CHAPTER V

ROLE OF JUDICIARY

“Laws are a dead letter without courts to expound and define their true meaning and operation.”

Alexander Hamilton

“Justice is the earnest and constant will to render to every man his due.”

In the previous chapter, the researcher has done the comparative study relating to the affirmative action policies adopted in various countries of the world in order to analyze, examine and to adopt them for making the Indian Laws relating to the policy of reservation more adaptable, adequate and effectual. In the present chapter, endeavors are intended to find out the attitude and role of the judiciary in evolving secular and rational criterion to cope with the problem of protective discrimination, in safeguarding the fundamental rights of the vulnerable groups in particular and citizens in general which were at stake on account of the policy of reservation adopted by the Government from time to time. The attempt is also sought for analyzing the contribution of the judiciary towards shaping and reshaping this policy after taking into consideration social factors and felt necessities of time in such a way as to strike a reasonable equilibrium among numerous relevant considerations in order to bring justice at the door of the poorest of poor.

Since the time immemorial, the concept of justice is of imponderable import. The quest for justice has been as challenging as the quest for the Holy Grail. From Plato to Gandhiji and others, all the social thinkers had made efforts in the quest of justice for abolishing injustice, tyranny and exploitation. Justice is equated generally with truthfulness, goodness, equality, mercy, righteousness and charity. All the States whether capitalists or socialists, ancient or modern democratic or authoritarian had always proclaimed to be guided and governed by justice and also take pride in being a just State with just social order and just law. In the practical or narrow sense, justice signifies a cluster of principles or ideals without the least opportunity or hope of any kind of injustice, inequality and discrimination but for the common welfare and good of the society. On this planet, justice has been regarded as one of the greatest concerns of mankind.
At the dawn of human civilization and awareness, there was the existence of the Divine Will and every human conduct including the discipline of law, was to conform to that Will. Justice had been postulated by Greeks, Romans and the ancient Indians as an ideal standard which was derived from God or based on Dharma, righteousness, truth, equality and same kind of higher moral values of lasting validity. In the ancient times in India, Hindus felt similarly. According to Sage Valmiki,

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The authority of Vedic texts which prescribed the standards/norms to regulate the human conduct, founded on the direct revelations was the basic assumptions of Hindu Law. To such law, even the king was subject.\(^2\) Justice has always been equated with the Dharma in our Shastras, and there was the description of courts of justice as Dharmadhikaran. Krishna Iyer Justice envisages Dharma, as the ‘fulfillment’ factor of justice. The spirit, life and the Hindu thought is recorded and reflected indeed by the immortal epics Ramayana and Mahabharata in the tales of Rama versus Ravana and Pandavas versus Kauravas in which the moral supremacy and the victory of the good over evil, or justice over injustice and of dharma over Adharma is portrayed magnificently. The deep commitment and the faith towards justice of our sages are demonstrated by these epics along with Vedas. All the four Vedas insist on the concept of equality and respect for the human dignity which is evident from the Yajurveda—’You are ours and we are yours--------’.

In the Post-Vedic Period, the parameters of justice were based on the strict conformity to observance and the strict enforcement of caste rules, within the prescribed norms and their disregard as well as violation was the platform for the punishment. The quality of justice conditioned by the stricter law of Manu in particular was anti-shudras and anti-women.

During the Muslim era, especially in the Pre-Moghul period, Muslim rule was essentially autocratic, theocratic and irresponsible devoid of the concept of the rule of law, morality, tolerance, social harmony and justice. During this period also justice was given the supreme place.\(^3\) But the essence of justice was completely arbitrary and inconsistent with the elementary justice.

During British era, it was realized by the Indians that there can be no justice without freedom and freedom without justice. Gandhiji and others fought to secure for
Indians some principles like idea of the rule of law, the freedom of persons, natural justice, civil liberties, natural justice and equality of law which were the backbone of British notion of justice.

After independence, the Constitution of India abounds with the natural and social justice and in its very preamble and Parts III and IV; our Constitution speaks about the justice as one of the great values cherished by its makers. In a narrow sense, justice is often understood to mean the justice of law or justice according to law. But in the present scenario, the term justice is used in the wider connotation and different forms are included in the term justice like social justice, economic justice and political justice. All aspects of human life are dealt with by the concept of the social justice. The concept of the social justice is varied. When India got independence and converted into an independent sovereign republic, the urge of this concept of social justice gathered momentum. The concept of equality is integral to most contemporary theories of justice. The social justice has a very noble object of maintaining or restoring equilibrium in the society and it also helps in providing equal treatment to the equal persons in the equal or essentially equal circumstances. The concept of social justice brings about the social solidarity. Therefore, the constitutional framers toiled hard for the purpose of injecting equality, justice and good conscience at the heart of social system because every thought of providing social justice would prove to be a teasing illusion if based on the social in-equality where the requisite social conditions did not exist. A society which is based on the inequality can never be just.

Thus, realizing that in India masses had suffered a lot and recognizing the reality of prevailing inequalities in the Indian society, at the helm of the Constitution, the mandate of the social equality and social justice was placed by the founding fathers and attempts were also made for creating a system where each and every member of the society is empowered to participate in the liberties and the freedom to be provided under the Constitution. So, the founding fathers inserted the Fundamental Rights and Directive Principles in the Constitution with this noble aim, the roots of which are found in the Constitution of India Bill, 1895 and the 1931 Karachi Resolution respectively. The soul of this living document is formed by them and also they have connected India’s past, present and future into one single thread, by giving greater credibility to the quest of the social equality and social justice,.

The founding fathers accorded the highest place to ‘Justice’ among the noble aims and objectives of the Constitution. The Preamble speaks of “We, the people of
India” resolving to secure inter alia “Justice – social, economic and political” to “all its citizens”. The juxtaposition of words and concepts in the Preamble is important. Again, priority to social and economic justice over political justice is enjoined clearly by the Preamble.4 In the quest of justice people turn to the judiciary.

To live under a Government of laws, not of men has been man’s long struggle. For long his cherished ideal has been equal justice under law, a system under which the same law is applicable to all alike. There is need to review the working of the judiciary during the last half-a-century and more, to assess how far our justice delivery system has been able to ensure equal social, economic and political justice to all the people as ordained by the Constitution and its Preamble.5

Under Article 32 of the Constitution, the judiciary in India is under an obligation for the enforcement of the Fundamental Rights as envisaged in Part III of the Constitution itself. This obligation on the part of the judicial system must be viewed along with the role of the judiciary as is envisaged in the Beijing Statement in respect of the Principle to be followed for Independence of the judiciary in the LAWASLA region. The Chief Justices of the Asia and the Pacific at Beijing accepted these principles in the year 1995, for the purpose of maintaining the effective functioning and independence of the judiciary, as those representing the essential minimum standards essential to be observed. The objectives of the judiciary which are mentioned in the Beijing Statement are as follows:

1. to ensure that under the Rule of law all the persons are able to live securely;

2. to promote the observance of the human rights and also its attainment within the proper limits of the functions of the judiciary; and

3. to administer, among persons and between persons and the State, the law impartially.”6

The superior judiciary in India has performed exceedingly well over the last five decades and has contributed significantly to the advancement of public good and good governance. It has succeeded in preserving, protecting and promoting the Fundamental Rights of the vulnerable groups and other citizens against the “innovations of exerted democracy” and for that purpose, it has drawn substantially upon the Directive Principles of State Policy enshrined in Part IV.7

Thus, it is the courts that have given fundamental rights and Directive Principles their real meaning. Recourse to the provisions given under Part III and Part
IV of the Constitution have been taken by the judiciary often, in their struggle for bringing justice to the poor section of the society. They have adopted substantive equality and aimed for a result oriented approach. This approach tends to encourage the down-trodden and under privileged to redeem themselves of previous in-equalities and has opened new vistas for judicial innovation and creativity in order to fulfill the mandate of achieving social equality.\(^8\)

Judicial remedies are sought in cases of abuse of protective discrimination policy. The courts have to perform their onerous constitutional duty to allow or disallow the preferential treatment in accordance with the constitutional norms. The judiciary has the honor of protecting the constitutional mandate of classless or casteless society through guarding against the perpetuation of the caste system. In India, the court also seeks to guard against inclusion of the Advanced Classes within the term Backward Classes. The problem of reservational protective discrimination places the task of great complexity and delicacy upon the shoulders of the judiciary. In shaping the preferential policy, the active role of the judiciary, through the determination of the legitimate boundaries of protective discrimination, has two-fold significance. It is essential,

“not only to vindicate the individual rights but for effectuating the policy of provisions related to the policy of protective discrimination—through the prevention of the dilution of the benefits which are unwarranted (for the more unrestrained the inclusion of the beneficiaries of this policy, the less the assistance/ benefits will be received by the intended beneficiaries) and the abuses which undermine the support of the public for these measures.”\(^9\) “The courts must guard against abuses of the preferential principle while at the same time insuring that the Government has sufficient leeway to devise effective use of the broad powers which the Constitution places at its disposal.”\(^10\)

The judiciary has always been cautious in allowing the preferential treatment to disadvantaged classes under permissible classification. It has upheld preferential treatment in their favour only for special reasons and on special justification. Lots of landmark judgments have been pronounced by Indian judiciary giving concrete and sound solutions to the problems arising out of the policy of reservation. The journey of the judiciary for the identification of the recipients/beneficiaries of the protective
discrimination through reservation and also the extent of the reservation has not been straight but rather zig-zag. The judicial march is shown, through the pronouncement of many judgments, towards rationalization by search; for the determination of scientific, objective, secular and rational criteria of the identification of the backwardness of the Backward Classes and also the extent of the reservational benefits. Because the judiciary is under an obligation to take care of the commitment made by the Constitution drafters to establish a society free from every type of discrimination on the basis of religion, sex, caste, race or place of birth. But most of these important decisions of Apex Court have been modified or nullified by Indian Parliament through constitutional amendments.

Amongst three kinds of the reservations, political reservation, educational reservation and the job reservation, in respect of each, the Supreme Court has by pronouncing significant judgments, played a very important role for the purpose of solving its problems and tuning its implementations.

1. Political Reservation

The State is empowered for taking steps to provide to the Scheduled Castes and the Scheduled Tribes due representation. For the purpose of the political reservations, the provisions of the Constitution for the benefits of the Scheduled Castes and the Scheduled Tribes are mandatory. All these provisions have been provided under Article 330 regarding reservation of seats for the Scheduled Castes and the Scheduled Tribes in Central Legislative Assembly, under Article 332 of the Constitution of India in respect of reservation of seats of Scheduled Castes and the Scheduled Tribes in Legislative Assembly of States, in Municipalities under Article 243T, in various Panchayat (local self Government) level bodies, namely, village, taluk (block) and district (Article 243D). These constitutional provisions reveal the ambivalence of the Constitution makers and the policy drafters in India. Constituencies (for the seat in the Parliament and State Assemblies) are reserved for the members of the Scheduled Castes and the Scheduled Tribes in the proportion to their share in the population. The constitutional provisions for the political reservation of the Scheduled Castes and the Scheduled Tribes were made mandatory in 1950, and it was decided that this provision would last only for ten years but since then every ten years, the Constitution has had to be amended for keeping on extending this kind of reservations for this category of persons.
Article 330 does not take away the right of the Scheduled Castes and the Scheduled Tribes candidates from contesting in the unreserved seats. This has been laid down by the Apex Court in the case of **V.V.Giri v. Dippala Suri Dora**. In this case, the Apex Court upheld the decision of the High Court reasoned on the grounds that the reasoning given by the High Court had been correct. The court opined that a member of Scheduled Castes and Schedule Tribe does not forgo his right of seeking the election to the general seat merely because the additional concession of the reserved seat is availed of himself by him through making the prescribed declaration for the same purpose, because an additional claim was represented over and above the claim for the reserved seat. The court felt about the allegation of the appellant that first respondent was not a member of the Scheduled Tribes no sufficient evidence could be provided by the appellant for proving that the first respondent had converted and become a Kshatriya. Hence, the election of the first respondent was upheld by the Supreme Court as valid and the appeal was dismissed.

There is another case of **Punjab Rao v. D.P.Meshram and Others**. Initially in the Presidential Order which specified Scheduled Castes, Buddhists were excluded. So, any Buddhist could not claim to be a Scheduled Castes. It was held by the tribunal that the corrupt practices had not been established and also that the elected Member of Legislative Assembly was not a member of the Scheduled Castes anymore after his conversion to the Buddhism and the impugned election was set aside. From the members, the evidence was adduced, who had either presided at the meeting at which mass conversion had taken place or who had converted themselves to Buddhism at the meeting. However, the decision of the Tribunal was overturned by the High Court on the grounds of the insufficiency of the evidence because all the prosecution witnesses had been the members of the political parties which were against the party and Member of Legislative Assembly himself.

The argument was put forth in the Supreme Court that there was high probability of the conversion of the respondent to Buddhism, because that had been advocated by Dr. Ambedkar and many prominent members belonging to the Scheduled Castes under his leadership who had so converted. There were three instances which sought to corroborate this:

1. A declaration which had been signed by the respondent himself was stating that he had converted to Buddhism;
2. Wedding invitations of the wedding of the daughter of the Member of Legislative Assembly which were circulated by the Member of Legislative Assembly containing the picture of Lord Buddha inscribed in it;

3. A conversion of a temple dedicated to Lord Shiva to one dedicated to Lord Buddha had been effected by the respondent.

The respondent himself admitted some of these facts which had been testified to by the witnesses. The evidence and the argument of the conversion of the respondent were accepted in this light.

Hence the Election Commission Order was upheld.

These judgments had been decided by the Supreme Court to give the solution to the problems regarding political reservation. In respect of this kind of reservation, the judgments delivered by the Apex Court are few but in respect of educational reservation and the job reservations, a lot of guidelines and sound suggestions and solutions had been provided from time to time by the Supreme Court in order to solve a number of burning problems like criteria to be adopted for giving benefits of this policy of reservation and extent of providing reservation quota etc.

2. Educational Reservation

Second important field of reservation is the education sector. For the advancement and development of the human beings, education is the strongest device. The image of an individual of the future is enlarged, enriched and improved by the education. With the weapon of education, the human beings are shown the way to liberation from the ignorance. Educational institutions are the sacred places where the knowledge and wisdom are acquired by the youth by whom in turn the future of a nation is determined. Therefore, the educational institutions function collectively as the backbone of a developed country. To keep the doors of temple of learning open for all, the constitutional provisions of non-discrimination are provided particularly in favour of the weaker sections (Scheduled Castes and the Scheduled Tribes) under Articles 14 and 15 of the Constitution.

In respect of education, the constitutional provisions relate to non-discrimination in the educational institutions, measures for the educational promotions and the equal representations for all. Under the constitutional provisions, the seats have been reserved for the Scheduled Castes and the Scheduled Tribes students in the educational institutions: in collages and the universities run by the Central and State
Governments and Governmental aided educational institutions. In India, the reservation in education is provided through the constitutional provisions not only in the general arts and the science courses but also in engineering and medical schools as well. A number of financial schemes support these provisions like scholarships, special hostels for the Scheduled Castes and Scheduled Tribes students, grants for books, concession in fees and remedial coaching etc. The reason behind providing reservation in education and in jobs is to provide special opportunities for some over and above the general provisions for equality for all the people at large.

In State of Madras v. Champakam Dorairajan\textsuperscript{16} the court had to decide the constitutionality of Madras Government’s Communal G. O. which, with the purpose of helping the Backward Classes had fixed the proportion of the students of each community for admitting them into the State Medical colleges. It was held by the court that “the Directive Principles of State Policy have to conform to and run as subsidiary to the Chapter of fundamental rights”.\textsuperscript{17} It was also held by the Court that the right to admission into an educational institution is a right which an individual citizen acquires not as a member of any community or a class of citizens but as a citizen of India. The Supreme Court refused to let the fundamental right declared in Article 29(2) to be whittled down by Article 46 and held the order void for violating the fundamental right under Article 29(2). Thus, the court asserted the supremacy of the fundamental rights over the Directive Principles of State Policy. It had been pronounced by the Court that the caste based reservation as per Communal Award violates Article 15(1). Thus, a literal interpretation was given by the Court to the constitutional provisions which led in Article 15 to the insertion of Clause (4), by which the State was enabled for making the special provision for the advancement of the Scheduled Castes and the Scheduled Tribes or for the advancement of any socially and educationally Backward Classes of the citizens. But no obligation is imposed on the State by this Clause for taking any action under it.\textsuperscript{18}

Another case was State of Madras v. C. R. Srinivasan\textsuperscript{19}. At Guindy, the admissions in the medical college for the different communities were as follows; Non-Brahmin Hindus 129, Backward Hindus 43 and Muslims 21, Brahmans 43, Harijans 43, Anglo-Indians and Indian Christians 21. Likewise, remaining seats were adjusted in the Engineering Collage in the proportion of Non-Brahmin Hindus 156, Backward Hindus 52, Brahmans 52, Harijans 52, Anglo-Indian and Indian Christians 25 and Muslims 25. It was contended by the petitioners that they were denied to be admitted
in the collage and so, their fundamental rights under Articles 15(1) and 29(2) were infringed. But the seven Judges full Bench conveyed\textsuperscript{20} the clear message without any dissent that caste and the religion cannot be the criteria of discrimination. But the first constitutional amendment introduced clause (4) in Article 15 in order to make the judgment invalid.

In the case of D. P. Joshi v. State of Madhya Bharath\textsuperscript{21}, the issue of domicile based classification and its validity came up before the Supreme Court.\textsuperscript{22}

The rule was held to be in the favour of the respondents by the majority and the validity of the rule was also upheld. It means that the preferential treatment of residents of Madhya Bharat was upheld by the Supreme Court and the following rational was provided as the bases for that purpose:

"The object of the classification underlying the impugned rule was clearly to help to some extent students who are residents of Madhya Bharat in the prosecution of their studies, and it cannot be disputed that it is quite a legitimate and laudable objective for State to encourage education within its borders. Education is State subject, and one of the directive principles declared in Part IV of the Constitution is that the State should make effective provisions for education within the limits of its economy."

However, in the institution of graduation, the validity of the reservation based on residence was upheld. In the case of Joseph Thomas v. State of Kerala\textsuperscript{23}, a 5:8 distribution of the seats was upheld between the residents of the Malabar area and Travancore Cochin area.

Similarly, in the case of K. Ramakrishna v. Osmania University\textsuperscript{24}, for the students from the Telangana area, a reservation provided by the Osmania University was upheld by the High Court of Andhra Pradesh High Court as the impugned provision had been introduced for the purpose of providing educational facilities to the students belonging to the Telangana and so, there had been reasonable nexus between the intelligible differentia of residence and the object of the classification.

There was a case of reservation in the educational institutions based on the earlier course of study where there was not a separate entrance examination in the educational institution. The reservation of 1/3\textsuperscript{rd} of the total number of seats was provided by the Medical College in Guntur in favour of multipurpose candidates in the Pre-Professional Course in medicine. The admission was based on the qualifying
marks instead of a common entrance test. However, in the case of Gullapalli Nageswara Rao v. Principal Medical College, Guntur,\(^{25}\) this rule regarding admission was challenged as being unjust and arbitrary. It was contended by the respondents that for affording equal opportunities to the multipurpose candidates, it was necessary to provide the said reservation. The reason was that than the Pre-University Course (P.U.C.) candidates, these candidates had to study more subjects and their examinations were more difficult. The reservation was upheld by the High Court on the ground that in the matter of securing higher percentage of marks in their subjects, the Higher Secondary Course (H.S.C.) candidates were at a disadvantage and so, in comparison to the Pre-University Course candidates, they were unequally placed.

On July 10, 1961 and July 31, 1962, the validity of the orders issued by the State of Mysore in the case of Heggade Janardhan Subhanye v. State of Mysore & Another\(^{26}\) under Article 15(4) of the Constitution of India was challenged by the petitioners. It was contended by the petitioners that for the purpose of getting admission they had applied to the Pre-Professional Class in Medicine in the Karnataka Medical College, Hubli and to the said Medical College they would have secured the admission but for the reservation directed to be made by the orders mentioned above. They contended the above-mentioned orders to be ultra vires. An appropriate writ or order restraining the respondents were prayed for by them from giving effect to those orders and requiring them for admission on merits to deal with their applications. The Apex Court held that the petitioners were entitled to an appropriate writ or order as claimed by them and the respondents including the State of Mysore were restrained from giving effect to the above-mentioned orders. In this case, the case of M. R. Balaji v. State of Mysore\(^{27}\) was followed. The State was at liberty to give effect to the reservation made in favour of the Scheduled Castes and Scheduled Tribes which was not challenged at all. The impugned orders were quashed only with reference to the additional reservation made for the benefits of the socially and educationally Backward Classes. Thus, in favour of Scheduled Castes and Scheduled Tribes the said reservation continued to be operative.

In 1963, M.R. Balaji v. State of Mysore\(^{28}\) was another landmark case in the area of affirmative action. It may be regarded as conscious judicial attempt to search a rational and scientific approach which is consistent with and true to noble ideal of secular welfare democratic set up by the welfare State of the country.\(^{29}\) In this case,
the order was held bad by the Supreme Court and the Supreme Court also held that upon the Constitution, it amounted to be a fraud and it was plainly inconsistent with Article 15(4). The Court held as follows:

“A special provision contemplated by Article 15(4) like reservations of posts and appointments contemplated by Article 16(4) must be within reasonable limits......In this matter again, we are reluctant to say definitely what would be a proper provision to make. Speaking generally and in a broad way, a special provision should be less than 50 percent; how much less than 50 percent would depend upon the relevant prevailing circumstances in each case.”

Thus, it was laid down by the Supreme Court in this case that for the weaker section of the society, the special provisions or the reservation must not in excess of 50 percent limit. Finally, the Apex Court decided that by Clause (4) of Article 15 the State was enabled for making the “special provisions” and not “exclusive provisions”, for the purpose of the advancement of the Scheduled Castes, Scheduled Tribes and for the socially and educationally Backward Classes of citizens.

