The State Of Punjab vs Davinder Singh on 27 August, 2020

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Bench: Aniruddha Bose, M.R. Shah, Vineet Saran, Indira Banerjee, Arun Mishra

1

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE/ORIGINAL JURISDICTION

CIVIL APPEAL NO.2317 OF 2011

THE STATE OF PUNJAB & ORS. … APPELLANTS

VS.

DAVINDER SINGH & ORS. … RESPONDENTS

WITH

CIVIL APPEAL NO. 5586 OF 2010

CIVIL APPEAL NO. 5597 OF 2010

CIVIL APPEAL NO. 5589 OF 2010

CIVIL APPEAL NO. 5593 OF 2010

CIVIL APPEAL NO. 5600 OF 2010

CIVIL APPEAL NO. 5598 OF 2010

CIVIL APPEAL NO. 5587 OF 2010

CIVIL APPEAL NOS. 5595-5596 OF 2010

CIVIL APPEAL NO. 2324 OF 2011

CIVIL APPEAL NO. 6936 OF 2015

SPECIAL LEAVE PETITION (CIVIL) NO. 30766 OF 2010
2

CIVIL APPEAL NO. 2318 OF 2011

SPECIAL LEAVE PETITION (CIVIL) NOS. 5454–5459 OF 2011

SPECIAL LEAVE PETITION (CIVIL) NO. 8701 OF 2011

SPECIAL LEAVE PETITION (CIVIL) NOS. 36500–36501 OF 2011

TRANSFERRED CASE (CIVIL) NO. 37 OF 2011

TRANSFERRED CASE (CIVIL) NO. 38 OF 2011

CIVIL APPEAL NO. 289 OF 2014

TRANSFER PETITION (CIVIL) NO. 464 OF 2015

AND

WRIT PETITION (CIVIL) NO. 1477 OF 2019

JUDGMENT

ARUN MISHRA, J.

1. A Bench of three Judges vide order dated 20.8.2014 referred the matter to a larger Bench for consideration opining that the judgment of a 5□Judge Bench in E.V. Chinnaiah v. State of A.P. and Ors., (2005) 1 SCC 394, is required to be revisited in the light of Article 338 of the Constitution of India, and not correctly following the exposition of the law in Indra Sawhney and Ors. v. Union of India & Ors., 1992 Suppl. (3) SCC 217. It was noted that matter involved interpretation and interplay between Articles 16(1), 16(4), 338 and 341 of the Constitution of India.

2. We, in order to consider the constitutional validity of Section 4(5) of the Punjab Scheduled Caste and Backward Classes (Reservation in Services) Act, 2006 (for short, 'the Punjab Act') in the matter referred, framed the following issues on 4.2.2020:

> "i) Whether the provisions contained under Section 4(5) of The Punjab Scheduled Castes and Backward Classes (Reservation in Services) Act, 2006 are constitutionally valid?
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> ii) Whether the State had the legislative competence to enact the provisions contained under Section 4(5) of the Act?
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> iii) Whether the decision in E.V. Chinnaiah Vs. State of A. P. & Ors. reported in (2005) 1 SCC 394 is required to be revisited?"

3. The background facts are that the Punjab Government by Circular No.1818□SW□75/10451 dated 5.5.1975 provided that out of seats reserved for Scheduled Castes, fifty per cent of the vacancies would be offered to Balmikis and Mazhabi Sikhs. The Circular was struck down by a Division Bench of the Punjab and Haryana High Court vide judgment dated 25.7.2006. This Court dismissed the S.L.P. against the same on 10.3.2008.

4. The Punjab Act was notified on 5.10.2006. Section 4(5) of the Punjab Act made similar provisions as were made in the Circular, which was struck down. It stipulated that fifty per cent of the vacancies of the quota reserved for Scheduled Castes in direct recruitment shall be offered to Balmikis and Mazhabi Sikhs, subject to their availability, by providing first preference from amongst the Scheduled Castes candidates.

5. A Division Bench of the Punjab and Haryana High Court struck down the provisions contained in Section 4(5) of the Punjab Act vide judgment dated 29.3.2010, relying upon the decision in E.V. Chinnaiah.

6. The constitutional validity of Section 4(5) of the Punjab Act depends upon whether any such classification can be made within the class of Scheduled Castes or Scheduled Tribes or are to be treated as a homogenous class. Whether it is not permissible to provide any further reservation to the weakest out the weak, particularly when it has not been possible to trickle down the benefit of reservation to the weakest and the same is utilised by the upper class within the group, who enjoy the benefit of reservation to the maximum creating disparities within its class.

Submissions:

7. Shri Ranjit Kumar, learned senior counsel appearing for the State of Punjab raised the following arguments:

> (a) The decision in E.V. Chinnaiah erroneously proceeded on the premise that affirmative action taken by the States by giving preference to certain Scheduled

Castes under Article 16(4) tinkers with the Presidential List under Article 341. Merely giving of preference does not tinker, rearrange, sub-classify, disturb or interfere with the list in any manner whatsoever since there is no inclusion or exclusion of any caste in the list as notified under the meaning of Article 341. The Punjab Act has been enacted under Article 16(1) and 16(4) read with Articles 245 and 246. The provisions of Section 4(5) of the Punjab Act are within the legislative competence of the State.

(b) The Court in E.V. Chinnaiah erred in correctly interpreting the majority ratio in Indra Sawney on the question of sub-classification within a class. At least five out of nine Judges in Indra Sawney held that amongst the backward, there may be some more backward, and when State chooses to make such classification, it would be permissible in law. Unequivocally in the majority, it was held that backward classes can be classified into more backward and less backward classes. The Scheduled Castes and Scheduled Tribes fall within backward classes. There is no warrant for the submission that there cannot be a classification within the Scheduled Castes.

(c) Article 16(4) covers all backward classes, including Scheduled Castes and Scheduled Tribes. The expression used in Article 16(4) is "any backward class of citizens". The expression "not adequately represented" covers all socially and educationally backward classes, who, on account of their backwardness, are inadequately represented in the State's services. The scope of Article 16(4) is wider in its ambit than Article 15(4). The expression "backward class of citizens" used in Article 16(4) covers in its ambit the Scheduled Castes and Scheduled Tribes and other backward classes, including the socially and educationally backward class.

(d) The preferential treatment is a facet of equality under Article 14.

Any enactment by the State giving preference to more backward amongst the backward fulfils the object of Article 16(4). Six out of nine Judges in Indra Sawney held that Article 16(4) is not an exception to Article 16(1). The preferential treatment given to certain Scheduled Castes/Scheduled Tribes does not violate Article 14. It intends to provide proportional equality. The classification is based on intelligible differentia. The differentia bears a reasonable nexus with the object, which is sought to be achieved, of equitable representation of all Scheduled Castes in the Government service. The specific reservations are required to bring about real equality of opportunity between unequals and must be ensured by the State.

(e) A new concept has been applied by this Court to Scheduled Castes also. While considering Indra Sawney in recent judgment by this Court in Jarnail Singh & Ors. v. Lachhmi Narain Gupta & Ors., (2018) 10 SCC 396, it was held that the object of Article 16(4) is to ensure that all backward classes march forward hand in hand and that will not be possible if only selective few get selected in all the coveted services of the Government. It was opined that the application of the 'creamy layer concept' to Articles 341 and 342 does not tinker with the Presidential List.

(f) The decision in E.V. Chinnaiah is contrary to other binding judgments, such as K.C. Vasanth Kumar & Anr. v. State of Karnataka, 1985 Supp. SCC 714, which was approved in Indra Sawney. In M.R. Balaji & Ors. v. State of Mysore & Ors., 1963 Supp. (1) SCR 439, it was held that sub□ classification between backward and more backward classes is necessary to help more backward classes. In E.V. Chinnaiah, the decision in State of Kerala & Anr. v. N.M. Thomas & Ors., (1976) 2 SCC 310, was not properly appreciated. It was laid down in N.M. Thomas that there could be no objection to further classification within a class. Men are born different, and some sort of differential treatment is required to achieve proportional equality.

(g) In case it is assumed that all castes are homogeneous by virtue of being in the List within Article 341, it is only addition, or deletion of any caste in the list would be impermissible as held by the Constitution Bench in State of Maharashtra v. Milind & Ors., (2001) 1 SCC 4 and Bir Singh v. Delhi Jal Board & Ors., (2018) 10 SCC 312. It is permissible for the State to give preferential treatment within the list based on the comparative backwardness of any class, there is nothing in Article 341, which prohibits the same. Article 341 does not take away the power of the State under Article 16(4) to make provisions for giving preference. Such preferential treatment is not only permissible but necessary to bring equality. Thus, the decision in E.V. Chinnaiah, having been rendered by a Coordinate Bench of five Judges, deserves to be referred to a larger Bench for reconsideration as the question of interpretation of various provisions of the Constitution involves the larger public interest and the decision is contrary to earlier decisions, it is appropriate to refer to a larger Bench to settle the law.

8. Shri R. Venkataramani, learned senior counsel appearing for the State of Tamil Nadu argued that:

> (a) The decision in E.V. Chinnaiah has and will continue to have an empirically demonstrable baneful effect on the general interests of the public and is inconsistent with the legal philosophy of the Constitution regarding equality and equal opportunity. The decision in E.V. Chinnaiah, which holds that Scheduled Castes and Scheduled Tribes once classified are a homogenous class, is removed from social and economic reality. If the decision continues to operate, a large section of Scheduled Castes and Scheduled Tribes would be deprived of the guarantees under Articles 14 to 16. The decision in E.V. Chinnaiah deserves to be revisited by a larger Bench.
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> (b) Articles 14 to 16 constitute a triumvirate of citizens' rights and obligations and conceived as equality and social justice charters. The State is under corresponding obligations to devise measures and methods, fashion, policies to promote and protect these rights. There is an interplay between these rights as held in Indra Sawney. The equality rights under Article 14 and equal opportunity rights under Articles 15 and 16 have been mutually reinforcing facets. The State must undertake the emancipation of the deprived and weaker sections of the community. The obligation to eradicate inequalities in status and wealth is complex obligations involving redistribution and reallocation of resources, opportunities, and equitable access to all public and social goods. Education, health, and public employment are all public goods of immense value. Therefore, the State/States will always need the freedom to carry out informed

experiments without being fettered by undue or disproportionate claims. The court has to keep social dynamics in mind and be careful not to chain the State or clamp its hand while interpreting constitutional provisions. The rule of law demands that the State is able to harmonise and balance several competing claims and interests.

(c) In Indra Sawney, the word "backward classes" have been declared to include Scheduled Castes and Scheduled Tribes and what all consideration involved in dealing with backward classes would also be attracted to the Scheduled Castes and Scheduled Tribes, i.e., grouping, classification or sub-classification of castes and tribes for effectuating the rights under Article 16(1) and 16(4) is permissible.

There are inter-se distinctions and inequalities within Scheduled Castes/Scheduled Tribes in their ability to access education and employment, afford healthcare, and enjoy the same social status. They are undeniably classes within a class. The data documented by the State shows that inter-se inequality persists. It is open to the State/States to deal with backward classes based on each group's needs or sub-class and handle the pervading imbalances.

(d) The decision in E.V. Chinnaiah has frozen all State authorities under Articles 14 to 16 of the Constitution. E.V. Chinnaiah does not answer many questions raised. It is based on the premise that all Scheduled Castes can and must collectively enjoy the benefits of reservation regardless of inter-se inequality. The broad statement in E.V. Chinnaiah has no demonstrable truth in empirical terms and is not supported under the judgment itself. The decision in E.V. Chinnaiah cannot be said to be absolute to a standard so high based on stare decisis as to freeze our constitutional understanding permanently and place of the judicial pronouncement. Shri R. Venkataramani has attracted the Court's attention to various decisions concerning stare decisis in matters of its constitutional importance.

9. Shri M.S. Ganesh, learned senior counsel appearing on behalf of Haryana Dhanak Sewa Samiti, while supporting the aforesaid submissions, additionally argued that:

(a) the decision in E.V. Chinnaiah suffers from tunnel vision and lacks acuity, and he has referred to M. Nagaraj & Ors. v. Union of India & Ors., (2006) 8 SCC 212. The impact test must also be applied to Article 341 read with the tautologous definition clause of Article 366(24) of the Constitution. The specification in Article 341 of the castes, races, and tribes is rendered qua legal fiction. The purpose of legal fiction must be ascertained, and then it is to be given full effect without letting the imagination boggle. It cannot be stretched beyond the purposes for which the legislature has created it. The legal fiction under Article 341 is limited to the specification. The specification is not disturbed by sub-classification of the Scheduled Castes mentioned in the List.

