Mrs. Valsamma Paul vs Cochin University And Others on 4 January, 1996

Equivalent citations: AIR1996SC1011, 1996(1)CTC301, (1996)3GLR92, JT1996(1)SC57, 1996(1)KLT169(SC), 1996LABLC919, 1996(1)SCALE85, (1996)3SCC545, [1996]1SCR128, 1996(1)UJ626(SC), AIR 1996 SUPREME COURT 1011, 1996 (3) SCC 545, 1996 AIR SCW 492, 1996 LAB. I. C. 919, (1996) 1 JT 57 (SC), (1996) 1 CTC 301 (SC), (1996) 2 APLJ 13, (1996) 1 SCR 128 (SC), (1996) 2 CIVLJ 504, (1996) 1 SERVLR 655, (1996) 3 GUJ LR 92, (1997) 1 MAH LJ 618, (1996) 33 ATC 713, (1996) 2 SCT 248, (1996) 1 KER LT 169, 1996 SCC (L&S) 772

Bench: K. Ramaswamy, B.L. Hansaria

ORDER

1. C.A. Nos. 3163-64/95. These appeals by special leave arise from the judgment dated January 18, 1995 of the Full Bench of the Kerala High Court in writ appeal Nos. 416 and 187 of 1992. The Division Bench, doubting the correctness of the judgment in Public Service Commission v. Dr. Kanjamma Alex (1981) KLT 24 (subject matter of CA No. 1197/81) had referred the question to the Full Bench. Facts lie in a short compass and are stated as under :

2. Two posts of Lecturers in Law Department of Cochin University were notified for recruitment, one of which was reserved for Latin Catholics (Backward Class-Fishermen). The appellant, a Syrian Catholic (a forward class), having married a Latin Catholic, had applied for selection as a reserved candidate. The University selected her on that basis and accordingly appointed her against the reserved post. Her appointment was questioned by one Rani George by filing a Writ Petition, viz., O.P. No. 9450/91 praying for a direction to the University to appoint her in place of the appellant to the said post. The learned single Judge allowed the writ petition of Rani George and held that the appointment should be made strictly in accordance with Rules 14 to 17 of the Kerala State Subordinate Service Rules. When appeals were filed, the appellant cited the judgment a single Judge in Dr. Kaniamma Alex v. Public Service Commission (1980) KLT 18 which later stood upheld in Public Service Commission v. Dr. Kanjama Alex (1980) KLT 24. As stated earlier, doubting the correctness of the decision of the Division Bench in Dr. Kanjamma Alex's case, the reference to the Full Bench had come to be made.

3. The Full Bench in the impugned judgment held that though the appellant was married according to the Canon Law, the appellant, being a Syrian Catholic by birth, by marriage with a Latin Catholic (Backward Class), is not a member of that class nor can she claim the status as a backward class by marriage. The special provisions under Articles 15(4) and 16(4) of the Constitution intended for the advancement of socially and educationally backward classes of citizens cannot be defeated by including candidates by alliance or by any other mode of joining the community. It would

tantamount to making a mockery of the constitutional exercise of identification of socially and educationally backward classes of citizens. Accordingly, the Full Bench overruled the decision of the Division Bench and of the single Judge referred to hereinbefore. The appeal challenging the Division Bench Judgement in respect of Dr. Kanjamma Alex, (Civil Appeal No. 1197/81) is placed before us alongwith these appeals.

4. The question is one of constitutional importance to harmonize the personal law of the citizens and the constitutional goal, viz., to accord equal opportunity to the disadvantaged social segments, envisaged in Articles 15(4) and 16(4) of the Constitution. Shri T.L.V. Iyer, learned senior counsel for the appellant, contended that though the appellant is a Syrian Catholic (a forward class) by birth and had voluntarily married J. Yesudas, a Latin Catholic (Fishermen community), admittedly a backward class, she had entered into the marital home of her husband in the year 1982 and was received and recognised by the community as a member of the Latin Catholic. Due to her marriage, she has subjected herself and suffered all the environmental disabilities to which her husband, J. Yesudas, was subjected and to which all other members of backward class in the region are subjected to. She cannot therefore, be discriminated by denying equality given by Article 16(4) of the Constitution. He elaborated the contention arguing that birth by itself is not a determinative factor for claiming protective discrimination given to the backward classes. Environmental and social disabilities are also relevant factor to which the appellant had volunteered by subjecting herself to them and that, therefore, she is entitled to the same treatment as is available to the Latin Catholics (Fishermen) to which she was transplanted by marriage according to Canon Law. Therefore, the view of the Full Bench is not correct in law. He placed strong reliance on the Judgment of this Court in Principal, Guntur Medical College, Guntur v. Y. Mohan Rao and N.E. Hero v. Jahan Ara Jai Pal Singh .