There was case of R. Chitralekha v. State of Mysore, which involved a challenge to the criteria of admission to University of Mysore, which, based upon the interview, included 25% of the marks. In this case, the system of interview was upheld by the Supreme Court for admitting the students into a University. Secondly, in this case, it was laid down by the Government of Mysore that on the following basis, the classification of the socially and educationally Backward Classes should be made: (i) economic conditions and (ii) occupations. But the caste of the applicant was not taken into consideration by the order of the Government as one of the criteria for the backwardness. It was further held by the Supreme Court that for the purpose of ascertaining the social backwardness of a group of citizens, though the caste of a group of the citizens might be a relevant factor, but in this behalf, it could not be the dominant or sole or even the essential test. The court had also explained the case of M.R. Balaji v. State of Mysore by saying that though caste was a relevant test for determining the social backwardness of citizens still it was not void merely because it ignored caste if such determination was based on other relevant criteria. Hence, the most contentious issue was the determination of Backward Classes. The criteria adopted by the Mysore Government were accepted to ascertain the backwardness of a class in this case.
The Supreme Court of India considered Article 15(4) in *M.R. Balaji v. State of Mysore* and *R. Chiterlekha v. State of Mysore*. These cases are almost interlinked. The Supreme Court of India had clarified the case of *M.R. Balaji v. State of Mysore* in *Heggade Janardhan Subbarye v. State of Mysore* by saying that it had not in any way invalidated the reservation for scheduled castes and scheduled tribes. Similarly in *R. Chiterlekha v. State of Mysore*, the court had explained the case of *M.R. Balaji v. State of Mysore* by saying that though caste was a relevant test for determining the social backwardness of citizens still the test was not void merely because it ignored caste if such determination was based on other relevant criteria. Hence, the most contentious issue was the determination of Backward Classes.

In *P. Rajendran v. State of Madras*, the Supreme Court upheld the validity of Rule 5 of Madras Educational Rules issued with Government Order (M.S.) 839 Education, dated 6.4.1951 by which castes were recognized as socially and educationally backward. The Court accepted the plea that each of the castes referred in order was as a whole socially and educationally backward. Wanchoo, Chief Justice (C.J.) delivering the judgment did not appear to have gone too much far from Ballaji’s case, but the accent in the Rajendran is quite different. To quote Wanchoo Chief Justice:

“If the reservation in question had been only on case and had not taken into account the social and educational backwardness of the caste in question, it would be violative of Article 15(1). But it would not be forgotten that a caste is also a class of citizens and if the caste as a whole is socially and educationally backward reservation can be made in favour of such a caste on the ground that it is a socially and educationally backward class of citizens with in the meaning of Article 15(4). It is true that in the present cases, the list of socially and educationally backward classes has been specified by caste. But that does not necessarily mean that the caste was the sole consideration and that persons belonging to these castes are not also a class of socially and educationally backward citizens.”

A challenge was also quashed regarding the allocation of marks for the interviews and lack of guidelines for the interviewers and the interview procedure was upheld with certain amount of discretion left to the Selection Committee in *P.
Rajendran v. State of Madras.\textsuperscript{43} In this case, there was challenge made for a rule providing for the allocation of seats district-wise, with the seats being divided between districts in the proportion of the population.\textsuperscript{44} In this case, it was observed by the Apex Court that the compulsory acceptance of the contention would only justify allocation of seats between Madras city on one side and the rest of the State on the other side. It was also contended by the respondents that the district-wise selection, if made, those selected from a district were likely to settle down in that district as practitioners resulting benefiting from their training in the districts, but the court rejected this argument.

In State of Kerala v. Jacob Mathew\textsuperscript{45}, the Kerala High Court had earlier adopted a similar line of reasoning. However, in the case of P. Rajendran v. State of Madras,\textsuperscript{46} the test of backwardness was upheld by the Supreme Court which was solely based on the caste of the beneficiary. It was held that though the list of the Backward Classes by the Madras Government described them by reference to caste and though the reservation of seats based on caste alone would be invalid, consideration of caste was not irrelevant to the question of backwardness. The judgment in Rajendran’s case appears to present a withdrawal from judicial efforts to search secular and rational criterion for determination of the backwardness. And it was clearly observed and held by the court that:

“Now if the reservation in question had been based only on caste and had not taken into account the social and educational backwardness of the caste in question, it would be violative of Article 15(1). But it must not be forgotten that a caste is also a class of citizens and if the caste as a whole is socially and educationally backward, reservation can be made in favour of such a caste on the ground that it is socially and educationally Backward Class of citizens within the meaning of Article 15(4)”.

In P. Sagar v. State of Andhra Pradesh,\textsuperscript{47} before the Andhra Pradesh High Court, an almost identical provision came up for challenge where again, there was rule that in all the categories taken together, 1/3\textsuperscript{rd} of the total number of seats should be provided to the Higher Secondary Course, Multipurpose I.S.C. and Multipurpose candidates and to the Pre-University Course candidates, at least 50% of the seats should be provided. The provision was upheld by the High Court on the same grounds relying on the earlier decision. Again, there was a point to be kept into notice that for
all the candidates belonging to the Pre-University Course and Higher Secondary Course categories, there was no common entrance test. This issue was not contested when this case came up before the Supreme Court on appeal. However, in the case of State of Andhra Pradesh v. P. Sagar, an Andhra Pradesh notification was apparently invalidated by the court which was based on the exclusive caste criterion, with the observation that in Article 15(4), the expression ‘class’ means because of certain likeness or common traits, a homogeneous section of the people grouped together in the determination of which there cannot be the exclusion of the caste altogether.

“But in the determination of a class, a test solely based upon the caste or community cannot be accepted."

In Umesh Chandra v. V. N. Singh, reservation made for the children of the employees of the educational institutions has been held not constitutional. A number of High Courts took the same view that because law did not deal with the conditions of service of the employees but with the admission, so, there was no nexus between the intelligible differentia and the object of the admission. Moreover, the benefits had been provided instead of employees themselves to the children of the employees and solely on the ground of the descent, it would amount to discrimination and would offend Article 14.

In the case of Surendra Kumar v. State of Rajasthan, the reservation was struck down for the children of political sufferers from Rajasthan, due to the following reasons:

(1). that if the object was only to provide the benefits of the reservation to the political sufferers, no reason was there why these benefits were restricted to the residents of Rajasthan only.

(2). that the term ‘political sufferer’ was so wide that it was not possible to determine exactly who was a political sufferer.

(3). that there was an end of the independence movement several years ago, and if political sufferers were to be provided with the facilities for their suffering due to their participation in the independence movement, they could be provided only once, and

(4). that for such a classification, there was no justification because the only valid classification could be that, which results in attracting the best possible talent towards the medical profession.
In *Kumari Chitra Ghosh v. Union of India*, a challenge was made to a rule of admission under which 25% seats were reserved for the residents of Delhi among others and this provision was challenged as violative of Articles 14 and 15(1). It was held by the Apex Court while the applicability of Article 15(1) was ruled out, that there was no violation of Article 14. The reservation for the residents of Delhi was not dealt with by the Supreme Court in detail. However, the court laid down a few propositions. The crucial observations which were made by the court are as follows:

1. The eligibility criteria could be determined by the Central Government due to bearing the financial burden.
2. It was impossible to throw the admission open to the students from all over the country.
3. As a question of policy, the sources from which the admission must be made could be decided by the Government.
4. A hand-off approach should be adopted by the court whether on territorial, geographical or other reasonable basis, if the sources were properly classified.

Therefore, this case was to start off a new trend regarding territorial allocation of the seats. It was also held by the court that the financial burden of establishing the universities was born by the Government and so, it had the discretion for choosing the sources so long as this discretion was not utilized in an arbitrary manner. Further, it was held by the court that the reservation of seats for the sons/daughters of the Central Government servants who were posted in Indian Missions abroad, Cultural, Colombo Plan and Thailand Scholars and Jammu and Kashmir State Scholars in the Maulana Azad Medical College, Delhi was justified in the following words:

“The first group of persons for whom seats have been reserved are the sons and daughters of residents of Union Territories other than Delhi. These areas are well known to be comparatively backward and with the exception of Himachal Pradesh they do not have any Medical College of their own. It was necessary that persons desirous of receiving medical education from these areas should be provided some facility for doing so. As regards the sons and daughters of Central Government servants posted in Indian Missions abroad it is equally well known that due to exigencies of their service these persons are faced with lot of difficulties in the matter of education. Apart from the problems of language, it is not easy or always possible to get
admission into institutions imparting medical education in foreign countries. The Cultural, Colombo Plan and Thailand scholars are given admission in medical institutions in this country by reason of reciprocal arrangements of educational and cultural nature. Regarding Jammu and Kashmir scholars it must be remembered that the problems relating to them are of a peculiar nature and there do not exist adequate arrangements for the medical education in the State itself for its residents. The classification in all these cases is based on intelligible differentia which distinguishes them from the group to which the appellants belong.\textsuperscript{54}

The impugned provision was declared valid because it satisfied the reasonable legislative classification test. Thus, reservation for specific classes can be provided so long as the reasonable legislative classification test is satisfied like to the children and grand-children of freedom fighters, children whose parents worked for bringing Tamil as official language and contribution for Tamil language development, children of deceased servicemen, ex-servicemen and serving defence personnel, children of police personnel.\textsuperscript{55} It is clearly in the interest of the nation to encourage children of defence personnel.\textsuperscript{56} Territorial Army will not be included in the Defence personnel without any proof of past suffering.\textsuperscript{57} The reservation can be provided to the sportsmen\textsuperscript{58}, after the cut-off date for the applications, the list of sports cannot be modified which was covered by a provision, especially when such an amendment is made to provide benefit to a particular individual.\textsuperscript{59}

After the Supreme Court struck down the selection of the candidates on a district-wise basis for M.B.B.S. course, the State reverted to selection on a State-wise basis, and this was also given up for a new system wherein there would be selection on a unit-wise basis.\textsuperscript{60} In the case of \textit{Periakaruppan v. State of Tamil Nadu},\textsuperscript{61} the unit-wise selection process was challenged, because some students who, in a specific unit got less marks, got admitted than others, who were rejected in other units. It was argued by the State that only for the administrative convenience, the unit-wise selection was made. And it was pointed by the Court that in case of unit-wise classification, the same problems existed as when there was State-wise classification. Therefore, the ratio in \textit{P. Rajendran v. State of Madras}\textsuperscript{62} was followed. In addition to this, the observation with approval which was made in the case of \textit{P. Rajendran}\textsuperscript{63} was reiterated by the Supreme Court and further it was held by the Court that on the
basis of castes, the classification of the Backward Classes was well with in the purview of Article 15(4) provided it was shown that those cases were socially and educationally backward though it warned against the vested interests which were created for the benefits of the castes and asked for the constant revision of the test.

In the case of D. N. Chanchala v. State of Mysore\textsuperscript{64}, it was provided that seats shall be distributed in the general pool university-wise, that is, seats in Colleges affiliated to each University shall be allotted to persons passing from the colleges which were affiliated to that University.\textsuperscript{65} In this case, it was held by the Court that there were different examination standards in different universities and to compare across universities would be impossibility. It was also held that for the following reasons, the reasonable legislative classification test was satisfied:

"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 specialized subjects, like medicine, satisfied through colleges affiliated to their own universities. Such a basis for selection through colleges affiliated to their own universities. Such a basis for selection has not the disadvantage of district-wise 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."\textsuperscript{66}

This case was followed by Vasundara v. State of Mysore\textsuperscript{67}. Under this case, Rule 3 of the Selection Rules was challenged according to which residing in the State for 10 years was a pre-requisite for the purpose of getting admission into the M.B.B.S. course.\textsuperscript{68} The observations in Kumari Chitra Ghosh v. Union of India\textsuperscript{69} were relied upon by the Supreme Court and so, the constitutionality of the rule was also upheld. On D. P. Joshi’s,\textsuperscript{70} case also great reliance was placed in which with respect to fees payable by the students of the college, classification based on residence was made. It was held that it was a binding precedent. The court also observed that even though the problem could arise which was pointed out by the petitioner, but the provision could not be deemed unconstitutional by this possibility. This was also submitted that this
was 100% reservation based on residence which is not permissible in the light of the later jurisprudence on this issue.

There are some cases where reservations were provided for certain students, who had studied a certain course, even when there was a separate entrance test in the educational institutions. One such provision was challenged under which 40% of the seats for Higher Secondary Course (multipurpose) candidates were reserved in the case of State of Andhra Pradesh v. U.S.V. Balaram71. It was claimed by the Petitioner that when once it was clearly specified according to the rules that there was to be a Common Entrance Test and that only on the basis of the results of such a test, selections were to be made, in the favour of the Higher Secondary Course candidates, the reservation of 40% was violative of Article 14 and was arbitrary.72 A distinction was drawn by the Supreme Court between the cases where there was no common entrance test and the present case, where there was common entrance test. In the former case, the classification was valid because there was unequal placement of two sets of students due to different standard of qualifying marks. However, in the present case, a single class was formed by all the applicants and they were equally placed and so could not be treated unequally. Thus, on this issue the position of law is:

(1). No reservation can be made on the basis of the earlier course of study if there is an entrance examination.

(2). Reasonable reservation can be provided if there is no entrance examination in favour of the students who studied a more difficult course and who are likely to be disadvantaged when the criterion for the purpose of admission is the qualifying examination marks.

In this case, it was also observed by the Supreme Court regarding the criteria to be adopted for the purpose of providing the benefits of the policy of reservation that:

“A caste is also a class of citizens and that a caste as such may be socially and educationally backward. If after collecting the necessary data, it is found that a caste as whole is socially and educationally backward, the reservation made for such persons will have to be upheld notwithstanding the fact that a few individuals in that group may be both socially and educationally above the general average.”

In the case of Miss Rita Kumar v. Union of India,73 in the Government Medical Colleges, seats were reserved for the pre-medical and M.B.B.S. courses for
the repatriates from Burma, Mozambique, Ceylon and new migrants from Bangladesh. A writ petition was filed by the both the petitioners who were repatriates from Burma claiming that more marks had been obtained by them than two others to whom admission had been granted. The admissions had been upheld by the Supreme Court on the grounds that to provide rehabilitation was the only objective of the classification and that the Petitioners were in less need of rehabilitation because they had been migrated to India earlier than those persons to whom admission had been provided.

But in the case of **Gurinder Pal Singh v. State of Punjab**, the classification based on residence was struck down due to the absence of any nexus with the object of the Act and this argument was based on Article 15(4) in this case.

In **Miss Asha J. Nanavati v. State of Gujarat**, before the Gujarat High Court, a writ was filed under which the constitutionality of the provision was challenged according to which right had been vested in M.P.Shah Charitable Trust for nominating 12 students to the M.P.Shah Medical College only because of the reason that a donation of Rs. 15 lakhs had been made by M.P.Shah to the college when this was started and the right had been reserved as consideration for nominating 6 candidates (at that time). It was argued by the Petitioner that between the Government of Saurashtra and the donor, there was no formal contract and that the agreement if any was there, on the Government of Gujarat, was not binding. The High Court quashed this challenge on the ground that in the year 1954-55, to establish the college was not possible without the donation granted by someone and hence, the donor and his successors were vested with the right for nominating the students.

Reservation of seats in the case of **State of Uttar Pradesh v. Pradeep Tandon**, was made by the Uttar Pradesh Government for the purpose of providing admission in the State to the medical colleges in favour of the candidates coming from (i) rural areas (ii) hill areas, and (iii) Uttarakhand areas as from these areas, the candidates constituted socially and educationally backward classes of citizens. In this case, the attempt was made for making the classification on the geographical or territorial basis. K. K. Mathew, N.L. Unwalia, Justices and Ray, Chief Justice observed, who were speaking on the behalf of the Court that under Article 15(4), the accent was on classes of citizens and the State is not enabled for bringing within the protection of Article 15(4) the socially and educationally backward areas. The emphasis was given on the point that under Article 15(4), the backwardness
contemplated is both social and educational and the socially and educationally Backward Classes of citizens are the groups other than the groups which were based on the castes. The social and educational backwardness may be contributed due to the traditional unchanging condition of the citizens. In judging the social and educational backwardness, the place of habitation and its environment may be a determining factor. The reservation for the persons belonging to hill and Uttarakhand areas was upheld by Ray, Chief Justice in the light of these observations. In this case, it was found that the absence of technical processes, means of communication and educational facilities in the remote and sparsely populated areas keep the illiterate and poor people backward. However, it was held by the Supreme Court that in favour of candidates coming from the rural areas providing reservation was not constitutional. The court held that dividing the people on the basis that in comparison to the people living in the urban areas, the people in the rural areas were poor, was not supported by facts and was not protected under Article 15(4). The court further pointed out that the population by itself could not be a class and suggesting the rural areas educationally and socially backward was to provide the benefits of the policy of the reservation for the majority of the people. There was no homogeneity among the rural population and not all the people residing in the rural areas were educationally backward, so by itself they cannot be treated as a class. In the rural areas, the special requirement of the medical men would not make the people living in those areas as socially and educationally Backward Classes of the citizens of India. Poverty could be found in all parts of the country therefore, the poverty itself could not classify the people living in the rural areas as Backward Classes. It was held by the court in the light of these observations that providing the reservational benefits to the candidates belonging to the rural areas was unconstitutional.

In *Kumari K.S. Jayasree & another v. State of Kerala & another*,77 The petitioner in this case, belonged to one of the socially and educationally Backward Classes, and when she submitted a certificate about the family annual income to be above 11,000 rupees, her candidature for a seat in the Medical College under the reservation scheme could not be considered.78 Under Article 32, in a writ petition, the contention was that there was no reason to exclude an insignificant part of the community on the basis of the income alone and that the income could not be the criterion of admission to determine the benefit of Article 15(4). Dismissing the writ petition, the court held that neither the caste nor the poverty by itself constituted the
criteria of backwardness. But though the poverty by itself was not the determining factor, poverty was a relevant factor in determining social backwardness. According to the Court, occupations, place of habitation may also be the relevant factors for the purpose of determining the socially and educationally Backward Classes.

Later, in the case of Susan Thomas, Petitioner v. State of Government of Kerala\textsuperscript{79}, a reservation was upheld for the residents of Malabar. Similarly, from the Telangana area, a reservation for the students was upheld by the Andhra Pradesh High court by the Osmania University as the impugned provision had been introduced for providing the educational facilities to the students belonging to Telangana and therefore, there was reasonable nexus between the object of the classification and the intelligible differentia of residence.\textsuperscript{80}

There was another decided case in this respect and that was Dr. Jagdish Saran v. Union of India\textsuperscript{81}. In this case, a rule which was reserving 70 percent of the seats to Delhi University Medical graduates in the Post-Graduate medical courses and keeping 30% open to all, including the Delhi University graduates was challenged as violating Articles 15 by a medical graduate from Madras University.\textsuperscript{82} Though in view of imperfect, scanty, fragmentary and unsatisfactory materials, the rule was not invalidated, it was explained by Krishna Iyer, Justice that (i) where the aspiring candidates are not belonging to an educationally Backward Class in that case there is no place of institution-wise segregation or reservation in Article 15; (ii) where special provisions are made with the larger goal and objective of getting over their disablement by the disabled in consistence with the individual spirit and general good; (iii) making of the reservation in every University and in every course cannot be justified by exceptional circumstances as a matter of course; (iv) there should not be excessive or societal injurious quantum of the reservation which was measured by the overall competency of the end product, viz., degree holders; (v) the quantification of the reservation is influenced by a host of variables and the one of the factors is that the lesser the role of reservation in case of higher the level of the specialty; (vi) the burden to prove the ex-facie deviation from equality is on the party who seeks to justify it.

For the people coming from certain areas adjoining the Line of Control, reservation was made and as being violative of Article 14, this was challenged. But in the case of Nishi Maghu v. State of Jammu and Kashmir,\textsuperscript{83} the court held that without identifying the areas and without laying any objective standard for guiding
the selection committee, the classification for the rectification of the regional
imbalance made for the determination of the areas of imbalance was not valid.
However, with reference to the nature of occupations and the classification made on
the basis of the areas adjoining the actual line of control and ‘bad pockets’ in Jammu
and Kashmir, being really backward areas, and of these areas the residents being
socially and educationally backward, the reasonable legislative classification test
stood satisfied and the classification of ‘social castes’ made was upheld.

In State of Madhya Pradesh v. Kumari Nivedita Jain,84 the complete
relaxation in the requirement as to the minimum qualifying marks had been upheld by
the Supreme Court in Pre-Medical Examination to the Medical Colleges for the
selection of the students in respect of the candidates belonging to the category of
Scheduled Castes/Tribes. It was held by the court that the State was obliged under
Article 15(4) to do for the upliftment of the Scheduled Castes/Tribes everything
possible.

In the case of Arti Sapru v. State of Jammu and Kashmir,85 the reservation
was struck down due to the fact that the allocation was not based on any substantive
evidence and was arbitrary where a reservation was provided to the candidates
belonging to: (a) areas adjoining actual line of control; and (b) areas which were
known as bad pockets including Ladakh because these areas were considered as
backward areas, and also the areas which were included in the above, consisted of
95% of the villages.

In Inder Dev Arya v. University of Rajasthan,86 as a step in the right
direction for the M.B.B.S. course, providing reservation for the students coming from
the other States was upheld by the Government of Rajasthan and this reservation was
encouraged too.

In the report of Medical Council of India in furtherance to its recommendation
for the purpose of encouraging the national integration by providing reservation (other
than the open category seats) of ten percent seats for the students on a reciprocal basis
coming from the other States, such a system was introduced by the Government; but
complete discretion was being retained in respect of such admission. In the case of
Suman Gupta v. State of Jammu and Kashmir,87 while the unguided discretion
was struck down as being violative of Article 14, the system was not disapproved of
by the court per se.
Then there came the judgment of Dr. Pradeep Jain v. Union of India,\textsuperscript{88} in which it was declared by the Apex Court that the whole scale institutional reservation was not permissible. It was observed by the Education Review Committee that to the students from the outside States, at least 25% of the seats should be opened. However, the upper limit of reservation of 70% was fixed by the court and it was also stated that the percentage must be fixed by the State depending upon the various factors but in no case this upper limit should be crossed.\textsuperscript{89} This was done for ensuring that during admissions, the merit is not sacrificed. It was also mandated by the court that over the years, the percentage should be reduced. However, this limit was got fixed at 50% in the institutes of higher education i.e., in case of post graduate institutes in the light of the extra-weightage provided to merit based selection.

