GOVERNMENT OF INDIA

# REPORT

OF THE

# BACKWARD CLASSES COMMISSION

(SECOND PART)

(Volumes III to VII)

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PART I

**Analysis of the Court Cases and Legislative Debates leading to the First Amendment of the Constitution**

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## Vol. III

*Study Prepared by the Indian Law Institute*

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*Study prepared by the Tata Institute of Social Sciences, Bombay*


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# VOLUME III

## Analysis of the Judgments of Supreme Court and the High Courts leading to the First Amendment of the Constitution

Article 15(1) of the Constitution of India specifically bars the state from discriminating against any citizen of India on grounds only of religion, race, caste, sex, place of birth or any of them. This provision represents another dimension of the principle of equality enshrined in article 14. Where a law falls within the prohibited confines of article 15(1), it cannot be validated by recourse to article 14 and by applying any principle of reasonable classification. The cumulative effect of articles 14 and 15 is not that the state cannot pass unequal laws, but if it does enact unequal laws, they have to be justified on reasonable classification and because of article 15(1), *religion, race, caste, sex* or *place of birth* alone cannot be a reasonable ground for discrimination. Further, article 29(2) also guarantees protection to citizens against state action which discriminates admission to educational institutions on grounds of religion, race, caste, language or any of them.

This being the position, soon after the coming into force of the Constitution, challenges were made to governmental programmes aimed at making special provisions for weaker sections of society in the field of education and housing. Two judicial decisions, one of the Supreme Court and the other of the Bombay High Court led to the First Amendment of the Constitution in 1951.

The Supreme Court decision is *State of Madras* v. *Champakam Dorairajan*. For many years before the commencement of the Constitution, admission to professional colleges such as Medical and Engineering Colleges was regulated on the basis of religion, caste and race set forth in the Communal G.O. For every 14 seats to be filled by the Selection Committee, candidates were selected on the following basis :

| | |
|---|---|
| Non-Brahmins (Hindus) | 6 |
| Backward Hindus | 2 |
| Brahmins | 2 |
| Harijans | 2 |
| Anglo Indians & Indian Christians | 1 |
| Muslims | 1 |

Two Brahmin candidates, one each for Medical and Engineering Colleges respectively, who could not get admission, challenged the Communal G.O. as being violative of the fundamental right in article 29(2). Even though they had academic qualifications, they were refused admission on the ground that they were Brahmins. Apparently admission was refused on the basis of religion, race and caste. The Supreme Court in an opinion by Justice S. R. Das held that the Classification in the Communal G.O was based on religion, race and caste which is forbidden under article 29(2). The Court rejected the argument of the State based on article 46 which enjoins on it to make special provisions for the educational and economic interests of the weaker sections of the people, on the ground that the fundamental rights were, "sacrosanct and not liable to be abridged by any Legislative or Executive act or order, except to the extent provided in the appropriate Art. in Part III. In our opinion, that is the correct way in which the provisions found in parts III and IV have to be understood"

The Court invalidated the Communal G.O. on the ground that it classified admission on the basis of religion, race and caste.

The second is the Bombay High Court decision in *Jagwant Kaur* v. *State of Bombay*.[2] In this case an order of the collector of Poona under section 5 of the Bombay Land Requisition Act for requisitioning some land in Poona for the establishment of a Harijan Colony was challenged as violative of article 15(1). The basis of challenge was that a colony intended for the benefit only of Harijans was discriminatory under the above constitutional provision. Further, it was held that article 46 could not override any fundamental right. Consequently, the order was declared void.

At the time of the decision in this case, (18-2-1952), presumably the First Amendment had not come into effect. Chief Justice Chagla had observed :

> We date say that after the amendment it would be possible for the State to put up a Harijan colony in order to advance the interest of the backward class. But till that amendment was enacted, as Art. 15 stood, it was not competent to the State to discriminate in favour of any caste or community.

Thus, it may be pointed out that it was these two decisions which led to the amendment of article 15. The First Amendment incorporated clause 4 to article 15 empowering the State to make special provisions for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes despite article 15(1) or clause (2) of article 29. The object of the constitutional amendment was to bring articles 15 and 29 in line with article 16(4) which empowers the State to make special provisions for the backward classes in matters of public employment.

1. AIR 1951 S.C. 226.

2. A.I.R. 1952 Bom. 461.

3. Id. at 462.

## Analysis of the Debates of the Constitution (First Amendment) Act, 1951 in so far as it pertains to the addition of Article 15(4)

As noted earlier, *Champakam Dorairajan's* case invalidated the Madras reservations in educational institutions and by implication barred all preferential treatment outside the sphere of government employment. This decision caused a political agitation in South India and led to the amendment of article 15 by adding clause (4). In the debate on the amendment Prime Minister Nehru remarked :

> The House knows very well and there is no need for trying to hush it up, that this particular matter in this particular shape arose because of certain happenings in Madras.[1]

While others generally agreed that the momentum for the amendment was given by the Madras agitation, Shankaraiya pointed out that

> It is not only the Madras Government that is concerned with this but the whole of South India—the State of Mysore, Travancore-Cochin and even Bombay.[2]

Deshmukh, however, pointed out that the problem was not confined to Madras but was bound to arise elsewhere as soon as the backward classes became more aware and assertive.[3]

The debates over the amendment revolved around the desirability of providing educational preferences to the backward classes, and it related in part also to the question of identification of the backward classes (who were the backward classes ?).

The bill was referred to a select committee after some discussion on May 16, 1951. Further debate on the amendment to Article 15(4) took place on May 18, 29, 30, 31 and June 1 and 2. The clause inserting article 15(4) was passed on June 1, and the entire bill on June 2. This amendment was one of the three major changes made by the Constitution. We are not concerned with the other two.

The original draft of article 15(4) would have added to article 15(3) which authorised special provision for women and children, the words :

> or for the educational, economic, or social advancement of any backward class of citizens.[4]

Nehru explained that the Select Committee chose the words as they are now in Art. 15(4) "because they (socially and educationally backward classes) occur in Article 340 and it wanted to bring them bodily from there".[5]

Thus the language of Art. 15(4) is on the lines of article 340 which provides that the Backward Classes Commission to be set up under that article would list the "socially and educationally backward classes of citizens". The issue whether the determination by the Commission and later by the President would be final agitated the members. While some members such as Thakaur Das Bhargava[6] and M. A. Ayyangar[7] liked the final phrasing because they thought it limited backward classes to those to be specified by the President after the recommendation of the Commission under article 340, others, such as, Hukum Singh[8] and S. P. Mookerjee[9] objected that they were not so confined. In fact an amendment to make clear this limitation to the groups specified under Article 340 was not accepted by the Government and was defeated by the House.[10] Some others like Seth Govind Das and Venkataraman assumed that the identification of the backward classes would be within the purview of the State governments who may be trusted to do their job well.

Perusal of the debates shows that whatever may be the criteria for the classification of the backward classes and by whomsoever they are to be designated as such, they were to be a list of castes or communities. Ambedkar, the then Law Minister, frankly observed that the amendment was required because "what are called backward classes are..... nothing else but a collection of certain castes." [11] Members felt that the provision should not allow communal quotas to be enjoyed by more advanced groups. Though economic backwardness of the groups who deserved preferences was emphasises, it was just not the poor alone that the government and the speakers had in mind. Nehru in fact observed that

> We have to deal with the situation where for a variety of causes for which the present generation is not to blame, the past has the responsibility, there are groups, classes, individuals, communities..... who are backward. They are backward in many ways—economically, socially, educationally—sometimes

1. Parliamentary Debates, Vol. XII—13 (Part II) at col. 9615.
2. Id. at 9000.
3. Id. at 9775.
4. Id. at 8929.
5. Id. at 9830.
6. Id. at 9719.
7. Id. at 9817.
8. Id. at 9823.
9. Id. at 9824.
10. Id. at 9832-33.
11. Id. at 9000b.

> they are not backward in one of these respects and yet backward in another. The fact is therefore that if we wish to encourage them in regard to these matters, we had to do something special for them.[12]

Though he did not refer about caste as such, it seems to be clear that what was needed were not measures to wipe out all inequalities but those specifically associated with the social structure :

> We want to put an end to ..... all those infinite divisions that have grown up in our social life ..... we may call them by any name you like, the caste system or religious divisions etc. There are of course economic divisions but we realize them and we try to deal with them ..... But in the structure that has grown up ..... with its vast number of fissures or divisions ..... [13]

K. T. Shah, who strongly felt that the backwardness to be remedied was economic, proposed to do away with the word "classes" and to add "economically" to qualify the term "backward classes".[14] Nehru, however, was not willing to accept any of the amendments, though he had no objection to adding "economically" but to do so would make it different from the language used in article 340. He observed partinently :

> But if I added "economically" I would at the same time not make it kind of a cumulative thing but would say that a person who is lacking in any of these things should be helped. "Socially" is a much wider word including many things and certainly including economically.[15]

The predominant feeling of the House was that special measures were required to remedy special inequalities of caste and community which tended to accentuate economic disparity among the groups.

*Conclusion*

The debates show that the description of the backward classes in clause 4 of article 15 should be similar to that in clause 1 of article 340. This was the reason that the word "economically" did not find a place in clause 4 of article 15 though several members pointed out that in the identification of socially and educationally backward classes, economic backwardness could not be ignored.

On the whole it was not clear whether "caste" was to be the sole criterion for determining "backwardness" though it may be pertinent to refer to the views of Nehru and Ambedkar. Nehru expressed the view that all the inequalities associated with the social structure have to be done away with and it appears that "social structure" meant the caste divisions or religious divisions (and not so much economic divisions) Ambedkar was more specific on the point when he said "what are called backward classes are nothing else but a collection of certain castes"

The listing of backward classes by the President on the recommendations of the Backward Classes Commission was not intended to be final. The state governments were also to identify backward classes.

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12. Id. at 9616.
13. Id.
14. Id. at 8121.
15. Id. at 9830.

PART II

**Summary of Cases under Article 15(4)**

PAGE NOS.
(7—60)

*State of A.P. v. P. Sagar*

A.I.R. 1968 S.C. 1379

*Facts*

The case come on appeal to the Supreme Court from the decision of the Andhra Pradesh High Court in *Sagar* v *State of A.P.* (A.I.R. 1968 A.P. 165) invalidating the Andhra Government's notification of June, 1966 as modified by an Order of July, 1966 for the Telangana Region and by an order of August, 1966 for the Andhra Region, reserving seats for backward classes in Medical institutions on the ground that the list was made solely on the basis of caste.

*Issues*

(i) Whether the list of backward classes based solely on caste is legal ?

*Extracts*

*Shah J.*

6. In the context in which it occurs the expression "class" means a homogeneous section of the people grouped together because of certain likenesses or common traits and who are identifiable by some common attributes such as status, rank, occupation, residence in a locality, race, religion and the like. In determining whether a particular section forms a class, caste cannot be excluded altogether. But in the determination of a class a test solely based upon the caste or community cannot also be accepted. By Clause (1), Article 15 prohibits the State from discriminating against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. By Clause (3) of Article 15 the State is, notwithstanding the provision contained in Clause (1), permitted to make special provision for women and children. By Clause (4) a special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and Scheduled Tribes is outside the perview of Clause(1). But Clause(4) is exception to Clause (1). Being an exception, it cannot be extended so as in effect to destroy the guarantee of Clause(1). The Parliament has by enacting Clause (4) attempted to balance as against the right of equality of citizens the special necessities of the weaker sections of the people by allowing a provision to be made for their advancement. In order that the effect may be given to Clause(4) it must appear that the beneficiaries of the special provisions are classes which are backward socially and educationally and they are other than the Scheduled Castes and Scheduled Tribes, and that the provision made is for their advancement. Reservation may be adopted to advance the interests of weaker sections of society but in doing so, care must be taken to see that deserving and qualified candidates are not excluded from admission to higher education institutions. The criterion for determining the backwardness must not be based solely on religion, race, caste, sex or place of birth, and the backwardness being social and educational must be similar to the backwardness from which the Scheduled Castes and the Scheduled Tribes suffer. These are the principles with which have been enunciated in the decision of this Court in M. R. Balaji's case.". .....

7. The list dated June 21, 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 of Andhra Pradesh in *P. Sukhadev's* case 1966-1 Andh WR 294. A first list was published under the amended rules with some modifications, but the basic scheme of the list was apparently not altered. It is true that the affidavits filed by the Chief Secretary in the High Court and the Director of Social Welfare that he considered the representations made to him, consulted the Law Secretary and certain publications relating to the study of backward classes, *e.g.* Thurston's "Caste and Tribes" and Sirajul Hasan's "Caste and Tribes", and made his recommendations which were modified by the Sub-Committee appointed by the Council of Ministers and ultimately the Council of Ministers prepared a final list of backward classes. But before the High Court the materials which the Cabinet Sub-Committee or the Council of Ministers considered were not placed nor was any evidence led about the criteria adopted by them for the purpose of determining the backward classes. The High Court observed :

"A perusal of this affidavit (Chief Secretary affidavit) as well as that of the Director of Social Welfare..... ... which are filed on behalf of the Government do not say what was the material placed before the Cabinet Sub-Committee or the Council of Ministers, from which we could conclude that the criteria laid down by their Lordships of the Supreme Court have been applied in preparing the list of backward classes". After referring to the opinion of the Law Secretary and the views of the Director of Social Welfare they observed :

"..... we are not able to ascertain whether any material, and if so, what material was placed before the Cabinet Sub-Committee, up to which the list of backward classes was drawn. On the other hand, it is stated that the Law Secretary and the Director of Social Welfare set together and drew up a list, the former specifying the legal requirements and the latter as an expert advising on the social and educational backwardness of class or classes."

It was urged before the High Court that expert knowledge of the Director of Social Welfare and of the Law Secretary was brought to bear upon the consideration of the relevant materials in the preparation of the list and they were satisfied that the correct tests were applied in the determination of backward classes and on that account the list should be accepted by the High Court. The High Court in dealing with the argument observed :

"..... the impugned backward classes list cannot be and has not been sustained by the Government as coming within the exception provided in Article 15(4) on any material placed before this Court. In fact there is a total absence of any material, from which we can say that the Government applied the criteria enunciated by their Lordships of the Supreme Court in the above referred cases, in preparing the list of backward classes. We cannot accept the contention of the learned Advocate-General that once there is proof that the Government *bona fide* considered the matter it is sufficient" Acceptance of this argument would make for arbitrariness, absolving the party on whom the burden of proof to bring it within the exception rests, from proving it. The mere fact that the act is *bona fide* and that there was total absence of *mala fides*, is not relevant".

8. Article 15 guarantees by the first clause a fundamental right of far reaching importance to the public generally. Within certain defined limits an exception has been engrafted upon the guarantee of the freedom in clause(1), but being in the nature of an exception, the conditions which justify departure must be strictly shown to exist. When a dispute is raised before a Court that a particular law which is inconsistent with the guarantee against discrimination is valid on the plea that it is permitted under Clause (4) of Article 15, the assertion by the State that the officers of the State had taken into consideration the criteria which has been adopted by the Courts for determining who the socially and educationally backward classes of the Society are, or that the authorities had acted in good faith in determining the socially and educationally backward classes of citizens, would not be sufficient to sustain the validity of the claim. The Courts of the country are invested with the power to determine the validity of the law which infringes the fundamental rights of citizens and others and when a question arises whether a law which *prima facie* infringes a guaranteed fundamental right is within an exception the validity of that law has to be determined by the Courts on materials placed before them. By merely asserting that law was made after full consideration of the relevant evidence and criteria which have a bearing thereon, and was within the exception, the jurisdiction of the Courts to determine whether by making the law is a fundamental right has been infringed is not excluded.

9. The High Court has repeatedly observed in the course of their judgement that no materials at all were placed on the record to enable them to decide whether the criteria laid down by this Court for determining that the list prepared by the Government conformed to the requirements of Clause (4) of Article 15 were followed. On behalf of the State it was merely asserted 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 officers of the State, by the Cabinet Sub-Committee and by the Cabinet. But whether in that examination the correct criteria were applied is not a matter on which any assumption could be made especially when the list prepared is *ex facie* based on castes or communities and is substantially the list which was struck down by the High Court in *P. Sukhadev's* case 1966-I Andh W.R. 294. Honesty of purpose of those who prepared and published the list was not and is not challenged but the validity of a law which apparently infringes the fundamental rights of citizens cannot be upheld merely because the law maker was satisfied that what he did was right or that he believes that he acted in manner consistent with the constitutional guarantees of the citizen. The test of the validity of a law alleged to infringe the fundamental rights of a citizen or any act done in execution of that law lies not in the belief of the maker of the law or of the person executing the law, but in the demonstration by evidence and argument before the Courts that the guaranteed right is not infringed.

***Holding***

As the State did not place adequate materials before the Court to prove that the list of backward classes was not prepared solely on caste basis but after full consideration of relevant factors, the Court invalidated the Andhra Government notification.

*Janardhan Subbaraya* v. *Mysore State*

A.I.R. 1963 S.C. 702

This case made clear that the judgement of the Supreme Court in *Balaji* case did not affect the validity of the reservation made in favour of the Scheduled Castes and Scheduled Tribes. The said reservation (15% for S.Cs. and 3% for S.Ts.) continued to be operative. The orders of 1962 of the Mysore Government had been quashed solely with reference to the reservation made in respect of the socially and educationally backward classes.

*M. R. Balaji* v. *State of Mysore*

A.I.R. 1963 S.C. 649

*Facts*

Since 1958 the State of Karnataka (then Mysore) had been attempting to make special provisions for the advancement of its socially and educationally backward classes of citizens under article 15(4) and whenever any order was passed its validity was challenged in writ proceedings in the High Court which quashed them. The petitions in the instant case were filed under article 32 to challenge the validity of the last order passed by the State in 1962. This final order was preceded by an order of 1961. The 1961 order was passed in the light of an expert committee set up by the State Government, called the Nagan Gowda Committee which had investigated the problem of identifying criteria for classifying backward classes in the state. The Committee had decided that in the present circumstances, the only practicable method of classifying the backward classes in the State is on the basis on *caste* and communities and that they should be sub-divided into two categories—Backward and the More Backward. The 1962 order was substantially based on the conditions of this Committee. The upshot of that order was that it had fixed 50% as the quota for the other backward classes (minus Scheduled Castes and the Scheduled Tribes). 28% out of that was reserved for Backward Classes so called and 22% for More Backward Classes. The reservation of 15% for Scheduled Castes and 3% for Scheduled Tribes was fixed. As a result, 68% of the seats available for admission to the Engineering, medical and other technical colleges was reserved for the backward classes and 32% was only available for the merit pool. Hence the order was challenged on the basis that the social backwardness of the communities to whom the impugned order applied had been determined in a manner not permissible under article 15(4).

*Issues*

(i) What are the criteria for identifying the social and educational backwardness ?

(ii) What is the role of "caste" in determining social backwardness ?

(iii) Is the sub-classification of backward classes into categories valid ?

(iv) Is the quantum of reservations excessive ?

*Extracts*

*Gajendragadkar J.*—In considering the scope and extent of the expression "backward classes" under Article 15(4), it is necessary to remember that the concept of 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). This position is not disputed before us by the learned Advocate-General for the State. The backwardness under Art. 15(4) must be social and educational. It is not either social or educational, but it is both social and educational ; and that takes us to the question as to how social and educational, backwardness has to be determined.

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

Besides, if the caste of the group of citizens was made the sole basis for determining the social backwardness of the said group, that test would inevitably break-down in relation to many sections of Indian society which do not recognise caste in the conventional sense known to Hindu society. How is one going to decide whether Muslims, Christians or Jains, or even Lingayats are socially backward or not ? The test of castes would be inapplicable to those groups, but that

would hardly justify the exclusion of these groups in toto from the operation of Art. 15(4). It is not unlikely that in some States some Muslims or Christians or Jains forming groups may be socially backward. That is why we think though castes in relation to Hindus may be a relevant factor to consider in determining the social backwardness of groups or classes of citizens it cannot be made the sole or the dominant test in that behalf. Social backwardness is one the ultimate analysis the result of poverty to a very large extent. The classes of citizens who are deplorably poor automatically become socially backward. They do not enjoy a status in society and have, therefore, to be content to take a backward seat. It is true that social backwardness which results from poverty is likely to be aggravated by considerations of caste to which the poor citizens may belong but that only shows the relevance of both caste and poverty in determining the backwardness of citizens.