5. Shri Nambiar, learned senior counsel on behalf of the respondents, contended that Articles 15(4) and 16(4) are intended to remove handicaps and disadvantages suffered by backward class citizens due to social and educational backwardness like the members of Scheduled Castes and Scheduled Tribes. Therefore, persons who by birth belong to Scheduled Castes, Scheduled Tribes or Backward Classes alone are entitled to the benefit of Articles 15(4) and 16(4). By marriage, adoption or any other device, viz., by procuring false social status certificates, they are not eligible to avail of protective discrimination for appointment to any office or to a post under the State or admission in educational institution. What is relevant is inadequacy of representation of that class into an office or service under the State. The members belonging to that particular group which is not adequately represented alone are entitled to avail of the protective discrimination. The appellant, having had the advantage of starting life as Syrian Catholic being born in forward class, though she voluntarily married to a backward class citizen, cannot claim the status as a backward class to avail of protective discrimination unless she further pleads and establishes that candidates like her suffered all the handicaps and disadvantages having been born as backward class citizens or Scheduled Castes or scheduled Tribes. Mere recognition of and acceptance by the community, after her marriage is not relevant for the purpose of availing of the benefit of Articles 15(4) and 16(4). Acceptance may be only for recognition as a legally wedded wife of a backward class citizen and nothing more. He distinguished the ratio of Mohan Rao's case (supra) contending that the parents of Mohan Rao initially belonged to the Scheduled Castes but later they converted into Christianity. On

reconversion Mohan Rao was accepted to be a member of the Scheduled Castes and, therefore, his admission as a reserved candidates was upheld by this Court. The ratio therein cannot be extended to all the situations and has to be confined to special facts established in that case. As to Hero case, the submission was that it is not relevant for our purpose.

6. The rival contentions give rise to the question of harmonising the conflict between the personal law and the constitutional animation behind Articles 15(4) and 16(4) of the Constitution. The concepts of "equality before law" and "equal protection of the laws" guaranteed by Article 14 and its species Articles 15(4) and 16(4) aim at establishing social and economic justice in political democracy to all sections of the society, to eliminate inequalities in status and to provide facilities and opportunities not only amongst individuals but also amongst groups of people belonging to Scheduled Castes (for short "Dalits')', Scheduled Tribes (for short Tribes') and Other backward Classes of citizens (for short OBCs) to secure adequate means of livelihood and to promote with special care the economic and educational tt interests of the weaker sections of the people, in particular, Dalits and Tribes so as to protect them from social injustice and all forms of exploitation. By 42nd Constitution (Amendment) Act, secularism and socialism were brought in the Preamble of the Constitution to realise that in a democracy unless all sections of the society are provided facilities and opportunities to participate in political democracy irrespective of caste, religion, and sex, political democracy would not last long. Dr. Ambedkar in his closing speech on the draft Constitution stated on November 25, 1949 that "what we must do is not to be attained with mere political democracy; we must make, our political democracy a social democracy as well, Political democracy cannot last unless there lies on the base of it a social democracy". Social democracy means "a way of life which recognises liberty, equality and fraternity as principles of life". They are not separate items in a trinity but they form union of trinity. To diversify one from the other is to defeat the very purpose of democracy. Without equality, liberty would produce the supremacy of the few over the many. Equality without liberty would kill individual initiative. Without fraternity, liberty and equality could not become a natural course of things. Articles 15(4) and 16(4), therefore, intend to remove social and economic inequality to make equal opportunities available in reality. Social and economic justice is a right enshrined for the protection of society. The right to social and economic justice envisaged in the Preamble and elongated in the Fundamental Rights and Directive Principles of the Constitution, in particular, Articles 14, 15, 16, 21, 38, 39 and 46 of the Constitution, is to make the quality of the life of the poor, disadvantaged and disabled citizens of the society, meaningful. Equal protection in Article 14 requires affirmative action for those unequals by providing facilities and opportunities. While Article 15(1) prohibits discrimination on grounds of religion, race, caste, sex, place of birth, Article 15(4) enjoins upon the State, despite the above injunction and the one provided in Article 29(2), to make special provision for the advancement of any socially and educationally backward classes of citizens or for the Dalits and Tribes. Equally, while Article 16(1) guarantees equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State, Article 16(4) enjoins upon the State to make provision for reservation for these sections which in the opinion of the State are not adequately represented in the services under the State. Article 335 of the Constitution mandates that claims of the members of the Dalits and Tribes shall be taken into consideration in making appointments to services and posts in connection with affairs of the Union or of a State consistent with the maintenance of efficiency of administration. Therefore, this Court interpreted that equal

protection guaranteed by Articles 14, 15(1) and 16(1) is required to operate consistently with Articles 15(4), 16(4), 38, 39, 46 and 335 of the Constitution, vide per majority in Indra Sawhney v. Union of India [1992] Supp. 3 SCC 217 known as Mandal case. In other words, equal protection requires affirmative action for those unequals handicapped due to historical facts of untouchability practiced for millennium which is abolished by Article 17; for Tribes living away from our national mainstream due to social and educational backwardness of OBCs.

7. In Kailash Sonkar v. Smt. Maya Devi a Bench of three Judges of this Court, considering the historical perspective confronting the framers of the Constitution in drafting the Constitution, stated that one of the important objectives to be translated into action was to take special care of the backward classes and members of the Dalits and Tribes by bringing them to the fore through pragmatic actions and providing adequate opportunities for their amelioration and development, education, employment and the like. Hindu social structure was erected by impregnable walls of separation with graded inequalities between different sections amongst Hindus. Caste became the result of birth and not of volition. No one wishes to be born in a particular caste or religion. It is the result of biological act of the parents. However, in Hindu social structure also, caste is the result of birth and has become a bane for individual drive, thrive and improvement of excellence, a fundamental duty under Article 51A(j). The practice of untouchability, which had grown for centuries, denuded social and economic status and cultural life of the Dalits and the programmes evolved under Articles 14, 15(2), 15(4) and 16(4) aimed to bring Dalits into national mainstream by providing equalitarian facilities and opportunities. They are designated as "Scheduled Castes" by definition under Article 366(24) and "Scheduled Tribes" under Article 366(25) read with Articles 341 and 342 respectively. The constitutional philosophy, policy and goal are to remove handicaps, disabilities, suffering restrictions or disadvantages to which Dalits/ Tribes are subjected, to bring them into the national mainstream by providing facilities and opportunities for them. As to OBCs, their identification was delegated to a Commission appointed under Article 340.

