

(1990) 11 MAD CK 0004

In the Madras High Court

Case No : Writ Petition No's. 11005, 11287, 11295, 11563, 11565, 11719, 11720, 11722, 11729, 11741, 11748, 11753, 11836, 11846, 11861, 11862, 11865, 11868, 11891, 11904, 11907, 12061, 12025, 12031, 12072, 12074, 12097, 12098, 12101, 12106, 12111, 12112, 12134; 121

K. Senthilkumar, represented by his father and natural guardian Dr. T. Kamalsekaran

APPELLANT

Vs

State of Tamil Nadu and The Secretary, Co-ordination Committee

RESPONDENT

Date of Decision : 16-11-1990

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 143, 15, 15(1)
Evidence Act, 1872 — Section 115

Citation : (1990) 11 MAD CK 0004

Hon'ble Judges : Mishra, J; Bakthavatsalam, J

Bench : Division Bench

Advocate : R. Krishnamoorthy, for M/s. V. Ramajagadeesan, P. Rathina Asokan, R. Muthukumaraswamy, K. Sundareswaran, R. Palaniappan, P.V. Bakthavatchalam, K. Mohanamurali, V. Shanmuganathan, V. Jeevagiridaran, M. Venkataraman, V. Chandrakantham, P. Karunakaran, P.M. Sundaram, M.S. Soundararajan, B. Chandran, Peppin Fernando, S. William, P. Rathinadurai, R. Elango, D.I.J. Rajkumar, M. Sriram, Kurian and Associates, A.S. Venkatachalamoorthy, T. Murugamanickam, P. Sampath, V.S. Subramaniam, T. Thiageswaran, K.V. Karthikeyan, M. Shakir Ali, N. Istaq Ahmed, M. Peer Mohamed, M. Venkatachalapathi, S.M. Loganathan, T.G. Balachander, S. Jagadcesan, N. Balasubramanian, D. Sivakumar, R. Vaigai, S. Vaidyanathan, N. Kanakasabai, G. Vasudevan, P. Sivaselvam, G. Desappan, G. Bharadwaj, K.N. Pandian, S. Doraisamy, T. Kalaichezian, P.T. Thirumoorthy, K.M. Venugopal, P. Sadasivam, P. Balakrishnan, G. Muniratnam, A.S. Vijayaraghavan, A.L. Gandhimathi, V. Sudhakar, Suchitra Madhavan, V.S. Kanthimathi, Sarala Chidambaram, Arvind P. Datar, R. Venkatavaradan, S. Asokkumar, A. Sasidharan, P. Radhakrishnan, A. Chandrasekaran, N. Kanakasabai, S.M. Amjad Nainar, Zaffarullahkan, R. Kannan, K.V. Subramanian, P. Suhadev, P.H. Pandian, Ravikumar, P.B. Ramanujam, W.C. Sridhar, T. Sivagnanasundaram, R.G. Rajan, S. Purushothama Das, M.B. Gopalan, N. Vijayaraghavan, M.B. Raghavan, T. Vadivelu, C. Ravichandran, Monica Sankhjani, P. Pandi, V. Ramajagadeesan, A Gopal, C. Kanakaraj, K. Rajasekaran, K. Pandi, N.G. Bhuvanaswami, S. Vadivelu,

P. Chandrasekaran, P.S. Sivasubramaniam, Santha Thiruvengadam, S.L. Kalavathy, Y.K. Rajagopal, N. Thiagarajan, R. Parthiban, R. Thiagarajan, S.C. Raghuram, S.T. Balamurugan, N. Paul Vasanthakumar, K. Ravichandrababu, T.S. Sivagnanam, M. Kamalanathan, S.L.N. Henry, S. Selvarathinam, S.D. Santhanakrishnan, E.S. Govindan, R. Sudhakar, O.V. Balaswami, B.R. Ramesh Babu, E. Padmanabhan, N. Damodaran, R. Govindaraj, T.R. Rajagopalan, T.R. Rajaraman, V. Jairam, Pichai Kani, M. Jeeva Bharathi, G. Anbumani, C.R. Prakash, S. James, R. Malaichamy, P. Chidambara Subramaniam, S. Manikumar, A. Lobamuthra, B. Maheswari, T.P. Kathiravan, P. Anandakrishnan Nair, K.N. Thampi, P. Sivakumar, V.P. Venkataraman, R. Alagarwamy, K. Jayachandran, G. Thanga Pandian, R. Vijayaraghavan, Irwin Aarson, Dharma Sanjeevi, R. Rajan, T. Srinivasaraghavan, A. Krishnamoorthy, T.N. Deepagandhi, M. Ravi, V. Manoharan, K. Balasubramanian, A.A. Lawrence, S. Chandrasekaran, A. Ramalingam, S. Silambanan, P. Venkatachalapathy, S. Gnanagurubaran, Aiyar and Dolia, R.N. Amarnath, K.J. Nithyanandam, B. Balasundaram, T.N. Vallinayagam, A.S. Mani, R.S. Anandan, S. Ravi, Sudha Ravi, S. Rajeswaran, T.L. Suresh, T. Martin, M. Joseph Thathetus Jerome, Zaffarullah Khant, R.S. Venkatachari, V. Raghavachari, V. Sumathi, A. Ramalingam, T. Thiagarajan, C.V. Karthikeyan, Annapoorna Sadasivam and A. Nair Ahmaed, for the Appellant; K. Alagiriswamy for the A.G.P. (Writs), for the Respondent

Judgement

Mishra, J.—Bakthavatsalam, J., has chosen to record his disagreement and had given me an opportunity to read his judgment. I have not

been able to persuade myself to accept any other judgment than the one I propose to deliver as I find we have differed not only in the matter of

Perception of law, but also on its application to the facts of this case. Petitioners in W.P. Nos. 13095 and 13139 of 1990, who are candidates

seeking admission to B.L. Degree Course of Study and petitioners in other writ petitions, who are candidates seeking admission to M.B.B.S.

Course of Study 1990-91, have moved this Court seeking a declaration that the Government Order made in G.O. Ms. No. 638, Education (JI)

Department dated 10-5-1990, is unconstitutional, illegal and void and such further or other orders as this Court may deem fit and proper.

1(a). The impugned G.O., viz., G.O. Ms. No. 638, Education (JI) Department, dated 10th May, 1990 states:

ORDER—With a view to give encouragement to the first applicant of families having no graduates seeking admission to the Degree courses in the

Professional courses, as announced in the floor of the House of the Legislative Assembly on 10-4-1990 by the Honourable Chief Minister, the

Government order that 5 (five) Bonus marks be awarded to students who apply for admission into the Engineering, Medical, Law, Agricultural and

Veterinary Colleges and happen to be the first such applicants in their families which have no single graduate till date from among their members,

i.e., their parents or brothers or unmarried sisters on the day of the application.

In case of admission into the Engineering, Medical, Agricultural and Veterinary colleges, students are admitted on communal rotation basis, taking

into account the marks obtained by them in the Public Examination as well as the marks obtained by them in the Entrance Examination. With

regard to the admission into the Law College, students are admitted on communal rotation basis taking into account of their marks obtained in the

Entrance Examination. Hence, the Director of Technical Education and the Director of Medical Education are hereby directed to supplement with

more appropriate questions in the application form so that the candidates seeking admission into Engineering, Medical, Agricultural and Veterinary

Colleges will furnish details of graduates in their families. The Tamil Nadu Agricultural University and the Tamil Nadu Veterinary and Animal

Sciences University are also directed in the same manner in the matter of admission to the respective undergraduate courses. In case of the Law

College, the applicants are required to furnish details about them in the application for the Entrance Examination, itself for which the Director of

Legal Studies is hereby instructed to include necessary questions in the application form therefor. At first, the applicants and their parents have to

give a joint declaration. The applicant concerned will be awarded 5 (five) Bonus Marks on the basis of the declaration. At the time of joining the

college, the applicants should produce certificates to this effect obtained from the Tahsildar or Deputy Tahsildar of the area in which the parents of

the applicants reside. Suitable criminal action will be taken against those who have furnished bogus certificates or false particulars, in addition to be

forfeited.

The above orders will come into effect from the Academic year, 1990-91. The Heads of Department, are requested to take follow-up action

thereon.

(By order of Governor)

V. Sankarasubbaiyan,

Secretary to Government.

2. The common ground in all these cases is that the candidates seeking admission to M.B.B.S./B.D.S. Course, 1990-91, who have passed the

Plus Two Examination and had secured sufficiently high marks in Biology, Physics and Chemistry and were eligible to appear in the Entrance

Examination conducted by the respondent/State Government for admission to the above Course, applied and sat in the Entrance Examination.

They all qualified for consideration for admission to the M.B.B.S./B.D.S. course 1990-91. Petitioners seeking admission to the Law Colleges in

the State of Tamil Nadu, had the minimum qualification of the graduation in one or the other qualifying discipline for admission to Three Years B.L.

Degree Course (1990-91), sat at the Entrance Examination and qualified for being considered for admission to B.L. Degree course. The grievance

also is based upon almost a common set of grounds. Since basic facts are not in dispute, I may state them first.

3. Under various Government Orders, 50% of the seats in the Medical Colleges are reserved for the candidates belonging to Backward Classes,

18% of the seats are reserved for candidates belonging to the Scheduled Castes and 1% for Scheduled Tribes and 31% is set apart for the

candidates of Open Competition. The Government have also reserved 48 seats for certain special categories like the Physically Handicapped,

widows, children born of inter-caste marriages, eminent sportsmen, etc.

4. The Prospectus issued to the candidates required inter alia that candidates for admission to the courses (except in the case of seats reserved for

foreign candidates) should be citizens of India and those who have already undergone professional courses for the 1st semester in

Agricultural/Veterinary/M.B.B.S./B.D.S. /B.Pharm/Engineering/Law, etc., are not eligible to apply for admission to M.B.B.S./B.D.S./B.Pharm

courses as the case may be, and ½

Admission to Government Medical Colleges in Tamil Nadu for MBBS./B.D.S./B.Pharm. courses for the year 1990-91 will be made on the basis

of marks obtained by them in the Science subjects at the qualifying examinations reduced to 200 and the marks obtained at the Entrance

Examination, vide Annexure VI. Selected candidates on receipt of intimation will appear before the Deans of the Medical Colleges concerned for

the verification of certificates and undergo Medical Examination by duly

constituted Medical Boards.

The minimum eligibility mark of various categories as stated in the prospectus has been $\frac{1}{2}$

Candidates who have passed H.S.C. (Academic) specified items 14, 1 (A) or its equivalent and who have secured not less than the following

marks shall be eligible to apply for admission to the said courses:

MBBS./B.D.S./B.Pharm. courses.

(i) H.S.C (Academic) candidates specified in 14.1(A) or other equivalent examination who have obtained the following marks shall be eligible to

apply for admission to the First Year MBBS./B.D.S./B.Pharm. course 1990-91 session.

OTHER COMMUNITIES:

(A) A minimum of 60% marks in Biology or Botany and Zoology taken together.

(B) A minimum of 60% marks in Physics and Chemistry taken together.

(C) Aggregate marks (a) and (b) to be not less than 140 out of 200 marks in Science subjects.

BACKWARD CLASS.

(a) A minimum of 60% marks in Biology or Botany and Zoology taken together.

(b) A minimum of 60% marks in Physics and Chemistry taken together.

(c) Aggregate marks (a) and (b) to be not less than 130 out of 200 marks in Science subjects.

MOST BACKWARD CLASS AND DENOTIFIED COMMUNITIES :

(a) A minimum of 55% marks in Biology or Botany and Zoology taken together.

(b) A minimum of 55% marks in Physics and Chemistry taken together.

(c) Aggregate marks (a) and (b) to be not less than 120 out of 200 marks in Science subjects.

SCHEDULED CASTE /SCHEDULED TRIBE :

Candidates belonging to Scheduled Castes and Scheduled Tribes are, however, eligible to apply if they have 40% aggregate marks in Science

subjects. This concession to the candidates belonging to Scheduled Castes and Scheduled Tribes is applicable to those who apply for selection

under the General Pool and those who apply for seats reserved against the Special Categories.

For Physically handicapped, widows and eminent sportsmen, applying against reserved seats for special categories, the eligibility for the course is

that the candidates should have secured 50% marks aggregate in Science subjects in Qualifying Examination.

The seat allocation aforementioned and accordingly reservation for SC/ST, MBC/DC and BC evidently (presumably) worked out on the basis of

socially and educational backwardness, thus shows that before taking any person to the Entrance Examination for admission to

M.B.B.S./B.D.S./B.Pharm course 1990-91 Session, unequals were given sufficient concession in the minimum eligibility and thus made equals to

sit in the open competition that, is to say, the Entrance Examination. It is on this basis, the Prospectus stated that marks obtained by them in the

science subjects at the qualifying examination reduced to 200 and the marks obtained at the entrance examination, vide Annexure VI, would be

made the basis for selection. Annexure VI, which also refers to certain rules, has fixed 50 marks in the Entrance Examination in Physics,

Chemistry, Biology (Botany and Zoology) and accordingly added 50 marks to 200 marks obtained at the qualifying examination to make a total of

250 marks as the minimum to qualify for selection and admission. The Prospectus has also mentioned the "First Graduate Concession" thus $\frac{1}{2}$

The Government have ordered in G.O. Rt. No. 638 Education (JI) Department dated 10-5-1990 to add 5 (five) marks to the total marks secured

after adding the academic marks in the prescribed subjects and the Entrance Examination marks to a candidate who is the first person from his/her

family to claim this concession for entry into Professional course of study. This extra mark is, however, applicable only to candidates in whose

family there is no graduate in any discipline on the date of application. Candidate who wishes to avail this concession should furnish the details of

his family members and their educational qualifications and also give a joint declaration duly signed by his/her parent/guardian in the application

form.

If a candidate who avails this concession is selected he/she should produce at the time of admission a certificate from a Revenue Official not below

the rank of 8 Deputy Tahsildar stating that there are no graduates in the applicant's family and that the candidate is the first one from the family to

claim this concession for entry into the Professional course of study.

Father, mother, brother(s) and unmarried sister(s) in addition to the applicant are considered as members of the family for this purpose.

5. The Law College Prospectus issued by the Director of Legal Studies, has similarly stated the conditions of eligibility, mode of selection, seats

allocation particulars to different classes of candidates and incorporated

Special concession of 5 marks under G.O. Ms. No. 630, Education, dated 10th May, 1990.

5 Marks will be added to the marks secured by a candidate in the Entrance Examination if none of the following members in his/her family has

obtained a Degree from any University.

1. Parents

2. Brother/Brothers

3. Unmarried sister or unmarried sisters.

In order to claim this concession, the candidates should give the particulars as to the educational qualifications of the parents, brothers and

unmarried sisters and his/her parents should also give a declaration in the form prescribed for this purpose in item No. 20 of the application.

At the time of his/her admission the candidate should submit a certificate from the Tahsildar Deputy Tahsildar of Revenue Department of the place

where the parents of the candidates reside.

Speaking about the eligibility, it is stated:

Candidates who have passed the Bachelor's Degree Examination in any faculty of the Universities in Tamil Nadu or an Examination of any other

University recognised as equivalent thereto by the Madras/Madurai/Kamaraj/Bharathiar/Bharathidasan- Universities respectively shall be eligible to

apply for admission to the course. In such cases, the Bachelor's degree will be taken as his qualifying degree, even though he has obtained higher

degrees.

The candidates who have acquired Master's degree directly without undergoing the Bachelor's degree course are also eligible. In such cases the

Master's degree will be taken as the qualifying degree even though he has acquired higher degrees.

If a candidate is found to be ineligible to apply, the application is liable to be

rejected at any stage even if the candidate has appeared for the, Entrance Examination.

6. Our first impression was that the First Graduate Concession was made available even to a candidate who was a graduate himself, but there was no other graduate in his family as otherwise DO candidate who has passed graduation in any of the faculties of the Universities in Tamil Nadu and who is eligible for admission to Three Year B.L. course in any of the Law Colleges in Tamil Nadu, is entitled to the eligibility as noticed above.

Learned Advocate-General, however, has brought to our notice a letter of the Government bearing Ms. No. 671 dated 18-5-1990 of Education

Department sent to the Director of Legal Studies on the subject of admission of students during 1990-91 and awarding of five bonus marks to

students and provided an English translation thereof, which states:

In the G.O. first cited, it has been ordered that five bonus marks awarded to students who apply for admission into the Engineering, Medical, Law,

Agricultural and Veterinary Colleges if they happen to be the first such applicants in their families which have no single graduate from among their

members, i.e., their parents or brothers or unmarried sister or sisters on the date of the application. In so far as Law College is concerned, it has

been ordered that the five bonus marks may be added to the marks obtained in the entrance examination to the eligible students.

The Director of Legal Studies has requested following clarification on the above order.

As regards Legal Education, there are two types of courses, i.e., five year Law course and three year Law course. For five year Law course,

those who have passed +2 examination are eligible to apply. In the case of three year Law course, graduates alone can apply. Therefore it is not

clear as to whether the candidate who is already a graduate can avail the concession referred to in para 1. Apart from this, BE, and MBBS,

graduates also apply for law course. The order referred to in para I will not apply to them.

3. After due consideration, the Government clarify that the concession granted as per orders issued in the G. O. first cited will apply to the

candidates who apply for the Three years course after graduation.

This clarification letter has thus clarified that a candidate after graduation who

decided to study medicine, is not entitled to the first graduate concession, but if he decided to study Law, he is eligible to the said concession.

7. It has been contended on behalf of the petitioners that (1) there is no intelligible differentia in identifying the concession of awarding five bonus marks to candidates in whose families there is no graduate in any discipline; (2) for achieving the object of selection of candidates who are meritorious for admission to professional courses, there is no reasonable nexus in classifying the so called first graduate candidates for bonus marks, and (3) the impugned G.O. has sought, to make an unreal classification in that a group of candidates who are preferred for bonus marks, does not form a real class or a class which could be recognised for any separate/different treatment.