The occupations of citizens may also contribute to make classes of citizens socially backward. There are some occupations which are treated as inferior according to the conventional beliefs and classes of citizens who follow these occupations are apt to become socially backward. The place of habitation also plays not a minor part in determining the backwardness of a community of persons. In a sense, the problem of social backwardness is the problem of Rural India in that behalf, classes of citizens occupying a socially backward position in rural areas fall within the purview of Art. 15(4). The problem of determining who are socially backward classes in undoubtedly very complex. Sociological, Social and economic consideration came into play in solving the problem and on evolving proper criteria for determining which classes are socially backward is obviously a very difficult task ; it will need an elaborate investigation and collection of data and examining the said data in a rational and scientific way. That is the function of the State which purports to act under Art. 15(4). All that this Court called upon to do in dealing with the present petitions is to decide whether the tests applied by the impugned order are valid under Art. 15(4). If it appears that the test applied by the order in that behalf is improper and invalid, then the classification of socially backward classes based on that test will have to be held to be inconsistent with the requirements of Art. 15(4).

What then is the test applied by the State in passing the impugned order ? We have already seen that the Nagan Gowda Committee appointed by the State was inclined to treat the caste as almost the sole basis in determining the question about the social backwardness of any community. The committee has no doubt incidentally referred to the general economic condition of the community as a contributory factor but the manner in which it has enumerated the backward and more backward classes leaves no room for doubt that the predominant, if not the sole, test that weighed in their minds was the test of caste. When the consider the impugned order itself, the position becomes absolutely clear. The impugned order has adopted the earlier order of 10th July, 1961, with some changes as to the quantum of reservation, and so, it is necessary to examine the earlier order in order to see what test was applied by the State in classifying the backward classes. In its preamble the order of 10-7-1961 clearly and unambiguously states that the Committee had come to the conclusion that in the present circumstances, the only practicable method of classifying the Backward Classes in the State is on the basis of castes and communities and the State Government accepts this test. In other words, on the order as it stands there can be no room for doubt that the classification of backward and more backward classes was made by the State Government only on the basis of their castes which basis was regarded as a practicable method. It is true that in support of the inclusion of the Lingayata amongst the Backward Classes the order refers to some other factors, but neither the Report of the Nagan Gowda Committee, nor the orders passed by the State Government on July 10, 1961 and July 31, 1962 afford any indication as to how any test other than of the caste was applied in deciding the question. The learned Advocate-General has contended that the statement in the preamble of the order of July 10, 1961 should not be literally construed and he has argued that the words in the relevant portion are inartistic and he has suggested that the order is not based on the sole basis of castes. We are not impressed by this argument. We have considered both the orders in the Right of the Report and the recommendations made by the Nagan Gowda Committee and we are satisfied that the classification of the socially backward classes of citizens made by the State proceeds on the consideration only of their castes without regard to the other factors which are undoubtedly relevant. If that be so, the social backwardness of the communities to whom the impugned order applies has been determined in a manner which is not permissible under Art. 15(4) and that itself would introduce an infirmity which is fatal to the validity of the said classification.

The next question to consider is in regard to the educational backwardness of the classes of citizens. The Nagan Gowda Report and the impugned order proceed to deal with this question 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 a thousand citizens of that community. On the figures supplied to the Committee which admittedly are approximate and not fully accurate, the Committee came to the conclusion that the State average of student population in the last three High School classes of all High School in the State was 6.9 per thousand. The Committee decided that all castes whose was less than the State average of 6.9 per thousand should be regarded as backward communities and it further held that if the average of any community was less than 50% of the State average, it should be regarded as constituting the more backward classes. It may be conceded that in determining the educational backwardness of a class of citizens, the literacy test supplied by the Census Reports may not be adequate ; but it is doubtful if the test of the average of student population in the last three High School classes is appropriate in determining the educational backwardness. Having regard to the fact that the test is intended to determine who are educationally backward classes, it may not

be necessary or proper to put the test as high as has been done by the Committee. But even assuming that the test applied is rational and permissible under Art. 15(4), the question still remains as to whether it would be legitimate to treat castes or communities which are just below the State average as educationally backward classes, if the State average is 6.9 per thousand, a community which satisfied the said test of is just below the said test cannot be regarded as backward. It is only communities which are well below the State average that can properly be regarded as educationally backward classes of citizens. Classes of citizens whose average of student population works below 50% of the State average are obviously educationally backward classes of citizens. Therefore, in our opinion, the State was not justified in including in the list of Backward Classes, castes, castes or communities whose average of student population per thousand was slightly above, or very near, or just below the State average.

It will be recalled that the Nagan Gowda Committee had recommended that the Lingayats should not be treated as Backward Classes. The State had decided otherwise, and in doing so, the State has taken the view that the figures arrived at by nearest integer as, in the nature of things, says the order of July, 1980, it is not possible to attain absolute mathematical precision in making such assessments. That is how the State average was raised from 6.9 to 7 per thousand. Even after increasing the State average to 7 the position with regard to Lingayat community was that its averaged of students population was 7.1 per thousand according to the Committee's conclusion and according to the decision of the State 7, and yet the Lingayats as a community have been held to be an educationally backward class of citizens under the State order. This result has been achieved by adding, 1 to the state average and deducting 1 from the Lingayat's average. The Ganigas whose average of students population 7 per thousand are likewise included in the list of backward classes. If the State average is 6.9 or 7 it would, we think, be manifestly erroneous to regard those communities as educationally backward whose students population ratio works at the same level as the state average.

In regard to the Muslims, the majority view in the Committee was that the Muslim community as a whole should be treated as socially backward. This conclusion is stated merely as a conclusion and no data or reasons are cited in support of it. The average of student population in respect of this community works at 5 per thousand and that, in our opinion, is not so below, the State average that the community could be treated as educationally backward in the State of Mysore. Therefore, we are not satisfied that the State was justified in making the view that communities or castes whose average of student population was the same as, or just below, the State average, should be treated as educationally backward classes of citizens If the test has to be applied by a reference to the State average of student population, the legitimate view to take would be that the classes of citizens whose average is well or substantially below the state average can be treated as educationally backward. On this point again, we do not propose to lay down any hard and fast rules, it is for the State to consider the matter and decide it in a manner which is consistent with the requirements of Art. 15(4).

In this connection, it is necessary to add that the sub-Classification made by the order between Backward Classes and More Backward Classes does not appear to be justified under Art. 15(4). Article 15(4) authorises special provision being made for the really backward classes. In introducing two categories of Backward Classes what the impugned order, in substance purports to do is to devise measures for the benefit of all the classes of citizens who are less advanced compared to the most advanced classes in the State, and that, in our opinion, is not the scope of Art. 15(4). The result of the method adopted by the impugned order is that nearly 60% of the population of the state is treated as backward, and that illustrate how the order in fact divides the population of the State into most advanced and the rest, and puts the latter into two categories of Backward and More Backward. The classification of the two categories, therefore, is not warranted by Art. 15(4).

*Holding*

(i) Castes poverty, occupations, place of habitation were some relevant factors for determining social backwardness. As regards educational backwardness the court said that it was doubtful if the test of the average of student population in last three High School classes was appropriate. Further the court said that assuming the test were valid, and the state average was 6.9 per thousand, a community which satisfied the said test could not be regarded as backward. It must be substantially below the state average.

(ii) Caste" though relevant in the Indian Society could not be made the sole or dominant test to determine social backwardness. This would perpetuate the vice of caste system in the society.

(iii) Sub-classification of the backwardness into backward and more backward was not constitutionally permissible.

(iv) The total reservation of 68% for Scheduled Castes, Scheduled Tribes and backward classes was held to be excessive.

*State of U.P. v. Pradip Tandon*

A.I.R. 1975 S.C. 563

*Facts*

Facts were the same as in *Subash Candra's* case. This case came on appeal from that decision to the Supreme Court.

*Issue*

Whether the Government of U.P. order incorporating the instructions which made reservations in favour of candidates from Rural areas, Hill areas and Uttrakhand was constitutionally valid ?

*Extracts*

*A. N. Ray, C. J.*—The express "socially and educationally backward classes" in Article 15(4) was explained in Balaji's case 1963 Supp 1 SCR 439—1963 SC(649) (Supra) to be comparable to Scheduled Castes and Scheduled Tribes illustrated social and educational backwardness. It is difficult to define the expression "socially and educationally backward classes of citizens". The traditional unchanging occupations of citizens may contribute to social and educational backwardness. The place of habitation and its environment is also a determining factor in judging the social and educational backwardness.

The expression "classes of citizens" indicates a homogeneous section of the people who are grouped together because of certain likeliness and common traits and who are identifiable by some common attributes. The homogeneity of the class of citizens is social and educational backwardness. Neither caste nor religion nor place of birth will be the uniform element of common attributes to make them a class of citizens.

The traits of social backwardness are these. There is no social structure. There is no social hierarchy. There are no means of controlling the environment through technology. There is no organisation of the society to create inducements for uplift of the people and improvement of economy. Building of towns and industries, growth of cash economy which are responsible for greater wealth are absent among such social growth and well being can be satisfied by massive change in resource conditions. High lands and hills are to be developed in fiscal values and natural resources. Nature is a treasury. Forests, mountains, rivers, can yield and advanced society with the aid of education and technology.

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

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

The 1971 Census showed population in India to be 54.79 crores. 43.89 crores or 80.1 per cent live in rural areas. 10.91 crores or 19.9 per cent live in cities and towns. In 1921 the rural population in India was 88.8 per cent. In 1971 the rural population was reduced to 80.1 per cent. The rural population of Uttar Pradesh in 1971 was roughly seven and a half crores. The population in Uttrakhand was roughly seven and a half lakhs. The population of Hill areas in Uttar Pradesh was near about twenty five lakhs. It is incomprehensible as to how 80.1 per cent of the people in rural areas or 7 crores in rural parts of Uttar Pradesh can be suggested to be socially backward because of poverty. Further, it is also not possible to predicate poverty as the common trait, of rural people. This Court in J. P. Parimoo v. State of Jammu and Kashmir (1973) SCR 236 = (AIR 1973 SC 930 = 1973 Lab IC 565) said that if poverty is the exclusive test a large population in our country would be socially and educationally backward classes of citizens. Poverty is evident everywhere and perhaps more so in educationally. Advanced and socially affluent classes. A division between the population of our country on the ground of poverty, that the people in the urban areas are not poor and that the people in the rural areas are poor is neither supported

by facts nor by a division between the urban people on the one hand and the rural people are socially and educationally backward class.

Some people in the rural areas may be educationally backward, some may be socially backward, t' :re may be a few who are both socially and educationally backward citizens residing in rural areas are socially and educationally backward.

80 per cent of the population, in the state of Uttar Pradesh in rural areas cannot be said to be a homogenous class by itself. They are not of the same kind. Their occupation is different. Their lives are different. Population cannot be a class by itself. Rural element does not make it a class. To suggest that the rural areas are socially and educationally backward is to have reservation for the majority of the State.

The reservation for rural areas cannot be sustained on the ground that the rural areas represent socially and educationally backward classes of citizens. This reservations appears to be made for the majority population of the State. 80 per cent of the population of the State cannot be a homogeneous class. Poverty in rural areas cannot be the basis of classification to support reservation for rural areas. Poverty is found in all parts of India. In the instructions for reservation of seats it is provided that in the application form a candidate for reserved seats from rural areas must submit a certificate of the District Magistrate of the District to which he belonged that he was born in rural areas and had a permanent home there, and is residing there or that he was born in India and his parents and guardians are still living there and earn their livelihood there. The incident of birth in rural areas is add the basic qualification. No reservation can be made on the basis of place of birth, as this would offend Article 15.

The onus of proof is on the State to establish that the reservations are for socially and educationally backward classes of citizens. The State has established that the people in hill and Uttrakhand areas are socially and educationally backward classes of citizens.

*Holding*

(i) Reservations in favour of candidates from Hill Areas and Uttrakhand were held to be valid.

(ii) Reservations in favour of Rural Areas were held not valid.

*State of A.P. v. S. V. Balaram*

A.I.R. 1972 S.C. 1375

*Facts*

On June 20, 1970 the Backward Classes Commission appointed by the State of Andhra Pradesh a couple of years back, made its report regarding the various categories of persons who are to be treated as belonging to Backward Classes and recommended reservation of 30% of seats to persons belonging to the Backward Classes. The Commission had adopted the following criteria for identifying social and educational backwardness—

(i) general poverty of the class or community as a whole ;

(ii) occupations the nature of which must be inferior, unclean, undignified and unremunerative or one which does not carry influence or power ;

(iii) caste in relation to Hindus ;

(iv) educational backwardness.

The State by G.O. No. 1793/Education, dated September 23, 1970 announced reservation of 25% of the seats in the M.B.B.S. Course for candidates belonging to the various Backward Classes enumerated therein on the basis of the report of the Backward Classes Commission. The reservation for Scheduled Castes and Scheduled Tribes was 14% and 4% respectively.

The enunciation of backward classes by the State Commission and the subsequent order of Government reserving 25% of seats were challenged in the High Court which held that they were violation of Articles 15(1) and 29(2) and were not saved by Article 15(4). The rationale was that "caste" was taken as the basis of the listing of backward classes by the Commission.

On appeal the matter come to the Supreme Court.

*Issues*

(i) Whether "caste" above could be taken as the basis for the enumeration of backward classes ?

(ii) Whether the quantum of reservation was excessive ?

*Extracts*

*Vadialingam J.*

68. The Government also accepted the list drawn up by the Commission *in toto* and declared that the castes and communities specified in the annexure to the G.O. are socially and educationally Backward Classes for the purpose of Art. 15(4) of the Constitution. Though the Commission had recommended reservation of 30% of seats for the Backward Classes in the professional Colleges, the Government in the order decided that only 25% of seats in the professional Colleges should be reserved for Backward Classes. The Government also agreed to the recommendations of the Commission to the classification of the Backward Classes into four groups and directed that on the basis of the population of those four groups, the 25% reservation of seats in the professional Colleges was to be apportioned amongst the said four groups in the proportion mentioned in the Government order. The Government made it clear that the acceptance of the recommendations of the Commission regarding reservations shall be in force for a period of 10 years in the first instance and the position will be reviewed thereafter.

69. We have referred to the circumstances leading upto the passing of the impugned G.O. No. 1793 of 1970. In order to appreciate the criticism made by the High Court regarding the approach made by the Commission, it is necessary to refer to the salient features of the report of the Backward Classes Commission. The report of the Backward Classes Commission is Annexure B before us. As soon as the Commission was appointed, the Commission issued a questionnaire and circulated it very widely to the various authorities and organisations mentioned in its report. The questionnaire refers to various matters regarding the criteria to be adopted for ascertaining the backwardness of persons as well as the information on matters relating to the social and educational backwardness of the persons. Apart from the distribution of the questionnaire, the Commission called for information from the Heads of all Government Departments regarding the number of persons belonging to each class or community employed in their Departments. Information was also asked from the principals of colleges, including the professional and technical colleges regarding the number of students belonging to each class or community in the academic year 1967-68. Similarly, the Head Masters of all the High Schools and Multipurpose High Schools in the State were also requested to furnish information regarding the total number of students belonging to each community who studied in those schools during the last 10 years as well as the number of students classwise and communitywise who studied in classes VI to XI in 1968-69.

70. The Commission toured all the Districts in the States and recorded oral evidence on oath from the representatives of a number of communities. During

the tour of the Districts, the Commission visited the houses and huts belonging to different communities of the people and also made oral enquiries from the inmates about their conditions of living, their customs, relations with other communities and their problems. The names of places visited by the Commission together with the dates of such visits are given in Appendix IV of its Report. The Commission together with the dates of such visits are given in Appendix IV of its Report. The Commission also visited the neighbouring States of Madras, Mysore and Kerala with a view to have discussion with the officers of those Governments, which were connected with the welfare of Backward Classes. The report says that about 820 persons were examined at various places and that about 480 persons submitted written memoranda. A large number of replies were received from the public to the questionnaire issued by the Commission. The Commission has stated that it had an opportunity, during its tour and visit of the villages, of studying the living conditions and standard of life of the various communities. The Commission has, no doubt, referred to the fact that upto date statistical information with regard to population of the several communities as well as the percentage of literacy was not available. The difficulty was enhanced by the fact that no castewise statistics had been collected after 1931 census. So far as Andhra area is concerned, the figures of 1921 census were available, as it had been prepared on castewise basis. Regarding Telangana area, the 1931 census of castewise statistics was available. It had to estimate the 1968 population in the two areas on the basis of the respective census data available. The population figures for 1968 for each caste was fixed by the Commission by the percentage of the increase of the total population. The estimate so made by the Commission is given in Appendix V of the report.

71. Regarding literacy, the Commission adopted the percentage of student population per thousand of particular class or community in standards X and XI with reference to the average student population in the whole state. The reasons for adopting this procedure have been given in Chapter VI. Though information was called for regarding the student population communitywise in standards X and XI from about 2224 High Schools and Higher Secondary Schools in the State, only about 50% of the institutions sent the information regarding the student population communitywise, in those two classes. The Commission worked out an average on the basis of the replies received from the 50% of the institutions which itself comes to nearly more than 1100 schools. It is not necessary to refer to the employment statistics collected by the Commission. The Commission itself has indicated the difficult problems it had to tackle.

72. Chapter IV and V deal with the constitutional provisions regarding the Backward Classes as well as the general principles laid down by the High Court and this Court for ascertainment of their social and educational backwardness.

73. Chapter IV deals with the tests of criteria adopted by the Commission for ascertaining the social and educational backwardness of persons. Regarding social backwardness, after a very exhaustive survey of the trade or occupations carried on by the persons concerned and other allied matters, the Commission has indicated that only such persons belonging to a caste or community who have traditionally followed unclean and undignified occupation, can be grouped under the classification of Backward Classes. In this connection the Commission has 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 is considered inferior and unclean, undignified or unremunerative or one which does not carry influence or power and caste in relation to Hindus.

74. Regarding educational backwardness, the Commission had adverted to the fact that during the past 10 years, the state has introduced many measures for the general educational advancement of its people by introducing compulsory primary education for children and free education for boys upto VIIIth and for girls upto XIth class. It has taken note of the fact that in 1968-69, free education for boys was also extended upto High School stage. Having regard to the fact that because of literacy and educational advancement, passing in the School Final Class (XI Class) is taken as the minimum qualification for appointment in Public Service as also for admission to University and, Technical Education. The Commission is of the view that it is proper to take the last two classes, namely, Class X and XI as standard for ascertaining the educational backwardness. In this connection it has referred to the Report of the Backward Classes Committee, appointed by the Jammu and Kashmir Government, presided over by Dr. P. B. Gajendragadkar, former Chief Justice of India. This Committee has expressed the view that the number of students on the rolls of IX and X classes should be ascertained for determining educational backwardness. The reasons given by the said Committee for this view are quoted by the Commission in its report. The Commission then has adverted to the fact that the average student population in Classes X and XI in the State works out to be about 4.55 per thousand. On this basis, it has proceeded to apply the principle that Communities whose student population in these standards is well below the State average, have to be considered as educationally backward. Here again the Commission has referred to the fact that as only 50% of the Schools had furnished figures with reference to the student population, it had to work out an average based on those figures applicable to the entire state. Though the figures received from the Schools show that certain groups showed a slightly higher level of education, the Commission felt in the light of their having personally seen their living conditions, the percentage supplied by the Schools may not be accurate. In view of this, the Commission has held even those persons as really backward from the educational point of view.