8. In Mandal case, identifying the backward classes of citizens, per majority, this Court at page 714 para 779 had held that a caste is nothing but a social class - "a social 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 to be a member of that group. To repeat, it is a socially and occupationally homogeneous class. Endogamy is its main characteristic. Its social status and standing depends upon the natures of the occupation followed by it; lowlier the occupation lowlier the social standing of the class in the graded hierarchy. In rural India, occupation-caste nexus is true even today. A few members may have gone to cities or even abroad but when they return, they do, -barring a few exceptions, go into the same fold again. It does not matter if he has earned money. lie may not follow that particular occupation. Still, the label remains. His identity is not changed. It is his social class, the caste, that is relevant."

9. In para 784 at page 717, it was further held that reservation under Article 16(4) is not made in favour of a 'caste' but a backward class. Once a caste satisfies the criteria of backwardness, it becomes a backward class for the purpose of Article 16(4). Even that is not enough. It must further be found that the backward class is not adequately represented in the services of the State. It would,

therefore, be for the authority constituted under Article 340 or the appropriate authority to identify the backward class eligible for entitlement under Article 16(4). It would thus be seen that the Dalits, Tribes and identified backward classes of citizens who are not adequately represented in a service or office under the State are eligible to be considered under Article 16(1) read with Article 16(4). Equally under Article 15(4) for admission in educational institutions and in other programmes.

10. The question, therefore, is : Whether a candidate, by marriage, adoption or obtaining a false certificate of social status would be entitled to an identification' as such member of the class for appointment to a post reserved under Article 16(4) or for an admission in an educational institution under Article 15(4)? In Kumari Madhuri Patil and Anr. v. Addl. Commissioner, Tribal Development and Ors. [1994] SCC 241, the appellants were daughters of one Laxman Patil who was a Hindu Koly (forward class). They obtained social status certificates as Mahadeo Koli, Scheduled Tribe and were admitted into Medical college. When it was found that they belonged to forward class, their admissions were cancelled and writ petitions were dismissed culminating in the aforesaid judgment. This Court had held that for the purpose of entitlement to admission under Article 15(4), the identification by the President as a Scheduled Tribe under Article 342(1) subject to the law under Article 342(2) as amended by the Scheduled Caste and Scheduled Tribes (Amendment) Act 1976, is conclusive. In other words, this Court had not accorded to a member of forward class, by obtaining a false certificate the status of a Scheduled Tribe. Admission given on the basis of false certificate was declared unconstitutional.

11. Director of Tribunal Welfare, Government of Andhra Pradesh v. Laveti Giri and Anr. , is equally instructive. Therein, the father of the respondent who was a Government servant obtained false certificate that his son was a Scheduled Tribe and got the respondent admitted in Engineering College. Father was a Kapu (a forward class in Andhra Pradesh) and certificate obtained was as Konda Kapu, Scheduled Tribe. It was held that the false claim by fraud played by the guardian disentitled the candidate to the social status as a Schedule Tribe.

12. In Telangana Region of Andhra Pradesh, Holva Community is a backward class. They sought to obtain social status as Holuva, a Scheduled Tribe. The Collector issued memo to the Tahsildar not to issue certificate to them. When validity of the memo was questioned, A.P. High Court in Andhra Holwa Society v. Union of India and Ors., in Writ Petition No. 17011 of 1984 dated 28.2.1986 held that the class exodus of one class of citizens as tribes on names of synonimity is impermissible. Similarly, Jangama community/ backward class sought certificates as Scheduled Castes (Beda or Budaga Jangama). The same High Court in P. Hattikarjunadev and Ors. v. Govt., of Andhra Pradesh [1989] 3 A.L.T. 50, held that they are not entitled to social status certificates. It would thus be clear that there are attempts of transplantation of forward classes to backward classes. Instead of integrated forward march, it is a retrograde reverse march from forward to backward status to claim reservations.

13. In A.S. Sailaja v. Kurnool Medical College, Kurnool and Ors. , the petitioner, daughter of A.S. Radhakrishna, an advocate of Cuddapah in Andhra Pradesh, had initially appeared for Common Entrance Examination for 1984-85 for admission into medical College but failed. For the Common Entrance Examination for 1985-86 she described herself to be daughter of natural father

Radhakrishna but in the application for admission made on July 13, 1985, she claimed that she was adopted by one B. Sivaramaiah, (Shepard), a backward class in Andhra Pradesh and sought admission on that basis. She secured 417 marks out of 600 and when she claimed to be O.B.C., but was not given admission, she filed a writ petition in A.P. High Court for direction to the College to admit her as a backward class group-D. The High Court considered the inter-play of adoption under the Hindu Adoption and maintenance Act, 1956 and the protective discrimination under Article 15(4). It held that the native endowments of men are by no means equal. The mind of children brought up in culturally, educationally and economically advanced atmosphere, is accounted highly as they are bound to start the race of life with advantages. It would apparently have its inevitable profound effect on the quality of the child born in that atmosphere. The children born amongst backward classes would not start the race of life with the same quality of life. It would, therefore, be necessary to identify the competing interests between diverse sections of the society and it is the duty of the Court to strike a balance between competing claims of different interests. Citizens belonging to a group of backward classes identified by the appropriate authority or the commission, as a part of that class, fulfilling the traits of socially and educationally backwardness among that group, would alone be eligible for admission as a backward class citizens under Article 15(4). In that event, the Court declined to go into the question whether such person is socially or educationally backward which is an exclusive function of the commission/authority appointed under Article 340 of the Constitution. r\ But any person who would attempt, by process of law and seeks to acquire the status of such a backward class should satisfy that he/she suffered the same handicaps or disadvantages due to social, educational and cultural backwardness. A person born in upper caste and having early advantages of education is not entitled to the benefit of Article 15(4). In that context, it was held that caste will be one of the considerations along with other factors applicable to homogeneous group of the people. A homogeneous group together being identifying as a class for the purpose of Article 15(4) or 16(4) would become mockery. Therefore, it was held that the petitioner, though by adoption became a member of the backward class, was not eligible for admission into medical college under Article 15(4) since she did not undergo any sufferings or disadvantages, handicaps or ignominy to which the members of the homogeneous backward class are subjected to.