There should not be any kind of reservation in the institutes for specialization and super-specialization because this would result in the compromising merit and in Dr. Dinesh Kumar v. Motilal Nehru Medical College, Allahabad\textsuperscript{90}, the kind of reservation contemplated was elucidated in the following words:

“To take an example, suppose there are 100 seats in a medical college or University and 30% of the seats are validly reserved for candidates belonging to Scheduled Castes and the Scheduled Tribes. That would leave 70 seats available for others belonging to non-reserved categories. According to our judgment, 30% of 70 seats, that is, 21 seats out of 70 and not 30% of the total number of 100 seats, namely, 30 seats, must be filled up by open competition regardless of residence requirement or institutional preference.’’\textsuperscript{91}

In K.C. Vasanth Kumar v. State of Karnataka,\textsuperscript{92} Supreme Court was asked by the State of Karnataka for giving clear guidelines on the vexed question of determination of the backwardness for the purposes of Articles 15(4) and 16(4). However, five separate opinions were expressed by the five judges of the Supreme Court on this question.\textsuperscript{93} There were divergence of opinions but it may be concluded that except Desai Justice (by whom poverty was considered as the only test of the backwardness), caste was considered as a relevant consideration by all others at least at this stage of the society of India. In the same case, it was also held by the court that by Clause (4) of Article 15, the State was empowered for making the special provisions. “Special Provision for the advancement” is a wide expression and restricted sense should not be construed of this expression meant only for the social
and educational advancement. Many more things may also be included in it besides mere the reservation of seats in the colleges. These “special provision for the advancement” may by way of free medical, educational and hostel facilities, free transport, financial assistance, scholarships, concessional or free housing, exemption from the requirements which were insisted upon in the case of other classes.

In the case of **Dinesh Kumar (II) v. Motilal Nehru Medical College, Allahabad**, the limit of 70% was questioned. It was argued that without the consideration of the percentage of the reservation for the Scheduled Castes, Scheduled Tribes and Other Backward Classes having the blanket of reservation, percentage would result in the inequality in the opportunities for the purpose of the admission in the different States. Where there are larger reservations for the Scheduled Castes, Scheduled Tribes and the Backward Classes, in those cases there would be reduction in the All India quota. The bar was raised from 50% to 75% with respect to the post graduate institutes on the same reasoning.

In the case of **Nedamarti Maheshkumar v. State of Maharashtra**, the classification was defended by the respondents on the ground that Vidarbha and Marathwada regions were backward areas vis-à-vis Pune and Bombay. Hence, for the students from these areas, such a provision made it possible to compete as well as to get admission which otherwise would be difficult. But, this contention was rejected by the Supreme Court because the claim was not based on any material facts that the Vidarbha and Marathwada regions were backward areas. Even on the assumption that these areas were backward; to make such a classification would be un-constitutional because the brilliant students from these regions would be denied an opportunity for studying at a University in Bombay or Pune. In this case and in the judgment of **Pradeep Jain v. Union of India**, the court pointed out the necessity to select best and most meritorious students for admission to the technical institutions and medical colleges by providing equal opportunity to all citizens in the country and expressed the view that reservations of seats for the admissions in medical colleges for M.B.B.S. and post-graduate medical courses on the basis of domicile (including all other reservations like those for Scheduled Castes, Scheduled Tribes and Backward Classes) should “in no event, exceed the outer limit of 70 percent which again needs to be reduced.”
The case of **N. B. Rao v. Principal, Osmania Medical College**\(^99\) demonstrated the incident of grabbing the reserved seats through getting the false social status certificates in the educational field.

In **D. M. K. Public School v. Regional Joint Director of School Education**,\(^100\) there was a claim for the purpose of quashing the show-cause notice which was issued by the Respondent under which demand was made for the cause to be shown by the Petitioner why the temporary recognition awarded to the Petitioner school should not be withdrawn. The school with the object of imparting English medium education was run free of cost to the children belonging to the category of Scheduled Castes and Scheduled Tribes who were living in Champapet village. The view was taken by the High Court while interpreting the rules in respect of recognition and analyzing all the factual aspects that keeping in mind the general constitutional scheme, some of the rules could be relaxed as was obvious from Article 46 and Article 15(4). So, the show cause notice was quashed by the High Court as there was the view that the schools running free of cost for the upliftment of the downtrodden sections of the society would suffer if a very strict adherence was required to the rules.

In the case of **Rajesh Mulick v. State of Madhya Pradesh**,\(^101\), the High Court allowed reservation of certain seats in the admissions to the Post-Graduate Course of the medical college to private practitioners and military personnel with a view to encourage them to work in rural and backward areas. Such a reservation may be rational.

Similarly, the classification based on the rectification of regional imbalance is permitted so long as it is not ordered arbitrarily and is based on the evidence. So, on the basis of Line of Actual Control, the giving of reservation and classification of people as backward on the ground of hazards of life which are being faced by them was held as valid pursuant to the report of Wazir Committee, an expert committee and Anand Committee in the case of **Rias Ahmad Shah v. State of Jammu and Kashmir**.\(^102\)

In the case of **Municipal Corporation of Greater Bombay v. Thukral Anjali Deokumar**,\(^103\) the petitioner used the logic of University based reservation to justify the college based reservation. In this case, primarily the arguments were based on a reference given to a system of college-wise reservation as being valid, in **Dr. Pradeep Jain v. Union of India**\(^104\) and **Dr. Jagdish Saran v. Union of India**\(^105\).
In these cases, the contention was taken that institution-based reservation was valid and the college-based reservation was included in the institutional reservation. However, this argument was rejected by the court stating that the two cases were related to different fact situations, the former was related with the residence-based reservation and the latter was dealing with the University-based reservation. Beyond the specific factual matrix, the ratio of these cases could not be stretched. A number of other arguments were also raised.\textsuperscript{106} Factually, it was proved that the result of such type of reservation system would be admission of less meritorious students (based on the assumption that merit is directly proportional to the marks obtained) over more meritorious students.\textsuperscript{107} This resulted in the patent discrimination against the more meritorious students.

In another case of \textit{State of Rajasthan v. Dr. Ashok Kumar Gupta},\textsuperscript{108} the relaxation of marks on a college-wise basis was struck down by the Supreme Court. In this case, into the post graduation course of the University of Rajasthan, the admission guidelines for the admission provided to the students for a uniform addition of 5% marks for applying for getting admission into the post-graduate course in case their M.B.B.S. course had been passed by them from any of the five Medical Colleges under that University. The High Court struck down the impugned provision and its decision was upheld by the Apex Court based on the ground that the addition of 5% marks and also 5% marks to be added to the students passing out of the University of Rajasthan would lead to an addition of so many marks that the remaining applicants would not be in a position to stand in competition with those candidates.

In another case of \textit{Meenakashi Malik v. University of Delhi}\textsuperscript{109}, the provision was held unreasonable under which a student was denied admission on the basis of the singular fact that his last two years of schooling was not in a particular city. For admission in a Medical College in Delhi, there was a precondition that there should be completion of schooling of last two years of the applicant in the city of Delhi. Pursuant to this, the Petitioner was denied admission on the ground that due to the work requirements of his parents; he could only complete his last years of study abroad instead of Delhi. This provision was struck down as being unreasonable.

In another case of \textit{Deepak Sibal v. Punjab University},\textsuperscript{110} out of the 150 seats in the LL.B. course in the evening college which was conducted by Punjab University, 64 seats were reserved for the Scheduled Castes, Scheduled Tribes and the Backward Classes. The court was agreeable to permit 50 percent reservation for the
regular or bonafide employees out of the remaining 86 seats and leaving remaining 43 seats open for the general candidates on the merit basis, i.e., 71 percent could be allowed as reserved posts and 29 percent to be left open for others on merit.\textsuperscript{111}

In Dr. Fazal Ghafoor v. Union of India,\textsuperscript{112} a relief was sought by filing an application in the Supreme Court under Article 32 through “a declaration that all the Post-Doctoral seats (Super-Specialties) in all the Universities and State of India including the All-India Medical Institutes should not have any regional or domicile reservations and should be open for All-India competition on merit”. Speaking through Rangnath Mishra Justice, the Supreme Court reiterated its earlier stand taken in Pradeep Jain’s\textsuperscript{113} case that in specialties there should really be no reservation.

A challenge to a provision was made in the case of Miss Asha J. Nanavati v. State of Gujarat,\textsuperscript{114} under which M.P.Shah Charitable Trust had been provided with the right for nominating 12 students to the M.P.Shah Medical College but that challenge was quashed by the High Court. However, a separate writ before the Supreme Court was made before the Supreme Court in which the same provision was challenged in the case of State of Gujarat v. M. P. Shah Charitable Trust.\textsuperscript{115} The Supreme Court holding the principle of res-judicata to be not applicable struck down the provision under the light of the observation of the case of J. P. Unnikrishnan v. State of Andhra Pradesh\textsuperscript{116} that like a business, an educational institution cannot be run. Merely due to the reason that a sizeable sum had been donated by the donor 40 years ago, his successors would not be provided with a perpetual right to nominate students. For a long period of 12 years, the benefit had already been enjoyed by them. Moreover, such a kind of provision was not acceptable in a Government aided institution.\textsuperscript{117}

An argument was raised in the case of Ajay Kumar Singh v. State of Bihar\textsuperscript{118} that to the post-graduate medical courses, the candidate seeking admission would have already benefited from the reservation to the undergraduate course at the time of admission and that during that period they were supposed to bring improvement in their efficiency and merit for competing with other candidates at the time of admission to the post-graduate medical courses. Moreover, there was another argument that providing for the reservation in the post-graduate courses was similar to the reservations in the promotions and so as per the dicta in Indra Sawhney v. Union of India,\textsuperscript{119} it was prohibited.\textsuperscript{120} As being untenable, the latter contention was rejected summarily. The Court further held,
“A class/caste may be backward in present time, but it may not be so in coming years due to their socialization with the society and job opportunities. Once a caste is socially and educationally backward community, it cannot remain so for all times to come. It requires periodical review.”

The reservation was provided by the State of Punjab in favour of the Scheduled Castes and the Scheduled Tribes on the one hand and those by whom their schooling had been done in the rural areas, on the other hand; and for the former i.e., the Scheduled Castes and the Scheduled Tribes, a special relaxation of minimum qualifying marks was also provided by the Government. The claim of the Petitioner who belonged to the latter class was rejected by the Punjab High Court when the same privilege was claimed to be extended to the latter class as well in the case of Rupinder Singh Guram v. State of Punjab.\textsuperscript{121} It was held by providing reason by the court that merely because both of the classes were recipient of reservation, so, could not be considered equals. Because inherently both of the classes were unequal, so their unequal treatment never resulted in a violation of Article 14.

In Surinder Kumar v. Punjabi University,\textsuperscript{122} it was held by the court that where in an educational institution, reservation was provided for the physically handicapped, then only allowing people with enough vision for availing of the reservation in order to teach a lower class was arbitrary. Into the B.Ed. Course, 2% reservation was provided for the physically handicapped for the purpose of getting admission. The Petitioner was 100% blind and he was denied admission because of the reason that he was incapable of teaching. Only those people with 40% vision were permitted to get the benefit from the reservation. The introduction of such a criterion was held to be arbitrary by the court.

In Swati Gupta v. State of Uttar Pradesh,\textsuperscript{123} The policy of the State Government was upheld by the Supreme Court which was providing for the horizontal reservation of seats in the medical colleges. Under this policy, for the Scheduled Castes/Tribes and Other Backward Classes, the vertical reservation of 50% seats was made along with the reservation in each category of 30% for the ladies. In the 50% quota of the general candidates, no further reservation was made. Reservation of 15% seats for the candidates, who belonged to other categories, was provided by it i.e., sons/daughters of the deceased/disabled soldiers, dependants of the freedom-fighters, physically handicapped and candidates belonging to Uttarakhal
areas or hill areas on the horizontal basis. On being selected on merit, the candidates belonging to such categories were to be adjusted in the reserved or general category depending upon the category to which they belonged. Such reservation was neither held unconstitutional nor contrary to the ratio which was laid down in the case of **Indra Sawhney v. Union of India.**\(^{124}\)

Similarly, in the case of **Anil Kumar Gupta v. State of Uttar Pradesh,**\(^{125}\) it was enunciated that Horizontal reservation can be classified further into two types.\(^ {126}\) In this case, the impugned system of reservation was provided by the State Government. It was also stated that such a system would qualify as “compartmentalized horizontal reservation” and in such kind of case if under both the “especially reserved category” and the “reservation for Scheduled Castes, Scheduled Tribes and Backward Classes category”, if there are not enough applicants then the remaining seats are not transferable to the general category.\(^ {127}\) Conversely, in case from the “especially reserved category” if there are not enough applicants under the “overall horizontal reservation” system, then there would be a transfer of the remainder of the seats to the general category.\(^ {128}\) While observing that the impugned provision was vague and the correct mode of selection ought to be specified by the State, it was proclaimed by the Supreme Court that the following was the proper method of selection:

**Step 1:** Based on merit, fill up the general category seats (50%).

**Step 2:** Fill up the vertical reservation seats (50%).

**Step 3:** Find out in the above mode, how many “especially reserved category” candidates are selected.

**Step 4:** The allocation end, if the quota fixed is satisfied for the horizontal reservations; if not, then “the especially reserved seats” as per steps 5, 6 and 7 are filled up.

**Step 5:** In case the system followed is “overall horizontal reservation”, if amongst the vertically reserved category, the enough seats are not filled up, then to the general quota the remaining seats are transferred and the seats in order of merit are allocated to the “especially reserved category” students.

**Step 6:** In case the system is “compartmentalized horizontal reservation”, then no such transfer takes place; allocation as mentioned in Step 5 is followed within the permissible limits.
Step 7: For every allocation made either to the general quota or the vertically reserved quota, in the merit list in that quota the power most person misses out.

According to the court it was not clear what was provided by the impugned provision and to the State a direction was given from next time for making it clearer. However, it was also pointed out by the court that the classification of the classes as recipient of the horizontal reservations was baseless because categories 3 and 5 were expressly held in the case of State of Uttar Pradesh v. Pradip Tandon, to be “socially and educationally backward” and these classes would be recipient of vertical reservations. So, in addition to the reservation already provided, providing 6% reservation to the socially and educationally backward would be illegal.

It was explained by the Supreme Court in the case of Valsamma Paul v. Cochin University that social and economic disabilities had been suffered by the Dalits (Scheduled Castes) and Tribes (Scheduled Tribes) which were recognized by Articles 17 and 15(2) and as a result, they had been recognized as socially, culturally and educationally backward. It was said by the Court that the purpose of reservation allowable under Articles 15(4) and 16(4) was the removal of handicaps, disadvantages, restrictions and the sufferings from which the members of the Dalits or Tribes or Other Backward Classes were suffering and reservation was sought for bringing them in the mainstream of the nation’s life by providing them opportunities and facilities. However, it was cautioned by the Court that by voluntary mobility, the acquiring the status of Scheduled Castes etc. into these categories would frustrate the benign policy of the Constitution provided under Articles 15(4) and 16(4) of our Constitution and it would amount to play fraud on the Constitution. Thus, it was ruled by the Court that a candidate being born in the forward caste and having the advantageous start in the life and who had march of advantageous life but by adoption or marriage or conversion, was transplanted in the Backward Caste would not become eligible for getting the benefit of the policy of reservation provided under Articles 15(4) or 16(4), as the case might be. It was ruled further by the Court that the recognition of the candidate for the purpose of his entitlement to the benefits of the reservation by the members of the Backward Class would not be relevant.

In the judgment of M. C. Sharma v. The Punjab University, Chandigarh, the Rules 5, 8 and 10 of Punjab University Calender Volume III were struck down by a full Bench of the Punjab and Haryana High Court by which it was provided that only a woman could be appointed as the principal of a Women’s Institution. It was
observed by the High Court that there was no basis for depriving a male for becoming a Principal, while permitting him in a Women’s Institution for discharging the duties of the Head of Department.

In the case of Mohan Bir Singh Chawla v. Punjab University, Chandigarh\textsuperscript{133}, the Supreme Court was posed with the question in respect of the validity of a rule which added 10% marks to the marks obtained in the qualifying examination, for the students coming from the Punjab University. Certain principles were summarized by the court.\textsuperscript{134} On the bases of these principles it was concluded by the court that to the students from specific Universities, the concept of addition of marks was permissible; but 10% marks was not reasonable amount and so nothing more than 5% marks was allowable/ permissible. It was further held by the Apex Court in this case that it would be dangerous to depreciate merit and excellence at higher levels of education.

The decision of the Uttar Pradesh Government was quashed by a Division Bench of the Supreme Court in Sadhna Devi v. State of Uttar Pradesh,\textsuperscript{135} dispensing with the requirement in the written examination held for the purpose of admission, by the candidates belonging to the special categories, of obtaining minimum qualifying marks to Post-Graduate and Diploma Courses in the field of Medicine and Surgery. Further, it was ruled by the court that it was not in the power and capacity of the Government who had laid down a system for the purpose of holding the admission tests, to do away with the requirement of obtaining the minimum qualifying marks for the special category of the Scheduled Castes/ Scheduled Tribes/ Other Backward Classes candidates. The court observed that the Government was enabled for admitting the candidates of special categories even in a case when the lesser marks than the general candidates had been obtained by them, provided the minimum qualifying marks for filling up the quota of seats reserved for them had been obtained by them. It was laid down by the court that merit would definitely be compromised when there was provision for minimum eligibility criteria in favour of Scheduled Castes and Scheduled Tribes.

It was observed in the case of Post Graduate Institute of Medical Education and Research v. K.L. Narasimhan,\textsuperscript{136} in respect of reservation in the superspecializations that sacrificing the excellence was not implied by the reservation. Because the same course of study was required to be undergone and same standard was required to be maintained by each and every student who secured admission for
obtaining a degree into the post-graduate specialty or super-specialty and there was no special relaxation for the reserved category. And providing opportunities for the handicapped was a constitutional duty and the denial of that duty would go against the concept of equality. Hence, the court held that the reservation was permissible in super-specialties as well.

The decision in the case of State of Madhya Pradesh v. Kumari Nivedita Jain137 is appeared to have been overruled by the court in this respect. With approval the court referred to the decisions in Dr. Saran v. Union of India,138 and Dr. Pradeep Jain v. Union of India,139 wherein for the purpose of admission to Post-Graduate Medical Courses, the importance of the merit was being emphasized. The judgment in Mohan Bir Singh Chawla v. Panjab University, Chandigarh,140 was also referred to by the Court wherein again, it was observed by the Supreme Court that: “the higher you go, in any discipline, lesser should be the reservation of whatever kind.”

It was further directed by the Court that if the reserved seats could not be filled on account of failure of the candidates belonging to the categories of Scheduled Castes/Scheduled Tribes/Other Backward Classes for obtaining the minimum qualifying marks, then to the candidates belonging to the general category such seats should be made available. Borrowing the language which was used in the case of Dr. Jagdish Saran,141 it was held by the court that keeping such seats unfilled would be “a national loss”. In such a case, it might be noted that there would have to be the application of the principle of alternative exchange.142

It was held by a Division Bench of the Supreme Court in the case of Jagdish Negi v. State of Uttar Pradesh,143 the backwardness of the citizens could not continue indefinitely. It was under the power of the State to decide whether the citizens had ceased belonging to the reserved category and from time to time also to review its policy of the reservation.

The reasoning and the conclusions which were drawn in the case of Dr. Sadhana Devi v. State of Uttar Pradesh144 were reiterated and agreed by the Supreme Court by a majority of 4 to 1 in the case of Preeti Srivastava v. State of Madhya Pradesh 145 by further saying that between the qualifying marks fixed for the reserved and the general category candidates, the disparity should not be big. It was also held by the court that between the groups of students, a large differentiation in the qualifying marks would make it difficult at the post-graduate level to maintain
the requisite standard of teaching and training and to the mandate of Article 15(4) it would be contrary. So, in the post-graduate institutes, the relaxation of the minimum qualifying entrance examination marks for the Scheduled Castes and the Scheduled Tribes was permissible to reasonable extents, while in the super-specialties, the same was prohibited.\textsuperscript{146} In the same case, the ratio that reservation was permissible in super-specialties as was decided in the case of \textit{Post-Graduate Institute of Medical Education and Research v. K.L.Narasimhan},\textsuperscript{147} was overruled by the Supreme Court.

