STATE OF KERALA & ANR.

v.

N. M. THOMAS & ORS.

September 19, 1975

[A. N. RAY, C.J., H. R. KHANNA, K. K. MATHEW, M. H. BEG, V. R. KRISHNA IYER, A C. GUPTA AND S. MURTAZA FAZAL ALI, JJ.]

Kerala State Subordinate Service Rules, 1958, *r.* 13*AA*—*Constitutional validity of.*

Constitution of India, 1950—*Arts* 16, 46 *and* 335—*Scope of.*

Scheduled Castes and Scheduled Tribes—If a caste—Exemption granted from passing special departmental tests—If violative of Art. 16.

Rule 13(a) of the Kerala State Subordinate Services Rules, 1958, provides that no person shall be eligible for appointment to any service or any post unless he possessed such special qualifications and has passed such special tests as may be prescribed in that behalf in the Special Rules.

For promotion of a lower division clerk to the next higher post of upper division clerk, the Government made it obligatory for an employee to pass the special departmental tests. Rule 13A which was introduced sometime later, gave temporary exemption from passing the departmental tests for a period of two years. The rule also provided that an employee who did not pass the unified departmental tests within the period of two years from the date of introduction of the test would be reverted to the lower post and further said that he shall not again be eligible for appointment under this rule. Proviso 2 to this rule gave temporary exemption of two years in the case of Scheduled Castes and Scheduled Tribes candidates. A Harijan Welfare Association represented to the State Government that a large number of Harijan employees in the State service were facing immediate reversion as a result of this rule and requested the Government to grant exemption in respect of Scheduled Castes and Scheduled Tribes employees from passing the obligatory departmental tests for a period of two years with immediate effect. Accordingly, the State Government introduced rule 13AA giving further exemption of two years to members belonging to Scheduled Tribes and Scheduled Castes in the service from passing the tests referred to in r. 13 or r. 13A.

Respondent no. 1 passed the special tests in November, 1971. The other respondents belonging to Scheduled Castes and Scheduled Tribes were promoted as Upper Division Clerks even though they had not passed the prescribed tests. Respondent no. 1 who was not promoted in spite of the fact that he had passed the requisite tests moved the High Court under Art. 226 of the Constitution seeking a declaration that r. 13AA under which exemption had been granted to the other respondents in the matter of promotion was violative of Art. 16 of the Constitution. The High Court struck down the imugned rule as violative of Art. 16(1) and (2) and Art. 335 of the Constitution.

Allowing the State's appeal to this Court,

[*Per majority*, Ray C.J., Mathew, Beg, Krishna Iyer, S. M. Fazal Ali, JJ.; Khanna and Gupta, JJ. *dissenting*]

HELD : (*Per* Ray, C.J.) The classification of employees belonging to Scheduled Castes and Scheduled Tribes for allowing them an extended period of two years for passing the special tests for promotion is a just and reasonable classification having rational nexus to the object of providing equal opportunity for all citizens in matters relating to employment or appointment to public offices. [930H]

A (1) Articles 14, 15 and 16 form part of a string of constitutionally guaranteed rights. These rights supplement each other. Article 16 is an incident of guarantee of equality contained in Art. 14. Both Articles 14 and 16(1) permit reasonable classification having a nexus to the objects to be achieved. Under Art. 16 there can be a reasonable classification of the employees in matters relating to employment or appointment. [926 F]

State of Gujarat and Anr. etc. v. *Shri Ambica Mills Ltd. Ahmedabad etc.* B A.I.R. 1974 S.C. 1300, referred to.

(2) Equality is violated if it rests on an unreasonable basis. The concept of equality has an inherent limitation arising from the very nature of the constitutional guarantee. Those who are similarly circumstanced are entitled to equal treatment. Classification is to be founded on substantial differences which distinguish persons grouped together from those left out of the groups and such differential attributes must bear a just and rational relation to the object sought to be achieved. [927 C]

C (3) If there is a rational classification consistent with the purpose for which such classification is made equality is not violated. The categories of classification for purposes of promotion can never be closed on the contention that they are all members of the same cadre in service. If classification is made on educational qualifications for purposes of promotion or if classification is made on the ground that the persons are not similarly circumstanced in regard to their entry into employment such classification can be justified. [927E-F]

D *C. A. Rajendran* v. *Union of India* [1968] 1 S.C.R. 721, followed.

(4) Art. 16(1) does not bar a reasonable classification of employees or reasonable tests for their selection. There is no denial of equality of opportunity unless the person who complains of discrimination is equally situated with the person or persons who are alleged to have been favoured. [928 B]

State of Mysore v. *V. P. Narasinga Rao* [1968] 1 S.C.R. 407, referred to.

E (5) Under Art. 16(1) equality of opportunity of employment means equality as between members of the same class of employees and not equality between members of separate, independent class. The present case does not create separate avenues of promotion for these persons. [928 F]

All India Station Masters and Assistant Station Masters' Association v. *General Manager, Central Railways* [1960] 2 S.C.R. 311, referred to.

F (6) The Legislature understands and appreciates the needs of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based upon adequate grounds. The rule of classification is not a natural and logical corollary of the rule of equality, but the rule of differentiation is inherent in the concept of equality. Equality means parity of treatment under parity of conditions. Equality does not connote absolute equality. A classification, in order to be constitutional, must rest upon distinctions that are substantial and not merely illusory. The test is whether it has a reasonable basis free from artificiality and arbitrariness embracing all and G omitting none naturally falling into that category. [929 D]

Govind Dattatray Kelkar v. *Chief Controller of Imports,* [1967] 2 S.C.R. 29; *Ganga Ram* v. *Union of India* [1970] 1 S.C.C. 377 and *Roshan Lal Tandon* v. *Union of India* [1968] 1 S.C.R. 185, referred to.

(7) The relevant touchstone of validity is to find out whether the rule of preference secures adequate representation for the unrepresented backward community or goes beyond it. [930 G]

H (8) The historical background of the rules justifies the classification of the personnel of the Scheduled Castes and Scheduled Tribes for the purpose of granting them exemption from special tests with a view to ensuring them the

equality of treatment and equal opportunity in matters of employment having regard to their backwardness and under-representation in the employment of the State. [931 C]

(9) (a) The Constitution makes a classification of Scheduled Castes and Scheduled Tribes in numerous provisions namely Arts. 46, 335, 338 and 341 and gives a mandate to the State to accord special or favoured treatment to them. [931 D]

(b) The impugned rule and the orders are related to this constitutional mandate. Without providing for relaxation of special tests for a temporary period it would not have been possible to give adequate promotion to the Lower Division Clerks belonging to the Scheduled Castes and Scheduled Tribes to the posts of Upper Division Clerks. The temporary relaxation of test qualification made in favour of the Scheduled Castes and Scheduled Tribes is warranted by their inadequate representation in the services and their overall backwardness. The classification of the members of the Scheduled Castes and Scheduled Tribes made under r. 13AA is within the purview of constitutional mandate under Art. 335 in consideration of their claims to redress imbalance in public service and to bring about parity in the communities in the public services. [931H; 932A-B]

(10) Scheduled Castes and Scheduled Tribes are not a caste within the ordinary meaning of castes. [932 E]

Bhaiyalal v. *Harikishan Singh and Ors.* [1965] 2 S.C.R. 877, referred to.

(11) (a) Our Constitution aims at equality of status and opportunity for all citizens including those who are socially, economically and educationally backward. The claims of members of backward classes require adequate representation in legislative and executive bodies. If members of Scheduled Castes and Scheduled Tribes who are said by this Court to be backward classes, can maintain minimum necessary requirement of administrative efficiency, not only representation but also preference may be given to them to enforce equality and to eliminate inequality. [932G-H]

(b) Equality of opportunity for unequals can only mean aggravation of inequality. Equality of opportunity admits discrimination with reason and prohibits discrimination without reason. Preferential representation for the backward classes in services with due regard to administrative efficiency is a permissible object and backward classes are a rational classification recognised by the Constitution. Therefore, differential treatment in standards of selection is within the concept of equality. [933B-C]

(c) The rule in the present case does not impair the test of efficiency in administration inasmuch as members of Scheduled Castes and Tribes who are promoted have to acquire the qualification of passing the test. The only relaxation which is done in their case is that they are granted two years more time than others to acquire the qualification. [933 D]

(12) (a) Equal protection of laws necessarily involves classification. The validity of the classification must be adjusted with reference to the purpose of the law. [933 G]

(b) The classification in the present case is justified because the purpose of classification is to enable members of Scheduled Castes and Scheduled Tribes to find representation by promotion to a limited extent. From the point of view of time a differential treatment is given to members of Scheduled Castes and Tribes for the purpose of giving them equality consistent with efficiency. [933 H]

(13) The High Court was wrong in basing its conclusion that the result of application of the impeached rule and the orders is excessive and exorbitant. The promotions made in services as a whole are nowhere near 50% of the total number of posts. It is correct that r. 13AA and the orders are meant to implement not only the direction under Art. 335 but also the directive principle under Art. 46. [932C-D]

A

Per Mathew, J.

(1) The concept of equality of opportunity is an aspect of the more comprehensive notion of equality. The idea of equality has different shades of meaning and connotations. It has many facets and implications. [948 A]

(2) The notion of equality of opportunity has meaning only when a limited good or a limited number of posts as in the present case should be allocated B on grounds which do not *a priori* exclude any section of citizens of those that desire it. *A priori* exclusion means exclusion on grounds other than those appropriate or rational for the good in question. The notion requires not merely that there should be no exclusion from access on grounds other than those appropriate or rational for the good in question *but the grounds considered appropriate for the good should themselves be such that people from all sections of society have an equal chance of satisfying them.* [950A-B]

(3) To give equality of opportunity for employment to the members of C Scheduled Castes and Scheduled Tribes, it is necessary to take note of their social, educational and economic environment. Not only is the Directive Principle embodied in Art. 46 binding on the law-maker as ordinarily understood but it should equally inform and illuminate the approach of the Court when it makes a decision as the Court also is 'State' within the meaning of Art. 12 and makes law even though interstitially. [951 E]

His Holiness Kesavananda Bharati Sripadagalayaru v. *State of Kerala and* D *Another, etc.* [1973] Supp. S.C.R. 1, referred to.

(4) Equality of opportunity is not simply a matter of legal equality. Its existence depends not merely on the absence of disabilities but on the presence of abilities. [951 F]

(5) The guarantee of equality before the law or the equal opportunity in matters of employment is a guarantee of something more than what is required by formal equality. It implies differential treatment of persons who are un- E equal. Egalitarian principle has, therefore, enhanced the growing belief that Government has an affirmative duty to eliminate inequalities and to provide opportunities for the exercise of human rights and claims. [951 H]

(6) Fundamental Rights as enacted in Part III of the Constitution are, by and large, essentially negative in character. They mark off a world in which the Government should have no jurisdiction. In this realm, it was assumed that a citizen has no claim upon Government except to be let alone. [952 A]

F (7)(a) But, the language of Art. 16(1) is in marked contrast with that of Art. 14. Whereas the accent in Art. 14 is on the injunction that the State shall not deny to any person equality before the law or the equal protection of the laws, that is, on the negative character of the duty of the State, the emphasis in Art. 16(1) is on the mandatory aspect. [952 B]

(b) If equality of opportunity guaranteed under Art. 16(1) means effective material equality, then Art. 16(4) is not an exception to Art. 16(1). It is G only an emphatic way of putting the extent in which equality of opportunity could be carried, namely, even upto the point of making reservation. [956 C]

(c) Art. 16(1) is only a part of a comprehensive scheme to ensure equality in all spheres. It is an instance of the application of the larger concept of equality under the law embodied in Arts. 14 and 15. Article 16(1) permits of classification just as Art. 14 does. But, by the classification, there can be no discrimination on the ground only of race, caste and other factors mentioned in Art. 16(2). [951 F]

H

S. C. Jaisinghani v. *Union of India & Ors.* [1967] 2 S.C.R. 703, at 712; *State of Mysore & Anr.* v. *P. Narasing Rao* [1968] 1 S.C.R. 407 at 410 & *C. A. Rajendran* v. *Union of India & Ors.* [1968] 1 S.C.R. 721, at 729 referred to.

(d) The word 'caste' in Art. 16(2) does not include Scheduled Castes. The definition of 'Scheduled Castes' in Art. 366(24) shows that it is by virtue of the notifica ion of the President that the Scheduled Castes come into being. Though the members of the Scheduled Castes are drawn from castes, races or tribes, they attain a new status by virtue of the Presidential notification. Moreover, though the members of tribe might be included in Scheduled Castes, tribe as such is not mentioned in Article 16(2). [957 A]

(e) Article 16(1) and Art. 16(2) do not prohibit the prescription of a reasonable qualification for appointment or for promotion. Any provision as to qualification for employment or appointment to an office reasonably fixed and applicable to all would be consistent with the doctrine of equality of opportunity under Art. 16(1). [957 E]

The General Manager, Southern Railway v. *Rangachari* [1962] 3 S.C.R. 586 referred to.

(8) Today, the sense that Government has affirmative responsibility for elimination of inequalities, social, economic or otherwise, is one of the dominant forces in constitutional law. [952 E]

(9) The concept of equality of opportunity in matters of employment is wide enough to include within it compensatory measures to put the members of the Scheduled Castes and Scheduled Tribes on par with the members of other communities which would enable them to get their share of representation in public service. [954 E]

(10) If reservation is necessary ei her at the initial stage or at the stage of promotion or at both to ensure for the members of the Scheduled Castes and Scheduled Tribes equality of opportunity in the matter of employment, there is no reason why that is not permissible under Art. 16(1) as that alone might put them on a parity with the forward communities in the matter of achieving the result which equality of opportunity would produce. Equality of result is the test of equality of opportunity. [954 G-H]

(11) The State can adopt any measure which would ensure the adequate representation in public service of the members of the Scheduled Castes and Scheduled Tribes and justify it as a compensatory measure to ensure equality of opportunity provided the measure does not dispense with the acquisition of the minimum basic qualification necessary for the efficiency of administration. [956 D]

(12) It is a mistake to assume *a priori* that there can be no classification within a class, say, the Lower Division Clerks. If there are intelligible differentia which separate a group within that class from the rest and that differentia have nexus with the object of classification, there is no objection to a further classification within the class. [957 C]

All India Station Masters and Assistant Station Masters Association v. *General Manager, Central Railway and Others* [1960] 2 S.C.R. 311, *S. C. Jaisinghani* v. *Union of India and Others* [1967] 2 S.C.R. 703 at 712 & *State of Jammu & Kashmir* v. *Triloki Nath Khosa & Others* [1974] 1 S.C.R. 771 held inapplicable.

(13) In the instant case, Rule 13AA has been enacted not with the idea of dispensing with the minimum qualification required for promotion to a higher category or class, but only to give enough breathing space to enable the members of Scheduled Castes and Scheduled Tribes to acquire it. The purpose of the classification made in r. 13AA is to enable them to have their due claim of representation in the higher category without sacrificing the efficiency implicit in the passing of the test. [958 B]

(14) The classification made in r.13AA has a reasonable nexus with the purpose of the law. Rule 13AA is not intended to give permanent exemption to the members of Scheduled Castes and Scheduled Tribes from passing the test but only reasonable time to enable to them to do so. That the power is liable to be abused is no reason to hold that the rule itself is bad. [958 E]

A *Per* Beg J.

The only ground given by the High Court for refusing to give the benefits of the impugned rules and orders to the backward class Government servants, that they fall outside the purview of Art. 16(4) was not substantiated. The respondent has not discharged the burden establishing a constitutionally unwarranted discrimination against him. [963 H]

B (1) When citizens are already employed in a particular grade as government servants considerations relating to the sources from which they were drawn lose much of their importance. Neither as members of a single class nor for purposes of equality of opportunity which is to be afforded to this class does the fact that some of them are also members of economically and socially backward class continue to be material or, even relevant. Their entry into the same relevant class as others must be deemed to indicate that they no longer suffer from the handicaps of a backward class. For purposes of Government service the source from which they are drawn should cease to matter. As Government servants, they would form only one class for the purpose of promotion.
C [960A-B]

(2) (a) The specified and express mode of realisation of the objects contained in Art. 16(4), must exclude the possibility of other methods which could be implied and read into Art. 16(1) for securing them in this field the applicable maxim being *"expressio unius est exclusio alterius"*. [960 E]

(2) (b) The purpose of equality of opportunity by means of tests is only to ensure a fair competition in securing posts and promotions in government
D service, and not the removal of causes for unequal performances in competitions for these posts or promotions. [960 H]

(3) Article 16(4) is designed to reconcile the conflicting pulls of Art. 16 (1) representing the dynamics of justice conceived of as equality in conditions under which candidates actually compete for posts in Government service and of Arts. 46 and 355 embodying the duties of the State to promote the interests of the economically, educationally and socially backward so as to release them from the clutches of social injustice. These encroachments on the field of Art.
E 16(1) can only be permitted to the extent they are warranted by Art. 16(4). To read broader concepts of social justice and equality into Art. 16(1) may stultify this provision and make Art. 16(4) otiose. [961C-D]

(4) It would be dangerous to extend the limits of protection against the operation of the principle of equality of opportunity in this field beyond its express constitutional authorisation by Art. 16(4). [959 G]

F (5) But if the impugned rules and orders could be viewed as an implementation of a policy of qualified or partial or conditional reservation which could satisfy the requirements of substantial equality in keeping with Art. 335 and meet the demands of equality and justice looked from the point of view of Art. 46 of the Constitution, they could also be justified under Art. 16(4) of the Constitution. [963 B-C]

(6) Though the respondent was not promoted in spite of passing the efficiency test earlier the backward class employees, who were given preference over him, were discharging their duties in the higher grade quite satisfactorily
G and were his seniors in service. Taking and passing of a written test earlier than another employee could not be the sole factor to consider in deciding upon a claim to superiority or to preference on grounds of merit and efficiency for promotion as a government servant. [962 A-B]

(7) The effect of the relaxation is that a backward class employee continues in the post temporarily for a longer period before being either confirmed or reverted. For this period, the post remains reserved for him. If he does
H not satisfy the efficiency tests even within the extended period he has to revert to the lower grade. If he does satisfy the special efficiency tests, in this extended period, he is confirmed in the class of promotees into which he obtained entry because of a reservation. One of the dictionary meanings of the word

'reserve' is "to keep back or hold over to a later time or place for further treatment etc." The result of the rule, therefore, is a kind of reservation. [962 F-H]

(8) If reservation of posts under Art. 16(4) for employees of backward classes could include complete reservation of higher posts to which they could be promoted, there is no reason why it could not be partial or for a part of the duration of service and hedged round with the condition that a temporary promotion would operate as a complete and confirmed promotion only if the temporary promotee satisfies some tests within a given time. [963 A]

In the instant cases apart from the fact that it is only one of partial or temporary and conditional reservation, it is disputed here that the favoured class of employees constituted more than 50% of the total number of Government servants of this class (Clerks) if the overall position is taken into account. Furthermore, a large number of temporary promotions of backward class Government servants of this grade had taken place in 1972 in the Department because promotions of this class of employees had been held up in the past due to want of necessary provision in the rules. The totality of facts of this case is distinguishable in their effects from those in *T. Devadasan* v. *Union of India* [1964] 4 S.C.R. 680 and *M. R. Balaji & Ors.* v. *State of Mysore* [1963] Suppl. 1 S.C.R. 439. [963 D-F]

Per Krishna Iyer, J.

(1) The Indian Constitution is a great social document, almost revolutionary in its aim of transforming a medieval, hierarchical society into a modern, egalitarian, democracy. Its provisions can be comprehended only by a spacious, social-science approach, not by pedantic, traditional legalism. [964 E]

(2)(a) The Preamble to the Constitution silhouettes a 'justice-oriented' community. The Directive Principles of State Policy, enjoin on the State the promotion *with special care* the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes and protect them from social injustice. To neglect this obligation is to play truant with Art. 46. Economic interests of a group—as also social justice to it—are tied up with its place in the services under the State. [974 A-B]

(b) The unanimous opinion of this Court in *Keshavananda Bharti's* case is that the Court must wisely read the collective Directive Principles of Part IV into the individual fundamental rights of Part III, neither part being superior to the other. In this case, the supplementary theory, treating both Parts as fundamental, gained supremacy. [977 A]

(c) The upshot is that Art. 46 has to be given emphatic expression while interpreting Art. 16(1) and (2). Indeed, Art. 335 is more specific and cannot be brushed aside or truncated in the operational ambit *vis a vis* Arts. 16 (1) and (2) without hubristic aberration. [977 F-G]

(3) The conclusions that could be drawn from the provisions of the Constitution are : (1) The Constitution itself demarcates *harijans* from others. (2) This is based on the stark backwardness of this bottom layer of the community. (3) The differentiation has been made to cover specifically the area of appointments to posts under the State. (4) The twin objects, blended into one, are *claims* of *harijans* to be considered in such posts and the maintenance of administrative efficiency. (5) The State has been obligated to promote the economic interests of *harijans* and like backward classes, Arts. 46 and 335 being a testament and Arts. 14 to 16 being the tool-kit. To blink at this *panchsheel* is to be unjust to the Constitution. [975 B-C]

(4) To relax on basic qualifications is to compromise with minimum administrative efficiency; to relent, *for a time*, on additional test qualifications as to take a calculated but controlled risk, assured of a basic standard of performance; to encourage the possession of higher excellence is to upgrade the

A efficiency status of the public servant and eventually, of the department. This is the sense and essence of the situation arising in the present case, viewed from the angle of administrative requirements or fair employment criteria. [967 C-D]

(5) Efficiency means, in terms of good government, not marks in examinations only, but responsible and responsive service to the people. [976 C]

B (6)(a) A bare reading of Arts. 341 and 342 brings out the quintessential concept that the Scheduled Castes and Tribes are no castes in the Hindu fold but an amalgam of castes, races, groups, tribes, communities or parts thereof found on investigation to be the lowliest and in need of massive State aid and notified as such by the President. [977 H]

(b) The discerning sense of the Indian *Corpus Juris* has generally regarded Scheduled Castes and Scheduled Tribes, not as a caste but as a large backward group deserving of societal compassion. [978 B]

C (7)(a) Given two alternative understandings of the relevant sub-Articles [Arts. 16(1) and (2)] the Court must so interpret the language as to remove that ugly 'inferiority' complex which has done genetic damage to Indian polity and thereby suppress the malady and advance the remedy, informed by sociology and social anthropology. The touch-stone is that functional democracy postulates participation by all sections of the people and fair representation in administration is an index of such participation. [971 E-F]

D (b) Clause (4) of Art. 16 if closely exaimned, is an illustration of constitutionally sanctified classification. Art. 16(4) need not be a saving clause but put in due to the over-anxiety of the draftsman to make matters clear beyond possibility of doubt. [978 H]

(c) Reservation confers *pro tanto* monopoly, but classification grants under Art. 16(1) ordinarily a lesser order of advantage. The former is more rigid, the latter more flexible, although they may overlap sometimes. Art. 16(4) covers all backward classes; but to earn the benefit of grouping under E Art. 16(1) based on Art. 46 and 335, the twin considerations of terrible backwardness of the type *harijans* endure and maintenance of administrative efficiency must be satisfied. [979 C-D]

(d) The fact that better educational prescription for promotion posts have been upheld by this Court does not rule out other reasonable differentia, having a nexus with the object. The true test is, what is the object of the classification and is it permissible? Further, is the differentia sound and substantial and clearly related to the approved object? [980 H]

F (e) The genius of Arts. 14 to 16 consists not in literal equality but in progressive elimination of pronounced inequality. To treat sharply dissimilar persons equally is subtle injustice. Equal opportunity is a hope, not a menace. [981 B]

In the present case the economic advancement and promotion of the claims of the grossly under-represented and pathetically neglected classes, otherwise described as Scheduled Castes and Scheduled Tribes, *consistently with the* G *maintenance of administrative efficiency* is the object, constitutionally sanctioned by Arts. 46 and 335, and reasonably accommodated in Art. 16(1). The differentia so loudly obstrusive, is the dismal social milieu of *harijans*. This has a rational relation to the object set out above. [981 C]

(8) It is a statistically proved social reality in India that the depressed employment position of *harijans* is the master problem in the battle against generations of retardation, and reservation and other solutions have made no H significant impact on their employment in public services. In such an unjust situation, to maintain mechanical equality is to prepetuate actual inequality. Relaxation of 'tests' qualification at the floor level of clerical posts is a part of this multiform strategy to establish broader, though seemingly differential equality. [983 F]

Per Fazal Ali, J.