14. It was further held that in interpreting the provisions of the Hindu Adoption and Maintenance Act 1956, and the Constitution, the balance is to be struck to maintain secularism and mobility of castes for national integration ensuring inter-caste marriages or adoption from one caste to another, allowing enough lee way for free mobility and integration of all sections of the society as homogeneous group. At the same time, the Court required to construe the provisions of the Act and the Constitution to reconcile the right of the individual and the society's right, namely, social justice. In writ petition No. 11914/85 (spouse of inter-caste marriage) and Writ Petition No. 14875/85 (adoption of a backward class boy to a Scheduled Tribe) disposed of on the same day, it was held in separate judgment that they were not eligible for admission under Article 15(4). In V.B. Rao v. Principal, Osmania Medical College AIR (1986) A.P. 197, a Velama (forward caste) was held not eligible for admission as Kappula Velama (O.B.C.). In K. Shantha Kumar v. State of Mysore (1971) 1 Mys. L. J. 21; Nataraja v. Selection Committee (1972) 1 Mys. L. J. 226 and R. Srinivasa v. Chairman Selection Committee , the Karnataka High Court consistently had held that on adoption a boy, belonging to a forward caste by a backward class citizen, is not entitled to the benefit of reservation

under Article 15(4).

15. In Smt. D. Neelima v. The Dean of P.G. Studies, A.P. Agricultural University, Hyderabad and Ors. , the appellant, a Reddy by birth (Reddy caste is a forward caste in A.P.) married to Erukala boy (basket weaving community, Scheduled Tribe in A.P.) was living in her marital home since her marriage. She sought admission into M. Sc. (Home Science) in Agricultural University as a Scheduled Tribe. She filed writ petition for direction for admission. The learned single Judge dismissed the writ petition holding that by "anuloma" marriage she was not entitled to the same status as that of the tribe. In another writ petition No. 1313 of 1992, the petitioner lady born in a Vysya community (Business community) was married to a Bestha (fishermen community - a backward class - A category). She applied for admission into Post-Graduate Medical Course (D.C.H.) under the quota reserved for Backward Class - A Group. Her writ petition was allowed by a learned single Judge holding that a marriage was not an agreement. It is a sacrament. After marriage she was no more a member of her parents' family but became a member of her husband's family. Therefore, she was entitled to be a member of the backward class. The diverse views were challenged before the Division Bench which had held that though on marriage the girls become members of their husbands' families snapping all their ties from parental homes and acquire the status as a Scheduled Tribe or backward class, they are not entitled, by virtue of marriage, to the right to reservation envisaged under Article 15(4) of the Constitution. Similar view was taken in Urmila Ginda v. Union of India and Mrs. Vaishali v. Union of India (1978) 80 BLR 182, wherein the Delhi and Bombay High Courts respectively had held that ladies belonging to the upper caste married to the Scheduled Caste men were not entitled to the reservation under Article 16(4). In Khazan Singh v. Union of India AIR 1980 Delhi 60 a single Judge of the Delhi High Court had held that on adoption of a jat boy into Scheduled Caste A family, he became entitled to the benefit of reservation Under Arts 16(4).

16. The Constitution seeks to establish secular socialist democratic republic in which every citizen has equality of status and of opportunity, to promote among the people dignity of the individual, unity and integrity of the nation transcending them from caste, sectional, religious barriers fostering fraternity among them in an integrated Bharat. The emphasis, therefore, is on a citizen to improve excellence and equal status and dignity of person. With the advancement of human rights and constitutional philosophy of social and economic democracy in a democratic polity to all the citizens on equal footing, secularism has been held to be one of the basic features of the Constitution (Vide : S.R. Bommai v. Union of India and egalitarian social order is its foundation. Unless free mobility of the people is allowed transcending sectional, caste, religious or regional barriers, establishment of secular socialist order becomes difficult. In State of Karnataka v. Appa Balu Ingale and Ors. this Court has held in paragraph 34 that judiciary acts as a bastion of the freedom and of the rights of the people. The Judges are participants in the living stream of national life, steering the law between the dangers of rigidity and formlessness in the seamless web of life. Judge must be a jurist endowed with the legislator's wisdom, historian's search for truth, prophet's vision, capacity to respond to the needs of the present, resilience to cope with the demands of the future to decide objectively, disengaging himself/herself from every personal influence or predilections. The Judges should adapt purposive interpretation of the dynamic concepts under the Constitution and the act with its interpretive armoury to articulate the felt necessities of the time. Social legislation is not a document

for fastidious dialects but means of ordering the life of the people. To construe law one must enter into its spirit, its setting and history. Law should be capable to expand freedom of the people and the legal order can weigh with utmost equal care to provide the underpinning of the highly inequitable social order. Judicial review must be exercised with insight into social values to supplement the changing social needs. The existing social inequalities or imbalances are required to be removed re-adjusting the social order through rule of law. In that case, the need for protection of right to take water, under the civil Rights Protection Act, and the necessity to uphold the constitutional mandate of abolishing untouchability and its practice in any form was emphasised.

