

(1997) 09 AP CK 0033

In the Andhra Pradesh High Court

Case No : Writ Petition No. 12213 of 1997

B. Narayana and Others

APPELLANT

Vs

Government of A.P. and Others

RESPONDENT

Date of Decision : 18-09-1997

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 15(4), 16, 16(1)

Citation : (1997) 5 ALT 292

Hon'ble Judges : P.S. Mishra, C.J.;M.N. Rao, J;Lingaraja Rath, J

Bench : Full Bench

Advocate : K.V. Satyanarayana, B. Lingaiah Choudary, P.V. Subrahmanya Sarma, Kota Bhaskara Rao, A. Subba Rao and M. Radhakrishna, for the Appellant; Advocate General, B. Adinarayana Rao for Central Government and L. Ravichander, B. Nalini Kumar, S. Ramachandra Rao, G. Vedanta Rao and P. Rathaiah, for the Respondent

Judgement

P.S. Mishra, C.J.—Petitions aforementioned, under Article 226 of the Constitution of India, the main amongst them being Writ Petition No. 13765 of 1997, are directed against the Government Orders in G.O.Ms. No. 68, Social Welfare (J1) Department, dated 6-6-1997 and G.O.Ms. No. 69, Social Welfare (J1) Department, dated 7-6-1997, which, inter alia, divide and/or categorise the Scheduled Castes who are listed in the Constitution (Scheduled Castes) Order, 1950 (Presidential Order, 1950), as amended in 1976 for the State of Andhra Pradesh, into four groups as "A", "B", "C, and "D" and purport to accordingly reserve for each group of the Scheduled Castes communities, posts including for filling up of backlog vacancies in the Public Service and seats in different professional and other educational institutions.

2. G.O.Ms. No. 68, SW (J1) Department, dated 6-6-1997 reads as follows:

"GOVERNMENT OF ANDHRA PRADESH ABSTRACT

Appointment of Commission of Inquiry, headed by Justice Shri P. Ramachandra Raju (Retd.) under the Commissions of Inquiry Act, 1952 - Submission of Report

- Appointment of Cabinet Sub-committee to give findings on the report of the Commission - Acceptance of the findings of the Cabinet Sub-Committee furnished to the Government - In pursuance to the recommendations of the Commission - Orders - Issued.

SOCIAL WELFARE (J1) DEPARTMENT

G.O.Ms.No. 68 Dated: 6-6-1997 Read: 1. G.O.Ms. No. 99, Social Welfare (J1) Dept., dated 10-9-1996.

2. G.O.Ms. No. 66, Social Welfare (J1) Dept., dated 2-6-1997.

ORDER:

1. A Commission of Inquiry was appointed vide G.O. first read above headed by Justice Shri Ramachandra Raju (Retd.) to examine:

(a) whether a disproportionately large number of benefits have gone to any particular Sub-caste of scheduled Castes; and

(b) if so, to indicate all such steps as are necessary and required to be taken to ensure that the above benefits are equitably distributed among the various Sub-castes of scheduled castes.

2. The Commission of Inquiry issued a notification on 1-10-1996 in the Gazette and several English and Telugu dailies inviting representations from any individual or associations relevant to the subject matter of the enquiry giving time till 31-10-1996. The said notification was also sent individually to all the Ministers, the Speaker of the Assembly, all MPs and MLAs of Andhra Pradesh, Heads of the Departments, District Collectors, District Judges, Superintendents of Police, Chairman of Zilla Praja Parishads, Registrar of High Court, various Universities etc. The time for filing the representations was extended by the Commission upto 31-1-1997 and representations received even subsequent to 31-1-1997 from scheduled castes associations and individuals were examined by the Commission.

3. The Commission received statistical data regarding the scheduled caste employees (sub-caste wise) employed in various government departments (both Central and State Government), State Government Public Sector Undertakings, local bodies and Co-operative Institutions. The Commission also received data about appointments of scheduled castes (sub-caste wise) from various Service Commissions for the period 1990 onwards. The Commission received responses from several educational institutions also regarding the educational benefits enjoyed by various sub-castes of scheduled castes for the period 1955 onwards. The statistics received upto 15-5-1997 were tabulated by the Commission and responses received on or after 16-5-1997 were not tabulated but separately considered at the appropriate places in the report of the Commission.

4. The Commission submitted its report on 28-5-1997 which was examined in depth by the Cabinet Sub-Committee constituted vide G.O. second cited. The

Cabinet Sub-Committee recommended for acceptance of most of the recommendations of the Commission to the Government. The Government after careful consideration of the report of the Commission, have agreed with the findings of the Cabinet Sub-Committee and accept the following findings of the Commission:-

I There is disproportionate distribution of reservation benefits in favour of the "Mala" group and "Adi-Andhra" group of Scheduled Caste communities compared to their respective populations.

II Both the "Madiga" group and "Reli" group of communities are not adequately represented either in Public appointment or in educational institutions compared to their respective populations.

III There is no constitutional bar in categorising these S.C., communities into four groups "A", "B", "C and "D" on a rational basis.

5. Therefore, the Government have decided to implement the following recommendations of the Commission with immediate effect:-

(i) The "Reli" group of communities will consist of the following sub-castes as listed in the- Andhra Pradesh Scheduled Castes Presidential Order, 1950, i.e.

8. Bavuri

12. Chachati

16. Chandala

18. Dandasi

20. Dom, Dombara, Paidi, Pano

22. Ghasi, Haddi, Reli Chachandi

23. Godagali

48. Mehtar

51. Paky, Moti, Thoti

53. Pamidi

55. Reli

58. Sapru.

The "Reli" group of communities is the most backward among the SC communities and are therefore categorised as "A" with percentage entitlement of one per cent (1%) of reservation in proportion to their population, both in public appointments and admissions to educational institutions. They shall be adjusted in serial number 2 of the roster as specified in G.O.Ms. No. 357, General Administration (Ser.D) Department dated 23-6-1989.

(ii) The "Madiga" group of communities will consist of the following sub-castes as listed in the A.P. Scheduled Castes Presidential Order, 1950.

5. Arundhatiya
9. Beda Jangam, Budga Jangam&
10. Bindla
14. Chamar, Mochi, Muchi
15. Chambhar
17. Dakkal, Dokkalwar
19. Dhor
24. Godari
28. Jaggali
29. Jambuvulu
30. Kolupulvandlu
32. Madiga
33. Madiga Dasu, Mashteen
43. Mang
44. Mang Garodi
47. Matangi
56. Samagara
59. Sindhollu, Chindollu.

The "Madiga" group of communities is the next most backward among the SC communities and therefore they are categorised as "B" with percentage entitlement of seven per cent (7%) of reservation in proportion to their population, both in public appointments and admissions to educational institutions. They shall be adjusted in serial numbers 7, 22, 41, 62, 72, 87 and 97 in the roster as obtained in G.O.Ms. No. 357, G.A. (Ser.D) Dept, dated 23-6-1989.

(iii) the "Mala" group of communities will consist of the following sub-castes as listed in the A.P. Scheduled Castes Presidential Order, 1950.

2. Adi Dravida
3. Anamuk
4. Aray Mala

6. Arwa Mala.
7. Bariki
11. Byagara
13. Chalavadi
21. Ellamalawar, Yellammala Wandlu
25. Gosangi
26. Holey a
27. Holey a Dasari
31. Madasi Kuruva, Madari Kuruva
34. Mahar
35. Mala
36. Mala Dasari
37. Mala Dasu
38. Mala Hannai
39. Malajangam
40. Mala Masti
41. Mala Sale, Netkani
42. Mala Sanyasi
45. Manne
50. Mundala
52. Pambada, Pambanda
57. Samban.

The "Mala" group of communities are receiving benefits of reservations wholly disproportionate to their population and are therefore categorised as "C" with percentage entitlement of six per cent (6%) of reservation in proportion to their population both in public appointments and admissions to educational institutions. They shall be adjusted in serial numbers 16, 27, 47, 66, 77 and 91 in the roster as specified in G.O.Ms. No. 357, G.A. (Ser. D) Dept., dated 23-6-1989.

(iv) The "Adi-Andhra" group of communities will consist of the following sub-castes as listed in the AP Scheduled Castes Presidential Order, 1950.

1. Adi Andhra

46. Mashti

49. Mitha Ayyalvar

54. Panchama, Pariah.

The "Adi-Andhra" group of communities are receiving benefits of reservation wholly disproportionate to their population and are therefore categorised as "D" with percentage entitlement of one per cent (1%) of reservation in proportion to their population, both in public appointments and admissions to educational institutions. They shall be adjusted in serial number 52 in the roster as specified in the G.O.Ms. No. 357, G.A. (Ser.D) Dept., dated 23-6-1989.

(v) The 331/3% reservations provided for women in public services shall be adjusted by allotting two seats in each roster cycle of 100 points fixed for "Madiga" group and "Mala" group and one seat alternately for "Relli" group and "Adi-Andhra" group.

(vi) If eligible candidates are not available to fill the slots reserved for them in the roster points as mentioned above, the slots may be filled in by the candidates belonging to the next lower group or category of the SC communities as described in the aforesaid paras. For example, in the roster point fixed for "Relli" group i.e. category "A" if an eligible candidate is not available, the roster point may be filled by the next lower category of "Madiga" group i.e. category "B". For women candidates also the same principle will be followed. For example, in the roster point fixed for "Relli" group (woman), i.e. category "A", if an eligible woman candidate is not available, the roster point may be filled by the woman candidate belonging to the next lower category of "Madiga" group i.e. category "B".

(vii) If no eligible SC candidate (including woman candidate, wherever applicable) belonging to any of the "A", "B", "C", "D" categories is available then the vacancy will be carried forward but shall not be filled by a candidate belonging to any other community other than SCs in accordance with the rules and Government orders in force.

6 (i) The above orders will be applicable from the academic year 1997-98, in all the educational institutions under the control of the State Government, wherever rule of reservation is being implemented.

(ii) In the case of public appointments for the backlog vacancies/regular vacancies to be filled by Scheduled Caste candidates, pursuant to various Government, instructions issued in this regard from time to time, and where the selection process has been completed i.e. appointment orders have been despatched or the applicants have been intimated officially that he/she has been selected and should await posting orders, in such case, the above orders will not be applicable.

(iii) Seperate instructions will be issued by the Government regarding the

appointments to the backlog vacancies /regular vacancies, where the selection process is at various stages and the appointment orders have not been despatched or selection has not been intimated to the applicants.

(iv) In the public appointments to be henceforth, wherever rule of reservation is being implemented, these orders will be applicable.

7. The categorisation of Scheduled Castes into "A", "B", "C", "D" groups as mentioned above does not apply to posts or admissions to educational institutions under the control of the Central Government Departments or Central Government Corporations/Public Sector Undertakings.

8. The General Administration (Services) Department and the Education Department (Higher Education and School Education) will issue necessary orders separately, modifying the existing Government Orders/Instructions of their departments, in pursuance to the decisions mentioned above.

(By order and in the name of the Governor of Andhra Pradesh)

M.S. Rajajee, & & & & & & & & Chief Secretary to Government.

3. The Government Order in G.O.Ms.No. 69, S.W. (J1) Dept, dated 7-6-1997 reads as follows:

"ORDER:

In pursuance to para 6 (iii) of the orders issued by the Government vide G.O.3rd read above, the Government hereby orders that wherever the selection process for backlog vacancies /regular vacancies is at various stages, such as, (a) the vacancies have been notified, (b) the applications have been received, c) the call letters have been sent to the applicants to appear for written test or an interview or both, (d) the written tests or interview or both have been completed but the appointment orders have not been despatched or selection has not been intimated to the applicants, in such cases, the appointing authorities shall complete the selection process based on the "A", "B", "C", "D" categories of Scheduled Castes, reserved at the roster points mentioned in the G.O.3rd read above.

(By order and in the name of the Governor of Andhra Pradesh)

S. Ray, & & & & & & & & Principal Secretary to Govt."

4. It is to be noted that the existing reservation for Scheduled Castes in public appointments is 15%, based on their percentage of population as per 1981 Census. Besides reservation for Scheduled Castes, the State has also made reservations for Socially and Educationally Backward Classes in Public appointments and fixed different percentage of reservation of seats for different categories of Backward Classes. The State in the matter of public appointments has also the obligation under the Presidential Order, 1975 (A.P. Public Employment (Organisation of Local Cadres and Regulation of Direct Recruitment)

Order, 1975) which provides for reservation for the three regions of the State i.e. Andhra, Telangana and Rayalaseema. It has also introduced reservation for women in Public Service and admissions to the educational institutions in each regional reservation as well as in each Backward Class category of group of communities. Area or regional reservation is made under the Presidential Order, 1975, which was issued under Article 371-D of the Constitution of India, which has, having regard to the requirements of the State as a whole, for equitable opportunities and facilities for the People belonging to different parts of the State, in the matter of public employment and in the matter of education, made certain provisions. For reservation in public appointments for Socially and Educationally Backward Classes, including Scheduled Castes and Scheduled Tribes, the State has followed Article 16(4) read with Article 15(4) of the Constitution of India and Article 14 thereof and particularly for the Scheduled Castes and Scheduled Tribes, taken into consideration their claims under Article 335 of the Constitution.

5. The people's resolve of equality of status and of opportunity and to promote fraternity assuring the dignity of the individual in the Preamble of the Constitution is manifested in the right to equality as enshrined under Article 14 of the Constitution which provides that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. This general provision, however, is further strengthened by the prohibition of discrimination, as envisaged under Article 15 of the Constitution, by the State against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them or subjecting to any disability, liability, restriction/or condition, any citizen on grounds only of religion, race, caste, sex, place of birth or any of them with regard to access to shops, public restaurants, hotels and place of public entertainment or the use of wells, tanks, bathing ghats and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public. That there can be some exception, however, to the above for women and children is envisaged under Article 15(4) and by insertion of Clause (4) in the said Article by the Constitution (First Amendment) Act, 1951, power is given to the State to make any special provision for the advancement of any Socially and Educationally Backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes. Equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State is envisaged under Article 16(1) of the Constitution and strengthened by Clause (2) thereof which states that no citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of any employment or office under the State. Exceptions to the above are stated, when a law is made by Parliament in regard to a class or classes of employment or appointment to an office under the Government of, or any local or other authority within, a State or Union Territory, any requirement as to residence within that State or Union Territory prior to such employment or appointment and the State by making any provision for the

reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State. For Scheduled Castes and Scheduled Tribes, Constitution (77th Amendment) Act, 1995, has reserved for the State the power to make any provision for reservation in matters of promotion to any class or classes of posts in the services under the State in their favour.