Rule 13AA is a valid piece of statutory provision which is fully justified under Art. 16(1) of the Constitution and does not fall within the purview of Art. 16(4). [1007 F]

(1)(a) Equality of opportunity would mean a fair opportunity not only to one section or the other but to all sections for removing the handicaps if a particular section of the society suffers from the same. What Art. 14 or Art. 16 forbids is hostile discrimination and not reasonable classification. In other words, the idea of classification is implicit in the concept of equality because equality means equality to all and not merely to the advanced and educated sections of the society. [992 H; 993 B]

(b) It follows that in order to provide the equality of opportunity to all citizens, every class of citizens must have a sense of equal participation in building up an egalitarian society. [993 C]

(c) The only manner in which the objective of equality as enshrined in Art. 14 and 16 can be achieved is to boost up the backward classes by giving them concessions, relaxations, facilities, removing handicaps and making suitable reservations so that the weaker sections may compete with the more advanced and in due course become equals and backwardness is banished for ever. [993 D]

(2)(a) There is complete unanimity of judicial opinion of this Court that the Directive Principles and the Fundamental Rights should be construed in harmony with each other and every attempt should be made by the Court to resolve apparent inconsistency. [993 H]

(b) The Directive Principles contained in Part IV constitute the stairs to climb the high edifice of a socialistic State and the Fundamental Rights are the means through which one can reach the top of the edifice. [993 H]

In *Re The Kerala Education Bill*, 1957, [1959] S.C.R. 995; *Mohd. Hanif Quareshi & Others* v. *The State of Bihar*, [1959] S.C.R. 629, 648; *I. C. Golak Nath & Others* v. *State of Punjab & Anr.*, [1967] 2 S.C.R. 762, 789-790; *Chandra Bhavan Boarding and Lodging, Bangalore* v. *The State of Mysore and Anr.*, [1970] 2 S.C.R. 600 612, *His Holiness Keshavananda Bharati Sripadagalvaru* v. *State of Kerala and Anr.*, [1973] 4 S.C.C. 225, referred to.

(c) The Directive Principles form the fundamental feature and the social conscience of the Constitution which enjoins upon the State to implement these Directive Principles. The Directives, thus provide the policy, the guidelines and the end of socio-economic freedom and Arts. 14 and 16 are the means to implement the policy to achieve the ends sought to be promoted by the Directive Principles. So far as the Court are concerned where there is no apparent inconsistency between the Directive Principles contained in Part IV and the Fundamental Rights mentioned in Part III, there is no difficulty in putting a harmonious construction which advances the object of the Constitution. [996 E-F]

(3)(a) The word 'caste' appearing after 'Scheduled' is really a misnomer and has been used only for the purpose of identifying this particular class of citizens which has a special history of several hundred years behind it. The Scheduled Castes and Scheduled Tribes have been a special class of citizens who have been so included and described that they have come to be identified as the most backward classes of citizens of this country. [997 A-B]

(b) Properly analysed, Art. 46 contains a mandate to the State to take special care for the educational and economic interests of the weaker sections of the people and as illustrations of the persons who constitute the weaker sections the provision expressly mentions the Scheduled Castes and the Scheduled Tribes. [997 F]

(c) A combined reading of Art. 46 and clauses 24 and 25 of Art. 366 clearly shows that the members of the Scheduled Castes and the Scheduled

A Tribes must be presumed to be backward classes of citizens, particularly when the Constitution gives the example of the Scheduled Castes and the Scheduled Tribes as being the weaker sections of the society. [997 G]

(d) The members of the Scheduled Castes and the Tribes have been given a special status in the Constitution and they constitute a class by themselves. That being the position it follows that they do not fall within the purview of Art. 16(2) of the Constitution which prohibits discrimination between the B members of the same caste. If the members of the Scheduled Castes and the Scheduled Tribes are not castes then it is open to the State to make reasonable classification in order to advance or lift these classes so that they may be able to be properly represented in the services under the State. [998 A-B]

(4)(a) Art. 16 is merely an incident of Art. 14 and both these articles form a part of the common system seeking to achieve the same end. [998 D]

State of Jammu & Kashmir v. *Triloki Nath Khosa & Ors.*, [1974] 1 S.C. C 771, 783; *Mohammad Shujat Ali and others* v. *Union of India and others*, [1975] 3 S.C.C. 76, 102; *Govind Dattatray Kelkar and others* v. *Chief Controller of Imports & Exports and others*, [1967] 2 S.C.R. 29, 33; *S. G. Jaisinghani* v. *Union of India and others*. [1967] 2 S.C.R. 703, 712 and *The General Manager, Southern Railway* v. *Rangachari*, [1962] 2 S.C.R. 586, 597, referred to.

(b) Art. 16 applies to all classes of appointment including promotions and selection posts. [999 E]

D *C. A. Rajendran* v. *Union of India and Ors.*, [1968] 1 S.C.R. 721, 728-729, referred to.

(c) Art. 16 permits a valid classification. [999 H]

State of Jammu & Kashmir v. *Triloki Nath Khosa & Ors.*, [1974] 1 S.C.R. 771, 789; *C. A. Rajendran* v. *Union of India and Ors.*, [1968] 1 S.C.R. 721, 728-729; *S. G. Jaisinghani* v. *Union of India and others*, [1967] 2 S.C.R. 703, 712; *The General Manager, Southern Railway* v. *Rangachari*, [1962] 2 S.C.R. 586, 597 and *Mohammad Shujat Ali and others* v. *Union of India and others*, E [1975] 3 S.C.C. 76, 102, referred to.

(d) Equality of opportunity for all citizens envisaged in Art. 16(1) implies that 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 can be achieved by making a reasonable classification so that every class of citizens is duly represented in the services which will enable equality of opportunity to all citizens. The classification must, however, be reasonable and must fulfil the following condi- F tions. [1000 G]

(i) It must have a rational basis; (ii) It must have a close nexus with the object sought to be achieved and (iii) It should not select any person for hostile discrimination at the cost of others. [1000 H]

(5) (a) If the promotees do not belong to a caste as contemplated by Art. 16(2) then they do not fall within the mischief of Art. 16(2) at all. Thus the case of the promotees squarely falls within the four-corners of Art. 16(1) and G can be justified as based on reasonable classification. [1002 B]

(b) Clause (4) of Art. 16 of the Constitution cannot be read in isolation but has to be read as part and parcel of Art. 16(1) and (2). [1002 E]

(c) Clause (4) of Art. 16 is not an exception to Art. 14 in the sense that whatever classification can be made can be done only through clause (4) of Art. 16. Clause (4) of Art. 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 Art. 16 deals exclusively with H reservation and not other forms of classification which can be made under Art. 16(1) itself. Since clause (4) is a special provision regarding reservation, it can safely be held that it overrides Art. 16(1) to that extent and no reservation can be made under Art. 16(1). [1002 G-H]

(d) Art. 16(4) is not a proviso to Art. 16(1) but this clause covers the whole field of Art. 16. Dissenting view of Subba Rao, J. in *T. Devadasan* v. *Union of India*, [1964] 4 S.C.R. 680, applied.

(e) Clause 4 of Art. 16 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.

(ii) That the class for which reservation is made is not adequately represented in the services under the State. [1004 E]

(iii) The reservation should not be too excessive so as to destroy the very concept of equality, and [1005 A]

(iv) Reservation should not be made at the cost of efficiency. [1006 C]

(6) In the instant case what Rule 13AA does, is merely to authorise the Government to exempt for a specified period any member or members of the Scheduled Caste and Scheduled Tribes from passing the test referred to in Rule 13 and Rule 13A. The rule does not give complete licence. A Lower Division Clerk who is a member of the Scheduled Caste or the Scheduled Tribe could not be promoted without passing any test at all so as to destroy the concept of equality. It merely gives a special concession or a temporary relaxation to backward class of citizens in order to lift them, advance them and enable them to compete with the stronger sections of the society. Thus, the basis of the rule is undoubtedly both rational and reasonable. The rule does not grant complete exemption to the promotees from passing the test. It only provides for grant of extension of time to enable them to clear the test. It cannot, therefore, be held that the State's action in incorporating rule 13AA. in any way violates the mandate contained in Art. 335. The concession given in Rule 13AA amounts to a reasonable classification which can be made under Art. 16(1) and does not amount to the selection of the respondent no. 1 for hostile discrimination so as to be violative of Art. 16(1) of the Constitution. Respondent no. 1 passed the test necessary for promotion to the Upper Grade on November 2, 1971. He cannot put forward his claim for being promoted earlier than that date. Extensions granted by the Government to the clerks belonging to the Scheduled Castes and Tribes from 1958 to 1972 and thereafter upto 1974 will affect respondent no. 1 only after November 2, 1971 and not before that date. [1001 C; F-G; 990 DE]

(7) If the carry forward rule is not upheld then backwardness will be perpetrated and it would result ultimately in a vacuum. The High Court was in error in holding that the State's action in filling 34 vacancies out of 51 by members of the Scheduled Castes and Tribes was illegal and could not be justified. [1006 C]

(8) A concession or relaxation in favour of a backward class of citizens particularly when they are senior in experience would not amount to any impairment of efficiency. The High Court was in error in holding that Rule 13AA was *ultra vires* and was violative of Art. 16 as it thought that this rule came within the mischief of clause 4 of Art. 16. [1006 D-E]

Per Khanna, J. (*dissenting*)

There is no infirmity in the finding of the High Court that the impugned promotions were violative of Article 335 of the Constitution. The Departmental tests are prescribed to ensure standards of efficiency for the employees. To promote 34 out of 51 persons although they have not passed the Departmental tests and at the same time not to promote those who have passed the Departmental tests can hardly be conducive to efficiency. [945 H]

(1) It is not permissible to waive the requirement of the minimum educational qualification and other standards essential for the maintenance of efficiency of service. The reservation of seats for the members of the

backward class was not to be at the cost of efficiency. This fact was brought out in Art. 335 according to which the claims of the members of the Scheduled Castes and Scheduled Tribes 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. [939 B; 938 H]

(2) The reservation of posts for a section of population has the effect of conferring a special benefit on that section of the population. Such preferential treatment is plainly a negation of the equality of opportunity for all citizens in matters relating to employment or appointment to an office under the State. Clause (4) of Art. 16 has been construed as a proviso or exception to cl. (1) of that Article. [939 C]

The General Manager, Southern Railway v. *Rangachari*, [1962] 2 S.C.R. 586 and *T. Devadasan* v. *The Union of Indian & Anr.* [1964] 4 S.C.R. 680, referred to.

(3) The provision of preferential treatment for members of backward classes including Scheduled Castes and Scheduled Tribes is that contained in cl. (4) of Art. 16. There is no scope for spelling out such preferential treatment from the language of cl. (1) of Art. 16 because the language of that clause does not warrant any preference to any citizen against another citizen. The language of Art. 16(4) indicates that but for this clause it would not have been permissible to make any reservation of appointments or posts in favour of any backward class of citizens. [939 H; 940 A]

All India Station Masters' & Asstt. Station Masters' Assn. & Ors. v. *General Manager, Central Railway & Ors.*, [1960] 2 S.C.R. 311; *S. G. Jaisinghani* v. *Union of India & Ors.*, [1967] 2 S.C.R. 703; and *State of Jammu & Kashmir* v. *Triloki Nath Khosa & Ors.*, [1974] 1 S.C.R. 771, distinguished.

(4) Equality of opportunity in matters of employment could be predicated only between persons who were either seeking the same employment or had obtained the same employment. Equality of opportunity in matters of promotion must mean equality between members of the same class of employees and not equality between members of separate, independent classes. [940 E]

All India Station Masters' & Asstt. Station Masters' Assn. & Ors. v. *General Manager, Central Railway & Ors.*, [1960] 2 S.C.R. 311, referred to.

(5) The concept of equality in the matter of promotion can be predicated only when the promotees are drawn from the same source. If the preferential treatment of one source in relation to the other is based on the differences between the two sources, and the said differences have a reasonable relation to the nature of the office, it can legitimately be sustained on the basis of a valid classification. The reason for the classification in that case was that the higher echelons of the service should be filled by experienced officers possessing not only a high degree of ability but also first rate experience. [940 H]

S. G. Jaisinghani v. *Union of India & Ors.*, [1967] 2 S.C.R. 703, referred to.

(6) A classification based upon the consideration that an employee belongs to a particular section of the population with a view to accord preferential treatment for promotion is clear violation of equality of opportunity enshrined in cl. (1) of Art. 16. [941 G]

(7) The essential object of various rules dealing with appointment to posts under the State and promotion to higher posts is to ensure efficiency of service. Exemption granted to a class of employees even though for a limited period, from passing the departmental tests which have been prescribed for the purpose of promotion would obviously be subversive of the object to ensure efficiency of service. It cannot be disputed that departmental tests are prescribed with a view to appraise and ensure efficiency of different employees. To promote employees even though they have not passed such efficiency test can hardly be consistent with the desideratum of ensuring efficiency in administration. [942 B]

A

(8) The fact that exemption from passing departmental tests granted to members of Scheduled Castes and Scheduled Tribes is not absolute but only for a limited period would not lend constitutionality to the impugned rule and orders. Exemption granted to a section of employees while being withheld from the remaining employees has obvious element of discrimination between those to whom it is granted and those from whom it is withheld. If the passing of departmental tests is an essential condition of promotion it would B plainly be invidious to insist upon compliance with that condition in the case of one set of employees and not to do so in the case of others. The basic question is whether exemption is constitutionally permissible. [942 D]

(9)(a) Preferential and favoured treatment for some citizens in the matter of employment or appointment to any office under the State would be antithesis of the principle of equality of opportunity. Equality of opportunity C is one of the corner-stones of our Constitution. It finds a prominent mention in the preamble to the Constitution and is one of the pillars which gives support and srength to the social, political and administrative edifice of the nation. [942 F-H]

(b) Privileges, advantages, favours, exemptions concessions specially carmarked for sections of population run counter to the concept of equality of opportunity, they indeed eat into the very vitals of the concept. To D countenance classification for the purpose of according preferential treatment to persons not sought to be recruited from different sources and in cases not covered by cl. (4) of Art. 16 would have the effect of eroding, if not destroying altogether the valued principle of equality of opporunity enshrined in cl. (1) of Art. 16. [943 A-B]

(10)(a) To introduce fresh notions of classification in Art. 16(1) would necessarily have the effect of vesting the State under the garb of classification E with power of treating sections of population as favoured classes for public employment. It may not be difficult to circumvent that clause mentioning grounds other than those mentioned in cl. (2). [943 C]

(b) To expand the frontiers of classification beyond those which have so far been recognised under cl.(1) of Art. 16 is bound to result in creation of classes for favoured and preferrential treatment for public employment and thus erode the concept of equality of opportunity for all citizens in matters F relating to employment under the State. [943 D-E]

(11) In construing the provisions of the Constitution, the courts should avoid a doctrinaire approach. A constitution is the vehicle of the life of a nation and deals with practical problems of the Government. It is, therefore, imperative that the approach to be adopted by the courts while construing the provisions of the Constitution should be pragmatic and not one as a result of which the court is likely to get lost in a maze of abstract theories. G The important task of construing the article of a Constitution is not an exercise in mere syllogism. It necessitates an effort to find the true purpose and object which underlies that article. The historical background, the felt necessities of the time, the balancing of the conflicting interests must all enter into the crucible when the court is engaged in the delicate task of construing the provisions of a constitution. [943 E-H]

H

(12) Another thing which must be kept in view while construing the provisions of the Constitution is to foresee as to what would be the impact of that contruction not merely on the case in hand but also on the future

A cases which may arise under those provisions. Out of concern for the facts of one individual case, the courts must not adopt a construction the effect of which might be to open the door for making all kinds of inroads into a great ideal and desideratum like that of equality of opportunity. Likewise, the courts should avoid in the absence of compelling reason, a course that has the effect of unsettling a constitutional position which has been settled over a long term of years by a series of decisions. [944 A-B]

B (13) The liberal approach that may sometimes have been adopted in upholding classification under Art. 14 would, in the very nature of things, be not apt in the context of Art. 16 when the object underlying Art. 16 is kept in view. [944 C]

(14) The State has ample power to make provision for safeguarding the interest of backward classes under cl. (4) of Art. 16 which deals with reservation of appointments or posts for backward classes not adequately represented in the services under the State. Inaction on the part of the State C under cl. (4) of Art. 16 cannot justify strained construction of cl. (1) of Art. 16. [946 E]

Per Gupta, J. *(dissenting)*

(1) Rule 13AA and the orders made thereunder giving additional opportunity in this regard to some out of the same class of employee would be obviously void unless the fact that the favoured members of the class belong to Scheduled Castes or Scheduled Tribes made any difference in the position. [987 B]

D

There is no force in the contention that Art. 16(1) should be read in the light of Art. 46 and 335. Neither Art. 46 and Art. 335 mentions Art. 16(1) nor Art. 16(1) refers to either of them. All the three Articles co-exist in the Constitution and if it is correct to say that one of them should be read in the light of the other two, it is equally right to suggest that the two of them should read in the light of the other. This means that the various parts of an organic instrument like the Constitution ought to be harmoniously construed but that is not the same things as suggesting that even where the E scope and ambit of one part is clear it should be abridged, extended or amended to prove its affinity with another part. Each limb of the body has its own function, and to try to make one of them do the work of another is both unnecessary and unwise. This might throw the entire system out of gear. [985 C-D]

(2)(a) It is difficult to see how Art. 46 which requires the State to promote with special care the economic interests of the weaker sections of F the people especially of the Scheduled Castes and Scheduled Tribes, can serve as an aid to the construction of Art. 16(1). [985 H]

(b) Art. 335 cannot furnish any clue to the understanding of Art. 16(1). This Article does not create any right in the members of the Scheduled Castes and Scheduled Tribes which they might claim in the matter of appointments to services and posts; one has to look elsewhere, to find out the claims conceded to them. Art. 335 says that such claims shall be considered consistently with the administrative efficiency. This is a provision which does not enlarge but qualify such claims as they may have as members of the Scheduled Castes G or Scheduled Tribes. [986 C]

(3) Article 14 which guarantees equality before the law and equal protection of the laws does not insist on absolute equality of treatment to all persons in disregard of all differences among them but provides for equality among equals only. Art. 16(1) contemplates classification on the basis of eligibility for an appointment; those who have the qualifications needed for the post form one class, it also implies that the same class of employees constitute a separate unit. Art. 16(1) forbids between the members of this class discrimination H and denial of equal opportunity in the matter of promotion. [986 D-E; 987 A]

T. Devadasan v. *The Union of India* [1964] 4 S.C.R. 680; *General Manager, Southern Railway* v. *Rangachari*, [1962] 2 S.C.R. 586 and *Sham Sunder* v. *Union of India*, [1969] 1 S.C.R. 312, referred to.

(4) Art. 16(1) in clear terms insists on equality of opportunity for all employees of the same class, and this requirement cannot be dispensed with because of anything in Art. 46 or Art. 335 which does not in any way qualify the guarantee in Art. 16(1). The Article, of course, permits classification, but only such classification as is reasonable, and the test of reasonableness having regard to the object of the Article, must be whether the proposed classification helps in achieving this object. Judging by this test, it is not possible to hold that the sub-division of Lower Division Clerks into two categories, those who belong to the Scheduled Castes and Scheduled Tribes and those who do not, is reasonable. [987 E-F]

(5)(a) The special reference to the Scheduled Castes and Scheduled Tribes does not suggest that the State should promote the economic interests of these castes and tribes at the expense of other "weaker sections of the people". [987 H]

(b) There is nothing reasonable in denying to some Lower Division Clerks the same opportunity for promotion as others have because they do not belong to a particular caste or tribe. Scheduled Castes and Scheduled Tribes, no doubt, constitute a well defined class, but a classification valid for one purpose may not be so for another. In the context of Art. 16(1) the sub-class made by r. 13AA within the same class of employees amounts to discrimination only on grounds of race and caste which is forbidden by cl. (2) of Art. 16. [988 B]

(6) Picking out employees belonging to the Scheduled Castes and Scheduled Tribes from the same class of Lower Division Clerks to give them additional opportunity to be promoted as Upper Division Clerks is not a measure for the promotion of the economic welfare of these castes and tribes. Some incidental financial gain to certain individuals, assuming it results in the welfare of the castes and tribes to which they belong in some remote and indirect way, is not what Art. 46 contemplates. [988 D]

(7)(a) In any case, Art. 16 (1) does not permit such classification as made by r. 13AA. That rule may have been inspired by Art. 46 which requires the State to take measures to bridge the education and economic gap between the weaker sections of the people and other citizens, but Art. 46 does not qualify the provisions of Art. 16(1). Art. 16(1) speaks of equality of opportunity, not opportunity to achieve equality. [988 E-F]

State of Rajasthan & Ors. v. *Thakur Pratap Singh,* [1961] 1 S.C.R. 222, followed.

(b) For the same reasons Art. 335 appears to be even less relevant on the question under consideration. [988 F]

(8) The appalling poverty and backwardness of large sections of the people must move the State machinery to do everything in its power to better their condition. Doling out unequal favours to members of the clerical staff does not seem to be a step in that direction. [988 H]

T. Devadasan v. *The Union of India,* [1964] 4 S.C.R., 680 and *M. R. Balaji & Ors.* v. *State of Mysore,* [1963] Supp. 1 S.C.R. 439, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1160 of 1974.

From the Judgment and Order dated the 19th April, 1974 of the Kerala High Court in Original Petition No. 1656 of 1972.

M. M. Abdul Khadir, Advocate General, Kerala and *K. M. K. Nair* for the appellants.

T. S. Krishnamoorthy Iyer, P. K. Pillai and *N. Sudhakaran* for respondent No. 1.

A *R. K. Garg, V. J. Francis* and *K. R. Nambiyar* for respondent Nos. 2-4, 6 and 7 and the Intervener Mr. Surendran.

R. K. Garg and *O. P. Rana* for the intervener—State of U.P.

L. N. Sinha, Sol. Gen. P. P. Rao and *Girish Chandra* for the Attorney-General for India.

B The following Judgments were delivered :

RAY, C.J. This appeal is by certificate from the judgment dated 19 April, 1974 of the High Court of Kerala.

This appeal concerns the validity of Rule 13AA of the Kerala State and Subordinate Services Rules, 1958 hereinafter called the Rules and two orders which are marked P-2 and P-6.

C

In order to appreciate Rule 13AA, it is necessary to refer to Rules 12, 13A, 13AA. These rules were framed in exercise of the powers conferred by the proviso to Article 309 of the Constitution. These rules came into existence on 17 December, 1958.

"Promotion" is defined in Rule 2(11) to mean the appointment
D of a member of any category or grade of a service or a class of service to a higher category or grade of such service or class.

Rule 12 states that where general educational qualifications, special qualifications or special tests are prescribed by the Special Rules of a service for any category, grade or post therein, or in a class thereof, which are not prescribed for a category or grade in such service or class carrying a lower rate of pay and no member in the category or
E grade carrying the lower rate of pay is eligible for promotion to such category, grade or post a member in such lower category or grade may be promoted to the category or grade carrying the higher rate of pay temporarily until a member of the former category or grade qualified under this rule is available for promotion. A member temporarily promoted under this rule shall not by reason only of such promotion,
F be regarded as a probationer in the category or grade to which he has been promoted, or be entitled to any preferential claim to future promotion.