17. Usha M. Apte in her "The Sacrament of Marriage in Hindu Society from Vedic period to Dharmsastras" (1978 Ed.) stated at page 13 that inter-caste marriages were prevalent in the period of Rig Veda. She quoted thus :

> Savasva, Kaksivat and Vimada all belonged to Brahmin families but they married daughters of the kings i.e. Ksatriya girls. Even Cyavana married a Ksatriya girl. On the other hand Sasvati i.e. daughter of the sage Angirasa, was married to king Asanga. The king Svanaya Bhavaya-vya i.e. brother-in-law of Kaksivat was married to Brahmani wife of Angirasa (of VIII. 1.34). Even marriage of Yayati and Devayani (X. 63.1) is of the same type i.e. Ksatriya male marrying a Brahmani.
>
> From the Brahmanas and the Upanishads, she also quoted at page 41 thus :
>
> Mahidasa Aitareya was the seer of the Aitareya Brahmana. He was the son of Itara i.e. a mother who was other than a Brahmani. The word can be interpreted also as son of Itara'. In this case he would be a child born of extra-marital connections.

18. At page 189 she stated that although the Sastrakaras accept the inter-caste marriage of anuloma type, certainly they did not approve of it. To them such marriages led to inter-mixture of Varnas which could lead to social chaos. She pleaded for simplification of the marriage rights and avoidance of waste of money and material.

19. In "Hindu Law of Marriage and Stridhana" by G. Banerjee, 2nd Edition 1896, it has been stated at pages 68-69 that by inter-caste marriages among Brahmans, Kshatriyas, Vaisyas and Sudras, which were allowed in Vedic p period, there arose a number of mixed classes, which have been treated in the 10th Chapter of Manu; and further, by a division of the Sudras according to their occupations, there arose a number or sub-castes; such being the nature and origin of caste, the prohibition of inter-marriage applies only with reference to the four primary castes, and was inapplicable to sub-divisions of the Sudra caste. Quoting from Pardaiya Telaver v. Puli Telaver, 1 Mad. 478 from the judgment of Scotland, C.J., it was concluded that the general law applicable to all classes or tribes does not seem opposed to marriage between individuals of different sects or divisions of the same class or tribe, and even as regards the marriage between individuals of a different class or tribe, the law appears to be no more than directory. Although it recommends and inculcates a marriage with a woman of equal class as a preferable description, yet the marriage of a man with a woman of a lower class or tribe than himself A appears not to be an invalid marriage,

rendering the issue illegitimate.

20. Dr. Paras Diwan in his 2nd Edition of "Law of Marriage and Divorce" stated at page 75 that in inter-caste and inter-sect marriages in anuloma form a male of superior caste marries a female of inferior caste; and in pratiloma marriage a male of inferior caste marries a female of superior caste. During British Raj, pratiloma marriage came to be considered as invalid and obsolete but anuloma marriage was held valid. Customary inter-caste marriages were held valid. They were performed under Special Marriages Act, 1872. The Arya Marriages Validation Act, 1937 permitted performance of both anuloma and pratiloma marriages under the auspices of the Arya Samaj. Inter-sub-caste marriages were validated under the Hindu Marriage (Removal of Disabilities) Act, 1946. The Hindu Marriage Validity Act, 1949 permitted performance of both forms of inter-caste marriages. Under the Hindu Marriage Act, 1955 inter-caste marriages among all castes are valid as under the Act marriage between any two Hindus is valid one. At page 76 he stated that under Muslim law inter-sect marriages between Muslims belonging to different sects or schools are valid. The Christian Marriage Act permitted marriage between Roman Catholics and Protestants. Among Parsis there are no sects or denominations. It would thus be clear that in Hindu social order, the prohibition of inter-caste marriage and looking down upon the progeny born to such inter-caste couple resulted in shunning the inter-caste marriages as a social mobility and resulted in rigidity in social structure. The Hindu Marriage Act has done away with that rigidity and made valid the inter-caste marriages. Section 7A of the Hindu Marriage Act introduced an amendment in the State of Tamil Nadu providing that marriages made between any two Hindus in any form solemnised in the presence of relatives, friends or other persons in a simplified form are a valid marriage; and by statutory operation of Sub-section (2), such marriages held earlier to the commencement of Hindu Marriages Madras Amendment Act 1957 are to be regarded as good and valid in law, doing away with any customary practice or usages to be mandatory. The Tamil Nadu Act 21 of 1957 came into force with effect from January 20, 1968.

21. The Constitution through its Preamble, Fundamental Rights and Directive Principles created secular State based on the principle of equality and non-discrimination striking a balance between the rights of the individuals and the duty and commitment of the State to establish an egalitarian social order. Dr. K.M. Munshi contended on the floor of the Constituent Assembly that "we want to divorce religion from personal law, from what may be called social relations, or from the rights of parties as regards inheritance or succession. What have these things got to do with religion, I fail to understand? We are in a stage where we must unify and consolidate the nation by every means without interfering with religious practices. If, however, in the past, religious practices have been so construed as to cover the whole field of life, we have reached a point when we must put our foot down and say that these matters are not religion, they are purely matters for secular legislation. Religion must be restricted to spheres which legitimately appertain to religion, and the rest of life must be regulated, unified and modified in such a manner that we may evolve, as early as possible, a strong and consolidated nation" (Vide : Constituent Assembly Debates, Vol. VII 356-8).