75. Chapter VII gives the list of socially and educationally Backward Classes and there is a very exhaustive note attached to each of these groups as to why the Commission regards them as socially and educationally backward. In that Chapter the Commission has also exhaustively dealt with the names of

the groups, the sub-divisions in those groups, their traditional occupation and various other matters having a bearing on their social, economic and educational set up. Appendix VI which enumerates the list of socially and educationally Backward Classes item by item gives a tabular statement containing information about the name of the community, its traditional occupation as well as its population in 1968. Appendix VII contains a note about each of the classes enumerated by the Commission as Backward Classes. Appendix VII contains information regarding the principal occupation, approximate family income, percentage of School going students in the particular groups and various other information regarding the persons mentioned in the list. A perusal of the Appendix VI and VII shows that the traditional occupations of the persons enumerated as backward were of a very low order such as beggars, washermen, fishermen, watchmen at burial grounds etc. The Commission had made certain recommendations regarding reservation in the Government Service and it had also made recommendations regarding other assistance to be given to the Backward Classes. In these appeals it is not necessary to refer to those recommendations. For the purpose of these appeals it is only necessary to state that the observations made by this Court in Triloki Nath Tiku v. State of Jammu and Kashmir, (1967) 2 SCR 265 (AIR 1967 S.C. 1283).

85. We have been referred to various decisions, particularly of this Court where reservations for Backward Classes made by the concerned State have been either accepted as valid or struck down. But it is not necessary for us to refer to those decisions because each case will have to be considered on its own merits, after finding out the nature of the materials collected by a Commission or by the State when it enumerated certain persons as forming the Backward Classes. But one thing is clear that if an entire caste, is as a fact, found to be socially and educationally backward, their inclusion in the list of Backward Classes by their caste name is not violative of Art. 15(4).

87. In (1968) 3 SCR 595—(AIR 1968 SC 1397) a similar list prepared by the State of Andhra Pradesh solely on the basis of caste was struck down. In Triloki Nath v. State of Jammu and Kashmir, (1969) I SCR 103 (AIR 1969 SC) the Constitution Bench of this Court held that the members of an entire caste or community may in the social, economic and educational scale of values, at a given time be backward and may on that account be treated as backward classes, but that is not because they are members of a caste or community but because they form a class. Therefore, it is clear that there may be instances of an entire caste or a community being socially and educationally backward for being considered to be given protection under Art. 15(4).

89. The High Court has committed another error in that it has proceeded on the basis that the groups whose inclusion as backward classes in the 1963 and 1966 lists, prepared by the State, which were struck down by the High Court, have again been included in the present list by the Commission. The High Court has missed the fundamental fact that those two lists were struck down by the High Court on the ground that the State had made no investigation whatsoever, nor had the State collected the relevant materials before classifying the groups as Backward Classes. It was on that ground that those lists were struck down by the High Court. In fact this Court also affirmed the latter decision of the Andhra Pradesh High Court striking down the 1966 list in its decision in (1968) 3 SCR 595—(AIR SC 1379). Though we are not inclined to agree with the decision of the High Court that the enumeration of groups as Backward Classes by the Commission is solely on the basis of caste, we will assume that the High Court is right in that view. There are two decisions of this Court where the list prepared of Backward Classes, on the basis of caste has been accepted as valid. No doubt, this Court was satisfied on the materials that the classification of caste as Backward Classes was justified.

93. The next decision of this Court where a list prepared on the basis of caste, on the ground, that the entire caste was socially and educationally backward was approved as valid under Art. 15(4) is one AIR 1971 SC 2303. In this decision unitwise distribution of seats for the Medical Colleges was struck down by this Court as violative of Arts. 14 and 15, nevertheless the list of Backward Classes, which was challenged, as having been framed on the basis exclusively of caste, was held to be valid. This Court after referring to the decisions in 1963 Suppl. (1) SCR 439—(AIR 1963 SC 649) and (1964) 6 SCR 368—(AIR 1964 SC 1823) held that caste is a relevant factor in ascertaining a class for the purpose of Art. 15(4). The decision in (1968) 2 SCR 786—(AIR 1968 SC 1012) was also quoted with approval and the said decision was relied on as an authority for the proposition that the classification of Backward Classes on the basis of caste is within the purview of Art. 15(4), if those castes are shown to be socially and educationally backward. After a perusal of the list of Backward Classes, which was under challenge, this Court held that though the list has been framed on the basis of caste, it does not suffer from any informity because the entire caste was substantially socially and educationally backward. On this basis the list of Backward Classes was held to be valid. It may be mentioned that the list which was under challenge was more or less substantially the same as this Court held to be valid in (1968) 2 SCR 786—(AIR 1968 SC 1012).

94. At this stage it may be recalled that the State of Andhra Pradesh originally formed part of the Composite State of Madras. We sent for the paper book in Writ petition No. 285 of 1970, the decision of which is reported in (1968) 2 SCR 786—(AIR 1968 SC 1012). On a comparison of the list, which was under challenge in the said decision, but accepted as correct by this Court, with the list which is under attack before us, we find that most of the groups whose inclusion in the list by the State of Madras was held to be valid are also found in the list prepared by the Backward Classes Commission appointed by the Andhra Pradesh State.

95. To conclude, though *prima facie* the list of Backward Classes which is under attack before us may

be considered to be on the basis of caste, a closer examination will clearly show that it is only a description of the group following the particular occupation or professions, exhaustively referred to by the Commission. Even on the assumption that the list is based exclusively on caste, it is clear from the materials before the Commission and the reasons given by it in its report that the entire caste is socially and educationally backward and therefore their inclusion in the list of Backward classes is warranted by Art. 15(4). The groups mentioned therein have been included in the list of Backward classes as they satisfy the various tests which have been laid down by this Court for ascertaining the social and educational backwardness of a class.

96. The Commission has given very good reasons as to why it had to take into account the population figures based upon the 1921 and 1931 censuses. It was also justified in taking the average student population of classes X and XI, especially as the said procedure has been accepted by the Committee appointed by the Jammu and Kashmir Government, presided by Dr. P. B. Gajendragadkar, former Chief Justice of India. That Committee took into account IX and X standards average. The decided cases have laid down the principles for ascertaining the social and educational backwardness of a class. The Backward Classes Commission in this case has taken considerable pains in collecting data regarding the various aspects before including a particular group as Backward Class in the list.

97. There is a criticism levelled that the Commission has used its personal knowledge for the purpose of characterising a particular group as backward. That, in the circumstances of the case, is inevitable and there is nothing improper or illegal. The very object of the Commission in touring the various areas and visiting the huts and habitations of people is to find out their actual living conditions. After all that information has been gathered by the Commission not secretly but openly. In fact the actual living conditions or habitation can be very satisfactorily judged and found out only on a personal visit to thereas which will give a more accurate picture of their living conditions and their sorroundings. If the personal impressions gathered by the members of the Commission have also been utilised to augment the various other materials gathered as a result of detailed investigation, it cannot be said that the report of the Commission suffers from any vice merely on the ground that they imported personal knowledge. In our opinion, the High Court has not been fair to the Commission when it says that whenever the Commission found the figures obtained in respect of certain groups as relating to their educational standard being higher that the State average, it adopted an ingenious method of getting over that obstacle by importing personal knowledge. In fact, the Commission has categorically stated that the information received from the various schools showed that the percentage of education was slightly higher than the State average in respect of certain small groups, but in view of the fact that their living conditions were deplorably poor, the slight higher percentage of literacy should not operate to their disadvantage.

98. Regarding the criticism that the Commission has divided classes into, more backward and less backward, in our opinion, this is not also well founded one. On the other hand, what the Commission has recommended was the distribution of seats amongst the reserved classes in proportion to their population. This is not a division of the Backward Classes as more Backward and less Backward as what the case which was dealt with by this Court in 1963 Supp. (1) SCR 439—(AIR 1963 SC 649).

100. No doubt our attention was drawn to a decision of the Kerala High Court, which has held that the reservation is irrespective of some of the candidates belonging to the Backward Classes, getting admission on their own merit. The Andhra Pradesh High Court has taken a slightly different view. If a situation arises wherein the candidates belonging to the groups included in the list of Backward Classes, are able to obtain more seats on the basis of their own merit, we can only state that it is the duty of the Government to review the question of further reservation of seats for such groups. This has to be emphasised because the Government should not act on the basis that once a class is considered as a backward class it should continue to be backward for all time. If once a class appears to have reached a stage of progress, from which it could be safely inferred that no further protection is necessary, the State will do well to review such instances and suitably revise the list of Backward Classes. In fact it was noticed by this Court in AIR 1971 SC 2303 that candidates of Backward Classes had secured nearly 50% of seats in the general pool. On this ground this Court did not hold that the further reservation made for the Backward Classes is invalid. On the other hand it was held :

> "The fact that candidates of backward Classes have secured about 50% of the seats in the general pool does show that the time has come for a *de novo* comprehensive examination of the questions. It must be remembered that the Government's decision in this regard is open to judicial review."

For the reasons given above, we are of the opinion that the list of Backward Classes, as well as the reservation of 25 per cent of seats in Professional Colleges for the persons mentioned in the said list is valid and it saved by Art. 15(4) of the Constitution. We are not inclined to agree with the reasons given by the High Court that the said G.O. offends Art. 15(4) of the Constitution.

*Holding*

(i) Though *prima facie* the list of Backward Classes impugned in the case may be considered to be based on "*Caste*" a close perusal would show that it was only a description of the group following particular occu-

pations or professions referred to by the Commission. Even assuming that the list was based exclusively on caste, it was clear from the materials before the Commission that the entire caste was socially and educationally backward. The groups listed by the Commission answer the various tests evolved by the Courtt for ascertaining the social and educational backwardness of a class.

(ii) The total reservation of 43 per cent was HELD to not excessive. It was within the 50 per cent limit laid down by *Balaji*.

*R. Chitralekha v. State of Mysore*

A.I.R. 1964 S.C. 1823

*Facts*

The Government of Mysore in its order of July 26, 1963 had defined backward classes and directed that 30 per cent of the seats in professional and technical institutions would be reserved for them. It laid down that the classification should be on the basis of (a) economic condition and (b) occupation or profession. Accordingly a family whose income was Rs. 1,200 per annum or less and persons or classes who followed occupations of agriculture, petty business, inferior services, crafts or other occupations involving manual labour were defined to be socially and economically backward. The order did not take caste into consideration, so it was challenged on that ground.

In the Mysore High Court in *D. G. Vishvanath v. Government of Mysore* (A. I. R. 1964 Mys. 132) involving the validity of the same order Hegde J. held that as the order had altogether ignored "caste" and "residence" basis, it did not benefit the really backward classes among the Hindus. The Supreme Court had stated in *Balaji* that caste in relation to Hindus was a relevant factor in determining the social backwardness of groups or classes of citizens.

The matter came on appeal to the Supreme Court in the *Chitralekha* case.

*Issues*

(i) What is the relevance of "Caste" in determining social and educational backwardness ?

(ii) Is "caste" and "Class" synonymous ?

*Extracts*

*Subba Rao, J.* (for the majority)

15. Two principles stand out prominently from the said observations, namely, (i) the caste of a group of citizens may be a relevant circumstance in ascertaining their social backwardness; and (ii) though it is a relevant factor to determine the social backwardness of a class of citizens, it cannot be the sole or dominant test in that behalf. The observations extracted in the judgement of the High Court appear to be in conflict with the observations of this Court. While this Court said that caste is only a relevant circumstance and that it cannot be the dominant test in ascertaining the backwardness of a class of citizens, the High Court said that it was an important basis in determining the class of backward Hindus and that the Government should have adopted castes as one of the tests. As the said observations made by the High Court may lead to some confusion in the mind of the authority concerned who may be entrusted with the duty of prescribing the rules for ascertaining the backwardness of classes of citizens within the meaning of Art. 15(4) of the Constitution, we would hasten to make it clear that caste is only a relevant circumstance in ascertaining the backwardness of a class and there is nothing in the judgement of this court which precludes the authority concerned from determining the social backwardness of a group of citizens if it can do so without reference to caste—While this Court has not excluded caste from ascertaining the backwardness of a class of citizens, it has not made it one of the compelling circumstances affording a basis for the ascertainment of backwardness of a class. To put it differently, the authority concerned may take caste into consideration in ascertaining the backwardness of a group of persons but, if it does not, its order will not be bad on that account, if it can ascertain the backwardness of a group of persons on the basis of other relevant criteria.

16. The Constitution of India promises justice, social, economic and political and equality of status and of opportunity, among others. Under Art. 46, one of the Articles in Part IV headed "Directive Principles of State Policy", the state shall promote with special care the educational and economic interest of the weaker sections of the people, and in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation. Under Art. 341,

> "The President may with respect to any State or Union Territory and where it is a State after consultation with the Governor thereof by public notification specify the castes, races or tribes or parts of or groups within castes, races or tribes which shall for the purpose of this Constitution deemed to be Scheduled Castes in relation to that State or Union Territory, as the case may be".

19. These provisions recognize the factual existence of backward classes in our country brought about by historical reasons and make a sincere attempt to promote the welfare of the weaker sections thereof. They shall be so construed as to effectuate the said policy but not to give weightage to progressive sections of our society under the false colour of caste to which they happen to belong. The important factor to be noticed in Art. 15(4) is that it does not speak of castes, but only speaks of classes. If the makers of the Constitution intended to take castes also as units of social and educational backwardness, they would have said so as they have said in the case of the Scheduled Castes and the Scheduled Tribes. Though it

may be suggested that the wider expression "Classes" is used in cl. (4) of Art. 15 as there are communities without castes, if the intention was to equate classes with castes, nothing prevented the makers of the Constitution to use the expression "Backward Classes" or the juxtaposition of the expression "Backward class" and "Scheduled Castes" in Art. 15(4) also leads to a reasonable inference that the expression "Classes" is not synonymous with castes. It may be that for ascertaining whether a particular citizen or a group of citizens belong to a backward class or not, his or their caste may have some relevance, but it cannot be either the sole or the dominant criterion for ascertaining the class to which he or they belong.

20. This interpretation will carry out the intention of the Constitution expressed in the aforesaid Articles. It helps the really Backward Classes instead of promoting the interests of individuals or groups who, though belong to particular caste a majority whereof is socially and educationally backward, really belong to a class which is socially and educationally advanced. To illustrate, take a caste in a State which is numerically the largest therein. It may be that though a majority of the people in that caste are socially and educationally backward, an effective minority may be socially and educationally far more advanced than another small sub-caste the total number of which is far less than the said minority. If we interpret the expression "classes" as "Castes", the object of the Constitution will be frustrated and the people who do not deserve any adventitious aid may get it to the exclusion of those who really, deserve. This anomaly will not arise if, without equating caste with class, caste is taken as only one of the consideration to ascertain whether a person belongs to a backward class or not. On the other hand, if the entire sub-caste, by and large, is backward, it may be included in the Scheduled Castes by following the appropriate procedure laid down by the Constitution.

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

43. I do not think it necessary to pronounce any opinion upon that question in this case and would reserve it for a future occasion. I would also likewise reserve my opinion on the other points upon which he has expressed himself excepting one, that is, as to the relevance of the consideration of caste in determining the classes which are socially and educationally backward. I would only say this that it would not be in accordance either with cl. (1) of Art. 15 or cl.(2) of Art. 29 to require the consideration of the castes of persons to be borne in mind for determining what are socially and educationally Backward Classes. It is true that cl. (4) of Art. 15 contains a *non obstante* clause with the result that power conferred by that clause can be exercised despite the provisions of cl. (1) of Art. 15 ,and cl. (2) of Art. 29. But that does not justify the inference that castes have any relevance in determining what are socially and educationally backward communities. As my learned brother has rightly pointed out the Constitution has used in cl. (4) the expression "classes" and not "Castes".

*Holding*

(i) "Caste" is one of the relevant factors in determining social and educational backwardness ;

(ii) "Caste" and "Class" are not synonymous.

*R. Rajendran v. State of Madras*

A.I.R. 1968 S.C. 1012

*Facts*

Rules made by the Government of Madras regulating admission to First Year Integrated M.B.B.S. Course were challenged as violative of articles 14 and 15. Rule 15 had provided for reservation of seats for socially and educationally backward classes specified in Appendix, and the Appendix referred only to *castes*.

*Issues*

(i) Can "Caste" be considered as the sole test for determining socially and educationally backward classes ?

(ii) On whom does the onus lie to prove that castes mentioned in the list are not socially and educationally backward ?

*Extracts*

*Wanchoo C. J.*

The first challenge is to R. 5 on the ground that it violates Article 15 of the Constitution. Article 15 forbids discrimination against any citizen on the ground only of religion, race, caste, sex, place of birth or any of them. At the same time article 15(4) *inter alia* permits the State to make any special provision for the advancement of any socially and educationally backward classes of citizens. The contention is that the list of socially and educationally backward classes for whom reservation is made under R. 5 is nothing but a list of certain castes. Therefore, reservation in favour of certain castes based only on caste considerations violates Article 15(1), which prohibits discrimination on the ground of caste only. Now if the reservation in question had been based only on caste and had not taken into account the social and educational backwardness of the caste in question, it would be violative of Article 15(1). But it must not be forgotten *that a caste is also a class of citizens and if the caste as a whole is socially and educationally backward reservation can be made in favour of such a caste on the ground that* it is socially and educationally backward class of citizens within the meaning of Article 15(4). Reference in this connection may be made to the observations of this Court in M. R. Balaji v. State of Mysore, 1968 S. C. 649 Supp I.S.C.R. 439 at pp. 459-460 (A.I.R., 1963 S.C. 649 at p. 659) to the effect that it was not irrelevant to consider the caste of a class of citizens in determining their social and educational backwardness. It was further observed that though the caste of a class of citizens may be relevant its importance should not be exagerated; and if classification of backward class of citizens was based solely on the caste of the citizens, it might be open to objection. It is true that in the present cases the list of socially and educationally backward classes has been specified by caste. But that does not necessarily mean that caste was the sole consideration and that persons belonging to these castes are also not a class of socially and educationally backward citizens. In its reply, the State of Madras has given the history as to how this list of backward classes was made, starting from the year 1906 and how the list has been kept up-to-date and necessary amendments made therein. It has also been stated that the main criterion for inclusion in the list was the social and educational backwardness of the caste based on occupations pursued by these castes. Because 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). As it was found that the members of these castes as a whole were educationally and socially backward, the list which had been coming on from as far back as 1906 was finally adopted for purposes of Article 15(4). In short the case of the State of Madras is that the castes included in the list are only a compendious indication of the class of people in those castes and these classes of people had been put in the list for the purpose of Article 15(4) because they had been found to be socially and educationally backward.

8. This is the position as explained in the affidavit filed on behalf of the State of Madras. On the other hand the only thing stated in the petitions is that as the list is based on caste alone it is violative of Article 15(1). In view however of the explanation given by the State of Madras which has not been controverted by and rejoinder, it must be accepted that though the list shows certain castes, the members of those castes are really classes of educationally and socially backward citizens. No attempt was made on behalf of the petitioners/appellant to show that any caste mentioned in this list was not educationally and socially backward. No such averment was made in the affidavit in support of their cases, nor was any attempt made to traverse the case put forward on behalf of the State of Madras by filing a rejoinder affidavit to show that even one of the castes included in the list was not educationally and socially backward. In this state of the pleadings, we must come to the conclusion that though the list is prepared caste-wise, the castes included therein are as a whole educationally and socially backward and therefore the list is not violative of Article 15. The challenge to R. 5 must therefore fail.

*Holding*

(i) 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 socially and educationally backward class of citizens within the meaning of Article 15(4).

(ii) The Court held that it was on the petitioners who challenged the validity of Rule 5 to show that the castes mentioned in the list were not socially and educationally backward.

