

WP No. 200448 of 2025
C/W WP No. 25515 of 2025

RESERVED ON 9TH SEPTEMBER 2026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 12TH DAY OF OCTOBER, 2026

PRESENT

THE HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE

AND

THE HON'BLE MRS. JUSTICE K.S. HEMALEKHA

WRIT PETITION NO. 200448 OF 2025 (SC-ST-PIL)

C/W

WRIT PETITION NO. 25515 OF 2025 (S-RES)



IN WP No. 200448/2025

BETWEEN:

1. MAHENDRA KUMAR MITRA
S/O DEVAMITRA
AGED ABOUT 42 YEARS
OCCUPATION: B.E. (CIVIL) & SOCIAL WORKER
STATE PRESIDENT
DR. AMBEDKAR SCHEDULED CASTES FEDERATION
H. NO.1-3-159, MATAMARI ROAD
NEAR AGAPE CHURCH
STATION AREA RAICHUR - 584 101
STATE: KARNATAKA

...PETITIONER

(BY SRI MAHENDRA KUMAR MITRA, PARTY-IN-PERSON)

AND:

1. THE SECRETARY TO THE GOVERNMENT OF INDIA
MINISTRY OF SOCIAL JUSTICE AND EMPOWERMENT
AND DEPARTMENT OF SOCIAL JUSTICE AND
EMPOWERMENT, C-WING
SHASTRI BHAWAN
DR. RAJENDRA PRASAD ROAD
NEW DELHI -110 001
2. NATIONAL COMMISSION
FOR SCHEDULED CASTES
REPRESENTED BY ITS SECRETARY
5TH FLOOR, LOK NAYAK BHAWAN



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KHAN MARKET
NEW DELHI - 110 003

3. STATE OF KARNATAKA
REPRESENTED BY ITS
PRINCIPAL SECRETARY TO GOVERNMENT
DEPARTMENT OF LAW AND
PARLIAMENTARY AFFAIRS
VIDHANA SOUDHA
DR B.R. AMBEDKAR VEEDI
BENGALURU - 560 001
4. STATE OF KARNATAKA
REPRESENTED BY ITS
PRINCIPAL SECRETARY TO GOVERNMENT
SOCIAL WELFARE DEPARTMENT
VIKASA SOUDHA
DR. B.R. AMBEDKAR VEEDI
BENGALURU - 560 001

...RESPONDENTS

(SRI HARSHA P. BANAD., CGSC FOR R-1 & 2;
PROF. RAVIVARMA KUMAR, SENIOR ADVOCATE A/W
MS. ASHWINI O., SPECIAL COUNSEL FOR R-3 & 4;
SRI PAVAN KUMAR N., ADVOCATE FOR
IMPLEADING APPLICANT IN I.A. NO.1/2026 &
SRI VIJAY KUMAR V.B., ADVOCATE FOR
IMPLEADING APPLICANTS IN I.A. NO.3/2026)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE
CONSTITUTION OF INDIA READ WITH RULE 14 (1) OF THE HIGH
COURT OF KARNATAKA (PUBLIC INTEREST LITIGATION) RULES
2018 PRAYING TO GRANT A WRIT OR ORDER OR DIRECTION IN
THE NATURE OF CERTIORARI QUASHING THE NOTIFICATION NO.
DPAL 29 SHASHANA 2022 DATED 12-01-2023 ISSUED BY THE
3RD RESPONDENT AS CONTAINED IN ANNEXURE-B-1 SHOWN AT
PAGE NOS. [103 TO 115] & ETC.

IN WP NO. 25515/2025

BETWEEN:

1. SAGAR H.R.
S/O. P. RUDRASWAMY
AGED ABOUT 26 YEARS
RESIDING AT: 1ST MAIN
BMR LAYOUT, BEHIND PETROL BUNK
NEAR HASSAN CIRCLE

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VIDYANAGAR, TIPTUR
TUMAKURU, KARNATAKA - 572 201

2. PRAJWAL KUMAR D.
S/O. DHRUVA KUMARA D.M.
AGED ABOUT 28 YEARS
RESIDING AT: #3148
20TH MAIN, 1ST CROSS
VIJAYANAGAR 2ND STAGE
MYSORE - 570 017
3. PURUSHOTHAM GOWDA G.M.,
S/O. MANJUNATHA K.G.
AGED ABOUT 29 YEARS
RESIDING AT A4
NEW KANTHARAJ URS ROAD
KUVEMPU NAGARA
NEAR AKSHAY BHANDAR
MYSURU - 570 023

...PETITIONERS

(BY SRI P.S. RAJAGOPAL, SENIOR ADVOCATE A/W
SRI VINAYAKA S. PANDIT, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
REP. BY ITS CHIEF SECRETARY
VIDHANA SOUDHA
DR. AMBEDKAR VEEDHI
BANGALORE – 560 001
2. THE PRINCIPAL SECRETARY TO GOVERNMENT
DEPARTMENT OF PERSONNEL
AND ADMINISTRATIVE REFORMS
VIDHANA SOUDHA
DR. B.R. AMBEDKAR VEEDHI
BENGALURU – 560 001
3. THE ADDITIONAL CHIEF SECRETARY
URBAN DEVELOPMENT DEPARTMENT
VIKASA SOUDHA
DR. B.R. AMBEDKAR VEEDHI
BENGALURU - 560 001
4. THE KARNATAKA PUBLIC
SERVICE COMMISSION

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REPRESENTED BY ITS SECRETARY
UDYOGA SOUDHA
PARK HOUSE
BANGALORE - 560 001

5. THE CHIEF COMMISSIONER
BRUHAT BENGALURU
MAHANAGARA PALIKE
N. R. SQUARE
BENGALURU - 560 002

...RESPONDENTS

(PROF. RAVIVARMA KUMAR, SENIOR ADVOCATE A/W
SRI SIDHARTH BABURAO, SPECIAL GOVERNMENT ADVOCATE,
MS. INCHARA H.M., ADVOCATE,
MS. RANJUTHA RAVINDRA, ADVOCATE,
SRI SOMASHEKAR, ADVOCATE,
SRI KUSHAL V.S., ADVOCATE FOR R-1 TO 3;
SRI RUBEN JACOB, SENIOR ADVOCATE A/W
SRI K.M. PRAKASH, ADVOCATE FOR R-4 &
SRI B.L. SANJEEV, ADVOCATE FOR R-5 &
SRI UDAYA HOLLA, SENIOR ADVOCATE FOR
SRI VIVEK HOLLA, ADVOCATE FOR
IMPLEADING APPLICANT IN I.A. NO.2/2026)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE
CONSTITUTION OF INDIA PRAYING TO DECLARE THE ACT NO.
1/2023 - THE KARNATAKA SCHEDULE CASTES AND TRIBES
(RESERVATION OF SEATS IN EDUCATIONAL INSTITUTIONS AND
APPOINTMENTS OR POSTS IN SERVICES UNDER THE STATE)
ACT, 2022 (ANNEXURE-A) IS ULTRA VIRES AND
UNCONSTITUTIONAL IN SO FAR AS IT RELATES TO INCREASE IN
RESERVATION FROM 15% TO 17% FOR PERSONS BELONGING
TO THE SCHEDULE CASTES AND 3% TO 7% FOR PERSONS
BELONGING TO SCHEDULE TRIBES IN APPOINTMENTS OR
POSTS IN SERVICES UNDER THE STATE AND ETC.

THESE WRIT PETITIONS HAVING BEEN HEARD AND
RESERVED FOR ORDERS, COMING ON FOR PRONOUNCEMENT
THIS DAY, ORDER WAS PRONOUNCED AS UNDER:

CORAM: HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE
and
HON'BLE MRS. JUSTICE K.S. HEMALEKHA

C.A.V. JUDGMENT

(PER: HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE)

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INTRODUCTION

1. The present petitions raise questions as to the width of the power of the State to provide for reservation within the scheme of the equal protection and equal opportunity clauses – Articles 14, 15 and 16 of the Constitution of India [**Constitution**].

2. Treating unequals as equals falls foul of the principle of proportional equality, which is attained only when “equals are treated equally and unequals are treated unequally”¹. The State seeks to increase the reservation of seats in educational institutions, and in appointments to posts in the services under the State beyond 50% of such seats/posts, in pursuit of the goal of securing proportional equality. This calls into question the width of the State’s power for such affirmative action and the guardrails placed by the equality clauses of the Constitution. To paraphrase the observation of S. Ravindra Bhat, J., this is part of an ongoing debate which every generation of Indians has to grapple with, and which the courts have to confront at different points in time².

3. The petitioners, *inter alia*, impugn the constitutional validity of the Karnataka Scheduled Castes and Scheduled Tribes

¹ K.K. Mathew, J. in *State of Kerala v. N.M. Thomas*: (1976) 2 SCC 310

² *Dr. Jaishri Laxmanrao Patil v. Chief Minister* (2021) 8 SCC 1

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(Reservation of Seats in Educational Institutions and of Appointments or Posts in the Services under the State) Act, 2022 (Karnataka Act No. 01 of 2023) [**the Act**], whereby the reservation in favour of persons belonging to the Scheduled Castes [**SCs**] and the Scheduled Tribes [**STs**] has been increased from 15% and 3% to 17% and 7%, respectively. The principal challenge to the Act is that the said increase takes the aggregate reservation for the backward classes, including SCs and STs, in educational institutions and in the services under the State beyond 50%. It is the case of the petitioners that the increase in reservation beyond 50% breaches the equal protection clause and the guarantee of equality of opportunity, and thus falls foul of Articles 14, 15 and 16 of the Constitution.

4. W.P.No. 200448/2025 (SC-ST-PIL), which is the lead matter, and W.P.No. 25515/2025 (S-RES) were heard along with the connected petitions, W.P.Nos. 3145/2023, 17968/2025 and 22361/2026. By an order dated 09.09.2026, this Court reserved orders in W.P.Nos. 200448/2025 and 25515/2025, in which arguments were heard in respect of the challenge to the constitutional validity of the Act, and directed that W.P.Nos. 3145/2023, 17968/2025 and 22361/2026 be listed separately. This

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judgment accordingly decides W.P.Nos. 200448/2025 and 25515/2025, insofar as they concern the challenge to the constitutional validity of the Act.

5. The petitioner in W.P.No. 200448/2025 (SC-ST-PIL), Mr. Mahendra Kumar Mitra, has instituted the said petition as a public interest litigation, *inter alia*, impugning the Act, as *ultra vires* the Constitution. The petitioner also impugns the Notification No. SWD 227 SAD 2003 dated 24.09.2005 issued by the Government of Karnataka [GoK] under Section 3 of the Commissions of Inquiry Act, 1952, and the subsequent notification bearing the same number dated 14.12.2005, whereby the Commission of Inquiry constituted thereunder was renamed.

6. In terms of the notification dated 24.09.2005, the GoK appointed a Commission of Inquiry comprising Justice A.J. Sadashiva (Retd.) to identify the particular castes, races and tribes of the Scheduled Castes in the State of Karnataka to whom the benefits of reservation are not percolating equitably, and to suggest the measures and positive steps necessary to enable them to compete with the other categories of the Scheduled Castes in the State, and other relevant aspects.

7. The petitioner has also sought other reliefs in the petition. However, the arguments in the said petition were confined to the challenge to the constitutional validity of the Act on the grounds as set out in the petition.

8. The petitioners in W.P. No. 25515/2025 are graduates in civil engineering, who applied for appointment to the post of Assistant Engineer (Civil) (Division-1) in the Bruhat Bengaluru Mahanagara Palike [**BBMP**] pursuant to the notification dated 13.03.2024 [**impugned notification**] issued by the Karnataka Public Service Commission [**KPSC**]. They impugn the Act, insofar as it increases the reservation in favour of SCs and STs in appointments or posts in the services under the State, as well as the impugned notification.

9. The impugned notification was issued on the basis of the Government Order dated 28.12.2022, which prescribes the roster points for giving effect to the increased reservation as stipulated by virtue of the Act. The said Government Order has since been set aside by the Karnataka State Administrative Tribunal [**KSAT**] by its judgment dated 28.05.2025 in Application No. 2144/2024, which is the subject matter of the State's petition, W.P. No. 17968/2025. The arguments in W.P. No. 25515/2025 in regard to the

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constitutional validity of the Act were heard along with W.P.No. 200448/2025. The petitioners reserve their right to challenge the impugned notification subject to the outcome of the challenge to the validity of the Act.

10. Before examining the rival contentions, it is relevant to set out the factual context in which the present petitions arise.

PREFATORY FACTS

11. In the erstwhile State of Mysore, the reservation in favour of SCs and STs was tentatively fixed at 15% and 3%, respectively, by the Government Order No. GAD (OM) 46 GRR 57 dated 04.02.1958, pending collection of data. The said percentages remained unchanged thereafter, notwithstanding the subsequent increase in the population of SCs and STs and in the number of castes and tribes included in the said categories³. The Government Order No. SWD 225 BCA 2000 dated 30.03.2002 provides for reservation in favour of various categories aggregating to 50%, namely, 15% for SCs, 3% for STs and 32% for the other backward classes, who are classified into Category-I, Category-II(A), Category-II(B), Category-III(A) and Category-III(B).

³ As recorded in the Statement of Objects and Reasons of the Act.

12. On 17.07.2015, a Division Bench of this Court disposed of W.P. Nos. 16852-16854/2015 (GM-RES-PIL), which had been filed by the Nayaka Student Federation and others seeking an increase in the reservation for STs from 3% to 7%. This Court granted liberty to the petitioners therein to submit a detailed representation to the Chief Secretary, GoK, and requested the Chief Secretary to consider the same by passing a reasoned and speaking order, preferably within a period of six months.

13. Thereafter, by a Reference Order No. SWD 303 PVY 2015 dated 22.07.2019, the GoK appointed a Commission headed by Justice H.N. Nagamohan Das, a former Judge of this Court, to procure empirical data for considering the demand for an increase in the reservation in favour of SCs and STs. The said Commission submitted its report on 02.07.2020 [**Nagamohan Das Commission Report**], recommending, *inter alia*, that the reservation for SCs be increased to 17% and for STs to 7%.

14. The GoK thereafter constituted a High Level Committee chaired by Justice Subhash B. Adi, a former Judge of this Court, by Government Order No. SWD 84 STP 2021 dated 10.03.2021. One of the references made to the said Committee was to indicate the modalities/steps for implementation of the Nagamohan Das

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Commission Report. The Statement of Objects and Reasons of the Act records that the said Committee submitted its report on 06.07.2022. The said report has not been placed on record. The report of the said Committee which has been placed on record [**Adi Committee Report**] is a later report, captioned “On Enhancement of Reservation For Scheduled Caste and Scheduled Tribe in State of Karnataka” dated 17.06.2023.

15. On 23.10.2022, the Governor of Karnataka promulgated the Karnataka Scheduled Castes and Scheduled Tribes (Reservation of Seats in Educational Institutions and of Appointments or Posts in the Services under the State) Ordinance, 2022 (Karnataka Ordinance No. 07 of 2022) [**the Ordinance**], which was brought into force with effect from 01.11.2022.

16. Consequent to the Ordinance, the GoK issued the Government Order dated 28.12.2022, prescribing the roster points for direct recruitment to the civil services in the State. In terms of the clarification annexed to the said Government Order, 56% of the posts are reserved for the reserved categories, leaving 44% of the posts for the general category.

17. The Ordinance was replaced by the Act, which received the assent of the Governor on 11.01.2023 and was published in the Karnataka Gazette (Extraordinary) on 12.01.2023. In terms of Section 1(2) of the Act, the Act is deemed to have come into force with effect from 01.11.2022. Section 8 of the Act repeals the Ordinance, while saving anything done or any action taken thereunder. The Statement of Objects and Reasons of the Act records, *inter alia*, that the Government is satisfied about the existence of extraordinary circumstances and a special case for an increase in the reservation for SCs and STs.

18. Section 3 of the Act provides that the reservation in respect of each branch or faculty for admission into educational institutions in the State for persons belonging to SCs and STs shall be 17% and 7%, respectively. By virtue of Section 4 of the Act, the reservation for appointments or posts in the services under the State for persons belonging to SCs has been increased from 15% to 17%, and for persons belonging to STs from 3% to 7%. Section 5 of the Act expressly stipulates that, notwithstanding anything contained in Sections 3 and 4 of the Act, persons belonging to SCs and STs shall also be considered for the unreserved seats, appointments or posts to be filled on the basis of merit; and where

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persons belonging to SCs or STs are selected on the basis of merit, the number of seats, appointments or posts reserved for them shall not in any way be affected.

19. By virtue of the aforesaid provisions of the Act, the reservation in favour of SCs and STs, both in admissions to educational institutions and in appointments or posts in the services under the State, stands increased to 17% and 7%, respectively. Since the reservation of 32% in favour of the other backward classes remains unaltered, the overall reservation for SCs, STs and the other backward classes stands increased from 50% to 56%. A tabular statement setting out the extent of reservation, as set out in W.P. No. 200448/2025, is reproduced below:

Sl. No.	Category	Percentage of Reservation	Increase of percentage by the Government of Karnataka through Karnataka Act No.1/2023 for SC/ST
1	Category-I	4%	4%
2	Category - II (A)	15%	15%
3	Category - II (B)	4%	4%
4	Category - III (A)	4%	4%
5	Category - III (B)	5%	5%
6	Scheduled Castes	15%	15 + 2 = 17%
7	Scheduled Tribes	3%	3 + 4 = 7%
	Total	50%	56%

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20. On 26.02.2024, the KPSC issued a notification inviting applications for recruitment to the posts of Gazetted Probationers (Group-A and Group-B) in various departments of the State, under the Karnataka Gazetted Probationers (Recruitment through Competitive Examination) Rules, 1997. The classification of vacancies in the said notification provided for reservation to the extent of 56% of the posts, in terms of the Government Order dated 28.12.2022.

21. Thereafter, on 13.03.2024, the KPSC issued the impugned notification inviting online applications from eligible candidates for Group-B posts in various departments, including 92 posts of Assistant Engineer (Civil) (Division-1) in the BBMP in the residual parent cadre. The classification of the said 92 posts, as set out in the impugned notification, is reproduced below:

"Residual Parent Cadre - 92 posts

Reservation	Women	Rural	Ex-Servicemen	Physically Challenged	Physically Challenged	Kannada Medium	Transgender	Total
SC	2	6	4	1	1*	1	-	15
ST	2	2	2	-	1*	-	-	7
Cat-1	1	1	1	-	1*	-	-	4
2A	2	5	4	1	1*	-	-	14
2B	1	1	1	-	1	-	-	4
3A	1	1	1	-	-	-	-	3
3B	1	1	1	-	1*	-	-	4
GM	9	13	10	4	1* 1*	2	1	41
Total	19	30	24	6	8	4	1	92

As per Notification No.:WCD 118 PHP 2020 dated: 13-01-2022:-

* For Low Vision candidates, ** For OA, OL, Lc, Dw, AAV candidates"

22. The said tabular statement indicates that, of the 92 posts, 51 posts (approximately 55.4%) are reserved for candidates belonging to the backward classes, including SCs and STs, and only 41 posts are available for candidates to be selected on general merit [GM].

23. In the meanwhile, one Madhu B.N., who had applied for the post of Gazetted Probationer pursuant to the notification dated 26.02.2024 as a candidate belonging to Category-III(A), filed Application No. 2144/2024 before the KSAT under Section 19 of the Administrative Tribunals Act, 1985, impugning the said notification and the Government Order dated 28.12.2022. By its judgment dated 28.05.2025, the KSAT allowed the said application. The KSAT held that the Government Order dated 28.12.2022, which had been issued consequent to the Ordinance, was only an executive order which did not draw its strength from any legislation; that no rules had been framed under the Act for giving effect to the increased reservation; and that the reservation to the extent of 56% was contrary to the law laid down by the Supreme Court in **Indra Sawhney v. Union of India**⁴ and **Dr. Jaishri Laxmanrao Patil v. Chief Minister** (*supra*). Accordingly, the KSAT set aside the notification dated 26.02.2024, insofar as it classified the vacancies

⁴ 1992 Supp (3) SCC 217

by reserving 56% of the posts, as well as the Government Order dated 28.12.2022, and granted liberty to the respondents therein to issue a fresh notification in accordance with law.

24. The State has assailed the said judgment in W.P.No. 17968/2025, which, as noted above, has been directed to be listed separately. By an order dated 31.07.2025, the KPSC was permitted to continue with the selection process, subject to the condition that it shall not publish the final select list or issue orders of appointment without the leave of this Court.

25. It is the case of the petitioners in W.P.No. 25515/2025 that, notwithstanding that the Government Order dated 28.12.2022 has been set aside by the KSAT, the KPSC has continued with the selection process pursuant to the impugned notification. It is in the aforesaid circumstances that the said petitioners have approached this Court.

26. By an interim order dated 19.11.2025, this Court restrained the respondents from implementing the increase in reservation in terms of the Act. On an application (I.A. No. 8/2025) filed by the State seeking vacation of the said order, this Court, by an order dated 27.11.2025, modified the same and directed that no further

notifications for recruitment or appointment on the basis of the increased reservation would be issued till the disposal of the present petitions. The recruitment processes that had already commenced were permitted to proceed, subject to the condition that any appointment made would be subject to the final outcome of the present petitions. This Court also directed that all appointment and promotion letters would expressly so indicate, and that the candidates would not claim any equities in the event the increased reservation is struck down.

SUBMISSIONS

Submissions on behalf of the petitioners

27. The petitioner in W.P.No. 200448/2025 has submitted his written submissions. Mr. P.S. Rajagopal, learned Senior Counsel, advanced submissions on behalf of the petitioners in W.P.No. 25515/2025 (S-RES).

28. The learned counsel appearing for the petitioners in W.P.No. 3145/2023 and W.P.No. 22361/2026, which were tagged with the present petitions and have since been directed to be listed separately, also advanced submissions in support of the challenge to the constitutional validity of the Act and they largely adopted the

submissions advanced by Mr. P.S. Rajagopal, learned Senior Counsel for the petitioners in W.P.No.25515/2025. Prof. Ravivarma Kumar, learned Senior Counsel, advanced submissions on behalf of the State.

29. At the outset, Mr.P.S. Rajagopal, the learned Senior Counsel submitted that the reservation in the princely State of Mysore was introduced in the year 1921; it came into effect in Bombay Presidency in 1902 and in Madras Presidency around the year 1921. He contended that the assumption that even after 100 years of reservation, the representation of the backward classes remained inadequate would require in-depth research. He contended that the reports of Sri. H.N. Nagamohan Das Commission (Justice Retired), and Sri. Subhash B. Adi (Justice Retired) fall short of judicially settled parameters of testing adequacy of representation. He submitted that the reports had failed to apply the proper tests.

30. He submitted that there are more than 210 castes and tribes in the State of Karnataka. In addition there are about 101 Scheduled Castes and 51 Scheduled Tribes. The question regarding the adequacy of their representation cannot be determined without examining the population of each of the other

castes and their participation in educational institutions and services in the State. He submitted that no such exercise has been conducted either by Sri. H.N. Nagamohan Das Commission or Sri. Subhash B. Adi Committee.

31. Next he referred to the preamble of the Act. He submitted that the enactment of the impugned Act was preceded by promulgating Ordinance 7 of 2022 titled 'The Karnataka Scheduled Castes and Scheduled Tribes (Reservation of Seats in Educational Institutions and of Appointments or Posts in the Services under the State) Ordinance, 2022', which was brought into force with effect from 01.11.2022. The said Ordinance was replaced by the impugned Act which received the assent of the Governor on 11.01.2023. He submitted that the preamble refers to the report of the H.N.Nagamohan Das Commission, which was submitted to the State Government on 02.07.2020 and indicates that the impugned Act was enacted on the basis of the said report. Thereafter, he referred to the said findings and contended that they relate to disparities inter-se within the Scheduled Castes and Scheduled Tribes. While the same could be a ground for internal reservation, the same could not be considered as justification for exceeding the overall reservation beyond 50%. He also assailed the finding to

the effect that Scheduled Castes and Scheduled Tribes were inadequately represented on the ground that the said finding was premised on their comparison with their population without any study or finding regarding the representation of other castes in the State of Karnataka.

32. He contended that although it was stated that a special case was made out for increasing the reservation of SCs upto 17% and for STs to 7%, the recommendations were misdirected as the report did not refer to a case for breaching the rule of 50% reservation. He also submitted that the report of the High Level Committee chaired by Justice Subhash B. Adi (Retd.), which is placed on record, is dated 17.06.2023, which is much after the ordinance had been promulgated. He contended that said report could not form a basis for enacting the Act, which received the assent of the Governor on 11.01.2023. He also contended that while the preamble referred to clause 1 of Article 38 of the Constitution, it ignored Article 41 of the Constitution, which speaks of the right to work and to education for all segments of the population; and Article 42, which provides for just and humane conditions of work.

33. He referred to the report dated 22.01.2024 published by the Directorate of Economics and Statistics, Govt. of Karnataka on the representation of SC/ST in the State Civil Services. He pointed out that the representation of the Scheduled Castes in the State Civil Services is 18.65% and that of Scheduled Tribes is 5.05%. He contended that the said representation exceeds the prescribed reservation of 15% and 3% for SCs and STs respectively. He submitted that the said data belies the claim of inadequate representation. He also referred to the report on internal reservation of SC dated 01.08.2025 and submitted that the report indicates literacy rate of persons belonging to 26 castes were higher than 90% and in respect of 55 castes was between 80 to 90%. In respect of 17 castes, it was between 70% to 80%. The literacy rates of the remaining 3 castes were less than 60%.

34. He submitted that the policy of reservation as embodied in the Act was without consulting the Commission for Scheduled Castes and the Commission for Scheduled Tribes, as required under clause (9) of Article 338 and clause (9) of Article 338A of the Constitution.

35. He referred to the decision of the Andhra Pradesh High Court in **B. Narayana v. the Government of A.P.**⁵ and contended that, in major policy matters relating to the Scheduled Castes, consultation with the National Commission as per Article 338 (9) of the Constitution is mandatory. He also referred to the decisions of the Supreme Court in **Pattali Makkal Katchi v. A. Mayilerumperumal**⁶ and submitted that non-consultation with National Commission renders the legislation void.