6. Constitution in Part XVI contains Special Provisions relating to certain classes and, in particular, for Scheduled Castes and Scheduled Tribes in the Lok Sabha, the State Legislatures and in appointments to services and posts in connection with the affairs of the Union or of a State. Article 335 states that the claim of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State. Article 338, to which, we shall refer later, in some details, after amendment, has envisaged a Commission for the Scheduled Castes and Scheduled Tribes to be known as the "National Commission for the Scheduled Castes and Scheduled Tribes" with the power to regulate its own procedure and duty to investigate and monitor all matters relating to the safeguards provided for the Scheduled Castes and Scheduled Tribes under the Constitution or any other law for the time being in force or under any order of the Government and to evaluate the working of such safeguards, to inquire into specific complaints with respect to the deprivation of rights and safeguards of the Scheduled Castes and Scheduled Tribes, to participate and to advise on the planning process of socio-economic development of the scheduled castes and scheduled Tribes and to evaluate the progress of their development under the Union and any State, to present to the President, annually and at such other times as the Commission may deem fit, reports upon the working of those safeguards, to make in such reports recommendations as to the measures that should be taken by the Union or any State for the effective implementation of those safeguards and other measures for the protection, welfare and socio-economic development of the Scheduled Castes and Scheduled Tribes and to discharge such other functions in relation to the protection, welfare and development and advancement of the Scheduled Castes and Scheduled Tribes as the President may, subject to the provisions of any law made by Parliament, by rule specify. Article 341, after some amendments, provides that the President 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 the Constitution, be deemed to be Scheduled Castes in relation to that State or Union Territory, as the case may be and, "Parliament may by law include in or exclude from the list of Scheduled Castes specified in the public notification as above any caste or race thereof or part of or group within any caste, race or tribe, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification". Similar provision is

made in Article 342(1) with respect to Scheduled Tribes. Article 340 of the Constitution and a corresponding provision present in Clause (10) of Article 338 envisage appointment of a Commission by the President of India to investigate the conditions of Socially and Educationally Backward Classes within the territory of India and the difficulties under which they labour and to make recommendations as to the steps that should be taken by the Union or any State to remove such difficulties and to improve their condition and as to the grants that should be made for the purpose by the Union or any State and the conditions subject to which such improvements should be made.

7. Special provisions in Article 371-D of the Constitution with respect to the State of Andhra Pradesh is introduced with two-fold object of (1) promoting accelerated development of the backward areas of the State so as to secure the balanced development of the State as a whole and (2) providing equitable opportunities to different areas of the State in the matter of education, employment and career prospects in Public Service (See Chief Justice of Andhra Pradesh and Others Vs. L.V.A. Dixitulu and Others, .

8. The significant Directive Principles of State Policy in Part IV of the Constitution are: (1) Article 38 says that the State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life and, in particular, strive to minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations; (2) Article 39 states that the State shall direct its policy towards securing-that the citizens, men and women equally, have the right to an adequate means of livelihood.....that there is equal pay for equal work for both men and women;(3) Article 41 states that the State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education.....; (4) under Article 43 - the State shall endeavour to secure, by suitable legislation or economic organisation or in any manner to all workers....a living wage, conditions of work ensuring a decent standard of life.....and (5) Article 46 says that the State shall 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 and shall protect them from social injustice and all forms of exploitation. Besides, one of the fundamentals in the Preamble, of equality of status and of opportunity and to promote fraternity assuring the dignity of the individual, the Preamble promises Justice, Social, Economic and Political. Justice social and/or social justice is the recognition of greater good to a larger number without deprivation or accrual of legal rights of anybody. The Court in administering justice on the one hand would see how just economic distribution to different segments of the people is under the laws administered by the State and would lean in favour of the weaker sections of the society to ensure that economic inequalities are removed and weaker sections are protected from exploitation. Equality thus envisaged by the

Constitution is the right to equal protection in similar circumstances, that there should be no discrimination between one person and another if as regards the subject matter of the legislation, their position is the same. It does not mean that every law must have universal application for all persons who are not by nature, attainment or circumstances in the same position, as the varying needs of different classes of persons often require separate treatment and so the State can classify persons for legitimate purposes, even if such classification in some degree would produce some inequality. Differential treatment per se would not constitute violation of Article 14. When there is a reasonable basis for the differentiation and if a law is made which deals equally with members of a well-defined class, it would in fact be a law legitimately designed for removing the discrimination, which, for the reason of social and educational backwardness or for the reason of circumstances which existed in a particular region or in a community or class needed special provision. Indeed, that would be in the pith of the doctrine of equality. Courts in India, including the Supreme Court, have thus held that Article 14 prohibits class legislation and not reasonable classification. In order, however, to pass the test of permissible classification, two conditions must be fulfilled, namely, (1) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (2) that the differentia must have a rational relation to the object sought to be achieved by the statute in question. Classification may be founded on different basis such as geographical or according to objects or occupations or the like. What is obnoxious thus is a classification which results in pronounced inequality which is palpably arbitrary or so hostile that it is unreasonable or irrational. Equality of opportunity in matter relating to employment or appointment to any office under the State and equal protection of the laws and equality before the law are accordingly understood and when provisions under Articles 15(4) and 16(4) are examined, they are not regarded as exception, but as instances of permissible classification. Use of the expression "any backward class of citizens" in Article 16(4) postulates such class of citizens who are socially and educationally backward and includes Scheduled Castes and Scheduled Tribes as well because on all tests that one would apply for knowing who is socially and educationally backward would find those who are classified and are put in the schedule, as envisaged under Article 341 of the Constitution of India as "Scheduled Caste" or under Article 342(1) of the Constitution as "Scheduled Tribe" at the bottom of the social and educational backwardness as well as economic backwardness. In *The General Manager, South Central Railway, Secunderabad and Another Vs. A.V.R. Siddhantti and Others*, the Supreme Court has stated as follows:

"The fundamental right of equality means that persons in like situation, under like circumstances are entitled to be treated alike. "The Constitutional Code of Equality and Equal Opportunity", observed this Court in *The State of Jammu and Kashmir Vs. Shri Triloki Nath Khosa and Others*, , "is a charter for equals". So long as employees similarly circumstanced in the same class of service are

treated alike - the question of hostile discrimination does not arise. The equality of opportunity for purposes of seniority, promotion and like matters of employment is available only for persons who fall substantially, within the same class or unit of service. The guarantee of equality is not applicable as between members of distinct and different classes of the service. The Constitution does not command that in all matters of employment absolute symmetry be maintained. A wooden equality as between all classes of employees regardless of qualifications, kind of jobs, nature of responsibility and performance of the employees is not intended, nor it is practicable if the administration is to run. Indeed, the maintenance of such a "classless" and undiscerning "equality" where, in reality, glaring inequalities and intelligible differentia exist, will deprive the guarantee of its practical content. Broad classification based on reason, executive pragmatism and experience having a direct relation with the achievement of efficiency in administration, is permissible. That is to say, reasonable classification, according to some principle, to recognise intelligible inequalities or to avoid or correct inequalities is allowed, but not mini-classification which creates inequality among the similarly circumstanced members of the same class or group".

9. In *Akhil Bharatiya Soshit Karamchari Sangh (Railway) represented by its Assistant General Secretary on behalf of the Association Vs. Union of India (UOI) and Others*, the Supreme Court has pointed out the disturbing issues, in their words, going to the root of progressive nationalism, dimensions of the problem and the values to which Constitution makers had addressed themselves for the advancement of the backward, particularly, "that pathetic segment described colourlessly as Scheduled Castes and Scheduled Tribes". The Supreme Court in its Judgment has stated thus:

"Articles 14 - 16 form a code by themselves and embody the distilled essence of the Constitution's casteless and classless egalitarianism. Nevertheless, our founding fathers were realists, and so did not declare the proposition of equality in its bald universality but subjected it to certain special provisions, not contradicting the soul of equality, but adapting that never-changing principle to the ever-changing social milieu. That is how Articles 15(4) and 16(4) have to be read together with Articles 15(1) and 16(1). The first Sub-article speaks of equality and the second Sub-article amplifies its content by expressly interdicting caste as a ground of discrimination. Article 16(4) imparts to the seemingly static equality embedded in Article 16(4) a dynamic quality by importing equalisation strategies geared to the eventual achievement of equality as permissible State action, viewed as an amplification of Article 16(4) or as an exception to it. The same observation will hold good for the Sub-articles of Article 15. Thus, we have a constitutional fundamental guarantee in Articles 14 - 16; but it is a notorious fact of our cultural heritage that the Scheduled Castes and the Scheduled Tribes have been in unfree India nearly dehumanised, and a facet of the struggle for Freedom has been the restoration of full personhood to them together with the right to share in the social and economic development of the country. Article 46

is a Directive Principle contained in Part IV. Every Directive Principle is fundamental in the governance of the country and it shall be the duty of the State to apply that principle in making laws. Article 46, in emphatic terms, obligates 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 the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation".

Reading Article 46 together with Article 16(4) the lucid intent of the Constitution framers emerges that the exploited lot of the harijan-girijan groups in the past shall be extirpated with special care by the State. The inference is obvious that administrative participation by SC & ST shall be promoted with special care by the State. Of course, reservations under Article 16(4) and promotional strategies envisaged by Article 46 may be important but shall not run berserk and imperil administrative efficiency in the name of concessions to backward classes. Article 335 enters a caveat in this behalf:

"335. The claims of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration consistently with the maintenance of efficiency of administration, the making of appointments to services and posts in connection with the affairs of the Union or of a State".

The positive accent of this Article is that the claims of SC & ST equalisation of representation in services under the State having regard to their sunken social status and impotence in the power system, shall be taken into consideration. The negative element, which is part of the Article is that measures taken by the State, pursuant to the mandate of Article 16(4), 46 and 335 shall be consistent with and not subversive of "the maintenance of efficiency of administration".

38. Within this broad constitutional framework the Central Government worked out its policy, way back in 1950, and made subsequent alterations in keeping with the needs of the situation, the poor progress registered, the militant impatience of the affected SC & ST and the improved tactics to hasten abolition of the depressed status of these groups by effective equalisation with the rest.

39. Even here, it may be noticed that the Constitution has given a special position for the Scheduled Castes and the Scheduled Tribes.

40. Article 341, makes it clear that a "Scheduled Caste" need not be a "caste" in the conventional sense and, therefore, may not be a caste within the meaning of Articles 15(2) or 16(4). Scheduled Castes become such only if the President specifies any castes, races or tribes or parts or groups within castes, races or tribes for the purpose of the Constitution. So, a group or a section of a group, which need not be a caste and may even be a hotch-potch of many castes or tribes or even races, may still be a Scheduled Caste under Article 341. Likewise, races or tribal communities or parts thereof or part or parts of groups within

them may still be Scheduled Tribes (Article 342) for the purpose of the Constitution. Under this definition, one group in a caste may be a Scheduled Caste and another from the same caste may not be. It is the socio-economic backwardness of a social bracket, not mere birth in a caste, that is decisive. Conceptual errors creep in when traditional obsessions obfuscate the vision".

10. Referring to the Judgment in *State of Kerala and Another Vs. N.M. Thomas and Others*, , in which Judgment, the Supreme Court's earlier judgment in *Bhaiyalal Vs. Harikishan Singh and Others*, is referred to, the Supreme Court in this judgment, has stated as follows:

"This aspect has been referred to in the *State of Kerala v. N.M. Thomas* by me, and dealt with at more length by Ray, C.J.:

Scheduled Castes and Scheduled Tribes are not a caste within the ordinary meaning of caste. In *Bhaiyalal Vs. Harikishan Singh and Others*, , this Court held that an enquiry whether the appellant there belonged to the Dohar caste which was not recognised as a Scheduled Caste and his declaration that he belonged to the Chamar caste which was a Scheduled Caste could not be permitted because of the provisions contained in Article 341. No Court can come to a finding that any caste or any tribe is a Scheduled caste or Scheduled Tribe. Scheduled Caste is a caste as notified under Article 366(25). A notification is issued by the President under Article 341 as a result of an elaborate enquiry. The object of Article 341 is to provide protection to the members of Scheduled Castes having regard to the economic and educational backwardness from which they suffer. 42. The President notifies Scheduled Castes not with reference to any caste characteristics, but their abysmal backwardness, as is evident from the scheme of Part XVI. He appoints, under Article 338, a Special Officer whose duty is to investigate into all matters relating to safeguards for the SC & ST. The Constitution provides not merely for adequate representation of SC & ST to services, but also provides for reservation of seats for SC & ST in the Legislatures. The cursory study of the Articles relating to the status and safeguards of SC & ST puts it beyond doubt that the founding fathers have assigned to them a special place and shown towards them special concern and charged the State with special mandates to redeem these handicapped human sectors from their grossly retarded situation. Indeed, they are not merely backward, but are the backward most and cannot be equated with just any other caste in the Hindu fold. It is, therefore, problematic whether Article 16(4) when it refers to equality among castes deals with the Scheduled Castes which, as shown above, may even be made of a plurality of castes or groups or races and may vary from State to State. Also, a caste, subjected qua caste, to the most humiliating handicaps may be a backward class although the Court will hesitate to equate caste with class except where the degree of dismalness is dreadful. The relevance of this point will be clear when we deal with the legal submissions of Counsel".

11. Reference in the above passage of the Supreme Court to "Special Officer"

under Article 338 is significant for us as the said Article has since undergone an amendment by Constitution (65th Amendment) Act, 1990. A further illumination is available to the provisions under Articles 14 - 16 of the Constitution and the pragmatic presence of Article 235 of the Constitution of India, in these words:

"73. What are the constitutional fundamentals bearing on equality vis-a-vis backward classes, especially the SCs & STs ? What is economic backwardness as distinct from social injustice and how does the Constitution strike the path of remedial jurisprudence harmonising the demands of both categories?

74. A luminous preface to the constitutional values nullified by social realities is found in Dr. Ambedkar's address to the Constituent Assembly earlier extracted, which draws poignant attention to the life of contradictions between the explosive social and economic inequalities and the processes of political democracy. "How long shall we continue to live this life of contradictions? How long shall we continue to deny equality in our social and economic life"? was the interrogation before the framers of the Constitution and they wanted to enforce the principle of "one man" "one value". This perspective must inform the code of equality contained in Articles 14 - 16. Equality being a dynamic concept with flexible import this Court has read into Articles 14 - 16 the pragmatic doctrine of classification and equal treatment to all who fall within each class. But care must be taken to see that classification is not pushed to such an extreme point as to make the fundamental right to equality cave in and collapse. (See observations in *The State of Jammu and Kashmir Vs. Shri Triloki Nath Khosa and Others*, . Ray, C.J. in *State of Kerala and Another Vs. N.M. Thomas and Others*, epitomised the position in a few passages:

Articles 14, 15 and 16 form part of a string of constitutionally guaranteed rights. These rights supplement each other. Article 16(4) which ensures to all citizens equality of opportunity in matters relating to employment is an incident of guarantee of equality contained in Article 14. Article 16(4) gives effect to Article 14. Both Articles 14 and 16(4) permit reasonable classification having a nexus to the object to be achieved.