Rule 13 speaks of special qualifications. Rule 13 does not concern this appeal.

The two rules which are of importance in this appeal are Rules
G 13A and 13AA. They are as follows :—

> "13A. Special and Departmental Tests—Temporary exemption for promotion.—Notwithstanding anything contained in rule 13, where a pass in a special or departmental test is newly prescribed by the Special Rules of a service for any category, grade or post therein or in any class thereof,
> H a member of a service who has not passed the said test but is otherwise qualified and suitable for appointment to such class, category, grade or post may within 2 years of the introduction of the test be appointed thereto temporarily.

If a member so appointed does not pass the test within two years from the date of introduction of the said test or when the said test also involves practical training within two years after the first chance to undergo such training he shall be reverted to the class, category or grade or post from which he was appointed and shall not again be eligible for appointment under this rule :

Provided that a person so reverted shall not by reason only of the appointment under this rule be entitled to any preferential claim to future appointment to the class, category, grade or post, as the case may be to which he had been appointed under this rule :

Provided further that the period of temporary exemption shall be extended by two years in the case of a person belonging to any of the scheduled castes or scheduled tribes.

Provided also that this rule shall not be applicable to tests prescribed for purposes of promotion of the executive staff below the rank of Sub Inspectors belonging to the Police Department".

"13AA. Notwithstanding anything contained in these Rules, the Government may, by order, exempt for a specified period, any member or members, belonging to a Scheduled Caste or a Scheduled Tribe, and already in service, from passing the tests referred to in rule 13 or rule 13A of the said Rules.

Provided that this rule shall not be applicable to tests prescribed for purposes of promotion of the executive staff below the rank of Sub Inspectors belonging to the Police Department".

It is necessary to state here that the third proviso to Rule 13A and the proviso to Rule 13AA were introduced with effect from 12 October, 1973. Rule 13AA was introduced with effect from 13 January, 1972. Exhibit P-2 is an order dated 13 January, 1972. The order is made by the Governor. The order refers to a memorandum dated 19 June, 1971 from the President, Kerala Harijan Samskarika Kshema Samithy, State Committee, Trivandrum and a letter dated 13 November, 1971 from the Secretary, Kerala Public Service Commission. The order is as follows :—

"The President, Kerala Harijan Samskarika Kshema Samithy, Trivandrum has brought to the notice of Government that a large number of Harijan employees are facing immediate reversion from their posts for want of test qualifications and has therefore requested that all Scheduled Castes and Scheduled Tribes employees may be granted temporary exemption from passing the obligatory departmental tests for a period of two years with immediate effect.

(2) Government have examined the matter in consultation with the Kerala Public Service Commission and are pleased to grant temporary exemption to members already

A in service belonging to any of the Scheduled Castes and Scheduled Tribes from passing all tests (unified and special or departmental tests) for a period of two years.

(3) The benefit of the above exemption well be available to those employees belonging to Scheduled Castes and Scheduled Tribes who are already enjoying the benefits of
B temporary exemption from passing newly prescribed tests under General Rule 13A. In their case, the temporary exemption will expire only on the date of expiry of the temporary exemption mentioned in para (2) above or on the date of expiry of the existing temporary exemption, whichever is later.

C (4) This order will take effect from the date of the order".

Exhibit P-6 is an order dated 11 January, 1974. It is an order made by the Governor. The order is as follows :—

"Government are pleased to order that the period of temporary exemption granted to Scheduled Castes and
D Scheduled Tribes in the G.O. read above from passing all tests (unified and special or departmental tests) be extended from 13-1-1974 to cover a period during which two tests are held by the Public Service Commission and results thereof published so that each individual gets two chances to appear. Government also order that these categories of
E employees will not be given any further extension of time to acquire the test qualifications. "

Pursuant to Rule 13AA which came into force on 13th January. 1972 the order Exhibit P-2 was passed on 13 January, 1972 granting temporary exemption to members already in service belonging to any of the Scheduled Castes and Scheduled Tribes from passing all tests
F (unified and special or departmental tests) for a period of two years. The exemption granted by Exhibit P-2 in almost all cases would have expired on 12 January, 1974.

The other impugned order is Exhibit P-6 which was passed on 11 January, 1974 gave further exemption to members of Scheduled Castes and Tribes from 13 January, 1974 from passing tests to cover
G a period during which two tests would be held by the Public Service Commission and results thereof published so that each individual would get two chances to appear within that period. The Government also ordered that these categories of employees would not be given any further extension of time to acquire the test qualifications.

On the basis of these exemption orders, several promotions have been effected. The respondent alleged in the writ petition that 12
H Lower Division Clerks who were members of Scheduled Castes and Scheduled Tribes were promoted without test qualification. The further allegation is that by an order dated 15 June, 1972, 19 Lower

Division Clerks belonging to Scheduled Castes and Tribes were promoted as Upper Division Clerks of which 5 were unqualified Scheduled Castes and Scheduled Tribes members and 14 were qualified Scheduled Castes and Scheduled Tribes members. By order dated 19 September, 1972, another 8 promotions of members of Scheduled Castes and Tribes were ordered of which only two were qualified and the remaining six were unqualified. By another order dated 31st October, 1972, 7 Scheduled Castes and Scheduled Tribes members were promoted without qualifying test and one was promoted with the qualifying test. The grievance of the respondent-petitioner before the High Court was that out of 51 vacancies which arose in the category of Upper Division Clerks in the year 1972, 34 were filled up by Scheduled Castes members who did not possess qualifications and only 17 were given to qualified persons.

The respondent is a Lower Division Clerk working in the Registration Department. For promotion to Upper Division Clerk in that Department on the basis of seniority, the Lower Division Clerks have to pass (1) Account Test (Lower), (2) Kerala Registration Test and (3) Test in the manual of office procedure. The respondent's grievance is that in view of certain concessions given to members of Scheduled Castes and Scheduled Tribes, they were able to obtain promotions earlier than the respondent, though the members of the Scheduled Castes and Scheduled Tribes who were promoted had not passed the tests.

The respondent in the writ petition filed in the High Court asked for a declaration that Rule 13AA is unconstitutional and mandamus for compelling the State to forbear from giving effect to order dated 13 January, 1972 marked Exhibit P-2. The respondent by an affidavit asked for a similar order that Exhibit P-6 dated 11 January, 1974 be set aside.

The respondents' contentions in the High Court were that Rule 13AA of the Service Rules and Exhibits P-2, P-6 and Exhibit P-7 which was another order dated 31 October, 1972 and all orders of promotion made thereunder were violative of Articles 16(1) and 16(2). The High Court upheld the contentions of respondent No. 1.

The contention of the State is that the impugned rules and orders are not only legal and valid but also support a rational classification under Article 16(1).

The contentions on behalf of respondent No. 1 are these. First, Article 16 is a specific application of Article 14 in matters relating to employment or appointment to any service in the State. Clauses (1) and (2) of Article 16 give effect to equality before law guaranteed by Article 14 and to prohibition against discrimination guaranteed by Article 15(1). In other words, Article 16(1) is absolute in terms guaranteeing equality of opportunity to every indivdiual citizen seeking employment or appointment. Emphasis is placed on similar opportunity and equal treatment for seeking employment or appointment. Second, matters relating to employment in Article 16(1) in-

A clude all matters in relation to employment both prior and subsequent to the employment and form part of the terms and conditions of service. Equal opportunity is to be given for appointment, promotion, termination of employment and payment of pension and gratuity. Third, the abridgement of equality guaranteed by Article 16(1) is only to the extent curtailed by Article 16(4). Apart from Article 16(4), the right guaranteed under Article 16(1) cannot be curtailed. B Article 16(4) is, in substance, an exception to rights guaranteed by Article 16(1) and (2). Fourth, Article 16(4) does not cover the entire field occupied 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-obstante* clause in Article 16(4). To illustrate, clauses (1) and (2) of Article 16 do not prohibit the prescription C of reasonable rules for selection to any employment or appointment in office. Any provision as to the qualification for employment or appointment in office reasonably fixed and applicable to all citizens would be consistent with the doctrine of equality of opportunity in Article 16(1). Reasonable qualification of employment for the purpose of efficiency of service is justified. Fifth, rule 13AA is violative of Article 16(1) and (2). The impeached Exhibits fall within the D same mischief. There is no scope for dealing with Scheduled Castes and Scheduled Tribes different from other backward classes. Exemption from qualification necessary for promotion is not conducive to the maintenance of efficiency of administration and violates not only Article 335 of the Constitution but also Article 16(1).

Before the introduction of the Kerala State and Subordinate Ser- E vices Rules, 1958 on 17 December, 1958 and also the formation of Kerala State on 1 November, 1956, the Travancore-Cochin Government had issued orders on 14 June, 1956 directing that the standard of qualification should be lower for members of Scheduled Castes and Scheduled Tribes than compared to others in the matter of examinations relating to various tests. By Government order dated 27 June, 1958, it was directed that the period of exemption from passing tests F be extended by two years in the case of Scheduled Castes and Scheduled Tribes. Again by Government order dated 2 January, 1961, the period of exemption to Scheduled Castes and Scheduled Tribes was further extended to 3 years. By another Government order dated 14 January, 1963, a unified account test (lower) and a test in office procedure were introduced replacing the old tests and as this was treated as a new test, all persons who were formerly in Travancore- G Cochin or Madras Service were given two years' time to pass the test and members of the Scheduled Castes and Scheduled Tribes were given extra time in accordance with the orders earlier mentioned. A circular was issued on 9 February, 1968 granting 7 years' time from 14 January, 1963 to members of the Scheduled Castes and Scheduled Tribes to pass the unified tests. This period was to expire on 14 January, 1970. On 13 January, 1970, an order was passed extend- H ing the time for another year upto 14 January, 1971. On 14 January, 1971 another Government order was issued extending the period by another year.

It was brought to the notice of the Government that large number of Government servants belonging to Scheduled Castes and Scheduled Tribes were unable to get their promotion because of want of test qualifications. In order to give relief to the Scheduled Castes and Scheduled Tribes, the Government incorporated Rule 13AA which enabled the Government to grant exemption to members of Scheduled Castes and Scheduled Tribes for a specified period. On 13 January, 1972 exemption from passing the tests was granted to members of Scheduled Castes and Scheduled Tribes for two years. On 11 January, 1974 order was made under Rule 13AA giving members of Scheduled Castes and Scheduled Tribes exemption from passing the tests for the period of two tests to be conducted after the order dated 11 January, 1974.

The criterion for promotion of Lower Division Clerks to Upper Division Clerks is seniority-cum-merit qualification. For want of test qualification a large number of Lower Division Clerks belonging to Scheduled Castes and Scheduled Tribes were passed over. It is because of the aforesaid Government order dated 13 January, 1972 marked exhibit P-2 that promotions were made according to seniority-cum-merit qualification. The larger share went to the members of the Scheduled Castes and Scheduled Tribes because they were senior hands. After the issue of the order dated 13 January, 1972, 34 out of 51 Lower Division Clerks who were promoted belonged to the Scheduled Castes and Scheduled Tribes. These 34 persons were given temporary exemption from passing the departmental tests. It also appears that these 34 members of Scheduled Castes and Scheduled Tribes have become senior most in the lower cadre.

Articles 14, 15 and 16 form part of a string of constitutionally guaranteed rights. These rights supplement each other. Article 16 which ensures to all citizens equality of opportunity in matters relating to employment is an incident of guarantee of equality contained in Article 14. Article 16(1) gives effect to Article 14. Both Articles 14 and 16(1) permit reasonable classification having a nexus to the objects to be achieved. Under Article 16 there can be a reasonable classification of the employees in matters relating to employment or appointment.

This Court in the *State of Gujarat and Anr. etc.* v. *Shri Ambica Mills Ltd. Ahmedabad etc.*(1) said "The equal protection of the laws is a pledge of the protection of equal laws. But laws may classify. And the very idea of classification is that of inequality. In tackling this paradox the Court has neither abandoned the demand for equality nor denied the legislative right to classify. It has taken a middle course. It has resolved the contradictory demands of legislative specialization and constitutional generality by a doctrine of reasonable classification. (See Joseph Tussman and Jacobus ten Breck, "The Equal Protection of the Laws", 37 California Rev. 341.)"

(1) A. I. R. 1974 S. C. 1300

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In the *Ambica Mills* case (supra) this Court explained reasonable classification to be one which includes all who are similarly situated and none who are not. The question as to who are similarly situated has been answered by stating that one must look beyond the classification to the purpose of law. "The purpose of a law may be either the elimination of a public mischief or the achievement of some B positive public good."

Discrimination is the essence of classification. Equality is violated if it rests on unreasonable basis. The concept of equality has an inherent limitation arising from the very nature of the constitutional guarantee. Those who are similarly circumstanced are entitled to an equal treatment. Equality is amongst equals. Classification is, therefore, to be founded on substantial differences which distinguish C persons grouped together from those left out of the groups and such differential attributes must bear a just and rational relation to the object sought to be achieved.

The crux of the matter is whether Rule 13AA and the two orders Exhibits P-2 and P-6 are unconstitutional violating Article 16(1). Article 16(1) speaks of equality of opportunity in matters relating to employment or appointment under the State. The impeached Rule D and orders relate to promotion from Lower Division Clerks to Upper Division Clerks. Promotion depends upon passing the test within two years in all cases and exemption is granted to members of Scheduled Castes and Scheduled Tribes for a longer period namely, four years. If there is a rational classification consistent with the purpose for which such classification is made equality is not violated. The E categories of classification for purposes of promotion can never be closed on the contention that they are all members of the same cadre in service. If classification is made on educational qualifications for purposes of promotion or if classification is made on the ground that the persons are not similarly circumstanced in regard to their entry into employment, such classification can be justified. Classification between direct recruits and promotees for purposes of promotion has F been held to be reasonable in *C. A. Rajendran* v. *Union of India*(1).

The respondent contended that apart from Article 16(4) members of Scheduled Castes and Scheduled Tribes were not entitled to any favoured treatment in regard to promotion. In *T. Devadasan* v. *The Union of India & Anr.*(2) reservation was made for backward classes. The number of reserved seats which were not filled up was carried forward to the subsequent year. On the basis of "carry G forward" principle it was found that such reserved seats might destroy equality. To illustrate, if 18 seats were reserved and for two successive years the reserved seats were not filled and in the third year there were 100 vacancies the result would be that 54 reserved seats would be occupied out of 100 vacancies. This would destroy equality. On that ground "carry forward" principle was not sustained in *Devadasan's* case (supra). The same view was taken in the case of H *M. R. Bajali and Others* v. *State of Mysore*(3). It was said that not

(1) [1968] 1 S. C. R. 721. (2) [1964] 4 S.C.R. 680.

(3) [1963] Supp. I.S. C. R. 439.

more than 50 per cent should be reserved for backward classes. This ensures equality. Reservation is not a constitutional compulsion but is discretionary according to the ruling of this Court in *Rajendran's* case (supra).

There is no denial of equality of opportunity unless the person who complains of discrimination is equally situated with the person or persons who are alleged to have been favoured. Article 16(1) does not bar a reasonable classification of employees or reasonable tests for their selection *State of Mysore* v. *V. P. Narasinga Rao*(1).

This equality of opportunity need not be confused with absolute equality. Article 16(1) does not prohibit the prescription of reasonable rules for selection to any employment or appointment to any office. In regard to employment, like other terms and conditions associated with and incidental to it, the promotion to a selection post is also included in the matters relating to employment and even in regard to such a promotion to a selection post all that Article 16(1) guarantees is equality of opportunity to all citizens. Articles 16(1) and (2) give effect to equality before law guaranteed by Article 14 and to the prohibition of discrimination guaranteed by Article 15(1). Promotion to selection post is covered by Article 16(1) and (2).

The power to make reservation, which is conferred on the State, under Article 16(4) can be exercised by the State in a proper case not only by providing for reservation of appointments but also by providing for reservation of selection posts. In providing for reservation of appointments or posts under Article 16(4) the State has to take into consideration the claims of the backward classes consistently with the maintenance of the efficiency of administration. It must not be forgotten that the efficiency of administration is of such paramount importance that it would be unwise and impermissible to make any reservation at the cost of efficiency of administration. (*General Manager, S. Rly.* v. *Rangachari*(2). The present case is not one of reservation of posts by promotion.

Under Article 16(1) equality of opportunity of employment means equality as between members of the same class of employees and not equality between members of separate, independent class. The Road-side Station Masters and Guards are recruited separately, trained separately and have separate avenues of promotion. The Station Masters claimed equality of opportunity for promotion vis-a-vis the guards on the ground that they were entitled to equality of opportunity. It was said the concept of equality can have no existence except with reference to matters which are common as between individuals, between whom equality is predicated. The Road-side Station Masters and Guards were required separately. Therefore, the two form distinct and separate classes and there is no scope for predicating equality or inequality of opportunity in matters of promotion. See *All India*

(1) [1968] 1 S. C. R. 407. (2) [1962] 2 S. C. R. 586

A *Station Masters and Assistant Station Masters' Association* v. *General Manager, Central Railways*(1). The present case is not to create separate avenues of promotion for these persons.

The rule of parity is the equal treatment of equals in equal circumstances. The rule of differentiation is enacting laws differentiating between different persons or things in different circumstances. The circumstances which govern one set of persons or objects may not necessarily be the same as those governing ano her set of persons or objects so that the question of unequal treatment does not really arise between persons governed by different conditions and different sets of circumstances. The principle of equality does not mean that every law must have universal application for all persons who are not by nature, attainment or circumstances in the same position and the varying needs of different classes of persons require special treatment. The legislature understands and appreciates the need of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based upon adequate grounds. The rule of classification is not a natural and logical corollary of the rule of equality, but the rule of differentiation is inherent in the concept of equality. Equality means parity of treatment under parity of conditions. Equality does not connote absolute equality. A classification in order to be constitutional must rest upon distinctions that are substantial and not merely illusory. The test is whether it has a reasonable basis free from artificiality and arbitrariness embracing all and omitting none naturally falling into that category.

The following decisions illustrate how classification for promotion has been upheld within the content of Article 16.

There can be cases where the differences between the two groups of recruits may not be sufficient to give any preferential treatment to one against the other in the matter of promotions, and in that event a Court may hold that there is no reasonable nexus between the differences and the recruitment. [*Govind Dattatray Kelkar* v. *Chief Controller of Imports*(2)].

The equality of opportunity takes within its fold all stages of service from initial appointment to its termination including promotion but it does not prohibit the prescription of reasonable rules for selection and promotion, applicable to all members of a classified group. *Ganga Ram* v. *Union of India*(3).

When the petitioner and the direct recruits were appointed to Grade 'D', there was one class of Grade 'D' formed of direct recruits and the promotees from the grade of artisans. The recruits from both

(1) [1960] 2 S. C. R. 311. (2) [1967] 2 S. C. R. 29.
(3) [1970] 1 S. C. C. 377.

the sources to Grade 'D' were integrated into one class and no discrimination could thereafter be made between them. There was only one rule of promotion for both the departmental promotees and the direct recruits. *Roshan Lal Tandon* v. *Union of India*(1).

In *State of Jammu & Kashmir* v. *Triloki Nath Khosa & Ors.*(2) this Court said that dealing with practical exigencies a rule making authority may be guided by realities just as the legislature "is free to recognise degrees of harm and it may confine its restrictions to those classes of cases where the need is deemed to be the clearest". Educational qualifications in that case were recognised as criteria for determining the validity of classification. The discrimination is not in relation to the source of recruitment unlike in *Roshan Lal's* case (supra).

The rule of equality within Articles 14 and 16(1) will not be violated by a rule which will ensure equality of representation in the services for unrepresented classes after satisfying the basic needs of efficiency of administration. Article 16(2) rules out some basis of classification including race, caste, descent, place of birth etc. Article 16(4) clarifies and explains that classification on the basis of backwardness does not fall within Article 16(2) and is legitimate for the purposes of Article 16(1). If preference shall be given to a particular under-represented community other than a backward class or under-represented State in an All India Service such a rule will contravene Article 16(2). A similar rule giving preference to an under-represented backward community is valid and will not contravene Articles 14, 16(1) and 16(2). Article 16(4) removes any doubt in this respect.

The principle of equality is applicable to employment at all stages and in all respects, namely, initial recruitment, promotion, retirement, payment of pension and gratuity. With regard to promotion the normal principles are either merit-cum-seniority or seniority-cum-merit. Seniority-cum-merit means that given the minimum necessary merit requisite for efficiency of administration, the senior though the less meritorious shall have priority. This will not violate Articles 14, 16(1) and 16(2). A rule which provides that given the necessary requisite merit, a member of the backward class shall get priority to ensure adequate representation will not similarly violate Article 14 or Article 16(1) and (2). The relevant touchstone of validity is to find out whether the rule of preference secures adequate representation for the unrepresented backward community or goes beyond it.

The classification of employees belonging to Scheduled Castes and Scheduled Tribes for allowing them an extended period of two years for passing the special tests for promotion is a just and reasonable classification having rational nexus to the object of providing equal opportunity for all citizens in matters relating to employment or appointment to public office. Granting of temporary exemptions from

(1) [1968] 1 S. C. R. 185. (2) [1974] 1 S. C. R. 771.

A special tests to the personnel belonging to Scheduled Castes and Scheduled Tribes by executive orders has been an integral feature of the service conditions in Kerala from its very inception on 1 November, 1956. That was the pattern in Travancore-Cochin State. The special treatment accorded to the Scheduled Castes and Scheduled Tribes in Government service which had become part and parcel of the conditions of service over these long periods amply justify the classification B of the members of the Scheduled Castes and Scheduled Tribes as a whole by the impugned rule and orders challenged. What was achieved by the Government orders is now given a statutory basis by Rule 13AA. The historical background of these rules justifies the classification of the personnel of the Scheduled Castes and Scheduled Tribes in service for the purpose of granting them exemption from special tests with a view to ensuring them the equality of treatment C and equal opportunity in matters of employment having regard to their backwardness and under representation in the employment of the State.

The Constitution makes a classification of Scheduled Castes and Scheduled Tribes in numerous provisions and gives a mandate to the State to accord special or favoured treatment to them. Article 46 D contains a Directive Principle of State Policy—fundamental in the governance of the country enjoining the State to promote with special care educational and economic interests of the Scheduled Castes and Scheduled Tribes and to protect them from any social injustice and exploitation. Article 335 enjoins that the claims of the members of the Scheduled Castes and Scheduled Tribes to the services and posts in the Union and the States shall be taken into consideration. Article E 338 provides for appointment by the President of a Special Officer for the Scheduled Castes and Scheduled Tribes to investigate all matters relating to the safeguards provided for them under the Constitution. Article 341 enables the President by public notification to specify castes, races or tribes which shall be deemed to be Scheduled Castes in the States and the Union Territories. Article 342 contains provision for similar notification in respect of Scheduled Tribes. Article F 366(24) and (25) defines Scheduled Castes and Scheduled Tribes. The classification by the impugned rule and the orders is with a view to securing adequate representation to Scheduled Castes and Scheduled Tribes in the services of the State as otherwise they would stagnate in the lowest rung of the State services.