36. He contended that it has been authoritatively held by the Supreme Court in a number of decisions that reservation under Article 15(4) and 16(4) of the Constitution could not exceed 50%. He referred to the decision of the Supreme Court in the case of **M.R. Balaji v. State of Mysore**⁷ and **Indra Sawhney** (*supra*) amongst other decisions and contended that the reservation could not exceed 50% and must be confined to a minority of seats. He also referred to the decision of the Supreme Court in **Union of India v. Rakesh Kumar**⁸ ; **Chebrolu Leela Prasad Rao v. State of A.P.**⁹; **Jarnail Singh v. Lachhmi Narain Gupta**¹⁰ [Jarnail

⁵ 1997 SCC OnLine AP 697

⁶ (2023) 7 SCC 481

⁷ AIR 1963 SC 649 : 1963 Supp. (1) SCR 439

⁸ (2010) 4 SCC 50

⁹ (2021) 11 SCC 401

¹⁰ (2018) 10 SCC 396

Singh I]; **Jarnail Singh v. Lachhmi Narain Gupta**¹¹ [Jarnail Singh II] ;**R.K. Sabharwal v. State of Punjab**¹² ; **M. Nagaraj v. Union of India**¹³ ; **Dr. Jaishri Laxmanrao Patil** (*supra*) and **Janhit Abhiyan v. Union of India**¹⁴ and **Post Graduate Institute of Medical Education and Research, Chandigarh v. Faculty Association and others**¹⁵. He also referred to the decision of the Chhattisgarh High Court and the Patna High Court in **Guru Ghasidas Sahitya Avam Sanskriti Academy v. State of Chhattisgarh**¹⁶ and **Gaurav Kumar v. State of Bihar**¹⁷ respectively and contended that reservations made in those states exceeding 50% had been set aside.

37. He contended that there were no extraordinary circumstances for breaching the 50% rule. He also referred to the report of the Committee headed by Smt. K. Ratna Prabha and contended that the same was rejected by the Supreme Court in **Jarnail Singh II** (*supra*) and submitted that the said Committee had not studied the representation of other castes and therefore did not apply the standards referred to in **Dr. Jaishri Laxmanrao Patil**

¹¹ (2022) 10 SCC 595

¹² (1995) 2 SCC 745

¹³ (2006) 8 SCC 212

¹⁴ (2023) 5 SCC 1

¹⁵ (1998) 4 SCC 1

¹⁶ 2022 SCC Online Chh 1639

¹⁷ 2024 SCC Online Pat 2308

(*supra*). Lastly, he submitted that there is no report regarding any data in respect of public undertakings, Boards or Corporations, yet the impugned Act is applicable to public undertakings and corporations.

38. Mr. Mahendra Kumar Mitra who is appearing in person in W.P.No.200448/2025 supported the contentions advanced by Mr. P.S. Rajagopal, the learned Senior Counsel. He also referred to the debates of the Constituent Assembly in regard to Article 10 of the Draft Constitution, which correspond to Article 16 of the Constitution.

Submissions on behalf of the State

39. Prof. Ravivarma Kumar, the learned Senior Counsel appearing for the State countered the said submissions and advanced submissions on several fronts. First, he submitted that the rule that reservation would not exceed 50% stood obliterated and was no longer operational by virtue of the Constitution (One Hundred and Third Amendment) Act, 2019, which was upheld by the Supreme Court in **Janhit Abhiyan** (*supra*).

40. He submitted that the additional State Level Reservation for economically weaker section (**EWS**) was introduced under Article 15(6) and 16(6) of the Constitution and the backward classes governed under Article 15(4) and 16(4) were excluded from reservation (EWS) under Article 15(6) and 16(6) of the Constitution. He submitted that therefore the quota for which they were eligible to participate had reduced from 100% to 90%. Thus, the decisions of the Supreme Court enunciating the 50% rule are no longer operative.

41. Second, he contended that Article 338(9) and Article 338A(9), did not apply to the matter in question. He submitted that the said provisions had no application for the statute enacted by the State Legislature and were applicable only for executive orders of the State Government. He submitted that enacting laws and the competence to enact the Act was traceable to Articles 245 and 246 r/w Entry No.41, List II of Schedule 7 to the Constitution and the said power was not fettered by Article 338 or 338A of the Constitution. Therefore, the enactment could not be invalidated for want of consultation with the National Commissions for the Scheduled Castes and Scheduled Tribes.

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42. He submitted that in any event the Act is a beneficial legislation for the benefit of persons belonging to SCs/STs and the consultation is relevant only in matters of major policy that adversely affect the SCs and STs. He relied on the decision of the Madhya Pradesh High Court in **Devansh Kaushik v. State of Madhya Pradesh**¹⁸ in support of his contention.

43. He submitted that in any event, the State had communicated with the Commission after the enactment of the Act, and, therefore, the said requirement was effectively satisfied.

44. He also submitted that the impugned Act enjoyed the presumption of constitutionality and therefore the burden lay on the petitioners to displace the said presumption.

45. He referred to the decision of the Supreme Court in **Charanjit Lal Chowdhuri v. Union of India**¹⁹; **Rama Krishna Dalmia v. S. R. Tendolkar**²⁰; **Government of A. P. v. P. Laxmi Devi**²¹; **Hamdard Dawakhana and others v. Union of India**²²; **Federation of Obstetrics and Gynecological Society of India v.**

¹⁸ 2024 SCC OnLine MP 2272

¹⁹ AIR 1951 SC 41

²⁰ AIR 1958 SC 538

²¹ (2008) 4 SCC 720

²² AIR 1960 SC 554

Union of India²³ and Union of India v. Exide Industries Limited²⁴ in support of his contention. He also contended that the petitioners in the present case had not discharged the said burden.

46. He submitted that the scope of judicial review of a legislative enactment was limited. He contended that the requirement for reservation is a matter of Government policy and it is not subject to judicial review.

47. He contended that without prejudice to his arguments that the rule of 50% stood obliterated by the 103rd Amendment to the Constitution, the said rule was never an inflexible rule. He submitted that the genesis of the rule was the decision of the Supreme Court in **M.R. Balaji** (*supra*) and the observations made in the said judgment were in the context of the facts in that case. He contended that the judgments referred to Dr. Ambedkar's statement, in respect of Article 10 of the Draft Constitution to the effect that the reservation would be only for minority of seats but ignored the observations in regard to minorities under draft Article 296, which corresponds to Article 335 of the Constitution. He submitted that separate reservation for minorities was given up,

²³ (2019) 6 SCC 283

²⁴ (2020) 5 SCC 274

which was accommodated under Article 16(4). He submitted that if the share of minorities is excluded from the reservation it would not exceed 50% even after the enactment of the impugned Act.

48. He also referred to the opinion of O. Chinnappa Reddy, J. in **K.C. Vasanth Kumar v. State of Karnataka**²⁵ in aid of his contention that rule of 50% was not inflexible but merely a rule of prudence.

49. Lastly, he referred to the Nagamohan Das Commission Report, the Adi Committee Report and the report of the Ratnaprabha Committee in support of his contention that the factual findings in those reports had set out a special case for reservation exceeding 50%.

REASONS

50. In the aforesaid backdrop, the principal question that arises for consideration is whether the increase in the reservation in favour of SCs and STs by the Act, which takes the aggregate reservation in the State beyond 50%, is constitutionally permissible. The answer to the said question turns, in the first instance, on the nature and content of the rule that reservation shall not exceed

²⁵ 1985 Supp SCC 714

50%, and on whether the circumstances relied upon by the State constitute an extraordinary situation warranting a departure from that rule.

The 50% Ceiling Rule

51. We may note that the question of the ceiling of 50% on reservation arises in the context of clauses (1) and (4) of Article 15 and clauses (1) and (4) of Article 16 of the Constitution. It is well settled that clause (4) of Article 15 and clause (4) of Article 16 are facets of the guarantee of equality under clause (1) of the respective Articles. This gives rise to the question as to the extent to which the State may make special provisions or reservations under clause (4) of the said Articles, when the said clauses are read as integral parts of the scheme of the equality and equal opportunity clauses.

52. We may, at this stage, set out the relevant clauses of Articles 15 and 16 of the Constitution of India:

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

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

- (a) access to shops, public restaurants, hotels and places of public entertainment; or
- (b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.

(3) Nothing in this article shall prevent the State from making any special provision for women and children.

²⁶[(4) Nothing in this article or in clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.]

²⁷[(5) Nothing in this article or in sub-clause (g) of clause (1) of Article 19 shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes insofar as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of Article 30.]

²⁸[(6) Nothing in this article or sub-clause (g) of clause (1) of Article 19 or clause (2) of Article 29 shall prevent the State from making,—

(a) any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in clauses (4) and (5); and

(b) any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in clauses (4) and (5) insofar as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1)

²⁶ *Ins.* by the Constitution (First Amendment) Act, 1951, S. 2 (w.e.f. 18-6-1951).

²⁷ *Ins.* by the Constitution (Ninety-third Amendment) Act, 2005, S. 2 (w.e.f. 20-1-2006).

²⁸ *Ins.* by the Constitution (One Hundred and Third Amendment) Act, 2019, S. 2 (w.e.f. 14-1-2019).

of Article 30, which in the case of reservation would be in addition to the existing reservations and subject to a maximum of ten per cent of the total seats in each category.

Explanation.—For the purposes of this article and Article 16, “economically weaker sections” shall be such as may be notified by the State from time to time on the basis of family income and other indicators of economic disadvantage.]

16. Equality of opportunity in matters of public employment.—(1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.

(3) Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office ²⁹[under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory] prior to such employment or appointment.

(4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.

³⁰[(4-A) Nothing in this article shall prevent the State from making any provision for reservation ³¹[in matters of promotion, with consequential seniority, to any class] or

²⁹ *Subs.* by the Constitution (Seventh Amendment) Act, 1956, S. 29 and Sch. (w.e.f. 1-11-1956). Prior to substitution it read as:

“under any State specified in the First Schedule or any local or other authority within its territory, any requirement as to residence within that State”.

³⁰ *Ins.* by the Constitution (Seventy-seventh Amendment) Act, 1995, S. 2 (w.e.f. 17-6-1995).

³¹ *Subs.* by the Constitution (Eighty-fifth Amendment) Act, 2001, S. 2 (w.r.e.f. 17-6-1995). Prior to substitution it read as:

“in matters of promotion to any class”

classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State.]

³²[(4-B) Nothing in this article shall prevent the State from considering any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for reservation made under clause (4) or clause (4-A) as a separate class of vacancies to be filled up in any succeeding year or years and such class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty per cent reservation on total number of vacancies of that year.]

(5) Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination.

³³[(6) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any economically weaker sections of citizens other than the classes mentioned in clause (4), in addition to the existing reservation and subject to a maximum of ten per cent of the posts in each category.]

The Constituent Assembly Debates

53. The Constituent Assembly Debates in regard to Article 10 of the Draft Constitution, which corresponds to Article 16 of the Constitution, are instructive. Clause (3) of Article 10 of the Draft Constitution, which ultimately became Article 16(4) of the

³² *Ins.* by the Constitution (Eighty-first Amendment) Act, 2000, S. 2 (w.e.f. 9-6-2000).

³³ *Ins.* by the Constitution (One Hundred and Third Amendment) Act, 2019, S. 3 (w.e.f. 14-1-2019).

Constitution, did not, in the form in which it was originally adopted by the Constituent Assembly, contain the word “backward”. The said word was subsequently introduced by the Drafting Committee.

As originally adopted, the clause read as under:

“(3) Nothing in this Article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any class of citizens who, in the opinion of the State, are not adequately represented in the services under the State.”

54. Thus, as originally adopted, the clause enabled the State to make provision for reservation in favour of any class of citizens not adequately represented in the services under the State. The Drafting Committee restricted the clause to a “backward class of citizens”. The said power was thus confined to making provision for reservation only in favour of a backward class of citizens which is not adequately represented in the services under the State.

55. During the course of the debate in the Constituent Assembly on 30.11.1948, Shri T.T. Krishnamachari voiced his concern that the word ‘backward’ was liable to different interpretations. He stated that the said word would be interpreted on the basis of caste, community, religion, literacy or economic status, and that the interpretation would lead to a lot of litigation. Some other members also expressed their apprehensions.

56. Dr. B.R. Ambedkar responded to the apprehensions expressed and explained the principles on the basis of which clause (3) of Article 10 of the Draft Constitution was framed. It is relevant to set out the following extract from his speech³⁴:

“Now, Sir, to come to the other question which has been agitating the members of this House, viz., the use of the word "backward" in clause (3) of Article 10, I should like to begin by making some general observations so that members might be in a position to understand the exact import, the significance and the necessity for using the word "backward" in this particular clause. If members were to try and exchange their views on this subject, they will find that there are three points of view which it is necessary for us to reconcile if we are to produce a workable proposition which will be accepted by all. Of the three points of view, the first is that there shall be equality of opportunity for all citizens. It is the desire of many Members of this House that every individual who is qualified for a particular post should be free to apply for that post, to sit for examinations and to have his qualifications tested so as to determine whether he is fit for the post or not and that there ought to be no limitations, there ought to be no hindrance in the operation of this principle of equality of opportunity. Another view mostly shared by a section of the House is that, if this principle is to be operative and it ought to be operative in their judgment to its fullest extent there ought to be no reservations of any sort for any class or community at all, that all citizens, if they are qualified, should be placed on the same footing of equality so far as the public services are concerned. That is the second point of view we have. Then we have quite a massive opinion which insists that, although theoretically it is good to have the principle that there shall be equality of opportunity, there must at the same time be a provision made for the entry of certain communities which have so far been outside

³⁴ Constituent Assembly Debates, Volume VII, 30.11.1948, pp. 700–703 (speech of Dr. B. R. Ambedkar).

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the administration. As I said, the Drafting Committee had to produce a formula which would reconcile these three points of view, **firstly, that there shall be equality of opportunity, secondly that there shall be reservations in favour of certain communities which have not so far had a 'proper look-in' so to say into the administration.** If honourable Members will bear these facts in mind the three principles, we had to reconcile, they will see that no better formula could be produced than the one that is embodied in sub-clause (3) of Article 10 of the Constitution; they will find that the view of those who believe and hold that there shall be equality of opportunity, has been embodied in sub-clause (1) of Article 10. It is a generic principle. At the same time, as I said, we had to reconcile this formula with the demand made by certain communities that the administration which has now for historical reasons-been controlled by one community or a few communities, that situation should disappear and that the others also must have an opportunity of getting into the public services. Supposing, for instance, we were to concede in full the demand of those communities who have not been so far employed in the public services to the fullest extent, what would really happen is, we shall be completely destroying the first proposition upon which we are all agreed, namely, that there shall be an equality of opportunity. Let me give an illustration. Supposing, for instance, reservations were made for a community or a collection of communities, the total of which came to something like 70 per cent of the total posts under the State and only 30 per cent are retained as the unreserved. Could anybody say that the reservation of 30 percent as open to general competition would be satisfactory from the point of view of giving effect to the first principle, namely, that there shall be equality of opportunity? **It cannot be in my judgment. Therefore the seats to be reserved, if the reservation is to be consistent with sub-clause (1) of Article 10, must be confined to a minority of seats. It is then only that the first principle could find its place in the Constitution and effective in operation. If honourable Members understand this position that we have to safeguard two things namely, the principle of equality of opportunity and at the**

same time satisfy the demand of communities which have not had so far representation in the State, then, I am sure they will agree that unless you use some such qualifying phrase as "backward" the exception made in favour of reservation will ultimately eat up the rule altogether. Nothing of the rule will remain. That I think, if I may say so, is the justification why the Drafting Committee undertook on its own shoulders the responsibility of introducing the word 'backward' which, I admit, did not originally find a place in the fundamental right in the way in which it was passed by this Assembly. But I think honourable Members will realise that the Drafting Committee which has been ridiculed on more than one ground for producing sometimes a loose draft, sometimes something which is not appropriate and so on, might have opened itself to further attack that they produced a Draft Constitution in which the exception was so large, that it left no room for the rule to operate. I think this is sufficient to justify why the word 'backward' has been used."

[emphasis added]

57. It is clear from the aforesaid speech that what the framers of the Constitution had in mind was a balance between the competing concepts of equality of opportunity for all citizens in the matter of employment under the State and reservation in favour of certain communities that had not had a 'proper look-in' into the administration. The framers of the Constitution did not intend to introduce special provisions for proportionate representation; their principal concern was to ensure that communities which had so far been left out of the administration could participate in it. It is in this context that Dr. B.R. Ambedkar emphasised that the reservation must be confined to a 'minority of seats'. The framers of the

Constitution were clear that the power to make provision for reservation should never be construed as permitting the reservation of a majority of seats, so as to overshadow the equal opportunity clause of uniform applicability and eventually debilitate or destroy it.

The early decisions

58. **B. Venkataramana v. State of Madras**³⁵ was one of the earliest cases in which clause (4) of Article 16 of the Constitution fell for the consideration of the Supreme Court. The said case arose in the context of a challenge to what was commonly known as the Communal G.O., which provided for reservation of appointments for various communities: Harijans, Backward Hindus, Muslims, Christians, Non-Brahmin Hindus and Brahmins. In the aforesaid context, the Supreme Court held as under:

“7. Clause (4) expressly permits the State to make provision for the reservation of appointments or posts in favour of any backward class of citizens which in the opinion of the State, is not adequately represented in the services of the State. Reservation of posts in favour of any backward class of citizens cannot, therefore, be regarded as unconstitutional. The Communal G.O. itself makes an express reservation of seats for Harijans and Backward Hindus. The other categories, namely, Muslims, Christians, Non-Brahmin Hindus and Brahmins must be taken to have been treated as other than Harijans and Backward Hindus. Our attention was drawn to a

³⁵ 1951 SCC 359

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Schedule of Backward Classes set out in Schedule III to Part I of the Madras Provincial and Subordinate Service Rules. It was, therefore, argued that Backward Hindus would mean Hindus of any of the communities mentioned in that Schedule. It is, in the circumstances, impossible to say that classes of people other than Harijans and Backward Hindus can be called Backward Classes. As regards the posts reserved for Harijans and Backward Hindus it may be said that the petitioner who does not belong to those two classes is regarded as ineligible for those reserved posts not on the ground of religion, race, caste, etc. but because of the necessity for making a provision for reservation of such posts in favour of a backward class of citizens, but the ineligibility of the petitioner for any of the posts reserved for communities other than Harijans and Backward Hindus cannot but be regarded as founded on the ground only of his being a Brahmin. For instance, the petitioner may be far better qualified than a Muslim or a Christian or a Non-Brahmin candidate and if all the posts reserved for those communities were open to him, he would be eligible for appointment, as is conceded by the learned Advocate-General of Madras, but nevertheless, he cannot expect to get any of those posts reserved for those different categories only because he happens to be a Brahmin. His ineligibility for any of the posts reserved for the other communities, although he may have far better qualifications than those possessed by members falling within those categories, is brought about only because he is a Brahmin and does not belong to any of those categories. This ineligibility created by the Communal G.O. does not appear to us to be sanctioned by clause (4) of Article 16 and it is an infringement of the fundamental right guaranteed to the petitioner as an individual citizen under Articles 16(1) and (2). The Communal G.O., in our opinion, is repugnant to the provisions of Article 16 and is as such void and illegal. This, in our opinion, is sufficient to dispose of this application and we do not consider it necessary to consider the effect of Article 14 or 15 of the Constitution on the case of the respondents."

59. The said decision established the principle that the State could not make reservations in employment except as sanctioned by Article 16(4) of the Constitution. As noted by the Supreme Court, the State is empowered to make reservation of appointments or posts in the services under the State in favour of any 'backward class of citizens' which, in the opinion of the State, was 'not adequately represented' in the services under the State.

60. The question of reservation of seats in educational institutions was considered by the Supreme Court in **State of Madras v. Champakam Dorairajan**³⁶. Article 15 of the Constitution, as originally enacted, did not include clause (4). The Supreme Court held that the classification in the Communal G.O., which reserved seats in the medical and engineering colleges on the basis of religion, race and caste, was violative of the fundamental right guaranteed to a citizen under Article 29(2) of the Constitution. The Court held that the 'Chapter of Fundamental Rights' is sacrosanct and not liable to be abridged by any legislative or executive act or order, except to the extent provided in the appropriate article in Part III, and that the Directive Principles of State Policy could not override the same. The Government

³⁶ 1951 SCC 351

Order was accordingly struck down. It was in the wake of the said decision that clause (4) was introduced in Article 15 by the Constitution (First Amendment) Act, 1951.

61. In **General Manager, Southern Railway v. Rangachari**³⁷, the Constitution Bench of the Supreme Court considered an appeal by the Railway Administration against the decision of the Madras High Court, which had restrained the Railway Board from providing for reservation in selection posts in Class III of the Railway Services in favour of members of SCs and STs. P.B. Gajendragadkar, J., speaking for the majority, observed as under:

“27. ... It is also true that the reservation which can be made under Article 16(4) is intended merely to give adequate representation to backward communities. It cannot be used for creating monopolies or for unduly or illegitimately disturbing the legitimate interests of other employees. In exercising the powers under Article 16(4) the problem of adequate representation of the backward class of citizens must be fairly and objectively considered and an attempt must always be made to **strike a reasonable balance between the claims of backward classes and the claims of other employees as well as the important consideration of the efficiency of administration.**”

[emphasis added]

62. The Court also observed that Articles 14, 15 and 16 form part of the same constitutional code of guarantees and supplement

³⁷ (1962) 2 SCR 586

each other. However, P.B. Gajendragadkar, J. also held that clause (4) of Article 16 is in the nature of an exception and must be construed as a proviso to Article 16(1) of the Constitution. That view no longer holds good. But the principle that an attempt must always be made to strike a reasonable balance between the claims of the backward classes and the claims of other employees is recognised as a substratal value governing the interplay between clauses (1) and (4) of Article 16 of the Constitution.

M.R. Balaji and the genesis of the rule

63. The question as to the permissible extent of reservation fell for the consideration of the Supreme Court, for the first time, in **M.R. Balaji** (*supra*). In that case, the validity of the Government Order dated 31.07.1962 issued by the erstwhile State of Mysore was questioned. Under the said Government Order, 50% of the seats in the specified educational institutions were reserved for the backward classes, which were categorised into (i) Backward Classes, and (ii) More Backward Classes: 28% of the seats were reserved for the Backward Classes and 22% for the More Backward Classes. In addition, 15% of the seats were reserved for Scheduled Castes and 3% for Scheduled Tribes. Thus, an aggregate of 68% of the seats available for admission to the

engineering and medical colleges and other technical institutions was reserved, and only 32% of the seats were available for the general merit candidates. The petitioners, who had applied for admission to the medical and engineering colleges, contended that the classification under the Government Order was irrational and a fraud on the power under Article 15(4) of the Constitution. In the aforesaid context, the Court addressed the question as to the extent to which the State would be competent to make special provisions under Article 15(4) of the Constitution.

64. We consider it apposite to refer to the following extract from the said decision, which reflects the considerations that weighed with the Court on the said question:

“33. We have already noticed that the Central Government in its communication to the State has suggested that reservation for backward classes, Scheduled Castes and Scheduled Tribes may be up to 25% with marginal adjustments not exceeding 10% in exceptional cases.

34. The learned Advocate-General has suggested that reservation of a large number of seats for the weaker sections of the society would not affect either the depth or efficiency of scholarship at all, and in support of this argument, he has relied on the observations made by the Backward Classes Commission that it found no complaint in the States of Madras, Andhra, Travancore-Cochin and Mysore where the system of recruiting candidates from other Backward Classes to the reserve quota has been in vogue for several decades. The Committee further observed that the representatives of the upper classes did not complain about any lack of efficiency

in the offices recruited by reservation (p.135). This opinion, however, is plainly inconsistent with what is bound to be the inevitable consequence of reservation in higher university education. If admission to professional and technical colleges is unduly liberalised, it would be idle to contend that the quality of our graduates will not suffer. That is not to say that reservation should not be adopted; reservation should and must be adopted to advance the prospects of the weaker sections of society, but in providing for special measures in that behalf care should be taken not to exclude admission to higher educational centres to deserving and qualified candidates of other communities. A special provision contemplated by Article 15(4) like reservation of posts and appointments contemplated by Article 16(4) must be within reasonable limits. The interests of weaker sections of society which are a first charge on the States and the Centre have to be adjusted with the interests of the community as a whole. The adjustment of these competing claims is undoubtedly a difficult matter, but if under the guise of making a special provision, a State reserves practically all the seats available in all the colleges, that clearly would be subverting the object of Article 15(4). In this matter again, we are reluctant to say definitely what would be a proper provision to make. Speaking generally and in a broad way, a special provision should be less than 50%; how much less than 50% would depend upon the present prevailing circumstances in each case. In this particular case it is remarkable that when the State issued its order on 10-7-1961, it emphatically expressed its opinion that the reservation of 68% recommended by the Nagan Gowda Committee would not be in the larger interests of the State. What happened between 10-7-1961, and 31-7-1962, does not appear on the record. But the State changed its mind and adopted the recommendation of the Committee ignoring its earlier decision that the said recommendation was contrary to the larger interests of the State. In our opinion, when the State makes a special provision for the advancement of the weaker sections of society specified in Article 15(4), it has to approach its task objectively and in a rational manner. Undoubtedly, it has to take reasonable and even generous steps to help the advancement of weaker

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elements; the extent of the problem must be weighed, the requirements of the community at large must be borne in mind ***and a formula must be evolved which would strike a reasonable balance between the several relevant considerations.*** Therefore, we are satisfied that the reservation of 68% directed by the impugned order is plainly inconsistent with Article 15(4).

35. The petitioners contend that having regard to the infirmities in the impugned order, action of the State in issuing the said order amounts to a fraud on the Constitutional power conferred on the State by Article 15(4). This argument is well-founded, and must be upheld. When it is said about an executive action that it is a fraud on the Constitution, it does not necessarily mean that the action is actuated by mala fides. An executive action which is patently and plainly outside the limits of the constitutional authority conferred on the State in that behalf is struck down as being ultra vires the State's authority. If, on the other hand, the executive action does not patently or overtly transgress the authority conferred on it by the Constitution, but the transgression is covert or latent, the said action is struck down as being a fraud on the relevant constitutional power. It is in this connection that courts often consider the substance of the matter and not its form and in ascertaining the substance of the matter, the appearance or the cloak, or the veil of the executive action is carefully scrutinized and if it appears that notwithstanding the appearance, the cloak or the veil of the executive action, in substance and in truth the constitutional power has been transgressed, the impugned action is struck down as a fraud on the Constitution. We have already noticed that the impugned order in the present case has categorised the Backward Classes on the sole basis of caste which, in our opinion, is not permitted by Article 15(4); and we have also held that the reservation of 68% made by the impugned order is plainly inconsistent with the concept of the special provision authorised by Article 15(4). Therefore, it follows that the impugned order is a fraud on the Constitutional power conferred on the State by Article 15(4)."

