

(1986) 02 AP CK 0006

In the Andhra Pradesh High Court

Case No : Writ Petition No. 9750 of 1985

A.S. Sailaja

APPELLANT

Vs

Principal, Kurnool Medical College, Kurnool and Others

RESPONDENT

Date of Decision : 19-02-1986

Acts Referred:

Constitution of India, 1950 — Article 14, 15(4), 16(4), 346
Hindu Adoptions and Maintenance Act, 1956 — Section 12

Citation : AIR 1986 AP 209 : (1986) 1 APLJ 234

Hon'ble Judges : K. Ramaswamy, J

Bench : Single Bench

Advocate : A. Hanumantha Rao, for the Appellant; Advocate General and Government Pleader, for Education, B. Tharakam, Chala Seetharamayya, (Amicus Curiae), for the Respondent

Judgement

1. An interesting interaction between the statute and the constitutional law the former attempting to entrench into the latter's ambit and the latter to elbow it out is the crux of the controversy and which of it would succeed is the area of consideration.

2. This is a writ petition to quash the proceedings of the Principal, Kurnool Medical College, dated August 28, 1985, by Certiorari and Mandamus to direct the Director, Backward Class Welfare, the second respondent, to forthwith certify the petitioner's social status as Backward Class Group "D" by virtue of her adoption to B. Sivaramaiah, a Shepard by caste, for her admission into the First Year M.B.B.S. Course for the year 1985-86.

3. The petitioner, A.S. Sailaja is the daughter of A.S. Radhakrishna, an advocate of Cuddapah in Andhra Pradesh. She was born on February 21, 1967, brought up and was educated by her natural father till March 16, 1985 and she passed her Intermediate in March 1984 with English as medium of instruction. She appeared for the common entrance examination for 1984-85 examination she secured 471 marks out of 600. In her application for common entrance examination dated

march 16, 1985, she described herself to be the daughter of A.S. Radhakrishna and no mention of adoption by S. Sivaramaiah was made. In her application for admission dated July 13, 1985, she stated her name as Ayyala Somayagula Sailaja. Her natural father A.S. Radhakrishna. In the Column 10(b), "The name of the guardian, if father is not alive", she described. B. Sivaramaiah (adopted father). In Column 11, regarding the occupation of the parent, she stated that it does not arise. In Column 14, with regard to "social status" in Clause (ii) thereof, she described as Yadava (Golla) Serial No. 33, "D" Class. To Clause (iii), "Whether she claimed earlier and enjoyed any educational concession", she stated "not claimed". In Column 16, "Whether the candidate applied earlier and if so, give all details of all attempts for M.B.B.S." and in clause (iv), "Social status claimed", she stated that on the previous occasion she applied for and she did not claim her social status and she was not selected. In the column "Official Address" she has given the address of her natural father and in the column "Residential Address" she has given as C/o Bangarugari Sivaramaiah, Ramanajupalle Post, Cuddapah Taluk and District. She enclosed a photostat copy of the registered adoption deed dated July 11, 1985 and two photostat copies one issued by the Village Munsif dated February 15, 1982 to the effect that Sivaramaiah is a Yadava (Golla - Shepard) by caste; he adopted the petitioner on February 11, 1982 and the petitioner belongs to shepard community and in the certificate dated January 1, 1983, the V.M. stated that B. Sivaramaiah is Yadava by caste from generation to generation. He did not mention anything regarding the adoption of the petitioner.

4. On the basis of those certificates, the petitioner was provisionally given admission as a Backward Class Group "D". The first respondent, on August 3, 1985, informed the petitioner of her provisional selection and directed her to be present on August 12, 1985 for interview along with the original certificates. It is the case of the petitioner that accordingly she appeared and she was asked to meet the Government Pleader, Kurnool, for the opinion whether the adoption is valid and she was also asked to meet the first respondent on August 17, 1985. On August 19, 1985, she met the first respondent and she was informed that the petitioner has to obtain the opinion of the Director of Medical Services - the Chairman of the Selection Committee. Thereafter, by letter dated August 21, 1985, she was informed that for confirmation of her social status, it was referred to the second respondent and when the second respondent was asked in that regard, he made an endorsement that no such reference was made to him by the first respondent. When again the first respondent was met on August 28, 1985, the petitioner was required to produce the certificate of adoption from the second respondent on or before September 9, 1985 failing which it was threatened that the provisional selection would be cancelled. Accordingly, the petitioner filed the writ petition on September 4, 1985. In W.P.M.P. No. 1347/85, this Court issued an interim direction not to cancel her admission and in W.P.M.P. No. 1347/85, application to admit her into the College, notice was ordered. Then the petitioner approached the second respondent on September 9, 1985 for issue of the social

status certificate, which now reveals that it was rejected.

5. From the narrative of the above facts, it is clear that the petitioner, a Brahmin by case is brought up and was educated by her natural father, an advocate. In the application for admission for entrance examination she did not claim to be the adopted daughter of B. Sivaramaih. For 1984-85 examination too, she did not claim her social status as Backward Class. After the entrance examination for 1985-86 was conducted on obtaining the marks certificate. She applied on July 13, 1985 for admission as a Backward Class "D" Group (Shepard by caste) - Item No. 33 of the Backward Class List issued by the Government of Andhra Pradesh. She claims that she was adopted on February 11, 1982 and the adoption-deed was executed and registered on July 11, 1985 and a certificate was obtained to that effect from the Village Munsif and on that basis she claimed her admission to be a Backward Class Group "D" candidate.

6. This claim was denied by the respondents in their counters. It is stated that no adoption in fact has taken place and it is only a brought up document to get admission as a Backward Class candidate.

7. In view of the fact that the question raised are of constitutional importance, I requested Sri Challa Sivaramaiah, a senior member of the Bar to assist the Court as amicus curiae and directed the learned Advocate General to appear on behalf of the Government. Sri M.R.K. Choudary has brought to my notice that in W.P. No. 11914/85 similar point was involved and therefore requested to post that writ petition also along with this writ petition. In W.P. also along with this writ petition. In W.P. No. 14875/85 (posted for admission) also, similar points arise though slightly in different way but the effect is the same. They too were heard together. Sri B. Tarakam, filed on application on behalf of the Andhra Pradesh Backward Classes, Scheduled Castes and Scheduled Tribes Advocates Association as intervener and accordingly, it was impleaded as third respondent and he also argued the matter.

