CHAPTER III

Reservation and inter organ relationship at Government level.

The spirit of equality prevades the provisions of the Constitution of India as the main aim of the Founders of the Constitution was to create an egalitarian society wherein social, economic and political justice prevail and equality of status and of opportunity are made available to all.[1] However, owing to historical and traditional reasons certain classes of Indian citizens are under severe social and economic disabilities that they can not effectively enjoy either equality of status or of opportunity.[2] The Constitution, therefore, accords to these weaker sections of society compensatory or protective discrimination in various articles including articles 15(4) and 16(4). Article 15(4) authorises the making of "any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes" and article 16(4) authorises the making of "any 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 the services under the State".

The Constitution confronts both government and courts with the problem of reconciling the conflicting principles of equal treatment and compensatory discrimination.[3] The sweeping language of articles 15(4) and 16(4) suggests that the framers

3. Whether the list of backward classes based solely on caste is constitutional?

4. Is sub classification of backward classes into backward and more backward classes valid?

5. What is the scope of the expression 'backward classes of citizens'?

6. When is reservation excessive?

7. Whether the reservation under article 16(4) can be made in the case of promotions or only at the stage of appointments?

8. Can government provide concessions other than reservations for backward classes?

9. Whether the people in rural and hill areas are backward?

10. Whether any reservation scheme for communities, which are not coming in the category of backward classes, according to their religion, race and caste infringes the fundamental right guaranteed under article 16?

11. Is government constitutionally obliged to make reservation for backward classes?

12. Whether 'caste' and 'class' are synonymous?

II

Analysis of the Court cases under Article 16(4)

1. Who are backward classes?

The first Supreme Court case dealing with the definition

of backward classes was Triloki Nath V. State of Jammu and Kashmir.[10] The facts in this case were that the Government of Jammu and Kashmir had adopted the following basis in the matter of promotions to certain posts without any formal rule or announcement:

1. 50 per cent were given to Muslims;
2. 60 per cent of the remaining 50 per cent of the posts were filled by Jamvi Hindus;
3. The remaining 40 per cent of the 50 per cent of the posts were given to Kashmiri Pandits. Sometimes one or two posts were given to Sikhs out of turn.

The Supreme Court held that the sole test of backwardness under article 16(4) was not that certain classes were not adequately represented in the services of the State, for such an argument "would exclude the really backward classes from the benefit of the provision and confer the benefit only on a class of citizens who, though rich and cultured, have taken to other avocations of life".[11] The Court stated that a class to be backward must satisfy two conditions : (i) it was socially and educationally backward explained in Balaji's case, and (ii) it was not adequately represented in the services of the State. Following Balaji and Chitralekha the Court said that the classification of backward classes should be made on the following basis : (i) economic conditions, and (ii) occupation. Though the

and (2) and was not saved by clause (4). It held that article 16(2) prohibits discrimination on the ground of religion, race, caste, place of birth or residence. The expression 'backward class' was not synonymous with "backward caste" or "backward community". The members of an entire caste or community might in the social, economic and educational scale of values at a given time be backward and might on that account be treated as backward class, but that was not because they were members of a caste or community but because they formed a class. In its ordinary connotation the expression "class" meant a homogeneous section of the people grouped together because of certain likeliness or common traits, and who were 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 formed a class, a test solely based on caste, community, race, religion, sex, decent, place of birth or residence could not be adopted because it would directly offend the Constitution.

After the second Triloki Nath case occurred Makhan Lal V. State of Jammu and Kashmir.[14] This case occurred on the facts of Triloki Nath. Though the Supreme Court had stated in Triloki Nath case that the State should devise a scheme of reservation consistent with the constitutional guarantee, no such scheme had been devised. The Education Department of the State, however, thought of an ingenious device of giving ostensible effect to

the court's decision. The respondent teachers whose promotions were declared illegal in view of the decisions in Triloki Nath case were allowed to work in the same higher position on temporary basis. The Supreme Court again declared these promotions unconstitutional on the ground that this was contrary to the constitutional guarantee of article 16.

Finally, there occurred Janki Prasad Parimoo V. State of Jammu and Kashmir[15] on the facts of the above three cases. As a result of the decision in Makhan Lal the Government of Jammu and Kashmir promulgated the Jammu and Kashmir Scheduled castes and Backward Classes Reservation Rules, 1970. In 1967 the Government of Jammu and Kashmir appointed the Jammu and Kashmir Commission of Enquiry under the Chairmanship of Dr. P.B. Gajendragadkar. Its report was submitted in November 1968. It recommended to appoint a Committee for drawing up a list of backward classes in the State. Accordingly, the Backward classes committee was appointed under the Chairmanship of J.N. Nazir, retired Chief Justice of the High Court of Jammu and Kashmir, on February 3, 1969. This Committee submitted its report in November 1969 recommending several classes of citizens who deserved to be described as socially and educationally backward. On the recommendations of the Committee the Government of Jammu and Kashmir issued on April 8, 1970, the Jammu and Kashmir Scheduled castes and Backward classes (Reservation) Rules. These rules aimed at making provision for reservation of posts in favour of certain classes of permanent residents of

the State who were backward and not adequately represented in the services. A further order was passed on August 8, 1970, by the State Government known as Jammu and Kashmir Scheduled Castes and Backward classes (Reservation of appointments by promotion) Rules. By these rules the principles laid down were made applicable to promotions also. The net result of the recommendations made by the Committee was to make reservations in both appointments and promotions to the extent of 8% of the posts for Scheduled Castes and 42% in favour of the backward classes.

The petitioners complained that the Committee had failed to determine the backward classes in accordance with the decisions of the Supreme Court. It was further alleged that a disproportionate share in appointments and promotions would go to the Muslims if Reservation Rules were implemented.

The Reservation Rules had classified backward classes into the six categories as follows:

1. Traditional occupations.
2. 23 low social castes.
3. Cultivators of land with small holding.
4. Low paid pensioners.
5. Residents in the area adjoining the cease-fire line.
6. Some areas in the State as "bad pocket" and every person belonging to that area.

The Supreme Court in this case emphasised that mere educational backwardness did not by itself make a class of citizens

backward. One must be "both educationally and socially backward" to be identified as belonging to such a class.

The Court found faulty with all the categories specified in the Reservation Rules. The main view points of the court on these categories were as follows:

1. As regards traditional occupation the Court agreed that persons engaged in traditional occupations could be regarded as persons belonging to a backward class. But the serious objection to the government classification was that the traditional occupation in respect of a person meant the main occupation of his living or late grand father and did not include casual occupation. This would mean that if a person wanted the special advantage as a member of the backward class, it was enough for him to show that his grand father had followed the traditional occupation but not his father. Thus the benefit might not go to the really backward person.

2. The rules had notified 23 low social castes as backward. The Backward Classes Committee had identified the first 19 of them and stated that these castes were considered inferior in society as the service which they rendered carried a stigma on it. They suffer from social disabilities and were backward both educationally and socially. The Supreme Court stated that it was not known on what basis they had been included as socially and educationally backward. As there was no material before the Court, it was not prepared to proceed on the basis that the other remaining

four castes were also backward.

3. The rules had identified cultivators of land with small holding as a backward class. The limits of his holding differed according to the type of land cultivated and the region in which such land was situated. The cultivator might be an owner or a tenant. He might even be a non-cultivator provided he wholly depended on land for his livelihood. The cultivator was designated as a class on the basis of the recommendations of the Backward Classes Committee. The reasons given by the Committee for this categorisation were economic. The Court rejected this approach and observed that a class "must be a homogeneous social section of people with common traits and identifiable by some common attributes".[16] In such a case the relevance of social and educational backwardness took a subordinate place. Taking an example, the Court said that a cultivator holding 10 Kanals of land or less was to be regarded as socially and educationally backward. But if his brother owned half a Kanal more, he was not to be considered as backward.

