difficult question tormenting this nation. The expression is not defined in the Constitution. What does it mean then ?..... At one end of the spectrum stands Sri N.A. Palkhiwala (supported by several other counsel) whose submissions may briefly be summarised in the following words : a secular, unified and caste-less society is the basic feature of the Constitution. Caste is prohibited ground of distinction under the Constitution. It ought to be erased altogether from the Indian Society. It can never be the basis for determining backward classes referred to in Article 16(4). The report of the Mandal Commission, which is the basis of the impugned memorandums, has treated the expression Backward Classes' as synymous with backward castes and has proceeded to identify backward classes solely and exclusively on the basis of caste ignoring all other considerations, including poverty. It has indeed invented castes for non-Hindus where he exists. The report has divided the nation into two sections, backward and forward, placing 54% of the population in the former section. Acceptance

of report would spell disaster to

[19]1975 (2) SCR 761

[20]1992(6) JT SC 273

the unity and integrity of the nation. If half of the posts are reserved for backward classes, it would seriously jeoparadise the efficiency of the administration, educational system and all other services resulting in backwardness of the entire nation. Merit will disappear by defying backwardness. Article 16(4) is broader than Article 15(4). The expression "Backward Class of Citizens" in Article 16(4) is not limited to "Socially and educationally backward classes" in Article 15(4). The impugned memorandums, based on the said report must necessarily fall to the ground along with the report. In fact, the main thrust of Sri Palkhiwala's argument has been against the Mandal Commission Report.

749. At the other end of the society stands Sri Ram Jethmalani, counsel appearing for the State of Bihar supported by several counsel. According to him, backward castes in Article 16(4) meant and means only the members of Sudhra caste, which is located between the three Upper Castes, (Brahmins, Kshtryas and Vaisyas) and the outcastes (Panchamas) referred to as Scheduled Castes. According to him Article 16(4) was conceived only for these "Middle Castes" i.e., castes categorised as Sudras in the castes system and for non else. This backward castes have suffered centuries of discrimination and disadvantage, leading to their backwardness. The expression "backward classes" does not refer to any current characteristic of a backward caste save and except paucity or inadequacy or representation in the apparatus of the Government. Poverty, is not a necessary 6 criterion of backwardness; it is in fact irrelevant. The provision for reservation is really a programme of historical compensation. It is neither a measure of economic reform not a poverty alleviation programme. The learned Counsel further submitted that it is for the State to determine who are the backward classes; it is not a matter for the Court. The decision of the Government is not judicially reviewable. Even if reviewable, the scope of judicial review is extremely limited to the only question whether the exercise of power is a fraud on the Constitution. The learned Counsel referred to certain American decisions to show that even in that country several programmes of affirmative action and compensatory discrimination have been evolved and upheld by Courts .....

755. Sri K. Parasaran, learned Counsel appearing for the Union of India urged the following submissions :-

(1) The reservation provided for by clause (4) of Article 16 is not in favour of backward citizens, but in favour of backward class of citizens. What is to be identified is backward class of citizens and not citizens who can be classified as backward. The homogeneous groups based on religion, race, caste, place of birth etc., can form a class of citizens and if that class is backward there can be a reservation in favour of that class of citizens.

(2) Caste is a relevant consideration. It can even be the dominant consideration. Indeed, most of list prepared by the State are prepared with reference to and on the basis of castes. They have been upheld by this Court.

(3) Article 16(2) prohibits discrimination only on any or all of the grounds mentioned therein. A provision for protective discrimination on any of the said grounds coupled with

other relevant grounds would not fall within the prohibition of clause (2). In other words, if reservation is made in favour of Backward Class of citizens the bar contained in clause (2) is not attracted, when if the backward classes are identified with reference to caste. The reason is that the reservation is not being made in favour of the castes simpliciter but on the ground that they are backward castes/classes which are not adequately represented in the services of the State.

(4) The criteria of backwardness evolved by Mandal Commission is perfectly proper and unjectionable. It has made and extensive investigation and has prepared a list of backward classes. Even if there are instances of under-inclusion or over-inclusion such errors do not vitiate the entire exercise. Moreover, whether a particular caste or class is backward or not and whether it is adequately represented in the services of the State or, t are questions of fact and are within the domain of executive decision."

After so referring to the contentions, the Supreme Court held in paragraph 788 as under : -

"788. In our opinion too, the words 'class of citizens - not adequately represented in the services under State' would have been a vague and uncertain description. By adding the word 'backward' and by the speeches of Dr. Ambedkar and Sri K.M. Munshi, it was made clear that "class of citizens..... not adequately represented in the services under the State" meant only those classes of citizens who were not so represented on account of their social backwardness.....