8. To satisfactory resolve the points raised, it is necessary to portray the historical background, source and the relevant provisions of the Constitution and the Act. For the purpose of this case, it is needless to travel into the history of the caste system prevalent in the Hindu social structure except to recapitulate what was succinctly stated by Gajendragadkar, J. (As he then was) in *M.R. Balaji and Others Vs. State of Mysore*, thus :

"In the Hindu social structure, caste unfortunately plays an important part in determining the status of the citizens. 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 over-burdened with considerations of purity based on ritual concepts, and that led inflexibility and rigidity. The artificial growth inevitably tended to create a feeling of superiority and inferiority, and to foster narrow

caste loyalties."

Professor Shariful Hasan, in his "Supreme Court : Fundamental Rights and Directive Principles" (Deep and Deep Publication) at page 14, stated that :

"Historically speaking, the pre-independent political struggle was aimed to end exploitation of the Indian masses which meant that political freedom must include the economic freedom of the starving millions."

9. On January 26, 1950, the people of India set out their voyage with resolution to reach the temple of socio economic justice in Democratic Socialist Secular Republic charging the State i.e., the legislature, Executive and Judiciary to secure liberty of various essential facets and equality of status and opportunity to develop full personality with dignity to all promoting among them fraternity in a united and integrated Bharat i.e., India. In steering the ship the guiding star is as Donald Eugene Smith says in his "India as a Secular State", that India is striving to be a secular State is remarkable not only in terms of the contrast with historic India civilization but also in contrast with the policies of neighbouring countries.....The secular State is important to the future of Indian democracy itself. It stands or falls as a basic and inseparable component of the modern liberal democratic State. The secular State is thus a fundamental aspect of India's democratic experiment. But Pandit Jawaharlal Nehru, in his "Discovery of India" (1946 Edition) at page 242 was stated the turbulent castes and classes waters through which the ships is to pass through thus :

"In the context of Society today the caste system and much that goes with it are wholly incompatible, reactionary, restrictive and barriers to progress. There can be no equality in status and opportunity within its framework nor can there be political democracy, and much less, economic democracy. Between these two concepts, conflict is inherent and only one of them can survive."

Desai, J., in K.C. Vasanth Kumar and Another Vs. State of Karnataka, held that those who attempted to move upwards (Pratiloma) in the social hierarchy have put the movement in the reverse gear so as to move downwards (Anuloma) in order to be identified as a group or class of citizens socially and educationally backward. As the awareness of concessions and benefits grows with consequent frustration on account of their not-availability confrontation developed amongst various classes of society.

10. To make the right to equality a reality to the depressed and deprived, Article 46 of the Constitution mandates the State to promote with special care the educational and economic interests of the weaker sections of the people and in particular of the Scheduled Castes and Scheduled Tribes, now called "Dalits" and shall protect them from social injustice and all forms of exploitation. Though Article 14 guarantees equality and Articles 15(1) and 16(1) prohibit discrimination on grounds only of religion, race, caste, sex, descent, place of birth or any of them, Articles 15(4) and 16(4) being species of Article 14 mitigates rigour of formal equality by providing equal opportunity in fact, to the

Dalits and the Backward Class of citizens, as a balancing wheel. Human law geared to human justice is rooted in the constitutional conviction of a new democratic order. Law is a measure of civilisation and essentially a social fact and devolution to the methods of law is an indispensable element in a public order that promotes essential human values. Thus, law is an instrument of social change values. Thus, law is an instrument of social change.

11. Sri A. Hanumantha Rao, learned Counsel for the petitioner has contended that under the Hindu Adoptions and Maintenance Act (78 of 1956), for short, "the Act", there is not prohibition of adoption between persons of two different castes but among Hindus. Though the petitioner was born and brought up in Brahmin caste and passed her Intermediate examination, she was adopted by a Golla (Shepard) and her adoption is valid under Sec. 12 of the Act and she shall be deemed to be the adoptive daughter of B. Sivaramaiah "for all purposes". The adoption was registered and u/s 16, there is a presumption that the adoption is valid. Though it is a rebuttable presumption, until it is disproved by adduction of evidence in an appropriate suit, the respondents are bound to treat her as the adopted daughter of B. Sivaramaiah and all her ties with her natural family have been snapped off. As such she is a Shepard by social status. She is entitled for admission by operation of Art. 15(4) of the Constitution.

12. Every adoption by a Hindu shall be made in accordance with the provisions of the Act and an adoption made in contravention thereof shall be void under S. 5(1) of the Act. The adoption under the Act shall be only between Hindus by religion as envisaged under Sec 2 (1). For a valid adoption u/s 6, the person adopting must have the capacity and also right to take in adoption. Equally, the person giving in adoption must have the capacity to do so and the person adopted must be capable of being taken in adoption. Such an adoption alone is a valid one. Section 4 obliterates the operation of inconsistent pre-existing Sastric Hindu Law declaring "shall cease to have effect". Section 2(2) declares its inapplicability to Scheduled Tribes. Under the Act, a male as well as a female child is eligible to be taken in adoption. Section 11 adumbrates the essential formalities for valid adoption. Since it is not material for the purpose of this case, they are omitted. The effect of a valid adoption is mentioned in Sec. 12. Since it is material for the purpose of this case, it is set out in extenso thus:

"Sec. 12. An adopted child shall be deemed to be the child of his or her adoptive father or mother "for all purposes" with effect from the date of the adoption and from such date all the ties of the child in the family of his or her birth shall be deemed to be served and replaced by those created by the adoption in the adoptive family :

Provided that ---

(a) the child cannot marry any person whom he or she could not have married if he or she had continue in the family of his or her birth;

(b) any property which vested in the adopted child before the adoption shall

continue to vest in such person subject to the obligations, if any, attaching to the ownership of such property, including the obligation to maintain relatives in the family of his or her birth;

(c) the adopted child shall not divest any person of any estate which vested in him or his before the adoption."

13. u/s 15, an adoption once made cannot be cancelled by the adoptive father or mother or any other person, nor can the adopted child renounce his or her status as such and return to the family of his or her birth. Registration of any document, under law, as a record of adoption signed by the person giving and the person taking the child in adoption gives rise to a rebuttable presumption under S. 16 that unless it is disproved, the adoption has been made in compliance with the provisions of the Act. A reading of these provisions would establish that once an adoption has been made by a Hindu to a Hindu be it a male or female child; aged below 15 years, in compliance with the provisions of the Act, such an adoption is valid and the child be it son or daughter, shall be deemed to be the child of his or her adoptive father or mother "for all purposes", and from the date of the adoption, the ties of the child in the natural family have been snapped off and stood transplanted from that date into the adoptive parents' family, subject to the restrictions engrafted in the three provisos. If it is registered under S. 16, the statute further raises a rebuttable presumption that unless and until it is disproved, the adoption has been made in compliance with the provisions of the Act.