4. The Supreme Court found the same error in the classification which regarded the dependant of a pensioner as backward if the maximum of the scale of pay of the post to which he belonged did not exceed Rs. 100/- per month. The Court held that this was not the test of social and educational backwardness. It analysed that in days when sources of employment were limited, many people,

though socially advanced, had accepted low paid jobs. Some of them had failed to make the educational grade and were thus forced by necessity to accept low paid jobs. Some others had pre-maturely retired from posts carrying the scale referred to above. Thus, the poor scale of pay could not be the test of social backwardness.

5. Further the rules had identified residents of certain areas as backward. The Backward classes Committee noticed that owing to lack of communication, inaccessibility, lack of material resources and the like the residents of bad pocket areas were living in almost primitive conditions and they were all socially and educationally backward. Similar conditions applied to areas adjoining the ceasefire line. The difficulties inherent in the living conditions in these areas had led the residents of these areas to live in economic and educational backwardness. The Supreme Court held that there was no objection to regard the residents of these areas as socially and educationally backward since the classification was not made merely on the ground of place of birth. But the rules had been so framed that the advantage was likely to be misused by imposters. A person wanting the advantage of reservation would be regarded as belonging to these classes if his father had been resident of the area for a period of not less than 10 years in a period of 20 years preceding the year in which the certificate of backwardness was obtained. The rules did not insist that either the father or the son should be a resident of the area when advantage was claimed. Further the rules did not

require that the son should have his earlier education in these areas to ensure that he and his father were permanent residents of that area. The Court observed that in order that the benefit might go to the residents of these areas, government ought to frame rules with adequate safeguards that only genuine residents would get the advantage of reservation and not outsiders.

In Deshu Rayudu V. A.P. Public Service Commission[17] the Petitioners challenged the cancellation of the list of backward classes prepared by the Andhra Pradesh Government. The Government decided to cancel the list because it was satisfied that the list was exclusively based on caste. The High Court of Andhra Pradesh stated that the Government was justified in cancelling the list of backward classes because "caste can not be exclusive or the dominant consideration for determining the backward classes for the purposes of article 16(4)".[18]

The U.P. Government Order dated 20th August, 1977, which enumerated backward classes comprising Ahirs, Kurmis and many other castes was challenged in Chhotey Lal V. State of U.P.[19] The petitioners alleged that many of the so-called backward classes like Ahirs and Kurmis were not economically and socially backward. Many of them were big farmers. Many were highly educated and occupied high offices. They urged that these castes were not backward within the meaning of article 16(4) and hence there was no rational basis for creating reservation for them. The counter-affidavit of the State disclosed that the State Government had

attempted to justify the reservation made in favour of the castes enumerated in the Government Order on the ground that they formed a class of citizens which considered as a whole was socially and educationally backward. The High Court quashed the Government Order. The Court speaking through Justice Misra observed : "Neither the impugned G.O. nor the counter-affidavit filed on behalf of the State reveals that any other survey or data collection in any other manner was done by the State Government. Similarly, as regards the list prepared by the Education Department, it is not mentioned in the counter-affidavit on what basis these castes were found even educationally backward class of citizens at that point of time. No fact-finding inquiry was alleged to have been made".[20] The Court observed that "no facts had been placed before it to show that the State Government had applied the tests laid down by the Supreme Court in arriving at the conclusion that each of the particular caste specified was a backward class".[21]

(ii) Quantum of reservation : When excessive?

The question whether the government can provide excessive reservation or not was raised in T. Devadasan V. India.[22] In this case the Supreme Court held that "the reservation for backward communities should not be so excessive as to create monopoly or to disturb unduly the legitimate claims of other communities".[23] The Court said that article 16(4) is an exception to article 16(1). An exception could not be so interpreted as to destroy the main

provision. Unlimited reservation under article 16(4) "would in effect efface the guarantee contained in clause (1) or at least make it illusory".[24] The overriding effect of article 16(4) on article 16(1) and (2) could only extend to the making of a reasonable number of reservation of posts. The Supreme Court observed that reservation exceeding 50% would not be constitutional.

On February 6, 1960 the U.P.S.C. had issued a notification to the effect that a competitive examination would be held in June, 1960 for promotion to the regular temporary establishment of Assistant Superintendents of the Central Secretariat Service. The notification stated that a reservation of 12½% of the vacancies would be made for members of the Scheduled castes and 5% for members of the Scheduled Tribes. But there was "carry forward" rule according to which unfilled reserved vacancies in the two years preceeing the year of recruitment were to be added to these percentages. The result of this examination was announced in April 1961. The U.P.S.C. recommended 16 candidates for being appointed in unreserved vacancies and 28 candidates in reserved vacancies as per prescribed percentage plus carry forward quota. Subsequently the U.P.S.C. recommended 2 more candidates from Scheduled Castes/ Tribes for the posts. The number of vacancies which were expected to be filled was stated to be 48 out of which 16 were unreserved and 32 reserved, though in fact the U.P.S.C. recommended only 30 for the latter category. The Government, however, made 45 appointments out of which 29 were from Scheduled Castes and Tribes. Thus

as a result of "carry forward" rule the reservation quota came to be 64.4% of the vacancies filled. As reservation quota exceeded 50%, the Supreme Court regarded it excessive and struck down the "carry forward" rule.

However, in A.B.S.K. Sangh (Rly) V. Union of India[25] the Supreme Court upheld the "carry forward" rule of the Railway Board. Justice Krishna Iyer for the majority held that the "carry forward" rule by being increased from 2 years to 3 years did not confer a monopoly on the Scheduled Castes and Scheduled Tribes and deprive others of their opportunity for appointment. But he was of the view that unlimited reservation of appointments was impermissible because it rendered article 16(1) nugatory. It should be seen that in no year the candidates belonging to the Scheduled castes and Scheduled Tribes were appointed "substantially" more than 50% of the reserved posts. Some excess might be permitted but "substantial" excess would void the selection. Subject to this condition the "carry forward" rule must be held valid.

The dissenting Judge in the instant case Pathak said that a quota of the posts might be reserved for backward class of citizens, but the interests of an efficient administration required that "at least half the total number of posts be kept open to attract the best of the nation's talent and not more than half be made the sum of reserved quotas".[26] An excess of reserved quotas would convert the state service into a collective membership predominantly of backward classes.[27] This would be inconsistent

with the maintenance of efficiency of administration.

80% reservation for the backward classes was challenged in Shivaji V. Chairman, M.P.S Commission.[28] Pursuant to an advertisement issued by the Maharashtra Public Service Commission on 4th June, 1979, the Petitioners applied for the posts of Probationary Tahsildars in Maharashtra Civil Services Class II. There were 25 vacancies to be filled in the category of Probationary Tahsildars. 9 posts were reserved for the Scheduled Castes (including SCs converted to Buddhism), Scheduled Tribes and denotied nomadic Tribes and other backward communities. 9 posts out of 25 posts constituted 34% of the total posts. 11 posts out of 25 posts constituting 46% of the posts were reserved for economically weaker sections of society. Thus 20 posts out of 25 posts were reserved for backward classes. Only 5 posts were open to the merit pool. Thus there was reservation of 80% of the posts in favour of what the State had regarded as backward classes within the meaning of article 16(4) of the Constitution.