The Madras High Court in \textit{Puvvala Sujatha (Minor) v. Union of India},\textsuperscript{148} observed that in favour of applicants from Pondicherry, the residence-based reservation was not the reservation under Article 15(4) but it was case of ‘concession or a source of selection decided by the Central Government’. The court submitted that as understood in the context of private international law, the concept of domicile would be a more rational basis to grant reservations for the sons of the soil. Two components are contained in the Domicile: (1) Residence (2) Intention for making that place a permanent home.\textsuperscript{149} If for the sons of the soil, the primary rationale behind giving reservation is that these beneficiaries of the reservation are going to settle down within the State and serve the people residing within the same State and by whom it is intended to continue residing permanently with the State, the benefits of the reservation ought to be granted. In India, there is no reorganization of the concept of the State domicile\textsuperscript{150} and it has been held in the context of reservation that there should not be the understanding of the concept of the domicile in the sense as it is understood in “Private International Law”.\textsuperscript{151}

Again it was explained by the Apex Court in the case of \textit{K. Duraisamy v. State of Tamil Nadu}\textsuperscript{152} that there were a number of differences in the concepts of reservation and fixation of quota as far as their purport, content as well as object is concerned. The nature of the expression reservation is diverse and it may be brought about in the diverse ways with variety of purposes and manifold objects. About the meaning, content and purport of the expression “reservation”, it was held by the Court that “they depend upon the purpose and object with which it is used”. For the implementation of the reservation, the peculiar principles of the interpretation which were laid down by the courts and envisaged under the Constitution of India for the purpose of ensuring the effective and adequate representation to the Backward Classes taken as a whole, could not be readily applied, the Court ruled, out of the
context and the unmindful of the purpose of the reservations. It was further laid down by the Court that for one or more of the classified group or category, whenever a quota was fixed or provided, the candidates falling in and answering the description of the different classified groups for whose benefits there was fixation of a respective quota, would have to, against the quota fixed for each of such category, confine their respective claims, with no body in one category who was having any kind of right for staking a claim against the quota which was earmarked for the other class or category. In this case, in a scheme for admission to super-specialty and the post-graduate medical courses, each for in-service candidates and non-service candidates, 50% seats were earmarked. It was ruled by the Court explaining the difference between the reservation and the quota fixation that quota could not be worked out for in-service candidates after the exclusion of those in-service candidates who on the basis of merit got the admission. Their claim would have to be confined only for the in-service candidates within the quota fixed. For the purpose of the promotion, for the benefits of various categories of posts, the fixation of quotas or different avenues and ladders in feeder cadres has been held to be a prerogative based upon the structure and pattern of the department of the employer. However, by considering the relevant factors, it can be done such as in the feeder post, the cadre strength, the more or less suitability of the holders, their experience, nature of duties and the channels of promotion which were available in the feeder cadres to the holders of posts.¹⁵³

In the case of State of Punjab v. Dayanand Medical College and Hospital,¹⁵⁴ the role of the Medical Council was explained and it was observed that the ratio of Dr. Preeti Srivastava v. State of Madhya Pradesh¹⁵⁵ could not be stretched so far to mean that the reservations could be prescribed only by the Medical Council. The States could decide about the percentage of the reservation in a better way which was necessitated by the appointing committees, than the Medical Council itself. However, the boundaries could be laid by the Medical Council so that the standards were not affected. The court also observed that the question of whether the reservation was permissible was not decided by the Bench in the case of Dr. Preeti Srivastava v. State of Madhya Pradesh.¹⁵⁶

In All India Institute of Medical Sciences Students Union v. All India Institute of Medical Sciences,¹⁵⁷ it was observed by a three-judge Bench of the Supreme Court stating the purpose of the reservation in the context of the admission in the medical colleges:
“Reservation as an exception may be justified subject to discharging the burden of providing justification in favour of the class which must be educationally handicapped. The rationale or reservation in the case of medical students must be removal of regional or class inadequacy or like disadvantage. Even there, the quantum of reservation should not be excessive or societally injurious. The higher the level of the specialty, the lesser the rule of reservation.”

However, the Full Bench decision which was given in the case of M. C. Sharma v. The Punjab University, Chandigarh,\textsuperscript{158} was overruled in appeal by the Supreme Court in the case of Vijay Lakshmi v. Punjab University\textsuperscript{159}. The view which was taken by the Supreme Court was that the policy of the Government had been taken keeping in consideration the morality because the students in the Women’s Institutions were all young girls. Over a policy decision, the court could not sit in appeal as long as there were reasonable basis for the policy decision. It was held that,

\textit{“The object sought to be achieved is a precautionary, preventive and protective measure based on public morals and particularly in view of the young age of the girl students to be taught. One may believe in absolute freedom, one may not believe in such freedom but in such case when a policy decision is taken by the State and rules are framed accordingly, it cannot be termed to be arbitrary or unjustified. Hence, it would be difficult to hold that rules empowering the authority to appoint only a lady Principal or a lady teacher or a lady doctor or a woman Superintendent are violative of Article 14 or 16 of the Constitution.”}\textsuperscript{160}

Since, there was direct nexus of the classification with the object of the Act. Thus, the provision was upheld by the Apex Court as being in consonance with Article 14.

The ratio decided in the case of Pre-Post Graduate Medical Sangarsh Committee v. Dr. Bajarang Soni,\textsuperscript{161} was followed in the case of State of Madhya Pradesh v. Gopal D Tirthani\textsuperscript{162} in which 20% reservation was upheld for in-service candidates. For the in-service candidates, other kinds of differential treatment have also been struck down by the Supreme Court. In the case of Harish Verma v. Ajay Srivastava,\textsuperscript{163} the lowering of minimum qualifying marks was declared invalid for in-service candidates. And in the case State of Madhya Pradesh v. Gopal D.
having separate entrance tests for both classes was held to be invalid and it was held that a common entrance test must be conducted for both in-service candidates and open candidates.

In TMA Pai Foundation v. State of Karnataka,\(^{165}\) it was held that in furtherance of national interest, the regulations would be permissible. Between ‘regulations’ and ‘restrictions’, the earlier drawn distinction is done away with by this and it is also suggested that the reservation may be in the national interest and so permissible.

In the case of T. T. Saravanan v. State of Tamil Nadu\(^{166}\), from the “especially reserved candidates list”, the exclusion of the grand children of the freedom fighters was upheld by the Madras High Court while quashing the challenge on the basis that the exclusion was made without applying the mind. There were the arguments given that there was no sense made for providing the reservation for the children of the freedom fighters because there would be nobody claiming under that category. However, it was decided by the court that the purpose of providing the impugned reservation system was only aiding those who due to their parents being freedom fighters might have suffered and that the same kind of suffering would not have been undergone by the grandchildren. Thus, the view was taken by the court that with the proper application of mind and with a valid rationale, the reservation had been provided and was hence valid.

In Saurabh Chaudri v. Union of India,\(^ {167}\) at a later stage 50% limit was reverted to by the Supreme Court. This was another case of Region-wise intra-State allocation of seats. There was one Divisional Board each for the Marathwada region, for the Vidarbha region and for the rest of Maharashtra, under the Maharashtra State Board of Secondary and Higher Secondary Education. There were common examination, common syllabus and common curriculum for the all the schools in the State. Thus, cutting across all three divisions, it would be easy to determine the order of merit. So, into the M.B.B.S. course, a region-wise classification for admission was made by the Government. Students falling under one divisional board could seek admission only and only in the Universities which were falling within the same jurisdiction. In the case of Nedamarti Maheshkumar v. State of Maharashtra,\(^ {168}\) this classification was challenged as being unreasonable.

The case of Nedamarti Maheshkumar v. State of Maharashtra,\(^ {169}\) was distinguished by the court from the case of D.N. Chanchala’s\(^ {170}\) on the two
grounds.\textsuperscript{171} It was clarified by the court that if a smaller percentage was reserved instead of 100\% reservation, it would be valid.\textsuperscript{172}

In the case of \textbf{P.A. Inamdar v. State of Maharashtra},\textsuperscript{173} The explanation was given about the term “national interest” as being an act in furtherance of public safety, national integrity and national security. It is more than clearly based on this definition that the imposition of a reservation system would not fall within the ambit of this term. It was further stated by the Supreme Court that providing the benefits under the reservation system amounts to a violation of the right guaranteed under Article 30(1). In this case, the Supreme Court held that:

\textit{“Such impositions of quota of State seats or enforcing reservation policy of the State on available seats in unaided professional institutions are acts constituting serious encroachment on the right and autonomy of private professional educational institutions. Such appropriation of seats can also not be held to be a regulatory measure in the interest of minority within the meaning of Article 30(1) or a reasonable restriction within the meaning of Article 19(6) of the Constitution.”}\textsuperscript{174}

Thus, it is quite clear that if with the interpretation provided by \textbf{P.A.Inamdar}\textsuperscript{175} one agrees to the verdict of \textbf{TMA Pai}\textsuperscript{176}, in the private unaided institutions, the imposition of the reservation is not permissible. Therefore, it is submitted that the if the reservations are imposed in the public/national interest and the law which was laid down in the case of \textbf{P.A.Inamdar}\textsuperscript{177} goes against the dicta in the case of \textbf{T.M.A.Pai} disregarding the same.

The effects of \textbf{P.A. Inamdar v. State of Maharashtra}\textsuperscript{178} were as legislatively overruled by way of the 93\textsuperscript{rd} Constitutional Amendment that came into force from January 20, 2006 and which introduced Article 15(5). Pursuant to this new amended policy, when the Government evinced intention to reserve 27 percent seats for Other Backward classes in institutions of higher learning, the whole issue got precipitated, and led to the prolonged strike by medicos all over the country that was later called off on the intervention of the Supreme Court, which was seized of the matter by accepting the \textbf{Writ Petitions}\textsuperscript{179} challenging the validity of the \textbf{Central Education Institutions (Reservation in Admission) Act, 2006}, notified by the Government on 4th January, 2007. It makes 27 percent reservation compulsory for Other Backward classes in institutions like the IITs, IIMS, AIIMS, PGIMS and others from next
academic session starting in June. However, in the case of Ashoka Kumar Thakur v. Union of India, the validity of Article 15(5) was challenged. In the context of a challenge to the validity of the Central Educational Institutions (Reservation in Admission) Act, 2006, the provision was challenged which sought to impose the reservations in central educational institutions. The important thing to be noted is that the challenge to this provision was not made by any unaided non-minority institution. In this case, the five-judge Constitution Bench consisting of Justice Dr. Arijit Pasayat, Justice C.K. Thakker, Justice R.V. Raveendran, Justice Dalveer Bhandari headed by Chief Justice K.G. Balakrishnan unanimously held that:

1. Identification of Other Backward classes solely on the basis of caste will be unconstitutional;
2. failure to exclude the 'creamy layer' from the benefits of reservation would render the reservation for Other Backward classes under Act 5 of 2007 unconstitutional; and
3. Act 5 of 2007 providing for reservation for Other Backward classes will however be valid if the definition of 'Other Backward classes' is clarified to the effect that if the identification of Other Backward classes is with reference to any caste considered as socially and economically backward, 'creamy layer' of such caste should be excluded.

The judges also expressed their separate decisions in this judgment on a number of important issues.

This judgment of the Supreme Court can change the lives of many formally excluded sections from the halls of higher learning and privilege. It is unfortunate that because of partisan politics, some are still unwilling to accept this equitable decision, thus, putting in jeopardy the implementation of this overdue measure for the poor segments of the Other Backward classes.

This case was followed by the case of Dr.Gulshan Prakash & Others v. State of Haryana & Others. In this case, challenge in the appeal was made by the appellants in order to quash the prospectus issued by Maharshi Dayanand University, Rohtak, Haryana for the MD/MS/PG Diploma Courses for the Academic Session 2007-2008 to the extent that any reservation of seats was not provided for the Scheduled Castes or the Scheduled Tribes candidates. Similarly, challenge in the Writ Petition related to the prospectus issued by the aforesaid University filed under Article 32 of the Constitution of India for the same courses for the Academic Session 2009-
2010. The petitioners in Special Leave Petition (C) Number 4590 of 2008 and Writ Petition (C) Number 69 of 2009 were one and the same. The Apex Court held that Article 15(4) is an enabling provision and the State Government is the best judge to grant the reservation in favour of the Scheduled Castes and the Scheduled Tribes and the Backward Class categories, at Post-Graduate level in the admission and the decision of the State of Haryana suffered no infirmity for not taking its own decision in respect of reservation depending upon various factors. Since it had been decided by the Government of Haryana for granting the reservation for Scheduled Castes, Scheduled Tribes and Backward Class candidates for the purpose of admission at M.B.B.S. level i.e., under graduate level, then it did not mean that the State was bound to grant the reservation at the Post-Graduate level also. The decision of the State Government had already been conveyed by it that it was not in favour of providing the reservation for Scheduled Castes/Scheduled Tribes/Other Backward Classes at the Post-Graduate level. In such circumstances, the mandamus against their decision could not be issued by the Court and their prospectus could not be faulted with in Post-Graduate Courses for not providing the benefits of the reservation. However, it was further held by the Court that irrespective of the above conclusion, the State of Haryana was at liberty for reconsidering its earlier decision, if it was so desired by it, and if the circumstances warranted in the future years. As a result, the Civil Appeal as well as the Writ Petition failed and accordingly, the same were dismissed with no order as to costs.

In the case of P.V. Indiresan v. Union of India,183 two questions were raised, first relating to the meaning of the words “cut-off marks” used in the clarificatory order dated 14.10.2008 in P.V. Indiresan & Others v. Union of India184 in regard to the decision of the Constitution Bench in Ashoka Kumar Thakur v. Union of India185 and second, whether all vacant seats in the reserved quota after the seats have been filled, shall revert to the general category. The Supreme Court affirmed the decision dated 7.9.2010 of the learned Single Judge of the High Court that the order dated 14.10.2008 clarifying that where minimum eligibility marks in the qualifying examinations are prescribed for admission, say as 50% for general category candidates, the minimum eligibility marks for Other Backward Classes should not be less than 45% (that is 50 less 10% of 50). The minimum eligibility marks for Other Backward Classes can be fixed at any number between 45 and 50, at the discretion of the Institution. Or, where the candidates are 40% for general category candidates, the
qualifying marks for Other Backward Classes candidates should not be less than 36% (that 40 less 10% of 40). This clarification was given subject to the following conditions:

(i). If any Central Educational Institution has already determined the ‘cut-off marks’ for Other Backward Classes with reference to the marks secured by the last candidate in the general category, and has converted the unfilled Other Backward Classes seats to the general category seats and allotted the seats to the general category candidates, such admissions shall not be disturbed. But where the process of conversion and allotment is not completed, the Other Backward Classes seats shall be filled by Other Backward Classes candidates.

(ii). If in any Central Educational Institution, the Other Backward Classes reservation seats remain vacant, such institutions shall fill the said seats with Other Backward Classes students. Only if Other Backward Classes candidates possessing the minimum eligibility/qualifying marks are not available in the Other Backward Classes merit list, the Other Backward Classes seats shall be converted into general category seats.

(iii). If the last date for admissions has expired, the last date for admissions shall be extended till 31.8.2011 as a special case, to enable admissions to the vacant Other Backward Classes seats.

3. Job Reservation

The social and political justice which is pledged by the Preamble of the Constitution will remain a myth unless and until, first to all, the citizens’ economic justice is guaranteed. In the face of economic deprivations, the liberty of thought and expression also will remain on paper. The remunerative occupation is a means not only of economic upliftment of a person but also of instilling in the individuals self-worthiness, self esteem and self-assurance. He is also accorded by it a status and dignity as a useful and independent member of the society. Employment is an important and dominant remunerative occupation, which has an added edge when it is with the Government, semi-Government or Government-controlled organization. Depending upon the establishment and the post, employment is coupled with the power and prestige of varying degrees and nature. Under the State, the employment by itself may help in achieving many times the triple goal of social, economic and political justice. Social and economic advancement leads to educational advancement of the group of people. Employment is also an important aid for the purpose of
achieving the cultural growth. Therefore, the reservation in the employment is imperative for achieving the total unity and integration of our society.

Thus, the employment is a means of the social leveling and when there is public employment, it helps in direct participation in the running of the affairs of the society. As ordained by the Preamble of the Constitution, an attempt made deliberately for securing the employment to those who in the past were designedly denied the same, is an attempt to provide them with social and economic justice. Because unless there is equal participation of all sections of the society in the State power, irrespective of their caste, religion, race, sex and also unless in the sharing of the State power, all the discriminations made on those grounds are eliminated by the positive measures, the trinity of the goals of the Constitution, viz., socialism, secularism and democracy cannot be realized. So, it was thought advisable by the drafters of the Constitution along with Article 14 to incorporate Article 16 specifically providing in the matters of public employment for equality of opportunity. Under Article 16(4), in the State employment, the reservation is provided for a “class of people” who must be “backward” and “in the opinion of the State” are “not adequately represented” in the services of the State.

Like any other employer, the State is entitled for laying down the qualifications for the employment and insisting that those must be satisfied by the applicants. However, on the State, there is an additional burden while laying down certain qualifications to adhere to the provisions of the Constitution as provided in Part III. Those qualifications which are reasonable and rational and have a nexus with the appointment in question will be valid, but any arbitrary or irrational requirement will be liable to be struck down by the courts. Thus, in the cases of abuse of the protective discrimination policy, the judicial remedies are sought. Since right involved in the protective discrimination are not the substantive rights, but only the permissive rights, so, the beneficiaries of such arrangements generally do not go to the courts. It is only the persons whose rights are adversely affected due to the reverse discrimination go to the courts against the Governmental action. And the disputes arise between the victims of the reverse discrimination and the sponsorer of the protective discrimination. Who comes to the court of laws as initiator or who has to defend it, does not make any difference because interested parties may join the issue as the interveners.
The case of B. Venkataramana v. State of Madras\(^{187}\) was a case directly under Article 16(4) and was held in a decision which was delivered on the same day by the same Bench of seven judges. In this case, the reservation of the posts was made by the Communal Government Order of the Government of Madras for the Harijans and Backward Hindus and also for the other communities like Muslims, Non-Brahmin Hindus and Brahmins and Christians. The reservation was upheld by the Court for the benefits of Harijans and Backward Hindus and was also held in this respect that those posts were reserved not on the ground of religion, caste, race, etc., but there was the necessity of making a provision for the reservation regarding such posts for the benefits of the Backward Classes of citizens. However, the reservation was struck down by the Court in favour of other than Harijans and Backward Classes based on the ground that it was impossible to take those classes as Backward Classes. In the decision pronounced by the Court it can be seen that into Harijan and Backward Classes, the classification of the Backward Classes was upheld by the Court as being allowable under Article 16(4) since the said two groups were citizens belonging to the Backward Classes and it was not a classification which was made on the ground of the race, caste, religion, etc. The writ petition was permitted on the ground that the allocation of the vacancies to and among the communities other than Backward Classes of Hindus and Harijans, cannot be sustained in view of clauses (1) and (2) of Article 16.

Since, in Venkataramana’s\(^{188}\) case reservation for the Backward Hindus comprising of certain castes was allowed, some High Courts thoughts caste could be permissible basis of classification.\(^{189}\) However, in one of such cases—R. K. Singh Ram Singh v. State of Mysore,\(^{190}\) Mysore High Court stressed the requirement for deciding the backwardness on intelligible principle. The Government move in 1959 to determine backwardness on the basis of 1941 census report which was declared to be unintelligible, as change in circumstances since then might have rendered some classes forward within eighteen years and declaration of 95 percent of the population as backward was declared bad.

For the exercise of the powers as conferred by Article 16(4), the condition precedent is that there ought to be satisfaction of the States that in its services, there is no adequate representation of the Backward Class of citizens. Either in the services the numerical inadequacy of the representation or even the qualitative inadequacy of the representation may be referred to by this precedent condition.\(^{191}\) It is not only
required for the advancement of the socially or educationally Backward Classes that there should be their adequate representation in the lowest rung of the services but to secure their adequate representation in selection posts in the services as well should be aspired by them. It had been held earlier in General Manager, South Railway v. Rangachari\(^{192}\) by the Supreme Court that the State could exercise the power of reservation conferred on it not only to provide for the reservation of the appointment but also to provide for the representation in the selection posts as well as promotional posts. It means that the Supreme Court in this case had permitted that under Article 16(4), the reservation could be made from a lower to a higher post or cadre i.e., not only at the initial stage of the recruitment but even in the matters of promotion also. It had been a law for more than 30 years.

The case of T. Devadasan v. Union of India\(^{193}\) is popularly known as “carry forward rule case” in which the scope of Article 16(4) was considered by the Supreme Court. In this case, the court pronounced upon the constitutionality of the rules framed by the Central Government regarding ‘carry forward’ which was framed for regulating the appointment of the persons belonging to the category of Backward Classes in the public services.\(^{194}\) By a majority of four to one it was held by the Court that the rule of carry forward as was not ultra virus and invalid but the rule which was amended in the year 1955 on the ground that under Article 16(4) the vested power in the State Government could not be so exercised in the matters of public employment as to deny reasonable equality of opportunity to the members of classes who were not backward. It was thought by the majority that the object of that provision was to ensure that the members of the Backward Classes were not handicapped excessively by their backwardness from the public employment and when the State by providing reservation for the benefits of the Backward Classes did in effect provide an opportunity to the Backward Classes in the matters of public employment equal to other classes. From this premise, it was further held by the Court that where the reservation was as excessive in its character as in practice to deny to other classes in a reasonable opportunity, it amounts a mockery and fraud upon the Constitution of India. Because in the year 1961, as a result of the application of the impugned Rule, 29 vacancies out of the 45 actually filled, went to the candidates belonging to the category of the Scheduled Castes and the Scheduled Tribes. That became about 64% of the reservation quota which was not below the limit of 50 percent which was laid down in the case of Balaji\(^{195}\). So, the carry forward rule regulating reservation of
vacancies in favour of the candidates who were belonging to the Scheduled Castes and Scheduled Tribes was struck down as invalid and unconstitutional by the court.

One of the cases in which it was decided that a fundamental right to the Backward Classes is not granted by Article 16(4) is C.A. Rajendran v. Union of India.\textsuperscript{196} Under Article 32, a petition was filed for the purpose of writ quashing an Office Memorandum providing for no reservation in favour of Scheduled Castes and Scheduled Tribes in the posts filled by the way of promotion. The petition was rejected by the Court and it was held that in making a provision for reservation of appointments or posts not only the claims of the members of the Backward Classes had to be taken into consideration by the Government but also the maintenance of efficiency of administration which was a matter of paramount importance. It was further held by the Court that under Article 16(4), no constitutional duty was imposed on the Government for making a reservation for the Scheduled Castes and Scheduled Tribes, either at the initial stage of the recruitment or at the stage of promotion. Article 16(4) was described an ‘enabling provision’.

In another case of Triloki Nath & Another v. State of Jammu & Kashmir & Others,\textsuperscript{197} the reservation of 50% of the Gazetted posts which were to be filled through promotion was made in favour of Muslims of Jammu & Kashmir and it was held by the Court that in State services, the inadequate representation would not be decisive to determine the backwardness of the section. Accordingly, the directions were given by the Court for collecting further relevant material. The matter was placed before the court after the material as directed earlier was collected and the decision in the case of Triloki Nath & Another v. State of Jammu & Kashmir & Ors. (I)\textsuperscript{198} was reported.\textsuperscript{199}

In State of Punjab v. Hira Lal,\textsuperscript{200} Rangachari\textsuperscript{201} was approved and followed by Supreme Court. The court specifically ruled out the acceptance of the argument that the word ‘posts’ in Article 16(4) meant posts filled by initial appointment and held ‘posts’ referred to selection posts. It was also observed in this case that the rule in Article 16(1) made was meaningless by virtue of the provision of reservation provided under Article 16(4) if the State’s decision would not be open to judicial review. However, the burden of establishing the fact was on the person who took the plea that particular reservation was offensive to Article 16(1).