14. The object of adoption under Sastric Hindu Law are twofold. The first is religious, to secure spiritual benefit to the adopter and his ancestors by having a son for the purpose of offering funeral cakes and libations of water to the names of the adopter and his ancestors. The second is secular, to secure an heir and perpetuate the adopter's name (Vide paragraph 447 of Mulal's Hindu Law, 15 Edition, page 569).

15. In V.T.S. Chandrasekhara Mudaliar (Died) and Others Vs. Kulandaivelu Mudaliar and Others, , their Lordships of the Supreme Court, speaking through Subba Rao, J., (as he then was) held that the object of adoption under the Sastric Hindu Law is for the performance of religious duty and it is an essential foundation of the law of adoption. Therefore, the adoption is for spiritual rather than temporal consideration. In AIR 1933 155 (Privy Council) at p. 158 the Judicial Committee speaking through Sir George Lowndes held that :

"It is clear that the foundation of Brahminical doctrine of adoption is the duty which every Hindu owes to his ancestors to provide for the continuation of the line and the solemnization of the necessary rites.....It can, they think, hardly be doubted that this doctrine the devolution of property, though recognised as the inherent right of son, is altogether a secondary consideration."

This decision was approved by the Supreme Court in Chandrasekhara's case (supra). Thus, it is an established principle that under the Sastric Hindu Law, the

object of adoption is for religious purpose for the performance of the religious rites and the secular purpose is subsidiary. But the Act did not give primacy to the religious consideration alone but it is also for secular purpose any other purpose as well. The Act has done away with the Sastric rigour that the adopted child shall be from the same caste or gotra, etc.

16. While considering the effect of S. 12 of the Act in *Sawan Ram and Others Vs. Kala Wanti and Others*, , Bhargava, J., speaking for the Court has held :

"Under the Sastric Hindu Law, if a child was adopted by a widow he was treated as a natural born son and consequently he could divest other members of the family of rights vested in them prior to his adoption. It was only with the limited object of avoiding any consequence on the adoption of a child by a Hindu widow that the provisions of Cl. (c) of the proviso to S. 12 and S. 13 of the Act were incorporated. In that respect, the right of the adopted child were restricted."

We are not concerned in this case with regard to the effect of adoption on the personal rights. Here it is made clear that I indicated to the learned counsel on either side that for the purpose of this case I would proceed that the adoption is valid and in case it is to be held that the petitioner is entitled to the benefits of the provisions of Art. 15(4), then the question whether the adoption, as a fact, has taken place and is in compliance with the provisions of the Act, is to be relegated for an enquiry to be made before the competent forum, in that regard. The parties have agreed for the same. In the light of the above finding, I proceed on the footing that the petitioner Sailaja has been adopted by B. Sivaramaiah, a Shepard, and there is a rebuttable presumption that the adoption has been made in compliance with the provisions of the Act and all ties of the petitioner with her natural family have been snapped off subject to the restrictions contained in the provisos to S. 12.

17. What is the meaning of the phrase "for all purposes" under S. 12 and its legal effect and whether it encompasses within its ambit the rights under Art. 15(4) is the material question. To decide this question, it is but necessary to look to the purpose of Art. 15(4); and who are the persons entitled to the benefit thereof.

18. In *Smt. Devaki v. Regional Joint Director of School Education, Hyderabad*, W.P.No. 2596/85 dated 24-1-1986, I have an occasion to consider the need for education and the right of the Dalits when the question arose whether a school established in the Harijanwada should be recognised when there is a need, though the conditions under G.O. Ms. No. 181 dated May 15, 1984 issued under S. 20(3)(A) of the Andhra Pradesh Education Act, 1982 have not been complied with. In that context it was held that the education is the very foundation of good citizenship and a principal instrument to awaken the child to cultural values in preparing the child for later professional training and in helping him to adjust to the environment. Thereby education nourishes intellectual advancement to develop dignity of person without which there is neither intellectual excellence

nor pursuit of happiness. It was held therein, considering Arts. 14, 15(4), 29(2), 45 and 46 of the Constitution that right to education is a fundamental right.

In *Bhuvaneswar Rao v. Principal, Osmania Medical College, Hyderabad*, W.P.No. 11707/85 dated 23-12-1985, it was held that the Dalits and Backward Classes have fundamental right to equality of opportunity and status in an unequal society. Social justice in establishing egalitarian society is the creed of the Constitution and distributive justice is a fact thereof. The benign equalitarian guarantee is an integral facet of equal justice under Art. 14 of the Constitution. In *A.V. Chandel v. Delhi University*, : AIR1978Delhi308 it was held that right to education is a fundamental right.

19. The Hindu social structure is based on caste and communities on the notions of superiority and inferiority, which created walls and barriers of exclusiveness among castes and classes. Equality implies fundamentally certain levelling process. It means that no man shall be so placed in the society that he can over-reach his neighbour to that extent which constitutes a denial of the latter's citizenship. (Vide Herold Laski's "Grammar of Politics", 1979 Indian Re-print, page 153). Equality means adequate opportunities are laid open to all. By adequate opportunities, we cannot imply equal opportunity in the formal sense, viz., identity of formal opportunity. The native endowments of men are by no means equal. Children who are brought up in culturally, educationally and economically advanced atmospheric conditions, the things of the mind of the children are accounted highly; they are bound to start the race of life with advantages. It would apparently have its inevitable effect profoundly on the quality of the children whom it touches. But in an egalitarian socialist state to the disadvantaged, the principle of equality in reality alone would be an adventitious aid to formal equality. Equality, therefore, involves up to margin of sufficiency, identity of response of primary needs. This is what is meant by justice. We are rendering each man his own by giving him what enables him to be a man. Herold Laski, in his "Grammar of Politics" (supra), at page 160, states thus :

"We so act because the common welfare includes the welfare of the weak as well as the strong.....To act otherwise is to regard them as not as persons but as instruments. It is to deny that their personality constitutes a claim. It is deliberately to weigh institutions against a section of community."

Article 15(4) guarantees equality in fact in the matter of admission into educational institutions maintained by the State or receiving aid from the State as a historical necessity. Thereby, Constitution is protecting the weak and limiting the general power of the society, to advance the educational and economic interests of the Dalits and Backward Classes.