The Petitioners alleged that the reservation to the extent of 80% for backward classes had deprived them of being appointed for the posts of Tahsildars. According to them, reservation made by the State in the instant case beyond 34% was illegal and not protected by article 16(4) of the Constitution. The Bombay High Court held that the reservation of 46% by the State in the instant case in favour of backward classes of the community was not

supportable by law .. Justice Jahagirdar, on behalf of the High Court observed : "Reservation under Article 16(4) of the Constitution should not be unreasonable, namely that reservation should not exceed 50% of the total number of posts and that backwardness which is mentioned in Article 16(4) is equivalent to social and educational backwardness mentioned in Article 15(4)".[29] He said that the State in the instant case had proceeded to determine the backwardness only on the basis of economic backwardness. Reservation made to the extent of 46% in addition to 34% made in favour of Scheduled Castes was invalid. Further, the reservation of 46% could not be treated as made validly in favour of another segment of backward class. If this was accepted, nothing could prevent the State from making reservation of 25% in respect of each segment of backward classes and swallow up the entire 100% in favour of the backward classes. Unlimited reservation, therefore, "destroys the equality of opportunity guaranteed to the citizens under Article 16(1) of the Constitution".[30]

In its recent judgement[31] the Supreme Court ruled that the reservation should not exceed 50 per cent. The Union Government issued a notification on August 13, 1990, reserving 27% jobs for backward classes in central services on the recommendations of the Second Backward Classes Commission, popularly known as Mandal Commission. Another notification was issued on September 25, 1991, modifying the earlier notification. The modified notification retained 27% reservation for backward classes but on the basis of

economic criterion another 10% reservation was given to more backward classes. 15% and 7½% reservations were already made for the members belonging to Scheduled Castes and Scheduled Tribes respectively. Thus it had raised the total reservation to over 50%. When the validity of these notifications was challenged in the Supreme Court, the Court upheld the 27% reservation for backward classes but struck down the 10% reservation based on economic criterion for weaker sections and ruled that reservation could not exceed 50%.

(iii) Discretionary with the Government to provide for reservations.

The question whether it is discretionary with the government to provide reservations for backward classes or not either in initial appointments or promotions occurred in C.A. Rajendran V. Union of India.[32] In this case the petitioner obtained rule from the Supreme Court calling upon the respondents to show cause why a writ in the nature of mandamus under article 32 of the Constitution should not be issued for quashing the Office Memorandum dated November 8, 1963 and restoring the earlier orders passed in Office Memorandum in 1955 and 1957. In 1955, the Union Government issued Office Memorandum whereby it reaffirmed its decision that there would be no reservation for Scheduled Castes and Scheduled Tribes in posts filled by promotion, but concessions as regards qualification and seniority were to be given to them in the matter of promotion. A further Memorandum of 1957 decided on a 12½ per cent

reservation for Scheduled Castes and 5 per cent for Scheduled Tribes. In 1963 the Union Government decided that there should be no reservation in the matter of promotion to Class I and Class II services because these services required higher degree of efficiency and responsibility and therefore the Government issued Memorandum dated November 8, 1963 withdrawing reservation quotas for Scheduled Castes and Scheduled Tribes made in the previous Government Orders of 1955 and 1957.

The Petitioner argued that the provision contained in article 16(4) of the Constitution was itself a fundamental right of the Scheduled castes and Scheduled Tribes and the Government could not withdraw the benefits conferred on them by the Government Orders of 1955 and 1957.

The Supreme Court held the Government Order of 1963 to be valid. It stated that article 16(4) did not confer any fundamental right on backward classes as regards reservation of posts and there was no constitutional obligation imposed on the Government to make reservation for Scheduled Castes and Scheduled Tribes, either at the initial stage of recruitment or at the stage of promotion. The Court observed : "Article 16(4) is an enabling provision and confers a discretionary power on the State to make a reservation of appointments in favour of backward class of citizens, which, in its opinion, is not adequately represented in the services of the State".[33] The language of article 16(4) must be interpreted

in the context and background of article 335 of the Constitution. In other words, in making a provision for reservation of appointments or posts the government must take into account consideration not only the claims of the members of the backward classes but also the maintenance of efficiency of administration.

In R.N. Pramanick V. Union of India[34] the Petitioner was appointed as a typist on April 24, 1956, against the quota reserved for Scheduled Castes. The Petitioner alleged that he was given the 75th place in the seniority list prepared by the Eastern Railway in 1961. But this was revised by the impugned Order of 1963 by which the petitioner was given the serial number 194-A. As a result of this reduction, he lost a chance of being promoted. The strongest ground urged on behalf of the petitioner was that of violation of the guarantee under article 16 of the Constitution. The Calcutta High Court upheld the Government Order. The Court held that it was within the right of the government to decide that merit would be the only consideration for promotion though there was reservation for the Scheduled Castes for recruitment to lower posts.

In Mohan Kumar Singhania V. Union of India[35] the Supreme Court held that article 16(4) conferred a discretionary power on the State for making reservation of appointments or posts in favour of any backward class of citizens. In this case the second proviso of Rule 4 of Civil Service Examination Rules (1983) was challenged as violative of articles 14 and 16 of the Constitution.

Rule 4 of Civil Service Examination Rules permitted every candidate to appear for three attempts at the civil service examination which is now increased to four. The proviso of this rule stated that this restriction on the number of attempts at the examination would not apply in the case of Scheduled Castes and Scheduled Tribes candidates who were otherwise eligible. The second proviso of the Rule provided that a candidate who had accepted allocation to a service and who was appointed to a service on the basis of the result of an earlier civil service examination could not be eligible to appear at the next civil service examination unless he resigned from the service. This rule was also applicable in the case of candidates belonging to Scheduled Castes and Scheduled Tribes. Justice S. Ratnaval Pandian appearing for the Supreme Court upheld the second proviso of Rule 4 and observed that the restriction imposed under the second proviso was only for a specified category of candidates by treating all such candidates at par and without making any exception to the candidates belonging to SC/ST. He said that reservation was not a constitutional compulsion but it was discretionaries lone.

(iv) Scope of reservations

That the State can make reservation in favour of backward classes both in initial appointments and promotions was expressed by the Supreme Court in General Manager, Southern Railway V. Rangachari[36] . The Railway Board issued two circulars on April 27, 1959 and June 12, 1959 by which it was expressed that there would

be prescribed quota of reservation for promotion to selection posts for the members belonging to Scheduled Castes and Scheduled Tribes. The respondent in this case urged that the safeguard provided by Aritiele 16(4) applied only to reservation of posts at the time of appointment and not promotion. The Supreme Court upheld the circulars of the Railway Board and observed that "matters of employment" in article 16(1) covered not only initial appointments but also promotions and such other matters as salary and periodical increments and terms of leave, gratuity, pension and age of superannuation. Article 16(4) was an exception to article 16(1) but there could not be any exception even in regard to backward classes with regard to matters other than initial appointments and promotions. Article 16(4) covered both initial appointments and promotions.

In its subsequent decision, however, the Supreme Court held that "reservations in posts would be confined to initial appointment only and could not extend to providing reservation in the matter of promotion".[37] But later in accordance with the directions of the Supreme Court the Central Government issued an order on the 19th August, 1993 to the effect that reservation provisions in promotion for backward classes of citizens are implemented without fail.

(v) Concessions other than reservations to backward classes.

The leading case on the grant of concessions in government employment by ways other than reservations was State of Kerala V. N.M. Thomas.[38] In Kerala the service rules for promotion from one particular cadre to a higher cadre were provided on the basis of seniority subject to passing the departmental test within

two years. However, certain concessions were given to the members of the Scheduled Castes and Scheduled Tribes by Rule 13AA and two orders dated January 11, 1972 and January 13, 1974, of the Government of Kerala, which had the effect of granting Scheduled Castes and Scheduled Tribes extra two years for passing the departmental tests. These concessions were challenged as violative of article 16(1) and (2). The Supreme Court declared these concessions valid and observed that "both articles 14 and 16(1) permit reasonable classification having a nexus to the objects to be achieved".[39] Thus the classification of employees belonging to the Scheduled Castes and Scheduled Tribes under Rule 13AA which exempted them from passing the tests for promotion was a "just and reasonable classification having rational nexus to the object of providing equal opportunity for all citizens in matters relating to employment or appointment to public office".[40] The Court was of the view that Rule 13AA and the impugned orders were related to the constitutional mandate given by article 335 of the Constitution that the claims of the Scheduled Castes and Scheduled Tribes should be taken into consideration in matters of employment consistent with the maintenance of efficiency of administration. It stated that the impugned rule did not impair the test of administrative efficiency in as much as members of the Scheduled Castes and Scheduled Tribes who were promoted had to acquire the qualification of passing the test. The only relaxation was that they were granted two years more time than others to acquire the

qualification. From the point of view of time a differential treatment was given to them for the purpose of giving them equality consistent with administrative efficiency.