791. Indeed, there are very good reasons why the Constitution could not have used the expression 'castes' or 'caste' in Article 16(4) and why the word 'class' was the natural choice in the context. The Constitution was meant for the entire country and for all times to come. non-Hindu religion like Islam, Christianity and Sikh did not recognise caste as such, though, as pointed out herein above, castes did exist even among these religions to a varying degree. Further, a Constitution is supposed to be a permanent document expected to last several centuries. It must surely have the envisaged that in future many classes may spring-up answering the test of backwardness, requiring the protection of Article 16(4). It, therefore, follows that from the use of the word 'class' in Article 16(4) it can't be concluded either that 'class' is antithetical to 'caste' or that 'caste' can't be a 'class' or that a caste as such can never be taken as a backward class of citizens. The word 'class' in Article 16(4), in our opinion, is used in the sense of social class- and not in the sense it is understood Marxist Jargon.....

795. The above material makes it amply clear that a caste is nothing but a social class- a socially homogeneous class,. It is also an occupational grouping, with this difference that its membership is hereditary. One is born into it. Its membership is involuntary ....."

The above decisions make it clear that the prime criteria to identify citizens of Backward Class is their backwardness in the social and educational spheres and there is thing wrong if caste is taken as one of the factors in working out the classification in the endeavour for identification.

41. In the instant proceedings both the claimants for reservation claim the caste or tribe concerned by virtue of their marriage, they being by completed their higher education as also graduation they had their marriages and by virtue of that, they mace a claim for reservation in the matter of admission into the post-graduation course. This discloses, obviously, they did not undergo the stresses and strains r were they before their marriage backward either socially or educationally, being members of the so-called Forward Castes. The environmental conditions and circumstances in which they lived till their marriage were different and distinct from those suffered by those who were socially and educationally backward. At this stage it is relevant to refer to some of the decisions on this aspect of the matter.

42. In *Shanitha Kumar v. State of Mysore*[21], the adoptee claimed reservation for admission into the Medical Course under Article 15 (4) of the Constitution. The facts disclosed that the natural father of the adoptee was a Supervisor in the office of the National Extension Service and the adoptee before adoption, that took place at his 16th year of age, did not suffer from any environmental disadvantage, and the environmental conditions of his upbringing for 3 years by his adoptive father, who may belong to socially and educationally Backward Classes, can't be said to destroy or nullify the advantage of the environmental conditions of his upbringing for 16 years by his natural parents. In the background of those facts, the Mysore High Court held :-

> "Whatever may be the position in regard to a boy who has been given in adoption at a comparatively early age like 4 or 5 years, in the case of the petitioner (adoptee) who is-stated to have been given in adoption when he was about 16 years of age, and has all the while imbibed the better environmental advantage of his natural father income and occupation it is not reasonable to hold that the income and occupation of his adoptive father and not those of his natural father that should determine whether he (the petitioner) belongs to socially and educationally Backward Classes. Any other view will lead to defeating the vary purpose of reservation for such Backward Classes. Any other view will lead to defeating the vary purpose of reservation for such Backward Classes, by the device of adoption just before the time of applying for admission to technical and professional College and Institutions, and thereby the benefit and protection to the classes of persons who really suffer from environmental disadvantages, will be whittled down."

43. In *Urmila Ginda v. Union of India*[22], the claimant for reservation was a girl of high caste Hindu by birth , but married a person belonging to Scheduled Caste person and sought for appointment in a post reserved for Scheduled Caste Member. Inasmuch as the claim was rejected, she invoked the jurisdiction under Article 226. Adjudicating her claim, the Delhi High Court held :-

> "Article 15 does not enable the State to make any reservation in respect of backward classes or of Scheduled Castes or Scheduled Tribes except to the extend permitted i.e., for helping social and educational advancement of member of such classes, castes or tribes. The petitioner, who is a high caste Hindu not subject to any social or educational backwardness, cant merely on the ground that she was married a scheduled caste husband, take advantage of any such special provision because the is not one of them. To

permit the petitioner to compete for a reserved post would defeat the very provision made by the State for such socially and educationally backward classes."

[21]1971 (1) Mys LJ 21

[22] AIR 1975 Delhi 115: 1975 Lab IC 1044

44. As signified earlier by the Supreme Court in Indra *Sawhney's case* (supra) backwardness varies according to time and the identification once made of the citizens belonging to the reserved caste or Tribes is not good for all time to come and it is prone to variance or revision and that is the reason why clause (2) is incorporated to Articles A.l and 342 of the Constitution. The Supreme Court again in *Vasanth Kumar v. State of Karnataka*[23], held :-

> "The policy of reservations in employment,' education and legislative institutions would 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 facts 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."