8. In the return of the respondents 1 to 4 and 6 to 8, the only return filed in these cases, it is stated that the petitioners are estopped from challenging the G.O. Ms. No. 638, Education, dated 10.5.1990 since they had acquiesced in the method of selection as set out in the prospectus meant for MBBS/BDS courses and knowing fully well that there were such prescriptions and procedures in the matter of selection, the petitioners applied for admission. After having acquiesced in the said prescription and procedure and after having gone through the process of selection, it is not permissible for the petitioners to challenge the constitutional vires of the said prescription and procedure after they were unsuccessful. It is also stated that the impugned G.O. has been passed to achieve the avowed state policy of eliminating inequalities in facilities and opportunities amongst individuals by giving weightage to the candidates originating from the families where there are no graduates. Respondents state that such giving of preference on special ground to promote educational advancement of families where no member is a graduate would be valid in law as it has rational nexus to the object sought to be achieved by the policy in the impugned G.O. It does not in any manner violate Art. 14 of the Constitution of India. According to them, candidates originated from the non-graduate families, irrespective of their community to which they belong, are surely in a disadvantageous position in many respects when compared to the candidates bailing from the graduate families. Hence,

. . . In order to secure a social order for the promotion of welfare of the

disadvantageous group, the Government of Tamil Nadu extended such special weightage to the candidates of the non-graduate families in the selection made to the professional courses. . . the candidates hailing from graduate families and the candidates hailing, from non-graduate families need not be treated equally as they are unequals in their educational background and status...

9. I shall advert to some other states merits incorporated in the return of the respondents later. I must indicate at this stage that learned Advocate-

General has conceded that the respondents would not justify the five bonus marks as the first graduate concession under Art. 15 (4) of the

Constitution of India. According to the return and according to the learned Advocate-General, such families are prevalent not only in the

communities enjoying special concession under Art. 15 (4) of the Constitution of India, but also in other communities. Hence, the State intended to

give a special treatment in the matter of selection of candidates for admission to the professional courses to those candidates hailing from the non-

graduate families irrespective of their religion, race, caste or language. Learned Advocate-General has, however, contended that the object of

selection to the medical course should not be confused with that of the object of the policy behind the Government Order. He has drawn our

attention to the statement in the return that the State Exchequer is spending about 97.94 crores for medical education and Rs. 32.38 crores for

technical education and stated that since the Government which bears the financial burden of running the Government Colleges, is entitled to lay

down criteria for admission inter alia to its own colleges and to decide the sources from which admission should be made. He has contended that it

is sufficient if the policy has rational nexus to the object sought to be achieved by the G.O. and in that, it cannot be said that the action of the State

in extending concession or providing facilities to a class of people who are trailing far behind the people who are well placed in their status, income,

and opportunities is violative of Art.14 of the Constitution of India. In other words, the stand of the State before this Court is that the policy sought

to be achieved under the G.O. is not to be construed as a measure taken under Art. 15 (4) of the Constitution. He has submitted that the State is

not prevented from taking any other measure in respect of any one of the class

of citizens covered under Art.15 (4) as well as in respect of any other class of citizens not covered under Art. 15 (4). The State is always at liberty to take any measure to safeguard the interests of the

educationally backward class citizens including the communities covered under Art. 15 (4) but without violating Art. 14 of the Constitution of India.

Learned Advocate General has also maintained before us that the difference between the last selected candidate and the unselected candidate

would be in the range of approximately 0.25 marks and the merit thus is not sacrificed. A helping hand is extended to a class of citizens, to whom.

. . . it is a dream still to get the admissions in the Professional courses. This helps not only to a class of citizens falling outside the ambit of Art.

15(4) of the Constitution of India.

10. Speaking on behalf of the Supreme Court, in the advisory capacity under Art. 143 of the Constitution, in a bench of 7 Judges, Chandrachud,

C.J. in *In Re: The Special Courts Bill, 1978*, said that as far back as 1960.

It was said by this Court in *Kangshari Haldar* that the propositions applicable to cases arising under Art.14 have been repeated so many times that

they now sound platitudinous.

and he added that if that was true in 1960, it would be even more true in 1979. However, the Supreme Court has itself said in *Ajay Hasia and*

Others Vs. Khalid Mujib Sehravardi and Others, that for the first time, it in *E.P. Royappa Vs. State of Tamil Nadu and Another*, laid bare a new

dimension of Art.14, In *Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others*, it has been said,

What is the content and reach of the great equalising principle enunciated in this article? There can be no doubt that it is a founding faith of the

Constitution. It is indeed the pillar on which rests securely the foundation of our democratic republic. And therefore, it must not be subjected to a

narrow, pedantic or lexicographic approach. No attempt should be made to truncate its all-embracing scope and meaning, for, to do so would be

to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be imprisoned within traditional and

doctrinaire limits. Art.14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. The principle of reasonableness,

which legally as well as philosophically, is an essential element of equality or non-

arbitrariness pervades Art. 14 like a brooding omnipresence. This was again reiterated by this court in *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, . It must therefore now be taken to be well settled that what Art.14 strikes at is arbitrariness because an action that is arbitrary, must necessarily involve negation of equality.

The doctrine of classification which is evolved by the Courts is not paraphrase of Art.14 nor is it the objective and end of that Article. It is merely a judicial formula for determining whether the legislative or executive action in question is arbitrary and therefore constituting denial of equality. If the classification is not reasonable and does not satisfy the two conditions referred to above, the impugned legislative or executive action would plainly be arbitrary and the guarantee of equality under Art.14 would be breached.

The two conditions which must be satisfied before a classification is found not to have violated Art. 14 are well-known and oft-repeated. Yet in *Ajay Hasia's* case at another place, the Supreme Court clarified:

The true scope and ambit of Art.14 has been the subject matter of numerous decisions.... It is sufficient to state that the content and reach of Art. 14 must not be confused with the doctrine of classification. Unfortunately, in the early stages of the evolution of our constitutional law. Art. 14 came to be identified with the doctrine of classification because the view taken was that Article forbids discrimination and there would be no discrimination where classification making the differentia fulfills two conditions, namely (i) that the classification is founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group; and (ii) that differentia has a rational relation to the object sought to be achieved by the impugned legislative or executive action. It was for the first time in *E.P. Royappa v. State of Tamil Nadu* (supra) that this Court laid bare a new dimension of Art.14 and pointed out that that Article has highly activist magnitude and it embodies a guarantee against arbitrariness ... We cannot countenance any attempt to truncate its all-embracing scope and meaning, for, to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be "cribbed, cabined and confined" within traditional and doctrinaire limits. From a positivistic point of view, equality is antithetic to arbitrariness. In fact, equality and

arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch.

Where an act is arbitrary it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of

Art.14, and if it affects any matter relating to public employment, it is also violative of Art.16. Arts.14 and 16 strike at arbitrariness in State action

and ensure fairness and equality of treatment.

11. Art. 14 guarantees 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 and embraces the entire realm of State action extending not only when an individual is discriminated against in the matter of exercise of his

rights or in the matter of granting privileges (See *The State of West Bengal Vs. Anwar Ali Sarkar*, and *Ramana Dayaram Shetty Vs. International*

Airport Authority of India and Others, . The underlying principle is 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. In other words, the State's action must not be arbitrary but must be based

on some valid principle, which itself must not be irrational or discriminatory. To emphasise such protection to every citizen the Constitution has in

Art, 15(1) and (2) provided:

(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them etc.

(2) No citizen shall, on grounds only of religion; race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or

condition with regard to

(a) access to shops, public restaurants, hotels and place of public entertainment; or

(b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of

the general public.

There are two exceptions indicated in clauses (3) and (4) of Art. 15; clause (3) being since the date of adaptation of the Constitution and clause

(4) introduced by the Constitution First Amendment Act, 1951 which together say:

Nothing in this article shall prevent the State from making any special provision

for women and children.

Nothing in this article or in clause (2) of Art.29 shall prevent the State from making any special provision for the advancement of any socially and

educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

A reference here to Art.29(2) is relevant because it directly affects any State's action concerning admission into any educational institution

maintained by the State or receiving aid out of State funds. That states.

No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of

religion, race, caste, language or any of them.

This has always been read as a counter-part of the equality clause of Art. 15 and adding to the prohibition in Art.15(2) an additional provision that

admission into any educational institution maintained by the State or receiving aid out of State funds shall not be denied on grounds only of religion,

race, caste, language or any of them. Art.16 of the Constitution of India which relates to employment to any office under the State and springs in

action to strike any discrimination in the matter of appointment/employment to any office under the State, may not, for this case be directly relevant,

but to understand the scope and extent of reasonable classification or justifiable discrimination sometimes a reference to the said article may be

helpful.

12. In *Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others*, the Supreme Court, after referring to a large number of cases decided on

Art.14 of the Constitution formulated the following propositions:

(a) Art.14 condemns discrimination not only by substantive law but by a law of procedure;

(b) Art.14 forbids class legislation but does not forbid classification;

(c) Permissible classification must satisfy two conditions, namely, (i) it must be founded on an intelligible differentia which distinguishes persons or

things that are grouped together from others left out of the group, and (ii) the differentia must have a rational relation to the subject sought to be

achieved by the statute in question;

(d) The differentia and object are different elements and it follows that the object

by itself cannot be the basis of the classification;

(e) In permissible classification mathematical nicety and perfect equality are not required. Similarly, no identity of treatment, is enough;

(f) The classification may be founded on different bases, namely, geographical or according to objects or occupations or the like;

(g) If a law deals equally with members of a well-defined class, it is not obnoxious and it is not open to the charge of denial of equal protection on

the ground that it has no application to other persons;

(h) Even a single individual may be in a class by himself on account of some special circumstances or reasons applicable to him and not applicable

to others; a law may be constitutional even though it relates to a single individual who is in a class by himself;

(i) The legislature is free to recognize degrees of harm and may confine its restrictions to those cases where the need is deemed to be the clearest;

(j) There is always a presumption In favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there

has been a clear transgression of the constitutional principles;

(k) In order to sustain the presumption of constitutionality, the court may take into Consideration matters of common knowledge, matters of

common report, the history of the times and may assume every state of facts which can be conceived;

(l) It must be presumed that the legislature understands and correctly appreciates the need of its own people, that its laws are directed to problems

made manifest by experience and that its discriminations are based on adequate grounds;

(m) While good faith and knowledge of the existing conditions on the part of a legislature are to be presumed, if there is nothing on the face of the

law or the surrounding circumstances brought to the notice of the court on which the classification may reasonably be regarded as based, the

presumption of constitutionality cannot be carried to the extent of always holding that there must be some undisclosed and unknown reasons for

subjecting certain individuals or corporations to hostile or discriminatory legislation. The principle must be borne in mind in deciding whether a law

violates Art.14.

13. In all subsequent judgments, I shall refer to a few of them, these

propositions are reiterated with emphasis shift from one to another differentiating thus the cases brought before the Court on their peculiar facts. In re the Special Courts Bill (supra), the Supreme Court has pointed out that the first part of Art. 14, which was adopted from the Irish Constitution is a declaration of equality of the civil rights of all persons within the territories of India and it enshrines a basic principle of republicanism and that the second part, which is a corollary of the first and is based on the last clause of the first section of the Fourteenth Amendment of the American Constitution, enjoins that equal protection shall be secured to all such persons in the enjoyment of their rights and liberties without discrimination or favouritism. It is a pledge of the protection of equal laws, that is, laws that operate alike on all persons under like circumstances. The Supreme Court has also pointed out in the said case that the State, in the exercise of its governmental power, has of necessity to make laws operating differently on different groups or classes of persons within its territory to attain particular ends in giving effect to its policies and it must possess for that purpose, large powers of distinguishing and classifying persons or things to be subjected to such laws. The constitutional command to the State to afford equal protection of its laws sets a goal not attainable by the invention and application, of a precise formula. Therefore, classification need not be constituted by an exact or scientific exclusion or inclusion of persons or things. The Courts should not insist on delusive exactness or apply doctrinaire tests for determining the validity of classification in any given case. Classification is justified if it is not palpably arbitrary. The law, it is in this behalf, therefore will be to concede to the State the power to differentiate groups or class of persons within its territory to achieve a particular aim in giving effect to its policies. But such differential treatment must not be arbitrary but must be rational, that is to say, it must not only be based on some qualities or characteristics which are to be found in all the persons grouped together and not in others who are left out, but those qualities and characteristics must have a reasonable relation to the object of the legislation or the State action. In order to pass the test, two conditions must be fulfilled, namely (i) that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others, and (ii) that that differentia must have a rational relation to the

object sought to be achieved by the Act.

14. In July, 1962, the State of Mysore in supersession of all previous orders made under Art.15(4) divided Backward Classes into two categories,

that is to say. Backward Class and more Backward class and reserved 68% of the seats in the Engineering and Medical Colleges and other

technical institutions for the educationally and socially Backward Classes and Scheduled Castes and Scheduled Tribes and left 32% seats for the

merit pool. In *M.R. Balaji and Others Vs. State of Mysore*, the Supreme court held that the order passed by the State of Mysore was a fraud on

the constitutional power conferred on the State by Art. 15(4) and was liable to be quashed because the order categorised contrary to plain

intendment of Art. 15(4) the backward classes on the sole basis of caste. The State Government of Andhra Pradesh came out with a similar order

in G.O. Ms. No. 880, Health dated 1-6-1963, notifying a list of castes for the purpose of selecting candidates from the backward classes for

admission in the Medical Colleges in the State of Andhra Pradesh. The said G.O. was declared as invalid by the Andhra Pradesh High Court. The

State Government once again issued two notifications in the year 1966 reserving certain seats for Central Government nominees, for N.C.C.,

A.C.C., President's Scouts and Guides, for candidates with sports and extra-curricular proficiency, for children of ex-service army personnel, for

children of displaced goldsmiths appearing from H.S.C. Multipurpose I.S.C. and PUC Examinations, and for candidates who had secured the

M.Sc. and B.Sc. degrees and also reserving 20% of the seats for Backward classes in each area. When these notifications were challenged before

the High Court. The High Court held that in reserving seats for nominees of the Central Government and from other States for cultural scholars, for

women, for graduates and for students from H.S.C. and P.U.C. courses, no fundamental rights were infringed, but the reservations for members of

the Backward classes described in the list prepared by the Government of Andhra Pradesh were invalid. The State Government then moved the

Supreme Court. In *State of A.P. v. P. Sagar* 1968 S.C.J. 778, the Supreme Court has noticed the law in these words:

By Art.46, which occurs in Chapter IV relating to Directive Principles of State Policy the State was enjoined to promote the educational and

economic interests of the weaker sections of the people, but Arts.15 and 29 as originally framed prohibited the making of any discrimination

against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them In the The State of Madras Vs. Srimathi Champakam

Dorairajan, , an order issued by the Government of the State of Madras fixing the number of seats for particular communities for selection of

candidates for admission to the Engineering and Medical Colleges in the State was challenged on the ground that it violated the guarantee against

discrimination under Art.29(2) of the Constitution. This Court held that the Government Order constituted a violation of the fundamental rights

guaranteed to the citizens of India by Art.29(2) of the Constitution, notwithstanding the directive principles of the State policy laid down in Part IV

of the Constitution. The Parliament thereafter added clause (4) in Art. 15, by the Constitution (First Amendment) Act, 1951 providing that

Nothing in this Article or in Cl. (2) of Art.29 shall prevent the State from making special provision for the advancement of any socially and

educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes...

In the context in Which it occurs, the expression "class" means a homogeneous section of the people grouped together because of certain

likenesses or common traits and who are identifiable by some common attributes such as status, rank, occupation, residence in a locality, race,

religion and the like. In determining whether a particular section forms a class, caste cannot be excluded altogether. But in the determination of a

class a test solely based upon the caste or community cannot also be accepted. By clause (1), Art.15 prohibits the State from discriminating

against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. By clause (3) of Art.15 the State is, notwithstanding

the provision contained in clause (1), permitted to make special provision for women and children. By clause (4) a special provision for the

advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and Scheduled Tribes is outside the

purview of clause (1). But clause (4) is an exception to clause (1). Being an exception, it cannot be extended so as in effect to destroy the

guarantee of clause (1). The Parliament has by enacting clause (4) attempted to balance as against the right of equality of citizens the special

necessities of the weaker sections of the people by allowing a provision to be made for their advancement. In order that effect may be given to

clause (4), it must appear that the beneficiaries of the special provision are classes which are backward socially and educationally and they are

other than the Scheduled Castes and Scheduled Tribes, and that the provision made is for their advancement. Reservation may be adopted to

advance the interests of weaker sections of society, but in doing so, care must be taken to see that deserving and qualified candidates are not

excluded from admission to higher educational institutions. The criterion for determining the backwardness, must not be based solely on religion,

race, caste, sex, or place of birth, and the backwardness being social and educational must be similar to the backwardness from which the

Scheduled Tribes suffer. These are the principles which have been enunciated in the decision of this Court in *M.R. Balaji and Others Vs. State of*

Mysore, and *R. Chitralekha and Another Vs. State of Mysore and Others*, .

15. Before proceeding further, I may here refer to the Directive Principles in Part IV of the Constitution. Art.46 in Part IV of the Constitution

states.

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 the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.