Article 335 of the Constitution states that claims of members of G the Scheduled Castes and Scheduled Tribes shall be taken into consideration in the making of appointments to the services and posts in connection with affairs of the State consistent with the maintenance of efficiency of administration. The impugned rule and the impugned orders are related to this constitutional mandate. Without providing for relaxation of special tests for a temporary period it would not have been possible to give adequate promotion to the Lower Division H Clerks belonging to Scheduled Castes and Scheduled Tribes to the posts of Upper Division Clerks. Only those Lower Division Clerks who were senior in service will get the benefit of the relaxation con-

templated by Rule 13AA and the impeached orders. Promotion to Upper Division from Lower Division is governed by the rule of seniority subject only to passing of the qualified test. The temporary relaxation of test qualification made in favour of Scheduled Castes and Scheduled Tribes is warranted by their inadequate representation in the services and their overall backwardness. The classification of the members of the Scheduled Castes and Scheduled Tribes already in service made under Rule 13AA and the challenged orders for exempting them for a temporary period from passing special tests are within the purview of constitutional mandate under Article 335 in consideration of their claims to redress imbalance in public service and to bring about parity in all communities in public services.

The High Court was wrong in basing its conclusion that the result of application of the impeached Rule and the orders is excessive and exorbitant namely that out of 51 posts, 34 were given to the members of the Scheduled Castes and Scheduled Tribes. The promotions made in the services as a whole are nowhere near 50% of the total number of posts. The Scheduled Castes and Scheduled Tribes constitute 10% of the State's population. Their share in the gazetted services of the State is said to be 2% namely 184 out of 8,780. Their share in the non-gazetted appointments is only 7% namely 11,437 out of 1,62,784. It is therefore, correct that Rule 13AA and the orders are meant to implement not only the direction under Article 335 but also the Directive Principle under Article 46.

Scheduled Castes and Scheduled Tribes are not a caste within the ordinary meaning of caste. In *Bhaiyalal* v. *Harikishan Singh and Ors.*(1) this Court held that an enquiry whether the appellant there belonged to the Dohar caste which was not recognised as a Scheduled Caste and his declaration that he belonged to the Chamar caste which was a Scheduled Caste could not be permitted because of the provisions contained in Article 341. No Court can come to a finding that any caste or any tribe is a Scheduled Caste or Scheduled Tribe. Scheduled Caste is a caste as notified under Article 366(25). A notification is issued by the President under Article 341 as a result of an elaborate enquiry. The object of Article 341 is to provide protection to the members of Scheduled Castes having regard to the economic and educational backwardness from which they suffer.

Our Constitution aims at equality of statuts and opportunity for all citizents including those who are socially, economically and educationally backward. The claims of members of backward classes require adequate representation in legislative and executive bodies. If members of Scheduled Castes and Tribes, who are said by this Court to be backward classes, can maintain minimum necessary requirement of administrative efficiency, not only representation but also preference may be given to them to enforce equality and to eliminate inequality. Articles 15(4) and 16(4) bring out the position of backward classes to merit equality. Special provisions are made for the advancement of backward classes and reservations of appointments and posts for them to secure adequate representation. These provisions will bring

(1) [1965] 2 S.C.R. 877.

A out the content of equality guaranteed by Articles 14, 15(1) and 16(1). The basic concept of equality is equality of opportunity for appointment. Preferential treatment for members of backward classes with due regard to administrative efficiency alone can mean equality of opportunity for all citizens. Equality under Article 16 could not have a different content from equality under Article 14. Equality
B of opportunity for unequals can only mean aggravation of inequality. Equality of opportunity admits discrimination with reason and prohibits discrimination without reason. Discrimination with reasons means rational classification for differential treatment having nexus to the constitutionally permissible object. Preferential representation for the backward classes in services with due regard to administrative efficiency is permissible object and backward classes are a rational classi-
C fication reconginsed by our Constitution. Therefore, differential treatment in standards of selection are within the concept of equality.

A rule in favour of an under-represented backward community specifying the basic needs of efficiency of administration will not contravene Articles 14, 16(1) and 16(2). The rule in the present case does not impair the test of efficiency in administration inasmuch as members of Scheduled Castes and Tribes who are promoted have to
D acquire the qualification of passing the test. The only relaxation which is done in their case is that they are granted two years more time than others to acquire the qualification. Scheduled Castes and Tribes are descriptive of backwardness. It is to the aim of our Constitution to bring them up from handicapped position to improvement. If classification is permissible under Article 14, it is equally permissible under Article 16, because both the Articles lay down
E equality. The quality and concept of equality is that if persons are dissimilarly placed they cannot be made equal by having the same treatment. Promotion of members of Scheduled Castes and Tribes under the impeached rules and orders is based on the classification with the object of securing representation to members of Scheduled Castes and Tribes. Efficiency has been kept in view and not sacrificed.

E All legitimate methods are available for equality of opportunity in services under Article 16(1). Article 16(1) is affirmative whereas Article 14 is negative in language. Article 16(4) indicates one of the methods of achieving equality embodied in Article 16(1). Article 16(1) using the expression "equality" makes it relatable to all matters of employment from appointment through promotion and
G termination to payment of pension and gratuity. Article 16(1) permits classification on the basis of object and purpose of law or State action except classification involving discrimination prohibited by Article 16(2). Equal protection of laws necessarily involves classification. The validity of the classification must be adjudged with reference to the purpose of law. The classification in the present case is justified because the purpose of classification is to enable members
H of Scheduled Castes and Tribes to find representation by promotion to a limited extent. From the point of view of time a differential treatment is given to members of Scheduled Castes and Tribes for the purpose of giving them equality consistent with efficiency.

For the foregoing reasons, I uphold the validity of Rule 13AA and Exhibits P-2 and P-6. The appeal is accepted. The judgment of the High Court is set aside. Parties will pay and bear their own costs.

KHANNA, J. Whether the State Government can grant exemption for specified period to employees belonging only to the scheduled castes or scheduled tribes from passing departmental test for the purpose of promotion under clause (1) of article 16 of the Constitution is the important question which arises for determination in this appeal filed on certificate by the State of Kerala and the Inspector General of Registration against the judgment of the Kerala High Court. The High Court answered the question in the negative in a petition filed by N. M. Thomas, lower division clerk of the Registration Department of the Kerala State, respondent No. 1, under article 226 of the Constitution.

According to clause (a) of rule 13 in Part II of the Kerala State and Subordinate Services Rules, 1958 (hereinafter referred to as the rules) framed under article 309 of the Constitution, no person shall be eligible for appointment to any service, class, category or grade or any post borne on the cadre thereof unless he possesses such special qualifications and has passed such special tests as may be prescribed in that behalf in the Special Rules. In January 1963 a unified test was prescribed by the Kerala Government for lower division clerks for promotion to the upper division. A pass in the test in the Manual of Office Procedure, Account Test and the Registration Test was obligatory for promotion of lower division clerks as upper division clerks in the Registration Department. Rule 13A, however, provided for temporary exemption from passing a newly prescribed special or departmental test for a period of two years. Rule 13A reads as under:

> "Notwithstanding anything contained in rule 13, where a pass in a special or departmental test is newly prescribed by the Special Rules of a service for any category, grade or post therein or in any class thereof, a member of a service who has not passed the said test but is otherwise qualified and suitable for appointment to such class, category, grade or post may within 2 years of the introduction of the test be appointed thereto temporarily. If a member so appointed does not pass the test within two years from the date of introduction of the said test or when the said test also involves practical training, within two years after the first chance to undergo such training he shall be reverted to the class, category or grade or post from which he was appointed and shall not again be eligible for appointment under this rule:
>
> Provided that a person so reverted shall not by reason only of the appointment under this rule be entitled to any preferential claim to future appointment to the class, category, grade or post, as the case may be to which he had been appointed under this rule:

A Provided further that the period of temporary exemption shall be extended by two years in the case of a person belonging to any of the scheduled castes or scheduled tribes.

Provided also that this rule shall not be applicable to tests prescribed for purposes of promotion of the executive staff below the rank of Sub Inspectors belonging to the Police B Department."

On January 13, 1972 rule 13AA was inserted in the rules. It reads as under :

"13A Notwithstanding anything contained in these rules, the Government may, by order, exempt for a specified period, any member or members, belonging to a Scheduled C Caste or a Scheduled Tribe, and already in service, from passing the tests referred to in rule 13 or rule 13A of the said Rules.

Provided that this rule shall not be applicable to tests prescribed for purposes of promotion of the executive staff below the rank of Sub Inspectors belonging to the Police D Department."

The following order was issued by the State Government on January 13, 1972 :

"The President, Kerala Harijan Samaskarika Kshema Samithy, Trivandrum has brought to the notice of Government that a large number of Harijan employees are facing E immediate reversion from their posts for want of test qualifications and has therefore requested that all Scheduled Castes and Scheduled Tribes employees may be granted temporary exemption from passing the obligatory departmental tests for a period of two years with immediate effect.

(2) Government have examined the matter in consul- F tation with the Kerala Public Service Commission and are pleased to grant temporary exemption to members already in service belonging to any of the Scheduled Castes and Scheduled Tribes from passing all tests (unified and special or departmental tests) for a period of two years.

(3) The benefit of the above exemption will be avail- G able to those employees belonging to Scheduled Castes and Scheduled Tribes who are already enjoying the benefits of temporary exemption from passing newly prescribed tests under General Rule 13A. In their case the temporary exemption will expire only on the date of expiry of the temporary exemption mentioned in para (2) above or on the date of expiry of the existing temporary exemption, which- H ever is later.

(4) This order will take effect from the date of the order."

During the pendency of the writ petition in the High Court, a further order was issued by the State Government on July 11, 1974 for extending the period of exemption as under :

"1. G.O. (NS) No. 22/PD dated 13-1-1972.

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ORDER

Government are pleased to order that the period of temporary exemption granted to Scheduled Castes and Scheduled Tribes in the G.O. read above from passing all tests (unified and special or departmental tests) be extended from 13-1-1974 to cover a period during which two tests are held by the Public Service Commission and results thereof published so that each individual gets two chances to appear. Government also order that these categories of employees will not be given any further extension of time to acquire the test qualifications."

Respondent No. 1 passed all the tests by November 2, 1971. The other respondents, who are members of scheduled castes and scheduled tribes and who too were lower division clerks working in the Registration Department of the State, were promoted as upper division clerks even though they had not passed the tests mentioned above. Respondent No. 1 was not, however, promoted despite the fact that he had passed the requisite tests. In 1972 out of 51 lower division clerks promoted as upper division clerks, 34 belonged to scheduled castes and tribes. Respondent No. 1 thereupon filed petition under article 226 on March 15, 1972 for a declaration that rule 13AA under which exemption had been granted to the other respondents in the matter of promotion was violative of article 16 of the Constitution. Prayer was also made for quashing order dated January 13, 1972 reproduced above by which exemption was actually granted to scheduled castes and scheduled tribes employees from passing the obligatory departmental test for a period of two years.

The petition was resisted by the appellants and the other respondents and it was averred on their behalf that the impugned rule and order were not violative of article 16. The High Court held that rule 13AA was void being violative of clauses (1) and (2) of article 16 of the Constitution. Orders dated January 13, 1972 and January 11, 1974 as well as other orders promoting members of Scheduled Castes and Scheduled Tribes who had not passed the prescribed test were quashed. The High Court also expressed the view that the promotion of 34 out of 51 persons even though they had not passed the necessary test was not conducive to the maintenance of efficiency of administration. The order in this respect was stated to be violative of article 335 of the Constitution.

In appeal before us the learned Advocate-General on behalf of the appellants has contended that the impugned rule and orders are cons-

A titutionally valid under clause (1) of article 16. He has in this context invited our attention to articles 46 and 335 of the Constitution. It has, however, been frankly conceded by the Advocate-General that he does not rely upon clause (4) of article 16 of the Constitution for sustaining the validity of the impugned rule and orders. The stand taken on behalf of the appellants has also been supported by the B learned Solicitor-General as well as by Mr. Garg on behalf of respondents other than respondent No. 1. As against the above, Mr. Krishnamurthy Iyer on behalf of respondent No. 1 has canvassed for the correctness of the view taken by the High Court and has contended that the validity of the impugned rule and orders cannot be justified under clause (1) of article 16.

C It may be apposite at this stage to reproduce articles 16, 46 and 335 of the Constitution :

> "16. (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, D 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 under the Government of, or any local or other authority within, E 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, F in the opinion of the State, is not adequately represented in the services under the State.
>
> (5) Nothing in this article shall affect the operation of any law which provides that the incumbent of any 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 G belonging to a particular denomination.
>
> 46. The State shall promote with special care educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.
>
> H 335. The claims of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of adminis-

tration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State."

Article 14 of the Constitution enshrines the principle of equality before the law. Article 15 prohibits discrimination against citizens on grounds only of religion, race, caste, sex, place of birth or any of them. Article 16 represents one facet of the guarantee of equality. According to this article, there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. No citizen, it is further provided, 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. Articles 14, 15 and 16 underline the importance which the framers of our Constitution attached to ensuring equality of treatment. Such equality has a special significance in the matter of public employment. It was with a view to prevent any discrimination in that field that an express provision was made to guarantee equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

At the same time the framers of the Constitution were conscious of the backwardness of large sections of the population. It was also plain that because of their backwardness those sections of the population would not be in a position to compete with advanced sections of the community who had all the advantages of affluence and better education. The fact that the doors of competition were open to them would have been a poor consolation to the members of the backward classes because the chances of their success in the competition were far too remote on account of the inherent handicap and disadvantage from which they suffered. The result would have been that, leaving aside some exceptional cases, the members of backward classes would have hardly got any representation in jobs requiring educational background. It would have thus resulted in virtually repressing those who were already repressed. The framers of the Constitution being conscious of the above disadvantage from which backward classes were suffering enjoined upon the State in article 46 of the Constitution to promote with special care educational and economic interests of the weaker sections of the people, in particular of the Scheduled Castes and Scheduled Tribes, and also protect them from social injustice and all forms of exploitation. To give effect to that objective in the field of public employment, a provision was made in clause (4) of article 16 that nothing in that article would 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, was not adequately represented in the services under the State. Under the above clause, it is permissible for the State, in case it finds the representation of any backward class of citizens in the State services to be not adequate, to make provision for the reservation of appointments or posts in favour of that backward class of citizens. The reservation of seats for the members of the backward classes was not, however, to be at the cost of efficiency. This fact was brought out in article 335,

A according to which the claims of the members of the Scheduled Castes and the Scheduled Tribes 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. In view of that it is not permissible to waive the requirement of minimum educational qualification and other standards essential for the maintenance of efficiency of service.

It is further plain that the reservation of posts for a section of population has the effect of conferring a special benefit on that section of the population because it would enable members belonging to that section to get employment or office under the State which otherwise in the absence of reservation they could not have got. Such preferential treatment is plainly a negation of the equality of opportunity for all citizens in matters relating to employment or appointment to an office under the State. Clause (4) of article 16 has, therefore, been construed as a proviso or exception to clause (1) of that article (*see The General Manager, Southern Railway* v. *Rangachari*(1) *and T. Devadasan* v. *The Union of India & Anr.* (2).

It has been argued on behalf of the appellants that equality of treatment does not forbid reasonable classification. Reference in this context is made to the well accepted principle that article 14 of the Constitution forbids class legislation but does not forbid classification. Permissible classification, it is equally well established, must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and the differentia must have a rational relation to the object sought to be achieved by the statute in question. It is urged that the same principle should apply when the court is concerned with the equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. In this respect I may observe that this Court has recognized the principle of classification in the context of clause (1) of article 16 in matters where appointments are from two different sources, e.g., guards and station masters, promotees and direct recrits, degree holder and diploma holder engineers (see *All India Station Masters & Asstt. Station Masters' Assn. & Ors.* v. *General Manager, Central Railway & Ors.*,(3) *S. G. Jaisinghani* v. *Union of India & Ors.*(4) and *State of Jammu & Kashmir* v. *Triloki Nath Khosa & Ors.*(5). The question with which we are concerned, however, is whether we can extend the above principle of classification so as to allow preferential treatment to employees on the ground that they are members of the scheduled castes and scheduled tribes. So far as this question is concerned I am of the view that the provision of preferential treatment for members of backward classes, including scheduled castes and scheduled tribes, is that contained in clause (4) of article 16 which permits reservation of posts for them. There is

(1) [1962] 2 S. C. R. 586. (2) [1964] 4 S. C. R. 680.
(3) [1960] 2 S. C. R. 311. (4) [1967] 2 S. C. R. 703 (5) [1974] 1 S. C. R. 771.

no scope for spelling out such preferential treatment from the language of clause (1) of article 16 because the language of that clause does not warrant any preference to any citizen against another citizen. The opening words of clause (4) of article 16 that "nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of backward class of citizens" indicate that but for clause (4) it would not have been permissible to make any reservation of appointments or posts in favour of any backward class of citizens.

In the case of *All India Station Masters' & Asstt. Station Masters' Association* (supra) the Roadside Masters of the Central Railway challenged the constitutionality of promotion of guards to higher grade station masters' posts. The petitioners' contention was that the channel of promotions amounted to a denial of equal opportunity as between Roadside Station Masters and guards in the matter of promotion and thus contravened clause (1) of article 16 of the Constitution. It was urged that taking advantage of this channel of promotions, guards became station masters at a much younger age than Roadside Station Masters who reached the scale when they were much older. According to the petitioners, Roadside Station Masters and guards really formed one and the same class of employees. This Court rejected that contention and held that the Roadside Station Masters belonged to a wholly distinct and separate class from guards and so there could be no question of equality of opportunity in matters of promotions as between Roadside Station Masters and guards. It was further laid down that the question of denial of equal opportunity required serious consideration only as between the members of the same class. The concept of equal opportunity in matters of employment did not apply as between members of different classes of employees under the State. Equality of opportunity in matters of employment could be predicated only between persons who were either seeking the same employment, or had obtained the same employment. Equality of opportunity in matters of promotion must mean equality between members of the same class of employees and not equality between members of separate, independent classes. In the case of *Jaisinghani* (supra) the dispute was about seniority between two classes of income-tax service, the direct recruits to class I grade II and promotees from class II to class I grade II. For the purpose of promotion, the Government fixed a ratio of 2 to 1 for direct recruits and promotees. It was in that context and on those facts that this Court laid down that it is not correct to say that all officers appointed to class I, grade II service formed one class and that after the officers have been once recruited there could be no distinction between direct recruits and promotees. It is really a case of recruitment to the service from two different sources and the adjustment of seniority between them. The concept of equality in the matter of promotion can be predicated only when the promotees are drawn from the same source. If the preferential treatment of one source in relation to the other is based on the differences between the two sources, and the said differences have a reasonable relation to the nature of the office it can legitimately be sustained on the

basis of a valid classification. The reason for the classification in that case was that the higher echelons of the service should be filled by experienced officers possessing not only a high degree of ability but also first-rate experience. In the case of *Triloki Nath Khosa* (supra) the question before the Court was with regard to the validity of a rule which provided that only those assistant engineers would be eligible for promotion as executive engineers who possessed a degree in engineering. The validity of this rule was challenged by assistant engineers who were diploma-holders and did not possess the degree in engineering. This Court held that though persons appointed directly and by promotion were integrated into a common class of assistant engineers, they could for purposes of promotion to the cadre of executive engineers be classified on the basis of educational qualifications. The rule providing that graduates shall be eligible for such promotion to the exclusion of diploma-holders was held to be not violative of articles 14 and 16 of the Constitution. It would thus appear that in each of the above cases the Court was concerned with two categories of employees, each one of which category constituted a separate and distinct class. Differential treatment for those classes was upheld in the context of their educational and other qualifications and because of the fact that they constituted distinct and separate classes. Not much argument is needed to show that a rule requiring that an official must possess a degree in engineering before he can be promoted to the post of executive engineer is conceived in the interest of efficiency of service. A classification based upon that consideration is obviously valid. Likewise, classification based upon the consideration that one category of employees are direct recruits while others are promotees, is permissible classification because the two categories of employees constitute two separate and distinct classes. The same is true of roadside station masters and guards. Classification of employees in each of these cases was linked with the nature of their initial employment or educational qualifications and had nothing to do with the fact that they belonged to any particular section of the population. A classification based upon the first two factors was upheld because it was conceived in the interest of efficiency of service and because they constituted two different classes in view of the fact that they were initially appointed to posts of different categories. Such classification does not impinge upon the rule of equality of opportunity. As against that, a classification based upon the consideration that an employee belongs to a particular section of the population with a view to accord preferential treatment for promotion is clear violation of equality of opportunity enshrined in clause (1) of article 16. In no case has the Court ever accepted and upheld under article 16(1) classification and differential treatment for the purpose of promotion among employees who possessing the same educational qualifications were initially appointed as in the present case to the same category of posts, *viz.*, that of lower division clerks. The present case falls squarely within the dictum laid down in the case of *Station Masters' & Asstt. Station Masters' Association* (supra) that equality of opportunity in matters of employment could be predicated between persons who were either seeking the same

employment or had obtained the same employment. The essential object of various rules dealing with appointment to posts under the State and promotion to higher posts is to ensure efficiency of service. Classification upheld under clause (1) of article 16 subserved and in no case militated against the attainment of that object. Exemption granted to a class of employees, even though for a limited period from passing the departmental tests which have been prescribed for the purpose of promotion would obviously be subversive of the object to ensure efficiency of service. It cannot be disputed that departmental tests are prescribed with a view to appraise and ensure efficiency of different employees. To promote employees even though they have not passed such efficiency test can hardly be consistent with the desideratum of ensuring efficiency in administation.

Much has been made of the fact that exemption from passing departmental tests granted to members of scheduled castes and scheduled tribes is not absolute but only for a limited period. This fact, in our opinion, would not lend constitutionality to the impugned rule and orders. Exemption granted to a section of employees while being withheld from the remaining employees has obvious element of discrimination between those to whom it is granted and those from whom it is withheld. If the passing of departmental tests is an essential condition of promotion, it would plainly be invidious to insist upon compliance with that condition in the case of one set of employees and not to do so in the case of other. The basic question is whether exemption is constitutionally permissible. If the answer to that question be in the negative, the fact that exemption is for a limited period would not make any material difference. In either event the vice of discrimination from which exemption suffers would contaminate it and stamp it with unconstitutionality. Exemption for a limited period to be constitutionally valid cannot be granted to one set of employees and withheld from the other.

What clause (1) of article 16 ensures is equality of opportunity for all citizens as individuals in matters relating to employment or appointment to any office under the State. It applies to them all, the least deserving as well as the most virtuous. Preferential and favoured treatment for some citizens in the matter of employment or appointment to any office under the State would be antithesis of the principle of equality of opportunity. Equality of opportunity in matters of employment guaranteed by clause (1) of article 16 is intended to be real and effective. It is not something abstract or illusory. It is a command to be obeyed, not one to be defied or circumvented. It cannot be reduced to shambles under some cloak. Immunity or exemption granted to a class, however limited, must necessarily have the effect of according favoured treatment to that class and of creating discrimination against others to whom such immunity or exemption is not granted. Equality of opportunity is one of the corner-stones of our Constitution. It finds a prominent mention in the preamble to the Constitution and is one of the pillars which gives support and strength to the social, political and administrative edifice of the nation. Privileges, advantages, favours, exemptions,

A concessions specially earmarked for sections of population run counter to the concept of equality of opportunity, they indeed eat into the very vitals of that concept. To countenance classification for the purpose of according preferential treatment to persons not sought to be recruited from different sources and in cases not covered by clause (4) of article 16 would have the effect of eroding, if not destroying B altogether, the valued principle of equality of opportunity enshrined in clause (1) of article 16.

The proposition that to overdo classification is to undermine equality is specially true in the context of article 16(1). To introduce fresh notions of classification in article 16(1), as is sought to be done in the present case, would necessarily have the effect of vesting the State under the garb of classification with power of treating C sections of population as favoured classes for public employment. The limitation imposed by clause (2) of article 16 may also not prove very effective because, as has been pointed out during the course of arguments, that clause prevents discrimination on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them. It may not be difficult to circumvent that clause by mentioning grounds other than those mentioned in clause (2). D

To expand the frontiers of classification beyond those which have so far been recognized under clause (1) of article 16 is bound to result in creation of classes for favoured and preferential treatment for public employment and thus erode the concept of equality of opportunity for all citizens in matters relating to employment under the State.