20. When so much is the permeation of the constitutional ambit of Art. 15(4) and Art. 46, whether a child hailing from a forward caste (Brahmin), on adoption by a Backward Class person is entitled to the benefit thereof, is the question. The petitioner proceeded on the premise that on adoption, as of right, she is entitled

to the benefit of reservation under Art. 15(4), but the Constitution makes classifications of citizens of the community as a whole as one class and Dalits and Backward Class as another class for the purpose of the rights conferred under the Constitution. This is explicit when the definitions under Art. 366(24) (Scheduled Castes) and (25) (Scheduled Tribes) are gleaned through as it specifically mentions at the end "for the purposes of this Constitution." But there is no special definition under the Constitution with regard to "Backward Class" of citizens who are socially and educationally backward. Obviously for that reason, the contentions of Sri. M.R.K. Choudary and echoed by Sri Hanumantaha Rao, the learned Counsel, is that once a person belonging to upper caste is adopted by a Backward Class person, the adopted child, as of right, is entitled to the benefits under Art. 25(4). The right is given to the class of persons; not to a person from the class. The motive behind the adoption cannot be pierced through. It is relevant and redundant. Though it may have the effect of defeating and nullifying the object of advancement under Art. 15(4) and an exploitation under Art. 46, the action being according to law, it could be remedied only by the President by appointing a Commission under Art. 340 to investigate into and the Parliament to make law, and the Court has no power to project its power of interpretation, nullifying the effect of S. 12 (the term "for all purposes"). The Act is post-constitutional one. The Parliament is aware of the effect of S. 12. No exception is made. Otherwise S. 12 would be maimed. The question is whether this contention is legally sound?

21. In *R. Chitrlekha and Another Vs. State of Mysore and Others*, Subba Rao, J, (as he then was), held that Arts. 46, 341, 342 and 15(4) form a group which have relevance in making of a special provision for the advancement of any socially and educationally Backward Classes of citizen in the matter of admission to colleges. While giving definition under Art. 366(24) and (3\25) Scheduled Castes and Scheduled Tribes, it expressly limited such definition "for the purpose of this Constitution". Therefore, when the Dalits are expressly defined under the Constitution and the Backward Class of citizens are left to be identified by the State, such an identification by a corollary should be "for the purpose of the Constitution", i.e., advancement of educational and economic interest, to provide equality of opportunity when they are socially handicapped like Scheduled Castes and Scheduled Tribes. The immediate question is who are the persons entitled to be identified among the Backward Class of citizens, for the purpose of the Constitution.

22. It is now well settled that in order to qualify for being called a Backward Class citizen, he must be a member of socially and educationally homogeneous group among backward class. Caste alone is not the consideration. The social and educational backwardness of that class is material for the purpose of both Arts. 15(4) and 16(4). In the context in which the expression "Class" under Art. 15(4) occurred, was considered in *State of Andhra Pradesh and Another Vs. P. Sagar, . Shan, J.*, (as he then was) held thus :

".....A homogeneous section of the people grouped together because of certain likeness 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. Backwardness being social and educational must be similar to the backwardness from which the Scheduled Castes and the Scheduled Tribes suffer."

23. In *Triloki Nath v. State of J & K.*, AIR 1969 SC 1 at p. 3, Para 4 Shah, J., held :

"The expression "backward class" is not used as synonymous with "backward caste" or "backward community". The members of an entire caste or community may in the social, economic and educational scale of values at a given time be backward and may on that account be treated as a backward class, but that is not because they are members of a caste or community, but because they form a class. In his ordinary connotation the expression "class" means a homogeneous section of the people grouped together because of certain likeness or common traits, and who are identifiable or common traits, and who are identifiable by some common attributes....."

24. In *M.R. Balaji and Others Vs. State of Mysore*, , relied on by Sri Sitaramaiah, learned amicus curiae, Gajendragadkar, J., (as he then was) while considering the scope and extent of the expression "backwardness" under Art. 15(4), held thus :

"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..... The occupations of citizens may also contribute to make classes of citizens socially backward. There are some occupations which are treated as inferior according to conventional beliefs and classes of citizens who follow these occupations are apt to become socially backward."

Mr. Tarakam, learned counsel for the intervener has contended that Miss Sailaja being a Brahmin, though she was assumed to have been adopted by a Shepard, she always continues to be a Brahmin and she cannot get rid of her caste identity and sanguinity with all attended advantages cannot also be got rid of. Therefore she is not entitled to be treated as a Backward Class. In my view, the form in which the learned Counsel has argued solely on caste basis, cannot be given acceptance. It is axiomatic that Art. 15(1) prohibits caste as such to be a factor for consideration. (Vide Balaji's case (supra). Caste alone cannot be the basis to identify a person or class of persons to be backward class. The reason is obvious. The Constitution intends to establish a secular State within its framework. Though India is a land of many religious faiths erected within certain linguistic barriers, the Constitution intended to transcend them to promote mobility among its people assimilating all the citizens in united and integrated India. The Hindu social structure as such is also briddled with several barriers of castes and

classes. Therefore, caste as such, should not be given any primacy. But however, it is now seen from the judicial dicta and the extrajudicial juristic thoughts that unfortunately even after 37 years of independence, instead of weakening the hold of the caste structure, it has been deeply entrenched. Even an English writer, D.E. Smith in his "India as a Secular State", at page 326 writes thus :

"The basic fact; of course, is that Hindu social life, for the vast majority, is still based on caste divisions. Caste loyalties are still second only to family loyalties in the thinking of the Hindu masses."

Paramanand Singh, Lecturer of Law College, Delhi University, in his article, "Constitutional Policy and Judicial Control" 1976, J.I.L.I. 300 at 370 has stated that Caste can be viewed in a secular sense in terms of deprivation of resource and attainments in relation to the large society rather than in terms of one's low ritual standing in the Hindu order. A secular and social meaning of "caste" has a relevant reason for classification and elimination of "caste" from the affairs of the State. Caste has to be viewed not in the context of Varna but to the multiplicity of cases or Jattis which disfigure the Indian Social structure. At page 380, he states that the policy behind protective discrimination is to help the really needy and the poor it is the socially and educationally backward individual of a group who should get the benefits of compensatory state action. The mention of caste group in the context of preferential job policies and places in the educational institutions is only a convenient method to identify the deserving beneficiaries of the Scheduled Castes Order. Even the words "Weaker Sections" in Art. 46 are intended to be convenient devices and select the legitimate beneficiaries of the protective schemes aimed at the promotion of the "educational and economic interests" of the Backward Classes. If this is so, then the only relevant consideration in identifying these beneficiaries should be the relative deprivation or lack of resources and opportunities and attainment of the individual members of the favoured group. At page 384, he states that in the process of social change, the Courts can play a very vital role discarding the theocratic or theoretical basis of caste and offer a social and secular meaning of caste consonant with secular ideals transforming our society within the framework of the Constitution from medieval hierarchical and closed society into egalitarian society extending better facilities to downtrodden enabling them to achieve upward mobility by securing social and economic and political equality or justice or to prevent exploitation from all forms. Motivation of change and status of mobility is thus encouraged.