[emphasis added]

65. The Court also held that the categorisation of the backward classes on the sole basis of caste was impermissible under Article 15(4), and that the reservation of 68% of the seats was plainly inconsistent with the concept of the special provision authorised by Article 15(4) of the Constitution. The Court accordingly held that the Government Order was a fraud on the constitutional power conferred on the State. More importantly, the Supreme Court emphasised the requirement of striking a reasonable balance between the several relevant considerations and, after noticing the decision in **Rangachari** (*supra*), observed that what is true in regard to Article 15(4) is equally true in regard to Article 16(4).

66. The rule that reservation must not exceed 50% was thus posited as a broad rule. The extent of reservation within the said ceiling would depend on the prevailing circumstances. The broad rule of the 50% ceiling was articulated as a rational measure, which would strike a balance between the need to make special provisions for the advancement of the weaker sections of society, on the one hand, and the need to ensure that the other communities are not unduly constrained, on the other.

Divergent views: T. Devadasan to K.C. Vasanth Kumar

67. In **T. Devadasan v. Union of India**³⁸, the Constitution Bench of the Supreme Court considered the constitutional validity of the 'carry forward rule'. By a resolution dated 13.09.1950, the Government of India had reserved 12½% of the vacancies filled by direct recruitment through open competition conducted by the Union Public Service Commission, and 16⅔% of the vacancies filled by direct recruitment otherwise than through open competition for Scheduled Castes. In addition, 5% of the vacancies to be filled by direct recruitment were reserved for Scheduled Tribes.

68. It appears that a sufficient number of qualified candidates belonging to Scheduled Castes and Scheduled Tribes was not available, and the Government of India issued supplementary instructions on 28.01.1952, providing that the reserved vacancies which remained unfilled would be filled by the best available candidates, but that a corresponding number of vacancies would be reserved in the following year for the communities whose vacancies were so filled, in addition to the number that would ordinarily be reserved for them. These instructions were subsequently modified. The instructions for carrying forward the

³⁸ (1964) 4 SCR 680

deficiency in the reserved quota were challenged before the Supreme Court.

69. M.R. Mudholkar, J. delivered the majority judgment, while K. Subba Rao, J. delivered a dissenting opinion. The majority held that clause (4) of Article 16 is in the nature of a proviso or an exception to clause (1), and that a proviso or an exception cannot be so interpreted as to nullify or destroy the main provision. The Court further observed as under:

“17. We would like to emphasise that the guarantee contained in Article 16(1) is for ensuring equality of opportunity for all citizens relating to employment, and to appointments to any office under the State. This means that on every occasion for recruitment the State should see that all citizens are treated equally. The guarantee is to each individual citizen and, therefore, every citizen who is seeking employment or appointment to an office under the State is entitled to be afforded an opportunity for seeking such employment or appointment whenever it is intended to be filled. In order to effectuate the guarantee each year of recruitment will have to be considered by itself and the reservation for backward communities should not be so excessive as to create a monopoly or to disturb unduly the legitimate claims of other communities.

18. Further, this Court has already held that clause (4) of Article 16 is by way of a proviso or an exception to clause (1). A proviso or an exception cannot be so interpreted as to nullify or destroy the main provision. To hold that unlimited reservation of appointments could be made under clause (4) would in effect efface the guarantee contained in clause (1) or at best make it illusory. No provision of the Constitution or of any enactment can be so construed as to destroy another provision

contemporaneously enacted therein. It is true, as pointed out by Mr Ganapathy Iyer on behalf of the respondent that effect must be given to the express words of Article 16(4): 'Nothing in this article shall prevent the State from making any provision for the reservation of appointments....etc.' but that does not mean that the provision made by the State should have the effect of virtually obliterating the rest of the article, particularly clauses (1) and (2) thereof. The overriding effect of clause (4) on clauses (1) and (2) could only extend to the making of a reasonable number of reservation of appointments and posts in certain circumstances, that is all."

70. M.R. Mudholkar, J. noted that, by the operation of the carry forward rule, the vacancies actually filled by candidates belonging to Scheduled Castes and Scheduled Tribes in the year in question far exceeded 50% (29 out of 45 vacancies, that is, about 64.4%). Referring to the decision in **M.R. Balaji** (*supra*), the majority held that the carry forward rule was invalid. The relevant extract of the said decision is set out below:

"16. The startling effect of the carry forward rule as modified in 1955 would be apparent if in the illustration which we have taken there were in the third year 50 total vacancies instead of 100. Out of these 50 vacancies 9 would be reserved for the Scheduled Castes and Tribes, adding to that, the 36 carried forward from the two previous years, we would have a total of 45 reserved vacancies out of 50, that is, a percentage of 90. In the case before us 45 vacancies have actually been filled out of which 29 have gone to members of the Scheduled Castes and Tribes on the basis of reservation permitted by the carry forward rule. This comes to about 64.4% of reservation. Such being the result of the operation of the carry forward rule we

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must, on the basis of the decision in Balaji case hold that the rule is bad. Indeed, even in General Manager Southern Railway v. Rangachari which is a case in which reservation of vacancies to be filled by promotion was upheld by this Court, Gajendragadkar, J., who delivered the majority judgment observed:

‘It is also true that the reservation which can be made under Article 16(4) is intended merely to give adequate representation to backward communities. It cannot be used for creating monopolies or for unduly or illegitimately disturbing the legitimate interests of other employees. In exercising the powers under Article 16(4) the problem of adequate representation of the backward class of citizens must be fairly and objectively considered and an attempt must always be made to strike a reasonable balance between the claims of backward classes and the claims of other employees as well as the important consideration of the efficiency of administration;....’

It is clear from both these decisions that the problem of giving adequate representation to members of backward classes enjoined by Article 16(4) of the Constitution is not to be tackled by framing a general rule without bearing in mind its repercussions from year to year. What precise method should be adopted for this purpose is a matter for the Government to consider. It is enough for us to say that while any method can be evolved by the Government it must strike ‘a reasonable balance between the claims of the backward classes and claims of other employees’ as pointed out in Balaji case.”

71. K. Subba Rao, J., in his dissenting opinion, observed that Article 14 of the Constitution lays down the general rule of equality

and that Article 16 is an instance of the application of the said general rule, with special reference to the opportunity of appointments under the State. He observed as under:

“26. Article 14 lays down the general rule of equality. Article 16 is an instance of the application of the general rule with special reference to opportunity of appointments under the State. It says that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. If it stood alone, all the backward communities would go to the wall in a society of uneven basic social structure; the said rule of equality would remain only an utopian conception unless a practical content was given to it. Its strict enforcement brings about the very situation it seeks to avoid. To make my point clear, take the illustration of a horse race. Two horses are set down to run a race -one is a first class race horse and the other an ordinary one. Both are made to run from the same starting point. Though theoretically they are given equal opportunity to run the race, in practice the ordinary horse is not given an equal opportunity to compete with the race horse. Indeed, that is denied to it. So a handicap may be given either in the nature of extra weight or a start from a longer distance. By doing so, what would otherwise have been a farce of a competition would be made a real one. The same difficulty had confronted the makers of the Constitution at the time it was made. Centuries of calculated oppression and habitual submission reduced a considerable section of our community to a life of serfdom. It would be well nigh impossible to raise their standards if the doctrine of equal opportunity was strictly enforced in their case. They would not have any chance if they were made to enter the open field of competition without adventitious aids till such time when they could stand on their own legs. **That is why the makers of the Constitution introduced clause (4) in Article 16. The expression ‘nothing in this article’ is a legislative device to express its intention in a most emphatic way that the power conferred thereunder is not limited in any way by the main**

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provision but falls outside it. It has not really carved out an exception, but has preserved a power untrammelled by the other provisions of the article.”

[emphasis added]

72. K. Subba Rao, J. rejected the contention that **M.R. Balaji** (*supra*) laid down the proposition that whenever the State makes reservation for backward classes in excess of 50%, such provision would not be one of reservation but would amount to a destruction of the fundamental right. He referred to the observations made by P.B. Gajendragadkar, J. in **M.R. Balaji** (*supra*) to the effect that a special provision should be less than 50%, and observed as under:

“33. ...These general observations made in the context of admissions to colleges cannot, in my view, be applied in the case of a reservation of appointments in the matter of recruitment to a cadre of particular service. The doctrine of ‘destruction’ of the fundamental right depends upon the entire cadre strength and the percentage reserved out of that strength. Further, the expression used in the observations viz. ‘generally’ and ‘broadly’, show that the observations were intended only to be a workable guide but not an inflexible rule of law even in the case of admissions to colleges.”

73. The Supreme Court also commented on the 50% ceiling rule in **N.M. Thomas** (*supra*). In that case, the Constitution Bench considered a challenge to Rule 13-AA of the Kerala State and Subordinate Services Rules, 1958, whereby the Government was empowered to grant to members of SCs and STs, for a specified

period, exemption from passing the special or departmental tests required for promotion.

74. A.N. Ray, C.J. delivered the leading opinion. Four other Judges, including V.R. Krishna Iyer and S. Murtaza Fazal Ali, JJ., delivered separate concurring opinions. In his concurring opinion, S. Murtaza Fazal Ali, J. commented on the 50% ceiling rule. He concurred with the view of K. Subba Rao, J. in **T. Devadasan** (*supra*) that clause (4) of Article 16 was not limited by clause (1), but preserved a power untrammelled by the other provisions of Article 16, and that Article 16(4) could not be read as a proviso to Article 16(1). He further analysed clause (4) of Article 16 and observed that it contained an express provision empowering the State to make reservation, provided the conditions stipulated therein – “backwardness” and “inadequate representation” – were satisfied. It is relevant to refer to the following extract, which sets out the learned Judge’s analysis of Article 16 of the Constitution:

"179. Coming now to Article 16 it may be analysed into three separate categories so far as the facts of the present case are concerned:

“Category I—clause (1) of Article 16
Category II—clause (2) of Article 16.
Category III—clause (4) of Article 16.”

180. Clause (1) of Article 16 clearly provides for equality of opportunity to all citizens in the services under the State. It is important to note that the Constitution uses the words “equality of opportunity

for *all citizens*". This inherently implies that the opportunity must be given not only to a particular section of the society or a particular class of citizens who may be advanced or otherwise more affluent but to all classes of citizens. This, therefore, can be achieved by making a reasonable classification so that every class of citizens is duly represented in services which will enable equality of opportunity to all citizens. The classification, however, must be a reasonable one and must fulfil the following conditions:

- (i) It must have a rational basis;
- (ii) it must have a close nexus with the object sought to be achieved;
- (iii) it should not select any person for hostile discrimination at the cost of others.

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182. Category II refers to clause (2) of Article 16 which may be reproduced as follows:

"No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State."

In view of my findings and the various provisions of the Constitution regarding the status of the members of the scheduled castes and the scheduled tribes, it is obvious that the members of the scheduled castes and the scheduled tribes are not a "caste" but a special class of backward citizens whose backwardness cannot be doubted. In these circumstances, therefore, if the promotees do not belong to a caste as contemplated by Article 16(2) then they do not fall within the mischief of Article 16(2) at all. Thus the case of the promotees squarely falls within the four corners of Article 16(1) and can be justified as based on reasonable classification.

183. Before leaving Categories I and II it might be mentioned that the Court has to apply strict scrutiny to the classification made by the Government and to find out that it does not destroy or fructify the concept of equality. In other words, the State cannot be permitted to invoke favouritism or nepotism under the cloak of equality. Having considered the matter

in all its comprehensive aspects I am satisfied that in this particular case the classification made by the Government by virtue of Rule 13-AA is fully justified by Article 16 of the Constitution.

184. This brings us to the consideration of Category III which is clause (4) of Article 16. Clause (4) may be extracted as under:

“Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.”

Clause (4) of Article 16 of the Constitution cannot be read in isolation but has to be read as part and parcel of Article 16(1) and (2). Suppose there are a number of backward classes who form a sizeable section of the population of the country but are not properly or adequately represented in the services under the State the question that arises is what can be done to enable them to join the services and have a sense of equal participation. One course is to make a reasonable classification under Article 16(1) in the manner to which I have already adverted in great detail. The other method to achieve the end may be to make suitable reservations for the backward classes in such a way so that the inadequate representation of the backward classes in the services is made adequate. This form of classification which is referred to as reservation, is, in my opinion, clearly covered by Article 16(4) of the Constitution which is completely exhaustive on this point. That is to say clause (4) of Article 16 is not an exception to Article 14 in the sense that whatever classification can be made can be done only through clause (4) of Article 16. Clause (4) of Article 16, however, is an explanation containing an exhaustive and exclusive provision regarding reservation which is one of the forms of classification. Thus clause (4) of Article 16 deals exclusively with reservation and not other forms of classification which can be made under Article 16(1) itself. Since clause (4) is a special provision regarding reservation, it can safely be held that it overrides Article 16(1) to that extent

and no reservation can be made under Article 16(1). It is true that there are some authorities of this Court that clause (4) is an exception to Article 16(1) but with due respect I am not in a position to subscribe to this view for the reasons that I shall give hereafter.

185. In the first place if we read Article 16(4) as an exception to Article 16(1) then the inescapable conclusion would be that Article 16(1) does not permit any classification at all because an express provision has been made for this in clause (4). This is, however, contrary to the basic concept of equality contained in Article 14 which implicitly permits classification in any form provided certain conditions are fulfilled. Furthermore, if no classification can be made under Article 16(1) except reservation contained in clause (4) then the mandate contained in Article 335 would be defeated.

186. I have already observed that the fundamental guarantees provided by the Constitution have to be read in harmony with the directive principles contained in Part IV. Again if Article 16(4) is deemed to be the only mode of classification, then it would follow that the Constitution permits only one form of classification, namely, reservation and no other form so far as the services are concerned. This will render the concept of equality nugatory and defeat the very purpose which is sought to be achieved by Article 16(1). Equality of opportunity to all citizens does not mean equality to some and inequality to others. As I have already pointed out that in our country there are a large number of backward classes of citizens who have to be granted certain concessions and facilities in order to be able to compete with others. Does it mean that such citizens should be denied these facilities which may not fall under the term "reservation"? Let us take a few instances. A notification provides that all candidates for a particular post must apply before a specified date. A person belonging to a backward class of citizens living in a very remote area gets information late. The Government, however, in case of such a backward class candidate makes a relaxation and extends the date. Can it be said that this has resulted in violation of Article 16(1) because it does

not fall within the reservation contemplated by clause (4) of Article 16? It is obvious that the intention of the Government is merely to help the backward class of citizens to apply for the job along with others by condoning the delay for special reasons. Another instance may be where the State makes a relaxation regarding the age in case of backward classes of citizens in view of the farfetched and distant area to which that class of citizens belongs. Lastly let us take the instance of the present case. The clerks belonging to the scheduled castes and tribes were given a further extension of time to pass the test because of their backwardness. They were not exempted from passing the test. This could only be done under Article 16(1) and not under clause (4) of Article 16.

187. For these reasons, therefore, I respectfully agree with the observations of Subba Rao, J., as he then was, in *T. Devadasan v. Union of India* [AIR 1964 SC 179 : (1964) 4 SCR 680 : (1965) 2 LLJ 560] where he observed:

“That is why the makers of the Constitution introduced clause (4) in Article 16. The expression ‘nothing in this article’ is a legislative device to express its intention in a most emphatic way that the power conferred thereunder is not limited in any way by the main provision but falls outside it. It has not really carved out an exception, but has preserved a power untrammelled by the other provisions of the article.”

My view that Article 16(4) is not a proviso to Article 16(1) but that this clause covers the whole field of Article 16 is amply supported by the decision of this Court in *General Manager, Southern Railway v. Ranga-chari* where it was observed: (p. 599)

“It is common ground that Article 16(4) does not cover the entire field covered by Article 16(1) and (2). Some of the matters relating to employment in respect of which equality of opportunity has been guaranteed by Article 16(1) and (2) do not fall within the mischief of non-obstantive clause in Article 16(4).

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188. Now analysing clause (4) of Article 16 it appears that it contains express provisions empowering the State to make reservations in suitable cases provided the following conditions are satisfied:

“(i) That the class for which reservation is made must be socially and educationally backward.”

189. I might mention that so far as the members of the scheduled castes and tribes are concerned, in view of the constitutional provisions referred to above, this fact will have to be presumed and it was also so held in *Rangachari case*.

“(ii) That the class for which reservation is made is not adequately represented in the services under the State.”

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“(iii) The reservation should not be too excessive so as to destroy the very concept of equality.”

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191. This means that the reservation should be within the permissible limits and should not be a cloak to fill all the posts belonging to a particular class of citizens and thus violate Article 16(1) of the Constitution indirectly. At the same time clause (4) of Article 16 does not fix any limit on the power of the Government to make reservation. Since clause (4) is a part of Article 16 of the Constitution it is manifest that the State cannot be allowed to indulge in excessive reservation so as to defeat the policy contained in Article 16(1). As to what would be a suitable reservation within permissible limits will depend upon the facts and circumstances of each case and no hard and fast rule can be laid down, nor can this matter be reduced to a mathematical formula so as to be adhered to in all cases. **Decided cases of this Court have no doubt laid down that the percentage of reservation should not exceed 50 per cent. As I read the authorities, this is, however, a rule of caution and does not exhaust all categories.** Suppose for instance a State has a large number of backward classes of citizens which constitute 80 per cent of the population and the

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Government, in order to give them proper representation, reserves 80 per cent of the jobs for them, can it be said that the percentage of reservation is bad and violates the permissible limits of clause (4) of Article 16? The answer must necessarily be in the negative. The dominant object of this provision is to take steps to make inadequate representation adequate.

[emphasis added]”

75. V.R. Krishna Iyer, J., in his concurring opinion, also agreed with the said view and observed that “the arithmetical limit of 50 per cent in any one year set by some earlier rulings cannot perhaps be pressed too far”³⁹.

76. The dissenting opinion of K. Subba Rao, J. in **T. Devadasan** (*supra*) and the subsequent opinions of V.R. Krishna Iyer and S. Murtaza Fazal Ali, JJ. in **N.M. Thomas** (*supra*) thus suggested that the 50% rule was only a broad rule of limited applicability.

77. In a later decision, in **Akhil Bharatiya Soshit Karamchari Sangh (Railway) v. Union of India**⁴⁰, the Supreme Court considered a challenge to the directives issued by the Railway Board providing for reservation in favour of members of Scheduled Castes and Scheduled Tribes in Selection Posts, and for granting them one grade higher than that which was otherwise assignable on the basis of their record of service. The directives also raised

³⁹ State of Kerala v. N.M. Thomas (*supra*), paragraph 143

⁴⁰ (1981) 1 SCC 246

the percentage of reservation for Scheduled Castes and Scheduled Tribes in direct recruitment; provided for a quota in promotions to posts in Classes I, II, III and IV made on the basis of seniority-cum-suitability; and provided for the carry forward of unfilled reserved vacancies for a period of three years.

78. V.R. Krishna Iyer, J. delivered the leading opinion, with O. Chinnappa Reddy, J. penning a separate concurring opinion. R.S. Pathak, J. delivered a separate opinion, differing on certain aspects. V.R. Krishna Iyer, J., consistent with his earlier opinion in **N.M. Thomas** (*supra*), did not accept the 50% ceiling on reservation as an inflexible rule. He also explained that the decisions in **T. Devadasan** (*supra*) and **M.R. Balaji** (*supra*) were rendered in the context of the facts of those cases. The relevant extract of the said decision is set out below:

"87. Even going by the majority, Devadasan case [(1964) 4 SCR 680, 695] lays down the proposition that under Article 16(4) "reservation of a reasonable percentage of posts for members of the Scheduled Castes and Tribes is within the competence of the State. What the percentage ought to be must necessarily depend upon the circumstances obtaining from time to time". Mudholkar, J. speaking for the majority has struck down only one restriction. "In order to effectuate the guarantee each year of recruitment will have to be by itself and the reservation for backward communities should not be so excessive as to create a monopoly or to disturb unduly the legitimate claims of other communities." (emphasis added) Unlimited

reservation of appointments may be impermissible because it renders Article 16(1) nugatory. At the same time, Article 16(4), calculated to promote social justice and expressive of the deep concern of the Constitution for the limping bracket of Indians, must be given full play. That is why the only restraint imposed by Mudholkar, J. is that an exercise of power under Article 16(4) “does not mean that the provision made by the State should have the effect of virtually obliterating the rest of the article, particularly clauses (1) and (2) thereof.” [(1964) 4 SCR 680, 700] By the three-year “carry forward” rule one is unable to see how, in practice, the total vacancies will be gobbled up by the harijan/girijan groups “virtually obliterating” Article 16(1). The court has made it very clear that the problem of giving adequate representation to backward classes under Article 16(4) is a matter for the Government to consider, bearing in mind the need for a reasonable balance between the rival claims as pointed out in Balaji case.

88. It is true that in Balaji case and Devadasan case “the carry forward” rule for backward classes far exceeded 50 per cent and was struck down. We must remember that the percentage of reservation for backward classes including SC & ST was rather high in both the cases. In Devadasan case the court went into the actuals, not into the hypotheticals. This is most important. The court actually verified the degree of deprivation of the “equal opportunity” right and discovered: [Ibid, pp. 693-94]

“In the case before us 45 vacancies have actually been filled out of which 29 have gone to members of the Scheduled Castes and Tribes on the basis of reservation permitted by the carry forward rule. This comes to about 64.4 per cent of reservation. Such being the result of the operation of the carry forward rule we must, on the basis of the decision in Balaji case hold that the rule is bad.”

What is striking is that the court did not take an academic view or make a notional evaluation but checked up to satisfy itself about the seriousness of the infraction of the right. On that footing, the petitioners have not demonstrated that in any particular year, virtually and in actual terms of promotion, there has been a substantial excess over

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50 per cent in favour of the SC & ST promotees. Mathematical calculations, departing from realities of the case, may startle us without justification, the apprehension being misplaced. All that we need say is that the Railway Board shall take care to issue instructions to see that in no year shall SC & ST candidates be actually appointed to substantially more than 50 per cent of the promotional posts. Some excess will not affect as mathematical precision is difficult in human affairs, but substantial excess will void the selection. Subject to this rider or condition that the "carry forward" rule shall not result, in any given year, in the selection or appointments of SC & ST candidates considerably in excess of 50 per cent, we uphold Annexure 'I'."

[emphasis added]

79. O. Chinnappa Reddy, J. referred to the decisions of the Constitution Benches in **N.M. Thomas** (*supra*), **T. Devadasan** (*supra*) and **Rangachari** (*supra*), and observed that the Court had repudiated the theory that Article 16(4) was in the nature of an exception to Article 16(1) and accepted that it was a facet, an illustration or a method of application of Article 16(1). In regard to the 50% rule in **M.R. Balaji** (*supra*), he observed as under:

"130. Another case upon which the petitioners placed reliance was *M.R. Balaji v. State of Mysore*. In that case the percentage of seats reserved in the engineering and medical colleges for the educationally and socially backward classes and Scheduled Castes and Scheduled Tribes came to 68 per cent leaving only 32 per cent of the seats for the merit pool. The Court held that generally and broadly reservation should not exceed 50 per cent. The actual percentage was to depend upon the relevant prevailing circumstances in each case. As the reservation in that case far exceeded what was generally and broadly permissible, the reservation

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was held to be bad. There again the Court was concerned directly with the immediate, actual, practical result of the reservation rule.

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135. Therefore, we see that when posts whether at the stage of initial appointment or at the stage of promotion are reserved or other preferential treatment is accorded to members of the Scheduled Castes, Scheduled Tribes and other socially and economically backward classes, it is not a concession or privilege extended to them; it is in recognition of their undoubted fundamental right to Equality of Opportunity and in discharge of the constitutional obligation imposed upon the State to secure to all its citizens "Justice, social, economic and political" and "Equality of status and opportunity", to assure "the dignity of the individual" among all citizens, to "promote with special care the educational and economic interests of the weaker section of the people", to ensure their participation on equal basis in the administration of the affairs of the country and generally to foster the ideal of a "Sovereign, Socialist, Secular, Democratic Republic". Every lawful method is permissible to secure the due representation of the Scheduled Castes and Scheduled Tribes in the Public Services. **There is no fixed ceiling to reservation or preferential treatment in favour of the Scheduled Castes and Scheduled Tribes though generally reservation may not be far in excess of fifty per cent. There is no rigidity about the fifty per cent rule which is only a convenient guideline laid down by Judges. Every case must be decided with reference to the present practical results yielded by the application of the particular rule of preferential treatment and not with reference to hypothetical results which the application of the rule may yield in the future.** Judged in the light of this discussion I am unable to find anything illegal or unconstitutional in anyone of the impugned orders and circulars. Each order and circular has been individually discussed by my Brother Krishna Iyer, J., with whose reasoning and conclusions I agree and to which I wish to add no more."

[emphasis added]

80. As noted above, R.S. Pathak, J. delivered a separate opinion. He observed that the principle that the reserved quotas should not exceed 50% is rational, having regard to the requirement of maintaining efficiency of administration under Article 335 of the Constitution. He concurred with the view in **T. Devadasan** (*supra*). In regard to the 50% rule, he observed as under:

"111. It seems to me that apart from the impact that an excessive reservation in a particular year is bound to have on the general community of citizens, there is the further far-reaching significance this assumes in the context of Article 335. The maintenance of efficiency of administration is bound to be adversely affected if general candidates of high merit are correspondingly excluded from recruitment because the large bulk of the vacancies, numbering anything over 50 per cent, is allotted to the reserved quota. In view of a maximum age limit invariably prescribed, some of such meritorious candidates may be lost to the service altogether. Viewed in that light, a maximum of 50 per cent for reserved quotas in their totality is a rule which appears fair and reasonable, just and equitable, and violation of which would contravene Article 335".

81. In **K.C. Vasanth Kumar** (*supra*), a Constitution Bench of the Supreme Court considered mainly two questions: (i) how the backward classes are to be identified for the purpose of reservation; and (ii) what would be the permissible extent of reservation. Two of the five Judges commented on the 50% rule. O. Chinnappa Reddy, J., consistent with his earlier views, criticised the 50% rule. He observed that there was no statistical data to

support the said rule and described it as a rule of thumb. It is apposite to refer to the following extract from his opinion:

"58. We must repeat here, what we have said earlier, that there is no scientific statistical data or evidence of expert administrators who have made any study of the problem to support the opinion that reservation in excess of 50 per cent may impair efficiency. It is a rule of thumb and rules of the thumb are not for judges to lay down to solve complicated sociological and administrative problems. Sometimes, it is obliquely suggested that excessive reservation is indulged in as a mere vote-catching device. Perhaps so, perhaps not. One can only say "out of evil cometh good" and quicker the redemption of the oppressed classes, so much the better for the nation. Our observations are not intended to show the door to genuine efficiency. Efficiency must be a guiding factor but not a smokescreen. All that a court may legitimately say is that reservation may not be excessive. It may not be so excessive as to be oppressive; it may not be so high as to lead to a necessary presumption of unfair exclusion of everyone else."