## A. Periakaruppan v. State of Tamil Nadu

A.I.R. 1971 S.C. 2303

*Facts*

In the State of Tamil Nadu, there were eight Medical Colleges out of which three are located in Madras, one in Madurai, one in Chingelput, one in Coimbatore, one in Thanjavur and one in Tirunelveli. The total seats available in Madras College were 500. The seats available in Madurai, Chingelput, Coimbatore, Thanjavur and Tirunelveli were 200, 50, 100, 200 and 75 respectively. In the instant case selections were made unitwise. 6 units were created in the State. Medical colleges in the city of Madras were constituted as one unit and each of the other medical colleges was constituted as a unit Selection for these units were made by different selection committees. A few seats out of the 1125 seats were reserved for certain social categories of students. As there was no dispute about them, that reservation was not agitated. However, out of the remaining seats 41% were reserved for students coming from socially and educationally backward classes, Scheduled Castes and Scheduled Tribes. The rest of them were placed in the general pool.

*Issues*

(i) Whether unitwise selection to Medical Colleges was violation of Article 14 and 15 ?

(ii) Whether the determination of backward classes on the sole basis of caste was constitutionally permissible ?

(iii) Whether 41% reservation of backward classes, Scheduled Castes and Scheduled Tribes was excessive ?

*Relevant Extracts from the Judgement of Justice Hegde*

11. "We shall first take up the plea regarding the division of medical seats on unitwise basis. It is admitted that the minimum marks required for being selected in some unit is less than in the other units. Hence *prima facie* the scheme in question results in discrimination against some of the applicants. In Rajendran's case (1968) 2 SCR 786=(AIR SC 1012) (*supra*) this court rules that the districtwise distribution of available seats is violative of Article 15 of the Constitution. But it was contended on behalf of the State that the unitwise distribution of seats was adopted for administrative convenience. It was said that it was not possible for one selection committee to interview all the applicants. Therefore several committees had to be constituted. In the past when applicants were interviewed by several committees there were complaints that the standard adopted by one committee differed from that adopted by others and therefore the applicants ability was not tested by a uniform standard. Further it was said that when selections were made by several committees there was delay in preparing a consolidated list. We are unable to accept these grounds as being real grounds for classification. The grievance when selections were made by several Committees in a statewise selections the standard adopted by various committees differed, would continue even when selections are made by several committees in a unitwise selection. Whether the selection is made by selection committees on statewise basis or unitwise basis, the standard adopted by various committees is bound to vary. Hence in principle it makes no difference.

12. Now coming to the question of delay, we see no reason why there should be any delay in preparing a consolidated list. At any rate the delay caused is not likely to be such as to justify departure from the principle of selection on the basis of merit on a statewise basis. Before a classification can be justified, it must be based on objective criteria and further it must have reasonable nexus with the object intended to be achieved. The object intended to be achieved in the present case is to select the best candidates for being admitted to Medical Colleges. That object cannot be satisfactorily achieved by the method adopted. The complaint of the petitioners is that unitwise distribution sought in 1967-68 has some force though on the material on record we will not be justified in saying that the unitwise distribution was done for collateral purposes. Suffice it to say that the unitwise distribution of seats is violative of Arts. 14 and 15 of the Constitution. The fact that an applicant is free to apply to any one unit does not take the scheme outside the mischief of Arts, 14 and 15. It may be remembered that the students were advised as far as possible to apply to the unit nearest to their place of residence.

22. There is no basis for the contention that the reservation made for backward classes is excessive. We were not told why it is excessive. Undoubtedly we should not forget that it is against the immediate interest of the Nation to exclude from the portals of our Medical Colleges qualified and competent students but then the immediate advantages of the National have to be harmonised with its long range interests. It cannot be denied that unaided many sections of the people in this country cannot compete with the advanced sections of the Nation. Advantages secured due to historical reasons should not be considered as fundamental rights. Nation's interest will be best served—taking a long range view—if the backward classes are helped to march forward and take their place in the line with the advanced sections of the

people. That is why in Balaji's case (1963) Supp. 1 SCR 439=(AIR 1963 SC 649) (*supra*) this Court held that the total of reservations for backward classes, Scheduled Castes and Scheduled Tribes should not ordinarily exceed 50% of the available seats. In the present case it is 41%. On the material before us we are unable to hold that the said reservation is excessive.

24. In Chitralekha's case (1964) 6 SCR 368= (AIR 1964 SC 1823) (*supra*), this Court reiterated that the caste is a relevant circumstance in ascertaining the backwardness of a class. Further it was observed therein :

> "While this Court has not excluded caste from ascertaining the backwardness of a class of citizens, it has not made it one of the compelling circumstances affording a basis for the ascertainment of backwardness of class. To put it differently the authority concerned may take caste into consideration in ascertaining the backwardness of a group of persons ; but, if it does not, its order will not be bad on that account, if it can ascertain the backwardness of a group of persons on the basis of other relevant criteria."

26. Caste has always been recognised as a class. In construing the expression "classes of His Majesty's subject" found in S-153-A of the Indian Penal Code, Wassoodew J. observed in Narayan Vasudev v. Emperor. AIR 1940 Bom. 379.

> "In my opinion, the expression "Classes of His Majesty's subjects" in Section 153-A of the Code is used in restrictive sense as denoting a collection of individuals or groups bearing a common and exclusive designation and also possessing common and exclusive characteristics which may be associated with their origin, race or religion, and that the term "class" within that section carries with it the idea of numerical strength so large as could be grouped in a single homogeneous community."

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

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

31. Rajendran's case, (1968) 2 SCR 786=(AIR 1968 SC 1012) (*supra*) is an authority for the proposition that the classification of backward classes on the basis of castes is within the purview of Art. 15(4) if those castes are shown to be socially and educationally backward. No further material has been placed before us to show that the reservation for backward classes with which we are herein concerned is not in accordance with Article 15(4). There is no gainsaying the fact that there are numerous castes in this country which are socially and educationally backward. To ignore their existence is to ignore the facts of life. Hence we are unable to uphold the contention that the impugned reservation is not in accordance with Art. 15(4). But all the same the Government should not proceed on the basis that once a class is considered as a backward class it should continue to be backward class for all times. Such an approach would defeat the very purpose of the reservation because once a class reaches a stage of progress which some modern writers call as take off stage then competition is necessary for their future progress. The Government should always keep under review the question of reservation of seats and only the classes which are really socially and educationally backward should be allowed to have the benefit of reservation. Reservation of seats should not be allowed to become a vested interest. The fact that candidates of backward classes have secured about 50% of the seats in the general pool does show that the time has come for a *de novo* comprehensive examination of the question. It must be remembered that the Government's decision in this regard is open to judicial review.

*Holding*

1. Unitwise selection was held to be violation of articles 14 and 15. Despite this conclusion the selections already made were not set aside because the selected candidates were not made parties to the petition. The 24 seats unfilled were ordered to be filled up according to the order of the Court.
2. 41% reservation was held not excessive.
3. The classification of backward classes on the basis of castes was held to be within the purview of article 15(4). The Court relied on its earlier decision in Rajendran's case.

*Dahyabhai Chaturbhai* v. *State*

11 Guj L.R. 386 (1970)

*Facts*

Challenge to a Government circular which regulated the disposal of riverbed lands to certain groups of people to the exclusion of others after cancellation of the existing order regarding the disposal of such lands by public auction. The priority for disposal of such lands were :

(i) *Bonafide* agriculturists of the village holding not less than 5 acres, preference will be given to Harijans, Adivasis and Backward Classes people.

(ii) Holders of land adjoining *Bet Bhatha* lands holding land less than 16 acres and who in the collector's opinion have a genuine need of additional lands for maintenance of their families *Inter se* preference in this case also will be as per (i) above.

(iii) Cooperative farming societies of *Harijans*, Adivasis and Backward Class persons.

(iv) Cooperative farming society consisting of landless labourers or small holders.

(v) Any of the priority holder under the Water Land Rules.

*Issues*

Was the quantum of reservation in favour of backward classes excessive ?

*Extracts*

*Metha J.*

Therefore, the effect of these clauses is not to make a special provision for small land holders or landless people who need the land for their maintenance and who could not bid at the public auction as against rich people. The whole classification is based on two essential principles :—that the individual gets excluded both by co-operative society and by an individual member of Harijans, Adivasis and Backward class people. *There is no list produced by the State, even though the State has been given proper opportunity to file an additional affidavits of persons who are regarded as backward class people and for whose benefit this reservation is sought to be made.* There is, therefore, no material whatever to indicate the category of "backward class people" as understood in this relevant Government Resolution. The fact remains that even the landless individual or small holder holding less than five acres would be thrown out of his existing tenancy as his lease would not be renewed, if he does not happen to be a priority holder as mentioned in Clause 5, while the cooperative society of any kind would have lease renewed if the condition No. 1 is fulfilled by members individually holding less than 16 acres excluding *Bet. Bhatha* lands and the total holding including the land to be granted is not exceeding the number of member multiplied by 16 acres. Besides, *the reservation is so excessive as in cases of Harijans, Adivasis and Backward class people* that they would completely exclude bona fide agriculturists having no land or having lands less than 5 acres who would have fallen otherwise under the first category of priority holders. Similarly, in the second category when the ground for consideration is the holding of land adjoining Bet, Bhatha land, even if the need for additional land for maintenance of family is found to be genuine, the individual shall be excluded and the Harijans, Adivasis etc. would be preferred. Even if these two preferential categories of priority holders are not there to exclude an individual or even the co-operative farming society of landless holders would exclude him and in those cases there are no limits specified of holdings of those cooperative members. Even the exclusion would happen not only by the co-operative members, or individuals of priority class in the village but also by the same principle operating even in the neighbouring villages within the radius of five miles. It is in the light of this exclusion scheme, which would leave no discretion to the competent authority and would absolutely bar any renewal in favour of persons other than the cooperative society or priority holders mentioned in this section, that we will have to consider the rival contention of the parties. At this stage it would be relevant to note that the method of fixation of rent under clause (6) is that of the average of the past three years' auction realization or if there was no such auction, of rent actually realised for similar adjacent lands. Even in the absence of that, such rent is to be determined by the Collector on the basis of one sixth of the gross produce converted in terms of cash, subject to revision as mentioned in Clause (7). This rent remains constant unless revised under Clause (8) for the renewal period of the lease of 10 years. Therefore, in all these cases of Bet and Bhatha lands the effect of the circular would be that there would not be a single instance of public auction from year to year which would augment the revenue but for a period of 10 years the lands would be given on the basis of these prices mentioned in clause (6).

As regards the second question raised by the petitioner the inequality is writ large on the face of this statutory order. Even though an opportunity was given to the State to file proper affidavit, no list has been given of the backward classes to show that the

criterion adopted by the State was the criterion laid down by their Lordships of the Supreme Court in this connection. Besides, the reservations, as we have already pointed out, are so excessive that almost all the 100 per cent lands would to these Harijans, Adivasis and backward persons and the reservation would cease to be a reservation at all within the meaning of the exception provided in Art. 15(4) of the Constitution. After the decision of the Supreme Court in State of A.P. v. P. Sagar, A.I.R. 1968 S.C. 1370, the law in this connection is now well settled. At page 1562 it has been observed that the Parliament has by enacting Clause (4) attempted to balance as against the right of equality of citizens the special necessities of the weaker sections of the people by allowing a provision to be made for their advancement. In order that effect may be given to clause (4), it must appear that the beneficiaries of the special provision are classes which are backward socially and educationally and they are other than the Scheduled Castes and Schedule Tribes and that the provision made is for their advancement. Reservation may be adopted to advance the interest of weaker sections of society, but in doing so, care must be taken to see that deserving and qualified candidates are not excluded from admission to higher educational institutions. The criterion for determining the backwardness must not be based solely on religion, race, caste, sex or place of birth, and the backwardness being social and educational must be similar to the backwardness from which the Schedule Castes and the Scheduled Tribes suffer. These are the principles which have been enunciated in the decisions of the Supreme Court in M. R. Balaji's case, A.I.R. 1963 S.C. 649 and R. Chitralekha v. State of Mysore, A.I.R. 1964 S.C. 1823. In Balaji's case, it was in terms pointed out that a reservation which makes it possible for these backward classes to get seats even more than 50% would amount to excessive reservation, *as the concept of reservation would imply reservation of less* than 50%. Therefore, on this short ground, this statutory order amounts to a class legislation and must be struck down. As pointed out by their Lordships in the said decision at page 1384 when a dispute is raised before the Court that a particular law which is inconsistent with the guarantee against discrimination is valid on the plea that it is permitted under Clause (4) of Article 15, the assertion by the State that the Officers of the State had taken into consideration the criteria, which had been adopted by the Courts for determining who were the socially and educationally the backward classes of citizens, would not be sufficient to sustain the validity of the claim. The Courts, of the country are invested with the power to determine the validity of the law which infringes the fundamental rights of citizens and others. When a question arises whether a law which *prima facie* infringes a guaranteed fundamental right is within an exception, the validity of that law was made after full consideration of criteria which have a bearing thereon, and was within the exception, the jurisdiction of the Courts to determine whether by making the law a fundamental right has been infringed is not excluded. The validity of a law which apparently infringes the fundamental rights of citizens cannot be upheld merely because the law maker was satisfied that what he did was right or that he believes that he acted in a manner consistent with the constitutional guarantees of citizens. The test of the validity of a law alleged to infringe the fundamental rights of citizen or any act done in execution of that law lies not in the belief of the maker of the law or of the person executing the law, but in the demonstration by evidence and argument before the Courts that the guaranteed right is not infringed. Therefore, merely by stating that the state was giving effect to the directive principles of the Constitution and was making reservation for weaker as contempleted by the Constitution is not a plea at all which would justify such a class legislation, when no attempt whatever has been made to show by any demonstrable evidence and argument that this was a reservation which would fall under Article 15(4). Besides, the fact that the classification is reasonable would not be able to support it, unless there is a nexus between the classification and the object sought to be achieved. As we have already pointed out, the object sought to be achieved is completely a collateral object and the criteria which are adopted for the alleged classification *viz.* the membership of the co-operative society and the person being Harijan, Adivasis or backward class people have no rational nexus whatever to the object of augmenting land revenue which would be the implicit object underlying the entire Code, including the statutory power of disposal of the said lands for the benefit of the public. The Code never contemplated any exclusion of persons when such statutory power was sought to be exercised by the State by any statutory order.

Therefore, this statutory order clearly violates Article 14 of the Constitution and even on that ground it must be struck down.

In the result, this petition must be allowed. The impugned Government resolution, dated December 28, 1960, is, therefore, held to be *ultra vires* and is struck down. The respondents and the State revenue authorities are directed not to take into account this circular while considering the question of renewal of leases or disposals of the Bet and Bhatha lands in question and also not to dispossess the petitioner except in due course of law without first determining the question of renewal or disposal of these lands in accordance with law. Rule accordingly made absolute in each case. The State shall pay costs of the petitioner in each case.

*Holding*

Reservation was found to be excessive in favour of backward Classes and was held to be unconstitutional.

*Gurinder Pal Singh* v. *State of Punjab*

A.I.R. 1974 Punj. 125

*Facts*

A challenge to the government orders making reservations in favour of Scheduled Castes, Scheduled Tribes, backward classes and residents of backward areas and other classified categories for admission to medical colleges against 50% seats. The quantum of reservations was :

| | | |
|---|---|---|
| (i) | Scheduled Castes/Tribes | 20% |
| (ii) | Backward Classes | 2% |
| (iii) | Backward areas | 10% |
| (iv) | Sportsmen/women | 2% |
| (v) | Central Government nominees including from J&K | 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 | |
| | (b) Children of defence personnel disabled | |
| | (c) Children of the personnel of the Border Security Force killed/disabled | 2% |
| | (d) Children of the ex-Servicemen of Indian Armed forces | |

*Issues* :

(i) Is economic condition of a family relevant for making reservations in favour of backward classes for admission to medical college ?

(ii) Is reservation for residents of backward areas constitutional ?

*Extracts* :

*M. R. Sharma, J.*

Challenge to Item No. (ii) may now be considered. Regarding backward classes, it is submitted that reservation cannot be made for any particular caste or community because backwardness depends more or less upon the economic condition of a family. In this respect, the learned counsel for the State has drawn my attention to a circular letter No. 2662-5WGII-63/6934, dated 20th April, 1963, issued by the State Government which provides that a family whose annual income is less than Rs. 1,000 should be regarded as a backward family, and some communities which are socialliy looked down upon by the people of the State and whose annual income does not exceed Rs. 1,800 and who are so declared by the State Government are also to be regarded as backward communities. It would, thus, appear that this circular amply highlights the aspect of the backwardness of a famliy before such a family can be declared to belong to a backward class. Such a classification is admissible under the Constitution and cannot be struck down. The constitutional validity of the reservation made at Item Nos. (iv), (v) and (ix) has not been challenged. The next item regarding which a finding has to be given is the "backward areas". The learned counsel for the respondent has placed before me a brochure relating to the admissions to the 1st Year Class of the M.B.B.S. Course at the Government Medical Colleges at Patiala and Amritsar. Regarding backward area candidates, the following conditions have been laid down :—

"Backward Area Candidates :

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 falls under one of the following categories as given in Punjab Government letter No. 15595-WG 56/4174, dated the 7th September, 1956, from the Chief Secretary to the Government of Punjab :—

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

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

(c) In the case of a person who has been residing in a village or town in the said area, the total period of his stay at both places will

be counted towards his residence in that area." A reading of this provision shows that a person residing in a particular village or a town for a particular period has been shown preference on the basis of residence only. A millionaire and a pauper living in such areas have been treated at par. If the object of making reservations in Medical Institutions is to show a preferential treatment to the economically backward people, then one fails to understand how a person living in the cities of the same State, can be accorded a preferential treatment with any justification. Article 15(4) of the Constitution provides that the State may make any special provision for the advancement of any socially and educationally backward classes of citizens. The classes of citizens mentioned in this Article do not relate to those citizens who reside within certain geographical limits regardless of their personal attainments or achievements. It is no doubt true that while making laws or while taking executive action, the State can make a reasonable classification on the basis of geographical limits but there must be an object for which such a classification is made and the classification itself must have a reasonable nexus with the object sought to be achieved. Residence in a particular area in a State qua the other citizens of the same state cannot form the basis for claiming additional privileges. If any law makes any such provisions, it shall have to be tested on the basis of Article 15 of the Constitution. I am further fortified in this opinion because in making a classification of the backward classes the State itself has made a rationale classification between ordinary communities and the communities which are socially looked down upon by the people of the State. In the case of the first category the limit of family income has been fixed at Rs. 1,000 per annum and in the case of the second category weightage has been given to offset the effect of social prejudices by fixing the annual income of the family at Rs. 1,800. In the very nature of things backward areas are those the residents of which are economically backward and who are denied the facility of higher education partly because of lack of educational institutions in these areas and partly because their residents do not possess the wherewithal to pursue higher education in institutions situated far away. In order to give relief to the really deserving residents of such areas, some yardstick for determining comparative prosperity of the residents has to be provided. The provisions quoted above do not give any such indication. I am of the considered view that reservation for backward areas mentioned at S. No. (iii) in Annexure ('A'), in the absence of any yardstick with which social and educational backwardness of the citizens of the area can be determined, is violative of Articles 14 and 15 of the Constitution. This reservation deserves to be struck down.

*Holding*

(i) Economic condition of a family was a relevant factor in determining backwardness.

(ii) Reservation for residents of backward areas was held to be unconstitutional.

*B. Sayeed Ahmed* v. *State of Mysore*

1969 (1) Mys. L. J. 79

*Facts*

The petitioner had applied for admission into Pre-Professional course leading to M.B.B.S. Degree on the basis that he belonged to the socially and educationally backward classes. He was denied admission though he had secured more marks than another backward class candidate with less marks.

*Issue*

Whether on the basis of his father's occupation (mechanic) he fell within the socially and educationally backward class ?

*Extracts*

*Narayana Pai, J.*

The answer to the complaint as set out in the counter affidavit of the Chairman of the Selection Committee is that on the material before them, the petitioner could not be classified as belonging to the socially and educationally backward class, and that, therefore he was considered in the general pool in which he could not secure admission, on the strength of his marks.