Janki Prasad Parimoo & Others etc. v. State of Jammu & Kashmir & Others\textsuperscript{202} was also a case decided under Article 16(4). It was held by the Court on the
test of backwardness that in the said decision, the poverty was discarded as the sole test of the backwardness for the purpose of Article 16(4) by the Court. However, on the other hand, this was emphasized that the social and educational backwardness should result in the poverty in question.

There has always been a problem of balancing between constitutional commitments to non-discrimination and substantive equalization. Therefore, in Arati Ray Chaudhury v. Union of India, a rule limiting the reserved vacancies to 45 percent was upheld.

Before the Supreme Court of India in the case of State of Kerala v. N. M. Thomas an important question arose in respect to the content and reach of Articles 16(1), 16(2), 16(4) and the interrelation of Articles 14, 15 and 16. By a majority of 5 to 2, the constitutional validity of the impugned Rule and the Order made there under was upheld by the Court. It was further held by the Court that to the employees belonging to the category of Scheduled Castes or Scheduled Tribes providing preference by permitting them an extended period of total two years for the purpose of passing the departmental test held for the promotion, was a reasonable and just classification which was having rational nexus to the object of giving for all citizens equal opportunity. It was also explained by the Court that the equality was envisaged by Article 16(1) between members of the same class of employees but not equality between members of separate, independent classes. Again, it was added by the Court that the reasonable classification of the employees was permitted by Article 16(1) in the matters of employment or appointment to any office, in which promotion to a selection post was also included. It was further observed by the court on the basis of backwardness that the classification did not fall within the province of Article 16(2), but it was covered under Article 16(1). Therefore, a rule would be valid which gave preference to an under-represented backward community and Articles 14, 16(1) and 16(2) would not be contravened by it. It was held by the Court that one of the methods regarding the achievement of equality which was embodied in Article 16(1) was indicated by Article 16(4). Thus, Article 16(4) should not be read by way of exception to Article 16(1). Rather, one mode of the reconciling the claims of the backward community and the opportunity for the free competition which was exercised ordinarily by the other sections of the community was served by it. It was established by the case of Thomas that the entire field covered by Article 16(1) and 16(2) was not covered by Article 16(4) and also that there would be some matters
relating to employment or appointment to the public office in respect of which the equality of the opportunity was guaranteed under Articles 16(1) and 16(2), which did not fall within Article 16(4). It was also exhibited by Thomas Case207 that what was guaranteed by Article 16(1) was “actual equality”. The State might adopt new strategy to ensure such equality so as for bringing at par the under-privileged with the rest of the society, by providing all the possible opportunities and the incentives to these groups, the reservation being one of them which was embodied in Article 16(4).

In Jagdish Rai v. State of Haryana,209 Thomas majority zeal was demonstrated. In this case, 50% reservation was done in favour of Ex-emergency Commissioned officers for the post of demonstrators in the dental College and 28 percent reservation was done for ‘released Army Personnel’ to the post of sub-Inspectors in Food and Supplies Department. It was pointed out by the High Court that a new dynamism and dimension had been given by Thomas into the concept of equality of opportunity. The old sterility had been got rid of by it. In view of the Court, it was not necessary to be apologetic that the special preference was justified under permissible exception. It could be boldly claimed that such laws were essential incidents of the equality.210

Expanding the scope of Article 16(4), the next significant judicial pronouncement came in Akhil Bharatiya Karamchari Sangh (Railway) v. Union of India.211 In this case, the validity of ten circulars was upheld by the Supreme Court which were issued by the Railway Board providing the reservation in favour of the Scheduled Castes and Scheduled Tribes in the selection posts in railways. The reservation was provided by the impugned circulars in the railway services of the 17.5% posts for these categories. The carry forward rule resulted in the reservation quota in the third year for these categories which came to about 64.4%. It was further held by the Court that the quantum of the reservation had not to be seen in a particular year but had to be seen in the context of overall representation of the Scheduled Castes and Scheduled Tribes. A reference to M. R. Balaji212 was made by the Court and it was said that in the case the quantum of 50 percent which was laid down was not a rule laid down by the Court but it was only an observation made by the Court. So, the court said that in this respect no fixed rule could be laid down. Therefore, this quantum of reservation was upheld by the Supreme Court as not excessive because it was ruled that while dealing with the human affairs the mathematical precision could not be applied. 213 In this case, it was also decided by the Apex Court that reservation
of appointment or posts under Article 16(4) included promotions. The court felt that competitive skill was more relevant in higher posts and promotional reservation was to put some set back to the legitimate expectations of majority of workers, still it preferred promotional reservation for Scheduled Castes and Scheduled Tribes on the ground that the real power could be shared by weakest section only if the doors of the higher desks were opened to them. This was overruled in Indra Sahwney v. Union of India\textsuperscript{214} the court declared that Article 16(4) did not permit reservation in matter of promotions and made the declaration effective after five years, in order to enable the authority to revise, modify or re-issue the relevant rules suitably.

In Chakradhar Paswan v. State of Bihar,\textsuperscript{215} it was held by the Court that in any cadre, a single post could not be reserved either at the initial stage or in filling up of a vacancy in future.

Again in P&T Scheduled Castes/ Scheduled Tribes Employees’ Welfare Association v. Union of India,\textsuperscript{216} it had been observed by the Court that Article 16(4) ‘is only an enabling clause’ and under it ‘no writ can be issued ordinarily compelling the Government for making the reservation’. However, in fact the Central Government was directed by the Court in that case for conferring on the Scheduled Castes and Scheduled Tribes employees, the same advantages in the P & T department as in the other departments of the Government which were enjoyed by the employees belonging to the category of Scheduled Castes and the Scheduled Tribes because ‘the equality clause of the Constitution’ was violated by the less advantageous treatment of the P & T employees.

In the case of Indra Sahwney v. Union of India,\textsuperscript{217} the Court examined the scope and extent of Article 16(4) in detail and clarified various aspects on which there was difference of opinion in various earlier judgments. The majority opinion of the Supreme Court on various aspects of reservation provided in Article 16(4) may be summarized as follows:-

1. Backward class of citizen in Article 16(4) can be identified on the basis of caste and not only on economic basis.
2. Article 16(4) is not an exception to Article 16(1). It is an instance of classification. Reservation can be made under Article 16(1).
3. Backward classes in Article 16(4) are not similar to as socially and educationally backward in Article 15(4).
4. Creamy layer must be excluded from Backward Classes.
5. Article 16(4) permits classification of Backward Classes into Backward and more Backward Classes.
6. A Backward class of citizens can not be identified only and exclusively with reference to economic criteria.
7. Reservation shall not exceed 50%.
8. Reservation can be made by ‘Executive Order’.
9. No reservation in promotions.
10. Permanent Statutory body to examine complaints of over-inclusion/under-inclusion.
12. Disputes regarding new criteria can be raised only in the Supreme Court.

In the case of Ashok Kumar Thakur v. State of Bihar,\textsuperscript{218} the addition of economic criteria for the purpose of the application of the exclusion rule in the case of Class I officers of the Central Government or State Government or an undertaking or an institution fully or partially financed by them had been held to be invalid. The criteria to be fixed for the determination of creamy layer, for the purposes of reservation under Article 16(4) in State services involves the question regarding the interpretation of the Constitution and it is also the subject-matter of the judicial decisions of the Supreme Court and thus, the report fixing the criteria can be reviewed by the Court. While appointing a commission, the terms of reference may be subject to the judicial review.\textsuperscript{219}

In R. K. Sabbarwal v. State of Punjab,\textsuperscript{220} the distinction between the terms “posts” and “vacancies” was explained by Constitution Bench of the Supreme Court with reference to the scope of Article 16(4). It was held by the Court that the meaning of the word “post” was an appointment, job, office or employment and a position to which a person was appointed, while the meaning of the word “vacancy” was an unoccupied post or office. The court explained that the plain meaning of the two expressions made it clear that to enable the “vacancy” to occur there must be a “post” in existence. By the number of posts comprising the cadre, the cadre-strength was always measured and therefore, in respect of a post in a cadre, the right to be considered for the appointment could be claimed. As a consequence, in relation to the number of posts by which the cadre-strength was formed, the percentage of reservation had to be worked out. It was made clear by the Court that in operating the percentage of reservation, the concept of “vacancy” had no relevance. Reservation in
promotion with consequential seniority was the cause of serious prejudice to the general category people. This has come to light in this case. The Apex Court further held that the roster system is a running account which is to operate only till the quota provided under the instructions is reached and not there after. Once the prescribed percentage of representation is secured the numerical test of adequacy would be satisfied and henceforth the roster would not survive. Thus, the Apex Court ensured maintenance of balance between the reserved category and the General category. The court observed that the rule of reservation gave accelerated promotion, but it did not give the accelerated consequential seniority. The court explained that a reasonable balancing of the rights of General candidate and roster candidate would be achieved by following the catch up rule.

The Supreme Court in its judgment dated 1-10-1996 in the case of S. Vinod Kumar v. Union of India,221 held that such relaxations in matters of reservation in promotion were not permissible under Article 16(4) of the Constitution in view of the command contained in Article 335 of the Constitution. The Apex Court also held that the law on the subject of relaxations of qualifying marks and standards of evaluation in matters of reservation in promotion is one laid down by the nine-judge Constitution Bench of the Supreme Court in the case of Indira Sawhney and others v. Union of India222 and others. Para 831 of Indira Sawhney judgment also held such relaxations as being not permissible under Article 16(4) in view of the command contained in Article 335 of the Constitution. In order to implement the judgments of the Supreme Court, such relaxations had to be withdrawn with effect from 22.07.1997.

Granting of seniority to those members who had been promoted to higher grade by virtue of reservation in promotion following the roster system created a serious problem. This was highlighted in the case of Union of India v. Virpal Singh Chauhan223. The view expressed in this case was concurred with by the Supreme Court holding that accelerated promotion was provided by the rule of the reservation, but the accelerated consequential seniority was not given by it. It was explained by the Court that by following the catch-up rule, there would be the achievement of the reasonable balancing of the rights of the general candidate and the roster candidate. According to this rule, if “in case any senior general candidate at level 2 reaches level 3 goes further upto level 4, in candidate (roster point promotee) at level 3 goes further upto level 4, in that case the seniority at level 3 has to modified by placing such a general candidate above the roster promotee reflecting their inter se at level 2.”224 In
this case the Supreme Court opined that it was open to the State if it was so advised to say that while the rule of reservation shall be applied and the roster followed in the matter of promotions to or within a particular service, class or category, the candidate promoted earlier by virtue of rule of reservation/roster shall not be entitled to seniority over his senior in feeder category and that as and when a General Candidate who was senior to him in the feeder category is promoted, such senior candidate will regain his seniority over the Reserved Candidate not withstanding that he is promoted subsequent to the Reserved Candidate.

This case was followed by the case of Ajit Singh Janjua & Others v. State of Punjab & Others (I) 225 in which similar problem relating to the reservation in promotion in favour of Scheduled Castes and Scheduled Tribes was discussed and similar solution was provided by the Apex Court that the members belonging to the category of Scheduled Castes and Scheduled Tribes cannot be promoted only on the basis of their ‘accelerated seniority’ against the general category posts. When the members of Scheduled Castes and Scheduled Tribes category have got promotion on the basis of reservation on the application of roster before their seniors in the lower grade belonging to general category then they have not superseded them in this process because there was no inter se comparison of merit between them. And when such seniors belonging to the general category are promoted later, then it cannot be said that they have been superseded by such members of Scheduled Castes or Backward Classes who have been promoted earlier. Since, this rule will violate the equality clause.

In another case of Ashok Kumar Gupta v. State of Uttar Pradesh, 226 it was clarified by the Apex Court that a right was guaranteed by Article 16(4A) read with Article 16(1) and 14 to Dalits and Tribes as a fundamental right for promotion in consistence with the efficiency of the administration where adequate representation had not been got by them.

In a next case of Jagdish Lal v. State of Haryana, 227 it was held by the Supreme Court that in case of promotion of the reserved candidates (Dalits or Tribals) earlier to a general candidate in the new cadre, their seniority would rank on promotion from the date of their joining.

The Supreme Court ruled in the case of Superintending Engineer, Public Health, and Union Territory Chandigarh v. Kuldeep Singh 228 that where no Scheduled Tribe was present as per the principle of alternative exchange, Scheduled
Castes had to be considered for promotion. The Court further held that in such a case, promotion could not be given in preference to the eligible Scheduled Caste candidate to a candidate from the general category.

In **Union of India v. Madhav Gajanan Chaubal**,\(^{229}\) it was held by the Supreme Court that in a single post, a rule providing for the reservation would not be unconstitutional. Relying on the case of **Arati Ray Chaudhury v. Union of India**,\(^ {230}\) in which in the context of the plurality of the posts, the applicability of the roster point had been considered and upheld by the Court. In the **Madhav’s case**,\(^ {231}\) the device of the rotation of roster was approved by the Court in respect of a single-post cadre.

In **Post Graduate Institute of Medical Education and Research, Chandigarh v. Faculty Association**,\(^ {232}\) the view held in the case of **Chakradhar v. Paswan v. State of Bihar**,\(^ {233}\) was reiterated by a five-Judge Constitution Bench of the Supreme Court with approval and it was again ruled by the Court that for reservation there would have to be plurality of posts. A petition moved by the Faculty Association of the Post Graduate Institute Chandigarh was allowed by the Court holding that at reservation, any attempt in a single post cadre by whatever means was “bound to create 100% reservation in such cadre” even through the device of rotation of a roster. Holding that there was need for the reservation for the members of the Scheduled Castes/Scheduled Tribes and Other Backward Classes and such reservation was confined not only to the initial appointment in a cadre but also to the appointment in the promotional post, clarification was given by the Court.\(^ {234}\) So, overruling the decision in the **Madhav’s case**, it was held by the Constitutional Bench:

“In a single post cadre, reservation at any point of time on account of rotation of roster is bound to bring about a situation where such single post in the cadre will be kept reserved exclusively for the members of the Backward Classes and in total exclusion of the general members of the public. Such total exclusion of general members of the public and cent percent reservation for the Backward Classes is not permissible within the constitutional frame-work. The decisions of this Court to this effect over the decades have been consistent. Hence, until there is plurality of post in a cadre, the question of reservation will not arise.”

In a significant decision in the case of **Ajit Singh Janjua v. State of Punjab (II)**,\(^ {235}\) the cases of **Ashok Kumar Gupta**\(^ {236}\) and **Jagdish Lal**\(^ {237}\) were overruled by a five Judges Constitution Bench of the Supreme Court and it was held that these cases
were not decided correctly. It was again explained by the Court that in certain posts, providing due representation of certain classes was the primary objective of the Articles 16(4) and 16(4A).\textsuperscript{238} It was ruled by the court that neither any fundamental right was conferred by both the Articles 16(4) and 16(4A) nor any constitutional duty was imposed by them, but the nature of these Articles was that they were only enabling provisions vesting a discretion in the State for considering to provide the reservation if the circumstances mentioned so warranted in those Articles. With approval, the decisions in the cases of Virpal\textsuperscript{239} and Ajit Singh\textsuperscript{240} were reiterated by the Supreme Court.

However, the interest of the Government servants who were belonging to the Scheduled Castes and the Scheduled Tribes was adversely affected by the judgments in Virpal case\textsuperscript{241} and Ajit Singh II case\textsuperscript{242} in the matter of seniority or promotion to the next higher grade.\textsuperscript{243}

It was explained by the Apex Court in the case of State of Haryana v. Prem Singh\textsuperscript{244} that only in respect of transfer to a higher post from a lower post the reservation policy would apply and not in the case of transfer made to an equivalent post.

In State of Punjab v. Surjit Singh,\textsuperscript{245} it was held by the Supreme Court that in the grant of the selection grade, the benefits of the reservation could not be granted because it was provided for avoiding stagnation in the grade at the highest slab which was quite different from promotion made to the higher posts.

In the case of Indra Sawhney v. Union of India & Others,\textsuperscript{246} the Supreme Court confirmed the “exclusion of the creamy layer” to be mandatory which was decided in the case of Indra Sawhney v. Union of India\textsuperscript{247}. However, Kerala State Backward Classes (Reservation of Appointments or Posts in the Services under the State) Act, 1995 was passed by the State of Kerala without even appointing for the purpose of the identification of ‘creamy layer’ a Commission declaring in Section 3 that there were not the existence of socially advanced sections having the capacity for competing with the forward classes among the Backward Classes of Kerala. So, the Supreme Court was prompted by this attitude of the State for issuing the instructions in the case of Indra Sawhney v. Union of India (II)\textsuperscript{248} to the Chief Justice of the Kerala High Court to set up a High Power Committee for the purpose of identification of the ‘creamy layer’ in the State. After considering the recommendations of the High Power Committee, it was held by the Apex Court that Section 3 was violative of
Articles 14, 16(1) and 16(4). Then, there was the enactment of Section 4 for the purpose of overcoming the effect of the decision. Section 4 and Section 6 were struck down by the Supreme Court. The unreasonable delay on the part of Kerala Government deliberately deprived the really Backward Classes of their legitimate rights. By making the discriminatory law, the Government of Kerala also made the breach not only of equality clause but of the judgment of this Court. Thus, the actions of the State of Kerala were held to be invalid and ineffective by the Supreme Court.

The Supreme Court ruled in Kuldeep Kumar Gupta v. Himachal Pradesh State Electricity Board,\textsuperscript{249} that providing quota for the specified category of personnel, whenever different category of persons were included in the feeder category, did not amount to the reservation within the ambit of Article 16(4) in the promotional cadre. It was explained by the Court that the mandate engrafted in Article 16(1) was actually effectuated by such a provision, since in feeder category; each category of persons would get the opportunity of being considered for the purpose of promotion, thereby making the promotional cadre equi-balanced.

A Bench of three learned judges of the Apex Court in the case of All India Non-Scheduled Castes/Scheduled Tribes Employees Association (Railway) v. V.K. Agarwal,\textsuperscript{250} ruled that the principle of the reservation would not be applicable to the restructuring of the posts. It had been made clear that if there was no additional post created as a result of the re-classification or re-adjustment then, there would not be the application of the principle of reservation. Where the existing employees were re-distributed into the different scales of pay as a result of up gradation, there would not be applicability of the principle of the reservation as no new post was created.

Under Article 16(4) of the Constitution, the reservation will be valid only if it has been provided in favour of socially Backward Class of citizens who, in the opinion of the State, are not adequately represented in the services under the State and the efficiency of the administration is not impaired by the reservation. However, reservation should not be excessive. In Ashutosh Gupta v. State of Rajasthan,\textsuperscript{251} it had been held by the Supreme Court that even in the matter of reservation in favour of the Scheduled Castes and Scheduled Tribes, a provision was made by the founding fathers of the Constitution relating to the maintenance of the efficiency of the administration. If a recruitment of a candidate was provided for by the statutory provision without bearing in mind the maintenance of efficiency of administration such a provision would be unconstitutional. Such a conclusion might be derived on
the basis of the provisions of Article 335. It is stipulated by this Article that there shall be consistency between the claims of the members of the Scheduled Castes and Scheduled Tribes with the maintenance of efficiency of administration in the making of the appointment to the services and posts in connection with the affairs of the Union or State. Thus, the efficiency of the administration should not be adversely affected by the policy of reservation.  

In *S. Pushpa v. Sivachanmugavelu,* it was made clear by the Court that by a Presidential Order issued under Article 341(1) or 342(1) of the Constitution of India, Article 16(4) is not controlled in the sense that in the matter of appointment or posts, the reservation may be made in a State or Union Territory only for such Scheduled Castes and Scheduled Tribes who are mentioned for that particular State or Union Territory in the Schedule appended to the Presidential Order. It is not said and conveyed by this Article that only the Scheduled Castes and the Scheduled Tribes mentioned in the Presidential Order for a particular State alone will be recognized as Backward Classes of citizen and none else.

In *Attar Singh Dhooor & Others v. State of Punjab,* and in *Dr. Krishah Pal and Others v. State of Punjab and Others,* challenge was made to the same instructions issued by the Government of Punjab providing that 50% vacancies of quota reserved for the members of the Scheduled Castes should be offered as a first preference from amongst the Scheduled Castes candidates to Balmikis and Mazabhi Sikhs, if available. In these two writs, the petitioners claimed that they belonged to the castes of Ramdasia and Ad Dharmi etc. and being Scheduled Castes, were aggrieved against providing the reservation of vacancies for only two castes (i.e., Balmiki and Mazabhi Sikhs) from amongst the Scheduled Castes which were contained in the impugned instructions dated 5.5.1975. It was held by the Supreme Court that there was no provision to sub-divide, sub-classify or sub-group the castes, which were found in the Presidential List of the Scheduled Castes. The Court held that for the purposes of Constitution, all the castes were to be taken as the member of the one group and any legislative or executive action done to disturb, rearrange or regroup or reclassify would be violative not only of Article 341 but also be of Article 14 and Article 16 of the Constitution. So, the Court ordered that the instructions issued on 5.5.1975 could not be validly followed as the same were ultra-vires of the Constitution of India.
The Supreme Court held in the case of Meera Kanwaria v. Sunita,\(^{256}\) that a person who was a high caste Hindu and in his/her life, he/she was not subjected to any kind of social or educational backwardness, could not ipso facto become a member of Scheduled Caste or Scheduled Tribe by reason of marriage alone. He/she could not be allowed to defeat the very provisions made by the State in the absence of any strict proof for reserving certain seats for disadvantaged people. It could not be said that the purposes of the reservation under Articles 15(4) and 16(4) of the Constitution on the one hand, and Articles 330 and 331 on the other, were different.