82. E.S. Venkataramiah, J., in his opinion, referred to the earlier decisions of the Supreme Court in **M.R. Balaji** (*supra*) and **T. Devadasan** (*supra*), which had laid down the 50% ceiling rule. He also referred to the decision in **N.M. Thomas** (*supra*) and observed as under:

"148. After carefully going through all the seven opinions in the above case, it is difficult to hold that the settled view of this Court that the reservation under Article 15(4) or Article 16(4) could not be more than 50 per cent has been unsettled by a majority on the Bench which decided this case. ..."

83. As noted above, only two of the Judges – E.S. Venkataramiah, J. and O. Chinnappa Reddy, J. – expressed their opinions regarding the 50% ceiling rule, and their opinions were not consistent. However, the opinions were consistent in that clause (4) of Article 16 is not a carve-out from Article 16(1), but a facet of equality. It enables the State to take affirmative action, either by way of executive orders or legislative enactments, in favour of the backward classes for their representation in employment under the State.

Indra Sawhney v. Union of India

84. In **Indra Sawhney v. Union of India** (*supra*), a Bench of nine Judges was constituted to consider the challenge to the Office Memorandum dated 13.08.1990, whereby the Government of India provided for reservation in favour of the socially and educationally backward classes in the services under the Union. 27% of the vacancies were reserved for the socially and educationally backward classes, in addition to the reservation for Scheduled Castes and Scheduled Tribes. The Court considered various questions, including the following question:

"Question 6:

To what extent can the reservation be made?

(a) Whether the 50% rule enunciated in *Balaji* a binding rule or only a rule of caution or rule of prudence?

(b) Whether the 50% rule, if any, is confined to reservations made under clause(4) of Article 16 or whether it takes in all types of reservations that can be provided under Article 16?

(c) Further, while applying 50% rule, if any, whether a year should be taken as a unit or whether the total strength of the cadre should be looked to?

(d) Was Devadasan correctly decided?"

85. As noted above, in certain decisions, the 50% rule as enunciated in **M.R. Balaji** (*supra*) was considered as a substantive principle for testing the constitutional validity of the extent of reservation. However, O. Chinnappa Reddy, J. had described the said rule as "*a rule of thumb*"⁴¹ and "*only a convenient guideline*"⁴²; K. Subba Rao, J., in his dissenting opinion, had not accepted it as an inflexible *rule*⁴³; S. Murtaza Fazal Ali, J. had described it as "*a rule of caution*"⁴⁴; and V.R. Krishna Iyer, J. had observed that the arithmetical limit of 50% cannot perhaps be pressed too far. Other decisions, however, treated the rule as settled.

86. After noting the earlier decisions, the Supreme Court (B.P. Jeevan Reddy, J., speaking for himself, M.H. Kania, C.J., M.N. Venkatachaliah, J. and A.M. Ahmadi, J.) answered the said question in the following manner:

⁴¹ O. Chinnappa Reddy, J. in K.C. Vasanth Kumar (*supra*)

⁴² O. Chinnappa Reddy, J. in Akhil Bharatiya Soshit Karamchari Sangh (Railway) (*supra*)

⁴³ Dissenting opinion of K. Subba Rao, J. in T. Devadasan (*supra*)

⁴⁴ S. Murtaza Fazal Ali, J. in N.M. Thomas (*supra*)

"807. We must, however, point out that clause (4) speaks of adequate representation and not proportionate representation. Adequate representation cannot be read as proportionate representation. Principle of proportionate representation is accepted only in Articles 330 and 332 of the Constitution and that too for a limited period. These articles speak of reservation of seats in Lok Sabha and the State legislatures in favour of Scheduled Tribes and Scheduled Castes proportionate to their population, but they are only temporary and special provisions. It is therefore not possible to accept the theory of proportionate representation though the proportion of population of backward classes to the total population would certainly be relevant. Just as every power must be exercised reasonably and fairly, the power conferred by clause (4) of Article 16 should also be exercised in a fair manner and within reasonable limits — and what is more reasonable than to say that reservation under clause (4) shall not exceed 50% of the appointments or posts, barring certain extraordinary situations as explained hereinafter. From this point of view, the 27% reservation provided by the impugned Memorandums in favour of backward classes is well within the reasonable limits. Together with reservation in favour of Scheduled Castes and Scheduled Tribes, it comes to a total of 49.5%. In this connection, reference may be had to the Full Bench decision of the Andhra Pradesh High Court in *V. Narayana Rao v. State of A.P.*, striking down the enhancement of reservation from 25% to 44% for OBCs. The said enhancement had the effect of taking the total reservation under Article 16(4) to 65%.

808. It needs no emphasis to say that the principal aim of Articles 14 and 16 is equality and equality of opportunity and that clause (4) of Article 16 is but a means of achieving the very same objective. Clause (4) is a special provision — though not an exception to clause (1). Both the provisions have to be harmonised keeping in mind the fact that both are but the re-statements of the principle of equality enshrined in Article 14. The provision under Article 16(4) — conceived in the interest of certain sections of society — should be balanced against the

guarantee of equality enshrined in clause (1) of Article 16 which is a guarantee held out to every citizen and to the entire society. It is relevant to point out that Dr Ambedkar himself contemplated reservation being "confined to a minority of seats" (See his speech in Constituent Assembly, set out in para 693). No other member of the Constituent Assembly suggested otherwise. It is, thus, clear that reservation of a majority of seats was never envisaged by the Founding Fathers. Nor are we satisfied that the present context requires us to depart from that concept.

809. From the above discussion, the irresistible conclusion that follows is that the reservations contemplated in clause (4) of Article 16 should not exceed 50%."

87. Having laid down the said rule, the Supreme Court also observed that, while 50% would be the rule, it was necessary not to put out of consideration certain extraordinary situations. Paragraphs 810 and 811 of the said decision are relevant and are set out below:

"810. While 50% shall be the rule, it is necessary not to put out of consideration certain extraordinary situations inherent in the great diversity of this country and the people. It might happen that in farflung and remote areas the population inhabiting those areas might, on account of their being out of the mainstream of national life and in view of conditions peculiar to and characteristic to them, need to be treated in a different way, some relaxation in this strict rule may become imperative. In doing so, extreme caution is to be exercised and a special case made out.

811. In this connection it is well to remember that the reservations under Article 16(4) do not operate like a communal reservation. It may well happen that some members belonging to, say, Scheduled Castes get selected in the open competition field on

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the basis of their own merit; they will not be counted against the quota reserved for Scheduled Castes; they will be treated as open competition candidates."

88. The concept of balance also informed the answer to Question 6(c) in **Indra Sawhney** (*supra*), namely, whether a year or the total strength of the cadre should be taken as the unit for applying the 50% rule. B.P. Jeevan Reddy, J., observed as under:

"814. ... It must be remembered that the equality of opportunity guaranteed by clause (1) is to each individual citizen of the country while clause (4) contemplates special provision being made in favour of socially disadvantaged classes. Both must be balanced against each other. Neither should be allowed to eclipse the other. For the above reason, we hold that for the purpose of applying the rule of 50% a year should be taken as the unit and not the entire strength of the cadre, service or the unit, as the case may be. ..."

89. It is also relevant to refer to the separate opinions rendered by the other Judges comprising the Bench on the said question.

90. T.K. Thommen, J., in his separate opinion, concluded as under on the said question:

"323. Summary

(8) Reservation in all cases must be confined to a minority of available posts or seats so as not to unduly sacrifice merits. The number of seats or posts reserved under Article 15 or Article 16 must at all times remain well below 50% of the total number of seats or posts.

(10) Once reservation is strictly confined to the constitutionally intended beneficiaries, as aforesaid, there will probably be no need to disappoint any

deserving candidate legitimately seeking the benefit of reservation, for there will then be sufficient room well within the 50% limit for all candidates belonging to the backward classes as properly determined on correct principles. In that event, questions such as caste or religion will become merely academic and the competing maddening rush for “backward” label will vanish.

324. Conclusions: C. Reservation of seats or posts for backward classes of citizens, including those for the Scheduled Castes and the Scheduled Tribes, must remain well below 50% of the total seats or posts.”

91. Kuldeep Singh, J. also rendered a separate opinion. He emphatically and unambiguously held that reservation must remain below 50% and, under no circumstances, ought to be permitted to exceed that limit. The relevant extract of his conclusions in this regard is as under:

"384. I have carefully read the reasoning and the conclusions reached by R.M. Sahai, J on this issue. Agreeing with him I hold:

(i) that the reservations under Article 16(4) must remain below 50% and under no circumstance be permitted to go beyond 50%. Any reservation beyond 50% is constitutionally invalid.

(ii) It is for the State to adopt the methodology of providing reservations below 50%. The State may provide the said reservation in respect of the substantive vacancies arising in a year or in the cadre or service. It would be permissible to carry forward the reserve vacancies of one year to the next year. It is reiterated that the vacancies reserved in a year including those which are carried forward shall not exceed 50%.

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(iii) No reservation of any kind can be made for any class or category whether backward or non-backward under Article 16(1)."

92. R.M. Sahai, J. unequivocally held that reservations under Articles 15(4) and 16(4) should not exceed 50%. The relevant extract of his opinion reads as under:

"619. Since this Court has consistently held that the reservation under Articles 15(4) and 16(4) should not exceed 50 per cent and the States and the Union have by and large accepted this as correct it should be held as constitutional prohibition and any reservation beyond 50 per cent would liable to be struck down. Reservation under Article 16(4) should in no case exceed 50 per cent."

93. S. Ratnavel Pandian, J. rendered a dissenting opinion and held that the view expressed in **M.R. Balaji** (*supra*) was *obiter dicta*. He held that reservation in excess of 50% would not, by itself, be violative of Article 14 or Article 16 of the Constitution. In his view, Article 16(4) did not limit the power of the Government in making reservation to any maximum percentage, and the same would depend on the quantum of representation required to make it adequate in the services. He concurred with the views of V.R. Krishna Iyer and S. Murtaza Fazal Ali, JJ. in **N.M. Thomas** (*supra*) and of O. Chinnappa Reddy, J. in **K.C. Vasanth Kumar** (*supra*). According to S. Ravindra Bhat, J. in **Dr. Jaishri Laxmanrao Patil**

(*supra*), P.B. Sawant, J. also indicated that there is no general rule of a 50% limit on reservation⁴⁵.

94. In view of the authoritative decision of the Bench of nine Judges in **Indra Sawhney** (*supra*), the ceiling of 50% on reservation under Articles 15(4) and 16(4) of the Constitution is firmly established. The language of the judgment makes it clear that this is not an elastic limit to be assessed on a case-to-case basis, or one dependent on the population of the backward classes or the extent of their backwardness.

95. Although the Supreme Court left room for an exception in extraordinary situations, this does not detract from the fact that it deliberated on, and fixed, a firm limit in view of the balance required to be struck in the scheme of the equality clauses.

96. The initial view expressed in the earlier decisions, that clause (4) of Articles 15 and 16 of the Constitution is an exception to clause (1) of the said Articles, was firmly rejected in the later decisions. **Indra Sawhney** (*supra*) authoritatively held that the equality clauses are to be read as parts of a single scheme. Clause (4) of Article 16 of the Constitution has to be read in conjunction

⁴⁵ See paragraph 10 of the opinion of S. Ravindra Bhat, J. in Dr. Jaishri Laxmanrao Patil (*supra*), extracted hereafter.

with Articles 46 and 335 of the Constitution. Clause (4) of Article 16 of the Constitution was held to be an enabling provision for affirmative action by way of reservation in favour of any backward class of citizens which is not adequately represented in the services under the State. “Backwardness” and “inadequate representation” are the *sine qua non* for any such affirmative action.

97. Article 46 of the Constitution enjoins the State to promote, with special care, the educational and economic interests of the weaker sections of the people and, in particular, of SCs and STs, and to protect them from social injustice and all forms of exploitation. Article 335 of the Constitution enjoins that the claims of the members of SCs and STs shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State.

98. Clause (2) of Article 16 of the Constitution proscribes discrimination on the grounds of religion, race, caste, sex, descent, place of birth, residence, or any of them, in respect of any employment or office under the State. Clause (1) of the said Article expressly guarantees ‘equality of opportunity’ to all citizens in

matters relating to employment or appointment to any office under the State.

99. The scheme of these clauses must be read with Article 14 of the Constitution, which guarantees equality before the law and the equal protection of the laws. Once it is accepted that clause (4) of Article 16 of the Constitution cannot be construed as an exception to clause (1) of that Article, it is imperative to strike a balance in applying the said clauses. The 50% ceiling rule is the result of striking that balance.

100. The Constituent Assembly Debates indicate that clause (4) of Article 16 of the Constitution was introduced to ensure the participation of the suppressed communities, which were otherwise excluded from participation in the administration and from employment under the State on account of years of suppression and exploitation. These communities had been effectively marginalised by centuries of servitude in a feudal society. It was thus felt necessary to enable affirmative action so that these communities could have a “look-in” and participate in the administration and services of the State. Affirmative action was considered necessary to enable these classes to break the barrier. The Constitution guarantees equality, but the guarantee would be

illusory if provisions were not made to enable the excluded communities to break the barrier and join the administration of the State. It was never contemplated that clause (4) of Article 16 would be worked in a manner that would provide for proportionate representation in employment, as that has the propensity to prove divisive. And, that would run counter to the constitutional guarantees.

101. The question of adequate representation is thus required to be construed in the context of the said object. Providing reservation for certain backward classes does not in any way preclude their members from competing for the remaining pool of appointments. The reservation does not confine the said classes to the limits of the reservation alone.

102. The ceiling limit of 50% was thus construed as the point of balance, exceeding which would debilitate the principle of equality, which is a part of the basic structure of the Constitution, as held in **M. Nagaraj** (*supra*).

The decisions after Indra Sawhney

103. Several decisions of the Supreme Court emphasise the importance of the balance struck in interpreting the equality

clauses, and the 50% rule. In **R.K. Sabharwal** (*supra*), the Supreme Court held that the percentage of reservation is required to be worked out in relation to the number of posts which form the cadre strength. The Court referred to the decision in **Indra Sawhney** (*supra*) and observed that the operation of the roster for filling up the cadre strength would, by itself, ensure that the reservation remains within the 50% limit.

104. In **Post Graduate Institute of Medical Education and Research, Chandigarh** (*supra*), the Supreme Court considered the question of reservation in a cadre comprising a single post. In the said context, the Court observed as under:

"35. Hence, until there is plurality of posts in a cadre, the question of reservation will not arise because any attempt of reservation by whatever means and even with the device of rotation of roster in a single post cadre is bound to create 100% reservation of such post whenever such reservation is to be implemented. The device of rotation of roster in respect of single post cadre will only mean that on some occasions there will be complete reservation and the appointment to such post is kept out of bounds to the members of a large segment of the community who do not belong to any reserved class, but on some other occasions the post will be available for open competition when in fact on all such occasions, a single post cadre should have been filled only by open competition amongst all segments of the society."

105. The Constitution Bench also founded its decision on the principle that a balance is required to be struck between equality of opportunity for all and affirmative action for the participation of the backward classes which are inadequately represented, and that the 50% ceiling limit effectively embodies that balance. We consider it apposite to refer to the following extract from the said decision:

"32. Articles 14, 15 and 16 including Articles 16(4), 16(4-A) must be applied in such a manner so that the balance is struck in the matter of appointments by creating reasonable opportunities for the reserved classes and also for the other members of the community who do not belong to reserved classes. Such view has been indicated in the Constitution Bench decisions of this Court in Balaji case, Devadasan cases and Sabharwal case. Even in Indra Sawhney case the same view has been held by indicating that only a limited reservation not exceeding 50% is permissible. It is to be appreciated that Article 15(4) is an enabling provision like Article 16(4) and the reservation under either provision should not exceed legitimate limits. In making reservations for the backward classes, the State cannot ignore the fundamental rights of the rest of the citizens. The special provision under Article 15(4) [sic 16(4)] must therefore strike a balance between several relevant considerations and proceed objectively. In this connection reference may be made to the decisions of this Court in State of A.P. v. U.S.V. Balram's and C.A. Rajendran v. Union of India. It has been indicated in Indra Sawhney case that clause (4) of Article 16 is not in the nature of an exception to clauses (1) and (2) of Article 16 but an instance of classification permitted by clause (1). It has also been indicated in the said decision that clause (4) of Article 16 does not cover the entire field covered, by clauses (1) and (2) of Article 16. In Indra Sawhney case this Court has also indicated that in the interests of the backward classes of citizens, the State cannot reserve all the appointments under the State or even a majority of

them. The doctrine of equality of opportunity in clause (1) of Article 16 is to be reconciled in favour of backward classes under clause (4) of Article 16 in such a manner that the latter while serving the cause of backward classes shall not unreasonably encroach upon the field of equality."

106. In **Indra Sawhney** (*supra*), the Supreme Court had held that clause (4) of Article 16 is confined to initial appointments and does not extend to reservation in matters of promotion. This led Parliament to enact the Constitution (Seventy-seventh Amendment) Act, 1995, whereby Clause (4A) was introduced in Article 16. The said clause was further amended by virtue of the Constitution (Eighty-fifth Amendment) Act, 2001, to enable provision of consequential seniority in matters of promotion. Clause (4A) of Article 16 of the Constitution, as it presently reads, is set out below:

"(4A) Nothing in this article shall prevent the State from making provision for reservation [in matters of promotion, with consequential seniority, to any class] or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State."

107. Thereafter, by the Constitution (Eighty-first Amendment) Act, 2000, clause (4B) was introduced in Article 16 of the Constitution, enabling the State to carry forward the unfilled vacancies reserved

for a particular year. Clause (4B) of Article 16 of the Constitution reads as under:

"(4B) Nothing in this article shall prevent the State from considering any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for reservation made under clause (4) or clause (4A) as a separate class of vacancies to be filled up in any succeeding year or years and such class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty per cent reservation on total number of vacancies of that year."

108. It is important to note that clause (4B) expressly recognises the rule of the 50% ceiling. The only carve-out is to enable the unfilled reserved vacancies of a year to be carried forward to the succeeding year or years, as a separate class of vacancies.

109. The Constitution Bench of the Supreme Court considered the challenge to the Constitution (Seventy-seventh Amendment) Act, 1995, the Constitution (Eighty-first Amendment) Act, 2000, the Constitution (Eighty-second Amendment) Act, 2000 and the Constitution (Eighty-fifth Amendment) Act, 2001 in **M. Nagaraj** (*supra*). The Supreme Court referred to the decision of the Constitution Bench in **Minerva Mills Ltd. v. Union of India**⁴⁶, in which the Court had observed that the freedoms under Articles 14 and 19 are fundamental and that, without them, democracy is

⁴⁶ (1980) 3 SCC 625

impossible. Noting these observations, the Supreme Court observed that 'the principle which emerges is that "equality" is the essence of democracy and, accordingly, a basic feature of the Constitution'. Once again, the Supreme Court emphasised the principle of balance in considering the extent of reservation, and the importance of a numerical benchmark in striking that balance. In this regard, it is relevant to refer to the following passage from the said decision:

"47. Equality of opportunity has two different and distinct concepts. There is a conceptual distinction between a non-discrimination principle and affirmative action under which the State is obliged to provide a level-playing field to the oppressed classes. Affirmative action in the above sense seeks to move beyond the concept of non-discrimination towards equalising results with respect to various groups. Both the conceptions constitute "equality of opportunity".

48. It is the equality "in fact" which has to be decided looking at the ground reality. Balancing comes in where the question concerns the extent of reservation. If the extent of reservation goes beyond cut-off point then it results in reverse discrimination. Anti-discrimination legislation has a tendency of pushing towards de facto reservation. Therefore, a numerical benchmark is the surest immunity against charges of discrimination."

110. The Supreme Court also noted that the question of the extent of reservation is closely linked to the question whether Article 16(4) is an exception to, or an application of, Article 16(1). The Court observed as under:

"54. The question of extent of reservation is closely linked to the issue whether Article 16(4) is an exception to Article 16(1) or is Article 16(4) an application of Article 16(1). If Article 16(4) is an exception to Article 16(1) then it needs to be given a limited application so as not to eclipse the general rule in Article 16(1). But if Article 16(4) is taken as an application of Article 16(1) then the two articles have to be harmonised keeping in view the interests of certain sections of the society as against the interest of the individual citizens of the society."

111. The Supreme Court referred to the earlier decisions, including **Indra Sawhney** (*supra*), in the aforesaid context of harmonising clauses (1) and (4) of Article 16 of the Constitution, and observed as under:

"Maximum limit of reservation possible

55. Word of caution against excess reservation was first pointed out in *G.M., S. Rly. v. Rangachari* [(1962) 2 SCR 586 : AIR 1962 SC 36] . Gajendragadkar, J. giving the majority judgment said that reservation under Article 16(4) is intended merely to give adequate representation to backward communities. It cannot be used for creating monopolies or for unduly or illegitimately disturbing the legitimate interests of other employees. A reasonable balance must be struck between the claims of Backward Classes and claims of other employees as well as the requirement of efficiency of administration.

56. However, the question of extent of reservation was not directly involved in *Rangachari* [(1962) 2 SCR 586 : AIR 1962 SC 36] . It was directly involved in *M.R. Balaji v. State of Mysore* [1963 Supp (1) SCR 439 : AIR 1963 SC 649] with reference to Article 15(4). In this case, 60% reservation under Article 15(4) was struck down as excessive and unconstitutional. Gajendragadkar, J. observed that special provision should be less than 50 per cent, how much less would depend on the relevant prevailing circumstances of each case.

57. But in *State of Kerala v. N.M. Thomas* [(1976) 2 SCC 310 : 1976 SCC (L&S) 227] Krishna Iyer, J. expressed his concurrence with the views of Fazal Ali, J. who said that although reservation cannot be so excessive as to destroy the principle of equality of opportunity under clause (1) of Article 16, yet it should be noted that the Constitution itself does not put any bar on the power of the Government under Article 16(4). If a State has 80% population which is backward then it would be meaningless to say that reservation should not cross 50%.

58. However, in *Indra Sawhney* [1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1 : (1992) 22 ATC 385] the majority held that the rule of 50% laid down in *Balaji* [1963 Supp (1) SCR 439 : AIR 1963 SC 649] was a binding rule and not a mere rule of prudence.

59. Giving the judgment of the Court in *Indra Sawhney* [1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1 : (1992) 22 ATC 385] Jeevan Reddy, J. [Speaking on behalf of Kania, C.J. and Venkatachaliah and Ahmadi, JJ. as they then were.] stated that Article 16(4) speaks of adequate representation not proportionate representation although proportion of population of Backward Classes to the total population would certainly be relevant. [Ed.: SCC para 807] He further pointed out that Article 16(4) which protects interests of certain sections of society has to be balanced against Article 16(1) which protects the interests of every citizen of the entire society. They should be harmonised because they are restatements of the principle of equality under Article 14. [Ed.: SCC para 808]

112. The Supreme Court thereafter examined whether the constitutional amendments violated the basic structure of the Constitution. The Court observed that the criterion for determining

the validity of a law is the competence of the law-making authority, which in turn depends on the ambit of the legislative power and the limitations imposed thereon. The Court further observed that the limitations imposed on the constituent power may be substantive as well as procedural. In regard to the width of the power, the Court reasoned that the ceiling limit of 50% is one of the boundaries of the width of the power, and found that the constitutional amendments did not obliterate these limits. We consider it apposite to refer to the following passage from the said decision, which clearly recognises the ceiling limit of 50% as defining the width of the power of the State:

“102. In the matter of application of the principle of basic structure, twin tests have to be satisfied, namely, the “width test” and the test of “identity”. As stated hereinabove, the concept of the “catch-up” rule and “consequential seniority” are not constitutional requirements. They are not implicit in clauses (1) and (4) of Article 16. They are not constitutional limitations. They are concepts derived from service jurisprudence. They are not constitutional principles. They are not axioms like, secularism, federalism, etc. Obliteration of these concepts or insertion of these concepts does not change the equality code indicated by Articles 14, 15 and 16 of the Constitution. Clause (1) of Article 16 cannot prevent the State from taking cognizance of the compelling interests of Backward Classes in the society. Clauses (1) and (4) of Article 16 are restatements of the principle of equality under Article 14. Clause (4) of Article 16 refers to affirmative action by way of reservation. Clause (4) of Article 16, however, states that the appropriate Government is free to provide for reservation in cases where it is satisfied on the basis of

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quantifiable data that Backward Class is inadequately represented in the services. Therefore, in every case where the State decides to provide for reservation there must exist two circumstances, namely, “backwardness” and “inadequacy of representation”. As stated above, equity, justice and efficiency are variable factors. These factors are context-specific. There is no fixed yardstick to identify and measure these three factors, it will depend on the facts and circumstances of each case. These are the limitations on the mode of the exercise of power by the State. None of these limitations have been removed by the impugned amendments. If the State concerned fails to identify and measure backwardness, inadequacy and overall administrative efficiency then in that event the provision for reservation would be invalid. These amendments do not alter the structure of Articles 14, 15 and 16 (equity code). The parameters mentioned in Article 16(4) are retained. Clause (4-A) is derived from clause (4) of Article 16. Clause (4-A) is confined to SCs and STs alone. Therefore, the present case does not change the identity of the Constitution. The word “amendment” connotes change. The question is—whether the impugned amendments discard the original Constitution. It was vehemently urged on behalf of the petitioners that the Statement of Objects and Reasons indicates that the impugned amendments have been promulgated by Parliament to overrule the decisions of this Court. We do not find any merit in this argument. Under Article 141 of the Constitution the pronouncement of this Court is the law of the land. The judgments of this Court in Virpal Singh [(1995) 6 SCC 684 : 1996 SCC (L&S) 1 : (1995) 31 ATC 813] , Ajit Singh (I) [(1996) 2 SCC 715 : 1996 SCC (L&S) 540 : (1996) 33 ATC 239 : AIR 1996 SC 1189] , Ajit Singh (II) [(1999) 7 SCC 209 : 1999 SCC (L&S) 1239] and Indra Sawhney [1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1 : (1992) 22 ATC 385] were judgments delivered by this Court which enunciated the law of the land. It is that law which is sought to be changed by the impugned constitutional amendments. The impugned constitutional amendments are enabling in nature. They leave it to the States to provide for reservation. It is well settled that Parliament while enacting a law does not provide content to the

“right”. The content is provided by the judgments of the Supreme Court. If the appropriate Government enacts a law providing for reservation without keeping in mind the parameters in Article 16(4) and Article 335 then this Court will certainly set aside and strike down such legislation. Applying the “width test”, we do not find obliteration of any of the constitutional limitations. Applying the test of “identity”, we do not find any alteration in the existing structure of the equality code. As stated above, none of the axioms like secularism, federalism, etc. which are overarching principles have been violated by the impugned constitutional amendments. Equality has two facets— “formal equality” and “proportional equality”. Proportional equality is equality “in fact” whereas formal equality is equality “in law”. Formal equality exists in the rule of law. In the case of proportional equality the State is expected to take affirmative steps in favour of disadvantaged sections of the society within the framework of liberal democracy. Egalitarian equality is proportional equality.