Although in the affidavit filed along with the application, the petitioner's father was described merely as an ex-employee of concern called "Vikram Industries", it is clear from the affidavit of the petitioner and of the Chairman of the Selection Committee filed in this petition before us that it was ascertained that the petitioner's father was a 'mechanic' but, that, on account of rheumatism, he has been out of work for some months prior to the date of the application and also at the time of the application.

The mere fact that at the time of the application, on account of ill health, the petitioner's father was not actually working, is not sufficient to hold that his occupation was not that of a "mechanic". As pointed out by this Court in Viswanath v. The Chief Secretary to the Government of Mysore (1), the true test is the permanent occupation of the parent or the guardian of the applicant, and any temporary, inability to carry on the permanent occupation is not a disqualification. There is no doubt therefore, that the occupation of the petitioner's parent was that of a 'mechanic'.

There is also no dispute that the annual income of the parent was less than Rs. 1200 his only income at the time of the application was Rs. 624 being rent fetched by his ancestral house.

The only remaining question therefore, is whether the occupation of a 'mechanic' is not one of the occupations set out in the relevant Government Order defining socially and educationally Backward Classes. Occupations therein set out are :

(i) actual cultivator ;

(ii) artisan ;

(iii) petty businessman ;

(iv) inferior service, *i.e.* Class IV Government Servants and corresponding class of appropriate employment including casual labour ; and

(v) any other occupation involving manual labour.

On the view that 'mechanic' DOES NOT come within the scope of any one of the first four enumerated occupations, the argument on behalf of the respondent was that the further question did remain as to whether the occupation of 'mechanic' was dominantly one involving manual labour or whether it does not involve greater proportion of intellectual labour. It appears to us that it is unnecessary to make an investigation on those lines. A 'mechanic', according to the Oxford Dictionary is one who clearly answers the description of the word 'artisan' in the said Dictionary includes the word 'artisan'. The meaning assigned to the word 'artisan' in the said Dictionary includes (1) 'one occupied in any industrial art' ; (2) 'mechanic or handicraftsman' ; (3) 'artificer'.

*Holding*

"Mechanic" fell within the description of the word 'artisan' under the Mysore Government Order of July 1963 and hence the petitioner was entitled to be considered for admission on the basis that he belonged to backward classes. Mandamus was issued directing the Selection Committee to consider the application of the petitioner.

*Abdul Latiff* v. *State*

A.I.R. 1964 Pat. 393

*Facts*

The Bihar Government had issued the following guidelines for the settlement of excise (ganja) shops in favour of Scheduled Caste and Scheduled Tribe applications by an Order of 20th August, 1958.

(i) Intimation to be given to the Department of Social Welfare who would give due publicity among the Scheduled Castes and Scheduled Tribes ;

(ii) When there are several candidates for an excise shop out of whom one is a S.C. or S.T. candidate who is suitable, the settlement should not be made by lot but by offering to that applicant ;

(iii) If there are more than one suitable S.C. or S.T. candidate, settlement is to be done by lot among such suitable candidates and the winner would get the shop ;

(iv) S.C. and S.T. candidates should not be rejected except after careful consideration of the matter.

The application of the petitioner who was one among the 39 applicants was rejected and he challenged the order.

*Issues*

Was the reservation exclusively in favour of S.C. and S.T. candidates excessive ? Was it valid under article 15(4) ?

*Extracts*

*V. Ramaswamy, C. J. and N. L. Untwalia, J.*

As a matter of construction, it is manifest that Art. 15(4) of the Constitution is not an independent or substantive enactment but it is an exception or a qualification to the main guarantee under Art. 15(1) of the Constitution. It is, therefore, not permissible to interpret Art. 15(4) of the Constitution in such a way as to destroy or nullify the meaning of guarantee under Art. 15(1) of the Constitution. It is because the interest of the society as a whole is served by promoting the advancement of the weaker elements of that society that Article 15(4) of the Constitution authorises special provision to be made. But if a provision which is in the nature of an exception completely excludes the rest of the society, that clearly is outside the scope of Art. 15(4).

*Holding*

The reservation exclusively in favour of S.C. and S.T. applicants was held to be unconstitutional.

*Haridaya Narain* v. *Mohd. Sharif*

A.I.R. 1968 Pat. 296

*Facts*

The main constitutional questions related to the validity of section 49M of the Bihar Tenancy Act and notification No. A/T-1015/55-1091-R. dated the 7th February, 1956, of the Government of Bihar, describing Jajams (item No. 13) as a backward community.

*Issues*

Whether Rajams belonged to backward classes ?

*Extracts*

*Narasimham, C. J.*

Mr. Mahendra Prasad Pandey has not been able to produce before us any material for holding that Jajams (Hindu and Muslims) are not socially and educationally backward. On the other hand, in Mr. P. C. Roy Choudry's Gazetteer of Darbhanga District at page 86, it was pointed out :

"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".

Their educational backwardness is thus beyond question. Socially also, there is no data to show that they are not backward. Hence there is no ground for striking down the notification for the sole reason that the classes have been described by their caste name.

*Holding*

Hajams were held to be socially and educationally backward. The court relied on the Gazetteer of Darbhanga District.

*Laila Chacko* v. *State*

A.I.R. 1967 Kerala 124

*Facts*

The petitioner belonged to the Nair Community and he had secured 1st Class in the B.Sc. degree with 639 marks in the subjects. He was denied admission to Medical College.

*Issue*

What is the criterion for identifying socially and educationally backward classes ?

*Extracts*

*Mabbew, J.*

Counsel for the petitioner in that case submitted that the petitioner was entitled to get admission to the course for the reason that persons who have been admitted to the reserved seats have got lesser marks. It was argued that the income of the petitioner's father is far below Rupees 6,000 and still the petitioner has not been admitted to the course, whereas members of the Exhava Community, the income of whose families is below Rs. 6,000 have been considered as belonging to backward class and were admitted to the course and that it is discriminatory to have done so. In other words, the argument was that if income is the criterion for deciding the backwardness of a class, then the petitioner also belongs to backward class and should have been admitted to the course in preference to them as he had secured greater marks than any one of them. Counsel submitted that as the classification has been made mainly on the basis of income, that classification ought to have been applied to the members of all the communities in the country and as the classification based on income has been applied to certain communities only it is bad. I am not inclined to accept this submission. It was after adverting to the relevant pronouncements of the Supreme Court on the subject that the Commissioner for Reservation of Seats in Educational Institutions, Kerala, decided to accept the means-cum-caste/Community test for determining the backwardness of a class. The Commission observes at page 35 of its reports.

> "We, therefore, consider that a means-cum-caste/Community test has to be adopted for the classifications so as to take is only the poor and deserving sections and exclude the wealthier sections".
>
> "Members of the families in the State which have an "aggregate income" of Rupees 4,200 and above per annum from all sources put together, cannot be considered to belong to any socially backward class whatever may be the caste or community to which they belong."

This has been enhanced by Government to Rs. 6.000 in G.O. (P) 208/66/Edn dated 2-5-1966. As I have already said, the determination whether a class is backward is a complex question. Several factors will have to be taken into consideration. It was not on the basis of income along that the question was determined. Therefore, merely because the income of the petitioner's father is less than Rs. 6.000 that would not entitle the petitioner to claim that he belongs to backward class on the basis of the test of income. I, therefore, overrule this contention.

*Holding*

Annual income of families alone cannot determine social and educational backwardness.

*Ratnakara Shetty* v. *State of Mysore*

1969(1) Mys. L.J. 149

*Facts*

The case involved the interpretation of the Mysore Government's order of July, 1963 defining socially and educationally backward classes. The petitioner, an applicant for admission to Medical College claimed that he belonged to backward class within the meaning of Mysore Government's order. He had declared that his father's annual income was only Rs. 650. The Order had adopted economic condition and occupation as the criteria for determining backwardness. An income limit of Rs. 1,200 per family along with certain occupation was fixed as the yardstick for determining backwardness.

*Issues*

(1) What does the expression "family" mean ?

*Extracts*

*Narayana Pai, J.*

Although, as observed by this Court, the order purports to refer or deal with a family as a unit for the purpose of determining the status of the family and of the members of the family, the difficulty created by these is that it does not define what it means by a family. Although the expression 'undivided family' has been used and is normally used by people, the exact legal import of that expression in its application to various categories of Hindus, is not always borne in mind. That the order cannot apply or be applied only to families which answer the description of the legal expression 'Hindu undivided family' is clear from the fact that in Mysore State, to which the order applies, there are families of persons who are not Hindus, but profess other faiths like Islam, Christianity etc. and at least two types of Hindu undivided families, Mithakshara families and Aliyasanthana families with one great difference between the two, *viz.*, whereas in the former, father and son belong to the same family, in the latter father and son belong to two different families. The normal rule of interpretation should, therefore, be applied *viz.*, that the word 'family' used in the Government Order is an expression which is intended to apply to all person irrespective of the rules of family law applicable to them. If so, the most obvious inference is that the reference is to the normal or natural consisting of a husband, wife and their children living together, along with such other relatives as may be living with them.

Hence, the suggestion both in the course of the arguments, as well as in the form of affidavit annexed to the form of application, that the applicant and his parents or guardian should pursue one or other of the enumerated occupations appears to us to be correct.

The next and the more difficult question is to whom and in what manner the test of income should be applied. If it were possible in the circumstances to hold that the family referred to in the Government Order is an undivided family known either to Mithakshara Law or Aliyasanthana law or any other system of family law holding property in common, then, perheps, it would have been easy to say that income of the entire undivided family should be taken into account. When, for reasons already stated, such meaning cannot be assigned to the expression 'family' used in the Order, the income for purposes of the Order cannot be income of the entire undivided family of either the applicant or the applicant's father or both.

It appears to us that there is some guidance for the resolution of this difficulty in the third paragraph of the Order itself. While setting out the reason for the fixation of Rs. 1,200 as the upper limit of annual income for purposes of the Order, it is stated that :

> "The per capita income of the States for the year 1961 was Rs. 226 per annum. Taking an average family to consist of 5 members, the average income of the family comes to Rs. 1,030 per year."

The clearest suggestion in this is that a family contemplated is a natural or normal family whose total income is five times the per capita income as determined by statistics. This statement proceeds upon the footing either that the income of a single individual in the family is so high as to give the family the benefit of five times the per capita income, or that the income of one, two or more members of the family actually earning or contributing to its income is not less than five times the per capita income. Whichever way one looks at it, the ultimate idea suggested is that the family of the applicant meaning thereby the applicant, his parents, his brothers and sisters and other relatives living together, have the benefit of an income of Rs. 1,200 per year irrespective of the fact which among them and how many among them earn that income or own properties which yield that income provided that all such income is available to the family and the benefit of it therefore is also available to the applicant.

We hold, therefore, that an applicant may be regarded as belonged to socially and educationally backward class if :

(i) he and/or his parents or either of them or his guardian in the event of his being an orphan, pursue or pursues any one of the occupations enumerated in the Government order ; and

(ii) the total earnings of the income from property, if any, belonging to the parents (or in the event of the death of both of them, the guardian) of the applicant, together with the earnings and the income from properties, if any, belonging to the applicant, his brothers or sisters or other relatives living with them available to the family does not exceed Rs. 1,200.

If any one of the brothers or sisters does not contribute to the income of the family or does not contribute his or her income for the upkeep of the family, then his or her income is not available for computation. Likewise, if the income from the properties of any one of the brothers or sisters or relatives is not available to the family of the applicant, then that income is also not available for the computation.

*Holding*

Same as given in the judgment.

*Sudha* v. *S. C. of Medical College*

A.I.R. 1967 Mys. 221

*Facts*

The petitioner was an applicant for admission to one of the Government Medical Colleges in the State. She had passed the Pre-University Course Examination of the Bangalore University. She secured 197 marks in the optional subjects and 35 marks in the interview, that is aggregate marks of 232. She claimed to belong to socially and educationally Backward Class. The last selected candidate in the General Pool of the Bangalore University secured 240 marks while the last selected candidate in the reserved seats for socially and educationally Backward Classes secured 222 marks in the aggregate. It was undisputed that if her claim to belong to such Backward Class is upheld she is entitled to be selected for admission to one of the Medical Colleges and if her claim is not so accepted she would not be entitled to be selected.

*Issues* :

Whether the petitioner belonged to socially and educationally backward class on the basis that her father's occupation of "Purohit" was one which involved manual labour within the scope of Mysore Government's order of July, 1973 ?

*Extracts* :

*Chandrashekhar, J.*

In the affidavit sworn to by the Petitioner's father it is alleged that his occupation as 'Purohit' falls within the category of any other occupation involving manual labour and that he is a petty Purohit having to do Paricharika' which an assistant has to do.

In deciding whether an occupation involves manual labour or intellectual labour,' we have to look to the predominant character of that occupation. Every occupation involving intellectual labour may also involve some manual labour. Even a Surgeon has to work with his hands in performing a surgical operation that does not make a Surgeon a manual labour as his hands performing a surgical operation that does not make a Surgeon a manual labour as his profession requires sustained study, learning and use of intellect. Though a Purohit may use his hands in performing certain rituals and ceremonies, the predominent character of his occupation is that it requires study and knowledge of scriptures and of the body of the traditions and the performance of his work involves mainly chanting or recitation of 'mantras' and scriptures. We are unable to hold that that the view taken by the Selection Committee that a Purohit's occupation does not involve labour is erroneous.

*Holding* :

The occupation of "Purohit" was one which did not involve manual labour and as such the petitioner could not claim to belong to backward class.

*V. Raghuramulu v. State of Andhra Pradesh*

A.I.R. 1952 A.P. 129

*Facts*

Two applicants belonging to backward classes applied for admission to Medical Colleges. They were interviewed but were not selected on the basis that the maximum seats allotted for the backward classes were exhausted by the other applicants from backward classes who secured higher marks than the petitioners, though in fact, they got higher marks than the two candidates who were selected for the seats thrown open for general competition. The two candidates challenged the selection as a violation of article 15 and 29. The Government had fixed a maximum of 15% reservations for backward classes.

*Issues* :

(1) Is the prohibition on backward classes to compete with others violative of articles 15 and 29(2) ?

(2) Is the fixing of a maximum percentage of reservation for backward classes constitutional ?

*Extracts* :

*K. Subba Rao, C. J.*

By the Amendment nothing in Art. 29(2) prevents a state from making any special provision for the advancement of any socially and educationally backward classes of citizens. To that extent the fundamental right of the citizen under Art. 29(2) can be abridged by the State. But the abridgement is conditioned and circumscribed provisions of the clause. Any special provision made by the State should be for the advancement of the backward classes of citizens and not to abridge the rights guaranteed to them under the Constitution or retard their progress.

To illustrate : The State may allot a minimum number of seats in professional colleges for backward classes. This provision would be for the advancement of the backward classes for irrespective of the marks they secured, certain seats would be guaranteed to those classes. But if in particular locality the members of the backward classes secure high marks and are able to compete with students of other classes they would not be deprived of their right to get admission into colleges beyond the quota allotted to them.

Such a provision would certainly be for the advancement of the backward classes. On the other hand, if a maximum be fixed, instead of providing for the advancement of those classes in the contingency visualised above. It would retard their progress ; for students of those classes who secure more marks than students who compete for the general seats and get less marks than students belonging to their classes would not get seats.

To that extent the provision made by the State would be in excess of the power of conferred on it under Cl. (4) and therefore cannot affect the fundamental right of the citizens whether they belonged to backward classes or not. To put it differently, every individual citizen as a citizen whether he belonged to the backward classes or not has a right to get admission into an educational institution of the kind mentioned in Cl. 2 of Art. 29.

The said fundamental right is abridged by the special provision made by the State for the advancement of any socially and educationally backward classes of citizens. If the provision is for the advancement of such classes the fundamental right of a citizen is not infringed for his right itself is reduced by the provision.

If the provision though it purports to be for the advancement of the backward classes, in effect abridged their rights, the entire rights, the entire provision or that part of it which abridges their rights would be had leaving untouched the fundamental right of every citizen whether he is member of the backward classes or not.

In the instant case the State directed that a maximum of 15 per cent, of the total number of seats in any faculty may be reserved for backward class candidates. The said rule is obviously made on the assumption that under the contingency more than 15 per cent, of the total number of seats in any faculty would be or could be captured by the members of the backward classes in open competition.

THis assumption has been bailed in the present case. Therefore, the effect of the provision instead of advancing the cause of the backward classes prevents some members of those classes from getting seats were brought under common pool. It may be that in other localities where the members of the other communities are more advanced educationally than in the second region of the Telengana Area, this rule may work for the advancement of the backward classes candidates.

It is therefore not necessary to hold that the rule is bad but it would be enough to confine the operation of that rule to a case where the assumption underlying that rule applies and to hold that in other cases where the rule does not operate for the advancement of the backward classes the fundamental right of a citizen of that class is unaffected by the provision.

We would suggest that the rule may be modified by substituting the words 'minimum of 15 per cent' for the words 'maximum of 15 per cent' or by any other appropriate way. It is not dispute that but for the provision, the names of the two petitioners would have been considered along with the applicants selected from the general pool, and if so considered they would have been selected.

*Holding*

(1) Prohibition on backward classes to compete with other was held to be violative of articles 15 and 29(2).

(2) Instead of fixing the maximum percentage of reservation for backward classes, a minimum percentage should be fixed.

*Jacob Mathew v. State of Kerala*

A.I.R. 1964 Ker. 39

I. *Facts*

The Government of Kerala passed orders in 1957 making reservation of seats for backward classes for admission to Professional colleges. The quantum of reservation was 35% for backward classes and 5% for Scheduled Castes and Scheduled Tribes. The backward classes were again sub-divided into the following groups :—

| | |
|---|---|
| (1) Ezhavas | 13% |
| (2) Muslims | 9% |
| (3) Latin Catholics | 3% |
| (4) Backward Christians | 1% |
| (5) Other Hindus | 9% |
| Total | 35% |

The order of Kerala Government was challenged.

Justice Vaidyalingam (as he then was) (Single Bench) held that from the materials adverted to by the State Government themselves it was clear that the Government had not validly determined as to who should be included in the backward classes. The basis to include the Ezhavas and the Muslims as a whole as backward classes was predominantly based on the test of caste and religion and no enquiry into their economic condition had been made. Consequently the classification of backward classes was invalid under article 15(4). The 35% quantum of reservation and the sub-division of that 35% was also not valid.

II. On appeal to the Division Bench in *State of Kerala v. R. Jacob*

AIR 1964 Ker. 316

the High Court (M. S. Menon, C.J. and Madhavan Nair, J.) held the following :—

*Extracts*

The first and second respondents in O.P. No. 1266 of 1963 are the applicants before us. They are the State of Kerala represented by the Chief Secretary to Government and the Principal of the Medical College, Trivandrum.

The controversy relates to the validity of Ext. R-1, an order of the Government regarding the selection of candidates for admission to the Medical College in the State. The order is dated the 7th June, 1963, and is the successor of earlier orders on the subject.

Ext. R-1 reserves thirteen per cent of the seats for the M.B.B.S. Course to Ez'havas, nine per cent to Muslims and three per cent to Latin Catholics inclusive of Anglo-Indians. The first question for consideration is whether these reservations can be sustained in the light of Arts. 14, 15 and 29 of the Constitution.

We are not concerned in this case with any Scheduled Castes or Scheduled Tribes; and the only question for consideration—in view of Art. 15(4) of the Constitution—is whether the Ez'havas, Muslims and Latin Catholics inclusive of Anglo-Indians can be considered as "socially and educationally backward classes of citizens". In M. R. Balaji v. State of Mysore, AIR 1963 SC 649 the Supreme Court said :

> "The backwardness under Art. 15(4) must be social and educational. It is not either social or educational but it is both social and educational."