Article 32 of the Constitution was invoked by the Petitioners for a writ in the nature of certiorari for quashing the Constitution (Eighty-Fifth Amendment) Act, 2001 which had inserted Article 16(4A) of the Constitution providing the reservation benefits to the beneficiaries in promotion with consequential seniority retrospectively from 17.6.1995 as being unconstitutional and violative of the basic structure in the case of M. Nagaraj & Others v. Union of India & Others.\(^{257}\) The Court held that it could not be said that by the insertion of the concept of the ‘consequential seniority,’ the structure of Article 16(1) stood abrogated or destroyed. The Article 16(4A) and 16(4B) flow from Article 16(4) and Article 16(4) is an enabling provision then Articles 16(4A) and 16 (4B) are also the enabling provisions. They do not alter the structure of the Article 16(4). The object behind the impugned constitutional amendments was conferring the discretion on the State for making the reservations in favour of Scheduled Castes/Scheduled Tribes/Scheduled Tribes in promotions subject to certain constitutional limitations and circumstances. The Court further ruled that as long as in Article 16(4), the boundaries namely, the ceiling-limit of 50%, the principal of creamy layer, backwardness, efficiency of administration and inadequacy were retained in Articles 16(4A) and 16(4B) as the controlling factors and the compelling reasons, then the constitutional invalidity could not be attributed to these enabling provisions. It means that if the State wished to exercise their discretion of making such provision for the reservation in favour of Scheduled Castes/Scheduled Tribes in matters of promotions then, the quantifiable data showing backwardness of the class and inadequacy of the representation of that class in public employment had to be collected in addition to compliance of Article 335. The Court further held that if the State had compelling reasons, even then the State would have to see that it was not led to excessiveness by its reservation provision so as to breach the ceiling-limit of 50% or obliterate the creamy layer or extend the reservation indefinitely. Subject to above,
the constitutional validity of the Constitution (Seventy-Seventh Amendment) Act, 1995, the Constitution (Eighty-First Amendment) Act, 2000, the Constitution (Eighty-Second Amendment) Act, 2000 and the Constitution (Eighty-Fifth Amendment) Act, 2001 were upheld.

In the case of I.R. Coelho (Dead) By Legal Representatives v. State of Tamil Nadu & Others\(^{258}\) (Appeal (civil) 1344-45 of 1976), the Supreme Court had given a very important judgment on a very controversial issue and the former Chief Justice of India Y.K. Sabharwal had set up a nine-Judge Constitution Bench in this case to examine the power of Parliament to amend the ninth Schedule of the Constitution from time to time facilitating the placing of at least 30 odd laws passed by different State Assemblies in it, including the controversial Tamil Nadu Backward Classes, Schedule Castes and Scheduled Tribes (Reservation of Seats in Educational Institutions and of appointment or posts in the Services under the State) Act, 1993 which had raised the ceiling limit of reservation to 69 per cent in the State overreaching the Supreme Court verdict in the Mandal Commission case fixing it at 50 per cent to strike a balance between Article 16 (1) individual’s right to equality and Article 16(4) providing equal opportunity to Backward Classes. The Constitution (Seventy-sixth Amendment) Act, 1994 was enacted with a view to include Tamil Nadu Backward Classes, Schedule Castes and Scheduled Tribes (Reservation of Seats in Educational Institutions and of appointment or posts in the Services under the State) Act, 1993 as Act Number 45 of 1994 dated 19\(^{th}\) July, 1994 providing for 69% reservation, within the purview of the Ninth Schedule to the Constitution so that it gets protection under Article 31B of the Constitution in regard to the judicial review. The Supreme Court of India consisting of a nine Judge Constitution Bench Namely, Chief Justice Y.K. Sabharwal and Justices Ashok Bhan, Arijit Pasayat, B.P. Singh, S.H. Kapadia, C.K. Thakker, P.K. Babasubramanyan, Altamas Kabir and D.K. Jain concluded on 11/01/2007 as follows:

“Ninth Schedule law has already been upheld by the court, it would not be open to challenge such law again on the principles declared by this judgment. However, if a law held to be violative of any rights in Part III is subsequently incorporated in the Ninth Schedule after 24th April, 1993, such a violation / infraction shall be open to challenge on the ground that it destroys or damages the basic structure as indicated in Article 21 read with Article 14, Article 19 and principles underlying
there under. Action taken and the transactions finalized as a result of impugned Acts shall not be open to challenge.”

It was observed by the Court in the case of Nair Service Society v. State of Kerala,\textsuperscript{259} that while appointing a Commission for identifying creamy layer, the direction of the State to the Commission for giving maximum benefit to a particular section of people was not proper and that would be against the principles laid down in the case of Indira Sawhney. Besides, it had been held by the Court\textsuperscript{260} that the report of the Commission for the purpose of identification of creamy layer pertaining to the fixation of income limit should be based on the scientific data and the evidence of experts and it (the report) should not be accepted by the State\textsuperscript{261} if it was not based on the scientific data and evidence of experts.

In Rajesh Kumar Davia v. Rajasthan Public Service Commission,\textsuperscript{262} the horizontal reservation has been explained by giving suitable example by the Court. Suppose there are two hundred vacancies and the vertical reservation in favour of the Scheduled Castes is 15% and the horizontal reservation for the benefits of the women is 30%, the proper description of the number of posts reserved for the Scheduled Castes should be: ‘For Scheduled Castes: 30 posts, of which 9 posts are for the women. In this case, the difference between vertical reservation and horizontal reservation has been clarified by the Court. It has been observed by the Court that the under Article 16(4), social reservation in favour of Scheduled Castes, Scheduled Tribes and the Other Backward Classes are ‘vertical reservations.’ In favour of physically handicapped, women etc., the special reservations under Article 16(1) or 15(3) are ‘horizontal reservations’ whereas in favour of Backward Classes, a vertical reservation is made under Article 16(4), the non-reserved posts may be competed for by the candidates belonging to such Backward Class and if they are appointed on their own merit to the non-reserved posts, then their numbers will not be counted against the quota reserved for the respective Backward Class. Therefore, if the number of candidates belonging to the category of the Scheduled Castes, who get selected to the open competition vacancies, by their own merit, equals or even exceeds the percentage of posts reserved for the Scheduled Castes candidates, it cannot be said that the reservation quota has been filled for the Scheduled Castes. In addition to those selected under Open Competition category, the entire reservation quota will be intact and available.\textsuperscript{263} But, applicable to the vertical (social) reservations, the aforesaid principle will not apply to the horizontal (special) reservations. Where
within the social reservation for the Scheduled Castes, a special reservation for women is provided, the proper procedure is first to fill up the quota in order of merit for the Scheduled Castes and then find out the number of candidates belonging to the special reservation group of ‘Scheduled Castes Women’ among them If in such list, the number of women is equal to or more than the number of special reservation quota, then there is no need for the further selection towards the special reservation quota. Only in case of any shortfall, the requisite number of women belonging to the category to Scheduled Castes shall have to be taken by deleting the corresponding number of candidates from the bottom of the list relating to the Scheduled Castes. The horizontal (special) reservation differs from the vertical (social) reservation to this extent. Thus, within the vertical reservation quota the selection of women on merit will be counted against the horizontal reservation for the women. It has been explained by the Court by an illustration.\(^{264}\)

The Supreme Court in the case of Mahesh Gupta v. Yashwant Kumar Ahirwar,\(^{265}\) has held that the reservation for handicapped persons is horizontal reservation under Article 16(1). Further, reservation therefore, cannot be made on the basis of caste, creed and religion. Actually, a special class is constituted by them. To the reservation for the handicapped and women, the rule does not apply that reservation must not exceed 50 percent.

However, in the following judgment of T. Muralidhar Rao and others v. The State of Andhra Pradesh, represented by its Secretary, Legislative Affairs and Justice, Law Department, Secretariat, Hyderabad and others,\(^{266}\) on the important issue of providing the reservation in favour of Backward Classes of Muslim religion, light was thrown by the High Court of Andhra Pradesh by stating that,

“When the State of Andhra Pradesh holds the view that coverage under Articles 15 and 16 of the Constitution in respect of certain social groups among Muslims have been missed until “The Andhra Pradesh Reservation in Favour of Socially and Educationally Backward Classes of Muslims Act, 2007” (Andhra Pradesh Act 26 of 2007) while the same coverage in respect of other religious communities have been in existence since long time, the court cannot accept any challenge to the Act on the ground that it is religion-specific. On the contrary, the impugned Act is an act all along of delayed rectification of justice done to them and extending of justice to
the now included social groups who have been identified not on the basis of their religion but on the parameters of social and educational backwardness. By including the now identified groups in the list of Backward Classes, the State has not made any discrimination based on religion and no rights of any citizens have been violated.”

The court further held that, “None of the specific inclusion of socially groups recommended by the Andhra Pradesh Commission for Backward Classes and made in the impugned Act and its scheduled is unjustified. Provision of 4% reservation for the backward social groups of Muslims now identified is neither unjustified nor excessive. Therefore, the Act has to be upheld as fully in conformity with the constitutional provisions and not violative of any fundamental rights of any citizen of India.”

In Viklang Sang, Haryana v. State of Haryana and Others, a writ petition was filed by Viklang Sabha, Haryana, Sirsa challenging the policy of the Government of Haryana, which denied the benefit of promotion to the disabled employees who had claimed under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. There was denial of 3% quota in the promotional avenues to the disabled persons which was provided by the Government of India, through the Ministry of Personnel, Public Grievances & Pension, Department of Personnel & Training, New Delhi. The Court held that denial of providing the reservation benefit of 3% quota in the promotional avenues in favour of disabled persons not only defeated the object of the Act itself but also was contrary to the mandate of Directive Principles contained in Articles 38 and 41 of the Constitution of India. Thus, accordingly, the respondents were directed by the Court for keeping 3% posts reserved for promotion in favour of the disabled by providing them promotions as per directions and guidelines issued by the Ministry of Personnel dated 20.11.1989.

In Devinder Singh v. State of Punjab and another, a petition was sought quashing of order dated 19.11.2009, terminating the services of the petitioner from the post of Lecturer Punjabi. Prayer was also made to declare section 4(5) of the “Punjab Scheduled Caste and Backward Class Reservation in Service Act, 2006” requiring 50% vacancies to be filled up out of the Balmiki caste and 50% from the Mazahbi caste as unconstitutional. The Court held that a further classification by way of micro
classification both in terms of Clause (4) of Article 15 and Clause (4) of Article 16 of the Constitution of India is not permissible. All the castes in the Presidential Order under Article 341(1) of the Constitution formed one class of homogeneous group and so, same could not be further sub-divided. Such classification of the members of different classes of people based on their respective castes would also be violative of the doctrine of the reasonableness. For giving benefits to the members of the Scheduled Castes for the purpose of the Constitution, a uniform yardstick must be adopted. The impugned legislation which does not answer the constitutional scheme cannot be upheld. The impugned legislation apart from being beyond the legislative competence of the State was also violative of Article 14 of the Constitution and accordingly, the provisions of section 4(5) of the 2006 Act were declared unconstitutional by the Court.

Another important legal question arose in the case of Union of India v. Ramesh Ram & Others\textsuperscript{569} when a three judge Bench of the Court referred the case to the Constitutional Bench. The question was whether the candidates belonging to the reserved category, who on account of their merit got recommended against the general/unreserved vacancies (without getting the benefit of any relaxation/concession), could opt for a higher choice of service which was earmarked for the Reserved Category and could thereby migrate to the reservation category. The constitutional validity of the sub-rules (2) and (5) of the Civil Service Examination Rules relating to the Civil Services Examinations in the years 2005 to 2007 held by the Union Services Commission was also the subject-matter of the appeals by the special leave. The Supreme Court held that the candidates of reserved category “belonging to Other Backward Classes, Scheduled Classes/Scheduled Tribes categories” with regard to the specific characteristics of the Union Public Service Commission examinations, who were selected on merit and placed in the list of the candidates belonging to General/Unreserved category, were free at the time of allocation of the services for choosing to migrate to the respective reserved category. The Court again ruled that a right to a post in the Reserved Category was not automatically rescinded by the Reserved Candidate although having done well enough to have qualified in the examination in the open category. The reserved status of an MRC candidate(Candidate selected on merit) by the operation of Rule 16(2) was protected so that he was not denied of the chance by his/her better performance to be allotted to a more preferred service. If vis-à-vis under Articles 14, 16 and 335, such
rule was declared redundant and unconstitutional then there would be frustration of the whole object of the equality clause in the Constitution and as per the general qualifying standard, the selected MRC candidates (Candidates selected on merit) would be disadvantaged because the candidates of his/her category who in the merit list was below him/her, might attain a better service by availing the benefits of the reservation at the time of making the allocation of the services. Thus, the promise was outlined in the Preamble of the Constitution by which the equality of status and opportunity as conceived, in spirit and in essence was protected by Rule 16. It was further held that Rule 16(2) of Civil Services Examination was not inconsistent with Rule 16(1) of the Rules or Articles 14, 16(4) and 335 of the Constitution. So, the validity of the Rule 16 of the Civil Service Examination Rules 2005 was upheld by the Apex Court.

In the case of **Suraj Bhan Meena & Another v. State of Rajasthan & Others**, the judgment of Rajasthan High Court quashing Notifications dated 28.12.2002 and 25.4.2008 issued by the State of Rajasthan was upheld by the Apex Court relying upon the decision of **M. Nagaraj**, on the ground that no exercise was undertaken in terms of Article 16(4-A) to acquire quantifiable data regarding the inadequacy of representation of the Scheduled Castes and Scheduled Tribes communities in public services. The Supreme Court also held that as no study was undertaken by Chopra Committee with respect to Gujjars belonging to Special Backward Classes particularly when Gujjars were already covered under the category of Other Backward Classes so, there was no rhyme or reason to provide them special status by including them in Special Backward Classes without undertaking requisite study.

In three writ petitions, which were filed in the cases of **Captain Gurvinder Singh & Others v. State of Rajasthan**, **G. Sharma v. State of Rajasthan** and **All India Equality Forum v. State of Rajasthan & Another**, the Rajasthan High Court on 22.12.2010 stayed the operation of Reservation of Seats in Educational Institutions in the State and of Appointments and Posts in Services under the State Act, 2008 (hereinafter referred to as Act 2008) granting five percent reservation in favour of Gujjars on December 22, 2010 and the State Government was directed to undertake a data collection exercise within a year for justifying the quota for the members of the community under the special Backward Classes category. Disposing of a bunch of writ petitions challenging the 2008 Act, the provision of one percent
reservation given to Gujjars in the ongoing recruitment drive in Government jobs was also stayed by the Court.

**Court Proposes Government Disposes**

The courts have been admiring of the sui-generis nature of the detrimental situation of the Scheduled Castes, Scheduled Tribes and Other Backward Classes and have been permissive as much as possible. However, to the severe actuality of the life, the judiciary has not closed their eyes. Undeniably, it has been obligated by the court that reservation plan should be so formulated as to ‘keep a rational balance’ among ‘numerous related considerations’. To interpret the rule of law in action and to carry justice at the door of poorest of poor, the judiciary in India has made ample efforts.

The Judiciary has attempted its best to solve a number of problems arising due to the policy of reservation in favour of Scheduled Castes, Scheduled Tribes and the Other Backward Classes from time to time. It (judiciary) has done laudable job of providing the solution giving decisions regarding reservation exact from the inception of the Constitution such as, in the three decisions of State of Madras v. Champakam Dorairajan, State of Madras v. C.R.Srinivasan and B. Venkataraman v. State of Madras the political move for perpetuating the caste-system was caught very intelligently.

Towards the rationalization of criteria for identifying the recipients of the benefits of the protective discrimination, the judicial attempt started in Champakam — B.Venkataraman dormantly, which was discussed elaborately in the case of Balaji and again was flourished in R. Chitrakala v. State of Mysore, Triloki Nath Tikku v. State of Jammu and Kashmir, K. C. Vasant Kumar v. State of Karnataka, Rajendran, Balaram, Periakaruppan, Km. K.S. Jayashree v. State of Kerala, and Indra Sawhney v. Union of India. After this case, in the case of Ashoka Kumar Thakur v. Union of India, it was held that the economic criterion was a valid criterion for the determination of the social and educational backwardness.

The limit of 50% for the reservation has its basis in M.R. Balaji v. State of Mysore. The Balaji spirit of accommodation of preferential benefit with the national interest in merit and efficiency was reinforced in Devadasan v. Union of India, Periakaruppan v. State of Tamil Nadu, D. N. Chanchala v. State of Mysore, Arati Ray Chaudhary v. Union of India and K.C. Vasanth Kumar.
v. State of Karnataka.\textsuperscript{296} The matter was put to rest in the landmark judgment of Indra Sawhney v. Union of India\textsuperscript{297} wherein it was held that the limit of 50\% as laid down in\textit{Balaji} was a binding rule. However, in the case of Rajesh Kumar Davia v. Rajasthan Public Service Commission\textsuperscript{298} and Mahesh Gupta v. Yashwant Kumar AHIRWAR\textsuperscript{299} it was clarified by the Apex Court that the rule applicable to the vertical reservation that reservation must not exceed 50\% does not apply to the horizontal reservation in favour of women and handicapped.

In the case of Ashoka Kumar Thakur v. Union of India,\textsuperscript{300} the judges were of the opinion that a periodic review of the policy of reservation must be conducted.

On the significant issue of exclusion of the creamy layer, elaborate discussions were made in the cases of Akhil Bharatiya Soshit Karmachari Sangh (Railway) Association v. Union of India\textsuperscript{301} and Kumari Jayasree v. State of Kerala.\textsuperscript{302} However, again in the cases of Indra Sawhney v. Union of India\textsuperscript{303} and Ashoka Kumar Thakur v. Union of India,\textsuperscript{304} the Supreme Court confirmed the “exclusion of the creamy layer” to be mandatory.

Regarding reservation in promotions, the judgments delivered by the Supreme Court in General Manager, Southern Railway v. Rangachari\textsuperscript{305}, Indra Sawhney v. Union of India\textsuperscript{306} and Union of India v. Virpal Singh Chauhan\textsuperscript{307} provided the sound and concrete solutions. Another problem relating to the policy of reservation was the challenges made to the ‘carry forward’ rule. In T. Devadasan v. Union of India\textsuperscript{308}, Akhil Bharatiya Soshit Karmachari Sangh (Railway) Association v. Union of India\textsuperscript{309}, Indra Sawhney v. Union of India\textsuperscript{310} and R.K. Sabharwal v. State of Punjab,\textsuperscript{311} the above stated rule was held to be applicable only to initial appointments and not to promotions so long as the 50\% limit was not crossed by it for a given year.

In T. Muralidhar Rao and others v. The State of Andhra Pradesh\textsuperscript{312}, the court held that the State of Andhra Pradesh was legally authorized to provide 4\% reservation in favour of Backward Classes among the Muslims. The High Court of Chandigarh has delivered the landmark judgments of Attar Singh Dhoor & Others v. State of Punjab\textsuperscript{313}, Dr. Krishah Pal and Others v. State of Punjab and Others\textsuperscript{314}, and Devinder Singh v. State of Punjab and another\textsuperscript{315} regarding the issue of 50\% reservation within reservation in favour of Balmikis and Mazabhi Sikhs in the State of Punjab and held that it was violative of Article 14 and was not permissible under the Constitution of India. Similarly, In the case of Suraj Bhan
Meena & Another v. State of Rajasthan & Others\textsuperscript{316}, it was held by the Supreme Court that as no exercise was undertaken in terms of Article 16(4-A) to acquire quantifiable data regarding the inadequacy of representation of the Schedule Castes and Scheduled Tribes communities in public services and as no study was undertaken by Chopra Committee with respect to Gujjar belonging to Special Backward Classes particularly when Gujjars were already covered under the category of Other Backward Classes so, there was no rhyme or reason to provide them special status by including them in Special Backward Classes without undertaking requisite study. The court further held that Rajasthan High Court has rightly quashed the notifications dated 28.12.2002 and 25.4.2008 issued by the State of Rajasthan providing for consequential seniority and promotion to the members of the Scheduled Castes and Scheduled.

However, the Government has annulled several imperative solution providing decisions of the Supreme Court aimed at mounting the voter base, from time to time by making new amendments in the provisions of Constitution regarding reservation benefits to be provided to the weaker segments of the society. Numerous instances can be cited in this respect, like, in the case of State of Madras v. Champakam Dorairajan\textsuperscript{317}, the Court took the view that a student by whom the requisite academic qualifications were possessed could not be denied the admission only on the ground of religion, race, caste, language or any of them\textsuperscript{318} and so, the Madras Government’s communal Government Order was struck down as violating Article 15 or Article 29(2). Then Sub-clause 4 was inserted to the Article 15 which when originally enacted, contained only three sub-clauses, by the Constitution (first amendment) Act, 1951, for only making the judgment invalid. Likewise, to tackle the position after the pronouncement of the Supreme Court of India in the case of Indra Sawhney v. Union of India,\textsuperscript{319} the Constitution (Seventy-seventh Amendment) Act, 1995 was introduced through which a new clause 4A was added to Article 16 of the Constitution of India for providing the reservation in matters of promotion to Scheduled Castes and the Scheduled Tribes. Further more the Constitution (Eighty-first Amendment) Act, 2000 has substituted Clause (4B) after clause (4) to Article 16 which seeks to end 50% ceiling on reservation for Scheduled Castes, Scheduled Tribes and Backward Classes in backlog vacancies which could not be filled up in the previous years due to non-availability of eligible candidates.
In order to wipe out the effect of the judgments of Union of India v. Virpal Singh Chauhan\textsuperscript{320} and Ajit Singh Janjua v. State of Punjab,\textsuperscript{321} clause (4A) was added under Article 16 of the Constitution; vide the Constitution (Eighty-Fifth Amendment) Act 2001. Consequently, when any Scheduled Caste or Scheduled Tribe Candidate was promoted earlier to General Candidate, his seniority in the new cadre would rank from the date of his joining on promotion. The eighty-fifth amendment had been given retrospective effect from 17\textsuperscript{th} June, 1995 i.e. from the date when the Constitution Seventy-Seventh Amendment Act came into effect.