* * *

Tests to judge the validity of the impugned State Acts

110. As stated above, the boundaries of the width of the power, namely, the ceiling limit of 50% (the numerical benchmark), the principle of creamy layer, the compelling reasons, namely, backwardness, inadequacy of representation and the overall administrative efficiency are not obliterated by the impugned amendments. At the appropriate time, we have to consider the law as enacted by various States providing for reservation if challenged. At that time we have to see whether limitations on the exercise of power are violated. The State is free to exercise its discretion of providing for reservation subject to limitation, namely, that there must exist compelling reasons of backwardness, inadequacy of representation in a class of post(s) keeping in mind the overall administrative efficiency. It is made clear that even if the State has reasons to make reservation, as stated above, if the impugned law violates any of the above substantive limits on the

width of the power the same would be liable to be set aside.”

113. On the basis of, *inter alia*, the aforesaid reasoning, the Supreme Court concluded as under:

"121. The impugned constitutional amendments by which Articles 16 (4-A) and 16(4-B) have been inserted flow from Article 16(4). They do not alter the structure of Article 16(4). They retain the controlling factors or the compelling reasons, namely, backwardness and inadequacy of representation which enables the States to provide for reservation keeping in mind the overall efficiency of the State administration under Article 335. These impugned amendments are confined only to SCs and STs. They do not obliterate any of the constitutional requirements, namely, ceiling limit of 50% (quantitative limitation), the concept of creamy layer (qualitative exclusion), the sub-classification between OBCs on one hand and SCs and STs on the other hand as held in *Indra Sawhney*, the concept of post-based roster with inbuilt concept of replacement as held in *R.K. Sabharwal*."

114. In **Dr. Jaishri Laxmanrao Patil** (*supra*), the Supreme Court, speaking through Ashok Bhushan, J. (speaking for himself and S. Abdul Nazeer, J.), reiterated that a balance needs to be struck to ensure that the affirmative action by way of reservation is reasonable. The Court concluded that the object of fixing the maximum ceiling of 50% in **Indra Sawhney** (*supra*) was to strike a balance between the rights under Articles 15(1) and 15(4), and Articles 16(1) and 16(4), of the Constitution.

115. In the said decision, the Constitution Bench of the Supreme Court declined to refer the decision in **Indra Sawhney** (*supra*) to a larger Bench for reconsideration, notwithstanding the subsequent constitutional amendments.

116. In his concurring opinion, S. Ravindra Bhat, J. observed as under:

"10. A careful reading of the judgments in *Indra Sawhney v. Union of India*, clarifies that seven out of nine Judges concurred that there exists a quantitative limit on reservation-spelt out at 50%. In the opinion of four Judges, therefore, per the judgment of B.P.Jeevan Reddy, J., this limit could be exceeded under extraordinary circumstances and in conditions for which separate justification has to be forthcoming by the State or the agency concerned. However, there is unanimity in the conclusion by all seven Judges that an outer limit for reservation should be 50%. Undoubtedly, the other two Judges, Ratnavel Pandian and P.B. Sawant, JJ. indicated that there is no general rule of 50% limit on reservation. In these circumstances, given the general common agreement about the existence of an outer limit i.e., 50%, the petitioner's argument about the incoherence or uncertainty about the existence of the rule or that there were contrary observations with respect to absence of any ceiling limit in other judgments (the dissenting judgments of K. Subba Rao, in *T. Devadasan v. Union of India*, the judgments of S.M. Fazal Ali and Krishna Iyer. JJ. in *State of Kerala v. N.M. Thomas* and the judgment of Chinnappa Reddy, J. in *K.C. Vasanth Kumar v. State of Karnataka*) is not an argument compelling a review or reconsideration of *Indra Sawhney* rule."

117. In view of the above, there is no room for any doubt as to the existence of the rule limiting reservation to 50%.

118. More importantly, S. Ravindra Bhat, J. also referred to the concept of balance that is the substratal principle which informs several decisions, including **Indra Sawhney** (*supra*). We consider it apposite to refer to the following extract from his opinion:

"25. A constant and recurring theme in the several judgments of Indra Sawhney was the concept of balance. This expression was used in two senses one, to correct the existing imbalance which existed, due to past discriminatory practices that kept large sections of the society backward; two, the quest for achieving the balance between the guarantee of equality to all and the positive or affirmative discrimination sanctioned by Articles 15(4) and 16(4). B.P. Jeevan Reddy, J. (for himself and four other Judges) held that: (SCC pp. 734-35, para 808) "808. It needs no emphasis to say that the principal aim of Articles 14 and 16 is equality and equality of opportunity and that clause (4) of Article 16 is but a means of achieving the very same objective. Clause (4) is a special provision-though not an exception to clause (1). Both the provisions have to be harmonised keeping in mind the fact that both are but the re-statements of the principle of equality enshrined in Article 14. The provision under Article 16(4) conceived in the interest of certain sections of society should be balanced against the guarantee of equality enshrined in clause (1) of Article 16 which is a guarantee held out to every citizen and to the entire society."

119. S. Ravindra Bhat, J. also observed that constitutional adjudication involves making choices, which necessarily means that lines have to be drawn and redrawn. He observed that the ceiling of 50%, with the 'extraordinary circumstances' exception, is

the just balance. He described it as the “Goldilocks solution”. His observations in this regard are as under:

"33. Upon examination of the issue from this perspective, the ceiling of 50% with the "extraordinary circumstances" exception, is the just balance-what is termed as the "Goldilocks solution"- i.e. the solution containing the right balance that allows the State sufficient latitude to ensure meaningful affirmative action, to those who deserve it, and at the same time ensures that the essential content of equality, and its injunction not to discriminate on the various proscribed grounds (caste, religion, sex, place of residence) is retained. This Court in *M. Nagaraj v. Union of India* observed that "a numerical benchmark is the surest immunity against charges of discrimination". To dilute the 50% benchmark further, would be to effectively destroy the guarantee of equality, especially the right not to be discriminated against on the grounds of caste (under Articles 15 and 16)."

120. Prof. Ravivarma Kumar, learned Senior Counsel appearing for the State, had earnestly argued that the extent of reservation is required to be determined on the basis of the quantifiable data available. He also referred to the observation in **State of Punjab v. Hira Lal**⁴⁷ that “the length of the leap to be provided depends upon the gap to be covered”. However, we may note that, in **Dr. Jaishri Laxmanrao Patil** (*supra*), S. Ravindra Bhat, J. referred to the same phrase and pointed out that such observations reveal no discernible principle. He reiterated that the definitive and objective

⁴⁷ (1970) 3 SCC 567

principle of a 50% ceiling on reservation emerges clearly from the overall decision in **Indra Sawhney** (*supra*).

121. Ashok Bhushan, J. (speaking for himself and S. Abdul Nazeer, J.) also referred to the earlier decisions of the Supreme Court, including **Indra Sawhney** (*supra*), and held as under:

"399. To change the 50% limit is to have a society which is not founded on equality but based on caste rule. Democracy is an essential feature of our Constitution and part of our basic structure. If the reservation goes above 50% limit which is a reasonable, it will be slippery slope, the political pressure, will make it hardly to reduce the same. Thus, answer to the question posed is that the percentage of 50% has been arrived at on the principle of reasonability and achieves equality as enshrined by Article 14 of which Articles 15 and 16 are facets."

122. The Court, in unequivocal terms, held that the ceiling of 50% has been arrived at on the principle of reasonableness and achieves equality, and that to change the said limit would be to have a society which is not founded on equality but based on caste rule.

123. In view of the emphatic language used, there can be little doubt that the 50% rule is not a rule of prudence or an *ad hoc*, elastic rule. It is a firm rule, albeit subject to an exception in extraordinary circumstances.

124. Prof. Ravivarma Kumar, learned Senior Counsel appearing for the State, had referred to the Nagamohan Das Commission Report, the Adi Committee Report and the Report on Backwardness, Inadequacy of Representation and Administrative Efficiency in Karnataka dated 05.05.2017, prepared by the Committee headed by the then Additional Chief Secretary, Smt. K. Ratna Prabha [**Ratnaprabha Committee Report**]. He contended that these reports provide concrete data to establish that an increase in the reservation in favour of SCs and STs is necessary to ensure their adequate representation in the services. We will examine the rival contentions in this regard later. However, at this stage, we note that, even if it is accepted that the reports present data supporting the view that the identified classes are backward and that the reservation would ensure their adequate representation, the said contention misses the point of the 50% rule. Any affirmative action under Article 16(4) of the Constitution must necessarily be in aid of classes that have been identified as backward, and for their adequate representation. If the identified backward classes are inadequately represented in the services under the State, Article 16(4) of the Constitution enables the State to make reservation in the services of the State for such backward classes. However, the width of this enabling provision extends to

50% of the total pool. Thus, the opinion of the State that a backward class is inadequately represented would enable it to make reservation only to the extent that the overall reservation for the backward classes does not exceed 50%. Any reservation in excess thereof would breach the equality clauses, which would be impermissible. The subjective opinion of the State that a backward class is not adequately represented in proportion to its population does not enable the State to exceed the limit of 50%, but only to provide for reservation within the said limit. The exception of “extraordinary situations” is an exception to the rule. The said exception is not satisfied by a subjective opinion on broad parameters that may otherwise warrant reservation.

125. In **Indra Sawhney** (*supra*), the Supreme Court had illustratively referred to a situation where the population inhabiting far-flung and remote areas has been left out of the mainstream of national life and, in view of the conditions peculiar to and characteristic of them, needs to be treated in a different way. In such extraordinary situations, some relaxation of the “strict rule” may become imperative. The object of carving out the exception of extraordinary situations was to ensure that the State is not disabled from dealing with any such extraordinary situation that may arise.

126. Clearly, it is neither apposite nor feasible for this Court to exhaustively set out the circumstances that may be considered extraordinary enough to warrant a breach of the 50% ceiling limit. However, a subjective opinion that the reservation in favour of an identified backward class ought to be a few percentage points higher is not extraordinary enough to trigger the exception to the 50% rule. Such an opinion does not constitute an extraordinary situation warranting a breach of the 50% limit, which reflects the balance between the equality clauses. Breaching the said limit would effectively undermine the principle of equality, one of the values on which the Constitution is founded.

127. In **Chebrolu Leela Prasad Rao** (*supra*), a Constitution Bench of the Supreme Court considered the challenge to the validity of GOM No. 3 dated 10.01.2000, issued by the Governor of the erstwhile State of Andhra Pradesh in exercise of the power under Para 5(1) of the Fifth Schedule to the Constitution. The said GOM provided, in effect, for 100% reservation in favour of ST candidates for the posts of teachers in schools in the Scheduled Areas of the State. The High Court had, by a majority, upheld the said G.O., holding that the reservation to that extent could be sustained as it was based on an intelligible differentia having a

nexus with the object sought to be achieved, and that it did not offend the equality clauses as it was a step to promote the educational development of the tribals. Before the Supreme Court, it was also argued on behalf of the State that the normal rule of 50% reservation could be relaxed in appropriate cases, and that this was precisely what had been done by the Governor. The Supreme Court did not find any merit in the said contention and observed as under:

"144. There were no such extraordinary circumstances to provide a 100% reservation in Scheduled Areas. It is an obnoxious idea that tribals only should teach the tribals. When there are other local residents, why they cannot teach is not understandable. The action defies logic and is arbitrary. Merit cannot be denied in toto by providing reservations.

145. A reservation that is permissible by protective mode, by making it 100% would become discriminatory and impermissible. The opportunity of public employment cannot be denied unjustly to the incumbents, and it is not the prerogative of few. The citizens have equal rights, and the total exclusion of others by creating an opportunity for one class is not contemplated by the Founding Fathers of the Constitution of India. Equality of opportunity and pursuit of choice under Article 51-A cannot be deprived of unjustly and arbitrarily. As per the Presidential Order, the citizens of the locality and outsiders were entitled to 15% of employment in the district cadre in terms of clause (10) of Article 370(1)(d) of the Constitution. Thus, the G.O. does not classify but deals with reservations. It was contrary to the report sent to the President by the Governor, which indicated even the posts which were reserved for Scheduled Tribes Teachers, they

were not available as such Tribes Advisory Council decided to fill them from other non-local tribals."

128. The Supreme Court also referred to the earlier decisions, including **Indra Sawhney** (*supra*), and observed that reservation beyond 50% was not permissible. The Court also noted that GOM No. 3 of 2000 had been issued notwithstanding that a similar Government Order issued in the year 1986 had been quashed by the State Administrative Tribunal, and that the appeal preferred against that decision had been withdrawn in the year 1998. In this regard, we may note the following observations of the Supreme Court and the consequent directions:

"167. As a sequel to the quashing of GOMs No. 3 of 2000, the appointments made in excess of the permissible reservation cannot survive and should be set aside. However, on behalf of the State and other respondents, it was urged that appointments may not be set aside. In the peculiar circumstances, the incumbents, who have been appointed, cannot be said to be at fault and they belong to the Scheduled Tribes.

168. We cannot ignore the fact that a similar G.O. was issued by the erstwhile State Government of Andhra Pradesh in the year 1986, which was quashed by the State Administrative Tribunal, against which an appeal was preferred in this Court, which was dismissed [State of A.P. v. A. Janardhana Rao, Civil Appeal No. 2305 of 1991, order dated 20-3-1998 (SC)] as withdrawn in the year 1998. After withdrawal of the appeal from this Court, it was expected of the erstwhile State of Andhra Pradesh not to resort to such illegality of providing 100% reservation once again. But instead, it issued GOMs No. 3 of 2000, which was equally impermissible, even if the A.P. Regulation of Reservation and

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Appointment to Public Services Act, 1997 would have been amended, in that event also providing reservation beyond 50% was not permissible. It is rightly apprehended by the appellants that the State may again by way of misadventure, resort to similar illegal exercise as was done earlier. It was least expected from the functionary like Government to act in aforesaid manner as they were bound by the dictum laid down by this Court in *Indra Sawhney* [*Indra Sawhney v. Union of India*, 1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1] and other decisions holding that the limit of reservation not to exceed 50%. There was no rhyme or reason with the State Government to resort to 100% reservation. It is unfortunate that illegal exercise done in 1986 was sought to be protected by yet another unconstitutional attempt by issuing GOMs No. 3 of 2000 with retrospective effect of 1986, and now after that 20 years have passed. In the peculiar circumstance, we save the appointments conditionally that the reorganised States i.e. the States of Andhra Pradesh and Telangana not to attempt a similar exercise in the future. If they do so and exceed the limit of reservation, there shall not be any saving of the appointments made, w.e.f. 1986 till date. We direct the respondents States not to exceed the limits of reservation in future. Ordered accordingly."

129. In **Guru Ghasidas Sahitya Avam Sanskriti Academy** (*supra*), a Division Bench of the Chhattisgarh High Court, by its judgment dated 19.09.2022, declared the Chhattisgarh Lok Seva (Anusuchit Jatiyon, Anusuchit Jan Jatiyon Aur Anya Pichere Wargon Ke Liye Aarakshan) Sanshodhan Adhiniyam, 2011 unconstitutional. The said amendment had substituted Section 4(2)(i) of the Chhattisgarh Lok Seva (Anusuchit Jatiyon, Anusuchit Jan Jatiyon Aur Anya Pichere Wargon Ke Liye Aarakshan)

Adhiniyam, 1994, which fixes the percentage of reservation of posts. It raised the overall reservation at the State level for Class-I, Class-II, Class-III and Class-IV posts to 58% (12% for SCs, 32% for STs and 14% for the other backward classes), thereby breaching the ceiling of 50%. The High Court also declared unconstitutional Section 3 of the Chhattisgarh Educational Institutions (Reservation in Admission) Act, 2012, which provided for reservation in admissions to educational institutions. The State argued that the enhancement was meant to address the inadequate representation of these classes in the services under the State, and that exceptional circumstances existed which warranted relaxing the 50% rule. The High Court did not accept this contention. The relevant observations of the Court are reproduced below:

"84. On the basis of materials on record, we are of the opinion that no special case is made out for breaching the reservation ceiling limit of 50% while increasing the reservation to 58%. Inadequacy of representation in services under the State or inadequacy of representation in educational institutions is relevant to the extent reservation is sought to be pegged below 50% but if the ceiling is to be crossed, then inadequacy in representation cannot be the sole determining factor and there has to be exceptional circumstances. Failure to secure a job or a seat in an educational institution by a reserve category candidate competing with candidates belonging to general category cannot be construed as an exceptional circumstance. Tables 4 to 8 seek to project certain disadvantages suffered

by SCs, STs and OBCs compared to socially advanced castes. The tables do not explain in any manner why reservation in SCs is to be lowered to 12%, reservation in STs to be increased to 32% and to maintain reservation of 14% in respect of OBCs. No exceptional circumstances is brought on record and no special case is made out. There is no explanation also as to why reservation had to be made to the extent of 76%, 80%, 81%, 66%, 74% in the districts of Surguja, Surajpur, Balrampur-Ramanujganj, Jashpur, Korla and in Surguja Division, respectively."

130. The High Court, however, moulded the relief and did not interfere with the admissions granted and the appointments made on the basis of the impugned reservation.

131. The said decision of the Chhattisgarh High Court was carried in appeal before the Supreme Court by several parties. These appeals remain pending before the Supreme Court. Matters concerning the enhancement of reservation for the other backward classes in the State of Madhya Pradesh were tagged with these appeals. These included Transferred Case (C) Nos. 15 and 16 of 2025, captioned "Ashita Dubey v. State of Madhya Pradesh". By order dated 19.02.2026, the Supreme Court remanded the Madhya Pradesh matters to the High Court of Madhya Pradesh.

132. A Division Bench of the Madhya Pradesh High Court, by a recent judgment dated 09.10.2026 in **Ashita Dubey v. State of**

Madhya Pradesh⁴⁸, struck down Madhya Pradesh Ordinance No. 2 of 2019 and the Madhya Pradesh Lok Seva (Anusuchit Jatiyon, Anusuchit Jan Jatiyon aur Anya Pichhade Vargon ke Liye Arakshan) Sanshodhan Adhiniyam, 2019, whereby the reservation for the other backward classes was increased from 14% to 27%, taking the aggregate reservation in that State to 63%. The High Court held that the ceiling of 50% on reservations, as authoritatively laid down by the Supreme Court, was binding on the State, and that the State had failed to establish the existence of any exceptional circumstances that would warrant breaching that ceiling. Accordingly, the enhancement was set aside, and the reservation for the other backward classes in that State was restored to 14%.

133. Similarly, in **Gaurav Kumar** (*supra*), a Division Bench of the Patna High Court set aside, as *ultra vires* the Constitution, the Bihar Reservation of Vacancies in Posts and Services (for Scheduled Caste, Scheduled Tribes and Other Backward Classes) Amendment Act, 2023 and the Bihar Reservation (in Admission to Educational Institutions) Amendment Act, 2023, whereby the reservation in the State of Bihar had been enhanced to 65% on the

⁴⁸ 2026:MPHC-JBP:79348

basis of a caste survey. The High Court referred to various decisions of the Supreme Court and held as under:

"83. Having dealt with the various decisions relied on at the Bar, we have to notice that there is no requirement that a Commission should be appointed or reference made to the already constituted Commission at the National or State level for the purpose of considering reservations, or its percentage; as held in M.R Balaji (supra). But it has to be emphasized that even as early as in M.R Balaji, on ascertaining the backwardness, it spoke of the relevance of various factors and the intermix of aspects like poverty, caste, occupation, location of residence etc; which reflects the social and economic situation, requiring an elaborate investigation by collection of data and in-depth analysis in a rational and scientific manner. We have already found that such an analysis was absent insofar as the enhancement of the quota for reservations. Article 15(4) and Article 16(4) were equated in M.R Balaji (supra) and Devadasan (supra) applied 50% limit even to Article 15(4). Paragraph 814 of Indra Sawhney (supra) approved Devadasan (supra) to the extent of its majority decision regarding the limit of 50% being applied to Article 15(4). N.M. Thomas (supra) was differed from and it was held that to apply the 50%, the year has to be taken as a unit and not the service as a whole. There can be no filling up of the deficiency of service in one single year was the authoritative pronouncement.

84. That, adequate representation is the core of both Articles 15(4) & 16 (4); was reiterated and the rule of 50% limit in reservations was reaffirmed by the various decisions. That, the exception provided, to exceed the 50% limit, was confined and restricted to extenuating circumstances and characteristically inherent aspects akin to far flung areas thus being kept away from the mainstream of National life, is undisputed. That, these conditions do not exist and was not demonstrated in the instant case is abundantly clear. That, the State attempted no in-depth study or analysis before providing for

enhancement of the reservation percentage is established from the records. That, the State proceeded on the mere proportion of population of different categories as against their numerical representation in government services and educational institutions is the admitted position and is the pivotal argument of the State. That, this argument works against the core principles of Articles 15(4) & 16(4) is a given fact. In our judgment hence, the enhancement of reservations beyond the 50% limit is bad in law based on the principles of equality emanating from the Constitution, as laid down by the wealth of precedents discussed in this judgment; binding on us and the State equally. We, hence, set aside the Bihar Reservation of Vacancies in Posts and Services (for Scheduled Caste, Scheduled Tribes and Other Backward Classes) Amendment Act, 2023 and the Bihar Reservation (in Admission to Educational Institutions) Amendment Act, 2023 as ultra vires the Constitution and violative of the equality clause under Articles 14, 15 and 16. The Writ Petitions are allowed leaving the parties to suffer their respective costs."

134. The said decision has been challenged before the Supreme Court by way of SLP by various parties. By order dated 29.07.2024, the Supreme Court granted leave but refused interim relief at that stage. The appeals remain pending before the Supreme Court.

135. In **Indra Sawhney** (*supra*), the 50% ceiling was described as a "strict rule"⁴⁹. The fact that the said rule admits of an exception in extraordinary situations does not render it a rule of prudence or an unenforceable guideline. The rule is founded on the equality

⁴⁹ Paragraph 810 of *Indra Sawhney* (*supra*), extracted hereinbefore.

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clauses, and the Supreme Court has unequivocally held that a breach of the rule would offend the constitutional guarantee of equality.

Whether the Constitution (One Hundred and Third Amendment) Act, 2019 has obliterated the 50% rule

136. Prof. Ravivarma Kumar, learned Senior Counsel appearing for the State, contended that the 50% ceiling stood obliterated by the Constitution (One Hundred and Third Amendment) Act, 2019 [103rd Amendment], which came into force on 14.01.2019. By virtue of the said amendment, clause (6), along with an Explanation, was inserted in Article 15, and clause (6) was inserted in Article 16 of the Constitution. Sections 2 and 3 of the 103rd Amendment are set out below:

“2. Amendment of article 15.— In article 15 of the Constitution, after clause (5), the following clause shall be inserted, namely:—

‘(6) Nothing in this article or sub-clause (g) of clause (1) of article 19 or clause (2) of article 29 shall prevent the State from making,—

(a) any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in clauses (4) and (5); and

(b) any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in clauses (4) and (5) in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority

educational institutions referred to in clause (1) of article 30, which in the case of reservation would be in addition to the existing reservations and subject to a maximum of ten per cent of the total seats in each category.

Explanation.—For the purposes of this article and article 16, ‘economically weaker sections’ shall be such as may be notified by the State from time to time on the basis of family income and other indicators of economic disadvantage.’

3. Amendment of article 16.— In article 16 of the Constitution, after clause (5), the following clause shall be inserted, namely:—

‘(6) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any economically weaker sections of citizens other than the classes mentioned in clause (4), in addition to the existing reservation and subject to a maximum of ten per cent. of the posts in each category.’”

137. Clause (6) of Article 15 enables the State to make special provisions for the advancement of any Economically Weaker Sections of Citizens [EWS], other than the classes mentioned in clauses (4) and (5) of Article 15. Sub-clause (b) of clause (6) enables the State to make such special provisions in relation to admission to educational institutions, including private educational institutions, whether aided or unaided by the State, other than minority educational institutions. It also provides that in the case of such reservation, the same would be in addition to the existing reservations and subject to a maximum of 10% of the total seats in each category. Explanation to clause (6) of Article 15 clarifies that,

for the purposes of Articles 15 and 16 of the Constitution, EWS shall be such as may be notified by the State from time to time on the basis of family income and other indicators of economic disadvantage. Similarly, clause (6) of Article 16 enables the State to make provision for the reservation of appointments or posts in favour of the EWS, other than the classes mentioned in clause (4) of Article 16, in addition to the existing reservation and subject to a maximum of 10% of the posts in each category.

138. Taking a cue from the said amendments, it was argued that, since an additional reservation of up to 10% is now permissible in educational institutions and in appointments to the services under the State, the ceiling of 50% on reservation under Articles 15 and 16 of the Constitution, as laid down by the Supreme Court in various decisions, no longer holds good.

139. Prof. Ravivarma Kumar, learned Senior Counsel, also contended that, even assuming that the ceiling of 50% continues to apply, the pool of seats and appointments to which members of the backward classes can aspire now stands reduced to 90% of the total, since SCs, STs and the other backward classes are excluded from the reservation in favour of the EWS. He contended that, if the ceiling of 50% is applied with reference to the total number of seats

or posts, the reservation for the backward classes would, in effect, exceed 50% of the pool for which they are eligible, as that pool has shrunk to 90%. He submitted that the 103rd Amendment had been upheld by the Constitution Bench of the Supreme Court in **Janhit Abhiyan** (*supra*).