(b) The caste given further reservation are not represented in the services of the State. The decision in E.V. Chinnaiah cannot be said to be laying down good law in view of the decision in I.R. Coelho v. State of T.N., (2007) 2 SCC 1. The approach and

reasoning in E.V. Chinnaiah were that for Scheduled Castes, Article 341 was the bedrock of the rights guaranteed by Articles 15(4) and 16(4) and was dominant tenement to which Articles 14 to 16 were subservient.

(c) That E.V. Chinnaiah is subject to Occam's Razor entia non sunt multiplicanda praeter necessitate (entities ought not to be multiplied except from the necessity), which means that all unnecessary or constituents in the subject being analysed are to be eliminated. The inclusion in the list cannot dictate to the enforcement and effectuation by the State of the rights guaranteed by Articles 15(4) and 16(4) between those specified castes, races, or group inter□se. The assignment of important role to ethical principles in behavioural relation of the society ranges from Aristotle, Aquinas, Ockham, and Arthasastra are referred to in 'The Idea of Justice' by Amartya Sen.

(d) That Articles 15(4) and 16(4) by themselves are substantive and enabling provisions. The power conferred is not limited in any way by the main provision, but falls outside it. It has not carved out an exception but has preserved the power untrammelled by the other provisions of the Article. The hands of the State cannot be restrained under Article 46 as done by E.V. Chinnaiah. In E.V. Chinnaiah has lost sight of the nature of Part□XVI of the role of the provisions of that Part.

(e) If E.V. Chinnaiah is a good law, its problematics give rise to prospects of challenge to the constitutional validity of Article 342A as inserted by the Constitution (One Hundred and Second Amendment) Act, 2018 necessitates revisiting the interpretation of Articles 341 and 342 of the Constitution.

10. Shri Nidesh Gupta, learned senior counsel argued that:

(a) there is no bar to grant a State's preference under Articles 341(2) and 342(2) of the Constitution. The Constitution does not forbid mere preference. The State Government cannot exercise power concerning inclusion and exclusion. This Court in Indra Sawney upheld a classification of the backward and more backward class under Article 16(4).

(b) In M. Nagaraj and Jarnail Singh, the exclusion of the Scheduled Castes' creamy layer under Article 16(4) was permitted. The creamy layer includes economic, social, educational, and other factors;

therefore, the preference given to Balmikis and Mazhabi Sikhs, i.e., the most backward amongst the Scheduled Castes, is in substance an application of the principle of creamy layer.

(c) A reading of Articles 16(4), 16(4A), 335, 341, and 342 makes it clear that the State(s) has a role to play at every stage of the reservation process. Therefore, it would be contrary to the constitutional scheme to deny them a role in merely granting a preference to the most backward among the

Scheduled Castes.

(d) A class of citizens cannot be treated to be socially and educationally backward till perpetuity. The class is always required to be judged in the light of the existing fact situation at a given point of time, as observed in Jagdish Negi, President, Uttarakhand Jan Morcha & Anr. v. State of U.P. & Anr., (1997) 7 SCC 203.

11. Shri Shekhar Naphade, learned senior counsel, attracted the attention of the Court to the findings recorded by the Committee based on which reservation has been provided to more backward of the Scheduled Castes in the State of Tamil Nadu. He argued that:

> (a) the Arunthathiyars community is the lowest caste. He attracted the attention of the Court to the representation of the group in the State Government Departments and educational courses and the reservation formula recommended by the Committee. The Tamil Nadu Arunthathiyars (Special Reservation of seats in Educational Institutions including Private Educational Institutions and appointments or posts in the services under the State within the Reservation for Scheduled Castes) Act, 2009 does not tinker with the Presidential List of Scheduled Castes in any manner.
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> (b) Special reservation is a fundamental aspect of Article 14 of the Constitution. E.V. Chinnaiah requires reconsideration in the light of the decision of the Constitution Bench in Jarnail Singh. Besides, it failed to take note of ground realities and is not based upon the statistical data collected by the State showing disparities amongst the Scheduled Castes and Scheduled Tribes.
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> (c) The State's legislative competence in various fields for making reservation flows from Article 246(2) and 246(3) read with Entry 41 in List II and Entry 25 in List III. Article 341 does not abrogate the legislative power of the State to enact a law providing for reservation in the employment in the State Public Services or State Public Service Commission. It is open to the State to make law providing reservation in the admissions to educational institutions.
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> (d) The restriction under Article 341 is limited, relating to inclusion and exclusion of castes. The decision in E.V. Chinnaiah treats unequals as equals. The object of the legislation is to improve the lot of Scheduled Castes and eliminate their social and educational backwardness and equally distribute the fruits among them. The special reservation is to render more meaningful social justice. The unequals cannot be treated equally. Differential treatment cannot be termed to be discriminatory.

12. Ms. Jyoti Mendiratta, learned counsel, attracted the attention of the Court to the various reports and argued that in E.V. Chinnaiah Scheduled Castes were taken to be a homogeneous group, they are, in fact, not homogeneous.

(a) Learned counsel attracted our attention to the report of Justice M.S. Janarthanam Committee of Inquiry for Special Reservation for the Arunthathiyars. They were not able to reap the fruits of reservation as there was upper crust within Scheduled Castes, and most of the posts were reserved for Scheduled Castes and Scheduled Tribes, though Arunthathiyars were 16 per cent of the Scheduled Caste population, they managed to obtain reservation to a much lower extent. The figures of representation of Arunthathiyars community in State services and educational institutions have been furnished.

(b) Our attention was attracted to the report of Justice Ramachandra Raju Committee, wherein it was observed that the Reli group of communities was the most backward amongst the Scheduled Caste communities.

(c) Learned counsel also invited our attention to Justice Usha Mehra Committee report (2008), indicating that Scheduled Castes do not constitute a homogenous class in relation to their social, educational, and economic backwardness in the country. Individual social groups inherit most traditional occupations by the incident of birth in the list of Scheduled Caste.

(d) Learned counsel further drew our attention to Justice Lokur Committee Report (1965). It was pointed out that the smaller and more backward communities have tended to get lost in the democratic process, though most deserving of special aid. It was suggested in the report that in the matters of planning and development, the distribution of benefits needs to be focused on the more backward and smaller groups on a selective basis. In E.V. Chinnaiah, the scope of Article 341 was not correctly appreciated about the power of the State concerning the allocation of percentage of reservation amongst the caste based upon rational differentia was ignored.

13. Shri Sanjay R. Hegde, learned senior counsel, while supporting E.V. Chinnaiah, argued that:

> (a) The Parliament alone has the power to exclude castes listed in the Schedule. He has attracted our attention to Dr. Ambedkar's speech in the Constituent Assembly regarding the purpose of Articles 341 and 342. The object is to eliminate any kind of political factors having a play in the matter of the disturbance in the schedule so published by the President. Considering the binding precedent doctrine, the decision in E.V. Chinnaiah is not required to be revisited wherein a possible view has been taken. The judgment concerning the construction of statutes ought not to be overruled except in exceptional cases. The unforeseeable consequences would follow if the judgment is overruled. It requires to be revisited if it causes great uncertainty, or it relates to some broad issue or principle, or the same is unjust or outmoded, not otherwise.

(b) In Indra Sawhney, the sub□classification was limited to socially and educationally backward classes. It was observed that none of its observations would apply to Scheduled Castes and Scheduled Tribes. The Scheduled Castes and Scheduled Tribes are backward for the provisions of Article 16(4). The test or requirement of social and educational backwardness cannot be applied to Scheduled Castes and Scheduled Tribes. The decision in Indra Sawhney was understood in the

correct perspective in E.V. Chinnaiah.

(c) In N.M. Thomas, it was held that Scheduled Castes and Scheduled Tribes are backward classes. No sub-classification can be made. The exclusion from the list is prerogative of the Parliament. The object of Article 341(1) is to provide additional protection to the members of the Scheduled Castes having regard to the economic and educational backwardness from which they suffer. In the Presidential Order, even the court cannot make any alteration. No enquiry is permissible to determine whether or not some particular community falls within the list or outside it as laid down in State of Maharashtra v. Milind & Ors., (2001) 1 SCC 4.

(d) The legal fiction created under Article 341 is to be given full effect. The provisions of Section 4(5) of the Punjab Act cannot be said to be constitutionally valid. The Governor is empowered only to make recommendations under Article 341 for alteration in the list. No further classification can be made once Scheduled Castes, and Scheduled Tribes are covered under Article 16(4).

(e) There is a difference between Scheduled Castes and Other Backward Classes. The Scheduled Castes are untouchables as held in Jarnail Singh. The Hindus are divided into two classes – the touchables and the untouchables. The term "depressed classes" was replaced by "Scheduled Castes" under the Government of India Act, 1935. The special treatment is given to the Scheduled Castes due to untouchability with which they suffer. It is not open to the Parliament or Legislature of States to make classification inter se Scheduled Castes/Scheduled Tribes once they are included in the Schedule. The Parliament is empowered to include or exclude any caste from the Presidential List. Article 341(1) provides additional protection to the members of the Scheduled Castes. The powers under Article 16(4) cannot be exercised de-hors Article 341.

14. Shri Tushar Bakshi, learned counsel argued that sub-classification is not permissible in the caste grouped in one entry of the list. It is not permissible to leave one caste grouped within the list. The power has been exercised maliciously.

15. Shri A. Subba Rao, learned counsel, appearing on behalf of the respondents argued that the Constitution (One Hundred and Second Amendment) Act, 2018 came into effect on 11.8.2018. Article 338B was inserted constituting National Commission for Backward Classes. The real question for consideration is the interpretation of Articles 14, 15, 16, 338, 338A, 338B, 341, 342, 342A, 366(24) and 366(26C). The Parliament alone has the power to deal with Scheduled Castes once the President notifies the Scheduled Castes list. He relied upon Bir Singh to submit that E.V. Chinnaiah has been correctly decided. The basic question for determination is of federalism. The powers conferred on the Parliament to amend the list cannot be whittled down and diluted by interpretation of the constitutional provisions. The reference to a larger Bench is not at all warranted.

16. Dr. K.S. Chauhan, learned counsel argued that law has been settled in E.V. Chinnaiah. The State Government has no power to include or exclude the castes in the List. The Constitution does not empower the Union or the State to categorise or sub-categorise the castes enumerated in the List. Any sub-classification may tantamount to varying the List under Article 341(1). The view taken in

Indra Sawhney is that castes enumerated are not castes, these are classes. Learned counsel has pointed out the distinction between class and caste.

In N.M. Thomas, it was laid down that Scheduled Castes are not castes, they are class. Hence, he argued that they should not be further classified. The principle settled in the decision of N.M. Thomas has been disregarded in the decision of M. Nagaraj. The majority in Indra Sawhney held that the provisions of Article 16(4) are classification of Article 16(1) of the Constitution, and the classification is permissible. The minority opinion in Indra Sawhney has been applied in M. Nagaraj, and the same is contrary to the law settled by the majority in Indra Sawhney and R.K. Sabharwal & Ors. v. State of Punjab & Ors., (1995) 2 SCC 745. A reference was made regarding the correctness of M. Nagaraj. The Constitution Bench in Jarnail Singh settled the principle based on Indra Sawhney. Still, a new principle of social backwardness and creamy layer has been developed, and the constitutional principles have been clarified and settled by modifying the legal interpretation of M. Nagaraj. The correctness of the decision in M. Nagaraj was also doubted in State of Tripura & Ors. v. Jayanta Chakraborty & Ors., (2018) 1 SCC 146. The clarification by the Constitution Bench in Jarnail Singh, remained very short-lived only upto in B.K. Pavitra & Ors. v. Union of India & Ors., (2019) 16 SCC

129. M. Nagaraj ought to have been referred to a larger Bench.

17. Shri Robin Khokhar, learned counsel argued that based on the Tamil Nadu Act No.4 of 2009, the Government of Tamil Nadu included 7 castes out of 76 castes in the list of Scheduled Caste Aruthathiyar, the power of classification could not have been exercised. The same is violative to the basic feature of the Constitution and Article 341. Legislating sub-classification is constitutionally impermissible. Discussion:

> 18. In E.V. Chinnaiah, it was held that Scheduled Castes form homogenous classes and there cannot be any sub-division and with respect to Indra Sawhney, following discussion was made:
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> "38. On behalf of the respondents, it was pointed out that in Indra Sawhney case, 1992 Suppl. (3) SCC 217, the Court had permitted subclassification of Other Backward Communities, as backward and more backward based on their comparative underdevelopment, therefore, the similar classification amongst the class enumerated in the Presidential List of Scheduled Castes is permissible in law. We do not think the principles laid down in Indra Sawhney case, 1992 Suppl. (3) SCC 217, for subclassification of Other Backward Classes can be applied as a precedent law for subclassification or subgrouping Scheduled Castes in the Presidential List because that very judgment itself has specifically held that subdivision of Other Backward Classes is not applicable to Scheduled Castes and Scheduled Tribes. This we think is for the obvious reason i.e. the Constitution itself has kept the Scheduled Castes and Scheduled Tribes List out of interference by the State Governments.