22. In the onward march of establishing an egalitarian secular social order based on equality and dignity of person, Article 15(1) prohibits discrimination on grounds of religion or caste identities so as to foster national identity which does not deny pluralism of Indian culture but rather to preserve

it. Indian culture is a product or blend of several strains or elements derived from various sources, in spite of inconsequential variety of forms and types. There is unity of spirit informing Indian culture throughout the ages. It is this underlying unity which is one of the most remarkable everlasting and enduring feature of Indian culture that fosters unity in diversity among different populace. This generates and fosters cordial spirit and toleration that make possible the unity and continuity of Indian traditions. Therefore, it would be the endeavour of everyone to develop several identities which constantly interact and overlap, and prove a meeting point for all members of different religious communities, castes, sections, sub-sections and regions to promote rational approach to life and society and would establish a national composite and cosmopolitan culture and way of life.

23. Arun Shourie in his "Religion in Politics", 1986 stated thus at pages 332-33 :

> To fashion a fair and firm State; a State and society in which the individual is all, an individual with an inviolate sphere of autonomy that neither the State nor anyone acting in the name of religion nor any other collectivity can breach; a State and society in which we learn to look upon one another as human beings, in which the habit of partitioning our fellow-men between them' and us' is gone; a H State and society in which a man of God is known not by the externals - by his appearance, by the rituals he observes, by the religious office he holds, - but by the service he renders to his fellow-men; a State and society in which each of us recognises all our traditions as the common heritage of us all; a State and society in which we shed the dross in religion and perceive the unity and truth to which the mystics of all traditions have born testimony; a state and society in which we learn, in which we examine, in which we begin to think for ourselves - fashioning such a State and society is a programme worthy of those who aspire to humanism and secularism.
>
> The sine qua non for such a programme is that all of us accept a limitation on means. We must accept the right of everyone to his own opinion and belief as well as the right of everyone to influence others to adopt his opinion and belief, but simultaneously each of us must vow that he will influence others by persuasion alone or not at all.
>
> And the hallmark of the humanist and the secularist in regard to the ideals he will pursue and the means by which he will pursue them is not 'I will be secular, I will be a humanist, only when all the 'others' also conduct themselves as secularists and humanists.' Our conduct must be principles, whatever the conduct of others. 'For', as Jesus said, 'if you love those who love you, what reward have you?

24. The approach in reconciling diverse practices, customs and traditions of the marriages as one of the means for social and national unity and integrity and establishment of Indian culture for harmony, amity and self-respect to the individuals, is the encouragement to inter-caste, inter-sect, inter-religion marriages from inter-region. The purposive interpretation would, therefore, pave way to establish secularism and a secular State.

25. At the cost of repetition, it is stated that pluralism is the keynote of Indian culture and religious tolerance is the bedrock of Indian secularism. It is based on the belief that all religions are equally good and efficacious G pathways to perfection or God-realisation. It stands for a complex interpretive process in which there is a transcendence of religion and yet there is a unification of multiple religions. It is a bridge between religions in a multi-religious society to cross over the barriers of their diversity. Secularism is the basic feature of the Constitution as a guiding principle of State policy and action. Secularism in the positive sense is the cornerstone of an egalitarian and forward - looking society which our Constitution endeavours to establish. It is the only possible basis of a uniform and durable national identity in a multi - religious and socially disintegrated society. It is a fruitful means for conflict-resolution and harmonious and peaceful living. It provides a sense of security to the followers of all religions and ensures full civil liberties, constitutional rights and equal opportunities.

26. Human rights are derived from the dignity and worth inherent in the human person. Human rights and fundamental freedoms have been reiterated in the Universal declaration of Human Rights. Democracy, development and respect for human rights and fundamental freedoms are inter-dependent and have mutual reinforcement. The human rights for women, including girl child are, therefore, inalienable, integral and an indivisible part of universal human rights. The full development of personality and fundamental freedoms and equal participation by women in political, social, economic and cultural life are concomitants for national development, social and family stability and growth-cultural, social and economical. All forms of discrimination on grounds of gender is violative of fundamental freedoms and human rights. Convention for Elimination of all forms of Discrimination Against Women (for short, "CEDAW") was ratified by the U.N.O. on December 18, 1979 and the Government of India had ratified as an active participant on June 19, 1993 acceded to CEDAW and reiterated that discrimination against women violates the principles of equality of rights and respect for human dignity and it is an obstacle to the participation on equal terms with men in the political, social, economic and cultural life of their country; it hampers the growth of the personality from society and family, making more difficult for the full development of potentialities of women in the service of the respective countries and of humanity.

27. Establishment of a new international economic order based on equality and justice will contribute significantly towards the promotion of equality between men and women etc. Article 1 defines "discrimination against women" to mean "any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognized enjoyment or exercise by women, irrespective of their marital status, on the basis of equality of men and women, all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field." Article 2(b) enjoins upon the State parties, while condemning discrimination against women in all its forms, to pursue, by appropriate means, without delay, elimination of discrimination against women by adopting "appropriate legislative and other measures including sanctions where appropriate prohibiting all discriminations against women; to take all appropriate measures including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women. Clause C enjoins upon the State to ensure legal protection of the rights of women on equal basis with men, through constituted national tribunals and other public institutions against any act of discrimination to provide effective

protection to women,. Article 3 enjoins upon the State parties that it shall take, in all fields, in particular, in the political social, economic and cultural fields, all appropriate measures including legislation to ensure full development and advancement of women for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on the basis of equality with men. Article 13 states that "the State parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women".