In these regions of human life and values the clear-cut distinctions of cause and effect merge into each other. Social backwardness contributes to educational backwardness; educational backwardness perpetuates social backwardness; and both are often no more than the inevitable corollaries of the extremes of poverty and the deadening weight of custom and tradition. In view of the details furnished in the affidavit on behalf of the State dated the 10th August, 1953 and the affidavit of the guardian of the third respondent dated the 14th August, 1963, we have no hesitation in holding that the Ez'havas, Muslims and Latin Catholics inclusive of Anglo-Indians constitute "socially and educationally backward classes of citizens" within the meaning of Art. 15(4) of the Constitution.

As a matter of the fact the social and educational backwardness of the Muslims and the Latin Catholics inclusive of Anglo-Indians was not—and we think correctly—in serious dispute. The attack was essentially against the reservation of seats in favour of the Ez'havas.

The Ez'havas form about twenty five per cent of the population of the State, and on the material before us it is not possible to say that the Government was wrong in its assumption that they constitute a community which is "socially and educationally backward". A perusal of the relevant entries in the Cochin Tribes and Castes by Mr. L. K. Ananthakrishna Ayyar, the Cochin State Manual by M. C. Achyuta Menon, the Report of the President of India, the Report of the Evaluation Committee constituted by the Government of Kerala and the other publications to which our attention has been drawn indicates that the three communities in whose favour the reservations have been made should be considered as backward both socially and educationally.

It was contended before us that the Travancore Temple Entry Proclamation of 1112 M.E., the Cochin Temple Entry Proclamation of 1123 M.E., the Madras Temple Entry Proclamation of 1123 M.E., the Madras Temple Entry Authorisation Act of 1947, and Art. 17 of the Constitution of India which says :

> "Untouchability" is abolished and its practice is forbidden. The enforcement of any disability arising out of "Untouchability" shall be an offence punishable in accordance with law have altered the ancient character of the Ezhave community, and that they should not now be treated as socially backward. It is true that at certain times, and in certain countries, society has given the lead to law. In India, however, it has been the other way about. In his introduction to "some Aspect of Indian Law Today" Mr. M. C. Chagla says :
>
> "It is true that at certain times society has given the lead to law; but in India at least it is the other way about. Law has given the lead to society, and law has placed before the society ideals and values to which people should confirm."

Confirmity in such cases does not synchronise with the promulgation of statutory enactments or constitution documents. Time has to play its part, and time alone transmutes the ideals of the law into the relatives of everyday life. No one can say that the introduction of progressive measures is the end, and not the beginning, of a process of amelioration. Habits of thought dies hard and slow and occupations like toddy tapping carry their social stigma from one generation to another and through decades of conduct and behaviours.

We have been furnished with a typed copy of the majority judgement of the Supreme Court in R. Chitralakha v. State of Mysore, Civil Appeals No. 1056 and 1057 of 1963 : (AIR 1964 SC 1823). We have not seen the blueprint of the decision and are quite unaware of what has been said in the judgement of the Judges who have dissented. Our pointed attention was drawn to the following passages in the decision :

> "The important fact to be noticed in Art. 15(4) is that it does not speak of castes, but only speaks of classes. If the makers of the Constitution intended to take castes also as units of social and educational backwardness, they would have said so, as they have said in the case of the Scheduled castes and the Scheduled Tribes."

The contention on the basis of the majority decision was that there is the authority of the Supreme Court to say that there shall be no reservation on the basis of castes. We are unable to understand the decision in that way. The judgment refers to certain passages in AIR 1963 SC 649 and says :

> "Two principles stand out prominently from the said observations, namely (1) the caste or group of citizens may be a relevant circumstances in ascertaining their social backwardness and (2) though it is a relevant factor to determine the social backwardness of a class of citizens, it cannot be the sole or dominent test in that behalf."

and :

> "To put it differently, the authority concerned may take caste into consideration in ascertaining the backwardness of a group of persons; but, if it does not, its order will not be had on that account if it can ascertain the backwardness of a group of persons on the basis of other relevant criteria."

According to Funk and Wagnalls Standard Dictionary "caste" is no more than an hereditary class into which Hindu society is divided. And we see nothing in the decision of the Supreme Court which precludes the conclusion that if the whole or a substantial portion of a caste is socially and educationally backward, then the name of that caste will (not ?) 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 Art. 15 of the Constitution.

In the light of what is stated above we must reverse the judgment under appeal R. Jacob Mathew v. State of Kerala, 1963 Ker Lt. 783 : (AIR 1954 Kerala 39) in so far as it strikes down the reservation of seats in favour of the Ezhavas, Muslims and the Latin Catholics inclusive of Anglo-Indians. We do so.

In Wealth Tax Officer v. Thuppan Namboodripad, Civil Appeals Nos. 262 to 266 of 1963 (SC) the Supreme Court had to consider whether the provision relating to Hindu undivided families in the Wealth-tax Act, 1957, violated the equality before law guaranteed by Art. 14 of the Constitution. The Supreme Court said :

> "We should like to point out that the High Court seemed to take the view that it was for the State to show that Art. 14 was not applicable. This is not correct, for it is for the party who comes forward with the allegation that equality before the law or the equal protection of the laws is being denied to him to adduce facts to prove such denial." In this view the burden of proof will be on the first respondent, and, perhaps all that we need say is that he has not proved that the Ezhavas, Muslims and Latin Catholics inclusive of Anglo-Indians are not entitled to the protection afforded by Article 15(4) of the Constitution.

We must, however, point out that the paucity of up-to-date date has been a source of considerable worry. It is impossible to say that our conclusing has not been influenced, to some extent at any rate, by our own experience of life and work in this State.

An enduring conclusion, however, should not be based on data that is not absolutely up-to-date or on judicial experience which such data may disprove or modify. We think it is essential that the State should immediately embark upon a fact-finding enquiry into matters that are relevant and frame appropriate orders in the light of that enquiry. We direct the State to do so.

*Holding*

(1) If the whole or substantial portion of a caste is socially and educationally backward then that caste can be considered as equivalent to socially and educationally backward class. According Ezhavas, Latin Catholics, Muslims and Backward Christians formed backward class.

*Ramakrishna Singh* v. *State of Mysore*

A.I.R. 1960 Mys. 338

*Facts*

The following two orders of Mysore Government listing backward classes and their reservation for admission to Professional Colleges were challenged.

(i) Order of 14th May, 1969

(ii) Order of 22nd July, 1959

The list of backward classes included 95 per cent of the population of the State and all communities and castes of the Hindus other than Brahmin, Banias, Kayasth, and all the communities in the State except Anglo-Indians and Parsies had been included in the list.

The two Orders had fixed 20 per cent for Scheduled Castes and Scheduled Tribes and 45 per cent for the socially and educationally backward classes and the remaining 35 per cent was to be filled up on the basis of merit.

The order of 22nd July, 1959 had further sub-divided the listed backward classes into several categories and fixed different percentage for the reservation of seats. The net effect was that the persons belonging to each sub-group could only compete for the seats reserved for them and were not eligible for the remaining seats reserved for the backward clases. In other words they were debarred from competing for the remaining seats in open competition amongst the members of the backward classes listed in the orders.

*Issues*

(1) Is the division of Backward Classes into various sub-groups and fixing of different percentage of reservation of seats for each such group and prohibition of one sub-group from competing for the seats reserved for the other sub-groups constitutional ?

*Extracts*

*S. R. Das Gupta, J.*

It would appear from the above notification that not only the so-called socially and educationally backward classes, as mentioned in the first notification have been sub-divided into different groups but the percentage of reservation of seats in respect of each group has also been specified. In other words, each group is only entitled to the percentage of seats as specified in respect of that group.

Thus, for example, classes belonging to group No. 1 is only entitled to 2.6 per cent of the seats reserved for backward classes and group 2 is entitled to 3.9 per cent thereof. The result of this is obvious.

The persons belonging to one of such groups can only compete for the seats which have been reserved for that group and are not eligible for the remaining seats reserved for the backward classes. In other words, they are debarred from capturing the said remaining seats in open competition amongst the members of the backward classes as enumerated in the first notification. This notification, therefore, instead of giving a benefit to the backward classes abridges their rights and cannot be supported by the provision of Article 15(4) of the Constitution.

As was observed by their Lordships of the Andhra Pradesh High Court in the case reported in AIR 1958 A.P. 129 that if the provision though it purports to be for the advancement of the backward classes, in effect abridges their rights, the entire provision or that part of it which abridges their rights would be bad. The net result of this notification is that while purporting to make special provision for the backward classes a discrimination has been made against them. This is certainly not in compliance with the Constitution.

The Constitution guarantees the fundamental right of every citizen whether he is a member of the backward class or not. Such right includes the right to be admitted into any educational institution maintained by the Government irrespective of one's religion, race, caste, sex or any of them. Article 15(4) allows an abridgment of that right. But that abridgment has to be for the benefit of the backward classes. In accordance with that Article special provision can be made for such backward classes, which, in the case of admission to educational institutions, means that a limited number of seats be reserved for them, leaving them free to contest the remaining seats.

If, as was observed by their Lordships of the Andhra Pradesh High Court in the case reported in AIR 1958 Andhra Pradesh 569, the boys belonging to the backward classes by their merit secure more than the prescribed seats in the general competition, this rule cannot be invoked to reject the boys above the prescribed number; for, in that even their fundamental right under Article 29(2) would be violated. But the present order has in fact debarred the boys of the different groups from getting any seats above the number of seats perscribed for the backward classes. By doing so, this order instead of benefiting them has abridged their fundamental right.

It was contended before us that in each of the groups one the forward class has been included. Jains for example, it was shown to us, as having been grouped

with large number of other classes and the reservation for that group is only 5.6 per cent. It was contended before us and in my opinion, rightly, that the result of grouping in this manner may be that even the limited percentage of seats reserved for the classes mentioned in the said notification would be captured by those communities who are more forward than the others of that group leaving thereby the really backward classes with no chances of getting any seats even in the said small percentage of reserved seats.

When this aspect of the matter was put to the learned Government Pleader he tried to justify the action of the Government by saying that unless such sub-divisions were made and special reservations were made for each of such sub-groups the comparatively forward classes in the list set out in the first order would have carried away all the seats reserved for the backward classes and the really backward people would in that even be deprived of any benefit under the said notification. This argument, in my opinion, strikes at the root of the first order.

It shows that the said notification was not in compliance with the provisions of Art. 15(4) of the Constitution.

*Holding*

The prohibition of each sub-groups of backward classes from competing with other sub-groups was held to be unconstitutional.

*Sardool Singh v. Medical College*

A.I.R. 1970 J. & K. 45

*Facts*

The writ petitions arose out of the admission of candidates to the Medical College at Srinagar. The petitioners were candidates who had been refused admission to the Medical College and had filed these petitions assailing the admission of some of the respondent candidates on the ground of their admission having been tainted with favouritism, nepotism and further that certain reservations made by the State Government were not permissible under Arts. 14, 15 and 29 of the Constitution of India and, therefore, the petitioners were selected for hostile discrimination by the State. The Government Order provided :

Seats shall be reserved for these classes for technical trainings and higher education in the educational institutions engaged in imparting such trainings or education and maintained by the State or receiving aid out of the funds of the State, which shall as nearly as may be, near such proportion to the total number of seats available for such trainings for education in such institutions as is specified against each such class below; and admission to such institutions for such trainings and education shall be regulated accordingly—

(a) Permanent resident Scheduled Castes 5%.

(b) Permanent residents of Ladakh Districts 2%.

*Issues*

Was the reservation in favour of permanent residents of Ladakh district and Scheduled Castes constitutional under Article 15(4) ?

*Extracts*

*Fazal Ali, J.*

It was next contended that reservation for persons belonging to Ladakh or to the Scheduled Castes was also not proper. This argument, however, is to be stated only to be rejected because Art. 15(4) specifically authorises the State to make special provisions for the advancement of socially and educationally backward classes of citizens or members of the Scheduled Castes. In the instant case the Government has indicated the data on the basis of which it reached the conclusion that members belonging to the district of Ladakh and those belonging to the Scheduled Castes were backward classes of citizens. The materials on the basis of which the Notification of the Government was passed have not been challenged before us, nor has it been shown to our satisfaction that persons coming from [illegible] not backward.

In A.I.R. 1968 SC 1012 (P. Rajendran v. [illegible] of Madras) reservation on the ground that certain candidates belonged to a particular district which was backward was upheld, provided the reservation was not made purely on the basis of the place of birth. In this connection their Lordships observed as follows :—

> "Even though there may be some substance in the charge that all this complicated and confusing method has been provided in order to get over the prohibition in Art. 15(1) by a camouflage we cannot say that there is a clear violation of Art. 15(1) for the district which the candidate may claim does not depend upon the place of his birth. We cannot, therefore, strike down R. 8 on the ground that it discriminates on the basis of the place of birth of the candidate concerned."

In this case, no doubt, their Lordships did not approve of the allocation or distribution of seats districtwise, but that has not been done in the present case. Ladakh happens to be only one of the districts of the State and the citizens belonging to this area have been declared by the Government to be socially and educationally backward so as to come within the protection given by Art. 15(4) of the Constitution of India. Thus the reservation made by the Government for candidates from the Ladakh district and members of the Scheduled Castes is perfectly valid and cannot be struck down as being violative of Arts. 14, 15 or 29 of the Constitution of India.

*Holding*

Reservation in favour of candidates from Ladakh district and Scheduled Castes was valid. Permanent residents of Ladakh district formed socially and educationally backward class.

Facts were more or less similar to those in the *Raghuramulu* case.

*Issues*

Were the same as in the *Raghuramulu* case.

*Extracts*

*K. Subba Rao, C.J.*

Learned Counsel for the petitioner contends that the said decision accepts the principle of selection of candidates in two compartments one for the quota allotted for backward classes and the other for the general pool and, therefore, boys belonging to the backward classes, who succeed in a competition held for the general pool, must be excluded from the selections in the reserved field. No such principle was accepted in the aforesaid decision.

It was there held that the rule, under the circumstances of that case, did not affect the fundamental right of citizen belonging to the backward communities and that the petitioners therein having secured marks higher than the students selected from the general pool were directed to admitted. It was not argued therein that if the boys belonging to the backward classes were taken in the general pool the petitioners would have been excluded, while preserving the minimum guaranteed to backward classes students. We had no occasion, therefore, to decide therein the question whether the selection should be made in compartments.

That question arises in this case. The fundamental right of a citizen whether he belongs to a backward community or not is to secure admission in any educational institution maintained by the State without his being discriminated on grounds only of religion, race, caste or any of them. The State may abridge this right by making a provision for the advancement of any socially and educationally backward class of citizens.

Presumably in exercise of that power, the State directed that a maximum of 15 per cent of the seats in each faculty should be reserved for candidates from backward classes. If the boys belonging to the backward classes by their merit secure more than 15 per cent of the seats in the general competition, this rule cannot be invoked to reject the boys above the prescribed number; for, in that event their fundamental right under Art. 29(2) would be violated.

On the other hand, if the selection is made in two different compartments in such a way that some boys belonging to the backward classes are allowed to compete for the general pool and some for the reserved seats, it would cause great hardship to the boys belonging to other communities. The rule, therefore, can be worked out in such a way as to protect the interests of students of the backward classes without at the same time causing prejudice to students of other communities.

This could be achieved by pooling all the candidates together and guaranteeing minimum seats for those belonging to the backward classes. To illustrate : If there are 100 applicants for selection to the Medical College, they would be arranged in the order of merit and even if more than 15 per cent of the candidates belonging to the backward classes could be selected on merit alone, they would be as selected.

If they feel short of that number, they would be selected to make up their number on the basis of merit inter se between them though they got less marks than boys belonging to other communities. This process will protect students of backward classes without doing any injustice to the forward ones. The rule with the modification suggested by this Court in the earlier judgment does not compel selection in different compartments but only reserves some seats to the particular communities. In this view as the petitioner did not succeed in the general competition and as seats reserved for the backward classes for their protection were exhausted, no right of the petitioner is infringed.

*Holding*

Same as in the *Raghuramulu* case.

*S. G. Pandit* v. *State*

A.I.R. 1972 Bom. 243

*Facts*

Rules framed by the Government of Maharashtra for admission to Government Medical Colleges in the state were challenged by the petitioner who sought admission in B.J. Medical College in Poona and was refused admission following the rules.

Rules were :

Admissions are granted once a year only at the Medical Colleges in the beginning of the academic year. Except the seats for the nominees of the Government of India and the seats of the B.J. Medical College, Poona and Miraj Medical College, Miraj all the seats at each medical college are earmarked for the students of the universities to which the particular medical college is affiliated.

Rule 4(d) provided as follows :

The percentage of seats reserved at each medical college will be :

| *Categories* | *Percentage of reservation* |
|---|---|
| 1. Scheduled Castes and Nav Budhas converted from Scheduled Castes. | 13 per cent |
| 2. Scheduled tribes including those outside specified areas | 7 per cent |
| 3. Denotified tribes and nomadic tribes | 4 per cent |
| 4. Other Backward classes | 10 per cent |
| Total | 34 per cent |

Reserved seats remaining vacant in any of the above groups for want of students in that group should go to other groups even if the percentage in a particular group exceeds the percentage prescribed for that group provided that the total percentage of the seats does not exceed 34 per cent of the total seats for backward classes. These seats should go to the members of the general public only when backward class students from any of the above mentioned group are not available to fill up the seats. The above percentage should be inclusive of the numbers of students who get admission on merit and should not be in addition thereto.

*Issues*

(i) Is the basis of the proportion of population of backward classes, Scheduled Castes and Scheduled Tribes to the total population of the state in fixing the quantum of reservation for admission to Medical Colleges constitutional ?

(ii) Is the provision for carrying forward of vacant reserved seats of one sub-group of backward class to that of the sub-group valid ?

*Extracts*

*Vaidya, J.*

The only other ground which was urged by Mr. Paranjpe in support of the petition was that the reservations made for the scheduled castes and scheduled tribes and backward classes on the basis of the proportion of these communities to the population of the State, as stated in the affidavit filed by Mr. Mathkar, was irrational, and further that the classification of the other backward classes on the basis of castes was illegal. He contended that the provision contained in Rule 4(d) laying down that the reserved seats remaining vacant in any of the reserved group for want of students in that group should go to the other groups of scheduled castes, and scheduled tribes and backward classes, was also unworkable and irrational.

We find no substance in any of these contentions. It is possible that some other mode of reserving the seats may be adopted, but it cannot be said that the basis of the proportion of population adopted by the Government of Maharashtra in reserving seats for scheduled castes and scheduled tribes and other backward classes on the basis of the last census is in any manner unreasonable. In the leading case on the subject M. R. Balaji *v.* State of Mysore A.I.R. 1963 S.C. 649 Gajendragadkar, J., as he then was, speaking for the Court laid down the principles as follows, while setting aside an order of the Government of Mysore which resulted in reservation of seats for 68 per cent of population of Mysore State treated as backward classes as plainly inconsistent with Article 15(4) :—

> "In our country where social and economic conditions differ from State to State, it would be idle to expect absolute uniformity of approach; but in taking executive action to implement the policy of Art. 15(4), it is necessary for the States to remember that the policy which is intended to be implemented is the policy which has been declared by Article 46 and the preamble of the Constitution. It is for the attainment of social and economic justice that Art. 15(4) authorises

the making of special provisions for the advancement of the communities there contemplated even if such provisions may be inconsistent with the fundamental rights guaranteed under Art. 15 or 29(2). The context, therefore, requires that the executive action taken by the State must be based on an objective approach free from all extraneous pressures. The said action is intended to do social and economic justice and must be taken in a manner that justice is and should be done."