140. We find little merit in the aforesaid contentions, as they overlook the fundamental premise on which the 50% ceiling on reservations for the backward classes rests. The wealth of judicial precedents handed down by the Supreme Court clearly spell out that the 50% rule is, fundamentally, a rule of equality. It strikes a balance whereby affirmative action does not overpower the other facets of the equal opportunity clause. In **M. Nagaraj** (*supra*), the Supreme Court also observed that, if the extent of reservation goes beyond the cut-off point, it results in reverse discrimination. When the contention advanced on behalf of the State is examined bearing the aforesaid in mind, it is at once clear that it is unsustainable. The import of the argument is that, since the pool available to the backward classes has been reduced to 90% on account of the reservation permissible for the EWS, the reservation of 50% in their favour already exceeds 50% of that pool. Thus, the ceiling of 50% is set at large, and the reservation in favour of such

classes can be enhanced, further reducing the pool available for general merit candidates. In other words, the argument is that, since the State is now enabled to make reservation for the upliftment of the EWS, the backward classes ought to have a larger share, and the State can further reduce the seats and appointments available to candidates on the basis of general merit. This would clearly fall foul of the equality clauses and the very concept of balance which the Supreme Court has endeavoured to strike by fixing the ceiling limit of 50%.

141. That apart, we also find that there is no scope for entertaining the contentions as advanced. The Constitution Bench of the Supreme Court in **Janhit Abhiyan** (*supra*) clearly explained that the ceiling of 50% is to be read essentially in the context of reservations under clauses (4) and (5) of Article 15 and clause (4) of Article 16 of the Constitution, and cannot be overstretched to the reservation provided for an entirely different class, consisting of the EWS.

142. In **Janhit Abhiyan** (*supra*), it was argued on behalf of the petitioners that further reservation in favour of the EWS was impermissible, as it would breach the ceiling of 50%. It was also argued that the limit of 50% also took into account that the

backward classes could compete for the unreserved seats/appointments on the basis of merit, which opportunity would stand curtailed by the reservation in favour of the EWS. The Supreme Court rejected the said contentions, noting that the observations as to the ceiling of 50% had been made in decisions rendered with reference to the reservations in place prior to the 103rd Amendment. Dinesh Maheshwari, J., in the leading majority opinion (Bela M. Trivedi, J. and J.B. Pardiwala, J. concurring), referred to the various decisions in which the ceiling limit of 50% had been deliberated upon, and concluded as under:

"171. Thus, having examined the permissible limits of affirmative action in light of the possible harm of preferential treatment qua other innocent class of competitors i.e. general merit candidates, this Court has expressed the desirability of fifty per cent as the ceiling limit for reservation in education and public employment but, as observed hereinbefore, all such observations are required to be read essentially in the context of the reservation obtaining under Articles 15(4), 15(5) and 16(4) or other areas of affirmative action like that in relation to local self-government (the case of K. Krishna Murthy [K. Krishna Murthy v. Union of India, (2010) 7 SCC 202 : (2010) 2 SCC (L&S) 385]) and cannot be overstretched to the reservation provided for entirely different class, consisting of the economically weaker sections.

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173. In another view of the matter, the prescription of ceiling limit of fifty per cent, being apparently for the benefit of general merit candidates, does not provide any justified cause to the candidates standing in the bracket of already available reservation to raise any grievance about extra ten per cent reservation for the benefit of another

section of society in need of affirmative action. In any case, there is no question of violation of any such basic feature of the Constitution that the entire structure of equality of opportunity in Article 16 would collapse by this EWS reservation."

143. Although the Supreme Court also observed that the rule of 50% is not "held to be inflexible and inviolable for all times to come", the said question is covered by the decision of the larger bench in **Indra Sawhney** (*supra*).

144. As is apparent from the above, the Supreme Court observed that the prescription of the ceiling limit of 50% is "apparently for the benefit of general merit candidates" and, thus, the reservation for the EWS, to the maximum extent of 10%, is carved out from the pool otherwise available to them. The same, therefore, cannot give rise to any legitimate grievance on the part of candidates belonging to the backward classes, as the limit of reservation in their favour is not affected.

Whether the challenge is outside the scope of judicial review

145. Prof. Ravivarma Kumar, learned Senior Counsel appearing for the State, contended that the Act is based on quantifiable data, as evidenced by the Nagamohan Das Commission Report, the Adi Committee Report and the Ratnaprabha Committee Report; and, therefore, the decision of the State Legislature to enact the Act is

outside the purview of judicial review. He submitted that the scope of judicial review in such matters is extremely limited. He contended that, in **M. Nagaraj** (*supra*), the Supreme Court had emphasised that affirmative action under Article 16 of the Constitution required the State to collect quantifiable data for fulfilling the parameters regarding ‘inadequacy of representation’, ‘backwardness’ and ‘overall efficiency’. He submitted that, in the present case, there is sufficient quantifiable data in the Nagamohan Das Commission Report and the Adi Committee Report, which enabled the State Legislature to enact the Act in exercise of its constitutional powers. He also referred to the decision of the Supreme Court in **S.V. Joshi v. State of Karnataka**⁵⁰ and, in particular, to paragraph 4 of the said decision, which is set out below:

“4. Subsequent to the filing of the above writ petitions, Articles 15 and 16 of the Constitution have been amended vide the Constitution (Ninety-third Amendment) Act, 2005, and the Constitution (Eighty-first Amendment) Act, 2000, respectively, which Amendment Acts have been the subject-matter of subsequent decisions of this Court in *M. Nagaraj v. Union of India* [(2006) 8 SCC 212 : (2007) 1 SCC (L&S) 1013] and *Ashoka Kumar Thakur v. Union of India* [(2008) 6 SCC 1] in which, inter alia, it has been laid down that if a State wants to exceed fifty per cent reservation, then it is required to base its decision on the quantifiable data. In the present case, this exercise has not been done.”

⁵⁰ (2012) 7 SCC 41

146. Additionally, he referred to the decision in **B.K. Pavitra v. Union of India**⁵¹ [**B.K. Pavitra II**] and, on the strength of the said decision, submitted that the Supreme Court had accepted the Ratnaprabha Committee Report. The Supreme Court held that the methodology adopted by the Ratnaprabha Committee was not alien to conventional social science methodologies, and rejected the contention that the conclusions of the said Committee were based on any extraneous or irrelevant material. He submitted that, since the enactment challenged in that case was based on the said report, the Supreme Court declined to interfere with it in the exercise of its power of judicial review. He contended that, in the present case as well, the Act is based on the reports, including the Ratnaprabha Committee Report, which contain quantifiable data regarding 'backwardness', 'inadequacy of representation' and 'efficiency' and, thus, the Act is not amenable to judicial review.

147. There is merit in the contention that the question whether the requisite conditions for the exercise of the enabling power are satisfied is a matter within the subjective satisfaction of the State. The judicial review of such a subjective opinion does not extend to a review on merits. It is primarily concerned with the decision-

⁵¹ (2019) 16 SCC 129

making process: whether the procedure has been followed; whether the opinion is *mala fide*; whether it is based on extraneous considerations; or whether it has been formed in disregard of relevant considerations. The grounds on which a legislative enactment may be challenged are limited to examining whether it is beyond legislative competence, is manifestly arbitrary, or falls foul of any of the provisions of the Constitution of India.

148. In **M. Nagaraj** (*supra*), the Supreme Court had held that the State would necessarily have to show the existence of compelling reasons, namely, ‘backwardness’, ‘inadequacy of representation’ and ‘overall administrative efficiency’, before making provision for reservation. It is relevant to refer to the following passages from the said decision:

“107. It is important to bear in mind the nature of constitutional amendments. They are curative by nature. Article 16(4) provides for reservation for Backward Classes in cases of inadequate representation in public employment. Article 16(4) is enacted as a remedy for the past historical discriminations against a social class. The object in enacting the enabling provisions like Articles 16(4), 16(4-A) and 16(4-B) is that the State is empowered to identify and recognise the compelling interests. If the State has quantifiable data to show backwardness and inadequacy then the State can make reservations in promotions keeping in mind maintenance of efficiency which is held to be a constitutional limitation on the discretion of the State in making reservation as indicated by Article 335. As stated above, the concepts of efficiency,

backwardness, inadequacy of representation are required to be identified and measured. That exercise depends on availability of data. That exercise depends on numerous factors. It is for this reason that enabling provisions are required to be made because each competing claim seeks to achieve certain goals. How best one should optimise these conflicting claims can only be done by the administration in the context of local prevailing conditions in public employment. This is amply demonstrated by the various decisions of this Court discussed hereinabove. Therefore, there is a basic difference between “equality in law” and “equality in fact” (see Affirmative Action by William Darity). If Articles 16(4-A) and 16(4-B) flow from Article 16(4) and if Article 16(4) is an enabling provision then Articles 16(4-A) and 16(4-B) are also enabling provisions. As long as the boundaries mentioned in Article 16(4), namely, backwardness, inadequacy and efficiency of administration are retained in Articles 16(4-A) and 16(4-B) as controlling factors, we cannot attribute constitutional invalidity to these enabling provisions. However, when the State fails to identify and implement the controlling factors then excessiveness comes in, which is to be decided on the facts of each case. In a given case, where excessiveness results in reverse discrimination, this Court has to examine individual cases and decide the matter in accordance with law. This is the theory of “guided power”. We may once again repeat that equality is not violated by mere conferment of power but it is breached by arbitrary exercise of the power conferred.

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117. The test for judging the width of the power and the test for adjudicating the exercise of power by the State concerned are two different tests which warrant two different judicial approaches. In the present case, as stated above, we are required to test the width of the power under the impugned amendments. Therefore, we have to apply “the width test”. In applying “the width test” we have to see whether the impugned amendments obliterate the constitutional limitations mentioned in Article 16(4), namely, backwardness and inadequacy of representation. As stated above, these limitations are not obliterated by the impugned amendments.

However, the question still remains whether the State concerned has identified and valued the circumstances justifying it to make reservation. This question has to be decided casewise. There are numerous petitions pending in this Court in which reservations made under State enactments have been challenged as excessive. The extent of reservation has to be decided on the facts of each case. The judgment in *Indra Sawhney* [1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1 : (1992) 22 ATC 385] does not deal with constitutional amendments. In our present judgment, we are upholding the validity of the constitutional amendments subject to the limitations. Therefore, in each case the Court has got to be satisfied that the State has exercised its opinion in making reservations in promotions for SCs and STs and for which the State concerned will have to place before the Court the requisite quantifiable data in each case and satisfy the Court that such reservations became necessary on account of inadequacy of representation of SCs/STs in a particular class or classes of posts without affecting general efficiency of service as mandated under Article 335 of the Constitution.”

149. Indisputably, the conditions of ‘backwardness’ and ‘inadequacy of representation’ are the *sine qua non* for the exercise of the power of affirmative action. Whilst the existence of the said conditions is a matter of the subjective opinion of the State, the opinion cannot be manifestly arbitrary or unreasonable. The Supreme Court has, in several decisions, examined whether the State had quantifiable data establishing the said conditions.

150. In **Suraj Bhan Meena v. State of Rajasthan**⁵², the Supreme Court upheld the decision of the High Court of Rajasthan quashing the notifications issued by the State Government of Rajasthan, *inter alia*, on the ground that the State had not undertaken the exercise of determining 'backwardness', 'inadequacy of representation' and 'overall efficiency' before providing for consequential seniority to candidates belonging to SCs and STs. Similarly, in **S. Panneer Selvam v. State of Tamil Nadu**⁵³, the Supreme Court observed as under:

"31. The respondents' submission regarding inadequacy of representation of Scheduled Castes/Scheduled Tribes in the Tamil Nadu Highways Engineering Service by itself is not sufficient to uphold the inadequacy of representation of SCs/STs in the said service. Even after the Eighty-fifth Amendment, the State is duty-bound to collect data so as to assess the adequacy of representation of the Scheduled Caste candidates in the service and based on the same the State should frame a policy/rules for consequential seniority. No material is placed on record that the State of Tamil Nadu has ever undertaken such exercise of collecting data of adequacy of representation of the SC/ST candidates in the Tamil Nadu Highways Engineering Service. In the absence of any rule conferring consequential seniority in the State of Tamil Nadu the "catch-up rule" is applicable even amongst Junior Engineers promoted as ADEs following rule of reservation and also for their inter se seniority amongst AEs promoted as ADEs and JEs promoted as ADEs following rule of reservation."

⁵² (2011) 1 SCC 467

⁵³ (2015) 10 SCC 292

151. In **B.K. Pavitra v. Union of India**⁵⁴ [B.K. Pavitra I], the Supreme Court struck down the provisions of the Karnataka Determination of Seniority of the Government Servants Promoted on the basis of the Reservation (to the Posts in the Civil Services of the State) Act, 2002, to the extent that they did away with the 'catch-up rule' and provided for consequential seniority, with effect from 27.04.1978, to persons belonging to SCs and STs promoted against roster points. The Court found that the State was unable to show any quantifiable data establishing the three conditions, and observed as under:

"29. It is clear from the above discussion in *S. Panneer Selvam case* [*S. Panneer Selvam v. State of T.N.*, (2015) 10 SCC 292 : (2016) 1 SCC (L&S) 76] that exercise for determining "inadequacy of representation", "backwardness" and "overall efficiency", is a must for exercise of power under Article 16(4-A). **Mere fact that there is no proportionate representation in promotional posts for the population of SCs and STs is not by itself enough to grant consequential seniority to promotees who are otherwise junior and thereby denying seniority to those who are given promotion later on account of reservation policy. It is for the State to place material on record that there was compelling necessity for exercise of such power and decision of the State was based on material including the study that overall efficiency is not compromised. In the present case, no such exercise has been undertaken.** The High Court erroneously observed that it was for the petitioners to plead and prove that the overall efficiency was adversely affected by giving consequential seniority to junior persons who got

⁵⁴ (2017) 4 SCC 620

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promotion on account of reservation. Plea that persons promoted at the same time were allowed to retain their seniority in the lower cadre is untenable and ignores the fact that a senior person may be promoted later and not at the same time on account of roster point reservation. Depriving him of his seniority affects his further chances of promotion. Further plea that seniority was not a fundamental right is equally without any merit in the present context. In absence of exercise under Article 16(4-A), it is the “catch-up” rule which fully applies. It is not necessary to go into the question whether the Corporation concerned had adopted the rule of consequential seniority.”

[emphasis added]

152. In **B.K. Pavitra II** (*supra*), the Supreme Court repelled the challenge to the Karnataka Extension of Consequential Seniority to Government Servants Promoted on the basis of Reservation (to Posts in the Civil Services of the State) Act, 2018, *inter alia*, on the ground that the report of the Ratna Prabha Committee, which formed the basis of the said Act, supported the opinion of the State regarding the inadequacy of representation of promotees belonging to SCs and STs in the cadre. The Supreme Court observed as under:

“75. The foundation of the decision in *B.K. Pavitra (1)* [*B.K. Pavitra v. Union of India*, (2017) 4 SCC 620 : (2017) 2 SCC (L&S) 128] is the principle enunciated in *Nagaraj* [*M. Nagaraj v. Union of India*, (2006) 8 SCC 212 : (2007) 1 SCC (L&S) 1013] that in order to sustain the exercise of the enabling power contained in Article 16(4-A), the State is required to demonstrate a “compelling necessity” by collecting quantifiable data on : (i) inadequacy of representation; (ii) backwardness; and (iii) overall efficiency. The judgment in *B.K. Pavitra (1)* [*B.K.*

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Pavitra v. Union of India, (2017) 4 SCC 620 : (2017) 2 SCC (L&S) 128] held that no such exercise was undertaken by the State of Karnataka before providing for reservation in promotion and providing for consequential seniority. On the ground that the State had not collected quantifiable data on the three parameters enunciated in *Nagaraj* [M. Nagaraj v. Union of India, (2006) 8 SCC 212 : (2007) 1 SCC (L&S) 1013], the Reservation Act, 2002 was held to be unconstitutional. The Constitution Bench in *Nagaraj* [M. Nagaraj v. Union of India, (2006) 8 SCC 212 : (2007) 1 SCC (L&S) 1013] upheld the validity of Article 16(4-A) on the basis that before taking recourse to the enabling power the State has to carry out the exercise of collecting quantifiable data and fulfilling the three parameters noted above. *B.K. Pavitra (1)* [B.K. Pavitra v. Union of India, (2017) 4 SCC 620 : (2017) 2 SCC (L&S) 128] essentially held that there was a failure on the part of the State to undertake this exercise, which was a precondition for the exercise of the enabling power to make reservations in promotions and to provide for consequential seniority.

76. The decision in *B.K. Pavitra (1)* [B.K. Pavitra v. Union of India, (2017) 4 SCC 620 : (2017) 2 SCC (L&S) 128] did not restrain the State from carrying out the exercise of collecting quantifiable data so as to fulfil the conditionalities for the exercise of the enabling power under Article 16(4-A). The legislature has the plenary power to enact a law. That power extends to enacting a legislation both with prospective and retrospective effect. Where a law has been invalidated by the decision of a constitutional court, the legislature can amend the law retrospectively or enact a law which removes the cause for invalidation. A legislature cannot overrule a decision of the court on the ground that it is erroneous or is nullity. But, it is certainly open to the legislature either to amend an existing law or to enact a law which removes the basis on which a declaration of invalidity was issued in the exercise of judicial review. Curative legislation is constitutionally permissible. It is not an encroachment on judicial power. In the present case, the State Legislature of Karnataka, by enacting the Reservation Act, 2018, has not nullified the judicial decision in *B.K. Pavitra*

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(1) [*B.K. Pavitra v. Union of India*, (2017) 4 SCC 620 : (2017) 2 SCC (L&S) 128] , but taken care to remedy the underlying cause which led to a declaration of invalidity in the first place. Such a law is valid because it removes the basis of the decision.

* * *

106. We are of the view that once an opinion has been formed by the State Government on the basis of the report submitted by an expert committee which collected, collated and analysed relevant data, it is impossible for the Court to hold that the compelling reasons which *Nagaraj* [*M.Nagaraj v. Union of India*, (2006) 8 SCC 212 : (2007) 1 SCC (L&S) 1013] requires the State to demonstrate have not been established. Even if there were to be some errors in data collection, that will not justify the invalidation of a law which the competent legislature was within its power to enact. After the decision in *B.K. Pavitra* (1) [*B.K. Pavitra v. Union of India*, (2017) 4 SCC 620 : (2017) 2 SCC (L&S) 128] , the Ratna Prabha Committee was correctly appointed to carry out the required exercise. Once that exercise has been carried out, the Court must be circumspect in exercising the power of judicial review to re-evaluate the factual material on record.”

153. As regards the scope of judicial review in such matters, the Supreme Court, in **B.K. Pavitra II** (*supra*), emphasised two principles. First, that there is a presumption of constitutionality of an enactment, and the onus to show that it is unconstitutional lies on the person who assails it. In this regard, the Court referred to various decisions, including **Amalgamated Tea Estates Co. Ltd. v. State of Kerala**⁵⁵ and **V.C. Shukla v. State (Delhi Admn.)**⁵⁶. Second, the Court emphasised that it cannot substitute its opinion

⁵⁵ (1974) 4 SCC 415

⁵⁶ 1980 Supp SCC 249

for that of the State, and that the opinion of the State cannot be challenged on the ground of insufficiency of the material. Thus, if there is material which could support the subjective opinion of the State, the same would not be amenable to judicial review on merits. As noted hereinbefore, the Court cannot undertake a merits review of the decision, but can examine whether the necessary conditions for exercising such power are established.

154. It is also relevant to refer to the following extract from the decision in **Indra Sawhney** (*supra*), which also sets out the scope of judicial review:

“798. Not only should a class be a backward class for meriting reservations, it should also be inadequately represented in the services under the State. The language of clause (4) makes it clear that the question whether a backward class of citizens is not adequately represented in the services under the State is a matter within the subjective satisfaction of the State. This is evident from the fact that the said requirement is preceded by the words “in the opinion of the State”. This opinion can be formed by the State on its own, i.e., on the basis of the material it has in its possession already or it may gather such material through a Commission/Committee, person or authority. All that is required is, there must be some material upon which the opinion is formed. Indeed, in this matter the court should show due deference to the opinion of the State, which in the present context means the executive. The executive is supposed to know the existing conditions in the society, drawn as it is from among the representatives of the people in Parliament/Legislature. It does not, however, mean that the opinion formed is beyond judicial scrutiny altogether. The scope and reach of judicial scrutiny in matters

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within subjective satisfaction of the executive are well and extensively stated in *Barium Chemicals v. Company Law Board* [1966 Supp SCR 311 : AIR 1967 SC 295] which need not be repeated here. Suffice it to mention that the said principles apply equally in the case of a constitutional provision like Article 16(4) which expressly places the particular fact (inadequate representation) within the subjective judgment of the State/executive.”

155. As stated earlier, a legislative enactment can be challenged on the ground of lack of legislative competence, which may be either substantive or procedural⁵⁷, or on the ground that it offends the fundamental rights guaranteed under Part III of the Constitution. In the present case, the challenge to the Act is principally on the ground that it violates the right to equality and equality of opportunity guaranteed under Articles 14, 15 and 16 of the Constitution.

156. In **Jarnail Singh I** (*supra*), the Supreme Court referred to **M. Nagaraj** (*supra*) and observed as under:

“30. In fact, the tests laid down in *Nagaraj* [*M. Nagaraj v. Union of India*, (2006) 8 SCC 212 : (2007) 1 SCC (L&S) 1013] for judging whether a constitutional amendment violates basic structure have been expressly approved by a nine-Judge Bench of this Court in *I.R. Coelho v. State of T.N.* [*I.R. Coelho v. State of T.N.*, (2007) 2 SCC 1] (see paras 61, 105, and 142). **The entirety of the decision, far from being clearly erroneous, correctly applies the basic structure doctrine to uphold constitutional amendments on certain conditions which are based upon the equality**

⁵⁷ M. Nagaraj (*supra*), paragraph 103

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principle as being part of basic structure. Thus, we may make it clear that quantifiable data shall be collected by the State, on the parameters as stipulated in *Nagaraj* [*M. Nagaraj v. Union of India*, (2006) 8 SCC 212 : (2007) 1 SCC (L&S) 1013] on the inadequacy of representation, which can be tested by the courts. We may further add that the data would be relatable to the cadre concerned.”

[emphasis added]

157. In view of the above, the contention that the question whether the State has a tangible basis (quantifiable data) regarding the three conditions, namely, backwardness, inadequacy of representation and efficiency, is outside the scope of judicial review, is unmerited. It is essential for the aforesaid conditions to be satisfied for the State to exercise its powers under Article 16(4) of the Constitution. However, the said exercise must remain within the confines of the said enabling provision. As noted above, the 50% rule specifies the limits of the power, *albeit* with an exception of ‘extraordinary circumstances’. Therefore, the question is not whether the State has quantifiable data for supporting its subjective opinion for providing reservation for SCs and STs in exercise of its powers under Article 16(4) of the Constitution. The question is whether the said exercise is within the limits of the said power. The limits so specified are necessary to preserve the principle of equality, which is a part of the basic structure of the Constitution.

158. The reliance placed on the decisions in **M. Nagaraj** (*supra*) and **S.V. Joshi** (*supra*), in support of the contention that the 50% rule could be breached if quantifiable data is available, is clearly misplaced. This is amply clear from the following passage from the decision in **M. Nagaraj** (*supra*):

“123. However, in this case, as stated above, the main issue concerns the “extent of reservation”. In this regard the State concerned will have to show in each case the existence of the compelling reasons, namely, backwardness, inadequacy of representation and overall administrative efficiency before making provision for reservation. As stated above, the impugned provision is an enabling provision. The State is not bound to make reservation for SCs/STs in matters of promotions. However, if they wish to exercise their discretion and make such provision, the State has to collect quantifiable data showing backwardness of the class and inadequacy of representation of that class in public employment in addition to compliance with Article 335. It is made clear that even if the State has compelling reasons, as stated above, the State will have to see that its reservation provision does not lead to excessiveness so as to breach the ceiling limit of 50% or obliterate the creamy layer or extend the reservation indefinitely.”

159. In **Dr. Jaishri Laxmanrao Patil** (*supra*), the Supreme Court referred to paragraph 4 of the decision in **S.V. Joshi** (*supra*), which was relied upon by the learned Senior Counsel for the State and is noted above, and held that the observation made therein was a clear misreading of the decision in **M. Nagaraj** (*supra*). The Supreme Court observed as under:

“383. The observation was made in para 4, as noted above, that the Constitution Bench in M. Nagaraj [M. Nagaraj v. Union of India, (2006) 8 SCC 212 : (2007) 1 SCC (L&S) 1013] has laid down that if a State wants to exceed 50% reservation, then it is required to base its decision on a quantifiable data, which is clear misreading of the judgment of the Constitution Bench in M. Nagaraj [M. Nagaraj v. Union of India, (2006) 8 SCC 212 : (2007) 1 SCC (L&S) 1013] . In M. Nagaraj [M. Nagaraj v. Union of India, (2006) 8 SCC 212 : (2007) 1 SCC (L&S) 1013] , the Constitution Bench has not laid down any proposition to the effect that if a State wants to exceed 50% reservation, then it is required to base its decision on the quantifiable data. To the contrary the Constitution Bench of this Court in M. Nagaraj [M. Nagaraj v. Union of India, (2006) 8 SCC 212 : (2007) 1 SCC (L&S) 1013] has reiterated the numerical benchmark like 50% rule in Indra Sawhney case.”

160. The Supreme Court also faulted the Maharashtra State Backward Class Commission for proceeding on the erroneous assumption that the existence of quantifiable data would enable the State to breach the 50% rule. The relevant observations made by the Supreme Court in this regard are set out below:

“462. After noticing the above proposition of law the Commission proceeded to deal with the subject. In Para 234 the Commission has noted the Constitution Bench judgment in M. Nagaraj v. Union of India [M. Nagaraj v. Union of India, (2006) 8 SCC 212 : (2007) 1 SCC (L&S) 1013] observing that this Court has again considered the aspect of ceiling of 50% reservation. The Commission, however, proceeded with an assumption that in Nagaraj [M. Nagaraj v. Union of India, (2006) 8 SCC 212 : (2007) 1 SCC (L&S) 1013] this Court has ruled that for relaxation i.e. 50%, there should be quantifiable and contemporary data. We may notice the exact words of the Commission in Para 234 which is to the following effect:

“234. The Honourable the Supreme Court has again considered this aspect of ceiling of 50% reservation in its next decision in *M. Nagaraj v. Union of India* [*M. Nagaraj v. Union of India*, (2006) 8 SCC 212 : (2007) 1 SCC (L&S) 1013] , wherein the Honourable the Supreme Court considered the validity of inserted clauses (4-A) and (4-B) by way of amendment to Article 16 of the Constitution. However, in *Nagaraj* [*M. Nagaraj v. Union of India*, (2006) 8 SCC 212 : (2007) 1 SCC (L&S) 1013] , the Honourable the Supreme Court has ruled that for the relaxation i.e. a ceiling of 50% there should be quantifiable and contemporary data.”