In Chandra Sekhar V. State of Mysore[41] the Mysore State Public Service Commission fixed 45% marks for the candidates belonging to Scheduled Castes and Scheduled Tribes and 55% marks for others as qualifying marks for success in the competitive examination for recruitment of Munsifs in the State Judicial service. The Mysore High Court expressed the opinion that fixation of smaller percentage of qualifying marks for success in a competitive examination was not "reservation in any sense of the term under article 16(4)".[42]

(vi) No reservations for communities other than backward classes.

In Venkataramana V. State of Mysore[43] the Supreme Court held that the State could make reservations only for backward classes and not other classes. By a notification dated 16-12-1949 the Madras Public Service Commission invited applications for 83 posts of District Munsifs in the Madras Subordinate Civil Judicial Service. It was notified that out of 83 posts to be filled by direct recruitment 12 were to go to persons already in service holding certain classes of employment in the Madras Civil Judicial Department and that the remaining 71 posts would be filled up from among the Official Receivers, Assistant Public Prosecutors and practising members of the Bar. It was further

notified that the selection of the candidates would be made from various castes, religion and communities in pursuance of the rules prescribed in what are described as Communal G.Os, namely, for Harijans 19, Muslims 5, Christians 6, Backward Hindus 10, Non-Brahmin Hindus 32 and Brahmins 11. The petitioner filed a writ petition praying for declaring that the rule of communal rotation was repugnant to the provisions of the Constitution and therefore void.

The Supreme Court held that the Communal G.O. was not permitted by article 16(1) and (2) which prohibited the State from discriminating against persons in respect of government employment on the basis of religion, race, caste etc. The ineligibility for reserved posts could not be regarded on the ground of religion, race, caste etc, "but because of the necessity for making a provision for reservation of such posts in favour of a backward class of citizens".[44] The Court stated that article 16(4) permitted reservations only for backward classes and not other classes.

III

Analysis of the Court Cases Under Article 15(4)

(i) Who are backward classes?

Since 1958 the State of Mysore had been endeavouring to make a special provision for the advancement of its socially and educationally backward classes under article 15(4), and

everytime when an order was passed in that behalf, its validity had been challenged by writ proceedings. Four previous orders passed in that behalf were challenged by writ proceedings taken against the State under article 226 of the Constitution in the High Court of Mysore. The present petitions were filed in M.R. Balaji V. State of Mysore[45] under article 32 of the Constitution to challenge the Government Order dated July 31, 1961. Under this Order, the backward classes were divided into two categories: backward classes and more backward classes. The effect of this order was that it had fixed 50% as the quota for reservation of seats for other backward classes, 28% out of this was reserved for backward classes so called and 22% for more backward classes, 15% for Scheduled Castes and 3% for Scheduled Tribes. Thus 68% of the total seats was reserved and only 32% was available to the merit pool.

It may be mentioned that the Government Order of 1962 was made in the light of the Report of the Mysore Backward Class Committee, popularly known as Nagen Gowda Committee, which was appointed by the State Government in order to investigate the problem and advise the Government as to the criteria which should be adopted in determining the educationally and socially backward classes, and the special provisions which should be made for their advancement. This Report proceeded on the basis that higher social status had generally been accorded on the basis of caste for centuries and so it took the view that the low social position of

any community was, therefore, mainly due to the caste system. According to the Report, social backwardness was based mainly on social, tribal and caste differences, though the economic backwardness might have contributed to social backwardness. The Committee felt that the entire Lingayat Community was socially forward and that all sections of Vokkaligas, excluding Bhunts, were socially backward. According to the Committee, the Muslim community as a whole should be classified as socially backward. It further decided that the backward classes should be sub divided into two categories —— backward and more backward. In making this distinction the Committee applied one test, i.e., was the standard of education in the community in question less than 50% of the State average? If it was, the community should be regarded as backward. As to the extent of reservation in educational institutions, the Committee recommended that 28% should be reserved for backward classes and 22% for more backward classes apart from 15% and 3% reservation for Scheduled castes and Scheduled Tribes respectively. Thus the Committee carved out 68% reservation for the advancement of the backward classes and the Scheduled Castes and Scheduled Tribes.

In determining educational backwardness of the classes of citizens the Committee proceeded on the basis of the average of student population in the last three High School classes of all High Schools in the State in relation to one thousand people

of that community. On the figures supplied the Committee came to the conclusion that the state average of student population in the last three High School classes of all High Schools in the State was 6.9 per thousand. The Committee decided that all castes whose average was less than the state average of 6.9 per thousand should be regarded as backward communities, and if the average of any community was less than 50% of the State average, it should be regarded as constituting the more backward classes. Thus the Government recommended that Lingayats with an average of 7.1 per thousand, Gangias with 7 and Muslims with 5 could be regarded as educationally backward.

The Supreme Court in an unanimous opinion delivered by Justice Gajendragadkar struck down the order of the State Government as unconstitutional. The Court observed 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".[46] It stated that in Hindu social structure, caste unfortunately played an important part in determining the status of the citizen. In dealing with the question as to whether any class of citizens was socially backward or not, it might not be irrelevant to consider the caste of the said group of citizens. Yet the special provision was contemplated for classes of citizens and not for individual citizens as such. Though the caste of the group of citizens might be relevant, its importance should not be

exaggerated. If backward classes of citizens were classified solely on the caste of the citizen, it might not be logical and might perpetuate the castes themselves. Besides, the sole test of caste would break down in relation to many sections of Indian society, as for instance, Muslims, Christians or Jains, who did not recognise castes in conventional sense known to Hindu society. Thus though castes in relation to Hindus might be a relevant factor in determining the social backwardness of groups or classes of citizens, it could not be made the sole or the dominant test on that behalf. The Court was of the view that "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".[47] It also emphasised the occupations of citizens and the place of habitation as contributing to social backwardness.

The Court was satisfied that the classification of socially backward classes made by the Government proceeded on the consideration only of their castes without regard to other factors which were undoubtedly relevant. If that be so, the social backwardness of the communities to whom the impugned Order applied had been determined in a manner which was not permissible under article 15(4).

As regards educational backwardness the Supreme Court held that it was doubtful if the test of the average of student population

in the last three High School classes as recommended by the Nagan Gowda Committee was appropriate in determining the educational backwardness. It might not be necessary or proper to put the test as high as had been done by the Committee. Even assuming that the test was rational and permissible, a community which satisfied the said test or just was below the said test could not be regarded as backward. According to the Court, "the classes of citizens whose average is well or substantially below the state average can be treated as educationally backward".[48] It approved that classes of citizens whose average of student population worked below 50% of the State average were obviously educationally backward classes of citizens. Thus when the State average was 6.9 per thousand, Lingayats with an average of 7.1 per thousand, Gangias with 7 and Muslims with 5 could not be regarded as educationally backward. Therefore the State was not justified in including in the list of backward classes, castes or communities whose average of student population per thousand was slightly above or very near, or just below the State average.

In the light of judicial pronouncements by the Supreme Court in Balaji the Government of Mysore by its Order dated July 26, 1963 directed that the classification of socially and educationally backward classes should be made on the basis of economic condition and occupation. The Government was of the opinion that a family whose income was Rs. 120/- per annum or less could be regarded as economically backward and that persons or classes

who followed occupations of agriculture, petty business, inferior services, crafts or other occupations involving manual labour, were, in general, socially backward. The Government listed the following occupations as contributory to social backwardness:

1. Actual cultivator;
2. Artisans;
3. Petty businessman;
4. Inferior Services (i.e., class IV in government services and corresponding class or service in private employment) including casual labour; and
5. Any other occupation involving manual labour.