Even in the recent decision in Indra Sawhney's case (supra) adverting to the concept of 'Creamy layer' the Supreme Court clarified in paragraph 807 by stating that imposition of an income limit for the stating that imposition of an income limit for the purpose of excluding persons (from the backward class) whose income is above the said limit known as 'means test' is very often referred to as 'the creamy layer'. The submission of the supreme Court was that some members of the designated backward classes are highly advanced socially as well as ecomically and educationally and thus constitute the forward section of that particular backward class- as forward as any other forward class member - and that they are lapping up all the benefits of reservations meant for that class, without allowing the benefits to reach the truly backward members of that class. The Supreme Court appreciating the contention and agreeing with the same opined that exclusion of such socially advanced members will make the 'class' a truly backward class and would more appropriately serve the purpose and object of clause (4), (page 630). Keeping in mind all these considerations, the Supreme Court in paragraph 810 directed the Government of India to specify the basis of exclusion of creamy layer so that persons falling within the exclusionary rule shall cease to be members of the backward class of citizens.

45. In this background of the exclusionary rule evolved in so far as citizens covered by creamy layer are concerned, the contention of the learned Counsel appearing for the claimants for reservation, viz., consequent upon their entering into the caste or tribe of their respective husbands they would be entitled to the reservations envisaged by Article 15(4) of the Constitution, though neither of the two claimants underwent the stresses or strains or suffered the environmental disadvantages, the real backward class citizens faces, and on the other hand they belonged to forward castes in Hindu society before their marriage that took place after they completed their graduation and thus were not socially and educationally backward, do not deserve appreciation inasmuch as acceding to the said submission would defeat the very provision and its purpose. By the device of marriage just before the time of applying for admission into the post-graduation courses, if they were to be permitted to invoke the benefit and protection available to the classes of persons who really suffer from environmental disadvantages and incidental stresses and strains, it amounts to letting the purpose of reservation to whittle down, besides permitting entry of citizens better, if not, equally, placed as those constituting

creamy layer.

[23] AIR 1985 SC 1495

46. Turning to the contention that the G.Os., Circulars, etc., would entail the present claimants to seek the benefits covered by them, it is to be noticed, as submitted, the benefits were being enjoyed by the citizens of reserved classes and those were extended to the spouses of inter-caste marriages with a view to encourages the same. If in fact by virtue' of marriage they are entitled to the benefits enjoyed by the reserved class citizens there would absolutely be need to extend the same to the married citizens. It is only because they are not entitled to the benefits covered by them by virtue of marriage simpliciter they are specifically sought to be extended. Further, those are benefits of non-statutory nature. if the G.Os., so permit, they can certainly enjoy those benefits. However basing and those G.Os., they cant be permitted to seek enlargement of the scope and content of the said G.Os., Circulars, etc., so as to entail them to the benefit of reservation envisaged by Article 15(4) of the Constitution of India.

47. Turning to the concepts of Anuloma and Pratiloma marriages referred to by the learned single Judge, we may observe that those marriages according to Sastric Hindu law were, perhaps, not valid, but the difference of opinion on this aspect that once existed, more survives because Section 4 of the Hindu Marriage Act prescribes that the provisions of the Act would apply notwithstanding any rule of Hindu Law or custom to the contrary while Section 5 permits any Hindu to marry a not her Hindu provided there is disqualifying feature mentioned in that section, no of which is complained of in the instant proceedings.

48. Before parting with this, we place on record our warm appreciation for the services rendered by Sri J.V. Suryanarayana Rao, the *amicus curiae*, who took considerable pains in taking us through different aspects and authorities having bearing on the subject. We are very much impressed by his thoroughness on the questions of law, from which wer are greatly profited.

49. For the aforementioned reasons, we find merit in the appeal. W.A. 1161 of 1992, and it is accordingly dismissed. In so far as the other appeal, W.A 1161 of 1992, and it is accordingly dismissed. In so for as the other appeal permitted the 1313 of 1992, is concerned inasmuch as the order under appeal permitted the claimant concerned to invoke the reservation under Article 15 (4) of the Constitution, the same is set aside by allowing the appeal. We, however, make order as to costs. Irrespective of the result, in view of the interim orders made permitting all the three candidates to prosecute their studies in the concerned permitting all the three candidates to prosecute their studies in the concerned courses, the authorities, however, shall allow them to continue their studies,

.