28. The Parliament has enacted the Protection of Human Rights Act, 1993. Section 2(b) defines "human rights" to mean "the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution, embodied in the international conventions and enforceable by courts in India". Thereby, the principles embodied in CEDAW and the concomitant right to development became integral part of the Constitution of India and the Human Rights Act and became enforceable. Section 12 of the Protection of Human Rights Act charges the commission with duty for proper implementation as well as prevention of violation of the human rights and fundamental freedoms.

29. Though the Government of India kept its reservations on Articles 5(e), 16(1), 16(2) and 29 of CIDAW, they bear little consequence in view of the fundamental rights in Article 15(1) and (3) and Article 21 and the directive principles of the Constitution.

30. It would thus be seen that the institution of marriage is one of the sound social institutions to bring harmony and integration is social fabric. The Shastric law among Hindus has undergone sea change, in the rigidity of Shastric prescriptions. In relation to intestate succession of property, marriage, adoption and maintenance among Hindus, they are brought under statutory operation appropriately underpinning the rigid shastric prohibitions, restrictions to operate in harmony with Universal Declaration of Human Rights and constitutional rights. The right to divorce which is unknown to Hindu law is made feasible and an irretrievable breakdown of the marriage is made a ground so as to enable the couple to seek divorce by mutual consent. The Hindu Marriage Act, 1956 and Special Marriage Act, 1954 made the marriage between persons belonging to different castes and religions as valid marriage. Even local amendments in Section 7A to the Hindu Marriage Act, 1956 like in Tamil Nadu, removed the rigidity of celebrating the marriages in accordance with shastric prescription like Kanyadan and Saptapadhi being not mandatory, recognised social marriage as valid. Right to maintenance from the divorced husband is provided under the Hindu Adoption and Maintenance Act, 1956 and Section 125 of the Code of Criminal Procedure, 1973 so long as she remains unmarried. Under Hindu Minority and Maintenance Act, she is entitled to maintenance from father-in-law. Similar gender equality is available to other citizens consistent with Human Rights and under Article 15(3) of the constitution. The march of law lays emphasis on the rights of the individual for equality. The form of marriages is relegated to backdoor as unessential. These are matters of belief and practice and not core content. Tying Tali is a must and without it marriage is not complete in South India among all Hindus and in some parts among Harijan Christians, while exchange of rings would do in North India. Ritualistic celebration of marriage would be considered by some as valid, while most people in other sections think that factum of marriage is enough. When in Tamil Nadu such marriage is statutorily, valid would it

become invalid in other parts of the country? The answer would, obviously and emphatically be, "NO". Inter-caste marriages and adoption are two important social institutions through which secularism would find its fruitful and solid base for an egalitarian social order under the Constitution. Therefore, due recognition should be accorded for social mobility and integration and accordingly its recognition must be upheld as valid law.

31. It is well settled law from Mussumat Bhoobun Moyee Debia v. Ramkishore Achari Chowdhary (1865) 10 MIA 279 that judiciary recognised a century and half ago that a husband and wife are one under Hindu law, and so long as the wife survives, she is half of the husband. She is 'Sapinda' of her husband as held in Lallu Bhoy v. Cassibai (1979-80) 7 IA 212. It would, therefore, be clear that be it either under the Canon law or the Hindu law, on marriage wife becomes an integral part of husband's marital home entitled to equal status of husband as a member of the family. Therefore, the lady, on marriage, becomes a member of the family and thereby she becomes a member of the caste to which she moved. The caste rigidity breaks down and would stand no impediment to her becoming a member of the family to which the husband belongs and she gets herself transplanted.

32. The immediate question arises : Whether recognition of the community is a precondition? Though it was consistently held that recognition is a circumstance to be taken into consideration, marriage being personal right of the spouses they are entitled to live, after marriage openly to the knowledge of all the members of the community or locality in which they live and by such living they acquire married status. In the light of the constitutional philosophy of social integrity and national unity, right to equality assured by the human rights and the Constitution of India, on marriage of a man and a woman, they become members of the family and are entitled to the social status as married couple, recognition per se is not a pre-condition but entitled to be considered, when evidence is available. It is common knowledge that with education or advance of economic status, young men and women marry against the wishes of parents and in many a case consent or recognition would scarcely be given by either or both the parties or parents of both spouses. Recognition by family or community is not a pre-condition for married status.

33. However, the question is : Whether a lady marrying a Scheduled Caste, Scheduled Tribe or OBC citizen, or one transplanted by adoption or any other voluntary act, ipso facto, becomes entitled to claim reservation under Article 15(4) or 16(4), as the case may be? It is seen that Dalits and Tribes suffered social and economic disabilities recognised by Articles 17 and 15(2). Consequently, they became socially, culturally and educationally backward; the OBCs also suffered social and educational backwardness. The object of reservation is to remove these handicaps, disadvantages, sufferings and restrictions to which the members of the Dalits or Tribes or OBCs were subjected to and was sought to bring them in the mainstream of the nation's life by providing them opportunities and facilities.