41. The conglomeration of castes given in the Presidential Order, in our opinion, should be considered as representing a class as a whole. The contrary approach of the High Court, in our opinion, was not correct. The very fact that a legal fiction has been created is itself suggestive of the fact that the legislature of a State cannot take any action which would be contrary to or inconsistent therewith. The very idea of placing different castes or tribes or group or part thereof in a State as a conglomeration by way of a deeming definition clearly suggests that they are not to be subdivided or subclassified further. If a class within a class of members of the Scheduled Castes is created, the same would amount to tinkering with the list. Such subclassification would be violative of Article 14 of the Constitution. It may be true, as has been observed by the High Court, that the caste system has got stuck up in the society but with a view to do away with the evil effect thereof, a legislation which does not answer the constitutional scheme cannot be upheld. It is also difficult to agree with the High Court that for the purpose of identifying backwardness, a further inquiry can be made by appointing a commission as to who amongst the members of the Scheduled Castes is more backward. If benefits of reservation are not percolating to them equitably, measures should be taken to see that they are given such adequate or additional training so as to enable them to compete with the others but the same would not mean that in the process of rationalising the reservation to the Scheduled Castes the constitutional mandate of Articles 14, 15 and 16 could be violated." The following opinion expressed by S.B. Sinha, J. in E.V. Chinnaiah has been referred to:

"113. The power of the State Legislature to decide as regards grant of benefit of reservation in jobs or in educational institutions to the backward classes is not in dispute. It is furthermore not in dispute that if such a decision is made the State can also lay down a legislative policy as regards extent of reservation to be made for different members of the backward classes including Scheduled Castes. But it cannot take away the said benefit on the premise that one or the other group amongst the members of the Scheduled Castes has advanced and, thus, is not entitled to the entire benefit of reservation. The impugned legislation, thus, must be held to be unconstitutional."

19. One of the questions is whether E.V. Chinnaiah correctly appreciated the majority decision in Indra Sawhney. It was argued that in Indra Sawhney, the majority of the Judges held that amongst the backward, there may be some more backward, and if the State chooses to make such classification, it would be permissible in law.

(a) Following is the opinion of B.P. Jeevan Reddy, J. (for himself and other three Judges) in Indra Sawhney:

"Question No. 5:

Whether Backward Classes can be further divided into backward and more backward categories?

801. In Balaji, 1963 Supp 1 SCR 439, it was held:

"that the sub-classification made by the order between Backward Classes and More Backward Classes does not appear to be justified under Article 15(4). Article 15(4) authorises special provision being made for the really backward classes. In introducing two categories of Backward Classes, what the impugned order, in substance, purports to do is to devise measures for the benefit of all the classes of citizens who are less advanced, compared to the most advanced classes in the State, and that, in our opinion, is not the scope of Article 15(4). The result of the method adopted by the impugned order is that nearly 90% of the population of the State is treated as backward, and that illustrates how the order in fact divides the population of the State into most advanced and the rest, and puts the latter into two categories of Backward and More Backward. The classification of the two categories, therefore, is not warranted by Article 15(4)." (SCR p. 465-66) The correctness of this holding is questioned before us by the counsel for the respondents. It is submitted that in principle there is no justification for the said holding. It is submitted that even among backward classes there are some who are more backward than the others and that the backwardness is not and cannot be uniform throughout the country nor even within a State. In support of this contention, the respondents rely upon the observations of Chinnappa Reddy, J in Vasanth Kumar, 1985 Supp SCC 714, where the learned Judge said: (SCC p. 750, para 55) "[W]e do not see why on principle there cannot be a classification into Backward Classes and More Backward Classes, if both classes are not merely a little behind, but far behind the most advanced classes. In fact such a classification would be necessary to help the More Backward Classes; otherwise those of the Backward Classes who might be a little more advanced than the More Backward Classes might walk away with all the seats."

802. We are of the opinion that there is no constitutional or legal bar to a State categorising the backward classes as backward and more backward. We are not saying that it ought to be done. We are concerned with the question if a State makes such a categorisation, whether it would be invalid? We think not. Let us take the criteria evolved by Mandal Commission. Any caste, group or class which scored eleven or more points was treated as a backward class. Now, it is not as if all the several thousands of castes/groups/classes scored identical points. There may be some castes/groups/classes which have scored points between 20 to 22 and there may be some who have scored points between eleven and thirteen. It cannot reasonably be denied that there is no difference between these two sets of castes/groups/classes. To give an illustration, take two occupational groups viz., goldsmiths and vaddes (traditional stone-cutters in Andhra Pradesh) both included within Other Backward Classes. None can deny that goldsmiths are far less backward than vaddes. If both of them are grouped together and reservation provided, the inevitable result would be that goldsmiths would take away all the reserved posts leaving none for vaddes. In such a situation, a State may think it advisable to make a categorisation even among other backward classes so as to ensure that the more

> backward among the backward classes obtain the benefits intended for them. Where to draw the line and how to effect the sub-classification is, however, a matter for the Commission and the State — and so long as it is reasonably done, the Court may not intervene. In this connection, reference may be made to the categorisation obtaining in Andhra Pradesh. The Backward Classes have been divided into four categories.

Group A comprises "Aboriginal tribes, Vimukta jatis, nomadic and semi-nomadic tribes etc." Group B comprises professional group like tappers, weavers, carpenters, ironsmiths, goldsmiths, kamsalins etc. Group C pertains to "Scheduled Castes converts to Christianity and their progeny", while Group D comprises all other classes/communities/groups, which are not included in Groups A, B and C. The 25% vacancies reserved for backward classes are sub-divided between them in proportion to their respective population. This categorisation was justified in Balram, (1972) 1 SCC 660. This is merely to show that even among backward classes, there can be a sub-classification on a reasonable basis.

803. There is another way of looking at this issue. Article 16(4) recognises only one class viz., "backward class of citizens". It does not speak separately of Scheduled Castes and Scheduled Tribes, as does Article 15(4). Even so, it is beyond controversy that Scheduled Castes and Scheduled Tribes are also included in the expression "backward class of citizens" and that separate reservations can be provided in their favour. It is a well-accepted phenomenon throughout the country. What is the logic behind it? It is that if Scheduled Tribes, Scheduled Castes and Other Backward Classes are lumped together, OBCs will take away all the vacancies leaving Scheduled Castes and Scheduled Tribes high and dry. The same logic also warrants categorisation as between more backward and backward. We do not mean to say — we may reiterate — that this should be done. We are only saying that if a State chooses to do it, it is not impermissible in law.

PART VII

859. We may summarise our answers to the various questions dealt with and answered hereinabove:

> (1) ** (2) ** (3) (a) A caste can be and quite often is a social class in India. If it is backward socially, it would be a backward class for the purposes of Article 16(4). Among non-Hindus, there are several occupational groups, sects and denominations, which for historical reasons, are socially backward. They too represent backward social collectivities for the purposes of Article 16(4). (Paras 746 to 779) *** *** ***
>
> (d) 'Creamy layer' can be, and must be excluded. (Paras 790-793) (5) There is no constitutional bar to classify the backward classes of citizens into backward and more backward categories. (Paras 801 to 803)" (emphasis supplied)
>
> (b) The opinion expressed by P.B. Sawant, J. (for himself) is extracted hereunder:

"523. As regards the second part of the question, in Balaji, 1963 Supp 1 SCR 439, it was observed that the backward classes cannot be further classified in backward and more backward classes. These observations, although made in the context of Article 15(4) which fell for consideration there, will no doubt be equally applicable to Article 16(4). The observations were made while dealing with the recommendations of the Nagan Gowda Committee appointed by the State of Karnataka which had recommended the classification of the backward communities into two divisions, the Backward and the More Backward. While making those recommendations the Committee had applied one test, viz., "Was the standard of education in the community in question less than 50% of the State average? If it was, the community was regarded as more backward; if it was not, the community was regarded as backward." The Court opined that the sub□classification made by the Report and the order based thereupon was not justified under Article 15(4) which authorises special provision being made for 'really backward classes'. The Court further observed that in introducing two categories of backward classes, what the impugned order in substance purported to do was to devise measures "for the benefit of all the classes of citizens who are less advanced compared to the most advanced classes in the State". That, according to the Court, was not the scope of Article 15(4). The result of the method adopted by the impugned order was that nearly 90% of the population of the State was treated as Backward and that, observed the Court, illustrated how the order in fact divided the population of the State into most advanced and the rest, putting the latter into two categories of the Backward and the More Backward. Thus, the view taken there against the sub□classification was on the facts of that case which showed that almost 90% of the population of the State was classified as backward, the backwardness of the Backward (as against that of the More Backward) being measured in comparison to the most advanced classes in the State. Those who were less advanced than the most advanced, were all classified as Backward. The Court held that it is the More Backward or who were really backward who alone would be entitled to the benefit of the provisions of Article 15(4). In other words, while the More Backward were classified there rightly as backward, the Backward were not classified rightly as backward.

524. It may be pointed out that in Vasanth Kumar, 1985 Supp SCC 714, Chinnappa Reddy, J after referring to the aforesaid view in Balaji, 1963 Supp 1 SCR 439 observed that the propriety of such test may be open to question on the facts of each case but there was no reason why on principle there cannot be a classification into Backwards and More Backwards if both classes are not merely a little behind, but far far behind the most advanced classes. He further observed that in fact, such a classification would be necessary to help the more backward classes; otherwise those of the backward classes who might be a little more advanced than the more backward classes, would walk away with all the seats just as if reservation was confined to the more backward classes and no reservation was made to the slightly more advanced of the backward classes, the backward classes would gain no seats since the advanced classes would walk away with all the seats available for the general category. With

respect, this is the correct view of the matter. Whether the backward classes can be classified into Backward and More Backward, would depend upon the facts of each case. So long as both backward and more backward classes are not only comparatively but substantially backward than the advanced classes, and further, between themselves, there is a substantial difference in backwardness, not only it is advisable but also imperative to make the sub□classification if all the backward classes are to gain equitable benefit of the special provisions under the Constitution. To give an instance, the Mandal Commission has, on the basis of social, educational and economic indicators evolved 22 points by giving different values to each of the three factors, viz., social, educational and economic. Those social groups which secured 22 points or above have been listed there as "socially and educationally backward" and the rest as "advanced". Now, between 11 and 22 points some may secure, say, 11 to 15 points while others may secure all 22 points. The difference in their backwardness is, therefore, substantial. Yet another illustration which may be given is from Karnataka State Government order dated October 13, 1986 on reservations issued after the decision in Vasanth Kumar, 1985 Supp SCC 714 where the backward classes are grouped into five categories, viz., A, B, C, D and E. In category A, fall such castes or communities as that of Bairagi, Banjari and Lambadi which are nomadic tribes, and Bedaru, Ramoshi which were formerly stigmatised as criminal tribes whereas in category D fall such castes as Kshatriya and Rajput. To lump both together would be to deny totally the benefit of special provisions to the former, the latter taking away the entire benefits. On the other hand, to deny the status of backwardness to the latter and ask them to compete with the advanced classes, would leave the latter without any seat or post. In such circumstances, the sub□classification of the backward classes into backward and more or most backward is not only desirable but essential. However, for each of them a special quota has to be prescribed as is done in the Karnataka Government order. If it is not done, as in the present case, and the reserved posts are first offered to the more backward and only the remaining to the backward or less backward, the more backward may take away all the posts leaving the backward with no posts. The backward will neither get his post in the reserved quota nor in the general category for want of capacity to compete with the forward.

525. Hence, it will have to be held that depending upon the facts of each case, sub□ classification of the backward classes into the backward and more or most backward would be justifiable provided separate quotas are prescribed for each of them.

552. The answers to the questions may now be summarised as follows:

Question 1:*** Question 2:*** Question 3:*** Question 4:*** Question 5:

Article 16(4) permits classification of backward classes into backward and more or most backward classes. However, this classification is permitted only on the basis of the degrees of social backwardness and not on the basis of the economic

consideration alone. If backward classes are classified into backward and more or most backward classes, separate quotas of reservations will have to be kept for each of such classes. In the absence of such separate quotas, the reservations will be illegal.