As the Directive does not empower the State to override the fundamental right, it has to be seen that the State's action 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

could not/cannot be achieved if Art.15(1) and particularly Art.29(2) are not subjected to such exceptions which permit a State to legislate or

otherwise act to promote educational and economic interests of the weaker sections of the people. The power under Art.29(2) is relaxed only

under Art.15(4) of the Constitution. Otherwise, a State would get no liberty to make any law to deny admission into any educational institutions

maintained by the State or receiving aid out of the State funds on grounds only of religion, race, caste or language or any of them. The emphasis

however is on the words "interests of the weaker sections of the people and in

particular of the Scheduled Castes and the Scheduled Tribes", who deserve, the Constitution has recognised, a special care for promotion of their educational and economic interests. The expression "weaker sections of the people" in this Article includes the Scheduled Castes and Scheduled Tribes. There may be weaker sections of the people who are not Scheduled Castes and Scheduled Tribes, but weaker otherwise compared to other people, who are socially, educationally and economically placed above them. Thus it is reasonable that the words "weaker sections of the people" are examined with reference to the people in a State to mean those who are not Scheduled Castes and Scheduled Tribes, and also those who are not Scheduled Castes and Scheduled Tribes, but backward in social/economical and educational status when compared to other sections of the people, who are highly placed in the society. A special provision or reservation for such a class of people shall not be a discrimination provided it satisfies the test of Art.15(4) of the Constitution, because then only any exception can be permissible from the equality envisaged by Art.14 read with Art.15(1) and Art.29(2) of the Constitution. Any attempt therefore to classify a group of people for a special treatment in the matter of admission to State owned or State aided educational institutions under Art.14 of the Constitution without reference to Art.15(4) will not be permissible on the grounds covered by Arts.15(1) and 29(2).

16. I may also here refer to a historical fact that S. 4 of the Constitution Forty Second Amendment Act by which Art.31-C of the Constitution was amended has been struck down by the Supreme Court in *Minerva Mills Ltd. and Others Vs. Union of India (UOI) and Others*, . Although some observations have been made in *Sanjeev Coke Manufacturing Company Vs. Bharat Coking Coal Limited and Another*, and it has been observed therein, "we wish to say no more about the *Minerva Mills Ltd. and Others Vs. Union of India (UOI) and Others*, as we are told that there, is pending a petition to review the judgment," it needs no further statement than reiteration that any act of the State even for giving effect to the policy of the State towards securing any of the principles laid down in Part IV shall be void if it is inconsistent with or takes away or abridges any of the rights conferred by Arts.14, 15 and 29(2) of the Constitution. The other directive

on the subject of education in Art.45 of the Constitution also does not confer legally enforceable right nor does it empower the State to override fundamental rights in Part III of the Constitution. It no doubt provides that the State would endeavour to provide within a period of ten years from the commencement of the Constitution free and compulsory education for all children until they complete the age of fourteen years, perhaps nothing has been done in any of the States to cover all children even for elementary education. Yet another Art.41 wherein it is stated that the State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want, inter alia provides as a duty of the State to establish educational institutions and also to effectively secure the right to education by admitting students to the seats available at such institutions. Even though this right is not a fundamental right and is not judicially enforceable as such, once the State by legislative or administrative action provides facilities for education, its action must conform to the standard of equality and rationality underlying Art.14(See Samir v. State AIR 1982 S.C. 66. The scheme thus leaves no scope to think that the State can by legislative or administrative action provide anything it likes in the name of special care to promote the educational and economic interests of the weaker sections of the people and in particular of the Scheduled Castes and Scheduled Tribes or extend facilities/preference of any kind to any person of its choice. Such acts of the State, whether legislative or administrative, must be shown to conform to the standard of equality and rationality underlying Art.14. Educational and economic interests of the weaker section of the people must in this background be the interests of such people, who belong to the weaker sections of the society who for constraints or compulsions existing in the society are left behind in comparison to some other sections of the people who enjoy superior status on account of social, educational and economic advantages cornered by them at the cost of the Scheduled Castes/ Scheduled Tribes or people belonging to such sections, who are forced to fall behind them. Reiterating the law that before a classification can be justified it must be based on an objective criterion and further it

must have reasonable nexus with the object intended to be achieved, the Supreme Court in Minor A. Peeriakaruppan and Sobha Joseph Vs. State

of Tamil Nadu and Others, , struck down unitwise distribution of seats for the purpose of selection of candidates for admission into medical

colleges in the State of Tamil Nadu as violative of Articles 14 and 15 of the Constitution whereas it upheld the reservation of the Backward

Classes, Scheduled Castes and Scheduled Tribes to the extent of 41% of the seats. The Supreme Court had stated.

...It is admitted that the minimum marks required for being selected in some unit is less than in the other unit. Hence prima facie the scheme in

question results in discrimination against some of the applicants. In Minor P. Rajendran Vs. State of Madras and Others, this Court ruled that the

districtwise distribution of available seats is violative of Art.15 of the Constitution. But it was contended on behalf of the State that the unitwise

distribution of seats was adopted for administrative convenience. It was said that it was not possible for one selection committee to interview all the

applicants. Therefore several committees had to be constituted. In the past when applicants were interviewed by several committees there were

complaints that the standard adopted by the committee differed from that adopted by others and therefore the applicant's ability was not tested by

a uniform standard. Further it was said that when selections were made by several committees there was delay in preparing a consolidated list. We

are unable to accept these grounds as being real grounds for classification ... Before a classification can be justified, it must be based on an

objective criterion and further it must have reasonable nexus with the object intended to be achieved. The object intended to be achieved in the

present case is to elect the best candidates for being admitted to Medical Colleges. That object cannot be satisfactorily achieved by the method

adopted. The complaint of the petitioners is that unitwise distribution of seats is but a different manifestation of the districtwise distribution sought

in 1967-68, has some force though on the material on record we will not be justified in saying that the unitwise distribution was done for collateral

purpose. Suffice it to say that the unitwise distribution of seat is violative of Arts.14 and 15 of the Constitution. The fact that an applicant is free to

apply to any one unit does not take the scheme outside the mischief of Arts.14 and 15. It may be remembered that the students were advised as

far as possible to apply to, the unit nearest to their place of residence.

17. In *The State of Andhra Pradesh and Others Vs. U.S.V. Balram, etc.*, the Supreme Court considered a rule under which admission to the

integrated M.B.B.S. Course in the Government Medical colleges in Andhra Pradesh was from two sources, namely, those who had passed the

Pre-University Course and those who had passed the Higher Secondary Course (Multi-purpose) and students from either course had to appear at

a competitive test, but 40% of the seats were reserved for those candidates who had passed the Higher Secondary Course (Multi-purpose). Seats

were also reserved for Scheduled Tribe and Scheduled Caste candidates as also for Backward Classes. It struck down the reservation of 40% of

the seats for Higher Secondary Course (Multipurpose) candidates stating:

We have referred to the averments contained in the counter-affidavit of the two officers above as they form part of the present record and they

have also been relied on for one purpose or other by both the State and the respondents. The above averments clearly establish that even

according to the State the marks obtained in the Entrance Test according to the rules is the decisive test for the purpose of considering the merits

of the candidates, who seek admission to the Medical College. These averments clearly show that there is absolutely no jurisdiction for making of

special reservation of 40% in favour of H.S.C. candidates, when once a common Entrance Test is held for all the candidates and selection is made

on an assessment of merit of marks obtained at the said examination.

Mr. Tarkunde referred us to *Minor P. Rajendran Vs. State of Madras and Others*, where the validity of the scheme of district-wise distribution of

seats as per the rules framed by the State of Madras, to the Medical Colleges, was challenged as violative of Art.14. The State attempted to justify

the said method of districtwise distribution on the ground that if districtwise distribution is not made, the candidates from Madras City would have

an advantage and would secure the largest number of seats in the Medical Colleges, which will not be justified on the basis of the proportion of

population of the Madras City. The challenge based on discrimination under Art.14 was accepted by this Court and it was held that the allocation

of seats districtwise results in discrimination and there is no nexus between the districtwise distribution and the object to be achieved, namely,

admission of the best talent from the sources indicated in the rules. On this ground, the allocation of seats on districtwise basis was struck down as violative of Art.14.

Similarly unitwise distribution of seats in the Medical Colleges in Tamil Nadu was declared by this Court in *Minor A. Peeriakaruppan and Sobha*

Joseph Vs. State of Tamil Nadu and Others, as violative of Arts.14 and 15.

These two decisions clearly establish that a classification which has no rational basis and has no relation to the object sought to be achieved is

violative of Art.14.....

It is no doubt open to the State to prescribe the sources from which the candidates are declared eligible for applying or admission to the Medical

College; but when once a common Entrance Test has been prescribed for all the candidates on the basis of which selection is to be made, the rule

providing further that 40% of the seats will have to be reserved for the H.S.C. candidates is arbitrary. In the first place, after a common test has

been prescribed, there cannot be a valid classification of the P.U.C. and H.S.C. candidates. Even assuming that such a classification is valid, the

said classification has no reasonable relation to the object sought to be achieved, namely, selecting the best candidates for admission to the

Medical Colleges. The reservation of 40% to the H.S.C. candidates has no reasonable relation or nexus to the said object. Hence we agree with

the High Court, when it struck down this reservation under R. 9 contained in G. No. 1648 of 1970 as violative of Art. 14.

18. In *State of Uttar Pradesh and Others Vs. Pradip Tandon and Others*, , the test for determining backwardness in terms of Art.15 (1) (4) and

Art.29 (2) and the validity of reservation for rural, hill and Uttrakhand areas on the ground that people coming from those areas belonged to

socially and educationally backward classes, for admission of students to medical colleges in the State was considered by the Supreme Court. I

refer to this judgment with some more care as it seems, this case has been a lamp post judgment and referred to in many subsequent judgments of

the Supreme Court. After taking notice of the provisions in Art.15 (i) and Art. 29 (2) and Art. 15 (4) which was added by the Constitution first

Amendment Act, 1951, the Supreme Court observed:

...The object of the amendment was to bring Arts. 15 and 29. In line with

Art.16(4). Art.16(4) states that nothing in that Article shall prevent the State from 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. In the *The State of Madras Vs. Srimathi Champakam Dorairajan*, the reservation of seats for Non-Brahmins, backward Hindus, Brahmins, Harijans, Anglo-Indians and Indian Christian and Muslim was held to offend Arts.15(1) and 29(2). This Court pointed out that the omission of a clause like Art.16(4) from Art.29 indicated the intention of the Constitution makers not to introduce communal consideration in matters of admission to educational institutions.

Art. 15(4) seeks to provide for socially and educationally backward classes of citizens. The State described the rural, hill and Uttarakhand areas as socially and educationally backward areas. The Constitution does not enable the State to bring socially and educationally backward areas within the protection of Art. 15(4)...

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

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

...Educational backwardness is ascertained with reference to these factors. Where people have traditional apathy for education on account of social and environmental conditions or occupational handicaps, it is an illustration

of educational backwardness. The hill and Uttrakhand areas are inaccessible. There is lack of educational institutions and educational aids. People in the hill, and Uttrakhand areas illustrate the educationally backward classes of citizens because lack of educational facilities keep them stagnant and they have neither meaning and values nor awareness for education...

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

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

The Court thus struck down the reservation for rural areas primarily for reason that it was not possible to identify that the candidates coming from rural areas belonged to a homogeneous class and in effect it was a reservation made on the basis of place of birth.

19. In *Miss Arti Sapru and Others Vs. State of Jammu & Kashmir and Others*, a question had arisen whether reservation for candidates from areas adjoining actual line of control and areas known as ""bad pockets"" including Ladhak for admission to the M.B.B.S. Course in the Government Medical College, Srinagar was valid or not. The said reservation was sought to be justified on the ground that the State wanted to rectify the imbalance in different parts of the State by identifying certain villages

as socially and educationally backward. The Supreme Court observed.

We are of opinion that the classification attempted by the State Government by its order dated 24th September, 1980 suffers from the vice of arbitrariness and must be declared invalid. There is no intelligible data before us for sustaining the classification. No doubt the State Government has acted in its own wisdom, but the material to which that wisdom was applied has not been disclosed at all...

20. In *Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others*, . *State of U.P. v. P. Tandon*, (supra) and several other cases have been once again considered and the question posed is whether residential requirement or institutional preference for admission to technical and medical colleges can be regarded as constitutionally permissible? Can it stand the test of Art.14 or does it fall foul of it and must be struck down as constitutionally invalid? The Supreme Court observed that it is not possible to answer the question by simple yes or no. It raises a delicate but complex problem involving consideration of diverse factors in the light of varying social and economic facts and calls for a balanced and harmonious adjustment of competing interests. The Supreme Court further observed.

But let us understand what we mean when we say that selection for admission to medical colleges must be based on merit. What is merit which must govern the process of selection? It undoubtedly consists of a high degree of intelligence coupled with a keen and incisive mind, sound knowledge of the basic subjects and infinite capacity for hard work, but that is not enough; it also calls for a sense of social commitment and dedication to the cause of the poor...

We may now proceed to consider what are the circumstances in which departure may justifiably be made from the principle of selection based on merit. Obviously, such departure can be justified only on equality-oriented grounds, for whatever be the principle of selection followed for making admissions to medical colleges, it must satisfy the test of equality under the Constitution is a dynamic concept. It takes within its sweep every process of equalisation and protective discrimination. Equality must not remain mere idle incantation but it must become a living reality for the large

masses of people. In a hierarchical society with an indelible feudal stamp and incurable actual inequality, it is absurd to suggest that progressive

measures to eliminate group disabilities and promote collective equality are antagonistic to equality on the ground that every individual is entitled to

equality of opportunity based purely on merit judged by the marks obtained by him. We cannot countenance such a suggestion, for to do so would

make the equality clause sterile and perpetuate existing inequalities. Equality of opportunity is not simply a matter of legal equality. Its existence

depends not merely on the absence of disabilities but on the presence of abilities. Where, therefore, there is inequality, in fact, legal equality always

tends to accentuate it. What the famous poet William Blake said graphically is very true namely. "One law for the Lion and the Ox is oppression."

Those who are unequal, in fact, cannot be treated by identical standards; that may be equality in law but it would certainly not be real equality. It is,

therefore, necessary to take into account de facto inequalities which exist in the society and to take affirmative action by way of giving preference

to the socially and economically disadvantaged persons or inflicting handicaps on those more advantageously placed in order to bring about real

equality. Such affirmative action though apparently discriminatory is calculated to produce equality on a broader basis by eliminating de facto

inequalities and placing the weaker sections of the community on a footing of equality with the stronger and more powerful sections so that each

member of the community, whatever is his birth, occupation or social position may enjoy equal opportunity of using to the full his natural

endowments of physique of character and of intelligence....

The most which can be said in favour therefore of any special provision wherein a departure is made on equality-oriented ground, that there existed

such de facto inequalities and that affirmative action by way of giving preference to the socially and economically disadvantaged persons or

inflicting handicaps on those more advantageously placed in order to bring about real equality was needed. Such affirmative action may not be held

to be hit by Art. 14 of the Constitution, but in the absence of any de facto inequality requiring a preferential treatment as to the handicap, any

preference or special provision shall be hit by Art. 14 of the Constitution.

21. In yet another case in *Suneel Jatley and Others Vs. State of Haryana and*

Others, , the Supreme Court reiterated the law that the classification between the students coming from common rural school and from the urban school was not founded on intelligible differentia and at any rate it has no rational nexus to the object sought to be achieved. An attempt was made before the Supreme Court to distinguish the law stated in the case of State of Uttar Pradesh and Others Vs. Pradip Tandon and Others, . The Supreme Court stated/wile commenting on State of Uttar Pradesh and Others Vs. Pradip Tandon and Others, ,

...It is true that the State did not attempt to sustain the reservation under Art.14 but certain observations in the judgment would leave no room for doubt that the aspect of valid classification was present to the mind of the Court. It was observed that 80% of the population reside in rural areas and it cannot be said to be a homogeneous class. Rural habitation cannot constitute it into class. And it is reservation related to place of birth. The Court thus examined whether candidates coming from rural areas constitute a distinct homogenous class for the purpose of admission to medical college and rejected it...

The Supreme Court then proceeded in Suneel Jatley's Case to say, Assuming that the decision in State of Uttar Pradesh and Others Vs. Pradip Tandon and Others, does not conclude the point as herein raised, the differentia on which the classification is founded appears to us arbitrary and irrational. How arbitrary and irrational it is, can be demonstrably established. In order to take advantage of the reservation students from nearby urban areas can join common rural schools on the periphery of urban agglomeration. And all rural schools without an exception cannot be condemned as ill-housed, ill-staffed and ill-equipped. Agriculture in Haryana has been a very profitable pursuit and standard of life of average farmer in rural area has gone up compared to middle class and industrial workers and the slum dwellers whose children will attend as a necessity urban schools. And yet the better placed will enjoy reservation.

It was, however, said that there was another discernible purpose in making the reservation. The urbanised students are disinclined to go to rural areas for practice or service and therefore if the students coming from rural common schools are encouraged to seek admission they may return after obtaining qualification to their childhood habitation and thus help extend

efficient medical service to rural areas at present wholly neglected. It was urged if a region is woefully deficient in medical services, there occurs serious educational and health service disparity for that human region which must be redressed by a Welfare State. It was submitted that the reservation was a step in this direction. This submission was sought to be supported by referring to *Dr. Jagadish Saran and Others Vs. Union of India (UOI)*, . This approach overlooks the fact that even students educated in common rural schools would be joining urban schools for four years before going to medical college and then spend about five years in medical college. There is no guarantee save a wishful thinking that they would return to rural areas. This is too flimsy a material to sustain classification.

22. In *Nidamarti Maheshkumar Vs. State of Maharashtra and Others*, it has been pointed out by the Supreme Court that there are two

considerations which may legitimately weigh with the Court in justifying departure from the principle of selection based on merit, namely; One is

what may be called State interest and the other is what may be described as a region's claim of backwardness, and it has been observed,

...The legitimacy of claim of State interest was recognised explicitly in *D.P. Joshi Vs. The State of Madhya Bharat and Another*, and *Minor P.*

Rajendran Vs. State of Madras and Others, These two cases show that the claim of State interest in providing adequate medical services to the

people of the State by imparting medical education to students who by reason of their residence in the State would be likely to settle down and

serve the people of the State as Doctors, was regarded by the Court as a legitimate ground for departing from the strict principle of selection

based on merit. The decision of this Court in *D.N. Chanchala Ors. Vs. The State of Mysore and Others*, also upheld university wise distribution of

seats, though it was not in conformity with the principle of selection based on merit and marked a departure from it, and the justification for taking

this view was that institutional preference was not constitutionally impermissible ""firstly, because it would be quite legitimate for students who are

attached to a university to entertain a desire to have training in specialised subjects like medicine, satisfied through colleges affiliated to their own

university since that would promote institutional continuity which has its own value and secondly, because any student from any part of the country

can pass the qualifying examination of that university, irrespective of the place of his birth or residence.