34. In Murlidhar Dayandeo Kesekar v. Vishwanath Pandu and R. Chandevarappa v. State of Karnataka , this Court had held that economic empowerment is a fundamental right to the poor and the State is enjoined under Articles 15(3), 46 and 39 to provide them opportunities. Thus, education, employment and economic empowerment are some of the programmes, the State has evolved and also provided reservation in admission into educational institutions, or in case of other economic

benefits under Articles 15(4) and 46, or in appointment to an office or a post under the State under Article 16(4). Therefore, when a member is transplanted into the Dalits, Tribes and OBCs, he/she must of necessity also undergo have had same the handicaps, and must have been subject to the same disabilities, disadvantages, indignities or sufferings so as to entitle the candidate to avail the facility of reservation. A candidate who had the advantageous start in life being born in forward caste and had march of advantageous life but is transplanted in backward caste by adoption or marriage or conversion, does not become eligible to the benefit of reservation either under Article 15(4) and 16(4), as the case may be. Acquisition of the Status of Scheduled Caste etc. by voluntary mobility into these categories would play fraud on the Constitution, and would frustrate the benign constitutional policy under Articles 15(4) and 16(4) of the Constitution.

35. Further question is : Whether recognition by the community, as is envisaged by law and expressly recognised by this Court in Mohan Rao's case would give the benefit of reservation? In that case, parents of Mohan Rao originally belonged to a Scheduled Caste in A.P. Mohan Rao became a Christian but reconverted into Hinduism and claimed the status as a Scheduled Caste. The Constitution Bench had held that by reconversion, he could not become a Hindu but recognition by the community is a precondition. In that case, it was found that caste/community had recognised him after reconversion as a member of the Scheduled Caste. In Kailash Son/car's case (supra), this Court, in the context of election law, considered the question of reconversion into Hindu fold. On conversion to a Christianity or any other religion, the convertee would lose the said caste. Where a person belonging to the Scheduled Caste is converted to Christianity or Islam, the same involves loss of the caste unless the religion to which he is converted is liberal enough to permit the convertee to retain his caste or the family law by which he was originally governed. Where the new religion does not at all accept or believe in the caste system, the loss of the caste would be final and complete. In South India, if a person converts from Hindu religion to other religion, the original caste, without violating the tenants of the new order to which he has gone, as a matter of common practice continues to exist from times immemorial. If a person abjures his old religion and converts to a new one, there is no loss of caste. However, where the convertee exhibits by his actions and behavior his clear intention of abjuring the new religion, on his own volition without any persuasion and is not motivated by any benefits or gain; the community of the old order to which the convertee originally belonged, is gracious enough to admit him to the original caste either expressly or by necessary intendment; and rules of the new order permit the convertee to join the new caste, on reconversion his original caste revives and he becomes a member of that caste. However, this Court had held that "in our opinion the main test should be a genuine intention of the reconvert to abjure his new religion and completely dissociate himself from it. We must hasten to add here that this does not mean that the reconversion should be only a ruse or a pretext or a cover to gain mundane worldly benefits so that the reconversion becomes merely a show for achieving a particular purpose whereas the real intention may be shrouded in mystery. The reconvert must exhibit a clear and genuine intention to go back to his old fold and adopt the customs and practices of the said fold without any protest from members of his erstwhile caste." In that case it was held from his conduct, the respondent established that she by her conduct became a member of the community entitled to contest the elections as a Scheduled Caste. In Mohan Rao's case (supra), this Court found as a fact that after conversion he was accepted as a member of the Dalits by the community. Similar are the facts in Hero case (supra). In CM. Arumugam v. S. Rajagopal and Ors. , this Court did not accept

reconversion, though Rajagopal proclaimed by conduct of his becoming a member of Scheduled Caste and his relations treated him as a member of Dalits. In Hero case also the respondent was recognised as a member of the Scheduled Tribe. Further in election law the compulsion of political party nominating a candidate and voters' verdict may be looked into. In Soosai v. Union of India , Bhagwati, C.J. speaking for a three Judge Bench held that non-recognition of Scheduled Caste Christians as Dalits was not violative of Article 14 as by reason of p conversion they were not similarly handicapped as Dalits. In Madhuri's case and Laveti Giri's case, this Court directed procedure for issuance of social status certificates. As a part of it, the officer concerned should also verify, as a fact, whether a convert has totally abjured his old faith and adopted, as a fact, the new faith; whether he suffered all the handicaps as a Dalit or tribe; whether conversion is only a ruse to gain constitutional benefits under Article 15(4) or 16(4); and whether the community has in fact recognised his conversion and treated him as a member of the community and then issue such a certificate.

36. The recognition of the appellant as a member of the Latin Catholic would not, therefore, be relevant for the purpose of her entitlement to the reservation under Article 16(4), for the reason that she, as a member of the forward caste, had an advantageous start in life and after her completing education and becoming major married Yesudas; and so, she is not entitled to the facility of reservation given to the Latin Catholic, a backward class.

37. The learned single Judge and the Division Bench in Dr. Kunjamma's case proceeded solely on basis of Canon Law, celebration of the marriage in accordance with Latin Catholic rites and acceptance of her as member of that community. Unfortunately they did not advert to the constitutional mandate adverted to hereinbefore. Consequently, the learned single Judge and the Division Bench did not correctly decide the law. Equally, in Khazan Singh's case the learned single Judge of the Delhi High Court too did not lay the law correctly. The Full Bench, for the aforesaid reasons, had rightly concluded that the appellant is not entitled to the benefit of reservation under Article 16(4) as a lecturer which post was reserved for the backward class Latin Catholic community.

38. The appeals are accordingly dismissed. The orders of the Division Bench and the single Judge stand set aside. The Full Bench judgment stands confirmed but, in the circumstances, parties are directed to bear their own costs throughout.

39. Consequent upon dismissal of C.A. Nos. 3163-64 of 1995 as above, this appeal is allowed.