It is not permissible to classify backward classes or a backward class social group into an advanced section and a backward section either on economic or any other consideration. The test of advancement lies in the capacity to compete with the forward classes. If the advanced section in a backward class is so advanced as to be able to compete with the forward classes, the advanced section from the backward class no longer belongs to the backward class and should cease to be considered so and denied the benefit of reservations under Article 16(4)." (emphasis supplied)

(c) In Indra Sawhney, the question involved was of Mandal Commission regarding other backward classes. The expression used in Article 16(4) is 'any backward class of citizens'. Article 16(4) is wider in its ambit than Article 15(4). The expression 'class' is wider than 'caste', and the expression 'backward class' stipulated under Article 16(4) takes into its ambit Scheduled Castes and Scheduled Tribes and all other backward classes including the socially and educationally backward class. Following discussion was made in the opinion expressed by B.P. Jeevan Reddy, J. (for himself and other three Judges):

"774. In our opinion too, the words "class of citizens — not adequately represented in the services under the State" would have been a vague and uncertain description. By adding the word "backward" and by the speeches of Dr Ambedkar and Shri K.M. Munshi, it was made clear that the "class of citizens ... not adequately represented in the services under the State" meant only those classes of citizens who were not so represented on account of their social backwardness.

777. ....The word "community" is clearly wider than "caste" — and "backward communities" meant not only the castes — wherever they may be found —but also other groups, classes and sections among the populace.

778. Indeed, there are very good reasons why the Constitution could not have used the expression "castes" or "caste" in Article 16(4) and why the word "class" was the natural choice in the context. The Constitution was meant for the entire country and for all time to come.

Non-Hindu religions like Islam, Christianity and Sikh did not recognise caste as such though, as pointed out hereinabove, castes did exist even among these religions to a varying degree. Further, a Constitution is supposed to be a permanent document expected to last several centuries. It must surely have been envisaged that in future many classes may spring up answering the test of backwardness, requiring the protection of Article 16(4). It, therefore, follows that from the use of the word "class" in Article 16(4), it cannot be concluded either that "class" is antithetical to "caste" or that a caste cannot be a class or that a caste as such can never be taken as a backward class of

citizens. The word "class" in Article 16(4), in our opinion, is used in the sense of social class — and not in the sense it is understood in Marxist jargon.

778□A. In Rajendran, (1968) 2 SCR 786, 790, Triloki Nath(II), (1969) 1 SCR 103, 105, Balram, (1972) 1 SCC 660 and Peeriakaruppan, (1971) 1 SCC 38, 48, this reality was recognised and given effect to, notwithstanding the fact that they had to respect and operate within the rather qualified formulation of Balaji, 1963 Supp 1 SCR 439.

778□B. For the sake of completeness, we may refer to a few passages, from Vasanth Kumar, 1985 Supp SCC 714, to show what does the concept of 'caste' signify? D.A. Desai, J defines and describes "caste" in the following terms: (SCC pp. 730□31, para 22) "What then is a caste? Though caste has been discussed by scholars and jurists, no precise definition of the expression has emerged. A caste is a horizontal segmental division of society spread over a district or a region or the whole State and also sometimes outside it. Homo Hierarchicus is expected to be the central and substantive element of the caste□system which differentiates it from other social systems. The concept of purity and impurity conceptualises the caste system .... There are four essential features of the caste□system which maintained its homo hierarchicus character: (1) hierarchy; (2) commensality; (3) restrictions on marriage; and (4) hereditary occupation. Most of the castes are endogamous groups. Inter□ marriage between two groups is impermissible. But 'Pratilom' marriages are not wholly known." Venkataramiah, J also defined "caste" in practically the same terms. He said: (SCC p. 786, para 110) "A caste is an association of families which practices the custom of endogamy i.e. which permits marriages amongst the members belonging to such families only. Caste rules prohibit its members from marrying outside their caste .... A caste is based on various factors, sometimes it may be a class, a race or a racial unit. A caste has nothing to do with wealth. The caste of a person is governed by his birth in a family. Certain ideas of ceremonial purity are peculiar to each caste .... Even the choice of occupation of members of caste was predetermined in many cases, and the members of a particular castes were prohibited from engaging themselves in other types of callings, professions or occupations. Certain occupations were considered to be degrading or impure."

779. The above material makes it amply clear that a caste is nothing but a social class — a socially homogeneous class. It is also an occupational grouping, with this difference that its membership is hereditary. One is born into it. Its membership is involuntary. Even if one ceases to follow that occupation, still he remains and continues a member of that group. ..... But we are concerned here with a limited aspect of equality emphasised in Article 16(4) — equality of opportunity in public employment and a special provision in favour of backward class of citizens to enable them to achieve it.

(b) Identification of "backward class of citizens"

780. Now, we may turn to the identification of "backward class of citizens". How do you go about it? Where do you begin? Is the method to vary from State to State, region to region and from rural to urban? What do you do in the case of religions where caste□system is not prevailing? What about other classes, groups and communities which do not wear the label of caste? Are the people living adjacent to cease□fire line (in Jammu and Kashmir) or hilly or inaccessible regions to be surveyed

and identified as backward classes for the purpose of Article 16(4)? And so on and so forth are the many questions asked of us. We shall answer them. But our answers will necessarily deal with generalities of the situation and not with problems or issues of a peripheral nature which are peculiar to a particular State, district or region. Each and every situation cannot be visualised and answered. That must be left to the appropriate authorities appointed to identify. We can lay down only general guidelines.

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

c) Whether the backwardness in Article 16(4) should be both social and educational?

786. The other aspect to be considered is whether the backwardness contemplated in Article 16(4) is social backwardness or educational backwardness or whether it is both social and educational backwardness. Since the decision in Balaji, 1963 Supp 1 SCR 439, it has been assumed that the backward class of citizens contemplated by Article 16(4) is the same as the socially and educationally backward classes, Scheduled Castes and Scheduled Tribes mentioned in Article 15(4). Though Article 15(4) came into existence later in 1951 and Article 16(4) does not contain the qualifying words "socially and educationally" preceding the words "backward class of citizens" the same meaning came to be attached to them. Indeed, it was stated in Janki Prasad Parimoo, (1973) 1 SCC 420 (Palekar, J speaking for the Constitution Bench) that:

> "Article 15(4) speaks about 'socially and educationally backward classes of citizens' while Article 16(4) speaks only of 'any backward class citizens'. However, it is now settled that the expression 'backward class of citizens' in Article 16(4) means the same thing as the expression 'any socially and educationally backward class of citizens' in Article 15(4). In order to qualify for being called a 'backward class citizen' he must be a member of a socially and educationally backward class. It is social and educational backwardness of a class which is material for the purposes of both Articles 15(4) and 16(4)."

787. It is true that no decision earlier to it specifically said so, yet such an impression gained currency and it is that impression which finds expression in the above observation. In our respectful opinion, however, the said assumption has no basis. Clause (4) of Article 16 does not contain the qualifying words "socially and educationally" as does clause (4) of Article 15. It may be remembered that Article 340 (which has remained unamended) does employ the expression 'socially and educationally backward classes' and yet that expression does not find place in Article 16(4). The reason is obvious:

> "backward class of citizens" in Article 16(4) takes in Scheduled Tribes, Scheduled Castes and all other backward classes of citizens including the socially and educationally backward classes. Thus, certain classes which may not qualify for

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

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

(d)(i) The question of preferential treatment given by the State was held to be facet of equality under Article 14 as giving preference to more backward amongst the backwards furthers the aim and object of Article 16(4). Six out of nine Judges in Indra Sawhney held that Article 16(4) is not an exception to Article 16(1). The opinion expressed by B.P. Jeevan Reddy, J. (for himself and other three Judges) is extracted hereunder:

> "733. At this stage, we wish to clarify one particular aspect. Article 16(1) is a facet of Article 14. Just as Article 14 permits reasonable classification, so does Article 16(1). A classification may involve reservation of seats or vacancies, as the case may be. In other words, under clause (1) of Article 16, appointments and/or posts can be reserved in favour of a class. But an argument is now being advanced — evidently

> inspired by the opinion of Powell, J in Bakke, 57 L Ed 2d 750, that Article 16(1) permits only preferences but not reservations. The reasoning in support of the said argument is the same as was put forward by Powell, J. This argument, in our opinion, disregards the fact that that is not the unanimous view of the court in Bakke, 57 L Ed 2d 750.

Four Judges including Brennan, J took the view that such a reservation was not barred by the Fourteenth Amendment while the other four (including Warren Burger, CJ) took the view that the Fourteenth Amendment and Title VI of the Civil Rights Act, 1964 bars all race□conscious programmes. At the same time, there are a series of decisions relating to school desegregation — from Brown, 347 US 483 to North Carolina Board of Education v. Swann, 28 L Ed 2d 586 — where the court has been consistently taking the view that if race be the basis of discrimination, race can equally form the basis of remedial action. The shift in approach indicated by Metro Broadcasting Inc., 58 IW 5053 is equally significant. The 'lingering effects' (of past discrimination) theory as well as the standard of strictest scrutiny of race□conscious programmes have both been abandoned. Suffice it to note that no single uniform pattern of thought can be discerned from these decisions. Ideas appear to be still in the process of evolution. Question 2(a):

> Whether clause (4) of Article 16 is an exception to clause (1)?

741. In Balaji, 1963 Supp 1 SCR 439 it was held — "there is no doubt that Article 15(4) has to be read as a proviso or an exception to Articles 15(1) and 29(2)". It was observed that Article 15(4) was inserted by the First Amendment in the light of the decision in Champakam, 1951 SCR 525 with a view to remove the defect pointed out by this court namely, the absence of a provision in Article 15 corresponding to clause (4) of Article 16. Following Balaji, 1963 Supp 1 SCR 439, it was held by another Constitution Bench (by majority) in Devadasan, (1964) 4 SCR 680 — "further this Court has already held that clause (4) of Article 16 is by way of a proviso or an exception to clause (1)". Subba Rao, J, however, opined in his dissenting opinion that Article 16(4) is not an exception to Article 16(1) but that it is only an emphatic way of stating the principle inherent in the main provision itself. Be that as it may, since the decision in Devadasan, (1964) 4 SCR 680, it was assumed by this Court that Article 16(4) is an exception to Article 16(1). This view, however, received a severe setback from the majority decision in State of Kerala v. N.M. Thomas, (1976) 2 SCC 310. Though the minority (H.R. Khanna and A.C. Gupta, JJ) stuck to the view that Article 16(4) is an exception, the majority (Ray, CJ, Mathew, Krishna Iyer and Fazal Ali, JJ) held that Article 16(4) is not an exception to Article 16(1) but that it was merely an emphatic way of stating a principle implicit in Article 16(1). (Beg, J took a slightly different view which it is not necessary to mention here.) The said four learned Judges — whose views have been referred to in para 713 — held that Article 16(1) being a facet of the doctrine of equality enshrined in Article 14 permits reasonable classification just as Article 14 does. In our respectful opinion, the view taken by the majority in Thomas, (1976) 2 SCC 310, is the correct one. We too believe that Article 16(1) does permit reasonable classification for ensuring attainment of the equality of opportunity assured by it. For assuring equality of opportunity, it may well be necessary in certain situations to treat unequally situated persons unequally. Not doing so, would perpetuate and accentuate inequality. Article 16(4) is an instance of such classification, put in to place the matter beyond controversy. The "backward class of citizens"

are classified as a separate category deserving a special treatment in the nature of reservation of appointments/posts in the services of the State. Accordingly, we hold that clause (4) of Article 16 is not exception to clause (1) of Article 16. It is an instance of classification implicit in and permitted by clause (1). The speech of Dr Ambedkar during the debate on draft Article 10(3) [corresponding to Article 16(4)] in the Constituent Assembly — referred to in para 693 — shows that a substantial number of members of the Constituent Assembly insisted upon a "provision (being) made for the entry of certain communities which have so far been outside the administration", and that draft clause (3) was put in in recognition and acceptance of the said demand. It is a provision which must be read along with and in harmony with clause (1). Indeed, even without clause (4), it would have been permissible for the State to have evolved such a classification and made a provision for reservation of appointments/posts in their favour. Clause (4) merely puts the matter beyond any doubt in specific terms.

742. Regarding the view expressed in Balaji, 1963 Supp 1 SCR 439 and Devadasan, (1964) 4 SCR 680, it must be remembered that at that time it was not yet recognised by this Court that Article 16(1) being a facet of Article 14 does implicitly permit classification. Once this feature was recognised the theory of clause (4) being an exception to clause (1) became untenable. It had to be accepted that clause (4) is an instance of classification inherent in clause (1). Now, just as Article 16(1) is a facet or an elaboration of the principle underlying Article 14, clause (2) of Article 16 is also an elaboration of a facet of clause (1). If clause (4) is an exception to clause (1) then it is equally an exception to clause (2). Question then arises, in what respect if clause (4) an exception to clause (2), if 'class' does not means 'caste'. Neither clause (1) nor clause (2) speak of class. Does the contention mean that clause (1) does not permit classification and therefore clause (4) is an exception to it. Thus, from any point of view, the contention of the petitioners has no merit. Question 2(c):

> Whether Article 16(4) is exhaustive of the very concept of reservations?
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> 744. The aspect next to be considered is whether clause (4) is exhaustive of the very concept of reservations? In other words, the question is whether any reservations can be provided outside clause (4) i.e., under clause (1) of Article 16. There are two views on this aspect. On a fuller consideration of the matter, we are of the opinion that clause (4) is not, and cannot be held to be, exhaustive of the concept of reservations; it is exhaustive of reservations in favour of backward classes alone. Merely because, one form of classification is stated as a specific clause, it does not follow that the very concept and power of classification implicit in clause (1) is exhausted thereby. To say so would not be correct in principle. But, at the same time, one thing is clear. It is in very exceptional situations, — and not for all and sundry reasons — that any further reservations, of whatever kind, should be provided under clause (1). In such cases, the State has to satisfy, if called upon, that making such a provision was necessary (in public interest) to redress a specific situation. The very presence of clause (4) should act as a damper upon the propensity to create further classes deserving special treatment. The reason for saying so is very simple. If reservations are made both under clause (4) as well as under clause (1), the vacancies available for free competition as well as reserved categories would be a correspondingly whittled down

and that is not a reasonable thing to do.