The second consideration which can legitimately weigh with the court in diluting the principle of selection based on merit is the claim of

backwardness made on behalf of any particular region . . . It is, therefore, clear that where the region from which the students of a university are

largely drawn is backward either from the point of view of opportunities for medical education or availability of competent and adequate medical

services, it would be constitutionally permissible, without violating the mandate of the equality clause, to provide a high percentage of reservation or

preference for students coming from that region, because without reservation or preference students from such backward region will hardly be able

to compete with those from advanced, regions since they would have no adequate opportunity for development so as to be in a position to

compete with others. By reason of their socially or economically disadvantaged position they would not have been able to secure education in

good schools and they would consequently be at a disadvantage compared to students belonging to the affluent or well-to-do families who have

had best of school education. . .

The Supreme Court, however, rejected the argument that a student from a school or college situate within the jurisdiction of a particular university

would not be eligible for admission to medical college or colleges situate in the jurisdiction of another university but would be confined only to

medical college or colleges within the jurisdiction of the same university, was intended to give protection to students in Vidharbha, Marathwada

and other predominantly rural areas the population of which is socially, economically and educationally backward for otherwise they would have

no opportunity for medical education since they would not be able to compete with students from Pune and Bombay regions and consequently the

classification made by this provision was constitutionally permissible. The Supreme Court said,

. . . We are afraid this contention is not well founded and must be rejected. In the first place there is no material to show that the entire region within

the jurisdiction of the university in Vidarbha is backward or that the entire region within the jurisdiction of Pune University is advanced. There are

quite possibly even in the region within the jurisdiction of Pune University predominantly rural areas which are backward and equally there may be

in the region within the jurisdiction of the University in Vidarbha areas which are not backward. We do not think it is possible to categorise the

regions within the jurisdiction of the various universities as backward or advanced as if they were exclusive categories and in any event there is no

material placed before us which would persuade us to reach that conclusion. But even if the regions within the jurisdiction of the Universities in

Vidarbha and Marathwada can be said to be backward and regions within the jurisdiction of the Universities in Bombay and Pune can be said to

be advanced, we do not think that regionwise classification for admission to medical colleges can be sustained. There is no reason why a brilliant

student from a region which is within the jurisdiction of a university in Vidarbha or Marathwada area should be denied the opportunity of medical

education in Bombay or Pune. Why should he remain confined to the so-called backward region from which he comes? Should an equal

opportunity for medical education not be made available to him as is available to students from regions within the jurisdiction of Bombay and Pune

Universities ?

23. Although in the context of Arts. 16 (1) and 2A read with Art. 16(4) of the Constitution of India, but nonetheless indicating bow a preference or

reservation may not be treated as discriminatory, the Supreme Court observed in the case of Yogender Pal Singh and others Vs. Union of India

others,

While it may be permissible to appoint a person who is the son of a police officer who dies in service or who is incapacitated while rendering

service in the Police Department, a provision which confers a preferential right to appointment on the children or wards or other relatives of the

police officers either in service or retired merely because they happen to be the children or wards or other relatives of such police officers would

be contrary to Art.16 of the Constitution. Opportunity to get into public service should be extended to all the citizens equally and should not be

confined to any extent to the descendants or relatives of a person already in the service of the State or who has retired from the service. . .

A reference was also made to an earlier judgment of the Supreme Court in

Gazula Dasaratha Rama Rao Vs. The State of Andhra Pradesh and

Others, . The question relating to the constitutional validity of S. 6(1) of the Madras Hereditary Village Offices Act, 1895 came up for

consideration before the Supreme Court. That section provided that where two or more villages or portions thereof were grouped together or

amalgamated so as to form a single new village or where any village was divided into two or more villages all the village officers of the class defined

in S. 3(1) of that Act in the villages or portions of the villages or village amalgamated or divided as aforesaid would cease to exist and the new

offices which were created for the new village or villages should be filled up by the Collector by selecting the persons whom he considered best

qualified from among the families of the last holders of the offices which had been abolished. The Supreme Court held that the said provision which

required the Collector to fill up the said new offices by selecting persons from among the families of the last holders of the offices was opposed to

Art.16 of the Constitution and observed,

Art. 14 enshrines the fundamental right of equality before the law or the equal protection of the laws within the territory of India. It is available to

all, irrespective of whether the person claiming it is a citizen or not. Art.15 prohibits discrimination on some special grounds religion, race, caste,

sex, place of birth or any of them. It is available to citizens only, but is not restricted to any employment or office under the State. Art.16. Cl. (1),

guarantees equality of opportunity for all citizens in matters relating to employment or appointment to any office, under the State; and Cl. (2)

prohibits discrimination on certain grounds in respect of any such employment or appointment. It would thus appear that Art.14 guarantees the

general right of equality ; Arts.15 and 16 are instances of the same right in favour of citizens in some special circumstances Art. 15 is more general

than Art.16, the latter being confined to matters relating to employment or appointment to any office under the State. It is also worthy of note that

Art.15 does not mention "descent" as one of the prohibited grounds of discrimination, whereas Art.16 does. We do not see any reason why the

full ambit of the fundamental right guaranteed by Art.16 in the matter of employment or appointment to any office under the State should be cut

down by a reference to the provisions in Part XIV of the Constitution which relate

to service or to provisions in the earlier Constitution Acts relating to the same subject....

There can be no doubt that S. 6(1) of the Act does embody a principle of discrimination on the ground of descent only. It says that in choosing the person to fill the new offices, the Collector shall select the person whom he may consider the best qualified from among the families of the last holders of the offices which have been abolished. This, in our opinion, is discrimination on the ground of descent only and is in contravention of Art.16(2) of the Constitution.

24. A judgment of the Supreme Court in *Deepak Sibal Vs. Punjab University and Another*, is relevant only to point out that the Supreme Court has consistently maintained that Art.14 forbids class legislation but does not forbid reasonable classification and whether a classification is permissible classification under Art.14 or not, two conditions must be satisfied, 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 nexus to the object sought to be achieved by the statute in question. A rule which purported to classify regular employees of

Government/Semi-Government Institutions/affiliated colleges/Statutory Corporations and Government Companies for the purpose of admission into the L.L.B. Degree Course(Evening) was held to be invalid. But there is also some observation in the said case on the statement of law in

Pradeep Jain v. Union of India A.I.R 1984 S.C. 1429 (supra) in these words,

. . . Bhagwati, J., (as he then was) speaking for the court observed that the effort must always be to select the best and most meritorious students

for admission to technical institutions and medical colleges by providing equal opportunity to all citizens in the country and expressed an opinion

that such reservation should, in no event, exceed the outer limit of 70 per cent which again needs to be reduced.

In *Pradeep Jain's* case A.I.R 1984 S.C. 1429 (supra), no reason appears to have been given for the observations relating to the reservation of 70

per cent of seats. In a later decision of this Court in *Nidamarti Maheshkumar Vs. State of Maharashtra and Others*, a more or less similar question

regarding regionwise reservation of seats in medical colleges for admission to

MBBS Course also came to be considered, and this time, Bhagwati, C.J., speaking for the Court, gave the reasons for reservation of 70 per cent of seats...

25. The Supreme Court was once again seized with the question, whether the rules framed by Bombay Municipal Corporation providing for

College-wise institutional preference for admission to post-graduate degree and diploma course in Medical Science is discriminatory and violative

of Art. 14 or not. The Supreme Court in *Municipal Corporation of Greater Bombay and Others Vs. Thukral Anjali Deokumar and Others*, has

stated that by the said rule, a classification has been sought to be made with the students of each particular college passing their M.B.B.S.

Examination from that college to the exclusion of any other students obtaining their M.B.B.S. Degree from the other colleges and observed,

... Thus, there is a patent discrimination inasmuch as students obtaining less marks have been preferred to those obtaining higher marks. There is

no intelligible differentia for the classification by way of collegewise institutional preference as provided by the impugned rules distinguishing the

preferred candidates in respect of each college from those excluded from such classification of college-wise institutional preference, merit has been

sacrificed, far less it has been preferred, when the University is the same for all these colleges, the syllabus, the standard of examination and even

the examiners are the same, any preference to candidates to the postgraduate degree course of the same university, except in order of merit, will

exclude merit to a great extent affecting the standard of educational institutions. In such circumstances, college wise institutional preference cannot

be supported and, it has already been noticed that this Court has not approved of such preference at all... So far as educational Institutions are

concerned, unless there are strong reasons for exclusion of meritorious candidates, any preference other than in order of merit, will not stand the

test of Art.14 of the Constitution. So, the impugned rules are discriminatory and do not satisfy the tests of reasonable classification and, as such,

cannot be sustained.

26. I may here refer to yet another case of reservation reference. A provision under which an addition of 5% marks to the students applying for

admission to the Post-Graduate Course in any of the five Medical Colleges was

made provided, the students had passed his final M.B.B.S.

Examination from the college to which admission in postgraduate courses as sought fell for consideration in State of Rajasthan and Another Vs. Dr.

Ashok Kumar Gupta and Others, . The Supreme Court started the Judgment saying,

What may "appear" to be equal treatment accorded in obeisance to the equality doctrine embodied in Art.14 of the Constitution in its application

in "reality" may result in denial of equality and may accordingly be liable to be condemned for defying the equality doctrine. This has been

illustrated by the provision embodied in Ordinance No. 278-E (d) (ii) of the Ordinance of University of Rajasthan which provides for uniform

addition of 5% marks to the students applying for admission to the post graduate course in any one of the five Medical Colleges provided the

student has passed his final MBBS Examination from the College to which admission in post-graduate course is sought. The said provision has

been held to be unconstitutional and in our opinion the conclusion reached by the High Court is right though the reasoning which has commended

itself to this Court is some what different.

After working out the net effect of 5% marks so allotted to candidates, who belonged to the same College in which they sought admission to Post-

graduate course, the Supreme Court observed,

The fortunes of the candidates would thus undergo a sea change. These who are more meritorious having secured more aggregate marks than

others would not get admission to PG courses anywhere in Rajasthan, whereas those with lesser merits would get admission, by reason of the 5%

Collegewise preference...

27. There is no doubt that one can multiply the decisions on the subject and notice that invariably in every case decided, the guiding principle has

always been that unless there is a very strong reason to allow a departure from merit, and accept as justifiable, a classification to prefer a candidate

of inferior merit over a candidate of superior merit, Art. 14 of the Constitution shall stand violated. The State can no doubt have the power to

make a special provision for socially and educationally backward classes and Scheduled Castes and Scheduled Tribes, but even that would be

violative of Arts. 14 and 15 (1) of the Constitution of India and Art.29 thereof, in

case any special provision is made for admission to an educational institution if there is no differentia and/or there is no reasonable nexus with the object to be achieved that is to say, the object of admitting the best amongst the candidates available. No exception has been made with respect to Art. 29 (2) or even with respect to Arts. 14 and 15 (1) in our constitution for reservation or a special provision for admission to educational institutions except as one in cl. (4) of Art. 15 of the Constitution of India. Courts have, however, taken notice of the historic perspective of the social economic conditions creating weaker or backward sections, groups or classes of people and allowed such policies which intended to benefit the weaker or backward sections of the society by a special provision on the principle that unless special provisions are made for those who are socially, educationally and economically handicapped, real equality may not be achieved but also insisted that such inequalities must be shown to exist de facto in a class which is identifiable as more disadvantaged or underprivileged than others, who have enjoyed social, educational and economic advantages and privileges. The law of consensus which has emerged from the decisions therefore is that the State may make a special provision for the promotion of educational and economic interests of the weaker sections of the people and for protection of interests of socially and educationally backward classes including the Scheduled Castes and Scheduled Tribes, but it must always be remembered that such a special provision must first concern the weaker sections of the people such as socially and educationally backward classes, Scheduled Castes and Scheduled Tribes and the object behind such a special provision is to promote the educational and economic interests of such people.

28. Adverting to the five marks bonus scheme envisaged in the impugned G.O., it appears that it has got nothing to do with the weaker sections of the people whose interest is sought to be promoted as provided in the directive in Art. 46 of the Constitution of India. It is sought to be applied to all categories of people, whether they are in the category of Backward Class or Most Backward Class, or Scheduled Caste or Scheduled Tribe or in the general category in which those who belong to higher strata of society are competing. I have already noticed that special provisions have

already been made for Backward Classes, Most Backward Classes, Scheduled Castes and Scheduled Tribes as well as for physically

handicapped widows, eminent sportsmen, etc. Those special provisions apparently are made with a view to protect the interests of the weaker

sections of the people including the Scheduled Castes and Scheduled Tribes, who belong to socially and educationally backward classes. In their

case also, the so called five bonus marks are sought to be added to a candidate who is sought to be identified as the first person from his/her family

to claim the concession for entry into professional course of study. It contemplates that five extra marks will be applicable only to a candidate in

whose family there is no graduate in any discipline on the date of application. Learned Advocate-General has produced the file in which at one

place there appears to be a serious exercise done to understand as to what a family means. The respondents have been aware of various

definitions and meanings given to the term "family" in different enactments. They knew that the term family is really one of great flexibility and is

capable of many different meanings according to the context in which it is used and its meaning may become narrow or broad depending upon the

intention of the Legislature or the context in which it is used. Courts have always held that it would neither be possible nor desirable to permit a

comprehensive formula or an exhaustive definition to indicate the meaning of the term "family". It may have therefore one meaning in a permissive

society and another in non-permissive society. It may have one meaning in a joint family and another in which every individual may constitute a

separate family. A broad common sense view taken with due regard to the facts and circumstances of each case including the social order, the

habits, the customs and the ideas of living in the community alone can give a proper and reasonable understanding of the word "family". It appears

from the impugned G.O. that an artificial meaning or definition has been introduced by saying that father, mother, brother and unmarried sister in

addition to the applicant are considered as members of the family for this purpose. A brother may be married or unmarried may be a major or a

minor. It is not difficult to understand that a brother dependent upon the parents like the applicant/candidate concerned may belong to the family.

But it cannot be said with respect to a married brother or a major brother, who having become an adult and entitled to have his own life and family

decides to separate from his parents. Once separated from the joint family by express declaration to be away from the parents, if a Hindu, he would cease to be a member of the joint family of the parents and if a Mohamedan or a Christian, he would constitute a separate family for all practical purposes without even bothering for the incidence or consequence of a joint family or co-parcenary. Even father and mother of a candidate may not always be found together. Such elements of disenchantment between husband and wife which are common in permissive society have already intruded into our society and it is no longer a sin for a wife to live away from the husband or a husband to divorce his wife. A child may remain with the mother or father depending upon the conditions in which they separate. If one who has chosen to live away from the son or daughter who is seeking admission is a graduate yet because he/she is born of him or her, he(?) shall be disqualified. Even if this artificial family is identified and the incidents noticed by me are ignored, when attempt is made to know why such a concession be given to a candidate in whose family there is no graduate, the records reveal that the respondents have not been unaware of the fact that there are certain qualifications both in medicine and engineering and in many other disciplines which are equivalent to a degree or even superior to a degree such as A.M.I.E. which is treated to be equivalent to B.E. Degree Course in Engineering; and a Diploma which a Chartered Accountant obtains without being a graduate in any discipline or even certain diplomas in Business Management and such other courses where for entry to the courses of study graduation is not required. Even if there is no such a person in the family having diploma or a certificate of efficiency in disciplines where graduation is not required and whose diplomas and certificates are either equivalent to a degree or superior to it, the candidate can seek the benefit of five bonus marks envisaged in the G.O. There are scholars in Sanskrit, Arabic, Persian and other similar languages, literature and disciplines, who are educated even better than the graduates and who occupy a higher position both socially and economically. How are they treated under the G.O.? A candidate belonging to their family can claim the benefit of the five marks bonus under the G.O. It is indeed curious why a child of a business magnate who is not a graduate or there is no graduate member in his family, who is capable of sending his ward to any institute or institution in this country and

abroad has been equated with the child of a peddler who is not a graduate and in whose family, there is no other graduate or a tiller of land or a

peasant, who can hardly afford to move his child for education to any place unless some help is given to him to educate his child. How does this

G.O. compare a graduate clerk's family with that of the family of a Chartered Accountant, who is not a graduate or a person who holds a diploma

in Business Management and is the proprietor of a business firm or the Managing Director of a Company dealing in high stakes and earning beyond

measure? A class, I have already noticed, is a homogeneous section of the people, grouped together because of certain likeness or common traits

and who are identifiable by similar attributes such as status, rank, occupation, residence in a locality, race, religion and the like. It is difficult to find

any common trait between such diversified sections of people only for the reason of there being no graduate in their family being classified as a

section of the people for a special provision that too in the teeth of Arts.29 (2) and 14 of the Constitution of India.

29. Since such a mixture of candidates for this special treatment has been created it is just impossible to suggest that they are a weaker section of

the society. Art.46 of the Constitution has recognised weaker sections of the people and in particular Scheduled Castes and Scheduled Tribes to

promote with special care their educational and economic interests. The phrase ""educational and economic interests"" cannot be split into

educational interests and economic interests. Judicial consensus is clear and unequivocal in reading the words ""socially and educationally

backward"" in Art.15 (4) of the Constitution of India as one entity and frowning upon any attempt to read therein social backwardness separately

and educational backwardness separately. Under Art.46, similarly, special care has to be taken for promoting the educational and economic

interests of the weaker sections of the people i.e., all sections of the people who are disadvantaged or backward compared to other persons

educationally and economically advantaged. This article which embodies the concept of distributive justice, in my opinion, is not available to the

State to suggest that it has the avowed object of promoting with a special care the educational and economic interests of the weaker sections of the

people in issuing the impugned G.O. This G.O. is neither one which has got anything to do with the weaker sections of the people nor any thing to

do with the promotion of the educational and economic interests of any weaker sections of the people. Instead of classifying a homogeneous section of the people, it has evidently formed a heterogeneous group. Instead of looking into the weaker sections of the people, it has clubbed the strong and the weak together.