25. J.W. Nickel, in his article "Should Reparation be given to Individuals or to Groups Analysis", 1974 Columbia Law Review, 154 at 160 states :

"Compensatory treatment should be given only to those who are personally disadvantaged by the past and present discrimination and who have not been able to overcome the effect of past discrimination."

Thus, I have no hesitation to conclude that the obvious purpose of Arts. 14 and

15(4) in providing special provision for admission into educational institutions maintained by the State of receiving State aid is to help the disadvantaged and the underprivileged children among the downtrodden, deprived and disadvantaged Dalits and Backward Class to enable them to catch up to the standards of the competition set up by the society. The purpose of Art. 16(4) is to fill the inadequacy of their representation in the services under the State. The constitutional purpose of reservation thereby is intended to those who are personally disadvantaged by the past and present discrimination and who have not been able to overcome the effect of past discrimination.

26. The question therefore is whether Sailaja, who had all the advantages in natural family social, cultural and educational advantaged life, an adoption at just completion of 15 years to a Shepard, could be considered to be a Backward Class citizen within the meaning of Art. 15(4) of the Constitution.

27. As already seen, caste is not the exclusive consideration but the homogeneity of the sections of people with likeness or common traits, identifiable by attributes such as social status, rank, occupation, residence in a locality in the society etc., are the important factors, the prime consideration being the social and educational backwardness of the people composed of such classes. The contention of the learned counsel for the petitioner is that once the petitioner by operation of law had transplanted themselves in the Backward Class of citizens, the motive for such transposition is immaterial however oblique it may be, however pugnacious its effect may result in. The only recourse is to have it remedied by law. It is already seen that the adoption is either for religious purpose or for secular purpose. The Sastric Law attached sole importance to the former relegating the latter to the secondary. The Act has obliterated the distinction. Therefore, it may be either for religious purpose or for secular purpose or for both, or for any other purpose.

28. G. Appaswami Chettiar and Another Vs. R. Sarangapani Chettiar and Others, the sheet anchor of Sri Hanumantha Rao is an authority for an adoption made under the Sastric Hindu Law for religious purpose and as such is redundant to go into the motive. The ratio therein is of little assistance to this case. But in this case, the adoption is a girl. The Act makes no distinction if the adoption is of a boy or a girl. The question is whether motive can be gone into in such an adoption.

29. The narrative of the facts would clearly indicate that for the academic year 1984-85 or in the application for entrance examination for 1985-86, she did not set up adoption. For the first time, on July 13, 1985, it was stated that she was adopted while giving her name as Ayyala Somayajula Sailaja and of her natural father for communication purpose. It would mean, she retained her natural family name and is residing with her natural father. What is the object? In the registered deed, it is stated that the oral adoption was made in the year 1982. Had an adoption taken place in 1982, obviously we would expect to find (it) mentioned on previous occasions. The natural father is no other than an

advocate. From this background, the question is whether the motive can be gone into and what would be the object of the alleged adoption.

30. In the context of administration of Income Tax Law, the English Courts followed by us are confronted with the arrangement made by the tax payers to evade tax. The law laid down by Lord Sumner, in *Inland Revenue Commr. V. Fisher's Executors*, 1926 AC 395 is that the subject is entitled so to arrange his affairs as not to attract taxes imposed by the Crown so far as he can do within the law, and that he may legitimately claim the advantage of any expressed arrangement was found acceptable for long, but with the passage of time and the march of law against tax avoidance, the House of Lords had to reconsider the same, and in *W.T. Ramsay v. Inland Revenue Commr.*, 1982 AC 300 Lord Wilberforce held that :

".....the above principle of (Lord Sumner) must not be over stated or over extended. While obliging the Court to accept documents or transactions, found to be genuine, as such, it does not compel the Court to look at a document or a transaction in blinkers isolated from any context to which it properly belongs..... it is the task of the Court to ascertain the legal nature of any transaction to which it is sought to attach a tax or a tax consequence....."

31. In *Federal Commissioner of Taxation v. Vestradars Pty. Ltd.*, (1980) 30 ALR 353 at pp. 354-355, the Australian High Court, speaking through Barwick, C.J., held that :

"It does not exclude the approach of the Court, its power and duty to look to the new sophisticated legal devices and determine their nature in law and relegate them to existing legislation. While the techniques of tax avoidance progress are technically improved, the Courts are not obliged to stand still."

In *McDowell and Co. Ltd. Vs. Commercial Tax Officer, Chinnappa Reddy, J.*, while concurring with the majority, has surveyed the entire law of avoidance and its pernicious effect on the public at large, stated thus:

"Whatever a statute may provide, it has to be interpreted and applied by the Courts; and ultimately, it will prove to be in this area of judge-made law that our elusive journey's end will be found..... When these ghosts of the past in the path of justice, clanking their medieval chains, the proper course for the judge is to pass through them undeterred..... Taxes are what we pay for civilised society. I like to pay taxes. With them I buy civilization. But surely, it is high time for the judiciary in India too to part its ways from the principle of *Westminster* (1936) AC 1 and the alluring logic of tax avoidance. We now live in a welfare State whose financial needs, if backed by the law, have to be respected and met.It is up to the Court to take stock to determine the nature of the new and sophisticated legal devices to avoid tax and consider whether the situation created by the devices could be relegated to the existing legislation with the aid of "emerging" techniques of interpretation as was done in *Ramsay* (1982) AC 300 and *Burmah Oil* (1982) STC 30 and *Dawson* (1984) 1 All ER 530, to

expose the devices for what they really are and to refuse to give judicial benediction."

The view was reinforced in *Workmen Employed in Associated Rubber Industry Ltd., Bhavnagar Vs. Associated Rubber Industry Ltd., Bhavnagar and Another*, in the context of Bonus Act, thus :

"It is the duty of the Court, in every case where the ingenuity is expended to avoid taxing and welfare legislations, to get behind the smoke screen and discover the true state of affairs. The Court is not to be satisfied with the form and leave well alone the substance of a transaction."