Whether clause (1) of Article 16 does not permit any reservations?

745. For the reasons given in the preceding paragraphs, we must reject the argument that clause (1) of Article 16 permits only extending of preference, concessions and exemptions, but does not permit reservation of appointments/posts. As pointed out in para 733 the argument that no reservations can be made under Article 16(1) is really inspired by the opinion of Powell, J in Bakke, 57 L Ed 2d 750. But in the very same paragraph we had pointed out that it is not the unanimous opinion of the Court. In principle, we see no basis for acceding to the said contention. What kind of special provision should be made in favour of a particular class is a matter for the State to decide, having regard to the facts and circumstances of a given situation — subject, of course, to the observations in the preceding paragraph." (emphasis supplied)

(ii) The opinion expressed by P.B. Sawant, J. (for himself) is extracted hereunder:

> "428. With the majority decision of this Court in State of Kerala v. N.M. Thomas, (1976) 2 SCC 310, having confirmed the minority opinion of Subba Rao, J in T. Devadasan v. Union of India, (1964) 4 SCR 680, the settled judicial view is that clause (4) of Article 16 is not an exception to clause (1) thereof, but is merely an emphatic way of stating what is implicit in clause (1).
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> 429. Equality postulates not merely legal equality but also real equality. The equality of opportunity has to be distinguished from the equality of results. The various provisions of our Constitution and particularly those of Articles 38, 46, 335, 338 and 340 together with the Preamble, show that the right to equality enshrined in our Constitution is not merely a formal right or a vacuous declaration. It is a positive right, and the State is under an obligation to undertake measures to make it real and effectual. .....
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> 430. If, however, clause (4) is treated as an exception to clause (1), an important but unintended consequence may follow. There would be no other classification permissible under clause (1), and clause (4) would be deemed to exhaust all the exceptions that can be made to clause (1). It would then not be open to make provision for reservation in services in favour of say, physically handicapped, army personnel and freedom fighters and their dependents, project affected persons, etc. The classification made in favour of persons belonging to these categories is not hit by clause (2). Apart from the fact that they cut across all classes, the reservations in their favour are made on considerations other than that of backwardness within the meaning of clause (4). Some of them may belong to the backward classes while some may belong to forward classes or classes which have an adequate representation in the services. They are, however, more disadvantaged in their own class whether backward or forward. Hence, even on this ground it will have to be held that Article 16(4) carves out from various classes for whom reservation can be made, a specific

class, viz., the backward class of citizens, for emphasis and to put things beyond doubt.

431. For these very reasons, it will also have to be held that so far as "backward classes" are concerned, the reservations for them can only be made under clause (4) since they have been taken out from the classes for which reservation can be made under Article 16(1). Hence, Article 16(4) is exhaustive of all the reservations that can be made for the backward classes as such, but is not exhaustive of reservations that can be made for classes other than backward classes under Article 16(1). So also, no reservation can be made under Article 16(4) for classes other than "backward classes" implicit in that article. They have to look for their reservations, to Article 16(1).

432. It may be added here that reservations can take various forms whether they are made for backward or other classes. They may consist of preferences, concessions, exemptions, extra facilities etc. or of an exclusive quota in appointments as in the present case.

When measures other than an exclusive quota for appointments are adopted, they form part of the reservation measures or are ancillary to or necessary for availing of the reservations. Whatever the form of reservation, the backward classes have to look for them to Article 16(4) and the other classes to Article 16(1)." (emphasis supplied)

(iii) The opinion of S. Ratnavel Pandian, J. (for himself) is extracted hereunder:

"168. In my view, clause (4) of Article 16 is not an exception to Article 16(1) and (2) but it is an enabling provision and permissive in character overriding Article 16(1) and (2); that it is a source of reservation for appointments or posts in the Services so far as the backward class of citizens is concerned and that under clause (1) of Article 16 reservation for appointments or posts can be made to other sections of the society such as physically handicapped etc.

169. There is complete unanimity of judicial opinion of this Court that under Article 16(4) the State can make adequate provisions for reservations of appointments or posts in favour of any backward class of citizens, if in the opinion of the State such 'backward class' is not adequately represented in the State. In fact in B. Venkataramana v. State of Madras, AIR 1951 SC 229, a seven□Judge Bench of this Court held that "[r]eservation of posts in favour of any backward class of citizens cannot, therefore, be regarded as unconstitutional". Not a single decision of this Court has cast slightest shadow of doubt on the constitutional validity of reservation.

Therefore, in view of the above position of law, I am not inclined to embark upon an elaborate discussion on this question any further."

20. On behalf of the State of Punjab, it was argued that preferential treatment given by the State to certain Scheduled Castes and Scheduled Tribes does not violate Article 14 but brings about proportional equality. The classification made based on intelligible differentia is inter□se backwardness and share in population vis□à□vis proportion of representation in Government services. The differentia bears a reasonable nexus with the object sought to be achieved. Those who are unequal class of Scheduled Caste and Scheduled Tribe can be given the benefit of reservation to ensure that benefit reaches to them as guaranteed under Article 14. For this purpose, reliance has been placed on the following decisions:

> (i) In Marri Chandra Shekhar Rao v. Dean, Seth G.S. Medical College & Ors., (1990) 3 SCC 130, the Court held:
>
> "8. Article 15 of the Constitution prohibits discrimination on grounds of religion, race, caste, sex or place of birth. Article 15(4), however, enjoins that nothing in that article or in clause (2) of Article 29 of the Constitution shall prevent the State from making any special provision of the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes. Therefore, reservation in favour of Scheduled Tribes or Scheduled Castes for the purpose of advancement of socially or educationally backward citizens to make them equal with other segments of community in educational or job facilities is the mandate of the Constitution. Equality is the dictate of our Constitution. Article 14 ensures equality in its fullness to all our citizens. State is enjoined not to deny to any persons equality before law and equal protection of the law within the territory of India. Where it is necessary, however, for the purpose of bringing about real equality of opportunity between those who are unequals, certain reservations are necessary and these should be ensured. Equality under the Constitution is a dynamic concept which must cover every process of equalisation. Equality must become a living reality for the large masses of the people. Those who are unequal, in fact, cannot be treated by identical standards; that may be equality in law but it would certainly not be real equality. Existence of equality of opportunity depends not merely on the absence of disabilities but on presence of abilities. It is not simply a matter of legal equality. De jure equality must ultimately find its raison d'etre in de facto equality. The State must, therefore, resort to compensatory State action for the purpose of making people who are factually unequal in their wealth, education or social environment, equal in specified areas. It is necessary to take into account de facto inequalities which exist in the society and to take affirmative action by way of giving preference and reservation to the socially and economically disadvantaged persons or inflicting handicaps on those more advantageously placed, in order to bring about real equality. Such affirmative action though apparently discriminatory is calculated to produce equality on a broader basis by eliminating de facto inequalities and placing the weaker sections of the community on a footing of equality with the stronger and more powerful sections so that each member of the community, whatever is his birth, occupation or social position may enjoy equal opportunity of using to the full his natural endowments of physique, of character and of intelligence. In this connection,

reference may be made to the observations of this Court in Pradeep Jain v. Union of India, (1984) 3 SCC 654." (emphasis supplied)

(ii) In Dr. Pradeep Jain & Ors. v. Union of India & Ors., (1984) 3 SCC 654, the following observations were made:

"13. ..... What the famous poet William Blake said graphically is very true, namely, "One law for the Lion and the Ox is oppression". Those who are unequal, in fact, cannot be treated by identical standards; that may be equality in law but it would certainly not be real equality. It is, therefore, necessary to take into account de facto inequalities which exist in the society and to take affirmative action by way of giving preference to the socially and economically disadvantaged persons or, inflicting handicaps on those more advantageously placed, in order to bring about real equality. ...." (emphasis supplied)

(iii) In Union of India & Ors. v. Rakesh Kumar & Ors., (2010) 4 SCC 50, it was opined:

"37. It is a well-accepted premise in our legal system that ideas such as "substantive equality" and "distributive justice" are at the heart of our understanding of the guarantee of "equal protection before the law". The State can treat unequals differently with the objective of creating a level-playing field in the social, economic and political spheres. The question is whether "reasonable classification" has been made on the basis of intelligible differentia and whether the same criteria bears a direct nexus with a legitimate governmental objective. When examining the validity of affirmative action measures, the enquiry should be governed by the standard of proportionality rather than the standard of "strict scrutiny". Of course, these affirmative action measures should be periodically reviewed and various measures modified or adapted from time to time in keeping with the changing social and economic conditions. Reservation of seats in panchayats is one such affirmative action measure enabled by Part IX of the Constitution." (emphasis supplied)

(iv) In Dega Venkata Harsha Vardhan & Ors. v. Akula Ventaka Harshavardhan & Ors., (2019) 12 SCC 735, similar observations were made.

21. The object-oriented approach has to be adopted as observed in S.R. Chaudhuri v. State of Punjab & Ors., AIR 2001 SC 2707, T.M.A. Pai Foundation & Ors. v. State of Karnataka & Ors., (2002) 8 SCC 481, Sobha Hymavathi Devi v. Setti Gangadhara Swamy & Ors., AIR 2005 SC 800. In M. Nagaraj, the following observations were made:

"122. We reiterate that the ceiling limit of 50%, the concept of creamy layer and the compelling reasons, namely, backwardness, inadequacy of representation and overall administrative efficiency are all constitutional requirements without which the structure of equality of opportunity in Article 16 would collapse." In Re. Application

of Creamy Layer Concept to the Scheduled Castes:

22. (a) In Indra Sawhney, within those identified as backward classes, exclusion had been permitted to those who are socially and educationally advanced. B.P. Jeevan Reddy, J. (for himself and other three Judges) observed thus:

> "792. .....While we agree that clause (4) aims at group backwardness, we feel that exclusion of such socially advanced members will make the 'class' a truly backward class and would more appropriately serve the purpose and object of clause (4). (This discussion is confined to Other Backward Classes only and has no relevance in the case of Scheduled Tribes and Scheduled Castes).
>
> 795. We see no reason to qualify or restrict the meaning of the expression "backward class of citizens" by saying that it means those other backward classes who are situated similarly to Scheduled Castes and/or Scheduled Tribes. As pointed out in para 786, the relevant language employed in both the clauses is different. Article 16(4) does not expressly refer to Scheduled Castes or Scheduled Tribes; if so, there is no reason why we should treat their backwardness as the standard backwardness for all those claiming its protection. As a matter of fact, neither the several castes/groups/tribes within the Scheduled Castes and Scheduled Tribes are similarly situated nor are the Scheduled Castes and Scheduled Tribes similarly situated. If any group or class is situated similarly to the Scheduled Castes, they may have a case for inclusion in that class but there seems to be no basis either in fact or in principle for holding that other classes/groups must be situated similarly to them for qualifying as backward classes. There is no warrant to import any such a priori notions into the concept of Other Backward Classes. At the same time, we think it appropriate to clarify that backwardness, being a relative term, must in the context be judged by the general level of advancement of the entire population of the country or the State, as the case may be. More than this, it is difficult to say. How difficult is the process of ascertainment of backwardness would be known if one peruses Chapters III and XI of Volume I of the Mandal Commission Report along with Appendixes XII and XXI in Volume II. It must be left to the Commission/Authority appointed to identify the backward classes to evolve a proper and relevant criteria and test the several groups, castes, classes and sections of people against that criteria. If, in any case, a particular caste or class is wrongly designated or not designated as a backward class, it can always be questioned before a court of law as well. We may add that relevancy of the criteria evolved by Mandal Commission (Chapter XI) has not been questioned by any of the counsel before us. Actual identification is a different matter, which we shall deal with elsewhere.
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> 796.□797. We may now summarise our discussion under Question No. 3. (a) A caste can be and quite often is a social class in India. If it is backward socially, it would be a backward class for the purposes of Article 16(4). Among non□Hindus, there are several occupational groups, sects and denominations, which for historical reasons

> are socially backward. They too represent backward social collectivities for the purposes of Article 16(4). (b) Neither the constitution nor the law prescribe the procedure or method of identification of backward classes. Nor is it possible or advisable for the court to lay down any such procedure or method. It must be left to the authority appointed to identify. It can adopt such method/procedure as it thinks convenient and so long as its survey covers the entire populace, no objection can be taken to it. Identification of the backward classes can certainly be done with reference to castes among, and along with, other groups, classes and sections of people.