30. The return of the respondents states that the object of the G.O. is to give a special treatment in the matter of selection to the professional courses to those, candidates hailing from non-graduate families irrespective of their religion, race, caste, or language and, in doing so, there is no discrimination of any kind; the petitioners have confused the object of selection to the medical course with that of the object of the policy behind the Government Order; in other words, learned Advocate-General has contended the object of issuing the G.O. need not be the same as the object of selection to medical courses meaning thereby that the object of selection to medical courses may be that the best and the most meritorious should be selected, but since the Government Order is intended to extend a benefit to the families, who do not have graduates, and according to them, such families were construed by them as educationally backward families, the Court should not seek rational nexus to the object of selection to medical course in considering whether this G.O. is valid or not. It is difficult, in my opinion, to countenance such a contention.

I have referred to the authorities and noticed the ratio and the consensus that in the matter of admission to the educational institutions, merit and merit alone is the object and unless there is a strong reason, any departure from it will be violative of Art.14 of the Constitution of India. The Government may have the idea of the educational backwardness of the families for the reason that there is no graduate in the family. But they cannot ignore the merit or infringe it to benefit any other person, who does not qualify for admission to a professional course on merit on their own considerations of any imaginary or frictional backwardness. Different considerations may arise, if the backwardness is one envisaged in Art.46 of the Constitution of India or under Cl. (4) of Art.15 thereof and not otherwise. Even in the cases covered by Art.46 and Art.15(4) of the Constitution, the rule of reasonable differentia and rational nexus to the object of selection to the professional educational courses shall be applied

as the test of validity of any legislative or executive action under Art.14 of the Constitution. This is a case where admittedly no care was taken to maintain any rational nexus to the object of selection to the medical course. The same must therefore be true to admission to engineering course or the law course.

31. Learned Advocate-General has canvassed with some emphasis that the very fact that there is no graduate in a family provides sufficient

guidelines to show that such families have suffered deficiency in education and deserve a public treatment. A deficiency that inheres due to one's

own negligence and a deficiency which is suffered on account of the constraints or compulsions created by the society stand wholly separated on

two clearly distinct conditions. The former will not stand in line with the latter as it is a self-inflicted deficiency and not one inflicted by the society.

The weaker sections of the people as envisaged in Art.46 of the Constitution of India belong to the latter category. Similarly socially and

educationally backward people belong to that group. If any social constraint or compulsion is noticed as the cause of the deficiency or deprivation

and such people are treated as a class or section of the people, for a special treatment, Art.14 may not be infringed. If people belonging to the

former as well as the latter category are clubbed together and are sought to be identified as a class of people, it will be a heterogeneous and not a

homogeneous combination of people belonging to different class or strata. Since it is admitted that the rule of five bonus marks is extended to such

candidates in whose families there are no graduates and is sought to be applied to Backward Class. Most Backward Class, including Scheduled

Castes and Scheduled Tribes as well as candidates belonging to the Open Competition Group, evidently no care has been taken to distinguish the

privileged from the under privileged and thus it is in the teeth of Art.14 of the Constitution of India.

32. Yet another arguments that merit has not been compromised by grant of five bonus marks to the candidates belonging to the families in which

there is no graduate is advanced by stating that an addition of five marks in the total of 200 marks in the qualifying examination and 50 marks in the

entrance examination only marginally improves the position of the candidates chosen for this special treatment. In a supplemental return filed on

behalf of the respondents, it is stated that out of 6,384 candidates belonging to the Forward Community or Open Competition Group, 2,636

candidates claimed concession of five bonus marks, 295 candidates have been selected on merit basis, while 267 on the basis of concession; Out

of 15,064 applicants belonging to the Backward Class, 9,035 claimed concession, 799 candidates selected on the basis of concession and 804 on

merit basis. In the category of Most Backward Class, 3,839 candidates applied, 2,672 candidates claimed concession, 408 candidates selected

by concession and 366 on merit basis. In the category of Scheduled Castes, 3,017 candidates applied, 2,383 candidates claimed concession, 426

candidates selected by concession and 232 on merit basis. In the category of Scheduled Tribes, 131 candidates applied, 89 candidates claimed

concession 24 selected by concession and 12 on merit basis. How in the matter of selection on merit, balance has been substantially tilted in favour

of candidates selected by concession can be well understood by a mere glance at the sea change introduced by only five bonus marks added to

the total of 250. It is difficult to read in Art. 14 such an arbitrary fiat which has been exercised to select candidates sacrificing merit and denying

admission to the candidates, who qualified on merit in their respective reserved categories. The applicants excepted selection on the basis of their

position in the qualifying examination arrayed in accordance with merit and together entered into the entrance examination in the hope of being

selected for admission into a technical or medical institution. Out of 3,634 candidates selected, 1,925 have jumped over the head of candidates

who were above them in merit. In the categories of Most Backward Class and the Scheduled Caste, the number of candidates selected by

concession is sufficiently more than the candidates selected on merit basis. In the Backward Class and the Forward Community, according to the

return of the respondents, their number is only marginally less than the candidates selected on merit basis. Thus it has so severely upset the merit

that the so called marginal aberration in the merit list has almost caused a devastation. Even this argument of the learned Advocate-General has got

no legs to stand.

32-A. Is it the fault of the candidate that there is some one in his family who is a graduate? Is he responsible for the accident of his birth in a family

in which there is a graduate from before? The Supreme Court has found it to be a hostile discrimination with reference to the place of birth in cases

in which persons belonging to the rural areas were sought to be classified as a section of the people for special treatment. True, the word "descent"

is not to be found in Art.15(1) of the Constitution on Art.14 as in Art.16(2) of the Constitution, but no person can be blamed for being in a family

where there is a graduate or because he is a descendant of parents who are graduates or a brother or an unmarried sister, who is a graduate.

Resort to such an artificial classification is in my view, a hostile discrimination.

33. I am inclined to think that any departure from merit for "admission to educational institution of a citizen of India, which is guaranteed under

Arts.14, 15 (1) and 29 (2) of the Constitution can be justified if the law or the executive order under which such a special provision is made

sustainable under Art.15(4) of the Constitution or otherwise if the object is not defeated. Learned Advocate General has conceded and such is the

approach taken by the respondents in the counter-affidavit that this special provision had not been made under Art. 15(4) of the Constitution but

de hors Art.15(4). I have already referred to Art. 15(4) of the Constitution. Had there been any such idea that there should be a special provision

made independent of the exception created under Art.15 (4) of the Constitution for any section of the citizens. Art.15 (1) of the Constitution

should not have spoken categorically that the State shall not discriminate against any citizen on grounds only of religion race, caste, sex or place of

birth or any of them. Since, however, in the instant case, there is nothing to show that there is any discrimination on grounds only of religion, race,

caste or sex or place of birth or any of them, this aspect of the law is only academic in so far as Art. 15(1) and Art.29(2) of the Constitution are

concerned. Since object of selecting in accordance with merit for admission to technical colleges has been compromised by the impugned

Government Order. I find it difficult to sustain the Government Order under Art.14.

34. Our first impression was that the fact that the candidate himself is a graduate will not exclude him from the concession under the impugned

G.O. That impression was created for the reason that for admission to Three year B.L. Degree, the minimum qualification required is graduation. It

is not unknown that candidates study in qualifying subjects upto the graduation level and then switch over to some technical institution. They do so

to improve their merit. Any number of Doctors and Engineers can be found who are graduates in one or the other discipline besides being

M.B.B.S. or B.E. But learned Advocate-General has produced before us a clarification issued by the State Government in Letter (MS) No. 671

dated 18-5-1990 of Education Department, which has already been referred to above. It shows that the concession granted as per orders issued

in the impugned G.O. will apply to the candidates, who apply for Three Years Course after graduation for admission into the Three Years Law

Course but not to Five Year Law Course or to other technical courses of study. Thus a candidate, who has improved his educational qualification

and has become a graduate would suffer at the hands of a candidate, who has not improved his qualification like him although both of them may

belong to the families where parents, brothers or unmarried sisters are not graduates. Thus it is not only harsh and hostile but infringes the rule of

equality inasmuch as a better candidate similarly situated is put to disadvantageous position when five bonus marks are awarded to a candidate

who is less qualified than him. The clarification may gladden the hearts of graduates seeking admission to Three Year Law Course but inflicts

irreparable injury to one who decided to qualify himself better than other candidates seeking admission to medical/engineering and other technical

courses.

35. There is, however, one more argument advanced on behalf of the respondents, which requires consideration and disposal summarily and

dismissively. The foundation for the said argument has been laid in the counter-affidavit in the following words:

At the outset, it is submitted that the petitioners are estopped from challenging the G.O. Ms. No. 638. Education, dated 10-5-1990 since they had

acquiesced in the method of selection as set out hereunder.... Knowing fully well that there are such prescription and procedure in the matter of

selection, the petitioners have applied for admission. After having acquiesced in the said prescription and procedure and after gone through the

process of selection, it is not permissible for the petitioners to challenge the constitutional vires of the said prescription and procedure after they

were unsuccessful.

In *Olga Tellis and Others Vs. Bombay Municipal Corporation and Others*, the Supreme Court has referred to the provision of estoppel in S. 115

of the Evidence Act and Arts. 15, 16, 19, 21 and 29 of the Constitution and stated:

It is not possible to accept the contention that the petitioners are estopped from setting up their fundamental rights as a defence to the demolition of

the huts put up by them on pavements or parts of public roads. There can be no estoppel against the Constitution. The Constitution is not only the

paramount law of the land but it is the source and sustenance of all laws. Its provisions are conceived in public interest and are intended to serve a

public purpose. The doctrine of estoppel is based on the principle that consistency in word and action imparts certainty and honesty to human

affairs. If a person makes a representation to another, on the faith of which the latter acts to his prejudice, the former cannot resile from the

representation made by him he must make it good. This principle can have no application to representations made regarding the assertion or

enforcement of fundamental rights. For example, the concession made by a person that he does not possess and would not exercise his right to

free speech and expression or the right to move freely throughout the territory of India cannot deprive him of those constitutional rights, any more

than a concession that a person has no right of personal liberty can justify his detention contrary to the terms of Art. 22 of the Constitution

Fundamental rights are undoubtedly conferred by the Constitution upon individuals which have to be asserted and enforced by them, if those rights

are violated. But the High purpose which the Constitution seeks to achieve by conferment of fundamental rights is not only to benefit individuals but

to secure the larger interests of the community. The preamble of the Constitution says that India is a democratic Republic. It is in order to fulfil the

promise of the Preamble the fundamental rights are conferred by the Constitution, some on citizens like those guaranteed by Arts. 15, 16, 19, 21

and 29, and some of citizens and non-citizens, alike, like those guaranteed by Arts. 14, 21, 22 and 25 of the Constitution. No individual can barter

away the freedoms conferred upon him by the Constitution. A concession made by him is a proceeding, whether under a mistake of law or

otherwise that he does not possess or will not enforce any particular fundamental

right, cannot create an estoppel against him in that or any subsequent proceeding. Such a concession, if enforced, would defeat the purpose of the Constitution. Were the argument of estoppel valid, an all powerful State could easily tempt an individuals an individual to forego his precious personal freedoms on promise of transitory, immediate benefits. Therefore, notwithstanding the fact that the petitioners had conceded in the Bombay High Court that they have no fundamental right to construct hutments on pavements and that they will not object to their demolition after October 15, 1981, they are entitled to assert that any such action on the part of public authorities will be in violation of their fundamental rights. How far the argument regarding the the existence and scope of the right claimed by the petitioners is well founded is another matter. But, the argument has to be examined despite the confession.

Just following the above observation and clearly stating that no individual can part away a fundamental right guaranteed under Arts.15, 16, 19, 21 and 29 or Arts.14, 21, 22 and 25 of the Constitution (we in the instant case are concerned with rights under Arts.14 and 29), the Supreme Court has observed.

The plea of estoppel is closely connected with the plea of waiver, the object of both being to ensure bona fides in day to day transactions. In

Basheshar Nath Vs. The Commissioner of Income Tax, Delhi and Rajasthan and Another, a Constitution Bench of this Court considered the

question whether the fundamental rights conferred by the Constitution can be waived. Two members of the Bench (Das, C.J. and Kapoor, J.) held

that there can be no waiver of the fundamental right founded on Art.14 of the Constitution. Two others (N.H. Bhagwati and Subba Rao, JJ.) held,

that not only could there be no waiver of the right conferred by Art.14, but there could be no waiver of any other fundamental right guaranteed by

Part III of the Constitution. The Constitution makes no distinction, according to the learned Judges, between fundamental rights enacted for the

benefit of an individual and those enacted in public interest or on grounds of public policy.

We must, therefore, reject the preliminary objection and proceed to consider the validity of the petitioners' contentions on merits.

This, in my view, is sufficient to conclude against the respondents that they are

not entitled to raise the plea of estoppel in the instant case as such a plea will be a plea of estoppel against the Constitution and in particular, a plea of estoppel against the fundamental right under Arts. 14 and 29 of the Constitution.

36. The first of the case heard by us together; viz., W.P. No. 11005 of 1990 was filed before any admissions were taken in the medical colleges.

We have no information whether any admissions have been taken in other technical institutions or not. But we are informed that in the M.B.B.S.

Course, a large number of students have been admitted. That their number is quite large, who have been admitted by grant of five bonus marks has

already been noticed by me. The view, which I have taken is leading me to the conclusion that the impugned G.O. is ultra vires the Arts.14 and

29(2) of the Constitution of India. Yet, the students who have been admitted by concession have not committed any wrong by claiming the

concession because such was the representation of the respondents in the prospectus. As a result of the quashing of the impugned G.O., their

admission will be invalid. They may as a consequence of our order be removed from the rolls of their respective colleges. This shall be too harsh a

consequence. How to obviate it? In quite a few cases, the Courts including the Supreme Court have devised a method of giving a protection to the

concerned respondents to make same special arrangement to continue such students, who have already been admitted but at the cost of all those

who are entitled to be admitted, by creating additional seats or by providing to them a special class treating them separately from the candidates

selected in accordance with the rules. The instant case is one in which for the academic year 1990-91, in the M.B.B.S. Course, such a special care

should be extended to the candidates who have already been admitted by concession.

37. To sum up, I hold unhesitatingly that the Government Order in G.O. Ms. No. 638, Education (JI) dated 10-5-1990 is ultra vires the Arts.14

and 29(2) of the Constitution of India. The respondents are obliged to follow the merit list and admit students in accordance with the rules without

granting any bonus marks as envisaged under the said G.O. They however, may make a special arrangement to continue on the rolls of the colleges

to which students have been admitted by grant of five bonus marks, but only

after filling any of the seats strictly in accordance with the merit list. It is hoped that the respondents shall make no delay in completing the admission in accordance with law so that selected candidates may not suffer on account of any delay in admission.

38. In the result, the writ petitions are allowed. The impugned G.O. viz, G.O. Ms. No. 638, Education (JI) dated 10-5-1990 is hereby quashed.

The respondents are directed to fill in the seats in technical institutions/ professional colleges in accordance with merit and the rules applicable for admission to these institutions. They may, however, make such arrangements as are permissible under the law to allow the students admitted by concession of five bonus marks to continue their study in the above institutions in addition to the students admitted strictly in order of merit and the rules governing admission. No costs.

Bakthavatsalam, J.

39. I have had the opportunity of reading the judgment of my learned brother Mishra, J. With respect, I do not agree with it.

40. The petitioners are candidates seeking admission to M.B.B.S., B.D.S., and B.L., Degree courses for the year 1990-91.

41. In all these petitions, the petitioners challenge the vires of G.O. Ms. No. 638, Education (JI) Department dated 10th May, 1990 as

unconstitutional. It is necessary to extract the said Government Order, which is impugned in these writ petitions which runs as follows:

ORDER: With a view to give encouragement to the first applicant of families having no graduates seeking admission to the Degree courses in the

Professional courses, as announced in the floor of the House of the Legislative Assembly on 10-4-1990 by the Honourable Chief Minister, the

Government order what 5 (five) Bonus marks be awarded to students who apply for admission into the Engineering, Medical, Law, Agricultural

and Veterinary Colleges and happen to be the first such applicants in their families which have no single graduate till date from among their

members, i.e., their parents or brothers or unmarried sisters on the day of the application.

In case of admission into the Engineering, Medical, Agricultural and Veterinary colleges, students are admitted on communal rotation basis, taking

into account the marks obtained by them in the Public Examination, as well as

the marks obtained by them in the Entrance Examination. With regard to the admission into the Law College, students are admitted on communal rotation basis taking into account of their marks obtained in the Entrance Examination. Hence, the Director of Technical Education and the Director of Medical Education are hereby directed to supplement with more appropriate questions in the application form so that the candidates seeking admission into Engineering, Medical, Agricultural and Veterinary Colleges will furnish details of graduate in their families. The Tamil Nadu Agricultural University and the Tamil Nadu Veterinary and Animal Sciences University are also directed in the same manner in the matter of admission to the respective undergraduate courses. In case of the Law College, the applicants are required to furnish details about them in the application for the Entrance examination, itself for which the Director of Legal Studies is hereby instructed to include necessary questions in the application form therefor. At first, the applicants and their parents have to give a joint declaration. The applicant concerned will be awarded 5 (five) Bonus Marks on the basis of the declaration. At the time of joining the college, the applicants should produce certificates to this effect obtained from the Tahsildar or Deputy Tahsildar of the area in which the parents of the applicants reside. Suitable criminal action will be taken against those who have furnished bogus certificates or false particulars, in addition to be forfeited.

The above orders will come into effect from the Academic year, 1990-91. The Heads of Department, are requested to take follow-up action thereon.

(By order of the Governor)

V. Sankarasubbaiyan,

Secretary to Government.

42. The facts are not in dispute. The above mentioned Government Order has been noted in the prospectus issued to the candidates.

43. Since my learned brother Mishra, J. has extracted the conditions of the prospectus and the eligibility of the candidates seeking for admission into professional courses and the points raised by the petitioners and the averments made in the counter affidavit filed by the respondent State. I do

not want to repeat the same.