32. In the light of the above law, the necessary conclusion is that while the Courts are obliged to accept the document or transaction found to be genuine as such, they are not to blinker at the language couched in the document or the transactions entered into. It is to ascertain the legal nature of the transaction, the sophisticated legal devices adopted in the transaction and determine their true nature under law. The Court's duty is to pass through them undeterred to untravel the camouflage; consider the situation created by the devices with the aid of marching techniques of interpretation and discover the true state of affairs. In an adoption under the Act or under the customary law, when it is for the religious purpose, enquiry into motive is irrelevant. If it is for secular purpose, motive is a relevant circumstance. When the adoption is set up as a means or source to take adventitious aid of Art. 15(4), the paramount purpose of the Constitution being to advance the educational and economic interest of the Backward Class of citizens or the Dalits, to assimilate them in the main stream of the society surpassing the handicaps suffered by them due to Hindu social structure and the caste system, the motive for such an adoption is absolutely a relevant factor and the Court would pierce through the document and find the purpose for such an adoption. The fact and the attending circumstances in setting up the document of adoption by the petitioner have already been adverted to and in the light of those circumstances, the necessary conclusion is that the adoption is not for a religious purpose not a secular purpose, but was intended to take the aid of Art. 15(4) of the Constitution.

33. It is true that the President may, by order under Art. 340, appoint a Commission to investigate the conditions of social and educational backwardness, of the difficulties under which they labour and to make recommendations as to the steps that should be taken by the executive Union or State, to remove such difficulties and to improve the conditions of social and educational backwardness, etc. On receipt thereof, the President shall cause a copy of the report together with the report on the action taken thereon to be laid before each House of Parliament and the latter would take appropriate action in that regard. The arguments of Mr. M.R.K. Choudary, learned counsel, is that the adoption is as per law, i.e., by lawful means. If no disability is created by law, no executive action can abridge the right conferred on the class and the Court cannot assume or presume that any disability arises due to the devices adopted

by the petitioner. If the result of such an adoption has the effect of defeating the benign policy of reservation the remedy would lie to amend the law. Until then, the adopted person being a member of the Backward Class, Scheduled Castes or Scheduled Tribes, as the case may be, entitled to the benefit of Article 15(4) given to the class of persons as a whole. The question is whether the Court would be entitled to consider the effect of the adoption made under law; its effect thereof on the constitutional scheme and in that process, whether the Court could interpret the effect of "for all purposes" under S. 12 of the Act, in the light of the constitutional scheme. The contention of Sri Sitaramaiah, learned amicus curiae is that it is purely one of interpretation of the constitutional scheme. The ratio in *M.R. Balaji and Others Vs. State of Mysore*, would establish that a person, to become eligible to the benefits of Art. 15(4) or Art. 16(4), must be a person belonging to the Class or Caste. In that context it is to be seen whether he/she had all the traits ascribable to that class into which he seeks to come. In that gray area of consideration, the doctrine of harmonious construction, the doctrine of harmonious construction steps in and it is the duty of the Court to interpret the provisions and effect thereof.

34. Judges are not mere arbitrators nor monks nor scientists. They are participants in the living stream of our national life steering the law between the dangers of defeating the constitutional goals and protecting the rights of the individual and the society. Constitution is sui generis and fundamental law of the State and the Act has its birth from it. The stream can rise no higher than the source. The Constitution is intended to endure for ages to come and consequently to be adopted to the various crisis of human affairs. Courts would not be loath to interpret the Constitution to enliven and accomplish the goals set out in the Constitution. The law passed under its authority is in accordance with the felt necessities of the time. As already seen, Art. 15(4) and Art. 16(4) are the fundamental rights to equality and Art. 46 mandates the State as step in aid to promote with special care the educational and economic interests of the Backward Classes and Dalits and shall protect them from "social injustice and all forms of exploitation". Together, they constitute a composite code lifting the rigour provided in Arts. 14, 15(1) and 16(1) and enables the State to make any special provision for the advancement of them. It is already held that right to an education to those classes and castes is a fundamental right. As held by Mathew, J., in *His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala*, that the fundamental rights themselves have no fixed content, most of them are more empty vessels into which each generation must pour its contents in the light of its experience. It was further held that in the interpretation and in implementation of the Directive Principles, judiciary being an organ of the State are bound to enforce these directives. Judicial process is also State action under Art. 37 and the judiciary is bound to apply the Directive Principles in making its judgment.

35. A cursory glance at the very contentions of the learned counsel for the petitioner is that migration of a forward class citizen into a Backward Class is to

wear mask of the latter to grab seats in the educational institutions or to usurp the posts or offices legitimately earmarked to the latter and the action if fructifies, admittedly defeats and frustrates the constitutional goal. When such is the effect, in *Pathumma and Others Vs. State of Kerala and Others*, , Fazal Ali, J., speaking per majority of the larger Bench of seven Judges, lays down the Court's duty thus :

"Courts should interpret the constitutional provisions against the social setting of country so as to show a complete consciousness and deep awareness of the growing requirements of the society, the increasing needs of the nation, the burning problems of the day and the complex issues facing the people which the legislature in its wisdom, through beneficial legislation seeks to solve. The judicial approach should be dynamic rather than static, pragmatic and elastic, rather than rigid."

In *Acharya Maharajshri Narendra Prasadji Anandprasadji Maharaj and Others Vs. The State of Gujarat and Others*, relied on by Sri Takaram, Goswami, J., speaking for the Court held :

"No rights in an organised society can be absolute. Enjoyment of one's right must be consistent with the enjoyment of rights also by others. Where in a free play of social forces it is not possible to bring about a voluntary harmony, the State has to step in to set right the imbalance between competing interests and there the Directive Principles of State Policy, although not enforceable in Courts, have a definite and positive role introducing an obligation upon the State under Art. 37 in making laws to regulate the conduct of men and their affairs. In doing so a distinction will have to be made between those laws which directly infringe the freedom of religion and others, although indirectly affecting some secular activities or religious institutions or bodies."

In that case, the question was whether the property of a religious institution can be acquired for a public purpose under Ss. 5 to 12 of the Gujarat Devasthanam Inams Abolition Act (16 of 1969). In considering the effect of the statutory right vis-a-vis the constitutional right to enjoy the property under Art. 31 and the need for public purpose, their Lordships have laid down the above law and in that context it was further held:

"One fundamental right of a person may have to co-exist in harmony with the exercise of another fundamental right by others and also with reasonable and valid exercise of power by the State in the light of the Directive Principles in the interests of social welfare as a whole. The Court's duty is to strike a balance between competing claims of different interests."

In *Comparative Constitutional Law Cases and Commentaries* by Walter F. Murphy and Joseph Tannenhau, relied on by Sri Sitaramaiah, learned amicus curiae, the learned authors, in Chapter 14, page 496, under the Caption "Freedom of Expression", have propounded that Judges have had to formulate their own answers, create their own jurisprudence, and write constitutional law in the

margins of the official document. Marc Galanter, in his "competing Equalities", at page 539, pleads that :

"Courts have to respond to obvious abuses and to redress intractable problems and imponderable fact situation."