Discrimination is the essence of classification.....Classification is, therefore, to be founded on substantial differences which distinguish persons grouped together from those left out of the groups and such differential attributes must bear a just and rational relation to the object sought to be achieved....

There is no denial of equality of opportunity unless the person who complains of discrimination is equally situated with the person or persons who are alleged to have been favoured. Article 16(4) does not bar a reasonable classification of employees or reasonable tests for their selection. *State of Mysore and Another Vs. P. Narasing Rao*, . This equality of opportunity need not be confused with absolute equality.....

Under Article 16(4) equality of opportunity of employment means equality as between members of the same class of employees and not equality between

members of separate, independent class....

The rule of parity is the equal treatment of equals in equal circumstances. The rule of differentiation is enacting laws differentiating between different persons or things in different circumstances. The circumstances which govern one set of persons or objects may not necessarily be the same as governing another set of persons or objects so that the question of unequal treatment does not really arise between persons governed by different conditions and different sets of circumstances. A classification in order to be constitutional must rest upon distinctions that are substantial and not merely illusory. The test is whether it has a reasonable basis free from artificiality and arbitrariness embracing all and omitting none naturally falling into that category. The learned Chief Justice relied upon earlier decisions to substantiate this proposition. In *The State of Jammu and Kashmir Vs. Shri Triloki Nath Khosa and Others*, this Court had held that the State may make rules guided by realities just as the legislature "is free to recognise degrees of harm and it may confine its restrictions to those classes of cases where the need is deemed to be the clearest". Thus we arrive at the constitutional truism that the State may classify, based upon substantial differential, groups or classes and this process does not necessarily spell violation of Articles 14 - 16.

75. Therefore, in the present case, if the SCs & STs stand on a substantially different footing they may be classified group-wise and treated separately since there is a Great Divide between the SCs and STs on the one hand and the rest of the Indian community on the other. This is no matter of speculation or investigation because the Constitution itself has recognised the direct socio-economic backward status of these species of humanity. We may quote Ray, C.J., where he observed: *State of Kerala and Another Vs. N.M. Thomas and Others*, .

The Constitution makes a classification of Scheduled Castes and Scheduled Tribes in numerous provisions and gives a mandate to the State to accord special or favoured treatment to them. Article 46 contains a Directive Principle of State Policy - fundamental in the governance of the country enjoining the State to promote with special care educational economic interests of the Scheduled Castes and Scheduled Tribes and to protect them from any special injustice and exploitation. Article 335 enjoins that the claims of the members of the Scheduled Castes and Scheduled Tribes to the services and posts in the Union and the States shall be taken into consideration. Article 338 provides for appointment by the President of a Special Officer for the Scheduled Castes and Scheduled Tribes to investigate all matters relating to the safeguards provided for them under the Constitution. Article 341 enables the President by public notification to specify castes, races or tribes which shall be deemed to be Scheduled Castes in the States and the Union Territories. Article 342 contains provision for similar notification in respect of Scheduled Tribes. Article 366 (24) and (25) defines Scheduled Castes and Scheduled Tribes. The classification by the impugned rule and the order is with a view to securing adequate representation to Scheduled

Castes and Scheduled Tribes in the services of the State as otherwise they would stagnate in the lowest rung of the State services.

Article 335 of the Constitution states that claims of members of the Scheduled Castes and Scheduled Tribes shall be taken into consideration in the making of appointments to the services and posts in connection with affairs of the State consistent with the maintenance of efficiency of administration.

76. I had made similar observations in the same case: *State of Kerala and Another Vs. N.M. Thomas and Others*, .

The Directive Principles of State Policy, fundamental in the governance of the country, enjoin on the State the promotion 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....and protect them from social injustice. To neglect this obligation is to play truant with Article 46. Undoubtedly, economic interests of a group - as also social justice to it - are tied up with its place in the services under the State. Our history, unlike that of some other countries, has found a zealous pursuit of Government jobs as a mark of share in State power and economic position. Moreover, the biggest - and expanding, with considerable State undertakings, employer is Government, Central and State, so much so appointments in the public services matter increasingly in the prosperity of backward segments. The Scheduled Castes and Scheduled Tribes have earned special mention in Article 46 and other "weaker sections" in this context means not every "backward class" but those dismally depressed categories comparable economically and educationally to Scheduled Castes and Scheduled Tribes.

77. Proceeding on this footing the fundamental right of equality of opportunity has to be read as justifying the categorisation of SCs and STs separately for the purpose of "adequate representation" in the services under the State. The object is constitutionally sanctioned in terms, as Articles 16(4) and 46 specificate. The classification is just and reasonable. We may, however, have to test whether the means used to reach the end are reasonable and do not outrun the purposes of the classification. Thus the scope of the case is narrowed down.

78. Of course, apart from Article 16(1), Article 16(2) expressly forbids discrimination on the ground of caste and here the question arises as to whether the Scheduled Castes and Tribes are castes within the meaning of Article 16(4). Even assuming that there is discrimination, Article 16(2) cannot be invoked unless it is predicated that the Scheduled Castes are "castes". Terminological similarities are an illusory guide and we cannot go by verbal verisimilitude. It is very doubtful whether the expression caste will apply to Scheduled Castes. At any rate, Scheduled Tribes are identified by their tribal denomination. A tribe cannot be equated with a caste. As stated earlier, there are sufficient indications in the Constitution to suggest that the Scheduled Castes are not mere castes. They may be something less or something more and the time badge is not the fact that the members belong to a caste but the circumstance that they belong to

an indescribably backward human group. Ray, C.J. instate of State of Kerala and Another Vs. N.M. Thomas and Others, made certain observations which have been extracted earlier to make out that "Scheduled Castes and Scheduled Tribes are not a caste within the ordinary meaning of caste". Since a contrary view is possible and has been taken by some judges a verdict need not be rested on the view that SCs are not castes. Even assuming they are, classification, if permitted, will validate to the differential rules for promotion. Moreover, Article 16(4) is an exception to Article 16(2) also.

79. The constitutional enquiry is whether the harijan/girijan fold is to sharply marked off from the rest of the Indian human family as to justify classification for considerate treatment in the field of public employment?

80. Let us be sure of the social facts. Mark Twain cynically remarked once: "Get your facts first, and then you can distort them as much as you please". By that token, let us scan the status of the SCs & STs the result of reservations in habilitating them into State services and the depressment impact on efficiency by supersession of meritorious seniors. It is a fact of our social history and a blot on our cultural heritage that 135 million men and women, described as SCs & STs have been suffering as "suppressed classes", denied human dignity and languishing as de facto bonded labour. They still are, in several places, "worse than the serf and the slave" and "their social standard is lower than the social standard of ordinary human beings" (Ambedkar). Tortured, violated and even murdered, the saga of the SCs and STs is not only one of economic exploitation but of social ostracisation. Referring to the sorrows of the suppressed shudras (what I prefer to call the panchama proletariat) Swami Vivekananda demanded shudra raj and refuted the incapacibilities of the groaning untouchables:

"Aye Brahmins, if the Brahmin has more aptitude for learning on the ground of heredity than the Pariah, spend no more money on the Brahmin's education but spend all on the Pariah. Give to the weak, for there all the gift is needed.....Our poor people, these downtrodden masses of India, therefore, require to hear and to know what they really are. Aye, let every man and woman and child, without respect of caste or birth, weakness and strength, hear and learn that behind the strong and the weak, behind the high and the low, behind everyone, there is that Infinite Soul, assuring that infinite possibility and the infinite capacity of all to become great and good. Let us proclaim to every soul "Arise, awake and stop not till the goal is reached". Arise, awake" (Socio-political views of Vivekananda, Binoy K. Roy, p. 30).

To make democracy functional and the republic real the social and economic personality of these backwardmost sections had to be restored. From this angle, the ancient injustice on the shudras among the shudras has to be liquidated by effective equalising measures. Power, material power, is the key to socio-economic salvation and the State being the nidus of power, the framers of the Constitution have made provision for representation of these weaker sections both in the legislature and the executive.

82. We must remember that Article 14 speaks of equality before the law and Article 16 vouchsafes equality of opportunity. The social dynamics of equality involve the strategy of equalisation in a society of stratification through citification. One of us did observe: *State of Kerala and Another Vs. N.M. Thomas and Others*, .

"In a spacious sense, "equal opportunity" for members of a hierarchical society makes sense only if a strategy by which the underprivileged have environmental facilities for developing their full human potential. This consummation is accomplished only when the utterly depressed groups can claim a fair share in public life and economic activity including employment under the State, or when a classless and casteless society blossoms as a result of positive State action. To help the lagging social segments by special care, is a step towards and not against a larger and stabler equality.....

It is a statistically proved social reality in India that the depressed employment position of harijans is the master problem in the battle against generations of retardation, and "reservation" and other solutions have made no significant impact on their employment in public services. In such an unjust situation, to maintain mechanical equality is to perpetuate actual inequality. A battery of several programmes to fight down this fell backwardness must be tried out by the State".

Subba Rao, J. in *T. Devadasan Vs. The Union of India (UOI) and Another*, brought out the need for equalisation to produce stable equality in society by a telling imagery. Although he was in a minority on one point in that case, that did not detract from the validity or force of the general observations: (*Ibid* p. 700).

Article 14 lays down the general rule of equality. Article 16 is an instance of the application of the general rule with special reference to opportunity of appointments under the State. It says that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. If it stood alone, all the backward communities would go to the wall in a society of uneven basic social structure, the said rule of equality would remain only a Utopian conception unless a practical content was given to it. Its strict enforcement brings about the very situation it seeks to avoid. To make my point clear, take the illustration of a horse race - one is a first class race horse and the other an ordinary one. Both are made to run from the same starting point. Though theoretically they are given equal opportunity to run the race, in practice, the ordinary horse is not given an equal opportunity to compete with the race horse. Indeed, that is denied to it. So, a handicap may be given either in the nature of extra weight or a start from a longer distance. By doing so, what would otherwise have been a farce of a competition would be made a real case. The same difficulty had confronted the makers of the Constitution at the time it was made. Centuries of calculated oppression and habitual submission reduced a considerable section of our community to a life of serfdom. It would be well-nigh impossible to raise their standards if the doctrine of equal opportunity was

strictly enforced in their case. They would not have any chance if they were made to enter the open field of competition without adventitious aids till such time when they could stand on their own legs.

A strikingly similar strain of juristic thinking has been developed in other jurisdictions in the field of equal protection and benign discrimination by Polyvos G. Plyvious in his book "The Equal Protection of the Laws". It may be meaningful to notice the argument: The Equal Protection of the Laws by G. Polyvious p. 364, 361-63:

"....focuses on the concepts of equal treatment and equal opportunity, professes to construe them realistically, and declares that the minority applicant does not have an opportunity "equal" to the white's because the discriminatory denial of educational, professional and cultural opportunities for generations past has severally handicapped him in any contest of early intellectual attainment. As Professor Cox has well put the question "do we achieve equality by putting each individual on the same starting line to-day or by giving minority applicants head-starts designed to offset the probable consequences of past discrimination and injustice against the group with which the applicant is identified"?"

12. We have referred to such relevant provisions made under the Constitution of India and the way they are understood by the Courts before taking notice of the contentions raised on behalf of the parties only with a view to keep the historical, social and constitutional aspects in sight while dealing with various contentions which are raised on behalf of the parties. Petitioners have with varying emphasis raised the following contentions:

(1) The State Government has no power to appoint a Commission when there is a National Commission provided by the Constitution itself under Article 338 of the Constitution of India;

(2) There is no Entry in any of the Lists in the Seventh Schedule in relation to legislation relating to Scheduled Castes and Scheduled Tribes. Even if the Government of the State can appoint a Commission of Inquiry in relation to the subject matter, covered by the Entries in List-II and List-III, since there is already a National Commission dealing with the same subject-matter, State Government, by appointing "Justice Ramachandra Raju Commission" and modifying the Presidential Order by grouping Scheduled Castes in the Presidential Order and by categorising them separately as "more backward" and "less backward" and/or on the ground that one or the other group among them is more benefitted by the reservations for the Scheduled Castes than the other group therein, has violated Article 341 read with Articles 338 and 335 of the Constitution.

(3) The Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976 (Act No. 108 of 1976) which modified the Original Constitution (Scheduled Tribes) Order, 1950, can be modified or varied by the Parliament alone under Sub-clause (2) of Article 341 of the Constitution of India.

(4) The State Government or the State Legislature cannot act independent of the requirement of consultation with the National Commission for the Scheduled Castes and Scheduled Tribes on all major policy matters affecting Scheduled Castes and Scheduled Tribes, as envisaged under Sub-clause (9) of Article 338 of the Constitution of India, and on the issue of dividing or categorising the Scheduled Castes as different groups for differential treatment in the matter of reservation, the State independently has taken a major policy decision without consulting the National Commission.

(5) Article 16(4) which empowers the State to make special provision for backward class of citizens and Article 15(4) which speaks of special provision for the advancement of socially and educationally backward classes of citizens and for the Scheduled Castes and the Scheduled Tribes, must be read harmoniously to exclude any power to make provisions for de-classifying or re-classifying Scheduled Castes or Scheduled Tribes or interfering with the classification which is made by putting various Scheduled Castes, sub-castes together in the Presidential Order.

13. One of the respondents has brought before the Court certain historical facts to bring on the record that the Scheduled Castes, the Panchamas outside the four-fold division of Hindus, the out-castes, differing qualitatively and quantitatively in various States, have their own social hierarchy, social distances, different cultures, different vocations, different rituals, different Gods, different customs, different practices, different ceremonies, at the birth, marriage, festivals and death from cradle to the grave, within themselves.

14. The State Government as well as other respondents have referred to various Commissions' Reports and emphasized that a lion's share of various benefits and preferences are appropriated by the numerically larger and politically well organised communities and that a few communities have been appropriating bulk of posts year after year leaving the majority of the Scheduled Castes and Scheduled Tribes who are educationally backward with the feeling of discontent and comparative disadvantage. Their contentions, however, which are developed in course of the arguments, mainly by the learned Advocate General are:

(1) Appointment of Commission of Inquiry under G.O.Ms. No. 99, Social Welfare dated 10-9-1996 u/s 3 of the Commission of Inquiry Act, 1952 even though referable to Scheduled Castes, the inquiry by the Commission pertained to State Public Service (Entry 41 of List-II in VII Schedule of the Constitution) and admissions to Educational Institutions relatable to Entry 25 of List-III thereof.

(2) The National Commission for Scheduled Castes and Scheduled Tribes is a permanent body under the Constitution, its functions are wholly different from the functions of the Commission of Inquiry appointed u/s 3 of the Commission of Inquiry Act by the State Government, which was only a fact finding body;

(3) The legal effect of the report of Commission of Inquiry under the Commission of Inquiry Act and the status of the Commission under Article 338 of the

Constitution of India are wholly different in character, the theory of occupied field adumbrated in Article 251 of the Constitution of India has no application to the exercise of power under the Commission of Inquiry Act.