44. The sum and substance of the arguments of Mr. R. Krishnamoorthy, learned senior counsel appearing for the petitioners supplemented by the

arguments of Mr. R. Gandhi, Mr. V. Subramaniam, Mr. V. Vadivelu, Mr. G. Masilamani, Mr. Arvind Datar, Mr. Bakthavatchalam, Mr. Mohan

Parasaran, Mr. Sundaravaradan and Mr. P.H. Pandian is that the classification has no nexus to the object of selection and would therefore be

violative of Art.14 of the Constitution. He further argues that the addition of five marks is unrelated to the method and object of selection, that once

a common entrance examination has been prescribed for all candidates, it is not open to the Government to provide for concession within the said

class, that the impugned Government Order must be justified under Art.15(4) of the Constitution in that it contemplates reservation for group of

citizens who are both socially and economically backward and not either one or the other, that the award of five marks would affect large number

of meritorious candidates and that there are chances of candidates obtaining false certificate and declaration. The other contention raised by Mr.

Vadivelu, is that the definition of "family" is artificial.

45. I have carefully considered the arguments of learned counsel appearing for petitioners.

46. The only question which is to be decided in these cases is whether the impugned Government Order offends Art.14 of the Constitution of

India, because the learned Advocate General has conceded that he is not justifying the five bonus marks as the first graduate concession under

Art.15(4) of the Constitution. What all had been done is that by the Government Order, which is impugned herein, the Government had ordered

that the first applicant from families where there are no graduates and seeking admission to professional degree courses be awarded five bonus

marks, if they happen to be the first of such applicants in their family which have no single graduate till date from among their members (i.e.) their

parents or brothers or unmarried sisters on the date of the application including the candidate. The learned Advocate General contends that the

policy of the Government is to see that necessary weightage of marks is given so that each family in the State will have a professional graduate and

that such a policy is a laudable policy. The learned Advocate General points out

that it is common knowledge that families where there are professional graduates encourage other members of the family to take such professional courses. According to the learned Advocate General the result is that there is uneven levels of development in the sphere of education in the State and that with a view to reduce the uneven levels of development in the sphere of education in the State and to produce equality on a proper basis by eliminating de facto inequities and to place the disadvantaged sections of the community on a footing of equality with more advantaged and very powerful sections, the impugned Government Order has been issued. It is further contended by the learned Advocate General that such weightage will provide for the disadvantaged and promote their levelling up so that in the long run community at large may enjoy a general measure of real and equal opportunity. The learned Advocate General points out that the object of the Government Order is only to give equal opportunities to such students from a family where there is no graduate who are now at a disadvantaged position. The learned Advocate General further argues that no reservation is involved in these cases and the merit is not given a go by or overlooked. According to the learned Advocate-General, only weightage is given to the students coming from a family where there is no graduate so that the disadvantage which they have may be offset by awarding 2% of the total marks. Learned Advocate General points out that since the percentage or the total number of seats reserved for Backward Class, Most Backward Class and Scheduled Caste remains constant, the concession given to the students by the impugned Government Order will not affect the said reservation of Backward Class. Most Backward Class and Schedule Caste and Schedule Tribe etc. He further points out that there is no violation of Art.14 of the Constitution.

47. In *Kumari Chitra Ghosh and Another Vs. Union of India (UOI) and Others*, , the Supreme Court has upheld sub R. (c) and (h) of R. 4 of

College Prospectus under which the reservation of seats to admission to Medical College for Maulana Azad Medical College, Delhi was made in

favour of sons and daughters of residents of Union territories other than Delhi, sons and daughters of Central Government servants posted in Indian

Missions abroad, the Cultural Colombo Plan and Thailand Scholars and Jammu

and Kashmir Scholars. In that case, the Supreme Court referring to the decision in Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others, held as follows: (at p. 38)

.....As laid down in Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others, Art.14 forbids class legislation; it does not forbid reasonable

classification. In other words to pass the test of permissible classification two conditions must be fulfilled, (i) that the classification is founded on

intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and, (ii) that differentia must

have a rational relation to the object sought to be achieved.

In the above mentioned case, the Supreme Court has further observed as follows: (at p. 39)

..It is the Central Government which bears the financial burden of running the medical college. It is for it to lay down the criteria for eligibility. From

the very nature of things it is not possible to throw the admission open to students from all over the country. The Government cannot be denied the

right to decide from what sources the admission will be made. That essentially is a question of policy and depends inter alia on an overall

assessment and survey of the requirements of residents of particular territories and other categories of persons for whom it is essential to provide

facilities for medical education. If the sources are properly classified whether on territorial geographical or other reasonable basis it is not for the

courts to interfere with the manner and method of making the classification..

(underlining is mine).

In that case the Supreme Court distinguished the decision in Minor P. Rajendran Vs. State of Madras and Others, stating that the classification

made in that case was district wise and as such it had to be considered that it had reasonable relation with the object sought to be achieved. It is to

be noted that the Supreme Court held in those cases, the main purpose of admission to a medical college was to impart education in the theory and

practice of medicine.

48. In N. Vasundara Vs. State of Mysore and Another, the Supreme Court has held that ""proper classification and selection from such classified

groups made for imparting medical education to available candidate with the object and purpose of providing broad-based medical aid to the

people of the State and to provide medical education to those who are test suited for such education cannot be challenged on ground of inequality

violating Art.14 ""'. Taking note of the earlier decisions, the Supreme Court has held as follows: (at p. 1442)

..The decision in Minor P. Rajendran Vs. State of Madras and Others, was distinguished on the ground that in the case the classification made

districtwise had been considered to possess no reasonable relation with the object sought to be achieved. It was also observed i Kumari Chitra

Ghosh and Another Vs. Union of India (UOI) and Others,

..It is the Central Government which bears the financial burden of running the medical college. It is for it to lay down the criteria for eligibility. From

the very nature of things it is not possible to throw the admission open to students from all over the country. The Government cannot be denied the

right to decide from what sources the admission will be made. That essentially is a question of policy and depends inter alia on no overall

assessment and survey of the requirements of residents of particular territories and other categories of persons for whom it is essential to provide

facilities for medical education. If the sources are properly classified whether on territorial, geographical or other reasonable basis it is not for the

Courts to interfere with the manner and method of making the classification.

According to this observation which merely reaffirms the settled law, if the sources are properly classified on reasonable basis, then Courts are not

expected to interfere with the manner and method of making the classification. Reasonable basis is not arbitrary or fanciful, but bears a just, rational

and intelligible relation with the object sought to be achieved by the classification.

In that case, the Supreme Court has further observed as follows: (at page 1443)

..The object of framing the impugned rule seems to be to attempt to impart medical education to the best talent available out of the class of persons

who are likely, so far as it can reasonably be foreseen to serve as doctors, the Inhabitants of the State of Mysore it is true that it is not possible to

say with absolute certainty that all those admitted to the medical colleges would necessarily stay in Mysore State after qualifying as doctors they

have indeed a fundamental right as citizen to settle anywhere in India and they are also free, if they so desire and can manage, to go out of India for

further studies or even otherwise. But these possibilities are permissible and

inherent in our constitutional set up and these considerations cannot adversely affect the constitutionality of the otherwise valid rule..

As such, I am of the view that it is not open to this Court to think about the working of the Rule of awarding of bonus marks. As rightly pointed out by the Supreme Court in the above mentioned case, the possibilities are permissible and inherent in our constitutional set-up and these considerations cannot adversely affect the constitutionality of the otherwise valid rule. In the above mentioned case, the Supreme Court has further observed as follows: (at p. 1443)

The need and demand for doctors in our country is so great that young boys and girls feel that in medical profession they can both get gainful employment and serve the people. The State has therefore to formulate with reasonable foresight a just scheme of classification for imparting medical education to the available candidates which would serve the object and purpose of providing broad-based medical aid to the people of the State and to provide medical education to those who are best suited for such education. Proper classification inspired by this consideration and selection on merit from such classified groups therefore cannot be challenged on the ground of inequality violating Art.14. The impugned rule has not been shown by the petitioner to suffer from the vice of unreasonableness. The counter-affidavit filed by the State on the other hand disclosed the purpose to be that of serving the interests of the residents of the State by providing medical aid for them.

The counter-affidavit filed by the respondent State before this Court discloses the purpose to be that of serving the interests of the families in which there is no graduate. In D.N. Chanchala Ors. Vs. The State of Mysore and Others, the Supreme Court has held as follows: (at p. 1769)

..Since it would not be possible to admit all candidates in the medical colleges run by the Government, some basis for screening the candidates had to be set up. There can be no manner of doubt and it is now fairly well settled, that the Government, as also other private agencies, who found such centres for medical training, have the right to frame rules for admission so long as those rules are not inconsistent with the university statutes and regulations and do not suffer from infirmities, constitutional or otherwise. Since the universities are set up for satisfying the educational needs of

different areas where they are set up and medical colleges are established in those areas, it can safely be presumed that they also were so set up to satisfy the needs for medical training of those attached to those universities. In our view, there is nothing undesirable in ensuring that those attached to such universities have their ambitions to have training in specialised subjects, like medicine, satisfied through colleges, affiliate to their own universities. Such a basis of selection has not the disadvantage of districtwise or unit-wise selection as any student from any part of the State can pass the qualifying examination in any of the three universities irrespective of the place of his birth or residence. Further, the rules confer a discretion on the selection committee to admit outsiders upto 20 per cent of the total available seats in any one of these colleges, i.e., those who have passed the equivalent examination held by any other university not only in the State but also elsewhere in India. It is, therefore, impossible to say that the basis of selection adopted in those rules would defeat the object of the rules as was said in *Minor P. Rajendran Vs. State of Madras and Others*, or make possible less meritorious students obtaining admission at the cost of the better candidates. The fact that a candidate having lesser marks might obtain admission at the cost of another having higher marks from another university does not necessarily mean that a less meritorious candidate gets advantage over a more meritorious one. As is well known, different universities have different standards in the examinations held by them. A preference to one attached to one university in its own institutions for post-graduate or technical training is not uncommon. Rules giving such a preference are to be found in various universities. Such a system for that reason alone is not to be condemned as discriminatory, particularly when admission to such a university by passing a qualifying examination held by it is not precluded by any restrictive qualifications, such as birth or residence, or any other similar restrictions. In our view, it is not possible to equate the present basis for selection with those which were held invalid in the aforesaid two decisions. Further, the Government which bears the financial burden of running the Government colleges is entitled to lay down criteria for admission in its own colleges and to decide the sources from which admission would be made, provided of course, such classification is not arbitrary and has a rational basis and a reasonable connection with the object of the Rules. So long as there is

no discrimination within each of such sources, the validity of the rules laying down such sources cannot be successfully challenged. In our view the rules lay down a valid classification. Candidates passing through the qualifying examination held by a university form a class by themselves as distinguished from those passing through such examination from the other two universities. Such a classification has a reasonable nexus with the object of the rules, namely, to cater to the needs of candidates who would naturally look to their own university to advance their training in technical studies. In our opinion, the rules cannot justly be attacked on the ground of hostile discrimination or as being otherwise in breach of Art.

14...

The above mentioned case in D.N. Chanchala Ors. Vs. The State of Mysore and Others, distinguished the cases in Minor P. Rajendran Vs. State of Madras and Others, and also in Minor A. Peeriakaruppan and Sobha Joseph Vs. State of Tamil Nadu and Others, . As such, in my view, the Government can regulate admission to its own institutions. He further contends that the object of selection for such admission is to get the best possible material from each class which the Government has undoubtedly a right to prescribe.

49. In my view, while making the classification of applicants coming from where there is no graduate, no other class of persons who have similar attributes have been excluded. As pointed out by the learned Advocate General, all the students are considered on merits and once a list of meritorious students have been drawn up a weightage of five marks has been given to the students who come from a family where there is no graduate. In my view, this is a reasonable classification and the Government has prescribed a new source for concessional treatment. I am also of the view that the impugned order has to be tested with regard to the object and policy behind the Government Order and that it is not for this Court to decide what will be the impediments when the policy is implemented. In my view, it is sufficient if the policy has rational nexus to the object sought to be achieved and so long as the said policy is implemented without discriminating between the persons coming within the classification. I do not think the argument of Mr. R. Krishnamoorthy, the learned senior counsel appearing on behalf of the petitioners based on

Art.14 of the Constitution contending that the said Government Order is violative of Art.14 can be accepted.

50. It is worthwhile to refer to the decision of Supreme Court in Kerala Hotel and Restaurant Association and others Vs. State of Kerala and

others, , wherein the Supreme Court has observed as follows: (at p. 919)

A catena of decisions was cited at the bar on the point relating to valid classification and the test to be applied when hostile discrimination is

alleged. It is not necessary to refer to all those decisions which state the settled principles not in dispute even before us. The difficulty really is in the

application of settled principles to the facts of each case. It is settled that classification founded on intelligible differentia is permitted provided the

classification made has a rational nexus with the object sought to be achieved in other words, those grouped together must possess a common

characteristic justifying their inclusion in the group, but distinguishing them from those excluded; and performance of this exercise must bear a

rational nexus with the reason for the exercise.

51. In Dr. Jagadish Saran and Others Vs. Union of India (UOI), while considering the question of admission to educational institution and the

scope and applicability of Arts.14 and 15 of the Constitution, V.R. Krishna Iyer, J. observed at p. 827 as follows:

..Constitutional equality itself is dynamic, flexible, and moulded by the variables of life. For instance, if a region is educationally backward or

woefully deficient in medical services, there occurs serious educational and health-service disparity for that human region which must be redressed

by an equality-and-service minded welfare State. The purpose of such a policy is to remove the existing inequality and to promote welfare-based

equality for the citizens of the backward regions. The specific strategy to ameliorate the unequal societal condition is left to the State, provided it is

geared to producing equality in the quality of life of that handicapped area subject, of course, to basic recognition of individual quality and criteria

of efficiency.

If the State, for example, seeks to remove the absence of opportunity for medical education of adivasis or islanders who have no inclination or

wherewithal to go to far-off cities and join medical colleges, by starting a regional university and medical college in the heart of such backward

region and reserves a high percentage of seats there to "locals" i.e., students from that university, it cannot be castigated as discriminatory. What is

directly intended to abolish existing disparity cannot be accused of discrimination.

Again, if the State finds that only students from the backward regions, when given medical graduation, will care to serve in that area, drawn

towards it by a sense of belonging, and those from outside will, on graduation, leave for the cities or their own regions, it may evolve a policy of

preference or reservation for students of that university. That strategy ensures the probability of their serving the backward people for whose

benefit the medical courses were opened. Such measures which make for equality of opportunity for medical education and medical service for

backward human sectors may be constitutionalised even by Arts. 14 and 15.

The Supreme Court has further observed at p. 831 which reads as follows:

..But the core reasoning has crucial significance in all cases of protective discrimination. The process of equalisation and benign discrimination are

integral, and not antagonistic to the principle of equality. In a hierarchical society with an indelible feudal stamp and incurable actual inequality, it is

sophistry to argue progressive measures to eliminate group disabilities and promote collective equality are anathema on the score that every

individual has entitlement on pure merit of marks. This narrow "unsocial" pedantry subverts the seminal essence of equal opportunity even for those

who are humble and handicapped. Meritocracy cannot displace equality when the utterly backward masses labour under group disabilities. So we

may weave those special facilities into the web of equality which, in an equitable setting, provide for the weak and promote their levelling up so

that, in the long run, the community at large may enjoy a general measure of real equal opportunity. So we hold, even apart from Art.15(3) and (4),

that equality is not negated or neglected where special provisions are geared to the larger goal of disabled getting over their disablement

consistently with the general good and individual merit. Indeed, Art.14 implies all this, in its wider connotation, and has to inform the interpretation

of Art. 15..

In my view, when testing the impugned Government Order before us, the dicta laid down by the Supreme Court in the above mentioned case has

to be borne in mind. In Maganlal Chhaganlal (P) Ltd. Vs. Municipal Corporation of

Greater Bombay and Others, the Supreme Court was

concerned with the vires of the provision of the Bombay Municipal Corporation Act, and while considering the scope of Art.14 of the Constitution.

A. Alagiriswami, J. has held that Art.14 of the Constitution does not demand a fanatical approach. In Dr. Pradeep Jain and Others Vs. Union of

India (UOI) and Others, posing the question "what we mean when we say that selection for admission to medical colleges must be based on

merit", the Supreme Court answered at p. 1431 as follows:

...What is merit which must govern the process of selection? It undoubtedly consists of a high degree of intelligence coupled with a keen and

incisive mind, sound knowledge of the basic subjects infinite capacity for hard work, but that it is not enough; it also calls for a sense of social

commitment and dedication to the cause of the poor. We agree with Krishna Iyer, J., when he says in Dr. Jagadish Saran and Others Vs. Union of

India (UOI), : "If potential for rural service of aptitude for rendering medical attention among backward people is a criterion of merit½and it,

undoubtedly, is in a land of sickness and misery, neglect and penury, wails and tears½then, surely, belonging to a university catering to a deprived

region is a plus point of merit. Excellence is composite and the heart and its sensitivity are as previous in the case of educational values as the head

and its creativity and social medicine for the common people is more relevant than peak performance in freak cases." Merit cannot be measured in

terms of marks alone, but human sympathies are equally important. The heart is as much a factor as the head in assessing the social value of a

member of the medical profession. This is also an aspect which may, to the limited extent possible, be borne in mind while determining merit for

selection of candidates for admission to medical colleges though concededly, it would not be easy to do so, since it is a factor which is extremely

difficult to judge and not easily susceptible to evaluation.

We may now proceed to consider what are the circumstances in departure may justifiably be made from the principle of selection based on merit.