One can start the process with the castes, wherever they are found, apply the criteria (evolved for determining backwardness) and find out whether it satisfies the criteria. If it does — what emerges is a "backward class of citizens" within the meaning of and for the purposes of Article 16(4). Similar process can be adopted in the case of other occupational groups, communities and classes, so as to cover the entire populace. The central idea and overall objective should be to consider all available groups, sections and classes in society. Since caste represents an existing, identifiable social group/class encompassing an overwhelming majority of the country's population, one can well begin with it and then go to other groups, sections and classes. (c) It is not necessary for a class to be designated as a backward class that it is situated similarly to the Scheduled Castes/Scheduled Tribes. (d) 'Creamy layer' can be, and must be, excluded.

(e) It is not correct to say that the backward class contemplated by Article 16(4) is limited to the socially and educationally backward classes referred to in Article 15(4) and Article 340. It is much wider. The test or requirement of social and educational backwardness cannot be applied to Scheduled Castes and Scheduled Tribes, who indubitably fall within the expression "backward class of citizens". The accent in Article 16(4) appears to be on social backwardness. Of course, social, educational and economic backwardness are closely intertwined in the Indian context. The classes contemplated by Article 16(4) may be wider than those contemplated by Article 15(4)." (emphasis supplied)

23. In Jarnail Singh, it was held that the application of the creamy layer concept to Articles 341 and 342 does not in any way tinker with the Presidential List. Following discussion was made:

> "26. The whole object of reservation is to see that Backward Classes of citizens move forward so that they may march hand in hand with other citizens of India on an equal basis. This will not be possible if only the creamy layer within that class bag all the coveted jobs in the public sector and perpetuate themselves, leaving the rest of the class as backward as they always were. This being the case, it is clear that when a court applies the creamy layer principle to Scheduled Castes and Scheduled Tribes, it does not in any manner tinker with the Presidential List under Articles 341 or 342 of the Constitution of India. The caste or group or sub-group named in the said List continues exactly as before. It is only those persons within that group or sub-group, who have come out of untouchability or backwardness by virtue of belonging to the creamy layer, who are excluded from the benefit of reservation. Even these persons who are contained within the group or sub-group in the Presidential Lists continue

to be within those Lists. It is only when it comes to the application of the reservation principle under Articles 14 and 16 that the creamy layer within that sub-group is not given the benefit of such reservation.

27. We do not think it necessary to go into whether Parliament may or may not exclude the creamy layer from the Presidential Lists contained under Articles 341 and 342. Even on the assumption that Articles 341 and 342 empower Parliament to exclude the creamy layer from the groups or sub-groups contained within these Lists, it is clear that constitutional courts, applying Articles 14 and 16 of the Constitution to exclude the creamy layer cannot be said to be thwarted in this exercise by the fact that persons stated to be within a particular group or sub-group in the Presidential List may be kept out by Parliament on application of the creamy layer principle. One of the most important principles that has been frequently applied in constitutional law is the doctrine of harmonious interpretation. When Articles 14 and 16 are harmoniously interpreted along with other Articles 341 and 342, it is clear that Parliament will have complete freedom to include or exclude persons from the Presidential Lists based on relevant factors. Similarly, constitutional courts, when applying the principle of reservation, will be well within their jurisdiction to exclude the creamy layer from such groups or sub-groups when applying the principles of equality under Articles 14 and 16 of the Constitution of India. We do not agree with Balakrishnan, C.J.'s statement in Ashoka Kumar Thakur, (2008) 6 SCC 1 that the creamy layer principle is merely a principle of identification and not a principle of equality.

28. Therefore, when Nagaraj, (2006) 8 SCC 212, applied the creamy layer test to Scheduled Castes and Scheduled Tribes in exercise of application of the basic structure test to uphold the constitutional amendments leading to Articles 16(4-A) and 16(4-B), it did not in any manner interfere with Parliament's power under Article 341 or Article 342. We are, therefore, clearly of the opinion that this part of the judgment does not need to be revisited, and consequently, there is no need to refer Nagaraj, (2006) 8 SCC 212 to a seven-Judge Bench. We may also add at this juncture that Nagaraj, (2006) 8 SCC 212 is a unanimous judgment of five learned Judges of this Court which has held sway since the year 2006. This judgment has been repeatedly followed and applied by a number of judgments of this Court, namely:

28.1. Anil Chandra v. Radha Krishna Gaur, (2009) 9 SCC 454 (two-Judge Bench) (see paras 17 and 18). 28.2. Suraj Bhan Meena v. State of Rajasthan, (2011) 1 SCC 467 (two-Judge Bench) (see paras 10, 50, and 67). 28.3. U.P. Power Corpn. Ltd. v. Rajesh Kumar, (2012) 7 SCC 1, (two-Judge Bench) [see paras 61, 81(ix), and 86]. 28.4. S. Panneer Selvam v. State of T.N., (2015) 10 SCC 292, (two-Judge Bench) (see paras 18, 19, and 36). 28.5. Central Bank of India v. SC/ST Employees Welfare Assn., (2015) 12 SCC 308 (two-Judge Bench) (see paras 9 and 26).

28.6. Suresh Chand Gautam v. State of U.P., (2016) 11 SCC 113 (two-Judge Bench) (see paras 2 and 45). 28.7. B.K. Pavitra v. Union of India, (2017) 4 SCC 620 (two-

Judge Bench) (see paras 17 to 22)." (emphasis supplied)

24. Reliance has been placed upon Ashoka Kumar Thakur v. Union of India and Ors., (2008) 6 SCC 1, to hammer home the point that the decision in Indra Sawhney (supra) was limited to other backward classes and not to Scheduled Castes. It was observed:

"395. In Sawhney (I), 1992 Supp (3) SCC 217, the entire discussion was confined only to Other Backward Classes. Similarly, in the instant case, the entire discussion was confined only to Other Backward Classes. Therefore, I express no opinion with regard to the applicability of exclusion of creamy layer to the Scheduled Castes and Scheduled Tribes.

633. In Indra Sawhney (1), 1992 Supp (3) SCC 217, creamy layer exclusion was only in regard to OBC. Reddy, J. speaking for the majority at SCC p. 725, para 792, stated that "[t]his discussion is confined to Other Backward Classes only and has no relevance in the case of Scheduled Tribes and Scheduled Castes". Similarly, in the instant case, the entire discussion was confined only to Other Backward Classes. Therefore, I express no opinion with regard to the applicability of exclusion of creamy layer to the Scheduled Castes and Scheduled Tribes." (emphasis supplied) In Ashoka Kumar (supra), no opinion was expressed concerning the creamy layer concept to Scheduled Castes and Scheduled Tribes.

However, now Jarnail Singh (supra) is crystal clear in that regard and lays down that it can be applied to Scheduled Castes and Scheduled Tribes, and that would not amount to tinkering with lists under Articles 341 and 342. The question involved in the present matter is of classification and thereby preferential treatment without depriving any caste benefit of reservation.

25. It was argued that E.V. Chinnaiah is contrary to other binding decisions in K.C. Vasanth Kumar and N.M. Thomas.

(a) In K.C. Vasanth Kumar decision in M. R. Balaji was distinguished. It was held that classification between backward and more backward is necessary to help more backward classes. The sub□ classification was held to be permissible to help those classes who are definitely far behind the advanced classes, but ahead of the very backward classes. Following opinion was expressed:

"55. It was also observed in Balaji, AIR 1963 SC 649, that the sub□classification made by the reservation order between backward classes and more backward classes did not appear to be justified under Article 15(4) as it appeared to be a measure devised to benefit all the classes of citizens who were less advanced when compared with the most advanced classes in the State, and that was not the scope of Article 15(4). A result of the sub□classification was that nearly 90 per cent of the population of the State was treated as backward. The propriety of such a course may be open to question on the facts of each case, but we do not see why on principle there cannot be

a classification into backward classes and more backward classes, if both classes are not merely a little behind, but far far behind the most advanced classes. In fact such a classification would be necessary to help the more backward classes; otherwise those of the backward classes who might be a little more advanced than the more backward classes might walk away with all the seats, just as, if reservation was confined to the more backward classes and no reservation was made to the slightly more advanced backward classes, the most advanced classes would walk away with all the seats available for the general category leaving none for the backward classes. All that we can say is that sub□classification may be permissible if there are classes of people who are definitely far behind the advanced classes but ahead of the very backward classes." (emphasis supplied)

(b) In N.M. Thomas, it was observed that there could be no objection to further classification within a class. It was held that men are born different, and some sort of differential treatment is required to achieve proportional equality. The Court opined thus:

"82. The word "caste" in Article 16(2) does not include "scheduled caste". The definition of "Scheduled Castes" in Article 366(24) means such castes, races or tribes or parts of or groups within such castes, races, or tribes as are deemed under Article 341 to be Scheduled Castes for the purposes of this Constitution.

This shows that it is by virtue of the notification of the President that the Scheduled Castes come into being. Though the members of the Scheduled Castes are drawn from castes, races or tribes, they attain a new status by virtue of the Presidential notification. Moreover, though the members of tribe might be included in Scheduled Castes, tribe as such is not mentioned in Article 16(2).

83. A classification is reasonable if it includes all persons who are similarly situated with respect to the purpose of the law. In other words, the classification must be founded on some reasonable ground which distinguishes persons who are grouped together and the ground of distinction must have rational relation to the object sought to be achieved by the rule or even the rules in question. It is a mistake to assume a priori that there can be no classification within a class, say, the lower division clerks. If there are intelligible differentia which separates a group within that class from the rest and that differentia have nexus with the object of classification, I see no objection to a further classification within the class. It is no doubt a paradox that though in one sense classification brings about inequality, it is promotive of equality if its object is to bring those who share a common characteristic under a class for differential treatment for sufficient and justifiable reasons. In this view, I have no doubt that the principle laid down in All India Station Masters and Assistant Station Masters Association v. General Manager, Central Railway, (1960) 2 SCR 311; S.G. Jaisinghani v. Union of India and State of J&K. v. Triloki Nath Khosa, (1974) 1 SCR 771, has no application here.

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167. A combined reading of Article 46 and clauses (24) and (25) of Article 366 clearly shows that the members of the scheduled castes and the scheduled tribes must be presumed to be backward classes of citizens, particularly when the Constitution gives the example of the scheduled castes and the scheduled tribes as being the weaker sections of the society.

169. Thus in view of these provisions the members of the scheduled castes and the scheduled tribes have been given a special status in the Constitution and they constitute a class by themselves. That being the position it follows that they do not fall within the purview of Article 16(2) of the Constitution which prohibits discrimination between the members of the same caste.

If, therefore, the members of the scheduled castes and the scheduled tribes are not castes, then it is open to the State to make reasonable classification in order to advance or lift these classes so that they may be able to be properly represented in the services under the State. This can undoubtedly be done under Article 16(1) of the Constitution." (emphasis supplied)

26. It was argued that the class of citizens cannot be treated to be socially and educationally backward till perpetuity those who have come up must be excluded like the creamy layer. The question arises for exclusion by courts of such class. The power of the court was upheld in Jarnail Singh. To take home the submission, reliance has been placed on Jagdish Negi, President, Uttarakhand Jan Morcha, in which it was held as under:

> "9. It is, therefore, obvious that residents of hills and Uttarakhand areas were treated as socially and educationally backward classes of citizens entitled to benefit under Articles 15(1), 15(4) and 29(2) of the Constitution in the year 1974 when this Court decided that case. But simply on this basis it cannot be urged that this class of citizens could be condemned as socially and educationally backward class of citizens till eternity, however much they may like to be stigmatized as educationally and socially backward class of citizens. This class is always required to be judged in the light of the existing fact situation at a given point of time. There cannot be a class of citizens which can be treated perpetually to be a socially and educationally backward class of citizens. Every citizen has the right to develop socially and educationally. .....
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> 14. It is, however, not possible to agree with the contention of learned Senior Counsel for the petitioners that such reservation should continue without any limitation or there cannot be periodical review about the said reservation policy. ..... Consequently the question whether a given category of citizens continues to be socially and educationally backward class of citizens at a given point of time or not has to be left to the State concerned for its objective decision from time to time. The State cannot be bound in perpetuity to treat such classes of citizens for all times as socially and educationally backward classes of citizens. The principle of "once a mortgage always a mortgage" cannot be pressed into service for submitting that once a backward class of citizens, always such a backward class. In other words, it is open to the State to review the situation from time to time and to decide whether a given class of citizens that has earned the benefit of 27 per cent reservation as socially and educationally

backward class of citizens has continued to form a part of that category or has ceased to fall in that category. Thereby it cannot be said that the first respondent is adopting a policy which is contrary to the constitutional scheme of reservation. Within the four corners of Article 15(4) or Article 16(4) such an exercise cannot be said to be unauthorised. Such an exercise has been upheld by the Constitution Bench of this Court in Indra Sawhney v. Union of India, 1992 Supp (3) SCC

217." (emphasis supplied) In Re. Effect of insertion of Article 342A:

27. Article 341 is extracted hereunder:

"341. Scheduled Castes.—(1) The President may with respect to any State or Union Territory, and where it is a State, after consultation with the Governor thereof, by public notification, specify the castes, races or tribes or parts of or groups within castes, races or tribes which shall for the purposes of this Constitution be deemed to be Scheduled Castes in relation to that State or Union territory, as the case may be.