At page 541, he argues that "Courts are to synthesise social actualities and the far reaching reconstruction of egalitarian secular society envisaged by the Constitution. In the light of these settled principles, I have no hesitation to hold that with the aid of the principle of harmonious construction with purposive and pragmatic approach, the Courts can angulate the question whether the petitioner can be treated to be a Backward Class citizen. When the action or transaction, though apparently assumes the colour of legal form, but tends to knock down the constitutional scheme to the bottom, restrictive construction to subserve the purpose is to be adopted.

36. It is true, normally once a competent Commission or authority determines that a Class of citizens belong to a homogeneous group of Backward Class, the duty of the Court is to see whether the relevant tests in identifying such a class has been adopted or not. But in a case, where a person admittedly does not belong to that homogeneous group or class, but attempt by process of law seeks to acquire the status of such a class, the question whether such person fulfilled the test of social and educational backwardness, laid down in determining the class of citizens of homogeneous group, would also be a relevant test and the Court could go into that question. The Court need not necessarily fold its armour of statutory construction, and leave the effect for amendment by the Legislature. If it were a case where such person by birth is a member of the homogeneous group, then the Court cannot go into the question, whether such person is socially and educationally backward. It is the exclusive province of the Commission appointed under Art. 340 to investigate into that question within the permissive parameters set by law.

37. As already noticed, the core contention of the learned counsel for the petitioner is that the petitioner on adoption, became a member of the Backward Class and therefore as of right she is entitled to be treated as a Backward Class "for all purposes", under S. 12 of the Act, including the one under Art. 15(4). The contention of the learned Advocate General, Mr. Tarakam and Mr. Ramakrishna, learned Government Pleader is that mere adoption is not sufficient. She continues to be a member of the Brahmin caste until and unless the Shepard community accepts the petitioner as a Backward Class. Sri Sivaramaiah, learned amicus curiae on the other hand contends that mere adoption does not change the character of the status. A Brahmin, under no circumstances, can be considered to be a Backward Class. By adoption under the Act, the adoptee is entitled to the rights under the personal law but to claim the benefits under Art. 15(4), the adoptee must satisfy the homogeneity as a person of class of Backward Class, and be socially and educationally backward. The question is whether by adoption, automatically the petitioner becomes a member of the

Backward Class?

38. Pandit Jawaharlal Nehru, the architect of Modern India, in Parliamentary Debates, 1951, Part II (Volume 12), at page 31 at First Amendment, has stated that the whole purpose of the Constitution is to move towards what may be called "A casteless and classless society". So, in the process of assimilating several persons to move forward in creating a casteless and classless society, there is bound to be a conflict in the interactions of personal law and the constitutional law. The object of the Constitution is to establish an egalitarian society and Arts. 14, 15(4) and 16(4) enliven the right to equality in fact, to the deprived and downtrodden to move forward in integrating them in the main stream of the casteless and classless society. But in implementation thereof, inroads are being made to defeat the very purpose of Arts. 15(4) and 16(4). It is a form of exploitation within the meaning of Art. 46 and Art. 37 being State action and the judiciary being part of the State, has to adopt harmonious construction between the statute law and the Constitutional Law. Therefore, in interpreting the provisions, we have to see what is the effect thereof. The interpretation should be to subserve the purpose. It is already seen that caste itself is not a determining factor in finding whether a class of citizens is Backward. It is a forbidden classification. Caste will be one of the considerations along with other factors. Homogeneous sections of the people are grouped together in identifying them as a class for the purpose of Art. 15(4) or Art. 16(4). Such people should have certain likeness or common traits for being identified. Common attributes were held to be status, rank, occupation, residence in a locality, race, religion and the like. In *K.C. Vasanth Kumar and Another Vs. State of Karnataka*, , Chinnappa Reddy, J., as held :

"No one will think of describing Brahmins anywhere in the land as socially and educationally backward, however poor they might be."

In the same decision, Chandrachud, C.J., held that so far as the Backward Class are concerned, they should satisfy the social backwardness and the means test for entitlement under Art. 15(4). In *M.R. Balaji and Others Vs. State of Mysore*, , Gajendragadkar, J., (as he then was) held in paragraph 21, that the expression of "Backward Class" under Art. 15(4) 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.

39. In *Kumari K.S. Jayasree and Another Vs. The State of Kerala and Another*, , Ray, C.J., while upholding the means test and social backwardness, held :

"The object of the reservation under Art. 15(4) is to recognise the factual existence of socially and educationally backward classes in our country and to make a sincere attempt to promote the welfare of the weaker sections of the community. Article 15(4) gives effect to the principle.Social Backwardness can contribute to educational backwardness and educational backwardness may perpetuate social backwardness may perpetuate social

backwardness. Both are often no more than the inevitable corollaries of the extremes of poverty and the deadening weight of custom and tradition.Sociological and economic considerations come into play in evolving proper criteria for determining the backwardness."

40. In the light of law, we have to see whether the petitioner, on adoption, becomes a member of the Backward Class. As indicated earlier, we would always keep in mind the constitutional march of making India secular casteless and classless State and enough leeway would be allowed for free mobility and interaction of all sections of the Society into an integrated class. But we should also keep in mind the constitutional goals set out. By adopting purposive construction we would reconcile the right of an individual as against the society and the society's right. Take an illustration that a child belonging to a Brahmin is given and taken in adoption to a Shepard fairly, at a young age, say at first year or second year or even up to fifth year and the child is brought up in the adoptive family in the locality lived by the members of the Backward Class treating as ourasa son/daughter, presumptive evidence furnished that the child is assimilated in the homogeneous group and integrated himself/herself as a member of such group imbibing all the traits of the group or undergoing sufferings or subjected to all the disadvantages or handicaps ignomy which the members of the homogeneous group are subjected to. In those circumstances, such a child may be considered to be a member of the homogeneous group though had the birth in Brahmin caste. But conversely, if a boy or girl born in the advanced section of the society, had the advantage of the natural parental brought up in an atmosphere of affluence, social; cultural and educational advanced start off up to fairly a good age of 15 years or so and then taken in adoption, he or she cannot be said to belong to homogeneous group into which he/she was transplanted by operation of law nor he/she be said to be socially and educationally backward.

41. In *R. Chitralekha and Another Vs. State of Mysore and Others*, , Subba Rao, J., (as he then was) in considering the distinction between the classes and castes, held :

"The juxtaposition of the expression "Backward Classes" 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 belongs to a backward class or not, his or their caste may have some relevance, but it cannot be either the sole or dominant criterion for ascertaining the class to which he or they belong."