The Constitution (Ninety-Third Amendment) Act, 2005 (93 Of 2005) has inserted clause (5) in Article 15 of the Constitution, after clause (4). The amendment was made by United Progressive Alliance Government to overcome the Supreme Court Constitutional Bench judgment in the P.A. Inamdar & Others v. State of Maharashtra & Others\textsuperscript{322}. The ninety-third amendment that came into force from January 20, 2006, extended the ambit of reservations even to “private educational institutions, whether aided or unaided by the State other than the minority educational institutions referred to in clause (1) of Article 30”

From the above discussion about various findings pronounced by the Supreme Court and the amendments made by Parliament for invalidating those concrete judgments, it is quite very obvious that initially, the Parliament used to amend the Constitution to facilitate socio-economic reforms for the benefit of labouring masses. However, in the current years, the authority to amend the Constitution is used to nullify sound decisions of the Supreme Court which strengthen the fundamental structure of the Constitution and supplement its objects, merely for the purpose of gaining electoral benefits.

**Conclusion**

After making comprehensive and critical analysis of case law on the subject, the following conclusions have been drawn. The judiciary has done creditable work by giving outstandingly concrete judgments relating to issues of preferential and protective discrimination. Judiciary has effectively preserved and safe-guarded the fundamental rights of the citizens and defenseless factions which were at stake because of the policy of reservation implemented by the Government from time to time. This compliment can appropriately be addressed to the Supreme Court of India.
too. The Apex Court of India has magnificently discharged its arduous responsibility sentry of the qui-vive.

The judiciary has been active to the Indian circumstances while interpreting and re-interpreting laws. In the arena of socio-economic justice, the judiciary has adopted deviating approaches to the Backward Classes for giving life to the socio-economic actions aiming at the amelioration of their lot. In the course of time, even a tendency was developed by the courts for treating all provisions connecting with positive discrimination as obligatory ones. This was consistent with the move from the treatment of reservation as a matter of right. Because the difference between mandatory and enabling provisions has appeared to be blurred in the course of time basically due to the rhetoric of social justice. Uncontrolled discretion to the State has been provided by the Court for determining the condition that is suitable for activating the affirmative action for the Backward Classes. However, the power of a judicial system lies in its capability to correct its own blunders of interpretation from time to time and stir to the fore. By trial and error, still the Supreme Court has been shaping the Constitution in the right direction.

Conversely, right from the commencement with the inauguration of the Constitution, a propensity is indicated by the judicial decisions as how in spite of their greatest labours for budding secular and coherent criterion to deal with the problem of protective discriminations, the Government has for all times on one excuse or other been infringing the judicially laid standards. It (Government) has, in place of shielding and escalating wellbeing of genuine deservers of the policy of reservations, adopted the policy of reverse discrimination i.e., snatching from upper castes strata of the society and giving to the lower castes section in the name of this policy of reservation. The lack of strong leadership with essential visualization and vigor for accomplishment of the constitutional objectives is the weakness of Indian democracy.

In concluding terms, it can be stated that the special provisions in the shape of policy of reservation in favour of Scheduled Castes, Scheduled Tribes Other Backward Classes and women in our Constitution are acknowledged to be inadequate and insufficient. Therefore, the judiciary has from time to time done the admirable job through the issuance of concrete guidelines to plug the loopholes in the policy in a number of rational and landmark judgments. It has also through the pronouncement of various solution providing judgments, solved numerous problems relating to this policy and has attempted to keep a rational equilibrium among
different categories of people by protecting their fundamental right of equality. However, on the other hand, Government has ventured to nullify those judgments by making a number of amendments in the Constitution only to make their vote bank intact. No Government and no legislature in the country has ever made the efforts for creating a classless and casteless society in addition to amelioration of the conditions of the really needy and deserving beneficiaries (poor segments in various categories) even more than six decades have gone by.

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4. Report of the National Commission to review the Working of the Constitution, Vol. I, Ch. 7, para 7.1.1
5. Report of the National Commission to review the Working of the Constitution, Vol. I, Ch. 7, para 7.1.1
8. The first annual Dr. K. R. Narayanan memorial lecture on the theme ‘Problem of Social In-equality and Possibilities of judicial Intervention’ delivered by the Hon’ble Shri K.G. Balakrishnan, Chief Justice, Supreme Court of India, at Dr. K. R. Narayanan Centre for Dalit and Minorities Studies, Jamia Milia Islamia University on Nov. 13th, 2007.
11. AIR 1959 SC 1318.
12. the appellant who was one of the contestants for the general seats, challenged the validity of the election of the first respondent on the ground that the nominations had been filed for the Scheduled Tribe seat by the first respondent and hence, he could not be the winner from the general seat, and furthermore, that first respondent was not even a member of the Scheduled Tribe. The election of the first respondent was set aside by the Election Tribunal. However, the decision was reversed by the High Court.
13. In this context, it was also pertinent that under the Constitutional scheme and the framework provided under the Representation of People Act, elections were held for the constituencies and not for seats as such.
15. In this case, in front of the Election Commission, the appellant filed a petition alleging that; (1) Before the election, the elected MLA had been converted to Buddhism and hence he had become ineligible for standing for the election from this constituency (whose seat was meant only for a reserved candidate) and (2) The MLA had committed several corrupt practices and he was guilty of those practices.
The court said, “What is reason for this denial of admission except that he (Srinivasan) is a Brahmin and not a non-Brahmin. He may have secured higher marks than the Anglo-Indian, and Indian-Christian or Muslim candidates but nevertheless, he cannot get any of the seats reserved for the last mentioned communities for no fault of his except that he is a Brahmin and not a member of the aforesaid communities. Such denial of admission cannot but be regarded as made on ground only of his caste”. [AIR 1951 SC 226 Case No. 271 of 1951.]

The following is the factual matrix of the case:

It was stated by the one of the rules of Mahatma Gandhi Memorial Medical College, which is an educational institution run by the State of Madhya Bharath as;

“For all the students who are “bonafide residents of Madhya Bharat students no capitation fee should be charged. But for other non-Madhya Bharat students the capitation fee should be retained as at present at Rs. 1300 for nominees and at Rs. 1500 for others”

‘Bona fide residents’ for the purpose of this rule was defined as:

“one who is—

(a) a citizen of India, whose original domicile is in Madhya Bharat, provided he has not acquired a domicile elsewhere, or

(b) a citizen of India, whose original domicile is not in Madhya Bharat but who has acquired a domicile in Madhya Bharat and has resided there for not less than 5 years at the date, on which he applies for admission, or

(c) a person who migrate from Pakistan before September 30, 1948 and intends to reside in Madhya Bharat permanently,

(d) a person or class of persons or citizens of an area or territory adjacent to Madhya Bharat or to India in respect of whom or which a Declaration of Eligibility has been made by the Madhya Bharat Government.

The Petitioner challenged the constitutionality of the above mentioned rule.

In this case, an Order was issued by the Mysore Government reserving the seats in the State in the medical and engineering colleges. The reservation provided under this Order was as follows: Backward Classes—28 percent; more Backward Classes—20 percent; and the Scheduled Castes and the Scheduled Tribes—28 percent. The reserved seats were 68 percent of the available seats in the college and for the general merit pool; only 32 percent seats were left. On the ground of the violation of Article 15(4), the validity of this Order was challenged. There were two main issues to be decided: one was, should caste be treated as the sole criterion for determining backwardness of a particular class. Regarding the first issue under this case, it was held by the Supreme Court that under Clause (4) of Article 15, the backwardness must be both socially and educational. For ascertaining whether for the purpose of Article 15(4) a class should be taken as Backward or not, the caste of a group of persons could not be the sole or the predominant factor. It was also held that the main determining factor in respect of social backwardness would be the result of poverty. In determining the social backwardness of a class of persons in our society the relevant factors could be the place of habitation and one’s occupation. Thus, the test of social backwardness which was based predominantly if not solely on the ground of caste was invalidated by the court. Thus, the court made it clear that the group of citizens to whom Article 15(4) applies is described as class of citizens not as castes of citizens. Secondly, the court has put 50% cap on reservation in almost all the states except TamilNadu (69% under the ninth scheduled) and Rajasthan (68% quota including 14% for forward castes, post Gujar Violence, 2008) has not exceeded 50% limit. Tamil Nadu exceeded limit in 1980, Andhra Pradesh tried to exceed limit in 2005 which was again stalled by the High Court. In this regard, it was held by the Court that in the zeal of promoting the welfare of the Backward Classes, in ignoring altogether the advancement of the rest of the society, the State would not be justified. If into the institution of the higher education, from admission, the qualified and competent students were excluded, the National interest would suffer.
30 M.R. Balaji was reiterated with approval and followed in Devadasan v. Union of India, AIR 1964 SC 179, in the context of Article 16(4).
31 AIR 1964 SC 1823.
32 In this case, by a letter addressed to the Director of Technical Education, the Government informed him that it had been decided by the Government for setting aside 25% of the maximum marks of the examination for an interview in the optional subjects. The following were the grounds for the challenge:
(1). No order was issued by the Government to the selection committee fixing the criteria for the allocation of the marks or prescribing the marks for the purpose of interview and that the letter could not taken to be a valid offer as the requirements of Article 166 of the Constitution was not conformed to by it because in the name of the Governor it was not issued.
(2). On the basis of the higher or different qualifications from those prescribed by the University for admitting students into the colleges, no power had been vested in the Government for appointing the selection committees. In the Union list there was an entry of the coordination and the determination of the standards, and it was not under the competency of the State legislature for making a law to maintain the standards of University education. An order could not be issued by the State to maintain the standards of the University since power of the executive of the State was co-extensive with the legislative power of the State.
(3). By the Mysore University Act, on the Mysore University, the power was conferred to make rules. And this power could not be exercised by the Government.
(4). In respect of private colleges, this power could not be exercised by the Government though aid was being received by them from the Government.
(5). The system of holding the interviews and the viva voce allowed the interviewers scope for acting arbitrarily and manipulating the results, so this system was arbitrary and illegal. Thus, there was contention that it was violative of Article 14.
33 AIR 1963 SC 649.
34 Ibid.
35 AIR 1963 SC 702.
36 AIR 1964 SC 1823.
37 AIR 1963 SC 649.
38 AIR 1963 SC 702.
39 AIR 1964 SC 1823.
40 AIR 1963 SC 649.
41 AIR 1968 SC 1012.
42 Id. at p. 790-91.
43 AIR 1968 SC 1012.
44 In this case, it was contended that the district to which a person belonged was dependant on the “nativity” of the person which in turn depended on the nativity certificate of the parents or the on the district from which the S.S.L.C. Examination of the candidate was passed. A challenged was quashed which was based on Article 15(1). This provision was also challenged as being violative of Article 14. There was argument that the object of the impugned Rules was to ensure that the best possible talent is absorbed into the University and this would not be possible by having district-wise allocation of seats. Therefore, there was argument delivered that there was no reasonable nexus between the object of the Rules and the classification. It was contended by the State that in the city of Madras there were better facilities of education in comparison to other districts of the State and, so if there was not made any district-wise selection, the candidates from the city of Madras would have an advantage and they would be able to secure many more seats than were justified on the grounds of the population of the city of Madras in comparison to the population of the State as a whole.
45 AIR 1964 Kerala 316.
46 AIR 1968 SC 1012.
47 AIR 1968 AP 165.
48 AIR 1968 SC 1379.
49 AIR 1968 Pat. 3.
51 AIR 1970 SC 35.
52 In Para 9 it was observed: “It is the Central Government which bears the burden of running the medical college. It is for it to lay down the criteria of eligibility. From the very nature of things it is not possible to throw the admission open to the 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.

53 The difference between the allocation of sources and reservation was pointed in Para 27 of the judgment in A. I. I. M. S. Students Union v. A. I. I. M. S., AIR 2001 SC 3262, where it was held: “Reservation is guided by consideration of ensuring allotment of a privilege or quota to, or conferral of State largesse on, a defined class or category of limited persons dispensing with the need of competition with another defined class of persons or remaining persons. Beneficiary of reservation is necessarily a minor or smaller group of persons which deservedly stands in need of protection or push up because of historical, geographical, economic, social, physical or similar such other handicaps. Persons consisting in reserved category are found to be an under-privileged class who cannot be treated on par with a larger and more privileged class of persons and shall be denied social justice and equality unless protected and encouraged. Sources of recruitment or entry are carved out for the purpose of achieving a defined proportion of intermingling at the target or destination between two or more categories of such persons who though similarly situated or belonging to one class to begin with, have stood divided into two or more categories by fortuitous circumstances and unless allowed entry from two separate sources one would exclude or block the other. No one of the two classes can be said to be weaker than the other. The factor impelling provision of different or separate sources of entry may not provide justification for reservation. Two sources of entry ensure an equal distribution between two segments of one society. The emphasis in reservation is on the subjects; the emphasis in providing sources of entry is aimed at securing equal or proportionate distribution. The characteristics of the two may to some extent be overlapping yet the distinction is perceptible though fine”.


57 Atul Kumar Singh v. State, AIR 1983 All 281.


60 In this case, in Madras all the Government colleges were considered as one unit and those situated outside Madras, one unit each. For each of these units, separate selection committees were constituted. The students could apply to any one committee, so they were advised to apply to the committee nearest to their place of residence.

61 AIR 1971 SC 2303.

62 AIR 1968 SC 1012.

63 AIR 1968 SC 1012.

64 AIR 1971 SC 1762.

65 In this case, it was argued that in the discretion of the Selection Committee, not more than 20% of the seats in the colleges affiliated to that University may be allotted to the students passing from the colleges in the State or elsewhere in India affiliated to any other University. The arguments given were as follows: (1). the reasonable classification test was failed by this classification due to the absence of nexus between the intelligible differentia and the object of the classification. (2). A student having higher marks may be deprived of a seat only because of the reason that his qualifying examination had been passed by him from a college affiliated to any other University. As far as Ground 2 was concerned that was rejected.

66 Para 22.

67 AIR 1971 SC 1439.

68 In this case, according to the primary argument, fixing the ten year period was arbitrary because if this rule was to be adopted by all the States, the children of those citizens would never be able for getting admission in any State who often was compelled to shift their residence and it was arbitrary to fix the ten year period. It was argued by the respondents that the selection of the students were ensured by this rule who were more likely after they pass out to serve as doctors.

69 AIR 1970 SC 35.

70 AIR 1955 SC 334.
71 AIR 1972 SC 1375.
72 In the same case, on the behalf of the Respondents, it was contended that in the Medical Colleges, the Higher Secondary Course candidates may not be able for getting adequate number of seats unless such reservation of seats was made. The further argument made was that in the Medical Colleges which were run by the Government, the State is authorized for specifying the sources from which the selection for admission of the candidates will have to be made to those Colleges. The Respondent referred to a number of High Court judgments.
73 AIR 1973 SC 1050.
74 AIR 1974 P&H 125.
75 Special Civil Application Number 1232 of 1974.
77 AIR 1976 SC 2381.
78 In this case, a commission was appointed by the State Government for making the enquiry into the social and the educational conditions of the people residing in the State and for recommending about the sections to be treated as the socially and educationally backward. It was found by the Commission that relating to the reservation in the educational institutions of the seats the benefit then in vogue based solely on the caste or the community, was being enjoyed only by the rich persons among the Backward communities and it was also found by the Commission that of certain communities the lower income groups constituted the socially and educationally Backward Classes. Therefore, the adoption of a means-cum-caste/community test was recommended by the Commission for the classification so as to exclude the wealthier sections and to take in the poor and deserving sections. Accordingly, it was strongly stipulated by the State that only those applicants would be entitled to the seats reserved for those students who are the members of certain communities and who were having the family income below Rs. 10,000/- per annum. It was held by the Court that: “In ascertaining the social backwardness of a class of citizens it may not be irrelevant to consider the caste of the group of citizens, caste cannot, however, be made the sole or dominant test. Social backwardness is in the ultimate analysis of the result of poverty to a large extent. Social backwardness which results from poverty is likely to be aggravated by considerations of their caste. This shows the relevance of both caste and poverty in determining the backwardness of citizens. Poverty is relevant in the context of social backwardness. The Commission found that the lower income group constitutes socially and the educationally Backward Classes. The basis of the reservation is not income but social and educational backwardness determined on the basis of relevant criteria. If any classification of Backward Classes of citizens is based solely on the caste of the citizens it will perpetuate the vice of caste system. Again, if the classification solely on poverty it will not be logical.”
79 AIR 1978 Kerala 199.
80 K. Ramakrishna v. Osmania University, AIR 1962 AP 120.
81 AIR 1980 SC 820.
82 In this case, the contention was that institution-based reservation includes college-wise reservation as well and this kind of reservation i.e., institution-based reservation was validated. However, there were other factors which led the court allowing only University-based reservation as one of the institutional continuity and the argument was rejected by the court saying that the residence-based reservation and the University-based reservation were two different types of reservation. Consequently, from University-based reservation system, a college-based reservation system stands on a different footing.
84 AIR 1981 SC 2045.
85 AIR 1981 SC 1009.
86 AIR 1981 Rajasthan 269.
87 AIR 1983 SC 1235.
88 AIR 1984 SC 1420.
89 In Para 21 it was held, “But, in our opinion, such reservation should in no event exceed the outer limit of 70 percent of the total number of open seats after taking into account other kinds of reservations validly made. The Medical Education Review Committee has suggested that the outer limit should not exceed 75 percent. But we are of the view that it would be fair and just to fix the outer limit at 70%. We are laying down this outer limit of reservation in an attempt to reconcile the apparently conflicting claims of equality and excellence. We may make it clear that this outer limit fixed by us will be subject to any reduction or attenuation which may be made by the Indian Medical Council which is the statutory body of medical practitioners whose functional obligations include setting standards for medical education and providing for its regulation and co-ordination.”
It was said by Chandrachud, C.J. that in the matter of backwardness of the Backward Classes ‘it should be comparable to the Scheduled Castes and the Scheduled Tribes’ and ‘they should satisfy the necessary test such as a State Government may lay down in the context of prevailing economic conditions.’ D.A. Desai J. was against making caste the basis for recognizing backwardness. He commended the economic criterion for compensatory discrimination or affirmative action for achieving two Constitutional goals. “One, to strike at the caste stratification of Indian society so as to arrest progressive movement and to make a firm step towards establishing a casteless society; and two, to progressively eliminate poverty by giving an opportunity to the disadvantaged sections of the society to raise their position and be part of the main stream of life which means eradication of poverty”. So, he (Desai J.) explained ‘The only criterion which can be realistically devised is the one of economic backwardness.’ It was concluded by Chinappa Reddy J.: ‘Class poverty, not individual poverty, is therefore the primary test…..Despite individual exceptions; it may be possible and easy to identify social backwardness with reference to caste, with reference to residence, with reference to occupation or some other dominant feature.” In the opinion of Sen J. ‘The predominant and the only factor for making special provisions under Article 15(4) or for reservation of posts and appointments under Article 16(4) should be poverty, and caste or a sub-caste or a group should be used only for purposes of identification of persons comparable to Scheduled Castes or Scheduled Tribes.” At the last, Venkataramiah, J. seems to be in favour of a test in which in making a determination of the backwardness, the lowest among the castes that were treated like Scheduled Castes and Scheduled Tribes, the occupation, the means or economic condition may all be counted.

It was held by the Apex court in this respect agreeing with the second reason that, “We agree with the second objection raised on behalf of some of the State Governments but so far as the first objection is concerned, we do not think it is well-founded. There can be no doubt that if in each State, 30% of the seats were to be made available for admission on the basis of All-India Entrance Examination after taking into account reservations validly made, the number of seats which would be available for admission on the basis of All-India Entrance Examination would vary inversely with the percentage of reservations validly made in that State. If the percentage of reservations is high as in the State of Tamil Nadu or the State of Karnataka, the number of seats available for admission on the basis of All-India Entrance Examination would be relatively less than what would be in a State where the percentage of reservations is low. There would thus be total inequality in the matter of making available seats for admission on the basis of All-India Entrance Examination. It would be open to a State Government to reduce the number of seats available for admission on the basis of All-India Entrance Examination by increasing the number of reserved categories or by increasing the percentage of reservations…….We would direct, in accordance with the suggestion made in the Scheme by the Government of India, that not less than 15% of the total number of seats in each medical college or institution, without taking into account any reservations validly made, shall be filled on the basis of All-India Entrance Examination.....”

In Para 5, it was observed “The same formula must apply also in regard to admissions to the post-graduate courses and instead of making available for the admission on all-India basis 50% of the open seats after taking into account reservations validly made, we would direct that not less than 25% of the total number of seats without taking into account any reservations, shall be made available for being filled on the basis of All-India Entrance Examination.”

Other arguments raised were as follows:

(1) The Colleges had different marking standards and separate practical examinations, involving 50% of the marks. Hence to equate all the students who passed from the different colleges would not be fair.
(2). With respect to the facilities available, each college differed. While with respect to A specialization one college may be having very good facilities and with respect to B specialization, another college will have better facilities than the first college. Hence, when it comes to a specialization, the students from the former college will be better off than the students from the latter college.

There was rejection made of the Contention Number 1 saying that marking was done by one internal examiner and there were also three external examiners for the same purposes who were appointed by the University. So, a uniform marking was expected. Contention Number 2 was negativised saying that: “It may be that the number of accident and injury cases in the hospital attached to Lokmany Tilak Memorial Medical College is higher than the number of such cases in the hospitals attached to other colleges, but that does not prove or lead to the conclusion that that students of other colleges will be deficient in surgery or less meritorious than the students of Lok-manya Tilak Medical College.”

In Para 14, it was observed: “Thus, although Dr. Anjali Deokumar Thukral and Dr. Sumeet Godambe secured more marks that the students admitted in the post-graduate course in Obstetrics and Gynaecology in the said G. S. Medical College, except the said Dr. Ganpat Sawant. They were refused admission in view of college wise institutional preference. Similarly, in respect of other disciplines many meritorious students could not get admission even though they secured higher marks than those admitted in the post-graduate degree course by virtue of the impugned rules.”

In the same case, for the private sector employees, the admission was not open. To all those who were in bonafide employment including self employment, the admission was kept open till 1986. But there was then the amendment of the rule excluding the private sector employees and the self-employed employees. This classification was unreasonable and was challenged for being violative of Article 14. On the following grounds, the classification was justified by the respondents: (1). A lot of mischief may be caused by the private employers through the production of the bogus certificates. (2). It was in the interest of the public to impart legal education to the Government employees. (3). The provision was made with the object of assuring a tenure of employment likely to continue for three years to a candidate and this assurance of employment could be provided only in the case of Government employment. (4). No possibility of wastage of a seat should be there.