The validity of the above order of the Mysore Government was challenged in Mysore High Court in D.G. Viswanath V. Government of Mysore[49] on the ground that out of the four bases for determining the socially and educationally backward classes, viz., "occupation", "income", "residence" and "caste" the Government had altogether ignored the caste basis and hence the scheme set out in the order was invalid. Following Balaji's case, Justice Hegde delivering the judgement of the High Court held that though the caste basis was undoubtedly a relevant basis in determining the classes of backward Hindus, it should not be made the sole basis. The test of caste might be adopted along with such other tests as occupation test, poverty test, residence test etc. In his view, as the State had ignored both caste test and residence test, the scheme was a very imperfect scheme.

The question of validity of the Mysore Government's Order of 1963 was raised next in Chitralekha V. State of Mysore.[50] In this case the Supreme Court again considered whether caste and class were synonymous and whether a caste as a whole could be identified as backward. Justice Subba Rao delivering the judgement of the Supreme Court held the Government Order to be valid. He observed that article 15(4) did not speak of castes but only classes. He was of the opinion that "if the makers of the Constitution intended to take castes also as units of social and educational backwardness, they have said so as they have said in the case of the Scheduled Castes and the Scheduled Tribes".[51] Though it might be suggested that the wider expression "classes" was used in article 15(4) as there were communities without castes, if the intention was to equate classes with castes, nothing prevented the constitution-makers to use the expression "Backward Classes or Castes". The juxtaposition of the expression "Backward Classes" and "Scheduled Castes" in article 15(4) also led to a reasonable inference that the expression "classes" was not snonymous with castes. For ascertaining whether a particular citizen or a group of citizens belonged to backward class or not, his or their caste might have some relevance, but it could not be either the sole or the dominant criterion for ascertaining the class to which he or they belonged.

The Court stated that if the expression "classes" was interpreted as "castes", the object of the Constitution would be

frustrated and the people who did not deserve any adventitious aid might get it to the exclusion of those who really deserved. This anomaly would not arise if, without equating caste with class, caste was taken as only one of the considerations to ascertain whether a person belonged to a backward class or not. If, on the other hand, the entire sub-caste, by and large, was backward, it might be included in the Scheduled Castes by following the appropriate procedure laid down by the Constitution.

The Court held that under no circumstances, a "class" could be equated to a "caste" though the caste of an individual or a group of individuals might be considered along with other relevant factors in putting him in a particular class.

The scope of the Mysore Government's Order of 1963 came up for scrutiny in N.S. Sudha V. Selection Committee of Medical Colleges[52]. In this case the petitioner was an applicant for admission to one of the government medical colleges in the State. She claimed to belong to socially and educationally backward classes. She satisfied the criterion of income as her father's annual income was stated as Rs. 480/-. In her application her father's occupation was stated as 'Purohit'. Mr S.K. Venkataranga, learned Counsel, who appeared for the petitioner, contended that the occupation of the petitioner's father involved manual labour as he had a 'Paricharaka Purohit' doing purely manual work in assisting a Purohit. The Mysore High Court applied the test of 'Predominant character' to decide whether an occupation involved

manual labour or intellectual labour. The Court was of the view that every occupation involving intellectual labour might also involve some manual labour. Though a Purohit might use his hands in performing certain rituals and ceremonials, the predominant nature of his occupation was that it required study and knowledge of scriptures and of the body of traditions and the performance of his work involved mainly chanting or recitation of 'mantras' and scriptures. The Court was in agreement with the Selection Committee of Medical Colleges that a Purohit's occupation did not involve manual labour. Accordingly, the petitioner was refused to be treated as belonging to socially and educationally backward class for the purpose of admission to Medical college.

In Gurindar Pal Singh V. State of Punjab[53] the special reservation for various categories of students was challenged in Punjab High Court. The Order of Punjab Government dated July 7, 1972, laid down that 50% of the total number of seats would be reserved for different categories of students and 50% would be allotted on the basis of merit. Reservation against 50% was made as under:

(i)	Scheduled Castes/Tribes	20%
(ii)	Backward classes	2%
(iii)	Backward Areas	10%
(iv)	Sportsmen/Women	2%
(v)	Central Government nominees including from Jammu and Kashmir	6%

(vi) Women candidates	1%
(vii) Candidates from border areas of Punjab	5%
(viii) Children of Political Sufferers of the freedom struggle with Punjab domicile	2%
(ix)(a) Children of defence personnel who have lost their lives in emergency.	
(b) Children of defence personnel who have disabled during the national emergency and released from service.	
(c) Children of the Personnel of the Border Security Forces killed/disabled during enemy action.	2%
(d) Children of the ex-servicemen/servicemen who are released/discharge from Armed Forces of Indian Union.	

Source: AIR 1974 Punjab 125 at 126

It was argued on behalf of the Petitioner that reservation could not be made for any particular caste or community because backwardness depended more or less on economic condition of a family. In reply the learned counsel for the State referred to a circular dated 20th April, 1963, issued by the Government of punjab which provided that a family whose annual income was less than Rs. 1000/- and some communities which were socially looked down upon by the people of the State and whose annual income did not exceed Rs. 1,800/-, and who were so declared by the State Government were also to be regarded as backward communities. The High Court of Punjab held that the circular amply highlighted the aspect of the backwardness of a family before such a family

could be declared to belong to a backward class. It stated that such a classification was constitutionally permissible and could not be struck down.

The learned Counsel for the respondent then referred to the letter dated 7th September, 1956, issued by the State Government which laid down that candidates claiming admission from backward areas of the State should submit along with their applications a certificate from Deputy Commissioner/General Assistant to Deputy Commissioner, Sub-Divisional Officer (Civil) of the District concerned that the claim of the candidate fell under one of the following categories[54]:

(a) A person who with the family members had been residing in a particular village or twon constantly for a period of ten years or more and was likely to continue to reside there.

(b) A person who had been residing in a village or town for a period of less than ten years, but was likely to reside there on account of the fact that he had obtained gainful employment or settled there after retirement, would also be termed as permanent resident, if the stay was for not less than five years.

(c) In the case of a person who had been residing in a village or town in the said area, the total period of his stay at both places would be counted towards his residence in that area.

The High Court declared the reservation for candidates from backward areas unconstitutional. It observed that article 15(4) of the Constitution allowed the State to provide a special reservation for advancement of socially and educationally backward classes of citizens. The classes of citizens mentioned in this article did not relate to those citizens who resided within certain geographical limits regardless of their personal attainments or achievements. The State could make a reasonable classification on the basis of geographical limits, but there must be an object for which such a classification was made and "the classification itself must have a reasonable nexus with the object sought to be achieved".[55] Residence in a particular area of the State could not form the basis of claiming additional privilege. The Punjab Government made provisions for entrance to medical colleges on the basis of residence in a particular area for a particular period regardless of economic condition of the residents. A millionnaire and a pauper living in such areas had been treated at par. The Court was of the considered view that reservation for backward areas in absence of any yardstick with which social and educational backwardness of the citizens of the area could be determined was violative of articles 14 and 15 of the Constitution.

In Chitra Ghosh V. Union of India[56], however, reservation made for the residents of the Union Territories other than Delhi was justified. The Supreme Court was of the opinion that the Union Territories consisted mostly of the erstwhile princely states were well known to be backward areas and with the exception of Himachal Pradesh they did not have any medical college. It was necessary that persons desirous of receiving medical education from these areas should be provided with some facility for doing so. But the same principle could not be extended to the citizens of the same State who were being denied equal protection of laws on the basis of the place of residence only.

The community-wise reservation was challenged in Kerala High Court in State of Kerala V. R. Jacob Methew[57]. The Kerala Government by its order dated 7th June, 1963 reserved 13% of the seats for the MB.B.S. course to Ezhavas, 9% to Muslims and 3% to Latin Catholics inclusive of Anglo-Indians. The respondent in this case alleged that the equality before law or equal protection of the laws was denied to him because of such community-wise reservation. He urged that the communities for which reservation was made were not entitled to protection afforded by article 15(4) of the Constitution.