(4) The power given to the President under Article 341 of the Constitution is an original quasi-legislative power to identify such castes, races or tribes or parts of or groups within such castes, races or tribes which fall within the definition of "Scheduled Castes" under Article 366(24) of the Constitution and to be notified as such for the purpose of special provisions to be made by the State for them and for their claims to be considered as contemplated under Article 335 of the Constitution for constitutional benefits. Categorisation for effective implementation of the constitutional safeguards falls outside of the identification and consequent notification of the Schedule by the President of India or inclusion in or exclusion from the list which is published by the President of India;

(5) The National Commission for Scheduled Castes and Scheduled Tribes set up under Article 338 makes only recommendations, for which purpose, it has been given some powers as well as monitors the safeguards provided for the Scheduled Castes and Scheduled Tribes, but, this does not exclude legitimate actions of the appropriate State or Legislature of the appropriate State, if they do not in any manner conflict with any such thing done by the National Commission. The Government's decision to categorise Scheduled Castes for effective implementation of the Constitutional safeguards provided for the Scheduled Castes cannot be characterised as a major policy matter so as to attract Article 338 of the Constitution of India as there is no adverse effect of the categorisation on them as a whole. In any event, consultation as contemplated under Clause (9) of Article 338 of the Constitution cannot be interpreted as mandatory with regard to the scheme envisaged therein; omission to consult would not vitiate or invalidate the Government Orders;

(6) Article 338 of the Constitution is not a limitation on the legislative power of the State to make special provisions under Articles 15(4) and 16(4) of the Constitution. No limitation can be engrafted on either Article 15(4) or 16(4) nor can there be a limitation on the legislative power of the State under Article 246(1) and (2) of the Constitution.

15. Two ancillary but quite serious contentions have been raised, one regarding the material considered by the Government and the other regarding Rule 22 of the A.P. State and Subordinate Service Rules. While, according to the petitioners, 1991 Census statistics should have been taken as a guide for determining respective population of the castes, according to the State Government, since the statistical figures of Scheduled Castes collected in 1991 Census have not been published, reliance on 1981 Census which contained the required data with necessary projections which are predicated on the basis of increase in population, can be a safe basis for categorising such castes or sub-castes or group of castes for the purpose of special provisions under Article 15(4) and 16(4) of the Constitution of India.

16. Similarly, 15 roster points at various positions in the cycle of 100 vacancies, set out in Rule 22 of the A.P. State and Subordinate Service Rules, according to the petitioners, get affected and thus the impugned Government Orders are violative of the said Rule. According to the respondent -Government of the State, however, the roster points are identified as for Scheduled Castes and there is no violation because in the order in terms of the categorisation, when they are fitted in the cycle of 100 vacancies, the cycle still remains unviolated and includes in its fold the same number of Scheduled Castes and maintains the same percentage of 15% of reservation for them.

17. The larger question thus before us for determination is, whether while making special provisions for the Backward Classes who are included in the schedule under Article 341 of the Constitution of India by the President for the purpose of Article 16(4), any categorisation or division is permissible and similarly, while making special provisions for Scheduled Castes and Scheduled Tribes, such a thing can be done without in any manner impairing or affecting the right of any caste, sub-caste or groups of caste which is included in the schedule.

18. In *Nityanand Sharma and another Vs. State of Bihar and others*, the Supreme Court has dealt with the question, whether the Court can declare a particular tribe to be "Scheduled Tribe" under the Scheduled Castes and Scheduled Tribes Order, 1950, as amended by Scheduled Castes and Scheduled Tribes Orders (Amendment Act), 1976 and declared:

"It is the constitutional mandate that the tribes or tribal communities or parts of or groups within such tribes or tribal communities specified by the President, after consultation with the Governor in the public notification, will be Scheduled Tribes subject to the law made by Parliament alone, which may, by law, include in or exclude from the list of Scheduled Tribes specified by the President. Thereafter, it cannot be varied except by Parliament".

19. In *A. Chinnappa Vs. V. Venkatamuni and others*, on a similar question in respect of Scheduled Castes, after quoting Article 341, the Supreme Court has declared as follows:

"A reading thereof would clearly indicate that the President may, with respect to any State or Union Territory, after consultation with the Governor, by public notification, specify the castes, races or tribes or parts of or groups within castes, races or tribes which shall, for the purposes of the Constitution be deemed to be Scheduled Castes in relation to that State or Union Territory, as the case may be. Under Clause (2) thereof, Parliament has been empowered by law either to include in or exclude from the list of Scheduled Castes specified by the President under Clause (1) of Article 341, any caste, race or tribe or part of or group within any caste, race or tribe. Once Parliament by law includes in or excludes from any race, caste, tribe, parts of or groups within any caste, race or tribes, the President thereafter shall have no power to vary by any subsequent notification the said caste, race, tribe or part of or group within any caste race or tribe".

20. In *Palghat Jilla Thandan Samudhaya Samrakshna Samithi and Another Vs. State of Kerala and Another*, the Supreme Court has dealt with a case, in which, the question was whether the decision of the State of Kerala not to treat members of a particular community belonging to the erstwhile Malabar District of the State as members of the Scheduled Caste was valid when they were actually included in the Schedule to the Constitution (Scheduled Castes) Order, 1950. Seeking a community certificate that she belonged to "Thandan Community", which was the Scheduled Caste, one Miss. O.K. Lakshmikutty moved the Kerala High Court. Her petition was allowed by the High Court. Lakshmikutty, however, notwithstanding the certificate was denied admission to the first year MBBS Course in 1981-82 in a seat reserved for the Scheduled Castes on the ground that she was not a "Thandan". In the Judgment under appeal before the Supreme Court, the High Court noted that Lakshmikutty had earlier obtained relief as aforesaid and that the State Government in reply to her petition stated that there was no "Thandan Community" in Palghat District except in certain parts of Chittur taluk which was formerly part of the erstwhile Travancore-Cochin State. The State Government had after the inclusion of Thandans in the Scheduled Castes Order by reason of the Amendment Act, 1976, made enquiries which had revealed that section of Ezhavas/Thiyyas of the Malabar area and certain taluks of Trichur District who were called Thandans have nothing in common with the Scheduled Caste Thandans. The High Court directed the State Government to conduct a public inquiry to determine whether there was a community called "Thandan" distinct from Ezhavas in Palghat District and in areas other than in the erstwhile Chittur taluk and also in any other place in the erstwhile Malabar District. The inquiry was also required to determine, whether Lakshmikutty belonged to the "Thandan Community". The High Court, pending inquiry, directed for provisional admission to the MBBS Course in a reserved seat for Lakshmikutty. Upon completion of the MBBS Course, Lakshmikutty applied for admission to a Post Graduate Course in a reserved seat. Once again she was denied admission. She filed a fresh petition before the High Court. She was given admission subject to the result of the petition. Appeal before the Supreme Court was preferred against the said order. Another person K. Swamidasan filed a petition in similar circumstances which was ordered by the High Court as above and appeal against the said order was also preferred before the Supreme Court. The Supreme Court on examination of the facts of the case held that until the Scheduled Castes Order is amended, it must be obeyed as it reads and the State Government must treat "Thandans" throughout Kerala as members of the Scheduled Caste and issue community certificates accordingly. This Judgment, however, is significant because it has taken notice of two earlier Constitution Bench Judgments of the Supreme Court and another Bench judgment of three learned Judges of the same Court and candidly stated the law that a State Government is entitled to initiate appropriate proposals for modification in case where it was satisfied that modifications were necessary and if after appropriate enquiry, the authorities were satisfied that a modification was required, an amendment could be undertaken as provided by the Constitution. Short, but

effective discussion of the law in the said judgment of the Supreme Court, is as follows:

"16. Article 341 empowers the President to specify not only castes, races or tribes which shall be deemed to be Scheduled Castes in relation to a State but also "parts of or groups within castes, races or tribes" which shall be deemed to be Scheduled Castes in relation to a State. By reason of Article 341 a part or group or section of a caste, race or tribe, which, as a whole, is not specified as a Scheduled Caste, may be specified as a Scheduled Caste. Assuming, therefore, that there is a section of the Ezhavas/Thiyyas community (which is not specified as a Scheduled Caste) which is called Thandan in some parts of Malabar area, that section is also entitled to be treated as a Scheduled Caste, for Thandans throughout the State are deemed to be a Scheduled Caste by reason of the provisions of the Scheduled Castes Order as it now stands. Once Thandans throughout the State are entitled to be treated as a Scheduled Caste by reason of the Scheduled Castes Order as it now stands, it is not open to the State Government to say otherwise, as it has purported to do in the 1987 order.

17. We may usefully draw attention to the judgment of a Bench of three learned Judges of this Court in *Srish Kumar Choudhury v. State of Tripura* (1990 Supp. SCC 220). This judgment considered the Constitution Bench judgments in *B. Basavalingappa Vs. D. Munichinnappa*, and *Bhaiyalal Vs. Harikishan Singh and Others*, and certain other judgments. It held that the two Constitution Bench judgments indicated that any amendment to the Presidential Orders could only be by legislation. The Court could not assume jurisdiction and order an enquiry to determine whether the terms of the Presidential Order included a particular community. A State Government was entitled to initiate appropriate proposals for modification in cases where it was satisfied that modifications were necessary and, if after appropriate enquiry, the authorities were satisfied that a modification was required, an amendment could be undertaken as provided by the Constitution.

18. These judgments leave no doubt that the Scheduled Castes Order has to be applied as it stands and no enquiry can be held or evidence let in to determine whether or not some particular community falls within it or outside it. No action to modify the plain effect of the Scheduled Castes Order, except as contemplated by Article 341, is valid.

19. The Thandan community in the instant case having been listed in the Scheduled Castes Order as it now stands, it is not open to the State Government or, indeed, to this Court to embark upon an enquiry to determine whether a section of Ezhavas/Thiyyas which was called Thandan in the Malabar area of the State was excluded from the benefits of the Scheduled Castes Order.

20. Learned Counsel for the State relied upon the decision in *Bhaiya Ram Munda Vs. Anirudh Patar and Others*, referred to in paragraph 15 of the judgment in *Srish Kumar Choudhury* case for the view taken there was that evidence was

admissible for the purpose of showing what an entry in the Presidential Order was intended to mean. In paragraphs 8, 9, 10 and 11 of the judgment in *Srish Kumar Choudury* case the Constitution Bench judgment referred to above are discussed, as also two other judgments taking the same view.

Then, in paragraph 14, the judgment of this Court in the case of *Dina v. Narayan Singh* (38 ELR 212 (SC)) and *Bhaiya Ram Munda v. Anirudh Patar* are referred to and it is stated that both were rendered by the same Bench of two learned Judges. Paragraph 14 goes on to set out the substance of the decision in *Dina* case and paragraph 15 sets out the substance of the decision in *Bhaiya Ram* case. In paragraph 16, it is said, "These authorities clearly indicate, therefore, that the entries in the Presidential Order have to be taken as final and the scope of enquiry and admissibility of evidence is confined within the limitations indicated. It is, however, not open to the Court to make any addition or subtraction from the Presidential Order". There is, therefore, no doubt that the Court in *Srish Kumar Choudhury* case accepted and followed, as it was bound to do, the Constitution Bench judgments and not the two-Judge judgments in the *Dina* and *Bhaiya Ram Munda* cases.

21. The enquiry that was ordered by the High Court in the order under appeal to "find out whether there was a community called Thandan distinct from Ezhavas in Palghat District in areas other than in the erstwhile Chittur Taluk and also in any other place in erstwhile Malabar District" has proceeded to a conclusion on the basis of an interim order passed by this Court on January 16, 1989. It is not for the State Government or for this Court to enquire into the correctness of what is stated in the report that has been made thereon or to utilise the report to, in effect, modify the Scheduled Castes Order. It is open to the State Government, if it so deems proper, to forward the report to the appropriate authority to consider whether the Scheduled Castes Order needs amendment by appropriate legislation. Until the Scheduled Castes Order is amended, it must be obeyed as it reads and the State Government must treat Thandans throughout Kerala as members of the Scheduled Castes and issue community certificates accordingly.

22. K.V. Kumaran, who claims to be the Chairman of the Kerala Scheduled Castes Protection Council, sought impleadment to these matters. We declined to implead him but we heard him in the character of an intervener. His submission, in the main, was that in Malabar Ezhavas/Thiyyas are known as Thandans but this did not mean that they belonged to the Scheduled Castes. As we have indicated, it is not for this Court to go into the question. It is for the appropriate authority to do so and, if satisfied, initiate proceedings to amend the Scheduled Castes Order".

21. Article 340 which has been referred to by us earlier and which speaks of appointment of a Commission to investigate the conditions of Backward Classes and Article 16(4) which makes no reference to Scheduled Castes and Scheduled Tribes as such were in the original Constitution and they have remained unamended. Article 15(4) was inserted by the Constitution (First Amendment)

Act, 1951. The framers of the Constitution did not, however, use the expression "socially and educationally backward" in Article 16(4). Clause (4) of Article 15 has, however, used the expression ".....shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens....." which is different from the expression ".....shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens....." used in Clause (4) of Article 16. Clause (4) of Article 15 has used a further expression "or for the Scheduled Castes and the Scheduled Tribes". In *Indra Sawhney and Ors. v. Union of India and Ors.*, (1992) Supp. 3 SCC 217, the Supreme Court has pointed out that the expression "any backward class of citizens" in Article 16(4) of the Constitution as understood till date means, "socially and educationally backward class" and quoted the observation of Palekar, J. made in the judgment in *Janki Prasad Parmoo v. State of Jammu and Kashmir*, (1971) 1 SCC 420 which reads as follows:

"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 Article 16(4) means the same thing as the expression "any socially and educationally backward class of citizens in Article 15(4)".