Applying the said principles to the facts of the present case, we find that the Government has adopted an objective and just test for determining the proportion of seats to be reserved in the medical colleges. Mr. Paranjpe further submitted that since the rest of the population of the State was not concerned with the Shivaji and Poona Universities, it was illogical to adopt the basis of the proportion of these communities to the entire population of the whole State in determining the proportion of seats to be reserved in medical colleges in the areas of Shivaji and Poona Universities. We do not find anything illogical in it. Reservation is permitted under Article 15(4) for the backward classes and, perhaps there is no better basis for such reservation that the proportion of the population of the backward classes to the whole population of the State. It would be totally unreasonable to expect the State to take a separate census of the backward classes population only of the areas of the two Universities or of each of the Universities in the whole State. The contention of Mr. Paranjpe that the rest or the population of the State is not interested in the admissions of the medical colleges at these two Universities has to be rejected because the Government of Maharashtra is certainly justified in adopting a uniform rule of reservation in respect of all parts of the State; and if it has adopted a uniform rule on the basis of the population, we find nothing in it which is irrational or is hit by Article 14 or 15.

Mr. Paranjpe next contended that the reservation of the seats to students of these communities were also vitiated by the fact that they were qualified to apply for admission even if they got 40 per cent marks as against the minimum of 45 per cent prescribed for other students and thereby the Government instead of advancing the backward communities was encouraging them to be less advanced than the others. This argument ignores the very purpose for which Article 15(4) was enacted. The backward communities, who are recognised as such, and the scheduled castes and scheduled tribes have been suffering from social and economic handicaps for centuries and one of the ways by which their conditions can be ameliorated by making students, who get even somewhat lower marks, to be eligible for admission to medical colleges; and they must be considered as a measure in advancement of these backward communities.

Similarly, the contention of Mr. Paranjpe that the rule of carrying forward the vacant seats in a particular group to the groups in the backward classes is unworkable, has no merit because, in our opinion, Rule 4(d) is very practical and reasonable and easy of application. We do not find any difficulty in its working. The said rule is quoted above. It is manifest that the four groups mentioned in the rule are "socially and educationally backward classes of citizens" and "scheduled castes and tribes" and Art. 15(4) lays down that nothing in Art. 15(4) lays down that nothing in Art. 15 or in clause (2) of the Art. 29 shall prevent the State from making any special provision for advancement of the said classes, castes and tribes. The Government of Maharashtra has made such a special provision in Rule 4(d) for the four groups mentioned therein They can be and are given mentioned special preferences under Art. 15(4). Under the rule, 34 per cent seats are reserved for all the four groups together and within the said 34 per cent seats, further special provision is made for filling up vacant seats reserved for any one or more of the four groups by throwing them open to students belonging to the remaining groups. All the four groups form one category of socially and educationally backward citizens They are to be preference. Therefore, provision is made for filling up vacant seats among the seats reserved for them. The sub-Division into the four groups is made obviously only to allocate the reservation to the four groups falling under the one category of socially and educationally backward citizens so that the comparatively brighter students in one group may not keep out the students of the other groups. All this, in our judgement, is permissible under Art. 15(4) of the Constitution of India and consistent with Art. 46 which requires the State "to promote with special care the educational and economic interests of the weaker sections of the people, and in particularly, of the scheduled castes and scheduled tribes". The petitioner cannot, therefore, challenge Rule 4(d) on the ground that after reserving seats for each of the groups, it further makes special provision for the benefit of these groups by throwing open the vacant seats in one group for students of the other groups or on the ground that vacant seats in any of the four ground should be thrown open to all students on merit without making them again available to students belonging to the said groups.

*Holding*

(i) The Court held that the basis of the proportion of population of backward classes, Scheduled Castes and Scheduled Tribes to the total population of the State as based on the previous census for determining the quantum of reservation was valid and reasonable.

(ii) The provisions for carrying forward of vacant reserved seats of one sub-group of backward class to that of the other sub-group within the quantum of reservation allowed for such backward classes was held to be valid.

*Shameem v Medical College, Trivandrum*

A.I.R. 1975 Ker. 131

*Facts*

The petitioners who belonged to communities which are socially and educationally backward challenged the constitutionality of the restriction imposed in G.O.P. 208/66/Edn. dated 2nd May, 1966 of the Kerala Government which stipulated that only applicants who are members of families whose aggregate annual income is below Rs. 6,000 would be entitled to admissions to the seats reserved for students belonging to the backward classes. The petitioners who had applied for admission to the First Year M.B.B.S. Course 1974-75 were denied admission. The Government order was passed consequent upon the report of the Kumara Pillai Commission which recommended a ceiling of Rs. 4,200 as income limit.

*Issues*

(i) Whether exclusion of persons belonging to socially and educationally backward class on ground of higher income valid under article 15(4); in other words, the sub-division of the backward classes on the basis of income permissible ?

(ii) Whether the ceiling limit of Rs. 6,000 arbitrary ?

*Holding (Single Judge, K. K. Narendran, J.)*

(i) Exclusion of persons belonging to socially and educationally backward classes on the basis of higher income was not warranted under article 15(4).

(ii) The ceiling limit of Rs. 6,000 in the instant case was held to be arbitrary and irrational.

II. On appeal from the Shameem case to a Division Bench of the Kerala High Court, the Court in *State of Kerala* v. *Krishna Kumari* (A.I.R. 1976 Ker. 851) held the following :

*Extracts*

*Govindan Nair, C.J.*

12. In the case of the major communities like Ezhavas and Muslims which form sizeable portions of the population of the State the Commission found it difficult at the time of its report to classify these communities wholly, or even by and large, as socially and educationally backward. The anomaly of including all the members of such castes as socially and educationally backward, was noticed by this Court in the Full Bench decision in *Hariharan Pillai* v. *State of Kerala* 1967 KLT 266. It was, however, felt by the Full Bench that there was no material before it to come to the conclusion that a section of the members of the caste were not socially and educationally backward. The Court was, therefore, not prepared to hold that the assertion that the members of the caste were by and large backward socially and educationally was not correct. At the same time it struck a note of warning in paragraph 22 of the judgment. We shall extract paragraphs 22 and 23 of the judgment :

> 22. It is, however, necessary to strike a serious note of warning because the data that has been relied on, like the report of the Committee constituted by the Travancore Government before 1935 and that of the Committee that considered the question in 1957 as well as the census report of 1941, which have been relied on, have all become quite obsolete and out of date now. It is essential that relevant data must be collected periodically. The provisions in Articles 15(4) and 16(4) of the Constitution are only transitory provisions and the action taken under that must be modulated from time to time. This can be done only if surveys are made at regular intervals and detailed information collected. While I am not for interfering with the selection made on the basis of principles that have more or less been in force for more than two, perhaps three, decades. I am not for continuing the system without the matter being looked into afresh.
>
> 23. I consider that the 'backward classes' have to be drawn from all weaker sections of citizens irrespective of the religion and/or caste to which those sections may belong. With this end in view, it is desirable that the State should undertake a detailed survey as early as possible. There will be no justification in continuing to apply the principles embodied in rules 14 to 17 of the General Rules after 31st March, 1968 without a fresh appraisal of the question involved.

It is in the light of these observations of the Full Bench of this Court that the present Commission was constituted. The principles applied by the Commission have been stated by the Commission in the report. It has *applied the principle that for the test of social backwardness, economic factors as well as caste/community can be taken into account. It has said so in paragraph 11 factors as well as caste/community can be taken in the account.*

*It has said so in paragraph II* at page 29 of the Report. The main question that arises for consideration is whether the laying down of such a test is warranted by the Constitutional provisions as interpreted by the Supreme Court or whether what has been taken into account by the Commission is an extraneous consideration or an irrelevant consideration which would make the classification violative of Art. 14 of the Constitution. It has been emphatically argued before us by Sri Sivaraman Nair as well as by other counsel that a very insignificant section of the castes which are socially and educationally backward has been excluded by the Commission on the basis of an artificial level of income. It was contended that this 'mini' classification as Sri Sivaraman Nair termed it is unjustified and even arbitrary

13. Poverty or economic standards is a relevant factor in determining social backwardness because the economic position has a direct nexus to social and educational status. Economic backwardness contributes to a social backwardness and prevents educational advancement. . . . . .

17. In all cases of classification there will be border-line cases. If the classification is permissible, the fact that it may cause hardship to a few individuals by itself will not make the classification unjust, unfair or arbitrary or perverse. Whatever be the level of income fixed there will be border-line cases. The real question is should a social and educational backwardness of the castes resulting from historical reasons be perpetual and the castes as a whole treated as socially and educationally backward even if there is a group of persons in the castes who are not socially and educationally backward. Should all the members of such a community always remain backward? The idea in making the reservation is to give the members of such caste or community an 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, educationally and economically, to make reservations for them would be to deprive the chance of the really socially and educationally backward classes of people in those communities/castes. . . . .

18. It is not as though these castes or communities as such suffer in any manner in the matter of reservation of seats by the principle adopted by the Commission and the Government. Reservation for the members of the community in quantum remains the same which are to a large extent treated as consisting of persons who are socially and educationally backward. The communities described in Appendix VIII to the Report as such, therefore, do not lose a single seat that had been reserved for them earlier before the present Report of the Commission had been accepted by the order of the Government. The competition is between the more advanced section of the castes and the less advanced. The real question is whether the Commission had material before it which was relevant to enable it to say that those among the castes who were economically better off were not socially backward. Some evidence had been collected by the Commission, and it is impossible to say that there was no material before the Commission for reaching the conclusion that it did. Certainly it is not for this Court to weigh the quantum of evidence that was available or sit in judgement on the conclusions reached. . . .

The question is, therefore, only whether the approach made by the Commission is correct : whether it had kept in mind the guiding principles laid down by the Supreme Court; whether it had material before it; and whether it had taken into consideration any irrelevant or extraneous matters, in reaching the conclusions it did. We are not prepared to say that there has been any flaw in the approach or in the adoption of principles. The Commission had material before it and it has not been influenced by irrelevant or extraneous considerations. Therefore, the contention that the classification is unjustified is not sustainable.

22. Counsel then contended that the fixation of the income at Rs. 6,000 for classifying those who are economically better off is quite arbitrary. It was pointed out that at least at the time of the selection with which we are concerned in these cases the sum of Rs. 6,000 was too low a figure. Reasons have been stated by the Commission for fixing the amount at Rs. 4,200 at the time the Commission submitted its report. The Government raised it to Rs. 6,000. It may be necessary to review this decision. This order of the Government was in 1966 and nearly a decade is now coming to close after the figure of Rs. 6,000 was fixed. We are sure that this matter will engage the attention of the Government and that it will take appropriate factors into consideration in deciding whether the figure should remain at Rs. 6,000 or should be altered. This is a matter which should engage the attention of the Government. But we are not prepared to say that the figure Rs. 6,000 was fixed arbitrarily. The Commission has seen reasons and has referred to relevant material for recommending the figure Rs. 4,200 and we consider that the Government was justified in raising the figure from Rs. 4,200 to Rs. 6,000.

*Holding*

Reversed the decision of Single Branch in Shameem case.

III. On appeal to the Supreme Court, the Court in *K. S. Jayasree* v. *State of Kerala*, (A.I.R. 1976 S.C. 2381) upheld the decision of the Kerala High Court in *Krishna Kumari's* case.

*Extracts*

*A. N. Ray, C.J.*

7. The Commission assumed office on 14th July, 1964 and submitted its report on 31st December, 1965. The recommendation of the Commission was that only citizens who are members of families which have an aggregate income of less than Rupees 4,200 per annum and which belong to the castes and communities mentioned in Appendix VIII constitute socially and educationally backward classes for purpose of Article 15(4).

74. When the Government passed the order on 2 May, 1966 the Government order stated *inter alia* as follows : "After the Commission collected data for its report, the cost of living has risen further and the income-tax exemption limit has been raised. Having regard to the current cost of maintenance of a student in a professional or technical institution, Government consider that the income limit of Rs. 4,200 suggested by the Commission should appropriately be raised to Rs. 6,000 per annum. In the circumstances, the Government accepted the above recommendation subject to the modification that only citizens who are members of families which have an aggregate income of less than Rupees 6,000 per annum and which belong to the castes and communities mentioned in the annexure to this Government Order will constitute socially and educationally backward classes for purposes of Article 15(4).

9. On 2 September, 1975 the State Government passed an order which *inter alia* states as follows :

> "After the issuance of the Government Order the cost of living has risen further and the income-tax exemption limit has been raised. Having regard to the current cost of maintenance of student in a professional or technical institution, Government consider that the income limit of Rs. 6,000 prescribed in the Government Order should be appropriately raised. In the circumstances, Government are pleased to enhance the income limit of Rs. 6,000 prescribed to Rs. 10,000 per annum with effect from the academic year 1975-76."

19. The commission applied the tests for educational backwardness, test of habitation, necessity for a mean-*cum*-caste/community test, the income level for the means-*cum*-caste/community test, and came to the conclusion that citizens in the State of Kerala who are members of families which have an aggregate income of less than Rs. 4,200 per annum from all sources and which belong to castes or communities mentioned in Appendix VIII constitute socially and educationally backward classes for purposes of Article 15(4). The Commission found that generally the members of the castes and communities mentioned in Appendix VIII are educationally backward and that the lower income groups which have an aggregate income of less than Rs. 4,200 per annum are socially backward also. The lower income group of these castes and communities belongs in the opinion of the Commission to classes of citizens who are both socially and educationally backward

20. In ascertaining social backwardness of a class of citizens it may not be irrelevant to consider the caste of the group of citizens. Caste cannot however be made the sole or dominant test. Social backwardness is in the ultimate analysis the result of poverty to large extent. Social backwardness which results from poverty is likely to be aggravated by considerations to their caste. This shows the relevance of both caste and poverty in determining the backwardness of citizens. Poverty by itself is not the determining factor of social backwardness. Poverty is relevant in the context of social backwardness. The Commission found that the lower income group constitutes socially and educationally backward classes. The basis of the reservation is not income but social and educational backwardness determined on the basis of relevant criteria. If any classification of backward classes of citizens is based solely on the caste of the citizens it will perpetuate the vice of caste system. Again, if the classification is based solely on poverty it will not be logical. The society is taking steps for uplift of the people. In such a task groups or classes who are socially and educationally backward are helped by the society. That is the philosophy of our Constitution. It is in this context that social backwardness which results from poverty is likely to be magnified by caste considerations. Occupations, place of habitation may also be relevant factors in determining who are socially and educationally backward classes. Social and economic considerations come into operation in solving the problem and evolving the proper ctiteria of determining which classes are socially and educationally backward. That is why our Constitution provided for special consideration of socially and citizens as also Scheduled Castes and Tribes It is only by directing the society and the State to offer them all facilities for social and educational uplift that the problem is solved. It is in that context that the Commission in the present case found that income of the classes of citizens mentioned in Appendix VIII was a relevant factor in determining their social and educational backwardness.

21. The problem of determining who are socially and educationally backward classes is undoubtedly not simple. Sociological and economic considerations come into play in evolving proper criteria for its determination. This is the function of the State. The Court's jurisdiction is to decide whether the tests applied are valid. If it appears that the tests applied are proper and valid the classification of socially and educationally backward classes based on the tests will have to be consistent with the requirements of Article 15(4). The Commission has found on applying the relevant tests that the lower income group of the communities named in Appendix VIII of the Report constitute the socially and educationally backward classes. 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. It is necessary to remember that 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, social backwardness is the result of poverty to a very large extent. Caste and poverty are both relevant for determining the backwardness. But neither caste alone nor poverty alone will be the determining tests. When the Commission has determined a class to be socially and educationally backward it is not on the basis of income alone, and the determination is based on the relevant criteria laid down by the Court. Evidence and material are placed before the Commission. Article 15(4) which speaks of backwardness of classes of citizens indicates that the accent

is on 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) cannot be equated with castes. In *R. Chitralekha* v. *State of Mysore*, (1964) 6 SCR 368 = (AIR 1964 SC 1823) this Court said that the classification of backward classes based on economic conditions and occupations does not offend Article 15(4).

22. The different castes that have been described in Appendix VIII to the Commission Report have not been accepted by the Commission as embodying the group of socially and educationally backward classes of people. Only those among the members of the castes mentioned in Appendix VIII whose economic means was below that stated by the Commission were treated as socially and educationally backward. The educational backwardness is reflected to a certain extent by the economic conditions of the group.

*Holding*

Caste and poverty are both relevant for determining backwardness. Application of the test of economic means to the members of castes listed by the Commission to determine their social and educational backwardness was upheld by the Court.

*B. C. Swain* v. *Secy., W. & T. Deptt.*

A.I.R. 1974 Orissa 115

*Facts*

An order of Bihar Government of 1970 leasing out roadside lands to the Express Highway No. 1 for agricultural and pisciculturai purposes temporarily on annual basis to landless Harijans, preference being given to the Fishery Cooperative Societies of the landless Harijans, was challenged as violative of article 15(4).

*Issues*

(i) Whether "Harijans" as class are socially and educationally backward ?

(ii) Is Harijan a caste ?

(iii) Whether the court can take judicial notice of the fact that Harijans are socially and educationally backward ?

*Extracts*

*Panda J.*

Admittedly Harijans do not come under the Scheduled Castes abd Scheduled Tribes enumerated under the Constitution. Hence the line of reasoning of Mr. Rath firstly is that unless Harijans come under the category of "any socially and educationally backward classes of citizens", the impugned order would be directly hit by Art. 15 on the ground of discrimination based only on caste as it is. Mr. Rath's second contention in this regard is that there is no evidence nor is there any presumption that Harijans as a class are socially and educationally backward.

Admittedly there is no caste as "Harijans". There is no definition of 'Harijan' at any place. This term is 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 untouchable and that comprised this category. So Harijans are people of those castes whom the non Harijans or the caste-Hindus or Sabarna-Hindus viewed as untouchables. It follows, therefore, that Harijans is not a caste but a conglomeration of people of different castes who were taken to be untouchables by the Sabarna-Hindus. The argument, therefore, that a classification like Harijan is based on caste, is not correct. The term 'Harijan' carries with it something more than the concept of a caste.

In a case reported in AIR 1958 Madh Pra 352 (1958) Cri LJ 1398. (State v. Purnachand), while interpreting the word 'Harijan' it is said :

> "It is well known that the word 'Harijan' applies to untouchables and the use of that word by the witness would have been accepted as sufficient to hold that Mohanlal was prevented from going inside the temple as he was an untouchable".

Mr. Rath could not cite any authority for the proposition that the classification as a Harijan or non-Harijan is based on caste. In fact, on the contrary all the citizens of Indian can be classified into two classes, *viz.* Harijans and non-Harijans—each division taking in its fold several castes. So we would repel the contention that a classification as 'Harijan' is based on 'caste'.

The next point that arises for consideration is whether the Harijans are socially and educationally backward classes of citizens. According to Mr. Rath, they are not and amongst them there are very rich people in affluent condition and highly educated nd the Court will not be justified in drawing an inference that Harijans are socially and educationally backward classes of citizens coming under the protection of Article 15(4). True in the petition there is a vague allegation as quoted above that some Harijans of the locality are well od whereas some people of other castes are not so advanced as the Harijans of the locality ; but no specific instance has been given or the percentage indicated to show how they are better off than the caste-Hindus. Even so, if some Harijans have become Ministers or high executive officers, does it mean that Harijans as a class are not socially and educationally backward class intended under Art. 15(4) are people who are also not economically well off. Mr. Rath very much relied on a case law reported in 1973 (1) Serv LR 719 (AIR 1973 SC 930) (Janki Prasad v. State of J. & K.) on the interpretation of the words 'backward class'. Therein it's stated :

> "Article 15(4) speaks about "socially and educationally backward classes of citizens" while Article 16(4) speaks only of "any backward class of citizens". However, it is now settled that the expression "backward class of citizens" in Art. 16(4) means the same thing as the expression "any socially and educationally backward class of citizens" in Article 15(4). In order to quality for being called a "backward class citizen" he must be a member of a socially and educationally backward class. It is social and educational backwardness of a class which is material for the purposes of both Articles 15(4) and 16(4). It is not merely the educational backwardness or the social backwardness which makes a class of citizens backward ; the class identified as a class as above must be both educationally and a socially backward. In India social and educational backwardness is further associated with economic

backwardness. Backwardness, socially and educationally, is ultimately and primarily due to poverty. But if poverty is the exclusive test, a very large portion of the population in India would have to be regarded as socially and educationally backward, and if reservations are made only on the ground of economic considerations, an untenable situation may arise because even in sectors which are recognised as socially and educationally advanced there are large pockets of poverty. In this country except for a small percentage of population the people are generally poor—some being more poor, others less poor. Therefore, when a social investigator tries to identify socially and educationally backward classes, he may do it with confidence that they are bound to be poor. His chief concern is, therefore, to determine whether the class or group is socially and educationally backward. Though the two words "socially" and "educationally" are used cumulatively for the purpose of describing the backward class, one may find that if a class as a whole is educationally advanced it is generally also socially advanced, because of the reformative effect of education on that class. The words "advanced" and "backward" are only relative terms there being several layers or starta of classes, hovering between "advanced" and "backward", and the difficult task is which class can be recognised out of these several layers as being socially and educationally backward".