The High Court of Kerala held that the Ezhavas, Muslims and Latin Catholics inclusive of Anglo-Indians in Kerala State constituted socially and educationally backward class of citizens within the meaning of article 15(4) of the Constitution and

reservation of seats for them by the Kerala Government Order dated 7th June, 1963, in the M.B.B.S. Course could not be considered as a violation of the fundamental right embodied in article 14 of the Constitution. It further observed that "if the whole or a substantial portion of a caste is socially and educationally backward, then the name of that caste will be a symbol or a synonym for a class of citizens who are socially and educationally backward and thus within the ambit of clause (4) of article 15 of the Constitution".[58]

The judgement of the Kerala High Court in the present case was opposite to that of Chitralekha in which the Supreme Court stated that a caste could not be identified as a class of citizens. While both Balaji and Chitralekha rejected the criterion of caste as the sole basis of classification, the Kerala High Court approved caste-wise classification on the ground that a caste was also a class of citizens.

In the subsequent decision of the Supreme Court in P. Rajendran V. State of Madras[59] the caste-wise classification was, however, held valid for identifying social and educational backwardness. In this case the validity of the Order of the State of Madras by which rules were promulgated for selection of candidates for admission to the first year integrated M.B.B.S. Course was challenged. Rule 5 provided reservation for socially and educationally backward classes and laid down that for the purpose

of article 15(4) socially and educationally backward classes would mean those classes which had been specified in Group III of the revised Appendix 17-A to the Madras Educational Rules issued with G.O. (Ms) 839 Education, dated 6th April, 1951. This rule was challenged on the ground that it violated article 15(4) of the Constitution because the list reserving seats for backward classes was exclusively made on the basis of caste. It was pointed out on behalf of the State that the list of backward classes was made starting from the year 1906 and had been kept upto date. It had also been stated that the main criterion for inclusion in the list was the social and educational backwardness of the caste based on occupations provided by these castes. As the members of the caste as a whole were found to be socially and educationally backward, they were put in the list. The matter was finally examined after the Constitution came into force in the light of the provisions contained in article 15(4) of the Constitution. As it was found that members of these castes as a whole were socially and educationally backward, the list which had been coming on from as far back as 1906 was finally adopted for purposes of article 15(4) of the Constitution.

In view of the explanation given by the State of Madras the Supreme Court was satisfied that though the list showed certain castes, the members of these castes were really classes of socially and educationally backward. Therefore, the list was not violative of article 15. It stated that if the reservation had been based

only on caste and had not taken into account the social and educational backwardness of the caste, it would violate article 15(4). The Court further observed : "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 backard class of citizens within the meaning of article 15(4)".[60]

Thus the Chitralekha approach was departed from in the decision of the Supreme Court in Rajenren. In Rajendren the Supreme Court declared the caste-wise classification valid for idenfifying social and educational backwardness. Both Balaji and Chitralekha did not approve of the criterion of caste as the sole basis of classification. But Rajendran upheld the caste-wise classification on the ground that a caste was also a class of citizens. Though the Court recognised caste as a basis of classification provided the whole caste was socially and educationally backward, but it did not answer the question as regards persons not coming within the category of backward in that caste. The difficulty in adopting caste as the sole criterion was that persons in that caste though socially and educationally advanced might get the benefit of backwardness.

In Hridaya Narain Singh V. Md. Shariff[61] the validity of the notification dated February 7, 1956, of the Government of Bihar describing 'Harijans' as a backward community was challenged. The High Court of Patna held that Mr. Mahendra Prasad Pandey,

the Counsel for the appelant, had not been able to produce before the Court any material for holding that Harijans (Hindus and Muslims) were not socially and educationally backward. The Court, on the other hand, referred to Mr. P.C. Roy Choudhury's Gazetteer of Darbhanga District, at page 86 of which it was pointed out that "the incidence of literacy among them appears to be very low but a few of them who are educated have taken up other professions also".[62] It observed that the educational backwardness of Harijans was thus beyond question. Socially also, there was no data to show that they were not backward. Hence there was no ground for striking down the notification for the sole reason that the classes had been described by their caste name.

B.C. Swain V. Secretary, Works & Transport[63] involved the challenge to the proposed action conveyed in Letter No. 17165 dated 31-7-1970 (Annexure 8) issued by the Government of Orissa suggesting leasing out of the road-side lands to the Express Highway No. 1 for agricultural and piscicultural purposes temporarily on annual basis to landless Harijans, preference being given to the Fishery Co-operative Societies of the landless Harijans.

Mr. Rath, the learned Counsel, appearing for the petitioner contended that Harijans did not come under the Scheduled Castes and Scheduled Tribes enumerated under the Constitution. Unless Harijans came under the category of any socially and educationally backward classes of citizens, the Government Order would be a violation of article 15(4) of the Constitution on the ground of discrimination

based only on caste as it was. His second contention in this regard was that there was no evidence nor was there any presumption that Harijans as a class were socially and educationally backward. It was averred in the writ peition that there were many landless persons even in other communities who were economically not more developed than the Harijans and as a matter of fact such Harijan community in the locality was much advanced, more affluent and economically advanced than persons belonging to other communities. There were various other backward classes who were economically much less advanced than the Harijans and so no such order for settlement of lands with the Harijans could be upheld since there was no determination of the fact that the Harijans were backward class.

Justice Panda delivering the judgement of the Orissa High Court held that there was no caste as Harijans. There was no definition of Harijan at any place. The term was of recent origin —— towards the middle of 1920s, the father of which was Mahatma Gandhi. According to the Lexicon (Bhashakosh) the caste Hindus who looked down upon the non-caste Hindus took some of the castes as untouchables and that comprised this category. So Harijans were people of those castes whom the non-Hindus or the Caste Hindus or Sabarna-Hindus viewed as untouchables. It followed, therefore, that 'Harijan' was not a caste but "a conglomeration of people of different castes who were taken to be untouchables by the Sabarna-Hindus".[64] The argument, therefore, that a

classification like Harijan was based on caste, was not correct. The term 'Harijan' carried with it something more than the concept of a caste. The interveners in the writ petition asserted that Harijans had no lands for cultivation. They earned their livelihood either by labour or by cultivating the lands of others. They formed one society which was striving hard to find out ways and means for their employment in different avocations of life. The Court admitted that Harijans were socially and educationally backward and upheld the Government Order.

In State of Andhra Pradesh V. P. Sagar[65] the Supreme Court again after Balaji and Chitralekha declared the caste-wise classification invalid. This case came on appeal before the Supreme Court against the judgement of the Andhra Pradesh High Court invalidating the reservation for backward classes on the ground that it did not come within the exception provided in article 15(4) of the Constitution.

The list dated 21-6-1963 of castes prepared by the Andhra Pradesh Government to determine backward classes for the purpose of article 15(4) was declared invalid by the High Court on the ground that the list was based on caste alone and as such could not be sustained as falling within the exception provided in article 15(4). The Government published a fresh list of backward classes, vide Orders Nos. 1135 and 1136-Health, Housing and Municipal Administration Department dated 16-6-1966 and as modified by G.O. M.S. 1880 dated 27-7-1966 and G.O. M.S. 1786 dated

2-8-1966 respectively. The fresh list was ex facie based on caste or communities and barring a few changes was substantially similar to the list which was previously struck down as invalid by the High Court. The validity of the fresh list on being challenged, it was stated in the affidavit filed on behalf of the Government that an enquiry was in fact made with the aid of expert officers and the Law Secretary and the question was examined from all points of view by the State, by the Cabinet Sub-Committee and by the Cabinet, and that correct lists were applied in the determination of backward classes though no materials at all were placed on the record to enable the Court to decide whether the criteria laid down by the Supreme Court for determining that the list prepared by the Government conformed to the requirements of clause (4) of article 15 were followed. The High Court held that the fresh list also could not be sustained as falling within the exception provided in article 15(4) on the grounds similar to those on which the first list was struck down.

The Supreme Court upheld the decision of the Andhra Pradesh High Court. It agreed with the view of the High Court that no enquiry or investigation had been made by the State Government before preparing the list of backward classes. It was further held that the State had placed no materials before the Court on the basis of which the list of backward classes was prepared.