22. Kuldeep Singh, J. in the minority and separate judgment has dealt with this aspect in some details and pointed out, however, the essential distinction that while under the Constitution the "backward class" which has been identified for preferential treatment is the "socially and educationally backward" class, the Constitutional scheme is explicit. Articles 340 and 15(4) make it clear that wherever the Constitution intended to provide special compensatory treatment for the "backward classes" they have been defined as "socially and educationally backward". Article 16(4) is not in line with Articles 340 and 15(4). Article 16(4) does not provide job reservations for all backward classes. That is why the expression "socially and educationally backward" has not been used therein. The classes of citizens to be identified under Article 16(4) are those who are not adequately represented in the services under the State. A passage, however, by the learned Judge in the judgment which has referred to the Scheduled Castes and Scheduled Tribes reads as follows:

"Yet another way to examine. Scheduled Castes and Scheduled Tribes are a "class by themselves and the Constitution permits protective discrimination to compensate them. Reservation of seats in the House of the People and the Legislative Assemblies have been provided for them. Article 335 is special provision for taking into consideration their claims in the appointments to State Services. Had there been an intention to provide job reservation in favour of weaker sections of society or for the "socially and educationally backward classes" then Scheduled Castes and Scheduled Tribes would have been the first to be provided for by specific mention in Article 16(4). It is idle to say that the

expression "backward class of citizens" would include them. Article 15(4) uses the expression ".....any special provision for advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes". Similarly Article 46 provides "The State shall promote.....weaker section of the people and, in particular, of the Scheduled Castes and Scheduled Tribes.....". Thus, wherever in the Constitution special protection has been provided for socially and educationally backward classes the Scheduled Castes and Scheduled Tribes have been specifically mentioned alongwith. Article 16(4) does not give protection to either of the two, it only provides for those who are inadequately represented in the State Services. If the "Scheduled Castes and Scheduled Tribes" and "socially and educationally backward classes" qualify the test of inadequacy they are eligible for the reserved seats under Article 16(4). The Scheduled Castes and Scheduled Tribes being the weakest of the weak per se satisfy the test."

23. Jeevan Reddy, J. in his judgment, with whom Kania, C.J., Venkatachaliah, J. and Ahmadi, J. have agreed, however, has stated as follows:

"The other aspect to be considered is whether the backwardness contemplated in Article 16(4) is social backwardness or educational backwardness or whether it is both social and educational backwardness. Since the decision in *M.R. Balaji and Others Vs. State of Mysore*, it has been assumed that the backward class of citizens contemplated by Article 16(4) is the same as the socially and educationally backward classes, Scheduled Castes and Scheduled Tribes mentioned in Article 15(4). Though Article 15(4) came into existence later in 1951 and Article 16(4) does not contain the qualifying words "socially and educationally" preceding the words "backward class of citizens" the same meaning came to be attached to them. Indeed, it was stated in *Janki Prasad Parimoo* (Palekar, J. speaking for the Constitution Bench) that:

"Article 15(4) speaks about "socially and educationally backward classes of citizens" while Article 16(4) speaks only of "any backward class citizens". However, it is now settled that the expression "backward class of citizens" in Article 16(4) means the same thing as the expression "any socially and educationally backward class of citizens" in Article 15(4). In order to qualify 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 true that no decision earlier to it specifically said so, yet such an impression gained currency and it is that impression which finds expression in the above observation. In our respectful opinion, however, the said assumption has no basis. Clause (4) of Article 16 does not contain the qualifying words "socially and educationally" as does Clause (4) of Article 15. It may be remembered that Article 340 (which has remained unamended) does employ the expression "socially and educationally backward classes" and yet that expression does not find place in Article 16(4). The reason is obvious: "backward class of citizens" in

Article 16(4) takes in Scheduled Tribes, Scheduled Castes and all other backward classes of citizens including the socially and educationally backward classes. Thus, certain classes which may not qualify for Article 15(4) may qualify for Article 16(4). They may not qualify for Article 15(4) but they may qualify as backward class of citizens for the purposes of Article 16(4). It is equally relevant to notice that Article 340 does not expressly refer to services or to reservations in services under the State, though it may be that the Commission appointed thereunder may recommend reservation in appointments/posts in the services of the State as one of the steps for removing the difficulties under which SEBCs are labouring and for improving their conditions. Thus, SEBCs referred to in Article 340 is only for the categories for whom 16(4) was enacted: Article 16(4) applies to a much larger class than the one contemplated by Article 340. It would, thus, be not correct to say that "backward class of citizens" in Article 16(4) are the same as the socially and educationally backward classes in Article 15(4). Saying so would mean and imply reading a limitation into a beneficial provision like Article 16(4). Moreover, when speaking of reservation in appointments/ posts in the State services - which may mean, at any level whatsoever - insisting upon educational backwardness may not be quite appropriate.

Further, if one keeps in mind the context in which Article 16(4) was enacted it would be clear that the accent was upon social backwardness. It goes without saying that in the Indian context, social backwardness leads to educational backwardness and both of them together lead to poverty - which in turn breeds and perpetuates the social and educational backwardness. They feed upon each other constituting a vicious circle. It is a well-known fact that till independence the administrative apparatus was manned almost exclusively by members of the "upper" castes. The Shudras, the Scheduled Castes and the Scheduled Tribes and other similar backward social groups among Muslims and Christians had practically no entry into the administrative apparatus, it was this imbalance which was sought to be redressed by providing for reservations in favour of such backward classes. In this sense Dr. Rajeev Dhavan may be right when he says that the object of Article 16(4) was "empowerment" of the backward classes. The idea was to enable them to share the State power. We are, accordingly, of the opinion that the backwardness contemplated by Article 16(4) is mainly social backwardness. It would not be correct to say that the backwardness under Article 16(4) should be both social and educational. The Scheduled Tribes and the Scheduled Castes are without a doubt backward for the purposes of the clause; no one has suggested that they should satisfy the test of social and educational backwardness....."

24. Sawant, J, who has concurred with the view of Jeevan Reddy, J, has also stated in his judgment that the expression "backward class of citizens" has been used in Article 16(4) in a particular context taking into consideration the social history of this Country. The expression is used to denote those classes in the society which could not advance socially and educationally because of the taboos and handicaps created by the society in the past on account of geographical or

other similar factors.

25. The view, thus in conformity with the authoritative pronouncements of the Supreme Court can safely be summarised in these words: Backwardness contemplated by Article 16(4) is mainly social backwardness. It would not be correct to say that the backwardness under Article 16(4) should be both social and educational. It takes in Scheduled Castes, Scheduled Tribes and all other backward classes of citizens including the socially and educationally backward classes. Certain classes which may not qualify for Article 15(4) may qualify as backward class of citizens for the purposes of Article 16(4). Scheduled Castes and Scheduled Tribes are without a doubt backward for the purposes of Article 16(4) of the Constitution of India. Article 341 empowers the President to specify not only castes, races or tribes which shall be deemed to be Scheduled Castes in relation to a State but also "parts of or groups within castes, races or tribes" which shall be deemed to be Scheduled Castes in relation to a State. By reason of Article 341, a part or group or section of a caste, race or tribe, which, as a whole is not specified as a Scheduled Caste, may be specified as a Scheduled Caste. Once, however, caste, race or tribe or parts of or groups within castes, races or tribes is/are included in the Scheduled Castes Order, it is not open to the State Government to say otherwise. Any amendment to the said Order can only be made by Parliament by legislation. State Government can initiate appropriate proposals for modification in the Scheduled Castes Order if it is satisfied that modifications are necessary. Scheduled Castes Order has to be applied as it stands and no enquiry can be held or evidence let in to determine whether or not a particular community falls within or outside it. Any special provisions for the advancement of any socially and educationally backward classes of citizens, as contemplated under Article 15(4), must include provisions for the Scheduled Castes and Scheduled Tribes as they are without a doubt socially and educationally backward compared to other communities, castes and/or class of citizens and any reservation as contemplated under Article 16(4) when made for the backward classes must also extend to Scheduled Castes and Scheduled Tribes as the social and educational backwardness of theirs is the reason for their inadequate representation in the services.

26. Looking closely to Articles 38 and 46 in Part IV of the Constitution and provisions in Part XVI of the Constitution, one can easily notice the concern of the Constitution that there are classes for which special provisions are made by the Constitution itself and whenever there is any intention expressed for special provisions for advancement of backward classes or for Scheduled Castes and Scheduled Tribes, care is taken to emphasise that Scheduled Castes and Scheduled Tribes be provided with such special provisions. Unlike Article 340 of the Constitution which speaks of appointment of a Commission to investigate the conditions of backward classes, Article 338, which, in the original Constitution has been as follows,

"338. Special Officer for Scheduled Castes. Scheduled Tribes, etc.

(1) There shall be a Special Officer for the Scheduled Castes and Scheduled Tribes to be appointed by the President.

(2) It shall be the duty of the Special Officer to investigate all matters relating to the safeguards provided for the Scheduled Castes and Scheduled Tribes under this Constitution and report to the President upon the working of those safeguards at such intervals as the President may direct, and the President shall cause all such reports to be laid before each House of Parliament.

(3) In this Article references to the Scheduled Castes and Scheduled Tribes shall be construed as including references to such other backward classes as the President may, on receipt of the report of a Commission appointed under Clause (1) of Article 340, by order specify and also the Anglo-Indian Community."

has been extensively amended by the Constitution (Sixty Fifth Amendment) Act, 1990 to provide for establishment of a Commission for the Scheduled Castes and Scheduled Tribes to be known as the National Commission for the Scheduled Castes and Scheduled Tribes.

27. It is thus irresistible that the Constitution has designed and approved the adoption of suitable and appropriate remedial measures to correct the continuing evil effect of discrimination which backward class segments of the society and the people have suffered. Reservation of posts and appointments as contemplated under Article 16(4) of the Constitution, is one of the measures adopted by the Constitution to remedy the continuing evil effects of prior inequities assimilating from discriminatory practices against various classes of people which have resulted in their social, educational and economic backwardness. Similarly, special provisions for advancement of socially and educationally backward classes, to which class, Scheduled Castes and Scheduled Tribes belong, that is, all such castes, races and tribes and parts or groups within castes, races and tribes which are included in the list under Article 341 of the Constitution, under Clause (4) of Article 15 of the Constitution are intended for removal of inequalities so that they may come out of the backwardness and march ahead as "equals" of socially and educationally advanced communities.

28. Question before us, however, is substantially different from the standpoint of the controversies that have been raised on account of the impugned Government Orders which categorise the Scheduled Castes and Scheduled Tribes for varying degree of reservation within the 15% of the total reservation for them with a rotational mechanism finally to ensure that they take in their turn the benefit of the reservation in the posts and appointments with the Government of the State as well as seats in the educational institutions.

29. The observations in Indra Saivhney"s majority judgment :

"We are of the opinion that there is no constitutional or legal bar to a State categorising the backward classes as backward and more backward....." appears to be the basis which is used to classify, may, further classify or

categorise the Scheduled Castes in the State. The majority judgment has added to the above :

"We are not saying that it ought to be done. We are concerned with the question if a State makes such a categorisation, whether it would be invalid? We think not. Let us take the criteria evolved by Mandal Commission. Any caste, group or class which scored eleven or more points was treated as a backward class. Now, it is not as if all the several thousands of castes/groups/classes scored identical points. There may be some castes/groups/classes scored points between 20 to 22 and there may be some who have scored points between eleven and thirteen. It cannot reasonably be denied that there is no difference between these two sets of castes/groups/classes. To give an illustration, take two occupational groups viz., Goldsmiths and Vaddes (traditional stone-cutters in Andhra Pradesh) both included within Other Backward Classes. None can deny that Goldsmiths are far less backward than Vaddes. If both of them are grouped together and reservation provided, the inevitable result would be that Goldsmiths would take away all the reserved posts leaving none for Vaddes. In such a situation, a State may think it advisable to make a categorisation even among Other Backward Classes to obtain the benefits intended for them. Where to draw the line and how to effect the sub-classification is, however, a matter for the Commission and the State - and so long as it is reasonably done, the Court may not intervene. In this connection, reference may be made to the categorisation obtaining in Andhra Pradesh. The Backward Classes have been divided into four categories. Group A comprises "Aboriginal tribes, Vimukta jatis, nomadic and semi-nomadic tribes etc." Group B comprises professional groups like tappers, weavers, carpenters, iron smiths, goldsmiths, Kamsalins etc. Group C pertains to "Scheduled Castes converts to Christianity and their progeny", while Group D comprises all other classes/communities/groups, which are not included in Groups A, B and C. The 25% vacancies reserved for Backward Classes are sub-divided between them in proportion to their respective population. This categorisation was justified in *The State of Andhra Pradesh and Others Vs. U.S.V. Balram, etc.,* . This is merely to show that even among backward classes, there can be a sub-classification on a reasonable basis.

30. Referring, however, immediately thereafter to Article 16(4) and saying that it recognises only one class viz., "backward class of citizens", the majority judgment in *Indra Sawhney*'s case says :

"It does not speak separately of Scheduled Castes and Scheduled Tribes, as does Article 15(4). Even so, it is beyond controversy that Scheduled Castes and Scheduled Tribes are also included in the expression "backward class of citizens" and that separate reservations can be provided in their favour. It is a well-accepted phenomenon throughout the country. What is the logic behind it ? It is that if Scheduled Tribes, Scheduled Castes and Other Backward Classes are lumped together OBCs will take away all the vacancies leaving Scheduled Castes and Scheduled Tribes high and dry. The same logic also warrants categorisation

as between more backward and backward. We do not mean to say - we may reiterate - that this should be done. We are only saying that if a State chooses to do it, it is not impermissible in law."

31. Concerned with the above submissions, learned single Judge, while issuing interim order, against which, Writ Appeal SR. No. 83378 of 1997 and batch has been preferred, has quoted also from the majority judgment, the observations in Indra Sawhney's case which are as follows :

"At the outset, we may state that for the purpose of this discussion, we keep aside the Scheduled Tribes and Scheduled Castes (since they are admittedly included within the backward classes), except to remark that backward classes contemplated by Article 16(4) do comprise some castes - for it cannot be denied that Scheduled Castes include quite a few castes."

32. We, however, can say safely that (1) Scheduled Caste is not a caste within the ordinary meaning of "caste"; (2) it is a caste as notified under Article 366(25) (sic. 366(24)) of the Constitution; (3) President of India notifies under Article 341 Scheduled Castes not with reference to any caste characteristics but their abysmal backwardness; (4) before the Constitution (Sixty-Fifth Amendment) Act, 1990, the President, appointed under Article 338 of the Constitution, a Special Officer, whose duty was to investigate into all matters relating to the safeguards for the Scheduled Castes and Scheduled Tribes; (5) after the Sixty-Fifth Amendment of the Constitution with effect from 7-6-1990, the National Commission for the Scheduled Castes and Scheduled Tribes is assigned the functions which before amendment of Article 338 had been assigned to the Special Officer with further duties assigned to it such as to inquire into the specific complaints with respect to the deprivation of rights and safeguards of the Scheduled Castes and Scheduled Tribes, to participate and to advise on the planning process of socio-economic development of the Scheduled Castes and Scheduled Tribes and to evaluate the progress of their development and to discharge such other functions in relation to the protection, welfare and development and advancement of the Scheduled Castes and Scheduled Tribes, as the President may subject to the provisions of any law made by Parliament, by rule specify; (6) the Commission while investigating any matter relating to the safeguards provided for the Scheduled Castes and Scheduled Tribes or inquiring into any complaint with respect to the deprivation of rights and safeguards of the Scheduled Castes and Scheduled Tribes, has got all the powers of a Civil Court trying a suit in respect of summoning and enforcing the attendance of any person from any part of India and examining him on oath, requiring the discovery and production of any documents, receiving evidence on affidavits, requisitioning any public record or copy thereof from any Court or office, issuing commissions for the examination of witnesses and documents and any other matter which the President may by rule determine; (7) it is obligatory for the Union and other State Governments to consult the Commission on all major policy matters affecting the Scheduled Castes and Scheduled Tribes; and (8)

notification specifying the castes, races or tribes or parts of or groups within castes, races or tribes, which, for the purpose of the Constitution are deemed to be Scheduled Castes in relation to the State or Union Territory, as the case may be, under Article 341 of the Constitution, is issued by the President of India as a result of an elaborate inquiry.