463. The above view has again been reiterated by the Commission in Para 235 to the following effect:

“235. ... However, it is seen from *Nagaraj* [*M. Nagaraj v. Union of India*, (2006) 8 SCC 212 : (2007) 1 SCC (L&S) 1013] that ceiling of 50% reservation may be exceeded by showing quantifiable contemporary data relating to backwardness as required by clause (4) of Article 15 and clause (4) of Article 16 of the Constitution.”

464. From the above, it is clear that the Commission read the Constitution Bench judgment of this Court in *Nagaraj* [*M. Nagaraj v. Union of India*, (2006) 8 SCC 212 : (2007) 1 SCC (L&S) 1013] laying down that ceiling of 50% reservation may be exceeded by showing quantifiable contemporary data relating to the backwardness. The above reading of the Constitution Bench judgment by the Commission was wholly incorrect. We may again notice the judgment of *M. Nagaraj* [*M. Nagaraj v. Union of India*, (2006) 8 SCC 212 : (2007) 1 SCC (L&S) 1013] in the above respect. *M. Nagaraj* [*M. Nagaraj v. Union of India*, (2006) 8 SCC 212 : (2007) 1 SCC (L&S) 1013] was a case where the Constitution (Eighty-fifth Amendment) Act, 2001 inserting Article 16(4-A) was challenged on the ground that the said provision is unconstitutional and violative of basic structure. Article 16(4-A) which was inserted by the above Amendment provides:

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“16. (4-A) Nothing in this article shall prevent the State from making any provision for reservation in matters of promotion, with consequential seniority, to any class or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State.”

465. The Constitution Bench proceeded to consider the submission raised by the petitioner challenging the Constitutional validity of the Constitutional provision. The Constitution Bench in Nagaraj [M. Nagaraj v. Union of India, (2006) 8 SCC 212 : (2007) 1 SCC (L&S) 1013] has noticed the maximum limit of reservation in paras 55 to 59. The Constitution Bench held that the majority opinion in Indra Sawhney [Indra Sawhney v. Union of India, 1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1] has held that rule of 50% was a binding rule and not a mere rule of prudence. Para 58 of the Constitution Bench judgment in Nagaraj [M. Nagaraj v. Union of India, (2006) 8 SCC 212 : (2007) 1 SCC (L&S) 1013] is as follows : (Nagaraj case [M. Nagaraj v. Union of India, (2006) 8 SCC 212 : (2007) 1 SCC (L&S) 1013] , SCC p. 251)

“58. However, in Indra Sawhney [Indra Sawhney v. Union of India, 1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1] the majority held that the rule of 50% laid down in Balaji [M.R. Balaji v. State of Mysore, 1963 Supp (1) SCR 439 : AIR 1963 SC 649] was a binding rule and not a mere rule of prudence.”

466. In para 107, the Constitution Bench observed : (Nagaraj case [M. Nagaraj v. Union of India, (2006) 8 SCC 212 : (2007) 1 SCC (L&S) 1013] , SCC pp. 270-71)

“107. ... If the State has quantifiable data to show backwardness and inadequacy then the State can make reservations in promotions keeping in mind maintenance of efficiency which is held to be a constitutional limitation on the discretion of the State in making reservation as indicated by Article 335.”

467. The Constitution Bench noted its conclusion in paras 121, 122 and 123. In para 123 the following has been laid down : (Nagaraj case [M. Nagaraj v. Union of India, (2006) 8 SCC 212 : (2007) 1 SCC (L&S) 1013] , SCC p. 278)

“123. However, in this case, as stated above, the main issue concerns the “extent of reservation”. In this regard the State concerned will have to show in each case the existence of the compelling reasons, namely, backwardness, inadequacy of representation and overall administrative efficiency before making provision for reservation. As stated above, the impugned provision is an enabling provision. The State is not bound to make reservation for SCs/STs in matters of promotions. However, if they wish to exercise their discretion and make such provision, the State has to collect quantifiable data showing backwardness of the class and inadequacy of representation of that class in public employment in addition to compliance with Article 335. It is made clear that even if the State has compelling reasons, as stated above, the State will have to see that its reservation provision does not lead to excessiveness so as to breach the ceiling limit of 50% or obliterate the creamy layer or extend the reservation indefinitely.”

468. The Constitution Bench in para 123 held that provision of Article 16(4-A) is an enabling provision and the State is not bound to make reservation for Scheduled Castes and Scheduled Tribes in the matters of promotion and however, if they wish to exercise their discretion and make such provision, the State has to collect quantifiable data showing backwardness of the class and inadequacy of representation.

469. The above observation regarding quantifiable data was in relation to enabling power of the State to grant reservation in promotion to the Scheduled Caste and Scheduled Tribes. It is further relevant to notice that in the last sentence of para 123 it is stated : (Nagaraj case [M. Nagaraj v. Union of India,

(2006) 8 SCC 212 : (2007) 1 SCC (L&S) 1013] ,
SCC p. 278)

“123. ... It is made clear that even if the State has compelling reasons, as stated above, the State will have to see that its reservation provision does not lead to excessiveness so as to breach the ceiling limit of 50% or obliterate the creamy layer or extend the reservation indefinitely.”

470. The Constitution Bench, thus, in the above case clearly laid down that even reservation for promotion, ceiling of 50% limit cannot be breached. The Commission has completely erred in understanding the ratio of the judgment, when the Commission took the view that on the quantifiable data ceiling of 50% can be breached. There is no such ratio laid down by this Court in M. Nagaraj [M. Nagaraj v. Union of India, (2006) 8 SCC 212 : (2007) 1 SCC (L&S) 1013] . Hence, the very basis of the Commission to proceed to examine quantifiable data for exceeding the limit of 50% is unfounded.”

161. Thus, the mere collection of data which, according to the State, reflects the ‘backwardness’ and ‘inadequacy of representation’ of Scheduled Castes and Scheduled Tribes does not enable the State to breach the 50% limit. Thus, the only question to be addressed is whether the State has established the existence of any ‘extraordinary circumstances’ which would bring the Act within the exception to the 50% rule.

Whether a special case of extraordinary circumstances is made out

162. Prof. Ravivarma Kumar, learned Senior Counsel appearing for the State, contended that the Act also fell within the exception of

extraordinary circumstances, which entitled the State to provide for reservation under Articles 15(4) and 16(4) beyond 50%. He submitted that the empirical data collected and examined by the Nagamohan Das Commission, the Adi Committee and the Ratnaprabha Committee justified reservation beyond 50%. According to him, there is a special case of extraordinary circumstances that warrants exceeding the 50% ceiling, on three grounds:

162.1. *First*, the number of SCs and STs has increased substantially, but reservation in their favour has remained constant for several decades.

162.2. *Second*, the population has grown exponentially and caste groups have proliferated, resulting in significant changes in the State's demographic and social composition. Thus, the provision for reservation must be assessed against demographic realities.

162.3. *Third*, the empirical data collected and examined by the Nagamohan Das Commission, the Adi Committee and the Ratnaprabha Committee indicates that the existing arrangement does not secure adequate and

effective representation for Scheduled Castes and Scheduled Tribes.

163. He submitted that, when the reservation for Scheduled Castes was fixed at 15% and for Scheduled Tribes at 3%, the proportion of their population to the total population of the State was approximately 13% and 0.8% respectively. He submitted that the demographic data showed that, by 2011, the population of Scheduled Castes had risen to 17.15% and that of Scheduled Tribes to 6.95%. Thus, their combined population was 24.10%, and yet the reservation in their favour was pegged at 18%. He submitted that the population of Scheduled Castes was projected to increase to 17.98% and that of Scheduled Tribes to 7.41% of the total population of the State by the year 2020. He submitted that this data presented a compelling case for an increase in reservation, as the representation of Scheduled Castes and Scheduled Tribes is below their proportion in the State's population. He also submitted that the increase in the population of Scheduled Castes and Scheduled Tribes was not only on account of the natural increase in population but also on account of the increase in the number of castes that were included in the lists of Scheduled Castes and Scheduled Tribes. He submitted that

initially, only six castes were included. He stated that, as of today, 101 communities are included in the list of Scheduled Castes in Karnataka and around 50 communities are included in the list of Scheduled Tribes. He submitted that the demographic data clearly warrants a change in the reservation framework. He referred to the Nagamohan Das Commission Report and contended that, although there have been significant improvements in literacy, approximately 51 of the 101 Scheduled Caste communities are engaged in vulnerable occupations, including hunting, bonded labour and agricultural labour, and approximately 74% of the tribal communities remain invisible and marginalised. He also referred to the data of the National Crime Records Bureau for the year 2018, which records a high incidence of atrocities against Scheduled Castes and Scheduled Tribes.

164. The Nagamohan Das Commission Report extensively records the various aspects adversely affecting the Scheduled Castes and the Scheduled Tribes. However, these aspects are relevant only to establish the backwardness of the communities that are the beneficiaries of reservation. The inclusion of communities in the lists of Scheduled Castes and Scheduled Tribes is, *inter alia*, on the basis of their backwardness. There is no cavil

that the condition of backwardness, which is a *sine qua non* for any affirmative action under Article 16(4), is satisfied.

165. However, the key question is whether there are any extraordinary circumstances for invoking the exception to the 50% rule. It is necessary to examine the Nagamohan Das Commission Report and the Ratnaprabha Committee Report from this perspective.

The Ratnaprabha Committee Report

166. It is common ground that the Nagamohan Das Commission had relied on the data on the representation of the Scheduled Castes and the Scheduled Tribes in the services of the State as referred to in the Ratnaprabha Committee Report. It is, thus, necessary at this stage to examine the said report. It is material to note that the Ratnaprabha Committee was not constituted to examine the quantum of reservation. It was constituted in the context of reservation in promotional posts, after the Supreme Court, in **B.K. Pavitra I** (*supra*), struck down the provisions of the Karnataka Determination of Seniority of the Government Servants Promoted on the Basis of Reservation (to the Posts in the Civil Services of the State) Act, 2002. The Supreme Court found that the exercise contemplated in **M. Nagaraj** (*supra*) had not been

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undertaken and that the said statute was enacted without any quantifiable data. In view of the said decision, GoK, by Government Order No. DPAR 182 SeNeNi 2011 dated 22.03.2017, entrusted Smt. K. Ratna Prabha, the then Additional Chief Secretary, with the task of collecting information on the cadre-wise representation of the Scheduled Castes and the Scheduled Tribes in all Government departments, and of studying the effect of reservation in promotion on the administration. The Government Order also directed that a report be submitted within four weeks.

167. The Additional Chief Secretary, in turn, constituted a Committee of officers, with the Secretary to Government, Department of Personnel and Administrative Reforms, as its Member-Secretary, which met on several occasions between 24.03.2017 and 27.04.2017. The report, dated 05.05.2017, is titled “Report on Backwardness, Inadequacy of Representation and Administrative Efficiency in Karnataka” and, as its title page indicates, was made “with regard to reservation in promotion to the Scheduled Castes and Scheduled Tribes in State Civil Services”. It is stated on behalf of the State that the report was approved by the Cabinet on 07.08.2017 and formed the basis of the Karnataka Extension of Consequential Seniority to Government Servants

Promoted on the Basis of Reservation (to the Posts in the Civil Services of the State) Act, 2018. The Supreme Court upheld the validity of the said Act in **B.K. Pavitra II** (*supra*).

168. The Committee analysed the data collected annually by the Directorate of Economics and Statistics [**DES**] for the years 1984 to 2016 (save for the year 1986) in respect of thirty-one departments of the State Government. The report noted that the DES collects data only from those departments and not from public sector undertakings, Boards, Corporations, Local Bodies or grant-in-aid institutions. Relying on **R.K. Sabharwal** (*supra*) and **M. Nagaraj** (*supra*), the Committee computed representation with reference to the total sanctioned strength of each group rather than the posts filled, and recorded that “currently the State Government provides vacancy based reservation and not post based reservation”. On that basis, it found that of the 7,45,593 sanctioned posts in the thirty-one departments in the year 2016, 5,23,574 (70.22 per cent) were filled; that the representation of the Scheduled Castes and the Scheduled Tribes computed against the sanctioned posts stood at 10.65 per cent and 2.92 per cent respectively; and that, averaged over the period of study, the representation of the Scheduled Castes was 12.07 per cent in Group A and 9.79 per cent in

Group B, and that of the Scheduled Tribes was 2.70 per cent and 2.34 per cent respectively. Group C accounted for about three-fourths of the sanctioned posts and, in that group, the representation of the SCs fell short by an average of 3.05 per cent, while that of the STs was marginally in excess of the prescribed three per cent. The Scheduled Castes and the Scheduled Tribes were over-represented in Group D by approximately two and one per cent respectively, which the Committee described as indicative of their educational backwardness. Although the Committee also noticed a shortfall of about three per cent in the representation of the Scheduled Castes in Group D over the preceding five years, it observed that the same may be a result of the policy of outsourcing. The report further noticed that, as per the census of 2011, the Scheduled Castes and the Scheduled Tribes constituted 17.15 per cent and 6.95 per cent of the population of the State, whereas the reservation for the said classes was fixed at fifteen and three per cent respectively. It is material to note that the Committee did not examine the representation of any community other than the SCs and the STs.

The Nagamohan Das Commission Report

169. By an order bearing No. SWD 303 PVY 2015 dated 22.07.2019 issued by the Social Welfare Department, the State

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Government appointed a Commission headed by Justice H.N. Nagamohan Das, a former Judge of this Court [**the Commission**]. An amended order was issued at the request of the Commission.⁵⁸ The terms of reference of the Commission, as set out in its report, are reproduced below:

“a. Examine and report whether the reservation limit can be enhanced to Scheduled Castes and Scheduled Tribes in Karnataka, in proportion to their population as per 2011 census: i.e., from 15% to 17% for Scheduled Castes and from 3% to 7% for Scheduled Tribes.

b. Whether there is adequate representation in education and employment of Scheduled Castes and Scheduled Tribes when compared to their population.

c. Other recommendations

d. The Commission has to submit the report within two months.”

170. It is material to note that the figures of seventeen and seven per cent were specified by the Government in the reference, and that both the principal terms of reference required an enquiry as to the reservation limit with reference to the population of the Scheduled Castes and the Scheduled Tribes. The Commission commenced its work on 04.11.2019. The time for submission of its report was extended by an order dated 13.12.2019 to the end of

⁵⁸ The Reference Order and the amended order are stated to be enclosed as Appendices 1 and 2 to the Report.

June 2020. It issued public notices inviting written representations; held consultation meetings at the four revenue divisional headquarters at Kalaburagi (10.12.2019), Belagavi (10.01.2020), Mysuru (10.02.2020) and Bengaluru (25.02.2020), besides thirty-eight other consultation meetings; and received eight hundred and fifty written petitions. The Commission records that it “has not received any petition opposing the enhancement of the reservation”. The Commission also recorded the limitations of the material available to it, observing that the Government departments were not collecting development data relating to the Scheduled Castes and the Scheduled Tribes; that the Government had directed it to proceed on the census of 2011; that no caste census had been held after 1931; and that no ethnographic study had been undertaken. The Commission observed that, in the circumstances, it was “very difficult to express opinion about the issues like continuation of reservation, internal reservation, creamy layer, etc”.

171. As noted above, the Commission submitted its report on 02.07.2020. The Nagamohan Das Commission Report runs into ten parts. Parts I to VI deal with the origin of caste and caste inequality, the history of reservation, the condition of the deprived communities at the margins of society, the hurdles faced by the

Scheduled Castes and the Scheduled Tribes, the problems of reservation (internal reservation, the creamy layer and reservation in promotion) and the shrinking of employment available for reservation. Part VII is titled “Enhancement of Reservation Limit”, Part VIII deals with population, representation and backwardness, Part IX with the way forward, and Part X sets out the recommendations. The portions of the Report which have a bearing on the questions before us may be noticed.

172. In Part VII, the Commission considered the ceiling of fifty per cent. The Commission referred to the decision in **Indra Sawhney** (*supra*) and observed that while imposing the cap, the Supreme Court “did not give proper explanation or reasons for the decision”, but observed that it is a “reasonable limit”. The Commission referred to various passages and observations made in the said decision and inferred that the limit may be relaxed “in extraordinary circumstances and in view of the plural character of the society”; that certain communities which have remained excluded from mainstream society have to be treated distinctly; and that, in relaxing the limit, the State has to collect the necessary data and exercise due caution. It went on to observe that the Government could protect the enhanced quota by including the legislation in the

Ninth Schedule. It also observed that, since the Union had provided ten per cent reservation for the EWS by the 103rd Amendment, “the government of Karnataka would have no hurdles in increasing the reservation to SC from 15 per cent and to ST from 3 per cent in proportion to the population of the concerned communities to total population of the state”. The Commission also noticed that reservation exceeding fifty per cent had been provided in the States of Tamil Nadu, Maharashtra, Chhattisgarh, Madhya Pradesh, Rajasthan, Jharkhand and Uttar Pradesh, and that “Karnataka government can increase the reservation within the frame work of the judgments of the courts”.

173. Under the heading “From what source reservation is to be increased?”, the Commission noticed the demand of the Scheduled Castes and the Scheduled Tribes that a part of the reservation provided to the backward classes be transferred to them, since several castes had been moved from the list of backward classes to the lists of Scheduled Castes and Scheduled Tribes without a corresponding transfer of quota. However, the Commission rejected the suggestion, observing that the backward classes constitute fifty-two per cent of the population and have not been

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provided reservation in proportion to their population, and concluded as under:

“Thus, the reservation for SC and ST has to be given from the general category reservation. The reduction of the reservation quota to general category and transferring it to SC and ST leads to realization and actualization of the constitutional philosophy of social justice.”

174. The Commission noted the population of the Scheduled Castes and the Scheduled Tribes in the State and also their projected population in the year 2020. It noted that the population of the Scheduled Castes and the Scheduled Tribes, as per the last census in 2011, was 17.15% and 6.95% respectively, and that the same was projected to increase to 17.98% and 7.41% in the year 2020. The tabular statements set out in the Report (Tables 8.2 and 8.3) are reproduced below:

Table 8.2. Growth of Population in Karnataka: Total, SC and ST Population; 1961-2011

Sl. No.	Years	Total Population of the State	Population of SC	Per cent of SC population in the State	Population of ST	Per cent of ST population in the State
1	1961	23586772	3117203	13.21	192096	0.81
2	1971	29299014	3850043	13.14	231084	0.78
3	1981	37135714	5595353	15.06	1822081	4.90
4	1991	44977201	7369000	16.38	1915691	4.25
5	2001	52850562	8562930	16.20	3463986	6.55
6	2011	61095297	10474992	17.15	4248987	6.95

Source: Census of India Various Years, Director of Census Operations, Karnataka, Bengaluru

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Table 8.3. Projected Population of Karnataka 2015
and 2020; Total Population, SC and ST Population

Sl. No.	Years	Total Population in the State	SC Population	Per cent of SC Population	ST Population	Per cent of ST Population
1	2012	62048535	10696507	17.24	4342835	6.99
2	2015	65072230	11399748	17.52	4646001	7.14
3	2020	70717272	12713639	17.98	5236581	7.41

Source: Government of Karnataka, Directorate of
Economics and Statistics, Bengaluru

175. On the basis of the said statistics, the Commission concluded that the increase in reservation for the Scheduled Castes and the Scheduled Tribes was justified. In Part VIII, after setting out the census figures noticed above and the projected population for the year 2020, the Commission observed as under:

“The total projected population of Karnataka in 2020 is 707.72 lakh. The SC account for 17.98 per cent and ST accounts for 7.41 per cent in the total state population. Based on the proportion of the population, it is desirable to provide reservation of 18 per cent to SC and 7.5 per cent to ST. However, in the terms of reference, the government has instructed to investigate and report whether reservation to SC can be enhanced from 15 per cent to 17 per cent and that of ST from 3 per cent to 7 per cent based on census 2011 population data. Therefore, the Commission has to give its recommendations based on the terms of references. It cannot go beyond the terms of references while making recommendations.”

176. Insofar as representation in the services of the State is concerned, the Commission did not collect independent data. It adopted the data of the Ratnaprabha Committee for the years up to

2016 and supplemented it with the data of the DES for the years 2017 and 2018. The figures relied upon by the Commission, computed with reference to the sanctioned posts in the thirty-one departments, are as under:⁵⁹

Table 8.15(a). The Representation of SC in Government Services

Year	Sanctioned posts	Filled in posts	Number of SC in filled in posts	Expected number of posts for SC as per 15 per cent mandate	Disparity (5-6)	Percent age of SC in sanctioned posts	Percent age of inadequacy
1	2	3	5	6	7	8	9
As per K. Ratnaprabha Committee report (GoK)							
1990	455948	401926	55061	68392	46274	12.07	2.93
2000	573062	489212	67189	85959	18770	11.72	3.28
2010	667756	546691	92675	100163	77488	13.87	1.13
2015	740653	541289	97022	111098	14076	13.09	1.91
2016	745593	523574	79401	111839	32438	10.65	4.35
As per data of the Directorate of Economics and Statistics, (GoK) 2017 and 2018							
2017	742370	516268	81318	111356	30038	10.95	4.05
2018	765859	526393	85427	114879	29452	11.15	3.85

⁵⁹ Tables 8.15(a) and 8.15(b) of the Report.

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Table 8.15(b). The Representation of ST in Government Services

Year	Sanctioned posts	Filled in posts	Number of ST in filled in posts	Expected number of posts for ST as per 15 per cent mandate	Disparity (5-6)	Percent age of ST in sanctioned posts	Percent age of inadequacy
1	2	3	5	6	7	8	9
As per K. Ratnaprabha Committee report (GoK)							
1990	455948	401926	8801	13678.44	4877.44	1.93	01.07
2000	573062	489212	20248	17191.86	3056.14	3.53	00.53
2010	667756	546691	23933	20032.68	3900.32	3.58	-00.58
2015	740653	541289	50460	22219.59	32240.4 1	6.81	-3.81
2016	745593	523574	21767	22367.79	60079	2.92	00.07
As per data of the Directorate of Economics and Statistics, (GoK) 2017 and 2018							
2017	742370	516268	22258	22271.10	13.1	3.00	00.00
2018	765859	526393	22599	22975.77	376.77	2.95	00.05

177. The Report does not explain the sharp variation in the figures for the year 2015, and in particular the number of employees belonging to the Scheduled Tribes shown for that year, which is more than double the figures shown for the years 2010 and 2016. A similar spike is discernible in the figures for Group C for the years 2014 and 2015 in the report of the Ratnaprabha Committee. On the basis of the said data, the Commission recorded that the representation of the Scheduled Castes and the Scheduled Tribes had not reached the prescribed percentages; that the

representation of the Scheduled Castes had risen to 10.95 per cent in 2017 and 11.15 per cent in 2018, but that the inadequacy continued⁶⁰; that their representation in Groups A and B was low while that in Groups C and D was high; and, with reference to the data furnished in Parliament, that their representation in the senior posts of the Union Secretariat was also below the prescribed quota. On the Commission's own figures, the representation of the Scheduled Tribes, computed against the sanctioned posts, stood at 3.00 per cent in 2017 and 2.95 per cent in 2018, as against the prescribed three per cent. It is relevant to note that the only table in the Report comparing the representation of different communities in public employment is Table 8.1, which sets out the ratio of employment between Brahmins and non-Brahmins in the princely State of Mysore for the years 1916 to 1918.

178. The Commission also recorded, on the material placed before it, the persisting social and educational backwardness of sections of the Scheduled Castes and the Scheduled Tribes. It noted that whereas the literacy rate of the State had risen to 75.36

⁶⁰ The narrative portion of the Report (at internal page 214) states that the representation of the Scheduled Castes increased from 10.95 per cent in 2016 to 11.15 per cent in 2017, and that of the Scheduled Tribes from 2.95 per cent to 3 per cent. These figures do not accord with Tables 8.15(a) and 8.15(b), which record 10.65, 10.95 and 11.15 per cent for the Scheduled Castes, and 2.92, 3.00 and 2.95 per cent for the Scheduled Tribes, for the years 2016, 2017 and 2018 respectively.

per cent in the year 2011, that of the Scheduled Castes and the Scheduled Tribes stood at 65.32 and 62.10 per cent respectively; that seventy-four communities (fifty-one Scheduled Castes and twenty-three Scheduled Tribes), with an aggregate population of 9,81,118, were identified as nomadic, semi-nomadic, small and very small communities largely dependent on traditional occupations, beggary and agricultural labour; and that, according to a study of the year 2019 by the National Law School of India University, Bengaluru, seventy-four per cent of the tribal communities have remained invisible and marginalised, with a literacy rate below thirty per cent. The Commission also referred to the condition of the primitive tribal communities, the Devadasis, the Safai Karmacharis, and the slum dwellers, the incidence of atrocities, of false caste certificates, and the disproportionately low landholdings of these classes.

179. On the question of efficiency of administration under Article 335 of the Constitution, the Commission described the concern as an “enigmatic question” whose “hidden apprehension” is that reservation may lead to the entry of ineligible candidates. The Commission noted that the educational qualifications prescribed for candidates of the reserved categories and of the general category

are the same and, referring to the Ratnaprabha Committee Report rendered in the context of reservation in promotion, concluded that there was “no substance in the contention that reservation has affected the administration and efficiency”.

180. The Commission summarised its findings in Part VIII by recording, *inter alia*, that the SCs and the STs have not been getting reservation in proportion to their population; that they are not represented in the services in proportion to their projected population; that their representation in the services has not been equal to the statutory reservation. The Commission observed that the Supreme Court had, in several decisions, expressed its opinion against using population as the main indicator for providing reservations for SC and ST communities. The Commission identified four criteria, namely, (a) community-wise population/representation in Government service; (b) backwardness of the communities (education, employment, land ownership, etc.); (c) economic development and human development; and (d) administration and development efficiency, and found that “in all the four criteria, SC and ST communities in Karnataka are eligible not only for reservation but also for hike the

rate of reservation”. The recommendations of the Commission, set out in Part X of the Report, are reproduced below:

- “1. The reservation in Karnataka for Scheduled Caste (SC) can be increased from 15 per cent to 17 per cent and that of Scheduled Tribes (ST) from 3 per cent to 7 per cent.
2. In Karnataka state, the representation of SC and ST is not in proportion to their respective population.
3. The government has to take steps to protect reservation by incorporating the increase in reservation as recommended in No 1, in 9th Schedule of the Constitution.
4. Of the allocation made to Scheduled Caste Sub-plan and Scheduled Tribe Sub-plan, at least 10 per cent of it is to be earmarked for the development of education of SC and ST children.
5. For the improvement of level of skill and knowledge of the children of SC and ST, the government has to develop qualitative education by adopting the education model followed in Kerala and Telangana.
6. A separate Development Corporation is to be established for the development of Nomadic, Semi-Nomadic and Primitive Tribe communities in the state.
7. In the interests of deprived communities within SC and ST, internal reservation is to be implemented. For this, measures are to be taken to overcome the legal hurdles, scientific classification of sub-castes and reservation is to be provided to the most deserving section on priority basis. In this regard a detailed study is necessary and based on such a report the Government to take decision about this issue.”