Justice Shah, on behalf of the Supreme Court, observed that "the expression 'class' means a homogeneous section of the people grouped together because of certain likeliness 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".[66] In determining whether a particular section formed a class, caste could not be excluded altogether. But in determination of a class a test solely based upon the caste or community could not be accepted. The Parliament had by enacting clause (4) of article 15 attempted to balance as against the right of equality of citizens the special necessities of weaker sections of the people by allowing a provision to be made for their advancement. In order that effect might be given to clause (4), it must appear that the beneficiaries of the special provision were classes which were backward socially and educationally and they were other than the Scheduled Castes and Scheduled tribes and that the provision made was for their advancement. Reservation might 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 were not excluded from admission to higher educational institutions. The Court held that "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".[67]

Unitwise distribution of seats in medical colleges in Tamil Nadu was declared violative of articles 14 and 15 of the Constitution by the Supreme Court in its decision in A. Periakaruppan V. State of Tamil Nadu[68]. In this case the Supreme Court observed that caste was a relevant factor in the determination of the backward classes. It held that "a caste has always been recognised as a class".[69] Then the Court referred to the report of the First Backward Classes Commission of the Central Government, popularly known as Kaka Kalelkar Commission, which emphasised 'caste' in considering the social backwardness in India. It relied on the authority of Rajendran for its proposition that the classification of backward classes on the basis of castes was within the purview of article 15(4).

As a sequel to the decision of the Supreme Court in Sagar case the Government of Andhra Pradesh by G.O. No. 870 appointed a Commission on April 12, 1968, in order to determine the criteria to be adopted in considering whether any sections of the citizens of India in the State of Andhra Pradesh were to be treated as socially and educationally backward. The Commission was desired to investigate and determine the various matters regarding the preparation of the list of backward classes for providing reservation in educational institutions and also for appointments for posts in government service. The Commission submitted its report to the Government on June 20, 1970. In its report the Commission had drawn up a list of 92 classes which, according to it, were

socially and educationally backward and had to be classified as backward classes and for whom reservations had to be made. As regards social backwardness the Commission had indicated that only such persons belonging to a caste or community who had traditionally followed unclean and undignified occupation could be grouped under the classification of backward classes. In this connection the Commission had adverted to the general poverty of the class or community as a whole, the occupation pursued by the class of citizens, the nature of which was considered inferior and unclean, undignified or unremunerative or one which did not carry influence or power, and caste in relation to Hindus. Regarding educational backwardness the Commission had adverted to the fact that the average student population in classes X and XI in the State worked out to about 4.55 per thousand. On this basis, it applied the principle that communities whose student population in these standards was well below the State average, had to be considered as educationally backward.

The Government accepted the criteria adopted by the Commission for determination of socially and educationally backwardness of the citizens and made by G.O. No. 1793/Education of September 1970 a reservation of 25% of seats in professional colleges for backward classes on the basis of the report of the Backward Classes Commission.

When this Government Order was challenged in the Andhra Pradesh High Court, the Court struck down the Order on the ground that the Commission had classified the groups as backward class mainly on the basis of caste, which was contrary to the principle laid down by the Supreme Court in Balaji case.

On appeal the Supreme Court reversed the decision of the Andhra Pradesh High Court in State of Andhra Pradesh V. U.S.V. Balaram[70] and upheld the recommendations of the Backward Classes Commission of Andhra Pradesh for determining socially and educationally backward classes of citizens. Justice Vaidialingam delivering the judgement of the Supreme Court held that if an entire caste was as a fact found to be socially and educationally backward, their inclusion in the list of backward classes by their caste name was not violative of article 15(4). He expressed the opinion that "a caste is also a class of citizens and a caste as such may be socially and educationally backward".[71] If after collecting the necessary data, it was found that the caste as a whole was socially and educationally backward, the reservation made of such persons would have to be upheld notwithstanding the fact that a few individuals in that group might be both socially and educationally above the general average. He observed that the list of backward classes prepared by the Commission was only a description of the group following the particular occupations or professions. Even on the assumption that the list was based exclusively on caste, it was clear from the materials and the

reasons given by the State that the entire caste was socially and educationally backward and therefore their inclusion in the list of backward classes was warranted by article 15(4).

In Subhas Chandra V. State of U.P.[72] the Allahabad High Court upheld reservation for candidates from rural, hill and Uttarkhand areas. There were in all 758 seats in the six medical colleges of the State of Uttar Pradesh. Of these 26 had been allotted for nominees of the Government of India under various heads. The remaining 732 seats were to be filled in by the combined Pre-Medical Test. By different Orders issued by the State Government a number of seats were reserved for various classes. The ultimate reservation of seats was as follows:

(1) Girl candidates	20%
(2) Candidates from rural areas	12%
(3) Candidates from hill areas	3%
(4) Candidates from Uttarkhand Division	3%
(5) Candidates belonging to Scheduled Castes	7%
(6) Candidates belonging to Scheduled Castes from rural areas and	3%
(7) Candidates belonging to Scheduled Tribes	1%
Total	49%

Source : AIR 1973 Allahabad 295 at 296

As a result of such reservations, 51% of the total number of seats were open to the combined Pre-Medical Test.

This reservation was challenged in Allahabad High Court. It was argued for the appellant that there was no rational basis to classify the candidates belonging to hill, rural and Uttarkhand areas for a specially favoured treatment. Justice Satish Chandra on behalf of the the High Court held the reservation in respect of candidates from rural, hill and Uttarkhand areas to be constitutional because the citizens of these areas formed a socially and educationally backward class of citizens. He said that there was no facility for imparting medical education in the rural or hill or Uttarkhand areas. From the point of view of imparting medical education the citizens of these areas were correctly treated by the State Government as socially and educationally backward.

But the same Court in its subsequent decision in Dilip Kumar V. Government of U.P.[73] invalidated reservation of seats in medical colleges for candidates from rural and hill areas other than Uttarkhand division. The Court stated that all the residents of one village might be educationally backward but the same could not be said in regard to all the rural areas. Instances were not known where literacy in a rural area was very high in some villages nearing cent percent. Similarly, in the hill areas there were classes of citizens who could not be classes as educationally backward. It might be said that the major part of Uttarkhand division was socially and educationally backward. But

in Uttarkhand division also the residents of certain areas could not be classes as socially and educationally backward.

When the matter came on appeal before the Supreme Court in State of Uttar Pradesh V. Pradip Tandon[74], the Court declared that the reservation of seats in medical colleges in U.P. for candidates from rural areas was unconstitutional, but the reservation for candidates from hill and Uttarkhand areas was valid because these areas in the State of U.P. were instances of socially and educationally backward class of citizens. Chief Justice Ray delivering the judgement of the Supreme Court emphasised economic element in backwardness. He said : "Backwardness is judged by the 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 was backward when they do not make effective use of resources".[75] To him, when large areas of land maintained a sparse, disorderly and illiterate population whose property was small and negligible the element of social backwardness was observed. When effective territorial specialisation was not possible in the absence of means of communication and technical processes as in hill and Uttarkhand areas the people were socially backward classes of citizens.

He stated that the people in the hill and Uttarkhand areas were also educationally backward classes of citizens because lack of educational facilities kept them stagnant. He was of the view

that "where people have traditional apathy for education on account of social and environmental conditions or occupational handicaps it is an illustration of educational backwardness".[76] There was lack of educational institutions and educational aids in the hill and Uttarkhand areas. Hence people in these areas were also educationally backward.

Invalidating reservation for candidates from rural areas Chief Justice Ray held that 80 per cent of the population in the State of U.P. in rural areas could not be a homogeneous class by itself. They were not of same kind. Their occupation was different. "Population can not be a class by itself. The rural element does not make it a class".[77] The special need for doctors in rural areas would not make the rural people socially and educationally backward classes of citizens. Poverty in rural areas could not also be the basis of classification to support reservation for rural areas. He further observed that the incident of birth in rural areas was made the basic qualification. But reservation could not be made on the basis of place of birth as this would offend article 15 of the Constitution. Thus reservation for candidates from rural areas was unconstitutional.