33. Inclusion of any caste, race or tribe or part of or group within caste or race or tribe in the notification under Article 341 of the Constitution is not with reference to any caste characteristics but by its/their abysmal backwardness. Inclusion of any caste, race or tribe or part of or groups within castes, races or tribes in the notification assigns to them a special place and a proof of the special concern that they belong to handicapped human sectors and are placed in grossly retarded situation. They are not merely backward but are the backward most and cannot be equated with just any other caste in the Hindu fold. It will need no elaboration to accept that Scheduled Castes are not necessarily a monolithic group. There can be disparities within the castes, races or tribes or parts of or groups within castes, races or tribes which are included in the Schedule. They after all are a plurality of castes within themselves, a heterogeneous and despair group of castes, races, tribes or parts of or groups within castes, races or tribes. Does it, however, mean that internal disparities within the castes, races or tribes or parts of or groups within castes, races or tribes which are notified as Scheduled Castes would permit classification amongst them on the basis of any measure of comparative backwardness ? Can there be amongst most backward any caste, race or tribe or parts of or group within any caste, race or tribe more backward than the most backward ? If it is permissible to classify the Scheduled Castes on the basis of any such scale of more backward than the most backward, is the Government of the State competent to do so ? Will any such classification not amount to entering into the Presidential Order to say that the most backward amongst the more backward are not benefitted because they are clubbed together in the Presidential Order ?

34. Reliance is placed on behalf of the respondents upon a Full Bench judgment of the Punjab and Haryana High Court in *Kamvaljit Singh Sidhu and Ors. v. State of Punjab and Ors.*, (1980) 2 ILR 515 in which, the Government Orders/ Instructions reserving for Balmikis or Mazbi Sikhs 50 per cent out of the quota of the appointments and posts reserved for Scheduled Castes and giving first preference in regard thereto were questioned as violative of Articles 14 and 16 of the Constitution of India in that they permitted discrimination between one Scheduled Caste as against another Scheduled Caste. After referring to the judgments of the Supreme Court in *M.R. Balaji and Others Vs. State of Mysore*, in *State of Kerala and Anr. v. N.M. Thomas and Ors.* (3 supra) and in *Shri Janki Prasad Parimoo and Ors. v. State of Jammu and Kashmir*, (1973) SCC 930 the Punjab and Haryana High Court said,

"It is too late in the day to say that the caste, community or religion or race, would be sole or even a dominant criteria to judge the social or educational

backwardness of a backward class. However, persons comprising in a caste, who are socially and educationally backward, can be labelled as belonging to a backward class. The two groups i.e., socially and educationally backward class and Scheduled Castes were differentiated for the purposes of Clause (4) of Article 15 of the Constitution of India. For the reservation in that case was meant for social, educational and economic advancement and it was recognised that Scheduled Castes, in the nature of things, were backward, but besides them, there were other groups of persons who were backward and deserved preferential treatment. Thus the need arose to class them separately from Scheduled Castes for the reason that such groups were not considered as backward as Scheduled Castes and therefore, they could not be grouped with the Scheduled Castes and if they had been grouped with them, they might have cornered a larger portion of the reserved cake, with the result that the benefits intended for such persons who are now termed as Scheduled Castes, might have eluded them. If that class of citizens had failed to take benefit in the matter of educational facilities, then there was no question of their being able to secure adequate representation in Government Services. The Constitution makers having secured wherewithal for future advancement of the Scheduled Castes, thereafter, in the matter of reservation of services, the continuation of dichotomy that was observed in Article 15 Clause (4) of the Constitution of India, perhaps became unnecessary and redundant and it was for that reason that every "backward class" was made entitled to preferential treatment if its representation in the service was considered inadequate. The scheme of reservation in order to fall within the requirement of Article 16(4) of the Constitution of India, had merely to satisfy two criteria; (i) that the given backward class is so, because of social and educational backwardness; and (2) that the share of this particular class in the Services is so meagre that it required weightage. For the purpose of Article 16(4) of the Constitution no distinction was sought to be made between a socially and educationally "backward class" and a "Scheduled Caste". Since all sections of Scheduled Castes, in the nature of things, are socially and educationally backward classes, so they stood included in the expression "backward class" as used in Article 16(4) of the Constitution of India. A particular class of citizens may be socially and educationally backward, yet it may not be entitled to preferential treatment if its representation in the Services is considered adequate i.e., all socially and educationally backward classes by virtue of that fact are not entitled to preferential treatment in the matter of reservation in appointments or posts, only such of them whose representation in the Services, is so inadequate that it requires weightage. Various castes which fall within the umbrella of "Scheduled Castes" are backward classes, but on that criteria all of them would not qualify for preferential treatment under Article 16(4) of the Constitution of India either qua non-backward classes or inter se. By way of illustration; if in a given State, the "Scheduled Caste" is comprised of five groups or constituents, three of them having three times as much representation individually as the remaining two groups or constituents, in our opinion, in a situation like this, it would be open to

the State Government to give preferential treatment to the candidates of those two sections of the Scheduled Castes, whose representation in comparison to the other three constituent sections of the Scheduled Castes, is so grossly inadequate."

35. Acceptance of the Punjab and Haryana High Court's reasoning would amount to acceptance in principle that by virtue of inclusion in the list of Scheduled Castes in the Presidential Notification alone any caste, race or tribe or any part of or group within castes, races or tribes is not recognised as the most backward class; it will be an extension of the same logic which we have seen in the majority judgment of the Supreme Court in Indra Sawkney's case for classification of other backward classes.

"782. Coming back to the question of identification, the fact remains that one has to begin somewhere - with some group, class or section. There is no set or recognised method. There is no law or other statutory instrument prescribing the methodology. The ultimate idea is to survey the entire populace. If so, one can well begin with castes which represent explicit identifiable social classes/groupings, more particularly when Article 16(4) seeks to ameliorate social backwardness. What is unconstitutional with it, more so when caste, occupation poverty and social backwardness are so closely intertwined in our society? (individual survey is out of question, since Article 16(4) speaks of class protection and not individual protection). This does not mean that one can wind up the process of identification with the castes. Besides castes (whether found among Hindus or others) there may be other communities, groups, classes and denominations which may qualify as backward class of citizens. For example, in a particular State, Muslim community as a whole may be found socially backward. (As a matter of fact, they are so treated in the State of Karnataka as well as in the State of Kerala by their respective State Governments). Similarly, certain sections and denominations among Christians in Kerala who were included among backward communities notified in the former princely State of Travancore as far back as in 1935 may also be surveyed and so on and so forth. Any authority entrusted with the task of identifying backward classes may well start with the castes. It can take caste "A", apply the criteria of backwardness evolved by it to that caste and determine whether it qualifies as a backward class or not. If it does qualify, what emerges is a backward class, for the purpose of Clause (4) of Article 16. The concept of "Caste" in this behalf is not confined to castes among Hindus. It extends to castes, wherever they obtain as a fact, irrespective of religious sanction for such practice. Having exhausted the castes or simultaneously with it, the authority may take up for consideration other occupational groups, communities and classes. For example, it may take up the Muslim Community (after excluding those sections; castes and groups, if any, who have already been considered) and find out whether it can be characterised as a backward class in that State or region, as the case may be. The approach may differ from State to State since the conditions in each State may differ. Nay, even within a State, conditions may differ from region to region. Similarly,

Christians may also be considered. If in a given place like Kerala, there are several denominations, sections or divisions, each of these groups may separately be considered. In this manner, all the classes among the populace will be covered and that is the central idea. The effort should be to consider all the available groups, sections and classes of society in whichever order one proceeds. Since caste represents an existing, identifiable, social group spread over an overwhelming majority of the country's population, we say one may well begin with castes, if one so chooses, and then go to other groups, sections and classes. We may say, at this stage, that we broadly commend the approach and methodology adopted by the Justice O. Chinnappa Reddy Commission in this respect.

783. We do not mean to suggest - we may reiterate - that the procedure indicated herein above is the only procedure or method/ approach to be adopted. Indeed, there is no such thing as a standard of model procedure/approach. It is for the authority (appointed to identify) to adopt such approach and procedure as it thinks appropriate, and so long as the approach adopted by it is fair and adequate, the Court has no say in the matter. The only object of the discussion in the preceding para is to emphasise that if a Commission/Authority begins its process of identification with castes (among Hindus) and occupational groupings among others, it cannot by that reason alone be said to be constitutionally or legally bad. We must also say that there is no rule of law that a test to be applied for identifying backward classes should be only one and/ or union. In a vast country like India, it is simply not practicable. If the real object is to discover and locate backwardness, and if such backwardness is found in a caste, it can be treated as backward; if it is found in any other group, section or class, they too can be treated as backward."

36. The logic of the "Means-test" and "Creamy layer" as stated by the Supreme Court in its majority judgment in Indra Sawhney's case, for which purpose, a reference is made to the earlier judgment of the Supreme Court in K.C. Vasanth Kumar v. State of Karnataka, 1985 Supp. SCC 714 that the benefits of reservation are often snatched away by the top creamy layer of backward class or caste, that a few of the seats and posts reserved for backward classes are snatched away by the more fortunate ._. . . . shall, if further classification of Scheduled Castes is made permissible shall be attracted, as the Supreme Court has said,

".....it is not a question of permissibility or desirability of such test but one of proper and more appropriate identification of a class - a backward class. The very concept of a class denotes a number of persons having certain common traits which distinguish them from the others. In a backward class under Clause (4) of Article 16(4), if the connecting link is the social backwardness, it should broadly be the same in a given class. If some of the members are far too advanced socially (which in the context, necessarily means economically and, may also mean educationally) the connecting thread between them and the

remaining class snaps. They would be misfits in the class. After excluding them alone, would the class be a compact class. In fact, such exclusion benefits the truly backward. Difficulty, however, really lies in drawing the line - how and where to draw the line? For, while drawing the line, it should be ensured that it does not result in taking away with one hand what is given by the other. The basis of exclusion should not merely be economic, unless, of course, the economic advancement is so high that it necessarily means social advancement. Let us illustrate the point. A member of backward class, say a member of carpenter caste, goes to Middle East and works there as a carpenter. If you take his annual income in rupees, it would be fairly high from the Indian standard. Is he to be excluded from the Backward Class? Are his children in India to be deprived of the benefit of Article 16(4)? Situation may, however, be different, if he rises so high economically as to become - say a factory owner himself. In such a situation, his social status also rises. He himself would be in a position to provide employment to others. In such a case, his income is merely a measure of his social status.

Upholding the view that backward classes can be further divided into "backward" and "more backward" categories (observations in this behalf have already been extracted earlier), the Supreme Court has referred to the criteria evolved by Mandal Commission and pointed out that in any other backward category those who secured points between 20 and 22 and those who secured points between 11 and 13 could legitimately be treated as two levels of backward classes and, in such a case, a sub-classification would be reasonable. The Supreme Court has, however, stated, "... Where to draw the line and how to effect the sub-classification is, however, a matter for the Commission and the State - and so long as it is reasonably done, the Court may not intervene" While referring to another way of looking at this issue, the Supreme Court has stated, "... it is beyond controversy that Scheduled Castes and Scheduled Tribes are also included in the expression "backward class of citizens" and that separate reservations can be provided in their favour. It is a well-accepted phenomenon throughout the country. What is the logic behind it? It is that if Scheduled Tribes, Scheduled Castes and Other Backward Classes are lumped together, OBCs will take away all the vacancies leaving Scheduled Castes and Scheduled Tribes high and dry. The same logic also warrants categorisation as between more backward and backward." If classification of the Scheduled Castes and Scheduled Tribes is accepted as permissible and one section of persons who are Scheduled Caste is given 1% and another section is given 7% of reservation, one can ask the question why for one section of persons who are Scheduled Caste instead of 1% nil reservation cannot be made and for the other the total reservation is made available? Will this not result in leading to the exclusion of a caste, race or tribe or a part of or group within any castes, races or tribes from the list of Scheduled Castes and thus interfering with the Presidential Order under which they are recognised as one amongst the most backward classes. Statement of Objects and Reasons of the Constitution (Sixty-Fifth Amendment) Act, 1990, by which,

Article 338 of the Constitution is amended, gives some idea as to the enjoyment of constitutional safeguards by all those who are included in the schedule. It states:

".....It is felt that a high level five-member Commission under Article 338 will be a more effective arrangement in respect of the constitutional safeguards for Scheduled Castes and Scheduled Tribes than a Single Special Officer as at present. It is also felt that it is necessary to elaborate the functions of the said Commission so as to cover measures that should be taken by the Union or any State for the effective implementation of those safeguards and other measures for the protection, welfare and socio-economic development of the Scheduled Castes and Scheduled Tribes and to entrust to the Commission such other functions in relation to the protection, welfare and development and advancement of the Scheduled Castes and Scheduled Tribes as the President may, subject to any law made by Parliament, by rule specify. It is also felt that the reports of the said Commission shall be laid before Parliament and the Legislatures of the States."

Debate preceding amendment shows the Government's concern - represented by the then Minister for Labour and Welfare - and a clue how the Parliament understood the proposed amendment is available in the speech of Professor N.G. Ranga, who said:

"....the Commission did not have sufficient powers. That is the reason why although they had been conducting very many useful studies in regard to all those places and all those incidents where these unfortunate people were being treated very badly, atrociously, in spite of those reports and surveys having been made and reports having been submitted to the Government, the social condition of the unfortunate crores of our people, tribal people as well as Harijans have not improved. The recommendations made by this Commission have not been implemented satisfactorily, either by the State Government or by the Government of India. That is the reason why my Hon. friends so many of us on this side and so many on that side - have been clamouring and making the demand that this Commission should be given the statutory status with necessary powers. And with the co-operation of the State Governments, in most cases and if need be, in certain cases, they would be able to take necessary steps to redress the grievances and also to minimise the sufferings of these unfortunate crores of our brethren in our country....."

37. In *Indra Sawhney's* case, the Supreme Court was dealing with the report of Mandal Commission which was appointed under Article 340 of the Constitution and in terms of Article 338(10), the Commission's Report was required to be processed in the same manner as contemplated in Clauses (6) and (7) thereof. Mandal Commission report was thus a result of an elaborate enquiry and intended to be dealt with by the Parliament and the State Legislatures to the extent they were concerned for necessary action. In the proceeding before us, however, the Government of the State has taken its decision to act upon the

report of Sri Justice Ramachandra Raju Commission of Inquiry, u/s 3 of the Commission of Inquiry Act, 1952.