Contention 1 was rejected by the court stating the reason that only a few cases of production of bogus certificates were not enough for excluding all the private employees from getting the benefit from the evening college. Contention 3 was also not accepted on the ground that only due to the reason that the Government employees had greater security of work in comparison to the private employees, it was not implied that both of them were unequal.

In Para 12 it was observed “M.P. Shah Medical College was established by the Government of Saurashtra. At all times, it has been maintained and run by the Government of Saurashtra/Gujarat – from out of their own funds. Every Medical College must necessarily have a hospital attached to it with requisite bed-strength and facilities; there cannot be a Medical College; without such an attached hospital. For this reason, an existing Government hospital was renamed as “Kasturba Gandhi Hospital” and attached to the college. Apart from the sum of Rupees fifteen lakhs “donated” in the year 1954, no further sum has been donated nor any other expenditure incurred by M.P. Shah or the respondent-trust over the last forty years. There is also no evidence to show that the college was established exclusively with the amount “donated” by Sri M.P. Shah and that no funds or property of the Government was utilized for the purpose. The material placed before us does not also show that the Government of Saurashtra was in no position to spare a sum of Rupees fifteen lakhs in 1954 for establishing the college or that for that reason it approached or requested M.P. Shah to donate the said amount.”

In this case, this argument was rejected by the court reasoning that: 1. The argument was based on the assumption that for his graduation course, the students who were claiming reservation for his graduation course had availed of reservation. This was a faulty assumption because of the chance that an applicant for his graduation course had got in by merit; however due to higher competition he had to...
avail of reservation at the post-graduation level. 2. Moreover, there was no rule that during the course of the educational career of a student, he cannot be given the benefit of reservation at more than one stage. It is a matter of policy for the Government to decide whether or not to permit granting of reservation more than once.

124 AIR 1993 SC 477.

In this case, the impugned system of reservation provided:

1. Reservation for the Scheduled Castes, Scheduled Tribes and the Other Backward Classes = 50%.
2. Horizontal reservation for—
   1. Actual dependents of the freedom fighters—5%.
   2. sons/daughters of soldiers/deceased/disabled in war—2%.
   3. Physically handicapped—2%.
   4. Candidates of hill area—3%.
   5. Candidates of Uttarakhand area—15%.

The total horizontal reservations amounted was 15%.

127 In Para 17, the following illustration was provided “Take this very case; out of the total 746 seats, 112 seats (representing fifteen percent) should be filled by special reservation candidates; at the same time, the social reservation in favour of Other Backward Classes is 27% which means 201 seats for the Other Backward Classes; if the 112 special reservation seats are also divided proportionately as between Other Classes, Other Backward Classes, Scheduled Castes and Scheduled Tribes, 30 seats would be allocated to the Other Backward Classes category; in other words, thirty special category students can be accommodated in the Other Backward Classes category; but say only ten special reservation candidates belonging to Other Backward Classes are available, then these ten candidates will, of course, be allocated among Other Backward Classes quota but the remaining twenty seats cannot be transferred to Other Classes category (they will be available for Other Backward Classes candidates only) or for that matter, to any other category; this would be so whether requisite number of special reservation candidates (56 out of 373) are available in Other Classes category or not; the special reservation would be a water tight compartment in each of the vertical reservation classes ( Other Classes, Other Backward Classes, Scheduled Classes and Scheduled Tribes)

128 In Para 17, the following illustration was provided “Take this very case; out of the total 746 seats, 112 seats (representing fifteen percent) should be filled by special reservation candidates; at the same time, the social reservation in favour of Other Backward Classes is 27% which means 201 seats for the Other Backward Classes; if the 112 special reservation seats are also divided proportionately as between Other Classes, Other Backward Classes, Scheduled Castes and Scheduled Tribes, 30 seats would be allocated to the Other Backward Classes category; in other words, thirty special category students can be accommodated in the Other Backward Classes category; but say only ten special reservation candidates belonging to Other Backward Classes are available, then these ten candidates will, of course, be allocated among Other Backward Classes quota but the remaining twenty seats cannot be transferred to Other Classes category (they will be available for Other Backward Classes candidates only) or for that matter, to any other category; this would be so whether requisite number of special reservation candidates (56 out of 373) are available in Other Classes category or not; the special reservation would be a water tight compartment in each of the vertical reservation classes ( Other Classes, Other Backward Classes, Scheduled Classes and Scheduled Tribes)”. In the same Para, it was held “As against this, what happens in the overall reservation is that while allocating the special reservation students to their respective social reservation category, the overall reservation in favour of special reservation categories has yet to be honoured. This means that in the above illustration, the twenty remaining seats would be transferred to Other Classes category which means that the number of special reservation candidates in Other Classes category would be 56+20= 76. Further, if no special reservation candidate belonging to Scheduled Castes and the Scheduled Tribes is available then the proportionate number of seats meant for special reservation candidates in Scheduled Classes and Scheduled Tribes also get transferred to Other Classes category. The result would be that 102 special reservation candidates have to be accommodated in the Other Classes category to complete their quota of 112. The converse may also happen, which will prejudice the candidates in the reserved categories. It is, of course, obvious that the inter se quota between Other Classes, Other Backward Classes, Scheduled Castes and Scheduled Tribes will not be altered.”
Also see to the same effect, Urmila Ginda v. Union of India, AIR 1975 Del 115; Mrs. Vaishali v. Union of India, (1978) 80 Bom LR 182; Smt. D. Neelima v. Dean, P.G. Studies A.P. Agr. University, Hyderabad, AIR 1993 A.P. 299; State of Tripura v. Namita Majumdar, 1998(8) SCC 217; Madhuri Patel v. Addl. Commr. Tribal Dev., AIR 1995 SC 94; Murlidhar v. Vishwanath, 1995 Supp. (2) SCC 549; State of Bihar v. Abha, AIR 2003 Jhar. 40. The Rajasthan High Court in Vikas Soni v. M.R. Engineering College, Jaipur, AIR 2003 Raj. 158. has, however, upheld the claim to the quota for “children of defence personal killed” for admission to Engineering College, made by the petitioner who was adopted by the widow of a deceased defence personnel. Also see a recent judgment delivered by a Bench of three learned Judges of the Supreme Court, wherein—it was ruled that the question as to whether a Hindu belonging to a Scheduled Caste/Scheduled Tribe would retain his Scheduled Castes/Scheduled Tribes status on conversion to other religion, would have to be decided on merits of each case. See The Tribune, February 9, 2004.

From the decided cases, the following principles emerge:

1. In any event, college-wise preference is not permissible.
2. University-wise preference is permissible provided it is relevant and reasonable. Seventy to eighty percent reservation has been sustained, even where students from different universities appear at a common entrance test. The trend, however, is towards reducing the reservations and providing greater weight to merit. The practice all over the country today, as a result of the decisions of this Court, is to make fifteen percent of the seats in M.B.B.S. course and twenty five percent of the seats in postgraduate medical courses in all the Government medical colleges in the country (except Andhra Pradesh and Jammu and Kashmir) available on the basis of merit alone. Students from anywhere in the country can compete for these seats which are allotted on the basis of an All-India test conducted by the designated authority.
3. The rule of preference on the basis of domicile/requirement of residence is not bad provided it is within reasonable limits, i.e., it does not result in reserving more than eighty five percent seats in graduate courses and more than seventy five seats in postgraduate courses. But district-wise reservation is an anathema.
4. Where the students from different universities appear at a common entrance test/examination (on the basis of which admissions are made) the rule of university-wise preference too must shed some of its relevance. The explanation of difference in evaluation, standards of education and syllabus lose much of their significance when admission is based upon a common entrance test. At the same time, the right of the State Governments (which have established and maintained these institutions) that regulate the process of admission and their desire to provide for their own students should also be accorded due deference.
5. The fair and proper rule is: the higher you go, in any discipline, lesser should be the reservations of whatever kind (Para 14).


AIR 1997 SC 3687.

AIR 1981 SC 2045.

AIR 1980 SC 820.

AIR 1984 SC 1420.


AIR 1997 SC 1120.

AIR 1999 SC 2894.

In Para 26 it was observed, “In the premises the special provisions for Scheduled Castes/Scheduled Tribes candidates whether reservations or lower qualifying marks at the speciality level have to be minimal. There cannot, however, be any such special provisions at the level of super-specialties.”

AIR 1997 SC 3687.
(1) There was no common examination in the said case and therefore, it was very difficult to test the merit across all spheres. (2) In the present case there was 100% reservation provided for whereas in the said case, in favour of the students passing PUC examination of a particular University, the reservation was to the extent of 20 percent.

For that, the reason was as follows: “In the first place it would cause a considerable amount of hardship and inconvenience if students residing in the region of a particular University are compelled to move to the region of another University for medical education which they might have to do if selection for admission to the medical colleges in the entire State were to be based on merit without any reservation or preference region-wise. It must be remembered that there would be a larger number of students who, if they do not get admission in the medical college near their residence and are assigned admission in a college in another region on the basis of relative merit, may not be able to go to such other medical college on account of lack of resources and facilities and in the result they would be effectively deprived of a real opportunity for pursuing the medical course even though on paper they would have got admission in the medical college……Moreover some difficulty would also arise in case of girls because if they are not able to get admission in the medical college near the place where they reside they might find it difficult to pursue medical education in a medical college situated in another region where hostel facilities may not be available and even if hostel facilities are available, the parents may hesitate to send them to the hostels.”

AIR 2005 SC 3226.

Justice Dalveer Bhandari further held that “Sawhney-I compels me to conclude that use of caste is valid. It is said that if reservation in education is to stay, it should adhere to a basic tenet of Secularism: it should not take caste into account. As long as caste is a criterion, we will never achieve a casteless
society. Exclusively economic criteria should be used.” Justice Pasayat said, “So far as determination of Backward Classes is concerned, a notification should be issued by the centre. Such notification is open to challenge on the ground of wrongful exclusion and inclusion.”

The court also unanimously held that “creamy layer” must be excluded from the Socially and Educationally Backward classes to make its identification complete and valid. Justice Dalveer Bhandari ruled that the office memorandum of September 8, 1993, on creamy layer was not comprehensive. It should be revised periodically to ensure that creamy layer criteria take the changing circumstances into account. This was also the view of other four Judges. Now, on October 14, 2008 the union cabinet approved 80% raise in the income ceiling for creamy layer among Other Backward classes. The creamy layer ceiling among Other Backward classes will now be Rs. 4.5 lakh and not Rs. 2.5 lakh a year, fixed earlier in 2004 vide OM of Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pensions, dated 9.3.2004. With this enhancement a larger number of Other Backward classes earlier excluded from reservation benefits will now be covered.183

Regarding the periodic review of the policy of reservation, all the Judges are unanimous on the point that there should be a review of the policy of reservation. However, Justice R.V. Raveendran, Justice Dalveer Bhandari and Chief Justice K.G. Balakrishnan preferred a period of ten years for such a review while Dr. Arijit Pasayat and Justice C.K. Thakker who delivered a joint judgment required such an exercise after every five years.

It is also held by the Supreme Court that the Central Government shall examine as to the desirability of fixing a cut off mark in respect of the candidates belonging to the Other Backward classes to balance reservation with other societal interest and to maintain standards of excellence. This would ensure quality and the merit would not suffer. If any seats remain vacant after adopting such norms they shall be filled by General Category candidates.

Again Justices Dr. Arijit Pasayat, C.K. Thakker and Dalveer Bhandari, by a majority, outlined the parameter "as to who should be classified as Backward" and came out with the criteria that once a backward class student passes graduation he would not be eligible to seek admission in post graduation courses under the Socially and Educationally Backward classes quota. In this judgment, the court has only rested existing judicial wisdom on reservations for the “Socially and Economically Backward classes”. But, among the weaker sections of the society very few complete primary and secondary education. According to the Human Resource Development Ministry’s survey, one out of every four doesn’t go beyond class V and the drop out rate has increased to 50.8 percent for secondary education184. However, a valid question to ask with respect to higher education is if exclusion of the creamy layer will not negate the very idea of reservations. Since higher education is by its nature elitist, it is almost axiomatic that only the creamy layer-from all the castes-enters the portals of post graduate institutes185.

182 AIR 2010 SC 288.
184 (2009) 7 SCC 300.
185 AIR 2008 SC 1.
186 Marc Glanter points out, “This litigation has, by and large been initiated, not by the beneficiaries of protective discrimination but by those complaining of schemes which affect their interest”. Glanter presents study of 113 cases, out of which 32 related to the reserved legislative seats. Out of 81 only 27 involved the claims brought to the courts by would be beneficiaries and remaining 54 “were initiated by those” challenging the existence and operation of preferential treatment. The outcome of litigation is shown to be by Glanter as follows:

Table 33

<table>
<thead>
<tr>
<th>Subject-matter of Preferential treatment</th>
<th>Overturn, restrict, and curtail the Government’s preference.</th>
<th>Enlarge, restore or amplify the coverage of the Government’s preference.</th>
</tr>
</thead>
<tbody>
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<td></td>
<td>Successful</td>
<td>Unsuccessful</td>
</tr>
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<td>Government Employment</td>
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</tr>
<tr>
<td>Total</td>
<td>27</td>
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</tr>
</tbody>
</table>
The Government indicated its intention by a resolution of the year 1950 for reserving 12.5 percent and 5 percent in favour of the Scheduled Castes and Scheduled Tribes respectively in any year of the total available vacancies. In the year 1952, it was provided by the supplementary instructions issued by the Government that if the number of the suitable candidates available in any particular year was less than the number of the reserved posts, for that particular year, so in excess posts shall be treated as unreserved but in the next year the number of posts which for such candidates would have been otherwise reserved in the normal course would be increased by the number which in the preceding year had been converted into non-reserved posts. At a time under the year 1952 instructions this process of carrying over which was to operate for the period of one year, was directed for operating at a time for two years by making an amendment in 1955.

M.R. Balaji v. State of Mysore, AIR 1963 SC 649, where a reservation of 68 percent of seats in educational institutions by the State was held invalid.

The Court observed: “The expression ‘Backward Classes’ is not used as synonymous with ‘backward caste’ or ‘backward community’. The members of an entire caste or community may, in the social, economic and educational scale of values at the given time, be backward and may on that account be treated as a backward class but that is not because they form a class. In this ordinary connotation, 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; but for the purpose of Article 16(4) in determining whether a section forms a class, a test solely based on caste, community, race, religion, sex, descent, place of birth or residence, cannot be adopted, because it would directly offend the Constitution.”

The Court observed that: “It is not merely the educational backwardness or the social backwardness which makes a class of citizens backward; the class identified as a class as above must be both educationally and socially backward. In India, social and educational backwardness is further associated with economic backwardness and it is observed in Balaji’s Case referred to above that backwardness, socially and educationally is ultimately and primarily due to poverty. But, if poverty is the exclusive test, a very large proportion of the population in India would have to be regarded as socially and educationally backward, and if reservations are made only on the ground of economic considerations, as untenable situation may arise because even in sectors which are recognized as socially and educationally advanced there are large pockets of poverty. In this country except for a small percentage of the population the people are generally poor, some being poorer, and others less poor. Therefore, when a social investigator tries to identify socially and educationally Backward Classes, he may do it with confidence that they are bound to be poor. His chief concern is, therefore, to determine whether the class or group is socially and educationally backward. Though, the two words ‘socially’ and ‘educationally’ are used cumulatively for the purpose of describing the Backward Class, one may find that if a class as a whole is educationally advanced, it is generally also socially advanced because of the reformatory effect of education on that class. The words ‘advanced’ and ‘backward’ are only relative terms—there being several layers or strata of classes, hovering between ‘advanced’ and ‘backward’, and the difficult task is which class can be recognized out of these several layers as being socially and educationally backward.”

Source: Glanter, Marc, Competing Equalities (1984) and Missed Opportunities (in) Law and Social Change, P. 197.

AIR 1951 SC 229.

AIR 1951 SC 229.


Ibid.

General Manager, South Railway v. Rangachari, AIR 1962 SC 36.

AIR 1962 SC 36.

AIR 1964 SC 179.

AIR 1968 SC 507.


AIR 1967 SC 1283.

AIR 1971 SC 1777.

AIR 1962 SC 36.

AIR 1973 SC 930.

AIR 1974 SC 532.

AIR 1976 SC 490.
In this case, the rules were framed by the Kerala Government to the higher cadre of upper division clerks from the cadre of lower division clerks regulating promotions which, within two years of the introduction of the test, was dependant on the passing of a departmental test. Failure on the part of the lower division clerk to pass the test entitled his promotion within two years in future. However, under the said Rule, subsequently by the issue of an Order, a longer period was granted to the members of the category of Scheduled Castes or Scheduled Tribes and two extra years were given to them for passing the test.

M.P. Jain, Indian Constitutional Law, 1987, 520.


Ibid., P. 60.


AIR 1993 SC 477

AIR 1988 SC 959.

AIR 1989 SC 139, 142.

AIR 1993 SC 477

AIR 1996 SC 75.


1996(6)JSCC 580.

AIR 1993 SC 477.

AIR 1996 SC 448

In M.G. Badappanavar v. State of Karnataka, AIR 2001 SC 260, the Apex Court, relying upon Ajit Singh II issued directions for determining the seniority of roster point promotees of reserved category vis-à-vis general category candidates, in accordance with the catch-up rule. Explained therein.

AIR 1996 SC 1189.


AIR 1997 SC 2366.


AIR 1997 SC 3074.

AIR 1974 SC 532.


The court clarified: “In the anxiety for such reservation, a situation should not be brought by which the chance of appointment was completely taken away so far as the members of other segments of the society were concerned by making such single post cent percent reserved for the Backward Classes, to the exclusion of other members of the community even when such member was senior in service and was otherwise more meritorious”. So the State cannot ignore the fundamental rights of the rest of the citizens in making the reservations for the reserved categories”.


Further the court held: “The Constitution has laid down in Articles 14 and 16(1) the permissible limits of affirmative action by way of reservation under Articles 16(4) and 16(4A). While permitting
reservations at the same time, it has also placed certain limitations by way of Articles 14 and 16(1) so that there is no reverse discrimination.”


243 See the Objects and Reasons attached to the Constitution (85th Amendment) Act, 2001.

AIR 2000 SC 2078.

AIR 2000 SC 3385.

AIR 2000 SC 498.

AIR 1993 SC 477.

AIR 2000 SC 498.

AIR 2001 SC 308.

AIR 2002 SC 2875.

AIR 2002 SC 1533.


253 AIR 2005 SC 1038.


255 C.W.P. Number 5815 of 2006.

256 AIR 2006 SC 597.

257 AIR 2007 SC 71.

258 AIR 2007 SC 861.

259 AIR 2007 SC 2891.

260 Ibid.

261 Ibid.

262 AIR 2007 SC 3127.


264 The illustration is as follows: If 19 posts are reserved for the Scheduled Castes (of which the quota for women is four), in accordance with merit from out of the successful eligible candidates, 19 candidates shall have to be first listed. If four Scheduled Castes women are contained in such list of 19 candidates then by including any further Scheduled Castes women candidate, there is no requirement for disturbing the list. On the other hand, if only two women candidates are contained in the list of 19 Scheduled Castes candidates, then in accordance with merit the next two Scheduled Castes women candidates will have to be included in the list and from the bottom of such list, the corresponding number of candidates shall have to be deleted, so as to ensure that four women Scheduled Castes candidates are contained in the final 19 selected Scheduled Castes candidates. But if more than four women candidates are contained in the list of 19 Scheduled Castes candidates, selected on own merit, in the list all of them will continue and on the ground that ‘Scheduled Castes women’ in excess of the prescribed internal quota of four have been selected, there is no question of deleting the excess women candidate.

265 AIR 2008 SC 3136.

266 Date of Decision-8th February, 2010. Msr/Ak.

267 CWP Number 12741 of 2009, Date of decision: March 18, 2010.

268 CWP Number 182009 of 2009 (O&M) Date of decision: 29.3.2010.

269 AIR 2010 SC 2691.

270 AIR 2011 SC 874.

271 AIR 2007 SC 71.


275 AIR 1951 SC 226.

276 Ibid.

277 AIR 1951 SC 229.

278 AIR 1951 SC 226.
AIR 1951 SC 229.
AIR 1963 SC 649.
AIR 1964 SC 1823.
AIR 1967 SC 1283.
AIR 1985 SC 1495.
AIR 1968 SC 507.
AIR 1972 SC 1375.
AIR 1971 SC 2303.
AIR 1976 SC 2381.
AIR 1993 SC 477.
AIR 2008 SC 1.
AIR 1963 SC 649.
Ibid.
AIR 1964 SC 179.
AIR 1971 SC 2303.
AIR 1971 SC 1762.
AIR 1974 SC 532.
AIR 1985 SC 1495.
AIR 1993 SC 477.
AIR 2007 SC 3127.
AIR 2008 SC 3136.
AIR 2008 SC 1.
AIR 1976 SC 2381.
AIR 1993 SC 477.
AIR 2008 SC 1.
AIR 1962 SC 36.
AIR 1993 SC 477.
AIR 1996 SC 448.
AIR 1964 SC 179.
AIR 1993 SC 477.
1995 AIR SCW 1371.
Date of Decision-8th February, 2010. Msr/Ak.
C.W.P. Number 5815 of 2006.
CWP Number 182009 of 2009 (O&M) Date of decision: 29.3.2010.
AIR 2011 SC 874.
AIR 1951 SC 226.
In Para 7 it was observed:
“The right to get admission into any educational institution of the kind mentioned in clause (2) is a right which an individual citizen has as a citizen and not as a member of any community or class of citizens. This right is not to be denied to the citizen on grounds only of religion, race, caste, language or any of them. If a citizen who seeks admission into any such educational institution has not the requisite academic qualifications and is denied admission on that ground, he certainly cannot be heard to complain of an infraction of his fundamental right under this Article. But, on the other hand, if he has the academic qualifications but is refused admission only on grounds of religion, race, caste, language or any of them, then there is a clear breach of his fundamental right.”
AIR 1993 SC 477.
AIR 1996 SC 448
AIR 2005 SC 3226.