Adequate representation

181. It is material to note that the terms of reference of the Commission did not include any question of examining whether there were compelling extraordinary circumstances for exceeding the 50% limit for reservations. On the contrary, the terms of reference required the Commission to examine whether the reservation limits for the Scheduled Castes and the Scheduled Tribes in Karnataka could be enhanced in proportion to their population as per the 2011 census, and whether there was adequate representation of the Scheduled Castes and the Scheduled Tribes in education and employment “when compared to their population”. Thus, the very reference point appears to be based on the premise that reservation for the Scheduled Castes and the Scheduled Tribes is required to be in proportion to their population. Further, as noted above, the terms of reference themselves specified the proposed increase of reservation for the Scheduled Castes from 15% to 17% and for the Scheduled Tribes from 3% to 7%. However, the condition stipulated in Article 16(4) of the Constitution is “adequate representation” and not proportionate representation. Thus, the fundamental premise that the reservation for backward classes must be in proportion to their population is erroneous.

182. In **Indra Sawhney** (*supra*), the Supreme Court in unambiguous terms held that the expression ‘adequate representation’, as used in clause (4) of Article 16 of the Constitution, cannot be read as ‘proportionate representation’. The Court also noted that the principle of proportionate representation is accepted only in Articles 330 and 332 of the Constitution and does not find place in clause (4) of Article 16 of the Constitution. It would be apposite to refer to the following passage from the said decision:

“807. We must, however, point out that clause (4) speaks of adequate representation and not proportionate representation. *Adequate representation* cannot be read as *proportionate representation*. Principle of proportionate representation is accepted only in Articles 330 and 332 of the Constitution and that too for a limited period. These articles speak of reservation of seats in Lok Sabha and the State legislatures in favour of Scheduled Tribes and Scheduled Castes proportionate to their population, but they are only temporary and special provisions. It is therefore not possible to accept the theory of proportionate representation though the proportion of population of backward classes to the total population would certainly be relevant....”

183. In **Dr. Jaishri Laxmanrao Patil** (*supra*), the Supreme Court reiterated that clause (4) of Article 16 of the Constitution speaks of ‘adequate representation’ and not ‘proportionate representation’. The Supreme Court faulted the Maharashtra State Backward Class Commission (Justice N.G. Gaikwad Commission) for proceeding

on the fundamentally erroneous premise that reservation was required to be provided in proportion to the population. In this regard, the Supreme Court observed as under:

“541. There is one more fundamental error which has been committed by the Commission. the Constitutional precondition for providing reservation as mandated by Article 16(4) is that the backward class is not adequately represented in the public services. The Commission laboured under misconception that unless Maratha community is not represented equivalent to its proportion, it is not adequately represented. We may notice what has been said by the Commission in Para 219 while recording its conclusion emerging from the analysis of information contained in Tables A, B, C and D. In Para 219(C), the Commission states:

“219(C). ... The obvious conclusion that emerges from the above information is that in none of the four grades the strength of Maratha class employees is touching the proportion to their population in the State which is based on various sources is estimated at an average 30%. So also, their presence in administration is more at the lower grades of “C” and “D” and have a comparatively lesser existence and role in decision-making levels of State administration in “A” and “B” grades....”

542. *Indra Sawhney* has categorically held that what is required by the State for providing reservation under Article 16(4) is not proportionate representation but adequate representation. The Commission thus proceeds to examine the entitlement under Article 16(4) on the concept of proportionate representation in the State services which is a fundamental error committed by the Commission.”

184. In **M. Nagaraj** (*supra*), the Supreme Court declined to lay down any test for the adequacy of representation, as the same

depends on various factors which the State is required to assess. This was also noted by the Supreme Court in a later decision of a Bench of three Judges in **Jarnail Singh II**. The Court also noted that it had rejected the contention that the proportion of Scheduled Castes or Scheduled Tribes to the population of India should be the test for determining the adequacy of their representation. It is relevant to refer to the following extract from the said decision:

“40. In *M. Nagaraj* [*M. Nagaraj v. Union of India*, (2006) 8 SCC 212 : (2007) 1 SCC (L&S) 1013], this Court was of the considered view that the exercise of collecting quantifiable data depends on numerous factors, with conflicting claims to be optimised by the administration in the context of local prevailing conditions in public employment. As equity, justice and efficiency are variable factors and are context-specific, how these factors should be identified and counter-balanced will depend on the facts and circumstances of each case. The attempt of the learned Attorney General for India to impress upon this Court that the proportion of SCs and STs in the population of India should be taken as the test for determining whether they are adequately represented in promotional posts, did not yield results.

41. This Court in *Jarnail Singh* [*Jarnail Singh v. Lachhmi Narain Gupta*, (2018) 10 SCC 396 : (2019) 1 SCC (L&S) 86] found no fault with *M. Nagaraj* [*M. Nagaraj v. Union of India*, (2006) 8 SCC 212 : (2007) 1 SCC (L&S) 1013] regarding the test for determining the adequacy of representation in promotional posts in the State. While emphasising the contrast in the language used between Article 330 and Articles 16(4-A) and 16(4-B) of the Constitution, this Court declined the invitation of the learned Attorney General for India to hold that the proportion of SCs and STs to the population of India should be the test for determining inadequacy of

representation in promotional posts. Therefore, we are not persuaded to express any opinion on this aspect. It is for the State to assess the inadequacy of representation of SCs and STs in promotional posts, by taking into account relevant factors.”

185. In a later decision in **State of Punjab v. Davinder Singh**⁶¹, the Supreme Court observed as under:

“185.3. The qualifier of inadequate representation in Article 16(4) is not mutually exclusive of the requirement of backwardness. The inadequate representation of the class in the services of the State must be because of social backwardness; and 185.4. The adequacy of representation must be determined based on the **standard of effective representation and not numerical representation.**”

[emphasis added]

186. The Nagamohan Das Commission Report does not include or refer to any fresh or contemporaneous data. As noted above, it relies on the data in the Ratnaprabha Committee Report for the years up to 2016, supplemented by the data of the DES for the years 2017 and 2018. The said data indicates that the reservation provided for the Scheduled Castes and the Scheduled Tribes had not been exhausted. Thus, according to the said data, even the existing reservation to the extent of 15% and 3% had not been fully filled up in some of the years. In some years, the percentage of persons belonging to the Scheduled Tribes exceeded the prescribed percentage.

⁶¹ (2025) 1 SCC 1

187. In this regard, it is relevant to note the contentions advanced on behalf of the petitioners.

188. Mr. P.S. Rajagopal, learned Senior Counsel appearing for the petitioners in W.P. No. 25515/2025, referred to the report dated 22.01.2024 issued by the DES as to the representation of the Scheduled Castes and the Scheduled Tribes in the State Civil Services as on 31.03.2023, which has been placed on record as Annexure-H to the writ petition.

189. Paragraph 4 of the said report is relevant and is set out below:

“4. Representation of Scheduled Castes and Scheduled Tribes:

4.1 As of 31.03.2023, the total number of Scheduled Caste employees in the state government service is 99,337 (18.65%), and the total number of Scheduled Tribe employees is 26,871 (5.05%). 4.2 In the group-wise classification, the percentage of Scheduled Castes in the total posts of Groups A, B, C, and D is 18.55, 19.46, 17.99, and 25.58, respectively. Similarly, the percentages for Scheduled Tribes are 4.86, 4.98, 4.79, and 8.18, respectively.”

190. The said report indicates that data was collected in respect of thirty-three departments, and records the representation of the Scheduled Castes in the said departments as under:

“Number of departments with representation as prescribed by the Government:

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Percentage Category	Zero 0%	Up to 10%	10-15%	15-17%	>19%	Total
Number Department s/Organizations	0	0	2	2	29	33

7.2 Analyzing the table above, out of the 33 departments for which data was collected, 2 departments have a Scheduled Caste proportion of less than 15%, and 2 departments have representation in the 15% to 17% range. The remaining 29 departments have representation of more than 19%. This means that in 89% of the departments, the representation in filled posts is higher than 17%.”

191. Similarly, the representation of the Scheduled Tribes in the said departments is reported as under:

“Number of departments with representation as prescribed by the Government:

Percentage Category	Zero 0%	Up to 1%	1-3%	3-7%	>7%	Total
Number Department s/Organizations	0	0	0	25	8	33

8.2 Analyzing the table above, it is found that the representation of Scheduled Tribes in 25 departments is in the 3% to 7% range. In 8 departments, Scheduled Tribes have more than 7% representation in filled posts.”

192. The aforesaid data indicates that the representation of the Scheduled Castes and the Scheduled Tribes is significantly higher than that reflected in the tabular statements set out in the Nagamohan Das Commission Report, which relate to the year 2018 and the years prior to that.

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193. It is also relevant to note that a provision for reservation, which is to operate in the present and in the future, must be founded on contemporaneous data. In this regard, the Supreme Court in **Pattali Makkal Katchi** (*supra*) observed as under:

“84. It is relevant to note that Justice Janarthanam in his Report relied upon the population figures of the Vanniakula Kshatriyas from the year 1985. His recommendation was on the basis of the figures taken from the Report of the Ambasankar Commission, submitted in 1985. Reference made to admissions to engineering colleges and appointment to public posts pertained to the years 2006-2007 to 2010-2011 and 2010, respectively. A decision taken for providing reservation which would impact the rights of members of as many as 115 communities should be on the basis of contemporaneous inputs and not outdated and antiquated data [*Ram Singh v. Union of India*, (2015) 4 SCC 697] . Any study by the Commission should be with regard to the present status since the object is to take affirmative actions in present or in future to address the needs of a particular community [*Jaishri Laxmanrao Patil v. State of Maharashtra*, (2021) 8 SCC 1] . In this particular case, the data that was relied on for the purpose of recommending internal reservation to the VanniakulaKshatariyas is from 1985. The State Government, at the time of appointing the Kulasekaran Commission to collect quantifiable data on castes, communities and tribes in the State of Tamil Nadu, including migrants domiciled therein, expressly recognised the need for collection of such data as the data collected by the Ambasankar Commission had become more than three decades old. **We are in agreement with the objection of the respondents, that there was no contemporaneous data available to Justice Thanikachalam or even Justice Janarthanam on the basis of which recommendations for internal reservation could have been made.**”

[emphasis added]

194. The aforesaid principle is also set out by the Supreme Court in **Dr. Jaishri Laxmanrao Patil** (*supra*).

195. The question whether a community or caste is adequately represented would necessarily involve a comparison between its representation and the representation of other classes. However, in the present case, the Nagamohan Das Commission Report does not mention the representation of other classes or communities in the services of the State. The observations made by the Supreme Court in **Dr. Jaishri Laxmanrao Patil** (*supra*) in regard to this principle are set out below:

“520. The word “adequate” is a relative term used in relation to representation of different caste and communities in public employment. The objective of Article 16(4) is that backward class should also be put in mainstream and they are to be enabled to share power of the State by affirmative action. To be part of public service, as accepted by the society of today, is to attain social status and play a role in governance. The governance of the State is through service personnel who play a key role in implementing government policies, its obligation and duties. The State for exercising its enabling power to grant reservation under Article 16(4) has to identify inadequacy in representation of backward class who is not adequately represented. For finding out adequate representation, the representation of backward class has to be contrasted with representation of other classes including forward classes. It is a relative term made in reference to representation of backward class, other caste and communities in public services.”

196. A large number of communities and castes have been identified as backward. Some of them are included in the lists of Scheduled Castes and Scheduled Tribes, and several other communities have been classified as other backward classes. The 50% rule is applicable to the reservations made by the State, in exercise of the enabling powers under Articles 15(4) and 16(4) of the Constitution, in favour of all such classes.

197. Thus, the demographic changes in respect of a single community, or a class of communities, cannot be examined in isolation for determining whether there are extraordinary circumstances which present a compelling case for breaching the 50% rule. It is relevant to examine the demographic changes not only of the backward classes, but also of the forward classes, to determine the question of the adequacy of representation of any one class in the services of the State, or of its share of the seats in educational institutions.

198. As observed by the Supreme Court in **Ashoka Kumar Thakur v. Union of India**⁶², reservation is a temporary crutch for overcoming backwardness. The ultimate objective is to achieve a classless society, where there is equality of opportunity for all in

⁶² (2008) 6 SCC 1, para 666

matters relating to employment under the State and admission to educational institutions, without reference to any class. When the 50% rule is viewed in that perspective, it is also clear that the measure of adequate representation would depend on the relative representation of other classes. Demographic changes, including the profile of backwardness of other classes, cannot be disregarded while considering whether there are extraordinary circumstances for exceeding the ceiling limit of 50% on reservation.

199. It is also material to note that the Nagamohan Das Commission had not accepted the demand that any increase in the reservation for the Scheduled Castes or the Scheduled Tribes be offset by reducing the reservation in favour of the other backward classes, on the ground that the reservation in favour of the other backward classes was itself less than their proportion of the population. This itself illustrates that a claim for reservation founded on the proportion of population, if accepted for one class, would equally be made by every other backward class.

200. In our view, the very approach that, once a class has been identified as a backward class, the reservation in its favour is required to be in proportion to its population is debilitating to the rule of equality, which is a part of the basic structure of the

Constitution. During the course of the arguments, Prof. Ravivarma Kumar, learned Senior Counsel for the State, contended that over 90% of the population of the State belongs to the Scheduled Castes, the Scheduled Tribes and the other backward classes, and that the reservation should be to the extent of the said percentage of population. To accept the said contention would be destructive of the principle of equality enshrined under the Constitution.

201. The ceiling limit of 50% has to be understood as circumscribing the power of the State to provide for reservation within the said parameters, notwithstanding the numerical strength of the backward classes. Thus, it would be difficult to accept that the proportion of a class to the population of the State could, by itself, be a ground for exceeding the 50% limit.

202. In **Dr. Jaishri Laxmanrao Patil** (*supra*), the Supreme Court did not accept that the extent of reservation being less than the proportion of the backward class in the population of the State would be an extraordinary circumstance so as to fall within the exception to the 50% ceiling rule. In this regard, we may refer to the following observations made by the Supreme Court:

“480. From the above, it is clear that both the Commission and the High Court treated the extraordinary situations with regard to exceeding 50%

for granting separate reservation to Marathas, the fact that population of backward class is 85% and reservation limit is only 50%. The above extraordinary circumstances as opined by the Commission and approved by the High Court is not extraordinary situation as referred to in para 810 of Indra Sawhney [Indra Sawhney v. Union of India, 1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1] judgment. The Marathas are dominant forward class and are in the mainstream of national life. The above situation is not an extraordinary situation contemplated by Indra Sawhney [Indra Sawhney v. Union of India, 1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1] judgment and both the Commission and the High Court fell in error in accepting the above circumstances as extraordinary circumstance for exceeding the 50% limit.....”

203. The conclusion of the Nagamohan Das Commission that certain communities are marginalised and that the benefits of reservation have not percolated to these communities may perhaps present a case for internal reservation. However, it does not present a case for exceeding or breaching the 50% rule.

204. The contention that the circumstances as set out in the reports qualify for an exception to the 50% ceiling rule is unmerited. We say so because it ignores the very foundation of the said rule. As noted above, the said rule is to strike a balance between clauses (4) and (1) of Articles 15 and 16 of the Constitution. The fact that the reservation in favour of, or the representation of, certain communities in the services of the State is less than their proportion of the population (as stated, the reservation is only 18%,

whereas the population is 24.10%) does not present any extraordinary circumstance which would warrant an increase beyond the said limit, thus reducing the pool of appointments that are available for general merit candidates.

205. The contention that there is an increase in the population of the Scheduled Castes and the Scheduled Tribes on account of the inclusion of other communities/castes in their lists also would not qualify as an extraordinary circumstance warranting the breach of the 50% rule. As discussed above, the 50% rule is founded on the principle of balance. The fact that the population of the reserved classes has increased would not warrant the said principle being abandoned.

206. The object of providing reservation is to enable those communities that have been left out to have a 'look in' and participate in the State administration. Neither clause (4) of Article 15 nor clause (4) of Article 16 of the Constitution was ever contemplated as a provision for securing proportionate representation in seats in educational institutions or in the services of the State. The reservation of 18% for classes that constitute 24.1% of the population cannot be considered as so inadequate as

to represent an extraordinary circumstance warranting a further increase in excess of the limit of 50%.

207. In order to invoke the exception of extraordinary circumstances, the least that would be necessary is to establish that, but for exceeding the limit, there is no possibility for the left-out communities to have any meaningful participation. It is not the State's case that, but for the increase in reservation beyond 50%, there is no possibility for a community or caste to have any real participation in the services of the State or to have a 'look in' in the administration.

208. A subjective opinion that the reservation in favour of any backward class should be increased marginally, by a few percentage points on the basis that the reservation provided is less than the proportion of their population, would be wholly inadequate to justify exceeding the 50% limit.

209. It is also contended on behalf of the State that the Ratnaprabha Committee Report has been accepted by the Supreme Court in **B.K. Pavitra II** (*supra*) and, therefore, it would not be open to the petitioners to question the provision of reservation made on the said basis.

210. In our view, the said contention is also without merit. In **B.K. Pavitra II** (*supra*), the Supreme Court had examined whether the decision of the State to provide for consequential seniority to persons promoted on the basis of reservation was sustainable. In that context, the Court had found that the decision was based on the Ratnaprabha Committee Report, which could not be considered as extraneous material for the purpose of forming the subjective opinion.

211. There is no cavil that the opinion of the State to provide for reservation on the basis of the said report would not warrant a merits review. However, in the present case, the question is not whether the State can enact a law providing for reservation, but whether the reservation can exceed the 50% ceiling limit, which has been determined to ensure that the guarantee of equality under the Constitution is not violated.

Whether the principles applicable to Article 16(4) of the Constitution apply equally to Article 15(4) of the Constitution

212. The principles applicable to clause (4) of Article 16 of the Constitution are also applicable to clause (4) of Article 15 of the Constitution. It was contended on behalf of the State that there is no requirement for the State to consider whether the backward

classes are adequately represented in educational institutions for taking any affirmative action under clause (4) of Article 15 of the Constitution. This contention is required to be examined in the light of the interplay between clause (4) of Article 15 of the Constitution and clauses (1) and (2) of the said Article. Clause (4) of Article 15 of the Constitution does not expressly refer to adequacy of representation as a condition for the said affirmative action. However, the contention that it is not necessary to examine whether the backward classes have an adequate share of seats in educational institutions is unmerited. The Supreme Court has, in a number of decisions, clarified that the principles which are applicable to clause (4) of Article 16 of the Constitution would also be applicable to Article 15 of the Constitution. It is relevant to note that the decision in **M.R. Balaji** (*supra*), in which the 50% rule was first enunciated, was rendered in the context of reservation in educational institutions.

213. In **Indra Sawhney** (*supra*), the Supreme Court expressly stated as under:

“757. Though *Balaji* [1963 Supp 1 SCR 439 : AIR 1963 SC 649] was not a case arising under Article 16(4), what it said about Article 15(4) came to be accepted as equally good and valid for the purpose of Article 16(4). The formulations enunciated with respect to Article 15(4) were, without question, applied and

adopted in cases arising under Article
16(4). ...”

214. In **Post Graduate Institute of Medical Education and Research** (*supra*), the Supreme Court had observed that Articles 14, 15 and 16, including clauses (4) and (4-A) of Article 16 of the Constitution, must be applied in such a manner as to strike a balance by creating reasonable opportunities for the reserved classes and also for the other members of the community.

215. In **Ashoka Kumar Thakur** (*supra*), the 50% ceiling rule was applied. K.G. Balakrishnan, C.J., in his opinion, expressly stated that, when considering the question of affirmative action, the larger principles of equality, such as the 50% ceiling (quantitative limitation) and the ‘creamy layer’ (qualitative exclusion), may be kept in mind.

216. In **Dr. Jaishri Laxmanrao Patil** (*supra*), the Supreme Court made no distinction between Articles 15 and 16 of the Constitution while applying the 50% ceiling rule. Similarly, in **Janhit Abhiyan** (*supra*), the Court proceeded on the basis that the ceiling limit of 50% applies to reservation under clause (4) of Article 15 as well as under clause (4) of Article 16 of the Constitution (see paragraph 171 of the said decision, extracted above).

217. Insofar as the ceiling limit of 50% is concerned, the same would be equally applicable to reservation under clause (4) of Article 15 of the Constitution as it is in the case of clause (4) of Article 16 of the Constitution. Thus, in any event, it would not be permissible for the State to exceed the said limit unless a compelling case of an exception under extraordinary circumstances is established.

Consultation with the National Commission for Scheduled Castes and the National Commission for Scheduled Tribes

218. Clause (9) of Article 338 and clause (9) of Article 338A of the Constitution require the Union and every State Government to consult the National Commission for Scheduled Castes and the National Commission for Scheduled Tribes, respectively, on all major policy matters affecting the Scheduled Castes or the Scheduled Tribes, as the case may be.

219. In the present case, the State has not consulted either the National Commission for Scheduled Castes or the National Commission for Scheduled Tribes prior to enacting the Act.

220. Prof. Ravivarma Kumar, learned Senior Counsel for the State, contended that clause (9) of Articles 338 and 338A of the Constitution has no application to an Act of the State Legislature.

He contended that the said clauses are applicable only in the case of an executive order of the Government. He submitted that Articles 245 and 246 of the Constitution, read with Entry 41 of List II of the Seventh Schedule to the Constitution of India, empower the State Legislature to enact the Act and, therefore, the said power is not affected by clause (9) of Articles 338 and 338A of the Constitution. There is no dispute that the State Legislature has the legislative competence to enact the Act in respect of its subject matter. However, it is erroneous to suggest that the power under Articles 245 and 246 of the Constitution is not circumscribed by the other provisions of the Constitution. Clause (9) of Articles 338 and 338A requires the State Government to consult the National Commission for Scheduled Castes and the National Commission for Scheduled Tribes on all major policy matters affecting the Scheduled Castes and the Scheduled Tribes. This is a constitutional requirement and cannot be disregarded.

221. In **Pattali Makkal Katchi** (*supra*), the Supreme Court observed as under:

“102. Given the language of the provision and its interpretation in *Jaishri Laxmanrao Patil* [*Jaishri Laxmanrao Patil v. State of Maharashtra*, (2021) 8 SCC 1], there need not be a detailed discussion about Article 338-B(9) being mandatory. **The requirement of consultation with an expert constitutional body is indeed mandatory and it**

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would be fatal to disregard the provision.

However, non-consultation by the State Government with the National Commission would not take away the competence of the State Government to enact the 2021 Act. Legislative competence can only be circumscribed by express prohibition contained in the Constitution itself [*M.P. Cement Manufacturers' Assn. v. State of M.P.*, (2004) 2 SCC 249] and Article 338-B(9) does not stop the State from enacting a legislation in furtherance of a major policy matter but states that the State Government shall consult the Commission on such matters.”

[emphasis added]

222. In **Dr. Jaishri Laxmanrao Patil** (*supra*), the Supreme Court had considered the requirement of consultation with the National Commission for Backward Classes contemplated under clause (9) of Article 338-B of the Constitution and observed as under:

“637. When the Constitutional provision uses the expression “consultation” which “consultation” is to be undertaken by a constitutional authority like National Commission for Backward Classes in the present case, the “consultation” has to be meaningful, effective with all relevant materials and information placed before the Commission. As observed above, the National Commission for Backward Classes has been given constitutional status under Article 338-B, has now been entrusted with numerous functions regarding the backward classes. The Commission is now to advice not only the Union Government but the State Government also and various measures as enumerated in clause (5). The objective of clause (9) of Article 338-B is to ensure that even the States did not take any major policy decision without consulting the Commission which is competent to provide necessary advice and solution keeping in view the larger interest of backward class. We thus are of the considered opinion that the consultation by the State on all

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policy matters affecting the socially and educationally backward classes is now mandatory as per clause (9) of Article 338-B which mandatory requirement cannot be bypassed by any State while the State takes any major policy decision.

638. It is true that the expression “consultation” in clause (4) of Article 338-B is not to be read as concurrence but as held above, “consultation” has to be effective and meaningful. The object of consultation is that “consultee” shall place the relevant material before the person from whom “consultation” is asked for and advice and opinion given by consulting authority shall guide the authority who has asked for consultation.”

223. Undoubtedly, the provision of reservation in pursuance of the State’s policy is a major policy matter. Thus, notwithstanding the State’s legislative competence to enact the Act, it was mandatory for the State Government to consult the National Commission for Scheduled Castes and the National Commission for Scheduled Tribes. Merely writing a letter after enacting the Act cannot be considered as consultation as required under clause (9) of Article 338 and clause (9) of Article 338A of the Constitution. The letters relied upon by the State, dated 10.12.2025 and 20.01.2026, were addressed nearly three years after the Act was enacted, and after its validity had been called in question before this Court. Consultation, to be meaningful and effective, must precede the decision. The contention that consultation is mandatory only if the policy adversely affects any Scheduled Castes or Scheduled Tribes

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is also unmerited. The language of clause (9) of Articles 338 and 338A of the Constitution is unambiguous, and it requires consultation on all major policy matters affecting the Scheduled Castes or the Scheduled Tribes.

224. The observations made by the Supreme Court in **Pattali Makkal Katchi** (*supra*) are binding. It is, however, not necessary for us to examine this challenge any further, in view of our conclusion that the impugned provisions of the Act violate Articles 14, 15 and 16 of the Constitution.

CONCLUSION

225. Section 3 of the Act, insofar as it takes the aggregate reservation beyond the ceiling of 50%, is struck down as it violates Articles 14 and 15 of the Constitution.

226. Section 4 of the Act is also struck down as unconstitutional, as it violates Articles 14 and 16 of the Constitution.

227. The petitions are allowed in the aforesaid terms.

Sd/-
(VIBHU BAKHRU)
CHIEF JUSTICE

Sd/-
(K.S. HEMALEKHA)
JUDGE