38. State Public Service is a subject in the State List (List-II of the Seventh Schedule of the Constitution) and in the making of the appointments to services and posts in connection with the affairs of the State, as contemplated under Article 335 of the Constitution, the State is required to take into consideration the claims of members of the Scheduled Castes and Scheduled Tribes. When Scheduled Castes and Scheduled Tribes belong to the most backward class, as held by the Courts, including the Supreme Court, it will be wrong if it is said that the State has no legislative competence to make any provisions for the reservation of appointments or posts in its service in favour of the Scheduled Castes and Scheduled Tribes. Similarly, education, including technical education, medical education and Universities, subject to the provisions of Entries 63, 64, 65 and 66 of List-I, being a subject in the Concurrent List (List-III of the Seventh Schedule of the Constitution), it will be wrong to say that the State has no legislative competence to make special provisions for reservation of seats in respect of education for the Scheduled Castes and Scheduled Tribes, as Clause (4) of Article 15 of the Constitution permits such legislation notwithstanding the guarantee of equality before the law or equal protection of the laws under Article 14 of the Constitution of India. When the Legislature of a State is competent to make laws for appointments to services and posts in connection with its affairs and in respect of education, including technical education, medical education and Universities, the executive power of the State being co-extensive with its legislative power, shall cover both reservation in the appointments to Public Services of the State as well as in the education. Potential question, however, which has emerged for consideration is, whether while making the law for reservation in appointments in Public Services and in education, the State shall have the liberty also to classify the Scheduled Castes and Scheduled Tribes, as it has the power to classify other backward classes, and such a classification of Scheduled Castes and Scheduled Tribes will not offend Article 16(1) of the Constitution, as after all any such classification is done by way of a special provision for the Scheduled Castes and Scheduled Tribes which is permitted by Article 16(4) of the Constitution and in the matter of education when Scheduled Castes and Scheduled Tribes are separately mentioned in Article 15(4) of the Constitution.

39. While drawing lines to classify the backward classes, the bottom line is Scheduled Castes and Scheduled Tribes, they being most backward. In *Indra Sawhney's* case, the Supreme Court has stated that categorising the backward classes as "backward" and "more backward" is permissible, as we have noticed earlier, after taking notice of the criteria evolved by the Mandal Commission and noticing the strength of logic that while making reservations for backward classes, if there are such two sets of classes, who cannot be grouped together, grouping them together would result in that less backward among them would not be benefitted unless they are separately categorised. Even in their case, sub-

classification, according to the Supreme Court in Indra Sawhney's case, is a matter for the Commission and the State and it has to be reasonably done, as any unreasonable division or categorisation would make the sub-classification unconstitutional. The Punjab and Haryana High Court's judgment in Kanwaljit Singh Sidhu 's case (10 supra) held that there is no violation of Articles 14 and 16(4) of the Constitution in the sub-classification of the Scheduled Castes. The judgment, however, is silent on the question when castes, races or tribes or parts of or groups within the castes, races or tribes are notified as Scheduled Castes, they are recognised as the most backward and thus stand beneath the bottom line of the backwardness, how then amongst them and on what criteria, without entering into the Schedule which is notified by the President of India, any sub-classification is possible. Punjab and Haryana High Court's judgment has made no reference to Article 338 of the Constitution of India and the role it played. When the judgment in Kanwaljit Singh Sidhu's case was delivered, Article 338 was yet to receive the amendment. It was not available in the present form when the High Court of Punjab and Haryana considered the question of sub-classification of Scheduled Castes as any other backward class.

40. The subject-matter of the Commission of Inquiry by Sri Justice Ramachandra Raju, entrusted by the State, can safely be seen as one of the subjects of investigation and evaluation by the National Commission for Scheduled Castes and Scheduled Tribes, yet, we see no reason to find fault with the State Government going for a fact finding enquiry into the question - whether a disproportionately large number of benefits have gone to any particular sub-caste of Scheduled Castes. One can say that the State Government wanted to be fully satisfied before it conceded the demand of such sections of Scheduled Castes who were alleging that amongst Scheduled Castes, there were some who were cornering more benefits for themselves. Why any State Government would after all resort to the provisions of Commission of Inquiry Act when the National Commission under Article 338 of the Constitution is already appointed under the Constitution? We do not, however, propose to go into this question for if it is found that the State Legislature is competent to sub-classify the Scheduled Castes and there are no constitutional inhibitions in resorting to sub-classification of Scheduled Castes and that the State Government is not obliged to consult the National Commission for deciding whether to sub-classify Scheduled Castes or not, its (State Government) resorting to a fact finding inquiry may not be questionable. We do not, for the said reason, propose to examine whether the view expressed in the Full Bench judgment of this Court in V. Narayana Rao and Another Vs. State of Andhra Pradesh and Another, in this behalf, is correct or not. Could the State Government, however, even if it felt satisfied with the report of the Commission of Inquiry that there were some amongst the Scheduled Castes who were the more backward amongst the Scheduled Castes and some were next to most backward, and some were receiving the benefits of reservation wholly disproportionate to their population, make sub-classification of the castes which are notified in the Schedule. When any caste, race or tribe or part of or

group within the caste, race or tribe is included in the Schedule, it is a proof that they are identified as most backward. Then, as per the report of the Commission of Inquiry, which has been accepted by the State Government, only most backward amongst the present Scheduled Castes communities deserve to be in the Schedule. Other castes, races or tribes or parts of or groups within castes, races or tribes have gone outside of the most backward category and thus have to be taken out of the notification. That exclusion, however, from the list of Scheduled Castes specified in the notification by the President of India is permissible only by the law made by the Parliament of India. The learned Advocate General and other learned Counsel appearing for the respondents, however, have contended that the schedule of the "most backward" i.e., the list of Scheduled Castes is not disturbed as only inter se sub-classification is made. This argument, however, puts Scheduled Castes in the broad classification of backward classes and as, in the case of other backward classes, sub-classification is permissible, so in the case of Scheduled Castes, such sub-classification is done. This logic, if accepted, shall render all special mentions in the Constitution, of Scheduled Castes, either in Articles 335 and 341 or special definition for them under Article 366(25) of the Constitution or Article 15(4) thereof, irrelevant. It seems reasonable to us that the inclusion or exclusion from the list of Scheduled Castes must not be read as a formal act of entering the castes, races or tribes or parts of or groups within any castes, races or tribes in the Schedule but also as the act of classifying them on the basis of an intensive inquiry and in recognition of the social backwardness, which they have been suffering, as pointed out by the Supreme Court in *Indra Sawhney*'s case *supra*, the Scheduled Castes and Scheduled Tribes are without a doubt most backward for the purpose of Article 16(4) of the Constitution of India and socially and educationally backward for the purpose of Article 15(4) thereof, putting them as the most backward class of the people in one bracket.

41. Yet, the exercise, however, of the Commission of Inquiry and its report to the State Government, is not futile. Armed with the report of the Commission of Inquiry, the State Government can take up the matter with the National Commission for Scheduled Castes and Scheduled Tribes.

42. Learned Advocate General has urged that sub-classification is not a major policy matter affecting the Scheduled Castes and Scheduled Tribes. Notification of the State Government at a glance, however, shows that it has accepted the change that a substantial number of castes, races and tribes and parts or groups of them have been receiving benefits of reservation wholly disproportionate to their population. If this be not a major policy matter when a section of Scheduled Castes are held to have been disproportionately benefitted by the special provisions for the Scheduled Castes, it would be difficult to visualise such matters affecting Scheduled Castes which would ever be called major policy matter. In respect of major policy matters affecting the Scheduled Castes and Scheduled Tribes, the State or the Union, as the case may be, is required to consult the National Commission for Scheduled Castes and Scheduled Tribes. It is so

provided under Clause (9) of Article 338 of the Constitution that the Union and every State Government shall consult the Commission on all major policy matters affecting Scheduled Castes and Scheduled Tribes. Learned Advocate General has urged, consulting the Commission as contemplated under Clause (9) of Article 338 of the Constitution is not a mandatory provision and the impugned Government Orders being decisions of the State Government, by way of special provisions for the Scheduled Castes in matter of appointments to services and posts and in education, when implemented without consulting the Commission, cannot be found to be unconstitutional and/or invalid. He has placed reliance upon the judgment of the Supreme Court in *State of U.P. Vs. Manbodhan Lal Srivastava*, where dealing with Articles 320(3)(c), which provides, "The Union Public Service Commission or the State Public Service Commission, as the case may be, shall be consulted, (a).....(b).....(c) on all disciplinary matters affecting a person serving under the Government of India or the Government of a State in a civil capacity, including memorials or petitions relating to such matters", the Supreme Court has said, "the use of the word "shall" in a statute, though generally taken in a mandatory sense, does not necessarily mean that in every case it shall have that effect, that is to say, that unless the words of the statute are punctiliously followed, the proceeding or the outcome of the proceeding, would be invlaid", and also "that it is not always correct to say that where the word "may" has been used, the statute is only permissive or directory in the sense that non-compliance with those provisions will not render the proceedings invalid", and concluded that "Article 320(3)(c) of the Constitution does not confer any rights on a public servant so that the absence of consultation or any irregularity in consultation, should not afford him a cause of action in a Court of law, or entitle him to relief under special powers of a High Court under Article 226 of the Constitution or of the Supreme Court under Article 32". In -the said judgment, the Supreme Court has taken notice of several reasons to hold that the provisions of Article 320(3)(c) were not mandatory. Following this judgment, the Supreme Court, in another case i.e., in *Ram Gopal Chaturvedi Vs. State of Madhya Pradesh*, reiterated that provisions in Article 320(3)(c) are not mandatory, they do not confer any right on any public servant. According to this judgment also, absence of consultation with Public Service Commission cannot furnish any ground to invalidate the action of the Government of the State in either making appointments or terminating the services of any employee.

43. Supreme Court in the case of *Narayanan Sankaran Mooss Vs. The State of Kerala and Another*, considering the effect of the provisions in Section 4 of the Electricity Act, 1909 (Act 9 of 1910) which received the words "and after consulting the State Electricity Board" by way of an amendment in the opening part of Sub-section (1) has noted that the Act was not expressly providing for the consequence of consultation and observed,

"It appears from a reading of Section 4 that when the Government consults the Board on the question of revocation of a licence u/s 4, the Board is to make up its mind as to whether it should recommend: (1) to revoke the licence, or (2) not

to revoke the licence, or (3) to permit the licence to remain in force subject to such further terms and conditions as may be thought proper. It is difficult to conceive how the Board will make a choice out of these three courses without considering the explanation of the licensee.... We are accordingly of the opinion that Section 4 contemplates that the Board should make its recommendation only after considering the explanation of the licensee. It would follow that the Board should be consulted by the Government after the licensee's explanation has been received. We have already said that in the present case the Board was consulted much before the receipt of the appellant's explanation and that the Board consequently could not consider the explanation at the time of making its recommendation in favour of revocation of the licence.

It is now to be seen as to what is the effect of this premature consultation of the Board by the Government of the impugned order. The Act does not expressly provide for the consequence of premature consultation. It does not say that the order of revocation is void....."

The Supreme Court thereafter observed, "the object and setting of the phrase "after consulting the Board" in Section 4 will have to be examined for deciding whether the provision is mandatory or directory". Referring to several earlier judgments of the Supreme Court such as the judgment in *H.N. Rishbud and Inder Singh Vs. The State of Delhi*, as well as *State of Uttar Pradesh v. Manbodhan Lal Srivastava* (15 supra), in which, the Supreme Court held that Article 320(3)(c) is directory and not mandatory, the Supreme Court said,

".... we have shown earlier that the conditions of consulting the Board has been inserted by an amendment of Section 4 with the object of creating a safeguard in favour of the licensee. There is no provision in the Act authorising the Government to waive the condition of consultation in any case....."

The relevant consideration, however, which weighed with the Supreme Court in *Narayanan Sankaran Mooss's* case (17 supra) to reach the conclusion, "We are satisfied from the object and context of Section 4 that Parliament intended to make consultation of the Board an imperative condition to revoking a licence", is found in the way the Supreme Court distinguished the Judgment in *Manbodhan Lal Srivastava's* (15 supra). It said,

".... The U.P. Public Service Commission was consulted as to the punishment to be imposed on him. But, it was consulted before the explanation of the employee was received by the Government. The argument was that as the Commission did not have the opportunity of considering his explanation, there was no real consultation as required by Article 320(c). It was also argued that Article 320(c) was mandatory and that accordingly the order of dismissal was void. This Court pointed out several reasons for the view that Article 320(3)(c) is directory. The proviso to Article 320(c) empowers the appropriate Government to issue directions as to the classes of cases in which the consultation of the Commission will not be necessary. The proviso therefore indicates that the provision is

directory. Another reason given by the Court is that Article 320(3)(c) does not occur in the chapter in which Article 311 occurs. It finds place in the chapter dealing with the Public Service Commission. Accordingly, it cannot be said that it confers any right on Government employees. The third reason given is that consultation of the Commission is not binding on the Government. The first two reasons do not apply in our case. We have shown earlier that the condition of consulting the Board has been inserted by an amendment of Section 4 with the object of creating safeguard in favour of the licensee. There is no provision in the Act authorising the Government to waive the condition of consultation in any case. It is true that the third reason given by the Court in *Manbodhan Lal* case (15 supra) applies in this case. As there, so here the opinion of the Board is not binding on the Government. In spite of the advising against revocation, the Government, if satisfied that it is necessary to revoke the licence may revoke it. But, having regard to the object and context of Section 4, we are of the opinion that it should not be regarded as an over-weighing, consideration. It will normally be difficult for the Government to ignore the Board's expert advice...."

44. Considering the requirement of consultation with the High Court in making appointments of persons to be and posting and the promotion of District Judges, as provided under Article 233(1) of the Constitution of India, the Supreme Court has pointed out in *Chandra Mohan v. State of U.P.*, AIR 1966 SC 1987 that "consultation with the High Court at the time of each appointment is mandatory". In *Supreme Court Advocates-on-Record Association and another Vs. Union of India*, a 9-Judge Bench of the Supreme Court has laid down that appointment of a person to be District Judge rests with the Governor but he cannot make the appointment unless there has been an effective and meaningful consultation with the High Court or the High Court has recommended the appointment. In order that the requirement of consultation does not end up as an empty formality in the event of difference of opinion there must be an effective interchange of viewpoints. In cases governed by Article 233(1), as a matter of rule, the High Court's recommendations must be accepted. Departure from the opinion of the High Court be a rare event. The Constitution relies on the collective wisdom of the High Court as a body and not that of any single individual howsoever high he may be placed.