Obviously, such departure can be justified only on equality-oriented grounds, for whatever be the principle of selection followed for making

admissions to medical colleges, it must satisfy the test of equality. Now the concept of equality under the Constitution is a dynamic concept. It

takes within its sweep every process of equalisation and protective discrimination. Equality must not remain mere idle incantation but it must become a living reality for the large masses of people. In a hierarchical society with an indelible feudal stamp and incurable actual inequality, it is absurd to suggest that progressive measures to eliminate group disabilities and promote collective equality on the ground that every individual is entitled to equality of opportunity based purely on merit judged by the marks obtained by him. We cannot countenance such a suggestion, for to do so would make the equality clause sterile and perpetuate existing inequalities. Equality of opportunity is not simply a matter of legal equality. Its existence depends not merely on the absence of disabilities but on the presence of abilities. Where, therefore, there is inequality, in fact, legal equality always tends to accentuate it. What the famous poet William Blake said graphically is very true, namely, "One law for the Lion and the Ox is oppression." Those who are unequal, in fact, cannot be treated by identical standards; that may be equality in law but it would certainly not be real equality. It is therefore, necessary to take into account de facto inequalities which exist in the society and to take affirmative action by way of giving preference to the socially and economically disadvantaged persons or inflicting handicaps on those more advantageously placed, in order to bring about real equality. Such affirmative action though apparently discriminatory is calculated to produce equality on a broader basis by eliminating de facto inequalities and placing the weaker sections of the community on a footing of equality with the stronger and more powerful sections so that each member of the community, whatever is his birth, occupation or social position may enjoy equal opportunity of using to the full his natural endowments of physique, of character and of intelligence. We may in this connection usefully quote what Mathew, J., said in The Ahmedabad St. Xavier's College Society and Another Vs. State of Gujarat and Another,

It is obvious that "equality in law precludes discrimination of any kind; whereas equality, in fact, may involve the necessity of differential treatment in order to attain a result which establishes an equilibrium between different situations.

We cannot, therefore, have arid equality which does not take into account the social and economic disabilities and inequalities from which large

masses of people suffer in the country. Equality in law must produce real equality, de jure equality must ultimately find its *raison d'être* in de facto

equality. The State must, therefore, resort to compensatory State action for the purpose of making people who are factually unequal in their wealth,

education or social environment, equal in specified areas. The State must, to use again the words of Krishna Iyer, J., In *Dr. Jagdish Saran and*

Others Vs. Union of India (UOI), weave those special facilities into the web of equality which, in an equitable setting, provide for the weak and

promote their levelling up so that, in the long run, the community at large may enjoy a general measure of real equal opportunity. Equality is not

negated or neglected where special provisions are geared to the large goal of the disabled getting over their disablement consistently with the

general good and individual merit. The scheme of admission to medical colleges may, therefore, depart from the principle of selection based on

merit, where it is necessary to do so for the purpose of bringing about real equality of opportunity between those who are unequals.

In my view, the principle laid down in the above mentioned case in *Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others*, has got to

be applied vigorously to the facts of the case on hand.

52. It is worthwhile to refer to the decision in *Deepak Sibal Vs. Punjab University and Another*, wherein the Supreme Court, referring to the

discrimination to admission to evening classes in L.L.B. three year degree course, observed at p. 906 as follows:

It is now well settled that Art.14 forbids class legislation, but does not forbid reasonable classification. Whether a classification is a permissible

classification under Art.14 or not, two conditions must be satisfied, 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

nexus to the object sought to be achieved by the statute in question...

53. Referring to the decision in *State of Uttar Pradesh and Others Vs. Pradip Tandon and Others*, an argument was put forth that there was no

homogeneity in the classification. That case relates to reservation of seats for rural areas and as such in that case it was held that many rural families

in Haryana are rich and educated and that it cannot be said that the people from

all rural areas are socially and educationally backward and that would result in reservation of 80% of the total number of seats, if such a classification was made. In such circumstances, in the above mentioned case, the Supreme Court has held that there is no homogeneity in such a classification inasmuch as all the rural areas are not the same. But, in so far as the present classification on hand is concerned, all families where there is no graduate fall within the classification without any exception and therefore no question of homogeneity arises. Besides, the object of the Government Order is that to provide equal opportunities for the disadvantaged sections of the community falling within this classification to compete with the more advantaged sections of students who come from graduate families. In my view, the policy of the Government to see that each family in the State is enabled to produce a professional graduate is laudable, and this Court cannot take a strict or a minute test on this laudable policy of the State. I am of the view the object of the State is reasonable and that the classification made by the impugned Government Order has reasonable nexus to the object sought to be achieved, i.e. in selecting the candidates to the admission to the professional courses.

54. In this context, it is worthwhile to refer to Art.46 of the Constitution of India which reads as follows:

... Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections:½The 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 the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation...

Art.46 of the Constitution, extracted above, clearly states that the State has 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. Therefore, I am of the view that the present impugned Government Order has not violated Arts. 15(1) and 29(2) of the Constitution. As rightly pointed out by the learned Advocate General as long as he is not relying upon those Articles, I am of the view that the State's duty to promote the weaker sections of the people has a meaning and it

has been taken note of in the present Government Order.

55. It is worthwhile to refer to the decision in *Nidamarti Maheshkumar Vs. State of Maharashtra and Others*, at this juncture. Referring to the

decisions in *Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others*, and in *Dr. Jagadish Saran and Others Vs. Union of India (UOI)*,

in the above mentioned case, the Supreme Court observed at (p. 1364) as follows:

...The question as to what principles for selection of students for admission to the medical colleges would be permissible under Art.14 of the

Constitution came up for consideration before this Court in the leading case of *Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others*,

. The judgment in this case reviewed all the previous decisions given by this Court starting from *D.P. Joshi Vs. The State of Madhya Bharat* and

Another, and ending with *Dr. Jagadish Saran and Others Vs. Union of India (UOI)*, and after analysing these decisions the Court laid down the

principles which should govern selection of students for admission to the medical colleges consistently with the requirement of Art.14. The Court

pointed out that the primary consideration in selection of candidates for admission to the medical colleges must be merit and the object of any rules

which may be made for regulating admissions to the medical colleges must be to secure the best and most meritorious students. This was in fact the

consideration which weighed with the Court in *Minor P. Rajendran Vs. State of Madras and Others*, in striking down a Rule made by the State of

Madras allocating seats in medical colleges on districtwise basis and so also in *Minor A. Peeriakaruppan and Sobha Joseph Vs. State of Tamil*

Nadu and Others, the same consideration prevailed with the Court in striking down a unitwise scheme of selection of candidates for admission to

medical colleges in the State of Tamilnadu, which provided for constituting medical colleges in the city of Madras as one unit and each of the other

medical colleges in the mofussil as a separate unit and selection being made unitwise. The Court in both these cases clearly and categorically

proceeded on the basis of the principle that the object of any valid scheme of admissions must be to "select the best candidates for being admitted

to medical colleges" and that if any departure is to be made "from the principle of selection on the basis of merit", it must be justified on the

touchstone of Art.14. This principle was affirmed by the Court in Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others, ...

56. In my view, it is not correct to set aside progressive measures on the ground that every individual is entitled to right of equality purely on merit

judged by the marks obtained by him. Equality of opportunity is not simply a matter of legal equality. Where, therefore, there is inequality in, fact,

legal equality always tends to accentuate it. By the impugned Government Order, the Government has taken into account de facto inequalities

which existed in the society and given preference to socially disadvantaged persons in order to bring about real equality. If one looks at the

prospectus, it is very clear that only a weightage of five marks is given and merit is not given a go-by. Of course, in this method, certain candidates

who might have been normally "in" will be "out" now. But, that does not mean that the scheme evolved by the State is violative of Art.14 of the

Constitution, in so far as the State has picked up a class of students from families where there is no graduate. Students coming from families where

there are graduates and students coming from families where there are no graduates are surely, in my view, a distinct and separate class and the

classification is very reasonable.

56A. So, in my view, the State is entitled to lay down the criteria for admission and decide the source as a class by themselves. I am of the view

that this is a measure to bring equal opportunity. In Marri Chandra Shekhar Rao Vs. Dean, Seth G.S. Medical College and Others, , the Supreme

Court, considering the scope of Article 14 of the Constitution observed as follows (at p. 138):

...Equality is the dictate of our Constitution. Art.14 ensures equality in its fullness to all our citizens. State is enjoined not to deny to any persons

equality before law and equal protection of the law within the territory of India. Where it is necessary, however, for the purpose of bringing about

real equality of opportunity between those who are unequals, certain reservations are necessary and these should be ensured. Equality under the

Constitution is a dynamic concept which must cover every process of equalisation. Equality must become a living reality for the large masses of the

people. Those who are unequal, in fact, cannot be treated by identical standards. That may be equality in law but it would certainly not be real

equality. Existence of equality of opportunity depends not merely on the absence of disabilities but on presence of abilities. It is not simply a matter

of legal equality. De jure equality must ultimately find its *raison d'être* in de facto equality. The State, must, therefore resort to compensatory State

action for the purpose of making people who are factually unequal in their wealth, education or social environment, equal in specified areas. It is

necessary to take into account de facto inequalities which exist in the society and to take affirmative action by way of giving preference and

reservation to the socially and economically disadvantaged persons or inflicting handicaps on those more advantageously placed, in order to bring

about real equality. Such affirmative action though apparently discriminatory is calculated to produce equality on a broader basis by eliminating de

facto inequalities and placing the weaker sections of the community on a footing of equality with the stronger and more powerful sections so that

each member of the community, whatever is his birth, occupation or social position may enjoy equal opportunity of using to the full his natural

endowments of physique, of character and intelligence. In this connection, reference may be made to the observations of this Court in *Dr. Pradeep*

Jain and Others Vs. Union of India (UOI) and Others,

Though the Supreme Court in that case was concerned with the question of reservation, in the cases on hand, no question of reservation arises.

However, the object of the State is by the impugned Government Order is to bring about the equality by awarding five bonus marks to the

candidates who are coming from the families where there are no graduates. When the object of the Government Order is to advance the students

from weaker sections, where they are coming from families where there is no graduate, I do not think the weightage of giving five marks can be

said to be unrelated to the method and object of selection to admission to professional courses.

57. I do not think the case relied upon by the learned senior counsel appearing for the petitioners in *The State of Andhra Pradesh and Others Vs.*

U.S.V. Balram, etc., applies to the facts of the case on hand. In that case, the academic marks are considered only for eligibility and not for

selection. In the present case, different eligibility marks are prescribed to different classes, and in fact the decision of the Supreme Court relates to

a case where entrance examination was taken by the candidates. But, here the marks obtained in the academic examination were also taken into

account for the purpose of selection. As pointed out by the learned Advocate General, no reservations are made, in the impugned Government

Order, on the basis that a class has been identified as both economically and socially backward. As such, I am of the view, it is open to the State

to make any other classification so long as, it does not offend Arts. 15 (1), 29 (2) and 14. I do not think, the arguments advanced by the learned

counsel appearing for petitioners are correct.

58. As I have already said only a weightage of five marks is given to the candidates who come from a family where there is no graduate. I could

see that merit is not given a go-by. Only students with merit are selected for the admission to professional courses and when selecting those

students the weightage of five marks is given to the particular group of students who come from families where there is no graduate. In my view,

this is a reasonable classification and it is well settled that even a single individual may be in a class by himself on account of some special

circumstances or reasons applicable to him and not applicable to others. It is also well settled that a law may be constitutional even though it relates

to a single individual who is in a class by himself. It is also well settled that in order to sustain the presumption of constitutionality, the court may

take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts

which can be conceived. In *Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others*, while considering the policy of the State with regard

to viva voce examination as a permissible test for selection of candidates for admissions to a College, with regard to arbitrariness, the Supreme

Court observed as follows (at p. 499):

It must therefore now be taken to be well settled that what Art.14 strikes at is arbitrariness because an action that is arbitrary must necessarily

involve negation of equality. The doctrine of classification which is evolved by the Courts is not paraphrase of Art.14 nor is it the objective and end

of that Article. It is merely a judicial formula for determining whether the legislative or executive action in question is arbitrary and therefore

constituting denial of equality. If the classification is not reasonable and does not

satisfy the two conditions referred to above, the impugned legislative or executive action would plainly be arbitrary and the guarantee of equality under Art.14 would be breached. Wherever therefore there is arbitrariness in State action whether it be of the legislature or of the executive or of an "authority" under Art.12, Art.14 immediately springs into action and strikes down such State action. In fact, the concept of reasonableness and non-arbitrariness pervades the entire constitutional scheme and is a golden thread which runs through the whole of the fabric of the Constitution...

Considering the policy of the State by the impugned Government Order, in the light of the recent decisions of the Supreme Court, cited above, that there should be at least one graduate, that too, from professional courses in a family, in my view, cannot be said to be arbitrary, by any stretch of imagination. I am also of the view, that if a law deals equally with members of a well-defined class, it is not obnoxious and it is not open to the charge of denial of equal protection on the ground that it has no application to other persons. In such matters, the common view also has to be taken into account.

59. It is common knowledge in this part of this country that if there is no graduate in a family, that family will be looked upon by others as small. It is common in this part that in villages, people normally do not send their children for higher education, especially in these days when there is a lot of competition for the limited number of seats in professional colleges. As rightly pointed out by the learned Advocate General, a person who belongs to a particular profession, say an agricultural labourer or an artisan, always thinks, that too, to obtain a seat in the professional colleges is costly in these days. The impugned Government order sets right this injustice by putting up the students from those families where there is no graduate. The policy of the State that every family should have a graduate, that too, a professional graduate is a very laudable, object. As such, in my view, the Courts should sustain the constitutionality rather than taking a fanatic view. This has been explained succinctly, by Krishna Iyer, J. in *Dr. Jagdish Saran and Others Vs. Union of India (UOI)*, As such, I am of the view that the impugned Government order does not offend Art.14 of the Constitution, and it cannot be said to be arbitrary.

60. A contention was raised before this Court, that the definition of "family" in the impugned Government Order is artificial and uncertain. It is a matter of common knowledge that in almost all legislation with regard to land reforms, the term "family" is defined artificially. Further, the prospectus of the Government Order makes it clear that the extra mark (5 bonus marks) is applicable only to the candidates in whose family there is no graduate, in any discipline on the date of application. When the point of time is justly fixed, I do not think that there is uncertainty about it. Clause I of the prospectus makes a reference to Annexure VI, Annexure VI makes a reference to R. 1 and R. 21 of the Prospectus and R. 21 deals with the graduate concession. Therefore, the contention of the learned counsel for petitioners that there is no mention about the first graduate concession in clause 1 of the prospectus cannot be accepted.

61. A reference to the decision in *Arun Narayan v. State of Karnataka* AIR 1976 Kar 174, may be usefully made. Considering the scope of

Arts. 15 and 29(2) of the Constitution, the Karnataka High Court observed as follows (at p. 184):

...There is no right expressly conferred on a citizen to be admitted to any educational institution maintained or aided by the State or a right that he should not be discriminated in regard to admission to such educational institutions on the ground of domicile or residence, as distinguished from race, religion, caste, sex, language, or place of birth. We are unable to accept the contention of Mr. Iyengar that apart from the rights expressly specified in the provisions of the Constitution, there are certain implied rights attached to citizenship and that the right not to be discriminated against on the ground of domicile or residence in a State, in regard to admission to educational institutions, is such implied right of a citizen. When the several grounds on which a citizen shall not be discriminated against in regard to admission to educational institutions have been expressly specified in Arts. 15 and 29(2) of the Constitution, it is unreasonable to imply any other ground not expressly mentioned in those two Articles....

The above mentioned decision has been quoted with approval, by the Division Bench of this Court in *Mohamed Zackaria v. State of Tamil Nadu*

1984 W.L.R. 25 wherein the Division Bench of this Court, after referring to the decision in *D.P. Joshi v. State of Madhya Bharat* AIR 1980 S.C.

1230, observed thus:

..The colleges in Tamil Nadu as in other States are completely financed by the State and it has ample power to decide the methodology of

selection and also the policy as regards admission to these colleges Such a policy decision, if it does not offend Arts.14, 15 and 29(2) of the

Constitution, cannot be interfered with by Courts since the manner and method of selection entirely rest with State's discretion...

With respect, I agree with the conclusion arrived at by the Division Bench of this court to the above mentioned case.

62. As I have already said that this Court is concerned only with the validity of the impugned Government Order and not in working out the

method or the effect of the Government Order in actual practice. In so far as the candidates in Law Degree courses are concerned, the learned

Advocate General produced before us a letter of the Government bearing Ms. No. 671 dated 18-5-1990 and it will show that a candidate after

graduation who decided to study medicine is not entitled to the first graduate concession, but if he decided to study Law, he is eligible to the said

concession.

63. In so far as I have held that the impugned Government Order does not suffer from vires and it does not offend Arts.14 and 15 and having

come to such conclusion taking into consideration the dicta laid down by the Supreme Court and the Division Bench of this Court in the cases

mentioned above, these writ petitions fail and therefore dismissed. However, there will be no order as to costs.

Nalnar Sundaram, J.

(14th November, 1990): 1/2

64. The two learned Judges, who heard this batch of writ petitions, differed on the moot point as to whether the impugned Government Order in

G.O. Ms. No. 630. Education (JI) Department, dated 10-5-1990 is hit by Art.14 of the Constitution of India. There is a consensus expressed by

both sides through a joint memorandum filed today that this is the moot point on which I should express my views. The impugned Government

Order runs as follows:

With a view to give encouragement to the first applicant of families having no graduates seeking admission to the Degree courses in the professional

colleges, as announced in the floor of the House of the Legislative Assembly on 19-4-1990 by the Honourable Chief Minister, the Government

Order that 5 (five) bonus marks be awarded to students who apply for admission into the Engineering, Medical, Law, Agricultural and Veterinary

Colleges and happen to be the first such applicants in their families which have no single graduate till date from among their members i.e., their parents or brothers or unmarried sisters on the day of the application.