E In construing the provisions of the Constitution we should avoid a doctrinaire approach. A Constitution is the vehicle of the life of a nation and deals with practical problems of the government. It is, therefore, imperative that the approach to be adopted by the courts while construing the provisions of the Constitution should be pragmatic and not one as a result of which the court is likely to get lost in a maze of abstract theories. Indeed, so far as theories are concerned, F human thinking in its full efflorescence, free from constraints and inhibitions, can take such diverse forms that views and reasons apparently logical and plausible can be found both in favour of and against a particular theory. If one eminent thinker supports one view, support for the opposite view can be found in the writings of another equally eminent thinker. Whatever indeed may be the conclusion, arguments not lacking in logic can be found in support of such conclusion. The important task of construing the articles of a Constitution is not an exercise G in mere syllogism. It necessitates an effort to find the true purpose and object which underlies that article. The historical background, the felt necessities of the time, the balancing of the conflicting interests must all enter into the crucible when the court is engaged in the delicate task of construing the provisions of a Constitution. The words of Holmes that life of law is not logic but experience have a direct relevance in the above context. H

Another thing which must be kept in view while construing the provisions of the Constitution is to foresee as to what would be the

impact of that construction not merely on the case in hand but also on the future cases which may arise under those provisions. Out of our concern for the facts of one individual case, we must not adopt a construction the effect of which might be to open the door for making all kinds of inroads into a great ideal and desideratum like that of equality of opportunity. Likewise, we should avoid, in the absence of compelling reason, a course that has the effect of unsettling a constitutional position, which has been settled over a long-term of years by a series of decisions.

The liberal approach that may sometimes have been adopted in upholding classification under article 14 would in the very nature of things be not apt in the context of article 16 when we keep in view the object underlying article 16. Article 14 covers a very wide and general field of equality before the law and the equal protection of the laws. It is, therefore, permissible to cover within its ambit manifold classifications as long as they are reasonable and have a rational connection with the object thereof. As against that, article 16 operates in the limited area of equality of opportunity for all citizens in matters relating to employment or appointment to an office under the State. Carving out classes of citizens for favoured treatment in matters of public employment, except in cases for which there is an express provision contained in clause (4) of article 16, would as already pointed out above in the very nature of things run counter to the concept underlying clause (1) of article 16.

The matter can also be looked at from another angle. If it was permissible to accord favoured treatment to members of backward classes under clause (1) of article 16, there would have been no necessity of inserting clause (4) in article 16. Clause (4) in article 16 in such an event would have to be treated as wholly superfluous and redundant. The normal rule of interpretation is that no provision of the Constitution is to be treated as redundant and superfluous. The Court would, therefore, be reluctant to accept a view which would have the effect of rendering clause (4) of article 16 redundant and superfluous.

This Court in the case of *State of Madras* v. *Shrimati Champakam Dorairajan*(1) unequivocally repelled the argument the effect of which would have been to treat clause (4) of article 16 to be wholly unnecessary and redundant. Question which arose for consideration in that case was whether a Communal G.O. fixing percentage of seats for different sections of population for admission in the engineering and medical colleges of the State of Madras contravened the fundamental rights. It was held that the Communal G.O. by which percentage of seats was apportioned contravened article 29(2) of the Constitution. A seven-Judge Bench of this Court in that case referred to clause (4) of article 16 of the Constitution and observed :

> "If the argument founded on article 46 were sound then clause (4) of article 16 would have been wholly unnecessary

(1) [1951] S. C. R. 525.

A and redundant. Seeing, however, that clause (4) was inserted in article 16, the omission of such an express provision from article 29 cannot but be regarded as significant. It may well be that the intention of the Constitution was not to introduce at all communal considerations in matters of admission into any educational institution maintained by the State or receiving aid out of State funds. The protection of backward classes of citizens may require appointment of members of backward classes in State services and the reason why power has been given to the State to provide for reservation of such appointments for backward classes may under those circumstances be understood. That consideration, however, was not obviously considered necessary in the case of admission into an educational institution and that may well be the reason for the omission from article 29 of a clause similar to clause (4) of article 16."

After the above decision of this Court, clause (4) of article 15 was added in the Constitution by the Constitution (First Amendment) Act, 1951 and the same reads as under :

"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."

If the power of reservation of seats for backward classes was already contained in clause (1) of article 15, the decision in the above mentioned case would in the very nature of things have been different and there would have been no necessity for the introduction of clause (4) in article 15 by means of the Constitution (First Amendment) Act. The fact that clause (4) of article 15 is similar to clause (4) of article 16 was also emphasised by this Court in the case of *M. R. Balaji & Ors. v. State of Mysore*(1).

It has been argued that there are observations in the case of *Champakam* (supra) relating to the Directive Principles of State Policy which should be deemed to have been overruled by the decision of this Court in the case of *Kesavananda Bharati*(2). It is, in our opinion, not necessary to express an opinion on this aspect. Whatever view one may take with regard to those observations, they would not detract from the correctness of the unanimous decision of the seven-Judge Bench of this Court in that case that, in the absence of provision like clause (4) of article 15, it was not permissible to make reservation of seats for admission to engineering and medical colleges on the ground of backwardness.

The matter can also be looked at from another angle. Departmental tests are prescribed to ensure standards of efficiency for the employees. To promote 34 out of 51 persons although they have not

(1) [1963] Supp. S. C. R. 439 (on p. 473). (2) [1973] Supp. S. C. R. 1

passed the departmental tests and at the same time not to promote those who have passed the departmental tests can hardly be conducive to efficiency. There does not, therefore, appear to be any infirmity in the finding of the High Court that the impugned promotions are also violative of article 335 of the Constitution. A

I may state that there is no dispute so far as the question is concerned about the need to make every effort to ameliorate the lot of backward classes, including the members of the scheduled castes and the scheduled tribes. We are all agreed on that. The backwardness of those sections of population is a stigma on our social set up and has got to be erased as visualized in article 46 of the Constitution. It may also call for concrete acts to atone for the past neglect and exploitation of those classes with a view to bring them on a footing of equality, real and effective, with the advanced sections of the population. The question with which we are concerned, however, is whether the method which has been adopted by the appellants is constitutionally permissible under clause (1) of article 16. The answer to the above question, in my opinion, has to be in the negative. Apart from the fact that the acceptance of the appellants' contention would result in undermining the principle of equality of opportunity enshrined in clause (1) of article 16, it would also in effect entail overruling of the view which has so far been held by this Court in the cases of *Champakam, Rangachari* and *Devadasan* (supra). It find no sufficient ground to warrant such a course. The State, in my opinion, has ample power to make provision for safeguarding the interest of backward classes under clause (4) of article 16 which deals with reservation of appointments or posts for backward classes not adequately represented in the services under the State. Inaction on the part of the State under clause (4) of article 16 cannot in my opinion, justify strained construction of clause (1) of article 16. We have also to guard against allowing our supposed zeal to safeguard the interests of members of scheduled castes and scheduled tribes to so sway our mind and warp our judgment that we drain off the substance of the contents of clause (1) of article 16 and whittle down the principle of equality of opportunity in the matter of public employment enshrined in that clause in such a way as to make it a mere pious wish and teasing illusion. The ideals of supremacy of merit, the efficiency of services and the absence of discrimination in sphere of public employment would be the obvious casualties if we once countenance inroads to be made into that valued principle beyond those warranted by clause (4) of article 16. B C D E F

The appeal is dismissed with costs. G

MATHEW, J.—The facts of the case have been stated in the judgment of the learned Chief Justice and it is not necessary to repeat them. The point which arises for consideration is whether rule 13AA made by Ex. P-1 amendment to the Kerala State and Subordinate Services Rules, 1958, and Exhibits P-2 and P-6 the orders passed by government in the exercise of their power under that rule, were valid. The rule reads : H

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> "13AA. Notwithstanding anything contained in these rules, the Government may, by order, exempt for a specified period, any member or members, belonging to a Scheduled Caste or a Scheduled Tribe, and already in service, from passing the test referred to in Rule 13 or Rule 13A of the said Rules."

Rule 13AA came into force on 13-1-1972 and on the same day
B Ex. P-2 Order was passed granting temporary exemption to members already in service belonging to any of the Scheduled Castes and Scheduled Tribes from passing any of the tests (unified and special or departmental tests) for a period of two years. Thereafter, another order was passed (Ex. P-6) on 11-1-1974 granting exemption for a period of another two years.

The High Court was of the view that rule 13AA violated Article
C 16(1) and that Article 16(4) which provides for making reservation of appointments or posts in favour of backward classes of citizens which, in the opinion of the State, is not adequately represented in the service under the State has no application. The Court relied on the decision of this Court in *General Manager, Southern Railway* v. *Rangachari*(1) where it was held that Article 16(4) is an exception to Article
D 16(1) and that it does not take in all the matters covered by Article 16(1) as it is concerned only with reservation of appointments and posts in favour of backward classes and that but for Article 16(4) there could be no reservation of posts in favour of backward classes under the guarantee of equality of opportunity in the matter of employment.

The learned Advocate General of Kerala submitted that the Constitution has
E enjoined a favoured treatment to the members of Scheduled Castes and Scheduled Tribes by Article 46 and that rule 13AA which empowers the government to exempt for a specified period any member or members of the Scheduled Castes or Scheduled Tribes already in service from passing the tests referred to in Rules 13 and 13A of the Rules is only a law passed by the 'State' in pursuance to its fundamental obligation to advance the interest of the weakest section of the community. He said that the implementation of the directive in Article 46
F will not be inconsistent in any manner with the principle of equality of opportunity guaranteed under Article 16(1) and that a rule which dispenses with the passing of a test or tests for a specified period in the case of members of Scheduled Castes and Scheduled Tribes will not in any way run counter to the equality of opportunity guaranteed to the other sections of the community. Article 46 provides :

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> "46. The State shall promote with special care the educational and economic interests of the weaker sections of the people and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation."

Justice Brandeis has said the knowledge must precede understand-
H ing and that understanding must precede judgment. It will therefore be in the interest of clarity of thought to begin with an understanding

(1) A. I. R. 1962 S. C. 36.—[1962] 2 S. C. R. 586.

of just what equality of opportunity means. Article 16(1) provides for equality of opportunity for all citizens in the matter of employment and there can be no doubt that the equality guaranteed is an individual right. The concept of equality of opportunity is an aspect of the more comprehensive notion of equality. The idea of equality has different shades of meaning and connotations. It has many facets and implications. Plato's remark about law is equally applicable to the concept of equality : "a perfectly simple principle can never be applied to a state of things which is the reverse of simple.(1)" Different writers tend to emphasize some forms of equality rather than others as of overriding importance — — equality before the law, equality of basic human rights, economic equality, equality of opportunity or equality of consideration for all persons.

Formal equality is achieved by treating all persons equally : "Each man to count for one and no one to count for more than one." But men are not equal in all respects. The claim for equality is in fact a protest against unjust, undeserved and unjustified inequalities. It is a symbol of man's revolt against chance, fortuitous disparity, unjust power and crystallised privileges. Although the decision to grant equality is motivated *prima facie* by the alleged reason that all men are equal yet, as soon as we clear up the confusion between equality in the moral sense and equality in the physical sense, we realise that the opposite is the truth; for, we think that it is just to promote certain equalities precisely to compensate for the fact that men are actually born different. We, therefore, have to resort to some sort of proportionate equality in many spheres to achieve justice.

The principle of proportional equality is attained only when equals are treated equally and unequals unequally. This would raise the baffling question. Equals and unequals in what ? The principle of proportional equality therefore involves an appeal to some criterion in terms of which differential treatment is justified. If there is no significant respect in which persons concerned are distinguishable, differential treatment would be unjustified. But what is to be allowed as a significant difference such as would justify differential treatment?

In distributing the office of a state, not any sort of personal equality is relevant; for, unless we employ criteria appropriate to the sphere in question, it would turn out that a man's height or complexion could determine his eligibility or suitability for a post. As Aristotle said, claims to political office cannot be based on prowess in athletic contests. Candidates for office should possess those qualities that go to make up an effective use of the office. But this principle also does not give any satisfactory answer to the question when differential treatment can be meted out. As I said, the principle that if two persons are being treated or are to be treated differently there should be some relevant difference between them is, no doubt, unexceptionable. Otherwise, in the absence of some differentiating feature what is sauce for the goose is sauce for the gander. The real difficulty arises in finding out what constitutes a relevant difference.

(1) 'Statesman', 294, Translation by Jowett.

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If we are all to be treated in the same manner, this must carry with it the important requirement that none of us should be better or worse in up bringing, education, than any one else which is an unattainable ideal for human beings of anything like the sort we now see. Some people maintain that the concept of equality of opportunity is an unsatisfactory concept. For, a complete formulation of it renders it incompatible with any form of human society. Take for instance, the case of equality of B opportunity for education. This equality cannot start in schools and hence requires uniform treatment in families which is an evident impossibility. To remedy this, all children might be brought up in state nurseries, but, to achieve the purpose, the nurseries would have to be run on vigorously uniform lines. Could we guarantee equality of opportunity to the young even in those circumstances? The idea is well expressed by Laski :

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> "Equality means, in the second place, that adequate opportunities are laid open to all. By adequate opportunities we cannot imply equal opportunities in a sense that implies identity of original chance. The native endowments of men are by no means equal. Children who are brought up in an atmosphere where things of the mind are accounted highly are bound to start the race of life with advantages no legislation D can secure. Parental character will inevitably affect profoundly the quality of the children whom it touches. So long, therefore, as the family endures—and there seems little reason to anticipate or to desire its disappearance—the varying environments it will create make the notion of equal opportunities a fantastic one."(1)

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Though complete inentity of equality of opportunity is impossible in this world, measures compensatory in character and which are calculated to mitigate surmountable obstacles to ensure equality of opportunity can never incur the wrath of Article 16(1).

The notion of equality of opportunity is a notion that a limited good shall in fact be allocated on the grounds which do not *a priori* F exclude any section of those that desire it(2). All sections of people desire and claim representation in the public service of the country, but the available number of posts are limited and therefore, even though all sections of people might desire to get posts, it is practically impossible to satisfy the desire. The question therefore is: On what basis can any citizen or class of citizens be excluded from his or their G fair share of representation? Article 335 postulates that members of Scheduled Castes and Scheduled Tribes have a claim to representation in the public service both of the Union and the States and that the claim has to be taken into consideration consistently with the maintenance of efficiency of administration in the making of appointments to services of the Union and the States. As I said, the notion

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(1) See "Liberty and Equality" in Social Problems and Public Policy: Inequality and Justice, ed. Lee Rainwater, pp. 26 to 31.

(2) See Williams on "The Idea of Equality" in Justice and Equality, ed. Egge A. Badau, p. 116.

of equality of opportunity has meaning only when a limited good or, in the present context, a limited number of posts, should be allocated on grounds which do not *a priori* exclude any section of citizens of those that desire it.

What, then, is *a priori* exclusion? It means exclusion on grounds other than those appropriate or rational for the good (posts) in question. The notion requires not merely that there should be no exclusion from access on grounds other than those appropriate or rational for the good in question, *but the grounds considered appropriate for the good should themselves be such that people from all sections of society have an equal chance of satisfying them.*

Bernard A. O. Williams, in his article "The Idea of Equality" (supra) gives an illustration of the working of the principle of equality of opportunity :

> "Suppose that in a certain society great prestige is attached to membership of a warrior class, the duties of which require great physical strength. This class has in the past been recruited from certain wealthy families only; but egalitarian reformers achieve a change in the rules, by which warriors are recruited from all sections of the society, on the result of a suitable competition. The effect of this, however, is that the wealthy families still provide virtually all the warriors, because the rest of the populace is so under-nourished by reason of poverty that their physical strength is inferior to that of the wealthy and well nourished. The reformers protest that equality of opportunity has not really been achieved; the wealthy reply that in fact it has, and that the poor now have the opportunity of becoming warriors — — it is just bad luck that their characteristics are such that they do not pass the test. "We are not", they might say, "excluding anyone for being poor; we exclude people for being weak, and it is unfortunate that those who are poor are also weak."

This is not a satisfactory answer though it may sound logical. The supposed equality of opportunity is quite empty. One knows that there is a causal connection between being poor and being under-nourished and between being under-nourished and being physically weak. One supposes further that something should be done subject to whatever economic conditions obtain in the society to alter the distribution of wealth. All this being so, the appeal by the wealthy to bad luck of the poor must appear rather disingenuous.

It is clear that one is not really offering equality of opportunity to X and Y if one contents oneself with applying the same criteria to X and Y. What one is doing there is to apply the same criteria to X as affected by favourable conditions and to Y as affected by unfavourable but curable conditions. Here there is a necessary pressure to equal up the conditions. To give X and Y equality of opportunity involves regarding their conditions, where curable, as

A themselves part of what is done to X and Y and not part of X and Y themselves. Their identity for this purpose does not include their curable environment, which is itself unequal and a contributor of inequality [see Williams, "The Idea of Equality" (supra)].

In *Ahmedabad St. Xavier's College Society and Another* v. *The* B *State of Gujarat and Another*(1), in the judgment on behalf of Chandrachud, J. and myself, I said at p. 798 :

> "The problem of the minorities is not really a problem of the establishment of equality because, if taken literally, such equality would mean absolute identical treatment of both the minorities and the majorities. This would result C only in equality in law but inequality in fact"

and that

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

It would follow that if we want to give equality of opportunity for employment to the members of the Scheduled Castes and Scheduled Tribes, we will have to take note of their social, educational and economic environment. Not only is the directive principle embodied in Article 46 binding on the law-maker as ordinarily understood but it should equally inform and illuminate the approach of the E Court when it makes a decision as the Court also is 'state' within the meaning of Article 12 and makes law even though "interstitially from the molar to the molecular". I have explained at some length the reason why Court is 'state' under Article 12 in my judgment in *His Holiness Kesavananda Bharati Sripadagalavaru* v. *State of Kerala and Another, etc.*(2).

F Equality of opportunity is not simply a matter of legal equality. Its existence depends, not merely on the absence of disabilities, but on the presence of abilities. It obtains in so far as, and only in so far as, each member of a community, whatever his birth or occupation or social position, possesses in fact, and not merely in form, equal chances of using to the full his natural endowments of physique, of G character, and of intelligence(3).

The guarantee of equality before the law or the equal opportunity in matters of employment is a guarantee of something more than what is required by formal equality. It implies differential treatment of persons who are unequal. Egalitarian principle has therefore enhanced the growing belief that government has an affirmative duty to eliminate inequalities and to provide opportunities for the exercise of H human rights and claims. Fundamental rights as enacted in Part III of the Constitution are, by and large, essentially negative in character.

(1) [1974] 1 S. C. C. 717. (2) [1973] Supp. S. C. R. 1.

(3) See R. H. Tawney, 'Equality' (1965) pp. 103-104.

They mark off a world in which the government should have no jurisdiction. In this realm, it was assumed that a citizen has no claim upon government except to be let alone. But the language of Article 16(1) is in marked contrast with that of Article 14. Whereas the accent in Article 14 is on the injunction that the State shall not deny to any person equality before the law or the equal protection of the laws, that is, on the negative character of the duty of the State, the emphasis in Article 16(1) is on the mandatory aspect, namely, that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State implying thereby that affirmative action by Government would be consistent with the Article if it is calculated to achieve it. If we are to achieve equality, we can never afford to relax. "While inequality is easy since it demands no more than to float with the current, equality is difficult for it involves swimming against it.(1)".

Today, the political theory which acknowledges the obligation of government under Part IV of the Constitution to provide jobs, medical care, old age pension, etc. extends to human rights and imposes an affirmative obligation to promote equality and liberty. The force of the idea of a state with obligation to help the weaker sections of its members seems to have increasing influence in constitutional law. The idea finds expression in a number of cases in America involving racial discrimination and also in the decisions requiring the state to offset the effects of poverty by providing counsel, transcript of appeal, expert witnesses, etc. Today, the sense that government has affirmative responsibility for elimination of inequalities, social, economic or otherwise, is one of the dominant forms in constitutional law. While special concessions for the underprivileged have been easily permitted, they have not traditionally been required. Decisions in the areas of criminal procedure, voting rights and education in America suggest that the traditional approach may not be completely adequate. In these areas, the inquiry whether equality has been achieved no longer ends with numerical equality; rather the equality clause has been held to require resort to a standard of proportional equality which requires the state, in framing legislation, to take into account the private inequalities of wealth, of education and other circumstances(2).

The idea of compensatory state action to make people who are really unequal in their wealth, education or social environment, equal, in specified areas, was developed by the Supreme Court of the United States. Rousseau has said: "It is precisely because the force of circumstances tends to destroy equality that force of legislation must always tend to maintain it (3)."

(1) R. H. Tawney, "Equality" (1962) p. 47.

(2) See "Developments—Equal Protection", 82 Harv. L. R. 1165.

(3) Contract Social, ii, 11.

A In *Griffin* v. *Illinois*(1), an indigent defendant was unable to take advantage of the one appeal of right granted by Illinois law because he could not afford to buy the necessary transcript. Such transcripts were made available to all defendants on payment of a similar fee; but in practice only non-indigents were able to purchase the transcript and take the appeal. The Court said that "there can be no equal justice B where the kind of trial a man gets depends on the amount of money he has" and held that the Illinois procedure violated the equal protection clause. The state did not have to make appellate review available at all; but if it did, it could not do so in a way which operated to deny access to review to defendants solely because of their indigency. A similar theory underlies the requirement that counsel be provided for indigents on appeal. In *Douglas* v. *California*(2), the C case involved the California procedure which guaranteed one appeal of right for criminal defendants convicted at trial. In the case of indigents the appellate court checked over the record to see whether it would be of advantage to the defendant or helpful to the appellate court to have counsel appointed for the appeal. A negative answer meant that the indigent had to appeal *pro se* if at all. The Court held that this procedure denied defendant the equal protection of the laws. D Even though the state was pursuing an otherwise legitimate objective of providing counsel only for non-frivolous claims, it had created a situation in which the well-to-do could always have a lawyer—even for frivolous appeals—whereas the indigent could not.

Justice Harlan, dissenting in both *Griffin* and *Douglas* cases (supra) said that they represented a new departure from the tradi- E tional view that numerically equal treatment cannot violate the equal protection clause. He concluded that the effect of the decisions was to require state discrimination. He said :

> "The Court thus holds that, at least in this area of criminal appeals, the Equal Protection Clause imposes on the States an affirmative duty to lift the handicaps flowing from F differences in economic circumstances. That holding produces the anomalous result that a constitutional admonition to the States to treat all persons equally means in this instance that Illinois must give to some that it requires others to pay for. . . . It may accurately be said that the real issue in this case is not whether Illinois has discriminated but whether it has a duty to discriminate."

G

Though in one sense Justice Harlan is correct, when one comes to think of the real effect of his view, one is inclined to think that the opinion failed to recognise that there are several ways of looking at equality, and treating people equally in one respect always results in unequal treatment in some other respects. For Mr. Justice Harlan, the only type of equality that mattered was numerical equality in the H terms upon which transcripts were offered to defendants. The majority, on the other hand, took a view which would bring about equality

(1) 351 U. S. 12. (2) 372 U. S. 353.

in fact, requiring similar availability to all of criminal appeals in *Griffin's* case and counsel-attended criminal appeals in *Douglas'* case. To achieve this result, the legislature had to resort to a proportional standard of equality. These cases are remarkable in that they show that the kind of equality which is considered important in the particular context and hence of the respect in which it is necessary to treat people equally(1).