45. One of the rules of interpretation of universal acceptance is, where alternative constructions are equally open, that alternative is to be chosen which will be consistent with the smooth working of the system which the statute purports to be regulating and that alternative is to be rejected which will introduce uncertainty, friction or confusion into the working of the system. If the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation which would reduce the legislation to futility should be avoided. The Court should rather accept the bolder construction based on the view that Parliament would legislate only for the purpose of bringing about an effective result. Construction *ut res magis valeat quam pereat*, is the rule which the Courts apply to avoid interpretations

which would leave any part of the provisions to be interpreted without effect. The primary rule is to discover the intention of Parliament from the language used in the legislation. The construction which would leave without effect any part of the language of a statute is normally rejected. One of the safest guides to the construction and interpretation of any Act of the Parliament and so any provision of the Constitution of India is, to consider all the parts of such provisions which are expected to work together or are resorted to or are sought to be applied in a common field, to read them together and give such meaning and purpose which would give full effect to all such provisions. Keeping the above principles in mind only, various provisions in Articles 14, 15, 16, 335, 338, 340, 341, 342, etc., are read together and such common principles are examined and it is seen that the Scheduled Castes and Scheduled Tribes are most backward for the purpose of Article 16(4) and most backward socially and educationally for the purpose of Article 15(4) of the Constitution, in which Article Scheduled Castes and Scheduled Tribes are separately mentioned. It is imperative that Articles 341 and 338 are given full effect, when reading the expressions "include in or exclude from the list of Scheduled Castes" in Article 341(2). As we have indicated earlier, the mechanical act of law making by the Parliament confined just to the inclusion of a caste, race or tribe or part of or group within caste, race or tribe or exclusion of any of them would make the provisions under that Article ineffective. As a result of inclusion in the list of Scheduled Castes, any caste, race or tribe or parts of or groups within caste, race or tribe get into the fold of most backward class for the purpose of Article 16(4) of the Constitution and, by exclusion, move out, may be still existing as any other backward class of the most backward class of the people. The provisions in Clause (9) of Article 338 of the Constitution, in these circumstances, assume considerable importance and the Union or the State thus is not expected to enter into the list of Scheduled Castes to examine who amongst them is more backward than the other. If it is faced with any such problem, it must consult the Commission which has the duty to investigate and to inquire into specific complaints with respect to the deprivation of rights and safeguards of the Scheduled Castes and Scheduled Tribes. Even a cursory reading of the impugned Government Orders is enough to convince that the State Government wanted specific complaints with respect to the deprivation of rights of some sections of Scheduled Castes to be inquired into by Sri Justice Ramachandra Raju Commission of Inquiry which has reported that there is indeed deprivation suffered by some sections of castes, races or tribes or parts of and/or groups within castes, races or tribes in the list of Scheduled Castes. National Commission which has the duty to inquire into such complaints, if consulted, would be in a position to make to the President recommendations as to the measures that should be taken by the Union or the State for the effective implementation of the safeguards so that any caste, race or tribe or part of or group within caste or race or tribe in the list of Scheduled Castes is not deprived of its rights under Article 16(4) and/or under Article 15(4) of the Constitution which are provided as special provisions for the Scheduled Castes by the State Government. National Commission is also empowered to recommend the

measures that should be taken by the State for the effective implementation of the safeguards and for the protection, welfare and socio-economic development of the Scheduled Castes. Clause (6) of Article 338 of the Constitution provides for laying before each House of Parliament along with a memorandum explaining the action taken or proposed to be taken on the recommendations of the National Commission relating to the Union and the reasons for the non-acceptance, if any, of any such recommendations and Clause (7) thereof provides that where any such report relates to any matter with which any State Government is concerned, a copy of such report shall be laid before the State Legislature along with a memorandum explaining the action taken or proposed to be taken on the recommendations and the reasons for the non-acceptance, if any, of any of such recommendations. A reading of the above provisions, lead us to conclude that once it is an issue as to reclassification or sub-classification of the Scheduled Castes and the State Government is of the opinion that a policy has to be framed, in this behalf, it has to consult the National Commission. It is not possible to say that the sub-classification of Scheduled Castes is not a major policy matter affecting Scheduled Castes and that the requirement of consultation with the National Commission under Clause (9) of Article 338 is not mandatory. The State Government, before taking any decision in the matter, is bound to consult the Commission, the Commission is bound to investigate or inquire into all such matters which are seen as relevant with respect to the safeguards provided for the Scheduled Castes and particularly with respect to the deprivation of rights and safeguards and report to the President with its recommendations as to the measures that should be taken by the Union or the State for the effective implementation of the safeguards and other measures for the protection, welfare and socio-economic development of the Scheduled Castes. The report in so far as it is connected to any matter with which the State Government is concerned and it is possible to say, in deciding upon, whether to sub-classify Scheduled Castes for the purposes of reservations for the Scheduled Castes under Clause (4) of Article 16 and/or Clause (4) of Article 15 of the Constitution, the State Government is concerned, to forward the report to the Governor of the State for being laid before the Legislature of the State along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the State and the reasons for the non-acceptance, if any, of any of such recommendations. While consultation with the National Commission, the sub-classification of Scheduled Castes being a major policy matter, is mandatory, recommendations, for specific reasons, may not be accepted by the State Government, which reasons, for the non-compliance of the recommendations of the National Commission, it has to state in the memorandum explaining the action taken or proposed to be taken. Concept of limitation on the legislative power of the State to make special provisions under Article 15(4) and Article 16(4) of the Constitution will be over-stretched if before any step is taken to make special provisions under Articles 15(4) and 16(4) of the Constitution, such provisions for Scheduled Castes as are under Articles 335, 338 and 341 of the Constitution of India are ignored. Article 335 read with Article

46, as a Directive Principle, almost enjoins 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 (see Comptroller and Auditor-general of India, *Gian Prakash*, New Delhi and *Another Vs. K.S. Jagannathan and Another*, . While entering thus for making special provisions under Articles 15(4) and 16(4) of the Constitution if such special care is not bestowed to the weaker sections of the people and the Scheduled Castes and Scheduled Tribes by the State Government, who are identified as the weakest, any legislation, for the purposes envisaged under Articles 15(4) and 16(4) of the Constitution will violate Articles 16(1) and Article 14 thereof. It is unimaginable that Legislature shall ignore Articles 16(4) and 14 while exercising its legislative power under Article 246(1) and (2) of the Constitution. Constitutional provisions operate to limit legislative functions of the Parliament as well as the State Legislatures and any law made by the " Parliament or the State Legislature which is violative of any provision of the Constitution is ultra vires the Constitution. Article 338 of the Constitution in itself may not have the potential of putting any limitation on the legislative power of the State to make special provisions under Articles 15(4) and 16(4) of the Constitution, but, it stands as a lever to ensure that Scheduled Castes and Scheduled Tribes are not deprived of rights and safeguards which the Constitution has envisaged for them and is thus a provision which provides to the State Government a tool to approach the National Commission for Scheduled Castes and Scheduled Tribes and seek its assistance in such matters which affect Scheduled Castes and Scheduled Tribes. State's executive or legislative power is not affected only because it is required to consult the National Commission for the Scheduled Castes and Scheduled Tribes before taking a major policy decision either for making a law or for issuing any executive instructions. While on the one hand, when National Commission is consulted, care is taken to divide matters which relate to the Parliament and matters which relate to the State Government, as contemplated under Clauses (6) and (7) of Article 338 of the Constitution, it takes care also of the role which Art 341 is assigned and if the meaning which we think the expression "include in or exclude from the list of Scheduled Castes" should receive, the Parliament may decide upon de-classification or sub-classification of Scheduled Castes and deprivation of a section of the Scheduled Castes, which, according to the impugned Government Order, need to be better protected, would receive their due from the Parliament. If such is the measure, in the opinion of the National Commission, which the State Government can take and which would take care of the safeguards and rights of such sections of the Scheduled Castes, who are seen as being deprived, the State Government can decide, after receiving recommendations of the National Commission, to implement in the manner that it thinks proper and the law permits.

46. We do not propose to deal with the contentions as respects Rule 22 of the A.P. State and Subordinate Service Rules and/or the inadequate materials upon which Sri Justice Ramachandra Raju Commission has made its recommendations

as we are not in a position to say that 1981 Census has undergone a substantial change and thus has ceased to be a real or genuine basis for providing sub-classification of Scheduled Castes. Once sub-classification is legally made how different sub-classes are put in within the 15% reservation for the Scheduled Castes with reference to the reservations for each sub-class will hardly be a matter of any serious consequence.

47. Irresistible conclusions, thus, to which, we arrive are:

(1) The List of Scheduled Castes in relation to the State as notified under Clause (1) of Article 341 of the Constitution amounts to identifying those in the list as most backward class for the purpose of Article 16(4) of the Constitution of India and most backward socially and educationally for Article 15(4) of the Constitution;

(2) Since the list of Scheduled Castes, as specified in the notification issued under Clause (1) of Article 341 amounts to identifying the castes, races or tribes or parts of or groups within castes, races or tribes as most backward class, although it is permissible for the State Government to sub-classify backward classes for the purpose of Article 16(4), the most backward in the Backward Classes shall be Scheduled Castes who are in the list. Any further classification of Scheduled Castes shall be permissible only in the manner as envisaged under Article 341 read with Article 338 of the Constitution of India. Same principles shall apply for any special provision under Clause (4) Article 15 of the Constitution;

(3) Sub-classification of Scheduled Castes is a major policy matter affecting the Scheduled Castes and as envisaged under Article 338 of the Constitution of India, the State Government is obliged to consult the National Commission for the Scheduled Castes and Scheduled Tribes;

(4) No sooner the National Commission is consulted, it is duty bound to investigate and inquire into all matters relating to the safeguards provided for the Scheduled Castes and specific complaints with respect to the deprivation of rights and safeguards of the Scheduled Castes in the State and to report along with its recommendations as to the measures that should be taken by the Union or the State or the effective implementation of the safeguards and other measures for the protection, welfare and socio-economic development of the Scheduled Castes;

(5) If the recommendations would require action to be taken by the Parliament, the report of the National Commission shall be laid before each House of the Parliament along with the memorandum explaining the action taken or proposed to be taken and the reasons for the non-compliance, if any, of any of such recommendations. If the recommendations would require action to be taken by the State, the report of the National Commission shall be made to the Governor who shall see that it is laid before the Legislature of the State along with the memorandum explaining the action taken or proposed to be taken and the

reasons for non-acceptance, if any, of any of such recommendations;

(6) Since the National Commission for Scheduled Castes and Scheduled Tribes has not been consulted by the State Government and it has acted upon the report of Sri Justice Ramachandra Raju Commission of Inquiry, which is a Commission appointed under Clause (3) of the Commission of Inquiry Act, 1952, its action in issuing the impugned Government Orders viz., (1) G.O.Ms. No. 68 Social Welfare (J1) Department dated 6-6-1997 and (2) G.O.Ms. No. 69 Social Welfare (J1) Department dated 7-6-1997 is unconstitutional as violative of Article 338(9) of the Constitution and as Scheduled Castes are sub-classified as any other backward class and thus amongst the most backward class for the purpose of Article 16(4) and most backward socially and educationally for the purpose of Article 15(4).

Sub-classification is made without consulting the National Commission and without there being any investigation/inquiry by the Commission, the impugned Government Orders are violative of Articles 14 and 16(1) of the Constitution of India.

48. For the reasons aforementioned, we have no hesitation in holding that the impugned Government Orders in (1) G.O.Ms. No. 68, Social Welfare (J1) Department, dated 6-6-1997 and (2) G.O.Ms. No. 69, Social Welfare (J1) Department, dated 7-6-1997 are unconstitutional and illegal. They are accordingly declared ultra vires and quashed.

49. In the result, the Writ Petitions are allowed and Government Orders in (1) G.O.Ms. No. 68, Social Welfare (J1) Department, dated 6-6-1997 and (2) G.O.Ms. No. 69, Social Welfare (J1) Department, dated 7-6-1997 are quashed. No costs.

50. An oral application is made on behalf of the Respondent-State Government, under Article 134A of the Constitution of India, for a Certificate that (1) the case involves a substantial question of law of general importance and that the said question needs to be decided by the Supreme Court, as contemplated under Article 133(1) of the Constitution and (2) that the case involves a substantial question of law as to interpretation of the Constitution, as contemplated under Article 132(1) of the Constitution.

51. Keeping in view the nature of the controversy, from which it can safely be said, that the case involves substantial questions of law of general importance as well as substantial questions of law as to interpretation of the Constitution, we are inclined accordingly to certify that the case is fit for appeal to the Supreme Court and we accordingly grant Certificate, as contemplated under Article 134-A for appeal to the Supreme Court, as the case involves substantial questions of law of general importance as well as substantial questions of law as to interpretation of the Constitution.

52. An oral prayer is also made by the learned Advocate-General for stay of the

impugned judgment. Pending the Writ Petitions, learned single Judge, who heard the petitions for admission, stayed the impugned Government Orders and in Writ Appeal SR.No. 83378 of 1997 and other cases, a Bench of this Court, passed the following order on 23-7-1997:

".....Pending final disposal of the Writ Appeals and the Writ Petitions following the consensus at the Bar, we are (sic. not) inclined to suspend the impugned order and instead, pass the following order:

(1) The process of admissions if any, in various educational institutions of the State and all appointments in any services or civil posts of the State, which has already started, shall continue, subject to -

(i) the concerned authorities and persons preparing a separate list of such candidates who are not selected for the reason of the implementation of G.O.Ms. No. 68, Social Welfare (J1) Department, dated 6-6-1997 and G.O.Ms. No. 69, Social Welfare (J1) Department, dated 7-6-1997; and

(ii) of all such candidates who are selected in place of the persons who are denied selection only because the said Government Orders are implemented and that to all such persons who fall in this list only provisional admissions are given stating clearly that their admissions are subject to the result of the writ petitions aforementioned;

(2) Process, if any, already started for appointments in any of the Civil Services of the State and/or civil posts shall continue subject to the condition that a list shall be prepared of such persons who are not appointed because G.O.Ms. Nos.68 and 69 are implemented and list of such persons shall be prepared, who are appointed only because the said Government Orders are implemented and such persons are given provisional appointments and it is stated in their appointment letters that their appointments are subject to the result of the aforementioned Writ Petitions;

(3) No fresh exercise or process shall be taken up by the State or any of its agents or officers for either admissions in educational institutions and/or appointments in civil services or civil posts."

53. We are satisfied, however, that since Government Orders are declared ultra vires the Constitution, any stay of the impugned Judgment is not warranted. Yet, since we have granted Certificate as above for appeal to the Supreme Court, we are inclined to continue for a period of four weeks only the order dated 23-7-1997 in W.A. SR. No. 83378 of 1997 and other cases, with effect from to-day i.e., 18-9-1997.