(2) Parliament may by law include in or exclude from the list of Scheduled Castes specified in a notification issued under clause (1) any caste, race or tribe or part of or group within any caste, race or tribe, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification." Articles 342 and 342A deal with Scheduled Tribes and socially and educationally backward classes respectively. They are extracted hereunder:

"342. Scheduled Tribes.—(1) The President may with respect to any State or Union territory, and where it is a State, after consultation with the Governor thereof, by public notification, specify the tribes or tribal communities or parts of or groups within tribes or tribal communities which shall for the purposes of this Constitution be deemed to be Scheduled Tribes in relation to that State or Union territory, as the case may be.

(2) Parliament may by law include in or exclude from the list of Scheduled Tribes specified in a notification issued under clause (1) any tribe or tribal community or part of or group within any tribe or tribal community, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.

342A. Socially and educationally backward classes.— (1) The President may with respect to any State or Union territory, and where it is a State, after consultation with the Governor thereof, by public notification, specify the socially and educationally backward classes which shall for the purposes of this Constitution be deemed to be socially and educationally backward classes in relation to that State or Union territory, as the case may be. (2) Parliament may by law include in or exclude from the Central List of socially and educationally backward classes specified in a

notification issued under clause (1) any socially and educationally backward class, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification." It is provided in Article 341(1) that the President may specify the castes, races or tribes or parts of or groups within castes, races or tribes in relation to a State or Union territory. As per Article 341(2), the Parliament has the power to include or exclude from the list of Scheduled Castes. Article 366 defines 'Scheduled Castes', 'Scheduled Tribes' and 'Socially and Educationally Backward Classes', thus:

"366. Definitions.—In this Constitution, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say— (24) "Scheduled Castes" means such castes, races or tribes or parts of or groups within such castes, races or tribes as are deemed under article 341 to be Scheduled Castes for the purposes of this Constitution;" (25) "Scheduled Tribes" means such tribes or tribal communities or parts of or groups within such tribes or tribal communities as are deemed under Article 342 to be Scheduled Tribes for the purposes of this Constitution;

(26C) "socially and educationally backward classes" means such backward classes as are so deemed under article 342A for the purposes of this Constitution;" Article 342A has been inserted by the Constitution (One Hundred and Second Amendment) Act, 2018, w.e.f. 14.8.2018. In Indra Sawhney, the question of reservation of socially and educationally backward classes was involved. Article 342A's provisions are pari materia to Articles 341 and 342 dealing with Scheduled Castes and Scheduled Tribes. Under Article 342A the President is empowered to issue public notification with respect to socially, and educationally backward classes which shall for the Constitution be deemed to be socially and educationally backward classes in relation to that State or Union territory and the Parliament may by law has the power to include in or exclude from the Central list of socially and educationally backward class. The power of variation can be exercised only once. When we consider the definition of 'socially and educationally backward classes' as defined in Article 366(26C), it means such backward classes as are so deemed under Article 342A for the purposes of the Constitution. In order to be recognised, it is necessary that socially and educationally class to find a place in the notification issued under Article 342A(1). The provisions of Articles 341, 342, and 342A are pari materia, and the reservation for socially and educationally backward classes was the subject matter under consideration in Indra Sawhney. Thus, the question arises how different opinions can be expressed with respect to Scheduled Castes, Scheduled Tribes, and socially and educationally backward classes for the purposes of the classification. The provisions of Article 16(4) and Article 342A indicate that it would not be permissible to adopt different criteria for Scheduled Castes, Scheduled Tribes, and socially and educationally backward classes. The authoritative pronouncement is required with respect to the effect of aforesaid provisions of the Constitution and whether sub□classification is permissible only with respect to the socially and educationally backward classes covered under Article 342A read with Article 366(26C) and not with respect to Scheduled Castes and Scheduled Tribes covered under similar provisions, i.e., under Articles 341 and 342 read with Article 366(24) and 366(25) respectively. The question of immense public importance arises in view of the insertion of Article 342A. When we consider Indra Sawhney,

permitting such classification of socially and educationally backward class, and provisions of Articles 341, 342, and 342A are pari materia, the Court is required to have a fresh look on the decision rendered in E.V. Chinnaiah. In the spirit of constitutional provisions, the question is required to be re-examined authoritatively by this Court being of immense public importance. Thus, the case is required to be heard by a larger Bench than the one which decided E.V. Chinnaiah. Whether sub-classification amounts to exclusion under Article 341(2)?

28. Whether sub-classification amounts to exclusion? What is provided under Articles 341(2), 342(2), and 342A(2) with respect to Scheduled Castes, Scheduled Tribes, and socially and educationally backward classes in the Central list, the Parliament has the power concerning inclusion or exclusion. Once there is exclusion, there is no power to re-include. The Parliament has the power to include in or exclude from the Central list of Scheduled Castes, Scheduled Tribes, and socially and educationally backward classes.

29. The question arising for consideration is whether sub-classification made or preferential treatment within the class of Scheduled Castes, Scheduled Tribes and socially and educationally backward classes can be said to be an exercise of inclusion or exclusion particularly when the other castes in the list of Scheduled Caste persons are not deprived of the benefit of reservation in totality. All the castes included in the list of Scheduled Caste are given the benefit of reservation as per representation in service, but only specific percentage fixed for preferential treatment to a caste/class which was not able to enjoy the benefit of reservation on account of their being more backward within the backward classes of Scheduled Castes. The preferential treatment would not tantamount to excluding other classes as total deprivation caused to any of the castes in the list of Scheduled Caste under Article 341(2). Caste is nothing but a class. It is the case of classification to provide benefit to all and to those deprived of the benefit of reservation, being the poorest of the poor. Whether the action based on intelligible differentia to trickle down the benefit can be said to be violative of Articles 14 and 16 of the Constitution and whether sub-classification can be said to be an act of inclusion or exclusion particularly when various reports indicating that there is inequality inter se various castes included within the list of Scheduled Castes. They do not constitute homogenous class have been relied upon. Based on the report and to give adequate representation to those who continue to remain the most backward of the downtrodden class, the provisions containing a certain percentage of preferential treatment subject to availability without depriving others in the list were made.

30. In the Speech made by Dr. Ambedkar in the Constituent Assembly regarding the enactment of Articles 341 and 342, he stated that the object is to eliminate any kind of political factor in the matter of the disturbance in the schedule so published by the President. The same has been referred to in Milind thus:

> "14. In the debates of Constituent Assembly (Official Report, Vol. 9) while moving to add new Articles 300-A and 300-B after Article 300 (corresponding to Articles 341 and 342 of the Constitution), Dr B.R. Ambedkar explained as follows:

> "The object of these two articles, as I stated, was to eliminate the necessity of burdening the Constitution with long lists of Scheduled Castes and Scheduled Tribes. It is now proposed that the President in consultation with the Governor or ruler of a State should have the power to issue a general notification in the Gazette specifying all the castes and tribes or groups thereof deemed to be Scheduled Castes and Scheduled Tribes for the purpose of these privileges which have been defined for them in the Constitution. The only limitation that has been imposed is this: that once a notification has been issued by the President, which, undoubtedly, he will be issuing in consultation with and on the advice of the Government of each State, thereafter, if any elimination was to be made from the list so notified or any addition was to be made that must be made by Parliament and not by the President. The object is to eliminate any kind of political factors having a play in the matter of the disturbance in the schedule so published by the President." (emphasis supplied)

31. The law is settled that once the President has issued a notification specifying the list included in the Scheduled under Article 341(1), the Parliament is competent to make the variation in the notification as provided under Article 341(2) from the following decisions:

> (i) B. Basavalingappa v. D. Munichinnappa, (1965) 1 SCR 316, it was held that the power was given to the Parliament to modify the notification and any subsequent notification shall not vary same;

hence, the making of notification by the President is final for all times except for modification by law as provided by clause (2).

(ii) In Bhaiya Lal v. Harikishan Singh (1965) 2 SCR 877, it was observed that before issuing a public notification under Article 341(1), an elaborate enquiry is required to be made. As a result, thereof social justice is sought to be done to the castes, races, or tribes. There can be specifications by reference to different areas in the State. Educational and social backwardness may not be uniform or of the same intensity in the whole of the State.

(iii) In Srish Kumar Choudhury v. State of Tripura & Ors., (1990) Supp. SCC 220, it was opined that the State Government may initiate appropriate proposals for modification in case the claim is genuine and tenable.

(iv) In Palghat Jilla Thandan Samudhaya Samrakshna Samithi & Anr. v. State of Kerala & Anr., (1994) 1 SCC 359, it was held that no enquiry could be held or evidence let in to determine whether or not some particular caste falls within it or outside it.

(v) In Milind, law to a similar effect was laid down whether a particular Scheduled Caste or Scheduled Tribe in the list is to be determined looking to them as they are. The Article does not permit anyone to seek modification by leading evidence that other caste or tribe is part of the castes or tribes mentioned in the list. No purpose would be served to look at gazetteers or glossaries for establishing the same. It is not open to the court to modify or vary the order.

(vi) In Bir Singh, it was held that any expansion/deletion of the list of Scheduled Castes/Scheduled Tribes by any authority except Parliament would be against the constitutional mandate under Articles 341 and 342. If in the opinion of a State it is necessary to extend the benefit of reservation to a class/category of Scheduled Castes/Scheduled Tribes beyond those specified in the lists, the State to make its views in the matter prevail with the central authority to enable an appropriate parliamentary exercise to be made by an amendment of the lists of Scheduled Castes/Scheduled Tribes.

(vii) In Heikham Surchandra Singh & Ors. v. Representatives of "Lois" Kakching, Manipur (A scheduled caste uplift body) & Ors., (1997) 2 SCC 523, it was observed that for the purpose of the Constitution, "Scheduled Tribes" defined under Article 366(25) as substituted under the Act, and the Second Schedule are conclusive.

(viii) In Shree Surat Valsad Jilla K.M.G. Parishad v. Union of India & Ors., (2007) 5 SCC 360, law to a similar effect was laid down.

(ix) Article 341(1) protects the Scheduled Caste's members, having regard to their economic and educational backwardness. In that context, the President is empowered to limit the notification to parts or groups within the castes. The notification issued in terms of the said provision is exhaustive. The legal fiction is required to be given its full effect as laid down in Punit Rai v. Dinesh Chaudhary, (2003) 8 SCC

204. In Punit Rai, it was observed that the President has been authorised to limit the notification to parts or groups within the castes. The notification issued is exhaustive. The object of Article 341(1) is to provide preferential right by way of protection to the members of the Scheduled Castes having regard to the economic and educational backwardness from which they suffer.

(x) In Subhash Chandra v. Delhi Subordinate Services Selection Board, (2009) 15 SCC 458, the question arose concerning migrants not listed in the Presidential notification. Whether they could claim the benefit of reservation? It was held that the subject of reservation, vis□a□vis inclusion of castes/tribes. The presence of Articles 338, 338□A, 341, 342 in the Constitution precludes that. The Central Government and the State Government may lay down a policy decision regarding reservation having regard to Articles 15 and 16, but such a policy cannot violate other constitutional provisions.

32. For revisiting the decision of E.V. Chinnaiah and doctrine of stare decisis, several decisions have been cited at the Bar. They are as follows:

> (a) In Sambhu Nath Sarkar v. State of West Bengal & Ors., (1973) 1 SCC 856, it was held that the Court would review its earlier decisions if it is satisfied with its error or of the baneful effect such a decision would have on the general interest of the public or if it is inconsistent with the legal philosophy of Constitution, as such perpetuation would be harmful to public interests.

(b) In State of Washington v. Dawson & Co., 264 U.S. 219, observed that a judgment seriously affects the lives of men, women, and children, and the general welfare, the stare decisis is not a universal, inexorable command.