In K.S. Jayasree V. State of Kerala[78] the Supreme Court upheld the Kerala Government Order dated May 2, 1966, reserving seats in medical colleges for members of families consisting of Ezhavas whose annual income was below Rs. 6000/-. The said Order

of the Kerala Government was issued on the basis of the recommendations of the Kerala Backward Classes Commission (Kumara Pillai Commission) which was set up by the State Government for enquiring into social and educational conditions of the people in the State and reporting as to what sections of the people in the State of Kerala should be treated as belonging to socially and educationally backward classes.

The Kerala Backward Classes Commission was appointed by the State Government on 14 July, 1964 and it submitted its report on 31 December, 1965. The Commission recommended that only those citizens who were members of families which had an aggregate income of less than Rs. 4200/- per annum and which belonged to the castes and communities mentioned in Appendix VIII constituted socially and educationally backward classes for purposes of article 15(4). The Government agreed but raised the income limit to Rs. 6000/- and subsequently to Rs. 10,000/- . This Government Order was challenged in Kerala High Court. The single judge in T. Shameem V. Medical College, Trivandrum[79] struck down the Government Order as unconstitutional and held that "the test of poverty can not be the determining factor of social backwardness".[80] But on appeal the same Court declared the Government Order valid in State of Kerala V. K.S. Krishna Kumari[81]. Chief Justice Nair, on behalf of the High Court, held that "poverty or economic standards is a relevant factor in determining social backwardness or even educational backwardness because the economic position has a direct nexus to social and educational status".[82]

Social and educational backwardness of the castes resulting from historical reasons could not be perpetual and the caste as a whole could not be treated as socially and educationally backward if a group of persons in the castes were not so backward. He observed: "The idea in making the reservation is to give the members of such caste or community on equal opportunity with those who are treated as socially and economically advanced classes of the society. If a group in those castes/communities were able to advance socially and educationally and economically, to make reservations for them would be to deprive the chances of the really socially and educationally backward classes of people in those communities/castes".[83]

The Supreme Court upheld the decision of the Kerala High Court in K.S. Jayasree V. State of Kerala.[84] The Court stated that caste and poverty were both relevant for determining backwardness. But neither the caste alone nor poverty alone would be the determining test of social backwardness. It was satisfied that the classification made by the impugned Order was based not on income but social and educational backwardness. Hence the Government Order was declared valid.

In K.C. Vasanth Kumar V. State of Karnataka[85] the Supreme Court emphasised the test of economic backwardness for identification of socially and educationally backward classes. In this case the honourable judges of the Supreme Court expressed their opinion on the issue of reservations, which served as a guideline

to the Commission which the Government of Karnataka proposed to appoint, for examining the question of affording better employment and educational opportunities to the Scheduled castes, Scheduled Tribes and other backward classes in the State of Karnataka. Chief Justice Chandrachud emphasised that the test of economic backwardness ought to be made applicable even to the Scheduled Castes and Scheduled Tribes. In so far as the other backward classes were concerned, he referred to two tests which should be applied for identifying them for the purpose of reservations in employment and education. First, "they should be comparable to the Scheduled Castes and Scheduled Tribes in the matter of their backwardness"[86], and second, "they should satisfy the means test such as a State Government may lay down in the context of prevailing economic conditions".[87] Justice Desai was of the opinion that the criterion of economic backwardness could be realistically devised for identification of socially and educationally backward classes. Some relevant criteria such as the secular character of the group, its opportunity for earning livelihood etc. might be added to this, "but by and large economic backwardness must be the load star".[88] He said that if economic criterion for compensatory discrimination was 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".[89] This approach,

he thought, would seek to translate into reality the twin constitutional goals: first, to strike at the perpetuation of the caste stratification of Indian Society so as to arrest progressive movement and to take a firm step towards establishing a casteless society; and second, to progressively eliminate poverty by giving an opportunity to the disadvantaged sections of the society to raise their position and be part of poverty. Justice A.P. Sen also emphasised economic backwardness as the only test to determine social and educational backwardness. He said that there were some services where expertise and skill were of the essence. In such services there could be no room for reservation. "Merit alone must be the sole and decisive consideration for appointments".[90]

(ii) Quantum of reservation

In Balaji V. State of Mysore[91] the Supreme Court struck down 68% reservation in favour of backward classes, Scheduled Castes and Scheduled Tribes because the Court was satisfied that reservation to the extent of 68% was excessive and not permitted by article 15(4). The Mysore Government Order dated 31st July, 1962, provided 50% reservation for other backward classes, 28% out of this for backward classes so-called, 22% for more backward classes, 15% for Scheduled Castes and 3% for Scheduled Tribes for admission to the Engineering and Medical Colleges and to other technical institutions. Thus 68% of the seats was reserved in

favour of backward classes, Scheduled Castes and Scheduled Tribes and 32% was available to the merit pool.

The Supreme Court held the Mysore Government Order to be invalid and said that reservation "must be adopted to advance the prospects of the weaker sections of society, but in providing for special measures in that behalf care should be taken not to exclude admission to higher educational centres to deserving and qualified candidates of other communities".[92] A special provision contemplated by article 15(4) must be within reasonable limits. The interests of the weaker sections of society had to be adjusted with the interests of the community as a whole. The adjustment of those competing claims was undoubtedly a difficult task, but if under the guise of making a special provision, a state reserved practically all the seats, that would clearly subvert the object of article 15(4). The Court stated that "a special provision should be less than 50%; how much less than 50% would depend upon the relevant prevailing circumstances in each case".[93] Accordingly, the reservation of 68% made by the impugned order was violative of article 15(4) and therefore was "a fraud on the constitutional power conferred on the State by Article 15(4)".[94]

IV

Conclusion

The following points arise from the analysis of judicial decisions:

1. A class to be backward must satisfy that it is socially and educationally backward and that it is not adequately represented in the services of the State.

2. Though castes in relation to Hindus may be a relevant factor in determining social backwardness, it can not be made the dominant test. A classification of backward classes based solely on caste without regard to other relevant factors is not permissible under article 15(4). However, in both Rajendran and Balaram the Supreme Court observed that if a caste as a whole was socially and educationally backward, its inclusion in the list of backward classes would not be violative of article 15(4).

3. Caste is not a synonym for class. The Supreme Court in Chitralekha stated that article 15(4) referred to backward classes and not backward castes. If classes were interpreted as castes, the object of the Constitution would be frustrated. Though the Chitralekha approach was repudiated by both Rajendran and Balaram, in subsequent decision (State of U.P. V. Pradip Tandon) the Supreme Court held that caste and class were not synonymous. The expression 'class' means a homogenous section of the people grouped together because of certain common attributes.

4. Poverty is a relevant factor in determining social and educational backwardness because economic position has a direct nexus to social and educational status. Social backwardness which results from poverty is to be aggravated by caste considerations of the poor people. This shows the relevance of both caste

and poverty in determining backwardness of citizens.

5. The class whose average is well or substantially below the State average can be treated as educationally backward. The Supreme Court in Balaji approved that the class whose average of student population worked below 50 per cent of the state average would be educationally backward.

6. People in the rural areas can not be regarded as socially and educationally backward classes of citizens. But the people in the hilly backward areas constitute socially and educationally backward classes of citizens.

7. Harijans form socially and educationally backward class.

8. The Ezhavas, Muslims and Catholics including Anglo-Indians in Kerala State are socially and educationally backward classes of citizens.

9. The Government is not constitutionally obliged to provide reservations for backward classes.

10. The government can not provide reservations for communities which are not coming in the category of backward classes.

11. Reservations can be made both in initial appointments and promotions.

12. Reservation in excess of 50 per cent is not constitutional.

13. The government can provide concessions other than reservations for backward classes. The Supreme Court in Thomas case held that a differential treatment could be given to the Scheduled Castes and Scheduled Tribes for the purpose of giving them equality consistent with the maintenance of efficiency of administration.

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