Look at the approach of the Supreme Court of United States of America in *Harper* v. *Virginia Board of Elections*(2). The Court there declared as unconstitution a Virginia poll tax of $ 1.50 per person which had been applied to all indiscriminately. As in *Griffin* and *Douglas,* the state had treated everyone numerically alike with respect to the fee. Whatever discrimination existed was the result of the state's failure to proportion the fee on the basis of need or, what is the same thing, to employ a numerically equal distribution with respect to the vote itself. The result again is a requirement that the legislature should take note of difference in private circumstances in formulating its policies.

There is no reason why this Court should not also require the state to adopt a standard of proportional equality which takes account of the differing conditions and circumstances of a class of citizens whenever those conclusions and circumstances stand in the way of their equal access to the enjoyment of basic rights or claims.

The concept of equality of opportunity in matters of employment is wide enough to include within it compensatory measures to put the members of the Scheduled Castes and Scheduled Tribes on par with the members of other communities which would enable them to get their share of representation in public service. How can any member of the so called forward communities complain of a compensatory measure made by government to ensure the members of Scheduled Castes and Scheduled Tribes their due share of representation in public services ?

It is said that Article 16(4) specifically provides for reservation of posts in favour of backward classes which according to the decision of this Court would include the power of the State to make reservation at the stage of promotion also and therefore Article 16(1) cannot include within its compass the power to give any adventitious aids by legislation or otherwise to the backward classes which would deregate from strict numerical equality. If reservation is necessary either at the initial stage or at the stage of promotion or at both to ensure for the members of the Scheduled Castes and Scheduled Tribes equality of opportunity in the matter of employment. I see no reason why that is not permissible under Article 16(1) as that alone might put them on a parity with the forward communities in the matter of achieving the result which equality of opportunity would produce. Whether there is equality of opportunity can be gauged only by the equality

(1) See "Developments-Equal Protection", 82 Harv. L. R. 1165.
(2) 383 U. S. 663.

A attained in the result. Formal equality of opportunity simply enables people with more education and intelligence to capture all the posts and to win over the less fortunate in education and talent even when the competition is fair. Equality of result is the test of equality of opportunity.

B Daniel P. Moynihan, one of America's leading urban scholars, spelled out the problem in a widely publicized study that he prepared while he was Assistant Secretary of Labour. The Moynihan Report, as it came to be known, made the point in a passage that deserves full quotation :

> C "It is increasingly demanded that the distribution of success and failure within one group be roughly comparable to that within other groups. It is not enough that all individuals start out on even terms, if the members of one group almost invariably end up well to the fore and those of another far to the rear. This is what ethnic politics are all about in America, and in the main the Negro American demands are being put forth in this new traditional and D established framework.
>
> "Here a point of semantics must be grasped. The demand for equality of opportunity has been generally perceived by White Americans as a demand for liberty, a demand not to be excluded from the competitions of life—at the polling place, in the scholarship examinations, at the personnel office, on the housing market. Liberty does, of E course, demand that everyone be free to try his luck, or test his skill in such matters. But those opportunities do not necessarily produce equality : On the contrary, to the extent that winners imply losers, equality of opportunity almost insures inequality of results.
>
> "The point of semantics is that equality of opportunity F now has a different meaning for Negroes than it has for Whites. It is not (or at least no longer) a demand for liberty alone, but also for equality—in terms of group results. In Bayard Rustin's terms, 'It is now concerned not merely with removing the barriers to full opportunity but with achieving the fact of equality.' By equality Rustin means a distribution of achievements among Negroes G roughly comparable to that among Whites."(1)

Beginning most notably with the Supreme Court's condemnation of school segregation in 1954, the United States has finally begun to correct the discrepancy between its ideals and its treatment of the black man. The first steps, as reflected in the decisions of the courts and the civil rights laws of Congress, merely removed the legal and H quasi-legal forms of racial discrimination. These actions while not

(1)The Moynihan Report and the Politics of Controversy, Eds. Lee Rainwater and Willian L. Yancey, p. 49.

producing true equality, or even equality of opportunity, logically dictated the next step : positive use of government power to create the possibility of a real equality. In the words of Professor Lipset : "Perhaps the most important fact to recognise about the current situation of the American Negro is that (legal) equality is not enough to insure his movement into larger society."(1)

I agree that Article 16(4) is capable of being interpreted as an exception to Article 16(1) if the equality of opportunity visualized in Article 16(1) is a sterile one, geared to the concept of numerical equality which takes no account of the social, economic, educational background of the members of Scheduled Castes and Scheduled Tribes. If equality of opportunity guaranteed under Article 16(1) means effective material equality, then Article 16(4) is not an exception to Article 16(1). It is only an emphatic way of putting the extent to which equality of opportunity could be carried viz., even upto the point of making reservation.

The State can adopt any measure which would ensure the adequate representation in public service of the members of the Scheduled Castes and Scheduled Tribes and justify it as a compensatory measure to ensure equality of opportunity provided the measure does not dispense with the acquisition of the minimum basic qualification necessary for the efficiency of administration.

It does not matter in the least whether the benefit of rule 13AA is confined only to those members of Scheduled Castes and Scheduled Tribes in service at the time and that it is not extended to all members of the backward classes. The law-maker should have liberty to strike the evil where it is felt most.

Article 16(1) is only a part of a comprehensive scheme to ensure equality in all spheres. It is an instance of the application of the larger concept of equality under the law embodied in Articles 14 and 15. Article 16(1) permits of classification just as Article 14 does [see *S. G. Jaisinghani* v. *Union of India & ors.*(2), *State of Mysore & Anr.* v. *P. Narasing Rao*(3) *and C. A. Rajendran* v. *Union of India & Ors.*(4).]. But, by the classification, there can be no discrimination on the ground only of race, caste and other factors mentioned in Article 16(2).

The word 'caste' in Article 16(2) does not include 'Scheduled Caste'. The definition of 'scheduled castes' in Article 366 (24) means : "such castes, races or tribes or parts of or groups within such castes, races, or tribes as are deemed under Article 341 to be Scheduled Castes for the purposes of this Constitution." This shows that it is by virtue of the notification of the President that the Scheduled

(1) "The American Democracy", Magrath, Cornwell and Goodman, p. 18.
(2) [1967] 2 S. C. R. 703, at 712. (3) [1958] 1 S. C. R. 407 at 41.
(4) [1958] 1 S. C. R. 721, at 729.

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

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

E Article 16(1) and Article 16(2) do not prohibit the prescription of a reasonable qualification for appointment or for promotion. Any provision as to qualification for employment or appointment to an office reasonably fixed and applicable to all would be consistent with the doctrine of equality of opportunity under Article 16(1) [see *The General Manager, Southern Railway* v. *Rangachari*(3)].

F Rule 13 provides that no person shall be eligible for appointment to any service unless he possesses the special qualification and has passed such special tests as may be prescribed in that behalf by special rules or possesses such special qualification as he considered to be equivalent to the said special qualification or special tests.

G The material provision in rule 13A provides that notwithstanding anything contained in rule 13, where a pass in a special or departmental test is newly prescribed by the Special Rules of a service for any category, grade or post therein or in any class thereof, a member of a service who has not passed the said test but is otherwise qualified and suitable for appointment to such class, category, grade or post may within two years of the introduction of the test be appointH ted thereto temporarily.

(1) [1960] 2 S. C. R. 311. (2) [1974] 1 S. C. R. 771.

(3) [1962] 2 S. C. R. 586.

Rule 14 provides for reservation of appointments to members of Scheduled Castes and Scheduled Tribes.

Rule 13AA has been enacted not with the idea of dispensing with the minimum qualification required for promotion to a higher category or class, but only to give enough breathing space to enable the members of Scheduled Castes and Scheduled Tribes to acquire it. The purpose of the classification made in rule 13AA viz., of putting the members of Scheduled Castes and Scheduled Tribes in one class and giving them an extension of time for acquiring the test qualification prescribed by rule 13 and rule 13A is to enable them to have their due claim of representation in the higher category without sacrificing the efficiency implicit in the passing of the test. That the passing of some of these tests does not spell in the realm of minimum basic requirement of efficiency is clear from rule 13A. That rule, at any rate, contemplated passing of the test by all the employees within two years of its introduction showing thereby that acquisition of the test qualification was not a *sine qua non* for holding the posts. Rule 13(b) which provides for exemption from passing the test would also indicate that passing of the test is not absolutely essential for holding the post. The classification made in rule 13AA has a reasonable nexus with the purpose of the law, namely, to enable the members of Scheduled Castes and Scheduled Tribes to get their due share of promotion to the higher grade in the service without impairing the efficiency of administration. Rule 13AA is not intended to give permanent exemption to the members of Scheduled Castes and Scheduled Tribes from passing the test but only reasonable time to enable them to do so. The power to grant exemption under the rule, like every other power, is liable to be abused. If the power is abused and the members of the Scheduled Castes and Scheduled Tribes are given favoured treatment to the extent not warranted by their legitimate claim, the courts are not rendered helpless. That the power is liable to be abused is no reason to hold that the rule itself viz., rule 13AA, is bad.

The ultimate reason for the demand of equality for the members of backward classes is a moral perspective which affirms the intrinsic value of all human beings and call for a society which provides those conditions of life which men need for development of their varying capacities. It is an assertion of human equality in the sense that it manifests an equal concern for the well being of all men. On the one hand it involves a demand for the removal of those obstacles and impediments which stand in the way of the development of human capacities—that is it is a call for the abolition of unjustifiable inequalities. On the other hand, the demand itself gets its sense and moral driving force from the recognition that 'the poorest he that is in England hath a life to live, as the greatest he'(1).

(1) see John Rees, "Equality", p.123.

A I agree with the conclusion of my Lord the Chief Justice that the appeal should be allowed.

BEG, J : I share the conclusion reached by the learned Chief Justice and my learned brethren Mathew, Krishna Iyer, and Murtaza Fazal Ali. I would, however, like to add, with great respect, that a view which though not pressed in this Court by the Advocate General of Kerala, perhaps because it had been repelled by the Kerala High Court, seems to me to supply a more satisfying legal justification for the benefits conferred, in the form of an extended period granted to Government employees of a backward class to pass a qualifying test for promotion to a higher grade of service, that is to say, from that of the Lower Division Clerks to that of the Upper Division Clerks in the State of Kerala. I think that we have to, in such a case, necessarily consider whether the manner in which Scheduled Caste and Scheduled Tribe Government employees are treated by the rules and orders under consideration falls within Article 16(4) of the Constitution.

Strictly speaking, the view adopted by my learned brother Khanna, that the ambit of the special protection of "equality of opportunity in matters relating to public service", which can be made available to members of backward classes of citizens, is exhausted by Article 16(4) of the Constitution, seems inescapable. Article 16 is, after all, a facet of the grand principles embraced by Article 14 of our Constitution. It guarantees : "Equality of opportunity in matters of public appointment". It does so in absolute terms. It is a necessary consequence and a special application of Article 14 in an important field where denial of equality of opportunity cannot be permitted. While Article 16(1) sets out the positive aspect of equality of opportunity in matters relating to employment by the State, Article 16(2) negatively prohibits discrimination on the grounds given in Article 16(2) in the area covered by Article 16(1) of the Constitution. If Scheduled Castes do not fall within the ambit of Article 16(2), but, as a "backward class" of citizens, escape the direct prohibition it is because the provisions of Article 16(4) make such an escape possible for them. They could also avoid the necessary consequences of the positive mandate of Article 16(1) if they come within the only exception contained in Article 16(4) of the Constitution. I respectfully concur with my learned brother Khanna and Gupta that it would be dangerous to extend the limits of protection against the operation of the principle of equality of opportunity in this field bevond its express constitutional authorisation by Article 16(4).

When citizens are already employed in a particular grade, as Government servants, considerations relating to the sources from which they are drawn lose much of their importance. As public servants of that grade they could, quite reasonably and logically, be said to belong to one class, atleast for purposes of promotion in public service for which there ought to be a real "equality of opportunity"

if we are to avoid heart burning or a sense of injustice or frustration in this class. Neither as members of this single class nor for purposes of the equality of opportunity which is to be afforded to this class does the fact that some of them are also members of an economically and socially backward class continue to be material, or, strictly speaking, even relevant. Their entry into the same relevant class as others must be deemed to indicate that they no longer suffer from the handicaps of a backward class. For purposes of Government service the source from which they are drawn should cease to matter. As Government servants they would, strictly speaking, form only one class for purposes of promotion.

As has been pointed out by Mylord the Chief Justice, the protection of Article 16(1) continues throughout the period of service. If Article 16(1) is only a special facet or field, in which an application of the general principles of Article 14 is fully worked out or stated, as it must be presumed to be, there is no room left for importing into it any other or further considerations from Article 14. Again the express provisions of Article 16(4) would be presumed to exhaust all exceptions made in favour of backward classes not contained there if we apply the maxim *expressio unius est exclusio alterius*". It is true that the principle of reasonable classification may still claim recognition or be relevant for working out the exact significance of "equality of opportunity" even within Article 16(1) in some aspect or context other than the one indicated by Article 16(4). But, in view of Article 16(4), that aspect or context must be different from one aimed at realizing the objects of Articles 46 and 335 in the sphere of Government service. The specified and express mode of realization of these objects contained in Article 16(4), must exclude the possibility of other methods which could be implied and read into Article 16(1) for securing them in this field. One could think of so many other legally permissible and possibly better, or, atleast more direct, methods of removing socio-economic inequalities by appropriate legislative action in other fields left open and unoccupied for purposes of discrimination in favour of the backward.

In relation to promotions, "equality of opportunity" could only mean subjection to similar conditions for promotion by being subjected uniformly to similar or same kind of tests. This guarantee was, in fact, intended to protect the claims of merit and efficiency as against incursions of extraneous considerations. The guarantee contained in Article 16(1) is not, by itself, aimed at removal of backwardness due to socio-economic and educational disparties produced by past history of social oppression, exploitation, or degradation of a class of persons. In fact, efficiency tests, as parts of a mechanism to provide equality of opportunity, are meant to bring out and measure actually existing inequalities in competence and capacity or potentialities so as to provide a fair and rational basis for justifiable discrimination between candidates. Whatever may be the real causes of unequal performances which imposition of tests may disclose, the purpose of equality of opportunity by means of tests is only to ensure a fair competition in securing posts and promotions in Government service, and not the removal of causes for unequal performances in

A competitions for these posts or promotions. Thus, the purposes of Articles 46 and 335, which are really extraneous to the objects of Article 16(1), can only be served in such a context by rules which secure preferential treatment for the backward classes and detract from the plain meaning and obvious implications of Article 16(1) and 16(2). Such special treatment mitigates the rigour of a strict B application of the principle contained in Article 16(1). It constitutes a departure from the principle of absolute equality of opportunity in the application of uniform tests of competence. Article 16(4) was designed to reconcile the conflicting pulls of Article 16(1), representing the dynamics of justice, conceived of as equality in conditions under which candidates actually compete for posts in Government service, and of Articles 46 and 335, embodying the duties of C the State to promote the interests of the economically, educationally, and socially backward so as to release them from the clutches of social injustice. These encroachments on the field of Article 16(1) can only be permitted to the extent they are warranted by Article 16(4). To read broader concepts of social justice and equality into Article 16(1) itself may stultify this provision itself and make Article 16(4) otiose.

D

Members of a backward class could be said to be discriminated against if severer tests were prescribed for them. But, this is not the position in the case before us. All promotees, belonging to any class, caste, or creed, are equally subjected to efficiency tests of the same type and standard. The impugned rules do not dispense with these tests for any class or group. Indeed, such tests could not be dis- E pensed with for employees from Scheduled Castes, even as a backward class, keeping in view the provisions of Article 335 of the Constitution. All that happens here is that the backward class of employees is given a longer period of time to pass the efficiency tests and prove their merit as determined by such tests. It has been, therefore, argued that, in this respect, there is substantial equality. In other words, the argument is that if Article 16(1) could be inter- F preted a little less rigidly and more liberally the discrimination involved here will not fall outside it. Even if this was a tenable view. I would, for all the reasons given here, prefer to find the justification, if this is possible, in the express provisions of Article 16(4) because this is where such a justification should really lie.

G In the case before us, it appears that respondent petitioner's grievance was that certain members of the Scheduled Castes, as a backward class, had been given preference over him inasmuch as he was not promoted despite having passed the efficiency test, but certain members of the backward class were allowed to remain in the higher posts as temporary promotees, without having passed the efficiency tests, because they had been given an extended period of time H to satisfy the qualifying tests. The petitioner thus claimed priority on the ground of merit judged solely by taking and passing the efficiency test earlier. Apparently, he was not even promoted, whereas the backward class employees said to have been given preference over him

were, presumably quite satisfactorily, discharging their duties in the higher grade in which they were already working as temporary promotees. He also admits that the respondents, over whom he claims preference for promotion, were his seniors in service who had put in longer terms of total service before their conditional promotions temporarily into the grade of the Upper Division Clerks. It seems to me that the taking and passing of a written test earlier than another employee could not be the sole factor to consider in deciding upon a claim to superiority or to preference on grounds of merit and efficiency for promotion as a Government servant.

The relevant rule 13A shows that a person who is allowed temporarily to work in the cadre of promotees, even without having passed the special efficiency test, must, nevertheless, have satisfied the test of being "otherwise qualified and suitable for appointment". Thus, an employee from a Scheduled Caste has also to be "otherwise qualified" before he is given an opportunity to work with others similarly promoted temporarily. The only difference is that, whereas the others get only two years from the introduction of the new test within which to qualify according to the newly introduced test, an employee of a Scheduled Caste or a Scheduled Tribe, similarly placed, gets two more years under the second proviso. The impugned rule 13AA, however, gives power to the Government to specify a longer period of exemption if it considers this to be necessary. The Governor passed the impugned order of 13-1-1972 under rule 13AA, extending the period still more. This order and the relevant rules 13A and 13AA are already set out above in the judgment of Mylord the Chief Justice. I need not, therefore, reproduce them here.

What is the effect of the provisions of Rules 13A and 13AA and the order of 13-1-1972? Is it not that a person who is in the position of the respondent petitioner must wait for a place occupied by or reserved for a person from a Scheduled Caste or Tribe, treated as backward class, until it is shown that the employee from the backward class has failed to take and pass the new test despite the extended period given to him. The effect of the relaxation is that the backward class employee continues in the post temporarily for a longer period before being either confirmed or reverted. For this period, the post remains reserved for him. If he does not satisfy the efficiency tests even within this extended period he has to revert to the lower grade. If he does satisfy the special efficiency test, in this extended period, he is confirmed in the class of promotees into which he obtained entry because of a reservation. Among meanings of the term "reserve", given in the *Oxford* Dictionary, are "To keep back or hold over to a later time or place for further treatment; to set apart for some purpose or with some end in view". In the *Webster's New International Dictionary* IInd Edn. (at p. 2118), the following meanings are given : "To keep back; to retain or hold over to a future time or place; not to deliver, make over or disclose it at once". The result of the above mentioned rules and orders does seem to me to be a kind of reservation. If a reservation of posts under Article 16(4) for employees of backward classes could include complete re-

servation of higher posts to which they could be promoted, about which there could be no doubt now, I fail to see why it cannot be partial or for a part of the duration of service and hedged round with the condition that a temporary promotion would operate as a complete and confirmed promotion only if the temporary promotee satisfies some tests within a given time.

If the impugned rules and orders could be viewed as an implementation of a policy of qualified or partial or conditional reservation, in the form indicated above, which could satisfy the requirements of substantial equality, in keeping with Article 335, and meet the demands of equity and justice looked at from the broader point of view of Article 46 of the Constitution, they could, in my view, also be justified under Article 16(4) of the Constitution.

It may be that the learned Advocate General for the appellant State did not press the ground that the impugned rules and orders are governed by Article 16(4) because of the tests required for complete or absolute reservation dealt with in *T. Devadasan* v. *the Union of India & Anr.*(1) *and M. R. Balaji & Ors.* v. *State of Mysore*(2), where it was held that more than 50% reservations for a backward class would violate the requirement of reasonableness inasmuch as it would exclude too large a proportion of others. Apart from the fact that the case before us is distinguishable as it is one of only a partial or temporary and conditional reservation, it is disputed here that the favoured class of employees really constituted more than fifty per cent of the total number of Government servants of this class (*i.e.* Clerks) if the overall position and picture, by taking the number of employees in all Govt. Departments, is taken into account. Furthermore, it is pointed out that a large number of temporary promotions of backward class Government servants of this grade had taken place in 1972 in the Registration Department, in which the petitioning respondent worked, because promotions of backward class employees had been held up in the past due to want of necessary provisions in rules which could enable the Government to give effect to a policy of a sufficient representation of backward class employees of this grade in Government service. The totality of facts of this case is distinguishable in their effects from those in cases cited before us. No case was cited which could fully cover the position we have before us now.

I am not satisfied that the only ground given by the High Court for refusing to give the benefits of impugned rules and orders to the backward class Government servants, that they fall outside the purview of Article 16(4), was substantiated. It was for the respondent-petitioner to discharge the burden of establishing a constitutionally unwarranted discrimination against him. His petition ought in my opinion, to have been dismissed on the ground that he had failed to discharge this initial burden.

Accordingly, I would allow this appeal and set aside the judgment and order of the High Court and leave the parties to bear their own costs throughout.

(1) [1964] 4 S. C. R. 680. (2) [1961] Suppl (1) S. C. R. 439

KRISHNA IYER, J.—A case which turns the focus on the political philosophy pervading the Constitution and affects a large human segment submerged below the line of ancient social penury, naturally prompts me to write a separate opinion substantially concurring with that of the learned Chief Justice. Silence is not always golden.

The highlight of this Civil Appeal against the High Court's judgment striking down a State Subordinate Service rule, thereby adversely affecting lower rung officials belonging to the Scheduled Castes and Scheduled Tribes, is the seminal issue of admissibility and criteria of classification within the 'equal opportunity' rule in Art. 16(1) and the lethal effect of the built-in inhibition against caste-based classification contained in Art. 16(2) in relation to these frightfully backward categories. In a large sense, the questions are *res integra* and important and cannot be dismissed easily on the remark of Justice Holmes that the equal protection clause is 'the last resort of constitutional arguments' (274 U.S. 200, 208).

Law, including constitutional law, can no longer 'go it alone' but must be illumined in the interpretative process by sociology and allied fields of knowledge. Indeed, the term 'constitutional law' symbolizes an intersection of law and politics, wherein issues of political power are acted on by persons trained in the legal tradition, working in judicial institutions, following the procedures of law, thinking as lawyers think.(1) So much so, a wider perspective is needed to resolve issues of constitutional law. May be, one cannot agree with the view of an eminent jurist and former Chief Justice of India : 'the judiciary as a whole is not interested in the policy underlying a legislative measure' (Mr. Hidayatullah—'Democracy in India and Judicial Process'—1965—p. 70). Moreover, the Indian Constitution is a great social document, almost revolutionary in its aim of transforming a medieval, hierarchical society into a modern, egalitarian democracy. Its provisions can be comprehended only by a spacious, social-science approach, not by pedantic, traditional legalism. Here we are called upon to delimit the amplitude and decode the implications of Art. 16(1) in the context of certain special concessions relating to employment, under the Kerala State (the appellant), given to Scheduled Castes and Scheduled Tribes (for short, hereinafter referred to as harijans) whose social lot and economic indigence are an Indian reality recognized by many Articles of the Constitution. An overview of the decided cases suggests the need to re-interpret the dynamic import of the 'equality clauses' and, to stress again, beyond reasonable doubt, that the paramount law, which is organic and regulates our nation's growing life, must take in its sweep 'ethics, economics, politics and sociology'. Equally pertinent to the issue mooted before us is the lament of Friedman :

> "It would be tragic if the law were so petrified as to be unable to respond to the unending challenge of evolutionary or revolutionary changes in society."(2)

(1) 'Perspectives in Constitutional Law—Charles Black—Foundations of Modern Political Science Series, Prentic-Hall Inc. New Jersey, 1963.