In case of admission into the Engineering, Medical, Agricultural and Veterinary Colleges, students are admitted on communal rotation basis, taking

into account the marks obtained by them in the Public Examination as well as the marks obtained by them in the Entrance Examination. With

regard to the admission into the Law College, students are admitted on communal rotation basis taking into account their marks obtained in the

Entrance Examination. Hence the Director of Technical Education and the Director of Medical Education are hereby directed to supplement with

more appropriate questions in the application form so that the candidates seeking admission into Engineering, Medical, Agricultural and Veterinary

Colleges will furnish details of graduates in their families. The Tamil Nadu Agricultural University and the Tamil Nadu Veterinary and Animal

Sciences University are also directed in the same manner in the matter of admission to the respective undergraduate courses. In case of the Law

College, the applicants are required to furnish details about them in the application for the Entrance Examination itself for which the Director of

Legal Studies is hereby instructed to include necessary questions in the application form therefor. At first, the applicants and their parents have to

give a joint declaration. The applicant concerned will be awarded 5 (five) bonus marks on the basis of the declaration. At the time of joining the

college, the applicants should produce certificates to this effect obtained from the Tahsildar or Deputy Tahsildar of the area in which the parents of

the applicants reside. Suitable criminal action will be taken against those who have furnished bogus certificates or false particulars, in addition to

this the seats allotted to them will be forfeited.

The above orders will come into effect from the Academic year 1990-91. The Heads of Departments are requested to take follow-up action

thereon.

(By Order of Governor)

V. Sankarasubbaiyan,

Secretary to Government.

In substance, the impugned Government Order, while dealing with the question of admission to degree courses in the professional colleges takes

out from the general pool, candidates hailing from families where there is no single graduate from among the members of their families on the date

of the application; the members of the families taking in the parents or brothers or unmarried sisters and confers on this group of candidates the

munificence of award of an additional five marks. The question is whether this classification will come within the permissible classification for the

purpose of Art.14 of the Constitution of India. It is now well established that while Art.14 forbids class legislation, it does permit reasonable

classification for the purpose of legislation. In order, however, to pass the test of permissible classification, two condition 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 that differentia must have a rational relation to the object sought to be achieved by the statute in question. The

classification may be founded on different bases, namely, geographical or according to objects or occupations or the like. What is necessary is that

there must be a nexus between the basis of classification and the object of the Act under consideration. It is also well established that Art.14 of the

Constitution condemns discrimination not only by substantive law but also by a law of procedure.

65. The prime moot question that looms large in the mind of the court is why this special and beneficial treatment to those candidates hailing

from families where there is no graduate among their members; family confined to the parents or brothers or unmarried sisters. Mukherjea, J. (as

he then was) in *The State of West Bengal Vs. Anwar Ali Sarkar*, spoke on the question of the classification being real and not artificial in the

following terms:

The classification should never be arbitrary, artificial or evasive. It must rest always upon real and substantial distinction bearing a reasonable and

just relation to the thing in respect to which the classification is made; and

classification made without any reasonable basis should be regarded as invalid.

In the words of Ivor Jennings, "Among equals the law shall be equal and shall be equally administered and that like shall be treated alike." The state cannot be allowed to rest by merely pointing out the classification, for it must proceed further and demonstrate the reasonableness and intelligence for the classification and differentia. The State cannot differentiate a particular individual from his fellow subjects and choose to confer on the former a benefit which places the other at a disadvantage in a common field, like the Educational field. As to what prompted the State to think about and bring in a separate class as candidates from no graduate families is set forth in the common counter-affidavit filed on behalf of the respondents. Without doing the process of summing up of what has been averred in the common counter-affidavit, it is better that relevant portions therefrom stand extracted as follows:

It is submitted that the said G.O. in question is neither unconstitutional nor ultra vires to the Constitution of India as alleged by the petitioners; on the contrary the said G.O. has been passed inter alia to achieve the avowed state policy of eliminating inequalities in facilities and opportunities amongst individuals by giving weightage to the candidates originating from the families where there are no graduates. Such giving of preference on special ground viz., promoting educational advancement of families wherein no member is a graduate would be valid in law as it has rational nexus to the object sought to be achieved by the policy in the impugned G.O. It is submitted that giving of such special preference, in the selection made to professional courses to the candidates in whose families there are no graduates is within reasonable limit and it cannot be held to be violative of Art.14 of the Constitution of India. It is most respectfully submitted that while implementing the policy of the Government, the claims of the meritorious candidates are not completely ignored and a sizable number of candidates have got selected to the professional courses on the sole ground of merit despite the fact that they were not awarded the 5 marks. Further, it is also a fact that a number of candidates who were given the benefit of the addition of 5 marks could not get selected because of their insufficient marks in the academic and entrance examination. Hence,

giving of preference on special ground viz., promoting educational advancement of families wherein no member is a graduate would be valid in law

and such a ground is not prohibited under any of the provisions of the Constitution of India.

It is submitted that the candidates originated from the non-graduate families irrespective of their community to which they belong, are surely in a

disadvantageous position in many respects when compared to the candidates hailing from graduate families. Hence in order to secure a social order

for the promotion of welfare of the disadvantaged group, the Government of Tamil Nadu extended such special weightage to the candidates of

the non-graduate families in the selection made to the professional courses. It is further submitted that the candidates hailing from graduate families

and the candidates hailing from non-graduate families need not be treated equally as they are unequals in their educational background and

status.....As regards Grounds (b) and (c) of the affidavit, it is submitted that in society many families do not have graduates and

those families were considered by the state as educationally backward families. Such families are prevalent not only in the communities enjoying

special concessions award under Art.15 (4) of the Constitution of India, but also in all other communities. Hence, the State intended to give a

special treatment in the matter of selection to the professional courses to those candidates hailing from the non-graduate families irrespective of

their religion, race, caste or language.

66. From a reading of the above passage in the common counter-affidavit, what gets elucidated as a justification for taking those candidates

coming from no graduate families, from the general pool; and showering on them a munificence of an additional five marks is the concept¹/₂I could

not call it a Conviction¹/₂that such candidates are in a disadvantageous position in many respects, when compared with the candidates hailing from

graduate families; and in order to secure a special order for the promotion of welfare of the disadvantaged group, the State extended such

special advantage to the candidates, from non-graduate families; and the State considered those families as educationally backward families. It

could be declared ad nauseam by the State that there is a policy behind the impugned Government Order. But, that policy must be one which must

go to show an intelligible differentia, which is the first of the twin tests to be passed. There are certain features which do speak and militate against this Court giving the stamp of reasonable classification or intelligible differentia to what has been done under the impugned Government Order. The accident of birth in a particular family may determine the fate of that candidate throughout his life. On this ground, though apparently looking innocuous, but really internecine he may lose his chances of entering the professional courses, where he could excel and ultimately serve the community at large. The factor of birth in a particular family is one over which the candidate has no control at all. Are we to characterise families, where there are no graduates, as a group having a disadvantage? Are we to subscribe our support to a theory that there is a need to promote the welfare of such a group to secure social equality, as the State would put it. If I give the answers in the affirmative, I shall be accused of having ignored the realities and treaded into a realm, nothing short of fictional. Members of many affluent families and belonging to the upper strata of society, refrain from pursuing academic studies and acquiring qualifications in the academic fields, because they have developed a conviction which cannot be stated to be unreal, that mere acquisition of academic qualifications is a futile process, which may prove not at all fruitful and helpful to them, with regard to progress to be made in life. For them, acquisition of academic qualifications is no impetus for coming up in life. Are we to call them as socially disadvantageous group? In contrast, there are poor and impecunious families, where there are number of graduates starving for openings in professional avenues. For them, pursuit of academic studies and qualifying themselves therein may prove the only source of coming up in life. Are we to exclude them from the disadvantageous group in the social order? The individual acumen should be the decisive factor in the field of academic pursuits and not the family antecedents. There are very many cases where persons stand completely alienated from their families for reasons, personal and social, and they have to toil their own way to come up in life. They stand disassociated from their families. To link such persons with their families for the purpose of deciding their fate cannot be called a reasonable way of dealing with the equality question. Such persons would like to exploit their talents and come up in life. Then the question is; should the accident of birth in the fictional family, where there

happens to be a graduate, despite the fact that the candidate concerned stands alienated from such family, stultify his chances of coming up in professional life, by the distribution of munificence of additional five marks to the other candidates, who may gain a march over him? Birth in a particular family is a fortuitous circumstance, and a member in the said family being a graduate or not is also fortuitous. By choice and not by compulsion, members of many families desire not to become graduate. Yet, they are very affluent and belong to the upper strata of the society. To group such families as socially backward will be a misnomer. There is no impediment, social or otherwise, for them to acquire academic qualifications. It is their preference to be non-academicians. It is not claimed that families where there are no graduates, suffered any social disadvantage or impediment, with regard to their members acquiring academic qualifications and becoming graduates. No social factor has brought in any such position to them, which again, I am not prepared to call straightway as disadvantageous. These families could never be classified as having suffered or suffering from any inequality in facilities and opportunities to acquire academic qualifications. On that ground, there is no need to extend any additional or extra weightage to students hailing from such families. The other group, either by choice or compulsion, has acquired academic qualification. An individual's right, fate or fortune should not be determined on the ground of his birth in a particular family, over which he has no control. The theory of no-graduate family does not have any acceptable rationale behind it. It would not amount to a reasonable classification or forming an intelligible differentia.

67. It is not always possible to draw inspiration from one or other of the pronouncements of Courts, which have dealt with various subjects coming up for attack as violative of Art. 14 of the Constitution of India. Each case has got to be dealt with on its own facts, of course keeping in mind the cardinal tests. In the words of Bose, J. in *Bidi Supply Co. Vs. The Union of India (UOI) and Others*,

Article 14 sets out, to my mind, an attitude of mind, a way of life, rather than a precise rule of law. It embodies a general awareness in the consciousness of the people at large of something that exists and which is very real but which cannot be pinned down to any precise analysis of fact

save to say in a given case that it falls this side of the line or that, and because of that decisions on the same point will vary as conditions vary, one

conclusion in one part of the country and another somewhere else; one decision today and another tomorrow when the basis of society has altered

and the structure of current social thinking is different. It is not the law that alters but the changing conditions of the times and Art.14 narrows down

to a question of fact which must be determined by the highest Judges in the land as each case arises.

I am convinced that the impugned Government Order has not even passed through the first of the twin tests.

68. The further question that arises for consideration is as to whether there is a rational relation or nexus between the basis of classification and the

object sought to be achieved. We are in the field of education. In *Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others*, this is what

the Supreme Court observed on the question:

The philosophy and pragmatism of universal excellence through equality of opportunity for education and advancement across the nation is part of

our founding faith and constitutional creed. The effort must, therefore, always be to select the best and most meritorious students for admission to

technical institutions and medical colleges by providing equal opportunity to all citizens in the country and no citizen can legitimately, without serious

detriment to the unity and integrity of the nation, be regarded as an outsider in our constitutional set up.

69. The state here declares that the impugned Government Order was passed inter alia to achieve the avowed State policy of eliminating

inequalities in facilities and opportunities amongst individuals by giving weightage to the candidates originating from families where there are no

graduates. It has been already noted that such families could not be classified as unequals to the other families, tested on this basis. Only if there

exists an inequality on the factor advanced in the families, there may arise a need to equalities to be in tune with Art.14. The theory of inequality

with reference to no-graduate families is in the fictional realm and not in the realistic and pragmatic realm. The above passage in the pronouncement

of the Supreme Court speaks for itself. Neither the impugned Government Order ex facie nor the averments in the common counter-affidavit make

out any rational relation or nexus between the basis of classification and the objects sought to be achieved, namely, equal opportunities in the educational field for all the citizens. On the other hand, candidates who have fared well in the academics and as well as in the entrance tests for the sin of someone in their family being a graduate are likely to lose their chances of entering into the professional courses by this award of concessional marks to the other fictional group. If the members of the other fictional group should have a march over them, I could not commend it as a classification intended to achieve the avowed object, namely, providing educational avenues equally to all concerned. As per the above discussion, my answer to the moot point is that the impugned Government Order violates Art.14 of the Constitution of India. Now I have answered the moot point, the cases shall stand remitted to the Honourable Judges, who constituted the Bench earlier, to dispose of the cases, taking note of the majority view, as contemplated under clause 36 of the Amended Letters Patent of this Court.

Mishra and Bakthavatsalam, JJ.

(16th November, 1990):-

(Per Mishra, J.):

70. On a difference of opinion between us in our respective judgments delivered on 13th September, 1990, the matter was placed before Nainar

Sundaram, J. in accordance with clause 36 of the Letters Patent of this Court for his opinion. His opinion has since been received. He has

concurred with the view expressed in the judgment by one of us (Mishra, J.) and held, in agreement with his conclusions, that the impugned

notification in G.O. Ms. No. 630, Education (II) Department, dated 10-5-1990 is hit by Art.14 of the Constitution of India. The matter has now

been listed before us for disposal, taking note of the majority view as contemplated under clause 36 of the amended Letters Patent of this Court.

71. Learned Advocate General appearing for the respondents however has raised two objections: (1) that there was no compliance with the

requirements of amended clause 36 of the Letters Patent of the Court inasmuch as we did not state the point upon which we differed and thus the

reference to Nainar Sundaram, J. itself was incompetent; and (2) Nainar Sundaram, J. has in recording his opinion gone into issues which were not

decided by any one of us and expressed his view on a question which was never directly answered by any one of us.

72. It is not entirely correct to say however that we did not spell out our difference of opinion while making a reference of the case under clause 36

of the Letters Patent. At the outset, in the judgment of Mishra, J. it is stated: ½

Bakthavatsalam, J. has chosen to record his disagreement and had given me an opportunity to read his judgment. I have not been able to persuade

myself to accept any other judgment than the one I propose to deliver as I find we have differed not only in the matter of perception of law, but

also on its application on the facts of this case.

Thus, difference on two counts, namely, (1) the perception of law, and (2) application of the law on the subject on the facts of this case, was fully

spelt out at the time of the reference of the case under clause 36 of the Letters Patent. Moreover, the amendment in clause 36 of the Letters Patent

of this Court, it appears, has been carried out on account of the amendment in the CPC by Act 104 of 1976. In sub-S. (2) of S. 98 thereof, it is

stated:

Where there is no such majority which concurs in a judgment varying or reversing the decree appealed from, such decree shall be confirmed:

Provided that where the Bench hearing the appeal is composed of two or other even number of Judges belonging to a Court consisting of more

Judges than those constituting the Bench and the Judges composing the Bench differ in opinion on a point of law they may state the point of law

upon which they differ and the appeal shall then be heard upon that point only by one or more of the other Judges, and such point shall be decided

according to the opinion of the majority if any of the Judges who have heard the appeal, including those who first heard it.

The contention based upon the said amendment in the CPC vis-a-vis the Letters Patent of the Patna High Court similarly worded was considered

in Smt. Jayanti Devi Vs. Srichand Mal Agrawal and Others, In that case also, a difference of opinion between two Hon"ble Judges of the said

Court was placed before a third Judge without specifying the difference of opinion and the question raised was whether in the absence of a joint

order specifying the difference, the reference was vitiated or not. Relying upon an earlier judgment of the Patna High Court by L.M. Sharma, J. (as

he then was) now a Hon''ble Judge of the Supreme Court, the Court opined that not specifying the difference of opinion does not vitiate the hearing

of the reference and thus the reference is competent.

73. It is indeed a rule of procedure and not a substantive provision to denounce altogether a reference to a third Judge of a matter in which Judges

of even number constituting a Bench do not concur. All that is necessary to notice in such a situation is whether by going through their respective

judgments it is possible to find out the difference of opinion or not. We find, however, that Nainar Sundaram, J. was conscious of that position

inasmuch as he entered upon the issues before him by obtaining the consensus of the parties, and in his words :

There is a consensus expressed by both sides through a joint memorandum filed today that this is the moot point on which I should express my

views.

Thereafter quoting the impugned notification, he has said the question is whether the classification will come within the permissible classification for

the purposes of Art.14 of the Constitution of India or not. It was precisely this very question with respect to which we differed in perception and

since we differed in perception, we also differed in its application upon the facts of the cases. Thus there is no merit in the first objection raised by

the learned Advocate General.

74. So far as the second objection raised by the learned Advocate General is concerned, it is not open to us to say whether the learned third Judge

could approach the point in dispute in the light of his own perception of law or not. Still as we go through the opinion recorded by him, we find that

he has really decided the point in issue with reference to the well-known recognised tests of reasonableness of the classification and whether the

classification is founded on an intelligible differentia and whether the differentia had a rational relation to the object sought to be achieved by the

impugned notification or not. Thus, it cannot be said that there has been any new aspect introduced in the dispute between the parties at the hearing

of the matter before the learned third Judge. We accordingly are bound by the rule in Cl. 36 of the Letters Patent to dispose of these cases in

accordance with the opinion of the majority of the Judges, that is to say, Mishra, J. and Nainar Sundaram, J. As a result of the majority opinion,

the impugned G.O. namely G.O. Ms. No. 368, Education (JI) Department, dated 10-5-1990 is hereby quashed. We however notice that since the difference was confined to the Constitutional validity of the said Government Order, Nainar Sundaram, J. has delivered the opinion only on that question and we say with respect he has done so rightly. In the judgment in which G.O. Ms. 638, Education (JI) Department, dated 10-5-1990 was quashed by one of us (Mishra, J.), there has been however a direction to fill in the seats in Technical Institutions/Professional Colleges in accordance with the merits and the rule applicable for admission to those Institutions and further that the respondents however may make such arrangements as are permissible under the law to allow the students admitted by concession of five bonus marks to continue their study in the above, institutions in addition to the students admitted strictly in order of merit and the rules governing admission. We are of the opinion that in the event of G.O. Ms. No. 638, Education (JI) Department dated 10-5-1990 having been quashed, the consequential direction should follow and accordingly order, the impugned G.O. Ms. No. 638, Education (JI) Department, dated 10-5-1990, is hereby quashed. The respondents are directed to fill in the seats in Technical Institutions/Professional Colleges in accordance with merit and the rules applicable for admission to those institutions. They may however make such arrangements as are permissible under the law to allow the students admitted by concession of five bonus marks to continue their study in the above Institutions in addition to the students admitted strictly in order of merit and the rules governing admission. No costs.