(c) In David Burnet v. Colorado Oil & Gas Company, 285 U.S. 393, it was observed that in cases involving the Federal Constitution, where correction through legislative action is practically impossible, this court has often overruled its earlier decisions. The court bows to the lessons of experience and the force of better reasoning, recognising that the process of trial and error, fruitful in the physical sciences, is also appropriate in the judicial function.

(d) In Graves v. People of the State of New York, 306 U.S. 466, it was observed that the ultimate touchstone of constitutionality is the Constitution itself and not what we have said about it.

(e) In Martin v. Hunter's Lessee, 14 U.S. (1 Wheat.) 304; 4 L. Ed. 97, 102, it was held that it could not be foreseen what new changes and modifications of power might be indispensable to effectuate the general objects of the charter; and restrictions and specifications, which, at the present, might seem salutary, might, in the end, prove the overthrow of the system itself.

(f) In Bengal Immunity Company Limited v. State of Bihar & Ors., (1955) 2 SCR 603, this Court observed that if the Court is convinced of the baneful effect on the general interests of the public, the decision has to be revisited, if its effect is far□reaching as it affects the rights of all consuming public.

(g) In M. Nagaraj, it was laid down that a right becomes a fundamental right because it has foundational value. A Constitution is to be given a generous and purposive construction. It would enable the citizens to enjoy the rights guaranteed by it in the fullest measure.

(h) In I.R. Coelho, it was held that the Court can also examine additional grounds in the constitutional matters of public interest.

33. With respect to the value of binding precedent, Shri Sanjay Hegde, learned senior counsel, has relied upon the following decisions:

(a) Keshav Mills Co. Ltd. v. Commissioner of Income Tax, (1965) 2 SCR 908, to lay down that unless there are compelling and substantial reasons, the court would be reluctant to entertain pleas for the reconsideration and revision of its earlier decision.

(b) In Union of India & Anr. v. Raghubir Singh (dead) by LRs. etc., (1989) 2 SCC 754, while laying down that the doctrine of binding precedent has the merit of promoting certainty and consistency in judicial decisions.

34. It was rightly pointed out by Shri R. Venkataramani that no provision and indeed no word or expression of the Constitution exists in isolation; they are necessarily related to transforming and, in turn being transformed by other provisions, words and phrases in the Constitution as held in GVK. Industries Limited & Anr. v. Income Tax Officer & Anr., (2011) 4 SCC 36. The observations made are extracted hereunder:

> "37. In interpreting any law, including the Constitution, the text of the provision under consideration would be the primary source for discerning the meanings that inhere in the enactment. However, in light of the serious issues it would always be prudent, as a matter of constitutional necessity, to widen the search for the true meaning, purport and ambit of the provision under consideration. No provision, and indeed no word or expression, of the Constitution exists in isolation—they are necessarily related to, transforming and in turn being transformed by, other provisions, words and phrases in the Constitution."

35. A Constitutional Court declares law as contained in the Constitution, but in doing so, it rightly reflects that a Constitution is a living and organic thing, which of all instruments has the greatest claim to be construed broadly and liberally as observed in Goodyear India Ltd. & Ors. v. State of Haryana & Anr., (1990) 2 SCC 71.

36. This Court discussed the concept of socially and educationally backward classes in Indra Sawhney; however, the Court observed in paragraph 781 extracted above that Scheduled Castes and Scheduled Tribes are admittedly included within the backward classes, as such there was no need to discuss that. Thus, the discussion was confined to whether socially and educationally backward classes can be included in Article 16(4), it was opined that ken of Article 16(4) is wider than Article 15(4). It was also observed that backward classes contemplated under Article 16(4) do comprise some castes. The Scheduled Castes include quite a few castes. Based on the aforesaid foundational basis, interpretation was made. In our opinion, the decision is relevant for interpreting Article 16(4) provisions in their application to Scheduled Castes, Scheduled Tribes, and other backward classes. They stand on the similar footing, and they cannot be treated as different from other as also fortified by insertion of Article 342A which is pari materia to Article 341 or 342 and considering the definition in Article 366(24) and (26C) and classification of backward classes can be done. The Scheduled Castes and Scheduled Tribes admittedly are backward, and the same yardstick would apply to all. In Indra Sawhney, it was held that it is permissible to make sub□classification within socially and educationally backward classes. That discussion would be applicable for Scheduled Castes and Scheduled Tribes as they admittedly fall under Article 16(4).

37. In Indra Sawhney, B.P. Jeevan Reddy, J. observed that several castes or tribes within the Scheduled Castes and Scheduled Tribes are not similarly situated. In N.M. Thomas, it was held that Scheduled Castes are group of castes, races, tribes, communities, or parts thereof found suitable by the commission and notified by the President. Caste is nothing but a social class or socially homogenous class. It is based on occupational grouping. Its membership is by birth, and they inherit the same occupation.

38. The question arises whether sub-classification for providing benefit to all castes can be said to be tinkering with the list under Articles 341, 342 and 342A, in view of the decisions in Indra Sawhney, permitting sub-classifications of backward classes and in Jarnail Singh, in which, it was opined that 'creamy layer concept' for exclusion of benefit can be applied to the Scheduled Castes and Scheduled Tribes and it does not in any manner tinker with the Presidential list under Article 341 or 342 of the Constitution. The caste or group or sub-group continued exactly as before in the list. It is only those persons within that group or sub-group, who have come out of untouchability or backwardness by virtue of belonging to the creamy layer, who are excluded from the benefit of reservation. The million dollar question is how to trickle down the benefit to the bottom rung; reports indicate that benefit is being usurped by those castes (class) who have come up and adequately represented. It is clear that caste, occupation, and poverty are interwoven. The State cannot be deprived of the power to take care of the qualitative and quantitative difference between different classes to take ameliorative measures.

39. Reservation was not contemplated for all the time by the framers of the Constitution. On the one hand, there is no exclusion of those who have come up, on the other hand, if sub-classification is denied, it would defeat right to equality by treating unequal as equal. In Chebrolu Leela Prasad Rao & Ors. v. State of A.P. & Ors., 2020 SCC OnLine SC 383, the necessity of revising lists was pointed out relying on Indra Sawney and Union of India & Ors. v. Rakesh Kumar & Ors., (2010) 4 SCC 50.

40. There is cry, and caste struggle within the reserved class as benefit of reservation in services and education is being enjoyed, who are doing better hereditary occupation. The scavenger class given the name of Balmikis remains more or less where it was, and so on, disparity within Scheduled Caste is writ large from various reports. The sub-classification was made under Section 4(5) of the Punjab Act to ensure that the benefit of the reservation percolate down to the deprived section and do not remain on paper and to provide benefit to all and give them equal treatment, whether it is violative of Article 14? In our opinion, it would be permissible on rationale basis to make such sub-classification to provide benefit to all to bring equality, and it would not amount to exclusion from the list as no class (caste) is deprived of reservation in totality. In case benefit which is meant for the emancipation of all the castes, included in the list of Scheduled Castes, is permitted to be usurped by few castes those who are adequately represented, have advanced and belonged to the creamy layer, then it would tantamount to creating inequality whereas in case of hunger every person is required to be fed and provided bread. The entire basket of fruits cannot be given to mighty at the cost of others under the guise of forming a homogenous class.

41. The Constitution is an effective tool of social transformation; removal of inequalities intends to wipe off tears from every eye. The social realities cannot be ignored and overlooked while the Constitution aims at the comprehensive removal of the disparities. The very purpose of providing reservation is to take care of disparities. The Constitution takes care of inequalities. There are unequals within the list of Scheduled Castes, Scheduled Tribes, and socially and educationally backward classes. Various reports indicate that Scheduled Castes and Scheduled Tribes do not constitute a homogenous group. The aspiration of equal treatment of the lowest strata, to whom the fruits of the reservation have not effectively reached, remains a dream. At the same time, various castes by and large remain where they were, and they remain unequals, are they destined to carry

their backwardness till eternity?

42. The State's obligation is to undertake the emancipation of the deprived section of the community and eradicate inequalities. When the reservation creates inequalities within the reserved castes itself, it is required to be taken care of by the State making sub-classification and adopting a distributive justice method so that State largesse does not concentrate in few hands and equal justice to all is provided. It involves redistribution and reallocation of resources and opportunities and equitable access to all public and social goods to fulfil the very purpose of the constitutional mandate of equal justice to all.

43. Providing a percentage of the reservation within permissible limit is within the powers of the State legislatures. It cannot be deprived of its concomitant power to make reasonable classification within the particular classes of Scheduled Castes, Scheduled Tribes, and socially and educationally backward classes without depriving others in the list. To achieve the real purpose of reservation, within constitutional dynamics, needy can always be given benefit; otherwise, it would mean that inequality being perpetuated within the class if preferential classification is not made ensuring benefit to all.

44. The sub-classification is to achieve the very purpose, as envisaged in the original classification itself and based thereupon evolved the very concept of reservation. Whether the sub-classification would be a further extension of the principle of said dynamics is the question to be considered authoritatively by the Court.

45. The Scheduled Castes as per Presidential List are not frozen for all the time, and neither they are a homogenous group as evident from the vast anthropological and statistical data collected by various Commissions. The State law of preferential treatment to a limited extent, does not amend the list. It adopts the list as it is. The State law intends to provide reservation for all Scheduled Castes in a pragmatic manner based on statistical data. It distributes the benefits of reservations based on the needs of each Scheduled Caste.

46. The State has the competence to grant reservation benefit to the Scheduled Castes and Scheduled Tribes in terms of Articles 15(4) and 16(4) and also Articles 341(1) and 342(1). It prescribes the extent/ percentage of reservation to different classes. The State Government can decide the manner and quantum of reservation. As such, the State can also make sub-classification when providing reservation to all Scheduled Castes in the list based on the rationale that would conform with the very spirit of Articles 14, 15, and 16 of the Constitution providing reservation. The State Government cannot temper with the list; it can neither include nor exclude any caste in the list or make enquiry whether any synonym exists as held in Milind.

47. The State Government is conferred with the power to provide reservation and to distribute it equitably. The State Government is the best judge as to the disparities in different areas. In our opinion, it is for the State Government to judge the equitable manner in which reservation has to be distributed. It can work out its methodology and give the preferential treatment to a particular class more backward out of Scheduled Castes without depriving others of benefit.

48. Apart from that, the other class out of Scheduled Castes/Scheduled Tribes/socially and educationally backward classes, who is not denied the benefit of reservation, cannot claim that whole or a particular percentage of reservation should have been made available to them. The State can provide such preference on rational criteria to the class within lists requiring upliftment. There is no vested right to claim that reservation should be at a particular percentage. It has to accord with ground reality as no one can claim the right to enjoy the whole reservation, it can be proportionate one as per requirement. The State cannot be deprived of measures for upliftment of various classes, at the same time, which is the very purpose of providing such measure. The spirit of the reservation is the upliftment of all the classes essential for the nation's progress.

49. In the federal structure, the State, as well as the Parliament, have a constitutional directive for the upliftment of Scheduled Castes, Scheduled Tribes, and socially and backward classes. Only inclusion or exclusion in the Presidential notification is by the Parliament. The State Government has the right to provide reservation in the fields of employment and education. There is no constitutional bar to take further affirmative action as taken by the State Government in the cases to achieve the goal. By allotting a specific percentage out of reserved seats and to provide preferential treatment to a particular class, cannot be said to be violative of the list under Articles 341, 342, and 342A as no enlisted caste is denied the benefit of reservation.

50. The "inadequate representation" is the fulcrum of the provisions of Article 16(4). In our opinion, it would be open to the State to provide on a rational basis the preferential treatment by fixing reasonable quota out of reserved seats to ensure adequate representation in services. Reservation is a very effective tool for emancipation of the oppressed class. The benefit by and large is not percolating down to the neediest and poorest of the poor.

51. The interpretation of Articles 14, 15, 16, 338, 341, 342, and 342A is a matter of immense public importance, and correct interpretation of binding precedents in Indra Sawhney and other decisions. Though we have full respect for the principle of stare decisis, at the same time, the Court cannot be a silent spectator and shut eyes to stark realities. The constitutional goal of social transformation cannot be achieved without taking into account changing social realities.

52. We endorse the opinion of a Bench of 3 Judges that E.V. Chinnaiah is required to be revisited by a larger Bench; more so, in view of further development and the amendment of the Constitution, which have taken place.

We cannot revisit E.V. Chinnaiah being Bench of coordinate strength. We request the Hon’ble Chief Justice to place the matters before a Bench comprising of 7 Judges or more as considered appropriate.

.....J. (Arun Mishra) .....J. (Indira Banerjee) .....J. (Vineet Saran) .....J. (M.R. Shah) New Delhi .....J. August 27, 2020 (Aniruddha Bose)