(2) Law in Changing Society—W. Friedman, p. 503.

A The main assumptions which Friedman makes are :

> "first, the law is, in Holmes' phrase, not a 'brooding omnipotence in the sky', but a flexible instrument of social order, dependent on the political values of the society which it purports to regulate...."(1)

B Naturally surges the interrogation, what are the challenges of changing values to which the guarantee of equality must respond and how? To pose the problem with particular reference to our case, does the impugned rule violate the constitutional creed of equal opportunity in Art. 16 by resort to a suspect classification or revivify it by making the less equal more equal by a legitimate differentiation? Chief Justice Marshall's classic statement in *McCulloch* v. *Maryland*(2) followed by C Justice Brennan in *Kazenbach* v. *Morgan*(3) remains a beacon light :

> "Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional."

D The background facts may be briefly set out in the elemental form. The Kerala State and Subordinate Services Rules, 1958 (for short, the rules) regulate the conditions of service of the State employees of the lower order. We are concerned with the prescription of qualifications for promotion of the lower division clerks to upper division posts in the Registration Department. Rule 13 insists on passing certain tests for promotional eligibility. When tests were newly introduced, E r. 13A gave 2 years from their introduction for passing them, to all hands—*harijan and non-harijan,* but the former enjoyed an extra two-year grace period. Rule 13B totally exempted pentagenarians from passing these tests. Rule 13AA, which is impugned as violative of Art. 16(1) and (2) of the Constitution, was promulgated on January 13, 1972 and it reads :

F

> "13AA. Notwithstanding anything contained in these rules, the Government may, by order, exempt *for a specified period* any member or members, belonging to a Scheduled Caste or a Scheduled Tribe, and already in service, from passing the tests referred to in rule 13 or rule 13A of the said Rules.
>
> G Provided that this rule shall not be applicable to tests prescribed for purposes of promotion of the executive staff below the rank of Sub-Inspectors belonging to the Police Department."

(1) Law in Changing Society—W. Friedman, p. xiii. quoted in the Foreword by P.B. Gajendragadkar to Legal Education in H India—Problems and Perspectives : by S. K. Agarwa'a, N. M. Tripathi, Bombay, (1970).

(2) 17 U.S. (4 Wheat) 316, 421 quoted in 384 U. S. 650.

(3) 384 U. S. 641 (1966).

A Note appended to the rule gives the *raison d' etre* of the rule :

> "It has been brought to the notice of Government that a large number of Harijan employees in Public Service are facing immediate reversion from their posts for want of test qualifications. So it is considered necessary to incorporate an enabling provision in the Kerala State and Subordinate Services Rules, 1958 to grant by order temporary exemption to members already in service belonging to Scheduled Castes and Scheduled Tribes from passing all tests for a specified period. This notification is intended to achieve the above object."

A break-up of r. 13AA of the rules certainly gives power to Government to extend the time to harijan officials of 'subordinate services' for passing tests prescribed for occupying promotional posts. But it does not *for ever* exempt these hands but only waive for a specified, presumably, short term. Nor does it relax the minimal qualifications held necessary for these posts from the point of view of basic administrative efficiency. The subsidiary need of passing certain new tests, for which all employees get some period (from the time of their introduction) is relaxed for a longer period in the case of harijan hands under r. 13A and still more under r. 13AA. We must expect that Government will, while fixing the longer grace time for passing tests, have regard to administrative efficiency. You can't throw to the winds considerations of administrative capability and grind the wheels of Government to a halt in the name of 'harijan welfare'. The Administration runs for good government, not to give jobs to harijans. We must accept the necessary import of the rule as a limited concession to this weaker group and test its *vires* on this basis.

One significant factor must be remembered to guard against exaggerating the bearing of these tests as a coefficient of efficiency. Certainly, they were not so important as all that because r. 13A—not challenged all these years—gave 2 years' qualifying period for all and 4 *years for harijans.* Also, those above 50 years of age did not have to pass the tests at all (r. 13B). The nature of the tests *vis a vis* the nature of work of upper division clerks, and their indispensability for official capability have not been brought out in the writ petition and, absent such serious suggestions, we have to assume that Government (the author of r. 13) would have granted varying periods of exemption only because of their desirability, not their precedent necessity. To expatiate a little more, it is not unusual to fix basic qualifications for eligibility to a post. Their possession is *a must,* having regard to the functions of the office. A second and secondary category of qualifications is insisted on as useful to discharge the duties of the post *e.g.,* accounts test, or civil and criminal judicial tests and the like, depending on the department where he is to work. After all here he is a pen-pushing clerk, not a magistrate, accounts officer, forest officer, sub-registrar, space scientist or too administrator or one on whose initiative the wheels of a department speed up or slow down. Even so, it makes his clerical work more understanding and efficient. These

A tests are, therefore, demanded for better performance, not basic proficiency, but relaxation is also allowed in suitable class of cases, their absence not being fatal to efficiency. A third class of virtues which will make the employee ultra efficient, but is not regarded as cardinal, is listed as entitled to preference. A doctorate in business management, or LL.M. where the basic degree is the essential requisite, social B service or leadership training, sports distinction and a host of other extra attainments which will improve the aptitude and equipment of the officer in his speciality but are, in no sense, necessary—these are welcome additives, are good and may even get the employee a salary raise but are not insisted on for initial appointment to the post either as a direct recruit or as a promotee. This trichotomy of qualifications makes pragmatic meaning to any employer and is within anyone's ken C if he turns over the advertisements in newspapers. To relax on basic qualifications is to compromise with minimum administrative efficiency; to relent, *for a time,* on additional test qualifications is to take a calculated but controlled risk, assured of a basic standard of performance; to encourage the possession of higher excellence is to upgrade the efficiency status of the public servant and, eventually of the department. This is the sense and essence of the situation arising D in the present case, viewed from the angle of administrative requirements or fair employment criteria.

Back now to the rule of exemption and its *vires.* Frankly, here the respondents who have passed the 'tests' are stalled in their promotion because of the new rule of harijan exemption. As individuals, their rights *vis a vis* their harijan brethren are regarded unequally. In E a strictly competitive context or narrowly performance-oriented standard, r. 13AA discriminates between a harijan and a non-harijan. The question is whether a perceptive sensitivity sees on 'equal opportunity' a critical distinction between distribution according to 'merit' of individuals and distribution according to 'need' of depressed groups, subject to broad efficiency criteria. We enter here 'a conceptual disaster area'.

F

Factual contexts dictate State action. The differential impact of a law on a class will influence judicial evaluation of the reasonableness of a classification and its relation to a purpose which is permissible. Courts, however, adopt a policy of restrained review where the situation is complex and is intertwined with social, historical and other substantially human factors. Judicial deference—not abdication—is best G expressed by Justice Holmes in his dissent in *Louisvilla Gas & Elec. Co.* v. *Coleman* (1)

> "But when it is seen that a line or a point there must be, and that there is no mathematical and logical way of fixing it precisely, the decision of the legislature must be accepted unless we can say that it is very wide of any reasonable H mark."

(1) 277 U. S. 32 (1928).

In *Buck* v. *Bell*(1) Holmes J. observed : A

> "The law does all that is needed when it does all that it can, indicates a policy, applies it to all within the lines, and seeks to bring within the lines all similarly situated so far and so fast as its means allow".

Given a legitimate over-riding purpose for selectivity the Court passes, B leaving it to the law-maker the intricate manner of implementation. Faced with a suspect classification based on a quasi-caste differentia and apparently injuring administrative quality, the Court turns activist. Conceptual equilibrium between these two lines is the correct guideline.

The operational technique may vary with time and circumstance C but the goal and ambit must be constitutionally sanctioned. In the instant case, the State has taken a certain step to advance the economic interests of harijans. What—if we break down the rule into its components—have Government done ? Have they transgressed the rights under Art. 16(1) & (2) ? If they have, the Court, as constitutional invigilator interdicts, after making permissible presumptions in favour of State actions and importing the liberal spirit of effective D equality into the mandate of Arts. 14 and 16. Otherwise, the hammer does not fall.

Why was this second 'holiday' under rule 13AA to harijans granted ? The hapless circumstance which compelled this course was, according to the State, the need to help this class, acting within the constitutional bounds, to avert mass reversion to lower posts, with- E out abandoning insistence on passing 'tests'. The Note to r. 13AA is explanatory. The State viewed this disturbing situation with concern, and, having regard to their backward condition, made r. 13AA which conferred power on Government to grant further spells of grace time to get through these tests. Simultaneously, a period within which two opportunities for passing tests would be available was afforded by a G.O. issued under r. 13AA. The consequence was their F immediate reversion was averted and the promotion prospects of the non-harijan writ petitioners, who were test-qualified, stood postponed. This grievance of theirs drove them to the High Court where the rule of temporary exemption from passing tests for promotional eligibility in favour of harijans was held *ultra vires* Arts. 16(1) and 335.

I shall focus on the basis because my learned brethren have dilated G on the necessary details of facts and, more importantly, because confusion on fundamentals deflects the construction of constitutional clauses—all this against the admitted backdrop of die-hard harijan bondage, sometimes subtle, sometimes gross. The learned Advocate General fairly conceded—and I think rightly—that r. 13AA was not a 'reservation' under Art. 16(4) and yet the favoured treatment to harijan clerks was valid, being based on reasonable classification under H a constitutionally recognised differentia which had a relation to the legi-

(1) 274 U.S. 200, 208 (1927).

timate end of promoting the advancement of this handicapped class, subject to administrative efficiency. The learned Solicitor General, appearing on notice by the Court to the Attorney General, stated the law on a broader basis and urged that the grouping of classes of socially and educationally downtrodden people especially the Scheduled Castes and Tribes, was good and did not offend Art. 16(1) or (2). Shri R. K. Garg, for some of the respondents and for the interveners, spread out the social canvas, focussed on the age-old suppression and consequential utter backwardness of those societal brackets and the State's obligation to wipe out the centuries of deprivation by making a concerted effort to bring them up to the same level as the other classes so that, after this levelling up, the whole nation could march forward on terms of democratic equality. Discrimination on the ground of caste did not arise, according to counsel, Scheduled Castes and Tribes being not a *caste* but an amalgam of the socially lowly and the lost, including groups with a caste savour. Shri Krishnamoorthy Iyer, for the respondents, naturally disputed all these propositions. The cornerstone of his case was that in the field of State employment caste-wise compassion to harijans flew in the face of Art. 16(1) and (2) and separate but special treatment was permissible *only* under Art. 16(4) which was expressly designed as benignant discrimination devoted to lifting backward classes to the level of the rest through the constitutional technology of 'reservation'. To travel beyond this special clause and evolve a general doctrine of backward classification was to over-power the basic concept of equality and to bring in, by a specious device, a back-door casteism subverting the scheme of a casteless society set as one of the goals of our constitutional order. Efficiency of administration, an important desideratum of public service, would also suffer.

I will examine these contentions in depth and detail later in this judgment.

Let us proceed to assess the constitutional merit of the State's *ex facie* 'unequal' service rule favouring in-service harijan employees in a realist socio-legal perspective. But before that, some memorable facts must be stated. The Father of the National adopted, as his fighting faith, the uplift of the *bhangi* and his assimilation, on equal footing, into Hindu society, and the Constitution, whose principal architect was himself a militant *mahar*, made social justice a founding faith and built into it humanist provisions to lift the level of the lowly scheduled castes and tribes to make democracy viable and equal for all. Studies in social anthropology tell us how cultural and material suppression has, over the ages, crippled their personality, and current demography says that nearly every fifth Indian is a harijan and his social milieu is steeped in squalour. The conscience of the Constitution found adequate expression on this theme, in Dr. Ambedkar's words of caution and premonition in the Constituent Assembly :

> "We must begin by acknowledging first that there is complete absence of two things in Indian society. One of

these is equality. On the social plane, we have in India a society based on privilege of graded inequality which means elevation for some and degradation of others. On the economic plane, we have a society in which there are some who have immense wealth as against the many who are living in abject poverty. On the 26th of January, 1950, we are going to enter into a life of contradictions. In politics we will have equality and in social and economic life we will have inequality... We must remove this contradiction at the earliest possible moment, or else those who suffer from inequality will blow up the structure of political democracy which this Assembly has so laboriously built up."

(Speeches, Vol. II, pp. 184-187).

Judges may differ in constitutional construction but, without peril of distorting the substance, cannot discard the activism of the equal justice concept in the setting of deep concern for the weaker sections of the community. What I endeavour to emphasize, as I will elaborate later, is that equal justice is an aspect of social justice, the salvation of the very weak and down-trodden, and the methodology for levelling them up to a *real,* not formal, equality, being the accent.

The Kerala State, the appellant, has statistically shown the yawning gap between what number of posts in Government service harijans are entitled to, population-ratio wise, and the actual number of posts occupied by them. Their 'official' fate is no less ominous elsewhere in India and would have been poorer on the competitive market method of selection unaided by 'reservation'. The case for social equality and economic balance, in terms of employment under the State, cries for more energised administrative effort and a Government that fails to repair this depressed lot, fools the public on harijan welfare. Indeed, an *aware* mass of humanity, denied justice for generations, will not take it lying down too long but may explode into Dalit Panthers, as did the Black Panthers in another country, —a theme on which Shri Gajendragadkar, a former Chief Justice of India, has laid disturbing stress in two Memorial Lectures delivered recently.(1) Jurists must listen to real life and, theory apart, must be alert enough to read the writing on the wall! Where the rule of law bars the doors of collective justice, the crushed class will seek hope in the streets! The architects of our Constitution were not unfamiliar with direct action where basic justice was long withheld and conceived of 'equal opportunity' as inclusive of equalising opportunity. Only a clinical study of organic law will yield correct diagnostic results.

Social engineering—which is Law in action— must adopt new strategies to liquidate encrusted group injustices or surrender society to traumatic tensions. Equilibrium, in human terms, emerges from

(1) (a) Govind Ballabh Pant Memorial Lecture & (b) Indian Democry—Its Major Imperatives (1975)—Mohan Kumaramangalam Memorial Lecture, p. 102.

A release of the handicapped and the primitive from persistent social disadvantage, by determined creative and canny legal manouvres of the State, not by hortative declaration of arid equality. 'To discriminate positively in favour of the weak may sometimes be promotion of genuine equality before the law' as Anthony Lester argued in his talk in the B.B.C. in 1970 in the series : 'What is wrong B with the Law'.(1) 'One law for the Lion and Ox is oppression'. Or, indeed as was said of another age by Anatole France, 'The law in its majestic equality forbids the rich as well as the poor to sleep under bridges, to beg in the streets and to steal bread'.(2) Redistributive justice to harijan humanity insists on effective reforms, designed to produce equal partnership of the erstwhile 'lowliest and the lost', by State action, informed by short-run and long-run C sociologically potent perspective planning and implementation. An uneven socio-economic landscape hardly gives the joy or equal opportunity and development or draw forth their best from manpower resources now wallowing in the low visibility areas of discontented life.

The domination of a class generates, after a long night of sleep D or stupor of the dominated, an angry awakening and protestant resistance and this conflict between thesis, *i.e.,* the *status quo,* and anti-thesis *i.e.,* the hunger for happy equality, propels new forces of synthesis *i.e.,* an equitable constitution order or just society. Our founding fathers, possessed of spiritual insight and influenced by the materialist interpretation of history, forestalled such social pressures and pre-empted such economic upsurges and gave us a E trinity of commitments—justice : social, economic and political. The 'equality Articles' are part of this scheme. My proposition is, given two alternative understandings of the relevant sub-Articles [Arts. 16(1) and (2)], the Court must so interpret the language as to remove that ugly 'inferiority' complex which has done genetic damage to Indian polity and thereby suppress the malady and advance the remedy, informed by sociology and social anthropology. My F touch-stone is that functional democracy postulates participation by all sections of the people and fair representation in administration is an index of such participation.

Justice Brennen, in a somewhat different social milieu, uttered words which may not be lost on us :(3)

G "Lincoln said this Nation was 'conceived in liberty and dedicated to the proposition that all men are created equal'. The Founders' dream of a society where all men are free and equal has not been easy to realize. The degree of liberty and equality that exists today has been the product

(1) Published in book form—Edited by Michael Zander—B.B.C., 1970—quoted in Mod. Law Rev. Vol. 33. Sept. 1970 p. 579:580.

H (2) 372 Ibid p. 580.

(3) Mr. Justice Brennan, concurring with the majority opinion of Mr. Justice Black in *Illinious* v. *Allen,* 197 U. S. 337 (1970).

> of unceasing struggle and sacrifice. Much remains to be done—so much that the very institutions of our society have come under challenge. Hence, today, as in Lincoln's time, a man may ask 'whether (this) nation or any nation so conceived and so dedicated can long endure'. It cannot endure if the Nation falls short on the guarantees of liberty, justice, and equality embodied in our founding documents. But it also cannot endure if our precious heritage of ordered liberty be allowed to be ripped apart amid the sound and fury of our time. It cannot endure if in individual cases the claims of social peace and order on the one side and of personal liberty on the other cannot be mutually resolved in the forum designated by the Constitution. If that resolution cannot be reached by judicial trial in a court of law, it will be reached elsewhere and by other means, and there will be grave danger that liberty, equality, and the order essential to both will be lost."

The Note to r. 13AA explains the immediate motivation behind the rule but the social backdrop set out by me helps us appreciate its constitutionality. However, we are under a Consitution and mere social anthropology cannot override the real words used in the Constitution. For, Judges may read, not reconstruct. Plainly harijans enjoy a *temporary advantage* over their non-harijan brethern by virtue of r. 13AA and this, it is plausibly urged by counsel for the contestants, is violative of the merciless mandate of equality 'enshrined' dually in Art. 16(1) and (2). It discriminates without constitutional justification and imports the caste differentia in the face of a contrary provision. The learned Advocate General seeks to meet it more by a legal realist's approach and, in a sense, by resort to functional jurisprudence. What is the constitutional core of equality ? What social philosophy animates it ? What luminous connotation does the pregnant, though terse, phrase 'equality of opportunity for all citizens in matters of employment' bear ? What excesses of discrimination are banned and what equalitarian implications invite administrative exploration ? Finally, what light do we derive from precedents of this Court on these facets of Art. 16 ? I will examine these contentious issues presently.

The Solicitor General, in his brief but able submissions, has offered a harmonious and value-based construction of the constitutional code guaranteeing equality (Arts. 14 to 16). Sri Garg has swung to extreme positions, some of which spill over beyond the specific issue arising in this case. Even so, I agree that a quickened social vision is needed to see in the Constitution what a myopic glimpse may not reveal.

A word of sociological caution. In the light of experience, here and elsewhere, the danger of 'reservation', it seems to me, is three-fold. Its benefits, by and large, are snatched away by the top creamy layer of the 'backward' caste or class, thus keeping the weakest among the weak always weak and leaving the fortunate layers to consume the whole cake. Secondly, this claim is over-played extravagantly in democracy by large and vocal groups whose burden of backwardness has been

A substantially lightened by the march of time and measures of better education and more opportunities of employment, but wish to wear the 'weaker section' label as a means to score over their near-equals formally categorised as the upper brackets. Lastly, a lasting solution to the problem comes only from improvement of social environment, added educational facilities and cross-fertilisation of castes by inter-caste and inter-class marriages sponsored as a massive State programme, and B this solution is calculatedly hidden from view by the higher 'backward' groups with a vested interest in the plums of backwardism. But social science research, not judicial impressionism, will alone tell the whole truth and a constant process of objective re-evaluation of progress registered by the 'under-dog' categories is essential lest a once deserving 'reservation' should be degraded into 'reverse discrimination'. Innovations C in administrative strategy to help the really untouched, *most backward* classes also emerge from such socio-legal studies and audit exercises, if dispassionately made. In fact, research conducted by the A. N. Sinha Institute of Social Studies, Patna, has revealed a dual society among harijans, a tiny elite gobbling up the benefits and the darker layers sleeping distances away from the special concessions. For them, Arts. 46 and 335 remain a noble romance'(1) the bonanza going to the 'higher' D harijans. I mention this in the present case because lower division clerks are likely to be drawn from the lowest levels of harijan humanity and promotion prospects being accelerated by withdrawing, for a time, 'test' qualifications for this category may perhaps delve deeper. An equalitarian break-throug in a hierarchical structure has to use many weapons and r. 13AA perhaps is one.

E The core conclusion I seek to emphasize is that every step needed to achieve in action, actual, equal, partnership for the harijans, alone amounts to social justice—not enshrinement of great rights in Part III and good goals in Part IV. Otherwise, the solemn undertakings in Arts. 14 to 16 read with Arts. 46 and 335 may be reduced to a 'teasing illusion or promise of unreality'. A clear vision of the true intendment of these provisions demands a deep understanding of the Indian spiritual-secular idea that divinity dwells in *all* and that ancient F environmental pollution and social placement, which the State must extirpate, account for the current socio-economic backwardness of the blacked-out human areas described euphemistically as Scheduled Castes and Scheduled Tribes. The roots of our constitutional ideas —at least some of them — can be traced to our ancient culture. The noble

(सहवीर्यं करवाव है)

G Upanishadic behest of collective acquisition of cultural strength is involved in and must evolve out of 'equality', if we are true to the subtle substance of our finer heritage.

Let me now turn to the essential controversy. Is rule 13AA valid as protective discrimination to the harijans? The Advocate General drew our attention to the Articles of the Constitution calculated to over- H come the iniquitous alienation of harijans from the three branches of

(1) As Huxley called it in "Administrative Nihilism"—(Methods & Results, Vol. 4 of Collected Essays).

Government. The Preamble to the Constitution silhouettes a "justice-oriented' community. The Directive Principles of State Policy, fundamental in the governance of the country, enjoin on the State the promotion '*with special care* the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, ... and protect them from social injustice'. To neglect this obligation is to play truant with Art. 46. Undoubtedly, economic interests of a group — as also social justice to it— are tied up with its place in the services under the State. Our history, unlike that of some other countries, has found a zealous pursuit of government jobs as a mark of share in State power and economic position. Moreover, the biggest—and expanding, with considerable State undertakings,— employer is Government, Central and State, so much so appointments in the public services matter increasingly in the prosperity of backward segments. The Scheduled Castes and Scheduled Tribes have earned special mention in Art. 46 and other 'weaker sections', in this context, means not every 'back-ward class' but those dismally depressed categories comparable economically and educationally to Scheduled Castes and Scheduled Tribes. To widen the vent is to vitiate the equal treatment which belongs to all citizens, many of whom are below the poverty line. Realism reveals that politically powerful *castes* may try to break into equality, using the masterkey of backwardness but leaving aside Art. 16(4), the ramparts of Art. 16(1) and (2) will resist such oblique infiltration.

Even so, does Art. 46 at all authorise the breach of uniform equality of opportunity guaranteed by Art. 16(1) ? Can a favoured treatment to harijans, by way of temporary concessions in passing tests, be founded on Art. 46 as a basis for rational classification? Is such a benign discrimination a caste-oriented legislation contravening Art. 16(2) ? Before I consider these vital questions, I may as well glance at some of the important pro-harijan provisions in the Constitution.

The Constitution itself makes a super-classification between harijans and others, grounded on the fundamental disparity in our society and the imperative social urgency of raising the former's sunken status. Apart from reservation of seats in the Legislatures for harijans, which is a deliberate departure, taking note of their utter backwardness (Art. 330 and 332, a special officer to investigate and report to the President upon the working of special constitutional safeguards made to protect harijans has to be appointed under Art. 338. Gross inadequacy of representation in public services is obviously one subject for investigation and report. More importantly, Art. 335, which Shri Garg relied on to hammer home his point, reads :

> "335. Claims of Scheduled Castes and Scheduled Tribes to services and posts.—The claims of the members of the Scheduled Castes and the Scheduled Tribes 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."