We think this does not help the petitioner in any way, rather it goes against him.

Thus the question that poses for consideration is whether in the above setting the Court can legitimately infer the fact that "Harijan" are socially, educationally and economically backward. Mr. Rath could not cite any authority prohibiting the court from drawing any such inference. Indian Evidence Act in Part II, Chapter III lays down the "facts which need not be proved". Section 57 thereof enumerates "facts of which the Court must take judicial notice". Independent of the pleadings the Court's power to take judicial notice of some facts being recognised, it is to be seen if the Court can take judicial notice of the fact that the Harijans are as a class socially, educationally and economically backward. It is now the settled law that facts of which judicial notice may be taken are not limited to those of the nature specifically mentioned in Cls. (1) to (13) of Section 57 of Evidence Act. Besides the matters mentioned in those clauses, there are numerous others which are considered too notorious to require proof : such matters are therefore 'judicially noticed'. In matters of such common knowledge that it would be an insult to intelligence to require proof are to be dealt with in this way. As judges must bring to the consideration of the questions they have to decide, their knowledge of the common affairs of life, it is not necessary on the trial of an action to give formal evidence of matters with which man of ordinary intelligence are acquainted, whether in general or in relation to natural phenomenons and whether in peace or war (Halsbury's Laws of England Vol. 15, 3rd ED. p. 399). There is a wide range of things which the Court can take judicial notice, viz. historical facts, geographical truths, scientific inventions, socio-economic conditions at a particular time and events of every day life and the like, as much as an axiomatic truth or natural phenomenons.

The tendency of modern practice is to encourage the field of judicial notice. Even it has been extended to the case Jorrors and said "Jurrors like Judges are not, because of their judicial functions, compelled to strip themselves of the knowledge which they possess of matters commonly and notoriously known." By way of reinforcing what we have said, we propose to refer only two decisions—one of the Supreme Court, AIR 1970 SC 36, Chitra Ghosh v. Union of India and another of this Court, AIR 1953 Orissa 53—(1953) (Cri LJ 544). Sheonath V. The State.

The passage quoted below (underlined portions) would show how much their Lordships of the Supreme Court rely on common knowledge. It is also an authority for the proposition how Annexure 8 is not discriminatory.

"The first group of persons for whom sears have been reserved are the sons and daughters of residents of Union territories other than Delhi. These areas are well known to be comparatively backward and with the exception of Himachal Pradesh they do not have any Medical College of their own. It was necessary that persons desirous of receiving medical education from these areas should be provided some facility for doing so. As regards the sons and daughters of the Central Government servants posted in Indian Missions abroad it is equally well known that due to exigencies of their service these persons are faced with lot of difficulties in the nature of education. Apart from the problems of language it is not easy or always possible to get admission into institutions imparting medical education in foreign countries.... Regarding Jammu and Kashmir scholars it must be remembered that the problems relating to them are of a peculiar nature and there do not exist adequate arrangements for medical education in the state itself for its students".

The classification in all these cases is based upon intelligible differentia which distinguished them from the group to which the petitioners belong.

In the latter case Narasimham, J. (as he then was) held :

> "The Court can take judicial notice of the fact that Sambalpur district is a surplus district as regards rice and there was extensive smugeling from the district to the adiacent States such as Bihar and Central Provinces".

*Holding*

(i) Harijans are socially and educationally backward.

(ii) The Court can take judicial notice of the above fact.

(iii) Harijan is not caste but a group of people of different castes who are considered as untouchable by the Sabarn Hindus.

*Shantha Kumar* v. *State of Mysore*

(1971) 1 Mys. L. Jour. 21

*Facts*

The petitioner was an applicant for admission to Medical Colleges in Mysore State. He claimed to belong to socially and educationally Backward Classes. The Selection Committee for admission to Medical Colleges, did not accept his claim that he belonged to such Backward Classes. As the marks secured by him were not sufficiently high for being selected for one of the unreserved seats in Medical Colleges, he was not selected. In this petition, the petitioner had impugned the decision of the Selection Committee in not treating him as belonging to socially and educationally Backward Classes. The petitioner claimed that by virtue of his adoption by his uncle at the age of 16 years he belonged to socially and educationally backward classes.

*Issues*

Whether by virtue of adoption into a socially and educationally backward class, the adopted can claim the benefit of the Mysore Government's order of July, 1963 ? Whose income and occupation that of the natural father or of the adoptive father would be relevant ?

*Extracts*

*Chandrashekhar J.*

In his application for admission, the petitioner stated that he was 19 years of age' that his father was one Ramiah Shetty who was a 'coolie' by occupation having an annual income of Rs. 450. The said Ramiah Shetty has signed the applicatiosn as the parent of the petitioner. The petitioner produced along with his application a copy of the deed of adoption dated 10-3-1969, registered on 14-4-1969. According to this deed, the petitioner's natural father, M. Krishna Shetty gave the petitioner in adoption to Ramiah Shetty about 3 years prior to the date of this deed, it is also recited in this deed that the wives of Krishna Shetty and Ramiah Shetty are sisters and that Ramiah Shetty who has no children, brought up the petitioner.

In the conter-affidavit sworn to by the Chairman of the Selection Committee, it is averred that the petitioner's father M. Krishna Shetty, is supervisor in the office of the National Extension Service at Kanakapura. The following circumstances have been mentioned in the counter-affidavit as being unusual. In the S.S.L.C. certificate dated 30-5-1966, the name of the petitioner's father is given as M. Krishna Shetty. In his application for admission as well as in the affidavit accompanying that application, the petitioner's initial is mentioned as 'K' which stands for the name of his father, Krishna Shetty. The petitioner's father who has in comparatively affluent circumstances, is stated to have given his son in adoption to a 'coolie' with a meagre income. Though the adoption is stated to have taken place in about the year 1966, the deed of adoption has come into existence just three months before making the application for admission.

It is stated in the counter-affidavit that taking into account the above circumstances, the Selection Committee was satisfied that the adoption deed must have been brought into existence for the sole purpose of claiming a seat reserved for socially and educationally Backward Classes, and hence the petitioner's claim that he belonged to such Backward Classes was not accepted.

The rationable of the reservation for socially and educationally Backward Classes, under Art, 15(4) of the Constitution, is that the environmental conditions of persons belonging to such Backward Classes, are not conducive to social and educational progress, but contribute for social and educational backwardness.

The petitioner whose natural father is a supervisor in the Office of the National Extension Service, did not suffer from any environmental disadvantage till he was given in adoption at about the age of 16 years. But the environmental conditions of his upbringing for 3 years by his adoptive father who may belong to socially and educationally Backward Classes, cannot be said to destroy or nullify the advantage of the environmental conditions of his upbringing for about 16 years by his natural parents before he was given in adoption. 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 who is stated to have been given in adoption when he was about 16 years of age, and had all the while imbibed the better environmental advantages of his natural father's 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 very purpose of reservation for such Backward Classes, by the device of adoption just before the time of applying for admission to technical and professional Colleges and Institutions, and thereby the benefit and protection to the Classes of persons who really suffer from environmental disadvantages, will be whittled down.

In the circumstances of the present case, the decision of the Selection Committee in treating the petitioner as not belonging to socially and educationally Backward Classes, cannot be said to be unreasonable. We see no good grounds to interfere with such decision.

*Holding*

The income and occupation of the natural father above were relevant to determine whether the petitioner would come within the category of backward classes. Applying that rule, the petitioner could not claim to be backward.

*Subashini* v. *State*

A.I.R. 1966 Mys. 40

The Mysore Government's order of July 1963 which made reservations for admission to medical colleges was challenged. One basis of attack against the order was that under it more than 50 per cent of the available seats were reserved and hence, the quantum of reservation exceeded the *Balaji* Limit. Factually, the total number of seats available in the medical colleges were 750. Out of those 3 seats were for cultural scholars of Indian origin domiciled abroad; 2 seats for Colombo Plan Scholars; 4 seats for student of Indian origin migrating from Burma; 4 seats for students from Asian and African countries; 2 seats for L.A.M.S. and L.U.M.S., 5 seats for students coming from Goa; 2½% of the seats for children of Defence Personnel; 1% of the seats for those who have shown exceptional skill and aptitude in sports and games, 75 seats as central quota for students from other states. If any of those seats were not filled, the unfilled seats would be transferred to the general pool. Out of the remaining 18 per cent were reserved for Scheduled Castes and Scheduled Tribes and 30 per cent for the socially and educationally backward Classes.

*Issues*

Does the *Balaji* limit on the quantum of reservation apply to reservation for certain general categories of non-backward classes ?

*Summary of Judgement*

*Hegde, J.*

It was argued that the total reservations for all groups exceeded the Balaji limit of 50 per cent. Rejecting this argument, the Mysore High Court held that the validity of reservation of seats for socially and educationally backward classes have to be judged by the conditions laid down in article 15(4a). The validity of the reservations for classes other than those socially and educationally backward classes Scheduled Castes and Scheduled Tribes had to be tested on the basis of the requirements of article 14. Such reservations should not be mixed up with the special reservations under article 15(4). The upper limit laid down in Balaji's case has application only to the reservation to be made under article 15(4). It does not include any reservation otherwise made.

*S. A. Partha* v. *State of Mysore*

A.I.R. 1961 Mys. 220

*Facts*

A challenge was made to the orders of Mysore Government making reservations for admission to technical and professional institutions based on the interim report of Dr. Nagan Gowda Committee to determine criteria for identifying the socially and educationally backward classes in the state. The Government had fixed 22% reservation for backward classes, 16% for Scheduled castes and, 3% for Scheduled Tribes. The remaining 60 per cent were to be selected on the basis of open competition on merit alone. If any seats reserved for candidates belonging to the Scheduled Castes or Scheduled Tribes remained unfilled, the same was to be filled by candidates of other backward classes.

*Issues*

(i) When reservation is made for backward classes, Scheduled Castes and Scheduled Tribes, can they demand more seats than are included in the reservation on the basis of their backwardness ?

(ii) Is the transfer of unfilled seats meant for Scheduled Castes and Scheduled Tribes to other Backward Classes constitutional under article 15(1) and 29(2) of the Constitution ?

*Summary of the judgment on the above two points*

*A. N. Pai and M. I. Hussain, JJ.*

The Court held that when a reservation of a certain percentage of seats is made in favour of Scheduled Castes or Scheduled Tribes or other Backward Classes, they could not on the basis of their backwardness ask for more seats than are included in the reservation percentage. Compartmentalisation was open to objection from the point of view of the fundamental rights of both categories of citizens, namely the backward and the advanced classes. To prevent a number of the category entitled of reservation from competing in the general category would violate his fundamental right. To permit him to compete separately both in the reserved category as well as in the general category would result in the violation of the fundamental right of a member of the general category beyond the limits constitutionally permissible for the protection of the reserved category. Hence, for a reservation of certain number of percentage of seats to be constitutionally correct or appropriate, it should not be in the nature of compartmentalisation but in the nature of a *guaranteed minimum* in the course of general competition among all categories of citizens.

Regarding the transfer of unfilled seats of Scheduled Castes and Scheduled Tribes to other backward classes, the court said that those three groups were three different categories whose classification was based on different indicia and the classification of other backward classes might vary from time to time and with reference to the nature of their backwardness. Consequently it was held that the allotment of seats under the provisions of the impugned orders in favour of other backward classes in excess of the 22 per cent reserved for them in a manner otherwise than by open competition is an unreasonable restraint on the fundamental right of other citizens and, therefore, onposed to the Constitution.

*Subhash Chandra v. State of U.P.*

AIR 1973 ALL. 295

*Facts*

The State of Uttar Pradesh runs five medical colleges, one each at Allahabad, Kanpur, Meerut, Agra and Jhansi. In addition, Lucknow University has a medical college called King George Medical College. In consultation with the Lucknow University, the State Government decided to hold one combined pre-Medical Test for selecting students for admission to the six medical colleges. The work of holding the combined pre-Medical Test was entrusted to the Meerut University. There were in all 758 seats in the six medical colleges. 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) | Giri Candidates | 20% |
| (2) | Candidates from rural areas | 12% |
| (3) | Candidates from hill areas | 3% |
| (4) | Candidates from Uttar Khand 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% |

As a result of the reservations, 368 seats remained as general seats. This was 51% of the total number of seats *i.e.* 732 which were open to the combined Pre-Medical Test, the balance 368 (49%) being reserved seats.

*Issues*

(i) Whether candidates from rural areas, Hill areas and Uttarkhand division belonged to socially and educationally backward classes ?

(ii) Whether 49 per cent reservation was excessive ?

*Extracts*

*Satish Chandra, J.*

Sub-articles (3) and (4) of Art. 15 classify women and children, socially and educationally backward classes of citizens, Scheduled Castes and Scheduled Tribes as distinct groups. If the State Government makes reservation in respect of these groups, it cannot be said that the classification is not based upon rational differentia. The object of the reservation in favour of the various categories of candidates is obviously to make special provision for their advancement. This is specifically permitted by sub-articles (3) and (4) of Art. 15. The differentia, are, therefore, reasonably related to the objects sought to be achieved by the reservation, namely to comply with the requirements of Art. 15(3) and (4). Reservation in favour of girls is clearly covered by Art. 15(3) of the Constitution as being a special provision for women. The reservation in respect of candidates from rural areas, hill areas and Uttar Khand Division has been stated to be because the citizens of these areas from a socially and educationally backward class of citizens. This, in our opinion, is undeniable from the point of view of education in medicine; because in this State there are only six medical colleges, each one of which is situated in a municipal town. There is no facility for imparting medical education in the rural of hill areas or in the Uttar Khand Division. From the point of view of imparting medical education, these areas were correctly treated by the State Government as having socially and educationally backward citizens.

For the appellant, it was urged that the percentage of reserved seats comes to 49 per cent only if the 26 seats reserved for nominees of the Central Government are excluded from consideration. Since reservation of 26 seats is also a reservation which precludes candidates for general seats to be selected against them, these 26 seats should also be taken into consideration while calculating the percentage of the reserved seats. If these 26 seats are included, the reserved seats would come to 62 per cent, which is according to the Supreme Court, unreasonable. The submission proceeds upon a fallacy. The Government which runs the medical colleges and bears the entire burden of their expenses is entitled to lay down sources from which selection will be made. The Supreme Court in D. N. Chanchala v. State of Mysore, AIR 1971 SC 1762 para 23 observed :—

"A provision laying down such sources strictly speaking is not a reservation. It is not a reservation as understood by Art. 15, against

which objection can be taken on the ground that it is excessive".

The State Government may have been under obligation to the Government of India to provide some seats for its nominees. These 26 seats were not open to be filled by the Pre-Medical Test. All other categories of reserved seats were to be filled through the combined Pre-Medical Test. These 26 seats cannot, in our opinion, be taken into account while determining the reasonability of the reservation of seats.

*Holding*

(i) People from rural areas, hill areas and Uttarkhand Division belong to socially and educationally backward classes entitled to reservation under article 15(4).

(ii) The quantum of reservation, namely, 49% was not excessive.

*Dalip Kumar v. Govt. of U.P.*
*A.I.R. 1973 ALL. 592*

*Facts*

The distribution of seats in the Medical Colleges of U.P. under para 10 of the Instructions issued by the Registrar, Combined Pre-Medical Test, Agra University was challenged as violation of article 15(4). The distribution of seats was done in the following manner :

Medical College

| | Luck. | Kan. | Agra | All. | Meerut | Jhansi |
|---|---|---|---|---|---|---|
| (a) Seat for general candidates (Male) . | 103 | 104 | 63 | 55 | 55 | 26 |
| (b) For girl candidates | 35 | 37 | 24 | 20 | 20 | 10 |
| (c) For candidates from Rural areas . | 28 | 28 | 19 | 15 | 15 | 6 |
| (d) For candidates from Hill areas (excluding Uttarkhand Division) . . | 5 | 6 | 4 | 3 | 3 | 2 |
| (e) For candidates from Uttarkhand Division (for these seats 50 per sent are reserved for female candidates from Uttarkhand Division) . | 5 | 6 | 4 | 3 | 3 | 2 |
| (f) For Scheduled Castes Candidates . | 5 | 6 | 4 | 3 | 3 | 2 |
| Total . . . | 181 | 187 | 118 | 99 | 99 | 50 |

*Issues*

(i) Was the reservation of seats for rural, hill and Uttarkhand areas constitutionally permissible ?

(ii) Are the criteria adopted for determining educational backwardness constitutionally valid ?

*Extracts*

*D. S. Mathur, J.* There are two broad features of these Instructions, firstly, that in respect of general candidates, girls candidates and candidates from rural areas, the minimum qualifying marks are 25% in each subject and 33% in the aggregate; while for Scheduled Castes candidates these minimum figures are 25% and 30%. In case of candidates from Uttarkhand Division, there is no such minimum qualifying marks, with the result that a candidate not securing any marks in any subject shall be admitted provided that the total number of candidates from Uttarkhand Division does not exceed the figures prescribed in the aforementioned instructions. Another feature of the Instructions is that the reservations have been made not only for Scheduled Caste candidates but also for girl students, candidates from rural areas, candidates from Hill areas other than Uttarkhand Division and candidates from Uttarkhand Division. In case of girl candidates if any girl candidate is selected from general candidates, the reservation for girl candidates shall stand reduced to that extent but not in the case of others. Consequently, if sufficient number of qualified candidates are available more candidates from those categories (other than girl candidates) than prescribed in the Instructions can be admitted in Medical Colleges.

In the instant case the State has tried to justify why the various groups or areas detailed in the Instructions were considered to be educationally backward but nothing has been indicated why and how could they all be treated as socially backward also. For educational backwardness the main criterion appears to be the percentage of marks obtained in the Pre-Medical Test, the number of candidates from reserved areas appearing in the Pre-Medical Test and also the shortage of Higher Secondary Schools in those areas. We must say that this is not sufficient for classifying all the residents of those areas as belonging to educationally backward classes. All the residents of the village may be educationally backward, but the same cannot be said in regard to all the rural areas. Instances are not unknown where literacy in a rural area is very high in some villages nearing cent per cent. Similarly, in the Hill areas other than Uttarkhand Division there are classes of citizens who cannot be classed as educationally backward, Uttarkhand Division stands in a different category and in the absence of data it may be said that major part thereof is socially and educationally backward; but in Uttarkhand Division also there are certain areas all the residents whereof cannot be classed as socially and educationally backward.

To put it differently, even if there may be some justification for placing Uttarkhand Division in the category of socially and educationally backward classes, there is no justification to place all the rural areas and Hill areas other than Uttarkhand Division in that category.

*Holding*

(i) The percentage of marks obtained in the Pre-Medical Test, the number of candidates from reserved areas appearing in the Pre-Medical Test and also the shortage of Higher Secondary Schools in these areas were not adequate to classify all the residents of these areas as belonging to educationally backward classes.

(ii) Reservation for candidates from Uttarkhand areas was held to be valid, whereas for hill and rural areas it was not valid.

## PART III

**Constituent Assembly Debates and Summary of Court Cases under Article 16(4)**

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