Therefore, the caste as well as the social and educational backwardness of a citizen who intends to enter into the fold of the Backward Class or Scheduled Castes or Scheduled Tribes is also a relevant factor and it must be established as of fact.

42. In the light of the above consideration, the necessary conclusion is that an

adoption under the Act is personal the purpose of S. 12 is that he or she becomes completely a member of the adoptive family "for all that purposes" -- be it for a religious or secular purpose, but "for the purpose of the Constitution", under Articles 14, 15(4) and 16(4), the adopted child must satisfy not only that he or she belongs to the particular homogeneous group or class or tribe but also become a member of the homogeneous group or class or tribe, also had suffered or subjected to all the disadvantages of handicaps which the members of the homogeneous group, class or tribe, are subjected to or have undergone or is undergoing. In that context, recognition of such a person by the caste or community elders to which the adoptee has already been assimilated or seeks an entry is a relevant factor which has to be established as a fact. The purpose of adoption under S. 12 is personal to the adoptee and is distinct and apart from the constitutional scheme under Articles 14, 15(4) and 16(4). The registration under S. 16 furnishes only a rebuttable presumptive evidence that the adoption was made in compliance with the provisions of the Act. Therefore, the presumption advances thus far and no further and is of little avail to the benefits under Articles 15(4) and 16(4) of the Constitution.

43. The above conclusion gets support from *K. Shantha Kumar v. State of Mysore*, (1971) 1 Mys LJ 21; *Nataraja v. Selection Committee*, (1972) 1 Mys LJ 226 and *R. Srinivas Vs. The Chairman Selection Committee for Admission to Govt. Medical Colleges and Govt. Seats in Private Medical Colleges, Bangalore and Another*, relied on by Sri Sitaramaiah, learned amicus curiae. In those cases, the plea of adoption by the Backward Class citizen was set up for the purpose of obtaining the benefit of reservation under Art. 15(4) and consistently the Mysore (now Karnataka) High Court has taken the view that such an adoptee is not entitled to the benefit of reservation. No doubt, as rightly contended by Sri Hanumantha Rao, learned counsel for the petitioner, that much light has not been shed in those decisions. But in the light of the discussion I have made, the conclusions reached by the Mysore High Court are in consonance with the scheme of the Constitution and I respectfully agree with the same. With regard to *Khazan Singh v. Union of India*, AIR 1980 Delhi 60, the sheet anchor of Sri Hanumantha Rao, the Delhi High Court confined the effect of adoption of Jatt into Harijan family under the Act, but the consequences under Article 16(4) were not considered. The learned Judge, with great respect, in the light of the arguments addressed before him, considered the effect of the adoption on progeny of the adoptee, but the effect of such adoption on the benign equalitarian doctrine enshrined under Art. 15(4) or Art. 16(4) was not adverted to, Therefore, with great deference, I find it extremely difficult to agree with the learned Judge. With regard to the ratio in *The Principal, Guntur Medical College, Guntur and Others Vs. Y. Mohan Rao*, and *C.M. Arumugam Vs. S. Rajgopal and Others*, , relied on by Sri Hanumantha Rao and Sri Choudary, Mohan Rao's parents and Rajagopal himself are scheduled castes. They converted as Christians and thereafter Mohanrao and Rajagopal have reconverted as Hindus. Initially Mohan Rao's parents and Rajagopal suffered the handicaps due to untouchability but to gain

some advantage in education or mobility in the society, they converted into Christianity but thereafter, Mohanrao and Rajagopal reverted into the fold of Hindu religion. The findings therein were that the Society accepted them back into the fold of the Scheduled Castes. Therefore, the ration in those cases are inapplicable to the facts in this case. If the contention of the Counsel is given credence to, the very constitutional goals will be annihilated and the object of educational and economic advancement of the Backward Classes and Dalits will be thwarted.

In *N.E. Horo Vs. Smt. Jahanara Jaipal Singh*, , relied on by Mr. Choudary, Jahan Ara was married according to the customs of Scheduled Tribes, she lived along with them for long and she bore children and became a member of the Scheduled Tribe. On those facts it was held that she assimilated herself to be a member of the Scheduled Tribe. I have already stated that if a child is adopted fairly at the tender age, lived as a member of the adoptive family, thereafter undergoing disadvantages, ignominy or sufferings which the members of the homogeneous group are subjected to, such a person, by assimilation could be considered to have become a member of the homogeneous group. Recognition by caste can be implied. Express recognition reinforces the said fact. In *Urmila Ginda Vs. Union of India and Others*, and *Vaishali V. Ambekar Vs. The Union of India*, , relied on by the learned Advocate-General, the ladies belonging to upper caste married Scheduled Castemen and laid claim for reservation. The Delhi and Bombay High Court have held that the ladies therein who are high class Hindus, not subjected to any social or educational backwardness, cannot, merely on the ground that they are married to scheduled caste persons, take advantage of any such special provision because they are not one of them. To permit them to compete for a reserved post would defeat the very provision made by the State for such socially and educationally backward classes. I respectfully agree. They support my conclusion.

44. Though Mr. Tarakam, learned counsel for the intervener has cited a large body of decisions on the caste and its effect, in view of the conclusion I reached, it is not necessary to deal with those cases in details. Suffice it to state, as stated earlier, that caste alone is not the criteria. However, caste is playing a dominant role. But undue emphasis need not be laid on it since the constitutional purpose is to usher in the secular State. However, attempt should be made to mitigate the rigour of caste practice or caste structure.

45. Thus, considered, I have no hesitation to hold that the petitioner though appears to have been adopted by a Shepard (Backward Class) which is prima facie proved by the registered document, she is entitled to walk in the family of adoptive father for the purpose of personal law. But the adoption is motivated one. She did not assimilate herself to be a member of the homogeneous Backward Class group nor she suffered any handicaps nor ignominy. She is not socially and educationally backward and cannot have best of both the worlds. As a result, she is ineligible to claim the protection of Article 15(4) for admission as

a candidate belonging to Backward Class Group "D". But however, if she acquires any right under the personal law, she is entitled to all such rights, if any.

46. However, at the end, I may indicate that instead of leaving it to judicial interpretation, it is time enough for the Central Law Commission to make an indepth study into this aspect and it is desirable to take suitable steps to amend the Act in this regard.

47. Before parting with the case, I express my profound thanks and special appreciation to Sri Challa Sitaramaiah, learned amicus curiae for his valuable assistance rendered to the Court apart from expressing my appreciation to all the learned Counsel and the learned Advocate-General who argued and assisted the Court.

48. The writ petition is accordingly dismissed, but in the circumstances, without costs. Advocate's fee Rs. 300/-.

49. Petition dismissed.