A This provision directs pointedly to (a) the *claims* of—not compassion towards—harijans to be given special consideration in the making of appointments to public services; and (b) lest this extra-attention should run riot and ruin administrative efficiency, a caution is uttered that maintenance of efficiency in administration should not suffer mayhem.

B Now we may deduce from these and other like Articles, unaided by authority, certain clear conclusions of great relevance to the present case : (1) The Constitution itself demarcates harijans from others. (2) This is based on the stark backwardness of this bottom layer of the community. (3) The differentiation has been made to cover specifically the area of appointments to posts under the State. (4) The twin objects, blended into one, are the *claims of* harijans to be considered in such posts and the maintenance of administrative efficiency. C (5) The State has been obligated to promote the economic interests of harijans and like backward classes, Arts. 46 and 335 being a testament and Arts. 14 to 16 being the tool-kit, if one may put it that way. To blink at this *panchsheel* is to be unjust to the Constitution.

Sri Krishnamoorthy Iyer, for the contesting respondents, argued that harijans may have been grouped separately for protective care D by the Constitution but its expression, in the matter of employment under the State, has to be subject to the fundamental right of every citizen like his clients to the enjoyment of equal opportunity and non-discrimination on the score of caste. His proposition is that, in the name of harijan welfare, dilution of Art. 16(1) and (2) is impermissible under the scheme of Part III which is paramount and contains enforceable guaranteed rights. Secondly, 'scheduled castes' are castes all the same E and preferment shown to them is plainly opposed to Art. 16(2). Thirdly, even Art. 335 insists on administrative tone, so essential to good government, and prolonged exemption from tests prescribed by the impugned rule, from the point of view of official efficiency, undermines this pertinent criterion. This Court has all along struck down measures of 'reserved' representation for backward classes in educational institutions and public services when a high proportion has been so F ear-marked, escalating the risk of making the Administration itself backward. Finally, the Constitution has set apart an exclusive exception to the equal opportunity rule in Art. 16(4), so much so Art. 46 and 335 must be projected through that provision only and cannot spill over into Art. 16(1) and (2). Fundamental rights are fundamental and cannot be cut back upon or insidiously eroded by the classificatory technique.

G Both the presentations have a flawless look, the controlling distinction being between two visions of the mood and message of the supreme law we call the Constitution, the dynamic and the static, the sociological and the formal. It is unexceptional to say that any insightful construction must opt for the former methodology and also seek a good fellowship among the various provisions, conventionally called 'harmonious construction'. In an elevating and organic instru- H ment, antagonisms cannot exist. If that be the lodester to help interpret the *suprema lex* we have to discover a note of unison in Arts. 16(1), (2) and (4) as well as Arts. 46 and 335, the background tune being

one of profound effort first to equalise and *then* to march together without class-creed distinction. The social engineering know-how of our constitution, viz., levelling up the groups buried under the debris by a generous consideration and thereafter enforcing strict equality among all—this two-tier process operating symbiotically, is the life of the law and the key to the 'equal opportunity' mechanism. Equally emphatic is the grave concern shown for a casteless and classless society—not in a magic instant but through a careful striving—and for the standards of performance of the Administration, noted from Curzon's days for drowsiness.

Efficiency means, in terms of good government, not marks in examinations only, but responsible and responsive service to the people. A chaotic genius is a grave danger in public administration. The inputs of efficiency include a sense of belonging and of accountability which springs in the bosom of the bureaucracy (not pejoratively used) if its composition takes in also the weaker segments of 'We, the people of India'. No other understanding can reconcile the claim of the radical Present and the hangover of the unjust Past.

Now to the precedential guidelines. I am alive to the correctly reluctant attitude of this Court to depart from precedent lest an unstable and uncertain situation be created. *Stare decisis et non quieta movere*. Khanna J. has rightly emphasized this great need but also quoted Brandeis and Cardozo JJ.(1) :

> "As observed by Brandeis, '*stare decisis* is always a desideratum, even in these constitutional cases. But in them, it is never a command'.
>
> x x x x x
>
> "As observed by Cardozo) :
>
> ... ... But I am ready to concede that the rule of adherence to precedent, though it ought not to be abandoned, ought to be in some degree relaxed. I think that when a rule, after it has been duly tested by experience, has been found to be inconsistent with the sense of justice or with the social welfare, there should be less hesitation in frank avowal and full abandonment. We have had to do this sometimes in the field of constitutional law'.

Anyway, here no case is being over-ruled because no case has said Scheduled Castes and Tribes are a *caste* nor that advancement of sunken sections of society consistently with administrative efficiency cannot be a rational object linked with outrageous backwardness of a class as the intelligible differentia within an official cadre.

Keshavananda Bharati(2) has clinched the issue of primacy as between Part III and Part IV of the Constitution. The unanimous

(1) per Khanna J. in *Magarlal* v. *Municipal Corporation*: [1975] 1 S. C. R. pp. 26 and 28.

(2) [1973] Supp. S.C.R. 1. A. I. R. 1973. S. C. 1461.

A ruling there is that the Court must wisely read the collective Directive Principles of Part IV into the individual fundamental rights of Part III, neither Part being superior to the other! Since the days of *Dorairajan*(1) judicial opinion has hesitatingly tilted in favour of Part III but in *Keshvananda Bharati* (supra) the supplementary theory, treating both Parts as fundamental, gained supremacy. Khanna J
B spoke with a profound sense of depth (if I may say so with respect) at p. 1878 :

> "The Directive Principles embody a commitment which was imposed by the Constitution makers on the State to bring about economic and social regeneration of the teeming millions who are steeped in poverty, ignorance and social backwardness. They incorporate a pledge to the coming
C generations of what the State would strive to usher in."
>
> * * * *
>
> "There should be no reluctance to abridge or regulate the fundamental rights to property if it was felt necessary to do so for changing the economic structure and attaining the objective contained in the Directive Principles."
D
>
> (at p. 1880)

Chandrachud J. has (again, I quote with deference) set the judicial sights straight in this passage (at p. 2050) :

> "What is fundamental in the governance of the country
E cannot surely be less significant than what is fundamental in the life of an individual. The freedoms of a few have to be abridged in order to ensure the freedom of all. If State fails to create conditions in which the Fundamental freedoms could be enjoyed by all, the freedom of the few will be at the mercy of the many and then all freedoms will vanish. In order, therefore, to preserve their freedom, the privileged
F few must part with a portion of it."

The upshot, after *Bharati,* (supra), is that Art. 46 to be given emphatic expression while interpreting Art. 16(1) and (2). Indeed, Art. 335 is more specific and cannot be brushed aside or truncated in the operational ambit *vis-a-vis* Art. 16(1) and (2) without hubristic aberration.

G We may clear the clog of Art. 16(2) as it stems from a confusion about *caste* in the terminology of Scheduled Castes and Scheduled Tribes. This latter expression has been defined in Arts. 341 and 342 A bare reading brings out the quintessential concept that they are no castes in the Hindu fold but an amalgam of castes, races, groups, tribes, communities or parts thereof found on investigation to be the
H lowliest and in need of massive State aid and notified as such by the President. To confuse this backward-most social composition with

(2) [1951] S. C. R. 525.

castes is to commit a constitutional error, misled by a compendious appellation. So that, to protect harijans is not to prejudice any *caste* but to promote citizen solidarity. Art. 16(2) is out of the way and to extend protective discrimination to this mixed bag of tribes, races, groups, communities and non-castes outside the four-fold Hindu division is not to compromise with the acceleration of castelessness enshrined in the sub-Article. The discerning sense of the Indian Corpus Juris has generally regarded Scheduled Castes and Scheduled Tribes, not as caste but as a large backward group deserving of societal compassion. The following provisions of the Income Tax Act, 1961 are illustrative of this principle :

"13. *Section* 11 *not to apply in certain cases* :

(1) (b) Nothing contained in s. 11 or s. 12 shall operate so as to exclude from the total income of the previous year of the person in receipt thereof

(a) ....

(b) in the case of a trust for charitable purposes or a charitable institution created or established after the commencement of this Act, any income thereof if the trust or institution is created or established for the benefit of any particular religious community or caste;

* * *

Explanation 2.—A trust or institution created or established for the benefit of Scheduled Castes, backward classes, Scheduled Tribes or women and children shall not be deemed to be a trust or institution created or established for the benefit of a religious community or caste within the meaning of clause (b) of sub-s. (1)."

The next hurdle in the appellant's path relates to Art. 16(4). To my mind, this sub-Article serves not as an exception but as an emphatic statement, one mode of reconciling the claims of backward people and the opportunity for free competition the forward sections are ordinarily entitled to. In the language of Subba Rao, J. (as he then was), in *Devadasan*(1) :

"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."

True, it may be loosely said that Art. 16(4) is an exception but, closely examined, it is an illustration of constitutionally sanctified classification.

(1) [1964] 4 S. C. R. 680, 700.

A

Public services have been a fascination for Indians even in British days, being a symbol of State power and so a special Article has been devoted to it. Art. 16(4) need not be a saving clause but put in due to the over-anxiety of the draftsman to make matters clear beyond possibility of doubt (see, for instance, 59 I.A. 206).

B 'Reservation' based on classification of backward and forward classes, without detriment to administrative standards (as this Court has underscored) is but an application of the principle of equality within a class and grouping based on a rational differentia, the object being advancement of backward classes consistently with efficiency. Arts. 16(1) and (4) are concordant. This Court has viewed Art. 16(4) as an exception to Art. 16(1). Does classification based on C desparate backwardness render Art. 16(4) redundant? No. Reservation confers *pro tanto* monopoly, but classification grants under Art. 16(1) ordinarily a lesser order of advantage. The former is more rigid, the latter more flexible, although they may overlap sometimes. Art. 16(4) covers all backward classes; but to earn the benefit of grouping under Art. 16(1) based on Art. 46 and 335 as I have explained, the twin considerations of terrible backwardness of the D type harijans endure and maintenance of administrative efficiency must be satisfied.

The surviving, but substantial, controversy centres round the 'equal opportunity' rule and its transgression, if any, by r. 13AA. The learned Advocate General fairly and rightly agreed that the impugned rule falls outside Art. 16(4). Therefore, he sought to E salvage the temporary exemption from passing tests by urging that a constitutionally valid classification was all that had been done and cited Indian rulings and American juridical writings in support of his stand.

It is platitudinous constitutional law that Arts. 14 to 16 are a common code of guaranteed equality, the first laying down the broad doctrine, the other two applying it to sensitive areas historically im- F portant and politically polemical in a climate of communalism and jobbery.

We need not tarry to consider whether Art. 16 applies to appointments on promotion. It does. Nor need we worry about administrative calamities if test qualifications are not acquired *for a time* by some hands. For one thing, these tests are not so telling on efficiency G as explained earlier by me. And, after all, we are dealing with clerical posts in the Registration Department where alert quailldriving and a smattering of special knowledge will make for smoother turn-out of duties. And the Government is only postponing, not foregoing, test qualification. As for the bearing of 'tests' on basic efficiency, everything depends on the circumstances of a case and the post.

H The basic question thus is one of social dynamics implied in Art. 16(1). Let us go to the fundamentals and ignore the frills. In a spacious sense, 'equal opportunity' for members of a hierarchical society makes sense only if a strategy by which the underprivileged

have environmental facilities for developing their full human potential. This consummation is accomplished only when the utterly depressed groups can claim a fair share in public life and economic activity, including employment under the State, or when a classless and casteless society blossoms as a result of positive State action. To help the lagging social segments, by special care, is a step towards and not against a larger and stabler equality. I had occasion to observe in *J & K State* v. *T. N. Khosa*(1).

> "In this unequal world the proposition that all men are equal has working limitations, since absolute equality leads to Procrustean cruelty or sanctions indolent inefficiency. Necessarily, therefore, an imaginative and constructive *modus vivendi* between commonness and excellence must be forged to make the equality clauses viable. This pragmatism produced the judicial gloss of 'classification' and differentia', with the by-products of equality among equals and dissimilar things having to be treated differently. The social meaning of arts. 14 to 16 is neither dull uniformity nor specious 'talentism'. It is a process of producing quality out of larger areas of equality extending better facilities to the latent capabilities of the lowly. It is not a methodology of substitution of pervasive and slovenly mediocrity for activist and intelligent—but not snobbish and uncommitted—cadres. However, if the State uses classification casuistically for salvaging status and elitism, the point of no return is reached for arts. 14 to 16 and the Court's jurisdiction awakens to dadden such manouvres. The soul of art. 16 is the promotion of the common man's capabilities, over-powering environmental adversities and opening up full opportunities to develop in official life without succumbing to the sophistic argument of the elite that talent is the privilege of the few and they must rule, wriggling out of the democratic imperative of arts. 14 and 16 by theory of classified equality which at its worst degenerates into class domination."

This observation was approved later by this Court in *Mohd. Shujat Ali* v. *Union of India*(2).

Sri Krishnamoorthy Iyer pressed before us, backed by a catena of cases, that this Court has frowned upon a classification for promotion from within a homogeneous group except when it is based on qualification for higher functional efficiency, and to inject a new ground for grouping within the class for promotion was constitutional anathema. I think not. The fact that better educational prescriptions for promotion posts have been upheld by this Court does not rule out other reasonable differentia, having a nexus with the object. The true test is, what is the object of the classification and is it permissible?

(1) [1974] 1 S. C. R. 771, 791. (2) A. I. R. 1974 S C. 1631 1653.

A Further, is the differentia sound and substantial and clearly related to the approved object? I agree this is virgin ground, but does not, for that reason alone, violate, equality. My conclusion is that the genius of Arts. 14 to 16 consists not in literal equality but in progressive elimination of pronounced inequality. Indeed, to treat sharply dissimilar persons equally is subtle injustice. Equal opportunity is a hope, not a menace.
B

If Art. 14 admits of reasonable classification, so does Art. 16(1) and this Court has held so. In the present case, the economic advancement and promotion of the claims of the grossly under-represented and pathetically neglected classes, otherwise described as Scheduled Castes and Scheduled Tribes, *consistently with the maintenance of administrative efficiency,* is the object, constitutionally
C sanctioned by Arts. 46 and 335 and reasonably accommodated in Art. 16(1). The differentia, so loudly obtrusive, is the dismal social milieu of harijans. Certainly this has a rational relation to the object set out above. I must repeat the note of caution earlier struck. Not all caste backwardness is recognised in this formula. To do so is subversive of both Art. 16(1) and (2). The social disparity must
D be so grim and substantial as to serve as a foundation for benign discrimination. If we search for such a class, we cannot find any large segment other than the Scheduled Castes and Scheduled Tribes. Any other *caste,* securing exemption from Art. 16(1) and (2), by exerting political pressure or other influence, will run the high risk of unconstitutional discrimination. If the *real* basis of classification is caste masked as backward class, the Court must strike at such communal
E manipulation. Secondly, the Constitution recognizes the *claims* of only harijans (Art. 335) and not of every backward class. The profile of Art. 46 is more or less the same. So, we may readily hold that casteism cannot come back by the backdoor and, except in exceptionally rare cases, no class other than harijans can jump the gauntlet of 'equal opportunity' guarantee. Their only hope is in Art. 16(4). I agree with my learned brother Fazal Ali J. in the view
F that the arithmetical limit of 50% in any one year set by some earlier rulings cannot perhaps be pressed too far. Overall representation in a department does not depend on recruitment in a particular year, but the total strength of a cadre. I agree with his construction of Art. 16(4) and his view about the 'carry forward' rule.

G The American jurisprudential response to the problem of repairing the handicaps of the coloureds in public employment and education is similar, although equal protection of the laws to all is assured by the 14th Amendment to the U.S. Constitution.

Jurisprudence, to be living law, must respond to the bhangi colony and the black ghetto intelligently enough to equalise opportunities within the social, political and economic orders, by making up
H for long spells of deprivation. Hence, if a court is convinced that the purpose of a measure using a suspect classification is truly benign, that is, that the measure represents an effort to use the classification

as part of a programme designed to achieve an equal position in society for all tribes and groups and communities, then it may be justified in permitting the State to choose the means for doing so, so long as the means chosen are reasonably related to achieving that end. The distinction would seem to be between handicaps imposed accidentally by nature and those resulting from societal arrangements such as caste structures and group suppression. Society being, in a broad sense, responsible for these latter conditions, it also has the duty to regard them as relevant differences among men and to compensate for them whenever they operate to prevent equal access to basic, minimal advantages enjoyed by other citizens. In a sense, the theory broadens the traditional concept of 'state action' to require government attention to those inequalities for which it is not directly responsible, but which nevertheless are concomitant features of the existence of the organized state. I quote from Harvard Law Review—1968-69. Vol. 82, excerpts from 'Developments in the Law—Equal Protection' :

> "A state might, for example, decide to give some racial groups *an exemption from qualification examinations* or establish a racial credit on such examinations to that often given to veterans"
>
> (p. 1105-06) (emphasis, mine)

* * * *

> "Where racial classifications are being used ostensibly to remedy deprivations arising from past and continuing racial discrimination, however a court might think it proper to judge the measures by a less stringent standard of review, possibly even the permissive or rationality standard normally used in constitutional appraisal of regulatory measures"
>
> (p. 1107)

* * * *

> Moreover, even if racial classifications do have some negative educative effects, the classifications may be so effective that they should be instituted despite this drawback. If the measures succeed in aiding blacks to obtain opportunities within the social, political and economic orders that have formerly been denied to them, they may be worth the cost of emphasizing men's differences. It may be that the actual participation of blacks in positions alongside whites will ultimately prove to have the most important and long-lasting educative effect against discrimination."
>
> (p. 1113)

A * * * *

"Hence, if a court is convinced that the purpose of a measure using a racial classification is truly benign, that is, that the measure represents an effort to use the classification as part of a program designed to achieve as equal position in society for all races, then it may be justified in permitting the state to choose the means for doing so, so long as the B means chosen are reasonably related to achieving that end."

(p. 1115)

Illustrative of an allied type of State action to eliminate gross group inequality for attaining general equality is a recent ruling of the U.S. Supreme Court. The good omen for American women in *Schlessinger* v. *Ballard*(1) is indicative of high judicial hunch in understanding the C classificatory clue to promotion of employment equality. The case related to a male challenge of a provision entitling women officers in the U.S. Navy to longer years of commissioned service. The Court remarked, upholding the unequal step to promote eventual gender equality, that :

"in enacting and retaining of Sec. 6401 Congress may D thus quite rationally have believed that women line officers had less opportunity for promotion than did their male counterparts and that a longer period of tenure for women officers would therefore be consistent with the goal to provide women officers with fair and equitable career advancement programs"

The key thought is the broader test of constitutional classification and E this reinforces my line of thinking.

It is a statistically proved social reality in India that the depressed employment position of harijans is the master problem in the battle against generations of retardation, and 'reservation' and other solutions have made no significant impact on their employment in public services. In such an unjust situation, to maintain mechanical equality F is to perpetuate actual inequality. A battery of several programmes to fight down this fell backwardness must be tried out by the State. Relaxation of 'tests' qualification at the floor level of clerical posts (lower or upper division) is a part of this multiform strategy to establish broader, though seemingly 'differential' equality.

If the Court has its listening posts on raw Indian earth, its assessment of 'equal opportunity' cannot remain legalistic or individualistic G but should see the age-old inequality to mend which is also the means to real equality, a demanding command of our Constitution. The poignant and ominous words of Sterling Tucker, in his book 'For Blacks. Only'(1) will awaken the judicial vision to the harijan situation and so I quote :

"If white Americans had learned to see us as we are, human H beings, like themselves without individual burdens of hope,

(1) 419. U-S. 42. L. Ed. 2. d 610.

(1) Reprinted by permission—Eurasia Publishing Hous Pvt. Ltd. New. Delhi—55.

or fear, they could have understood our rage and our defiance. They might have wished to accommodate to it, but they could have comprehended it. They could have understood our need for pride and grasped what black power meant to us. But as Ralph Ellison potently expressed, they never really saw us :

> I am an invisible man.. I am a man of substance, of flesh and bone, fiber and liquids,—and I might even be said to possess a mind. I am invisible, understand, simply because people refuse to see me.....When they approach me they see only my surrounding, themselves or figments of their imgaination—indeed, everything and anything except me.
>
> That invisibility to which I refer occurs because of a peculiar disposition of the eyes of those with whom I come in contact. A matter of the construction of their *inner* eyes, those eyes with which they look through their physical eyes upon reality....You wonder whether you aren't simply a phantom in other people's minds....You ache with the need to convince yourself that you do exist in the real world, that you're a part of all the sound and anguish, and you strike out with your fists, you course and you swear to make them recognize you. And, alas, it is seldom successful."

I end my opinion of concurrence with the learned Chief Justice with the admonition, induced by apprehension and for reasons already given, that no caste, however seemingly backward, or claiming to be derelict, can be allowed to breach the dykes of equality of opportunity guaranteed to all citizens. To them the answer is that, save in rare cases of 'chill penury repressing their noble rage', equality is equality—nothing less and nothing else. The heady upper berth occupants from 'backward' classes do double injury. They beguile the broad community into believing that backwardness is being banished. They rob the need-based bulk of the backward of the 'office' advantages the nation, by classification, reserves or proffers. The constitutional *dharma*, however, is not an unending deification of 'backwardness' and showering 'classified' homage, regardless of advancement registered, but progressive exorcising of the social evil and gradual withdrawal of artificial crutches. Here the Court has to be objective resisting mawkish politics. But, by that standard, as statistically shown to us in this case, harijan have'nots have 'miles to go' and so long, the Administration has 'promises to keep'.

GUPTA, J. I agree with brother Khanna J. that this appeal should be dismissed, and for the reasons given by him. I only wish to add a few words on one aspect of the question that arises for decision in this case.

The lower division clerks working in the Registration Department of the State of Kerala have to pass within a fixed time certain departmental tests to be eligible for promotion as upper division clerks. For

A some of these lower division clerks who happen to belong to Scheduled Castes or Scheduled Tribes, the time for passing the tests has been extended by successive orders made by the Government in exercise of the power conferred by Rule 13AA of the Kerala State and Subordinate Services Rules, 1958. The High Court of Kerala held that Rule 13AA was violative of Article 16(1) and (2) of the Constitution and set aside the orders made under that Rule. On behalf of the B appellant, State of Kerala, and some of the respondents and interveners, validity of Rule 13AA is sought to be justified on a construction of Article 16(1) which, it is claimed, is based on the provisions of Articles 46 and 335 of the Constitution. It is contended that Article 16(1) should be read in the light of the other two Articles. I am not clear as to what exactly that means; neither Article 46 and Article C 335 mention Article 16(1), nor Article 16(1) refers to either of them. All the three Articles co-exist in the Constitution which we, the People of India, have given to ourselves, and if it is correct to say that one of them should be read in the light of the other two, it is equally right to suggest that the two of them should be read in the light of the other. This means that the various parts of an organic instrument like the Constitution ought to be harmoniously construed, D but that is not the same thing as suggesting that even where the scope and ambit of one part is clear, it should be abridged, extended or amended to prove its affinity with another part. Each limb of the body has its own function, and to try to make one of them do the work of another is both unnecessary and unwise; this might throw the entire system out of gear.

E Article 16(1) declares a right which is one of the Fundamental rights guaranteed in Part III of the Constitution, and Article 13(1) invalidates all laws inconsistent with such rights. Article 16(1) lays down :

> "There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State."

F Article 46 is in Part IV of the Constitution containing the 'Directive Principles of State Policy' Article 46 reads :

> "The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes and shall protect them from social injustice G and all forms of exploitation."

Article 37 states that the provisions contained in Part IV shall not be enforceable by the courts but the principles embodied in them are "fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws". It is difficult to see how Article 46 which, so far as relevant for the present pur- H pose, requires the State to promote with special care the economic interests of the weaker sections of the people, especially of the Scheduled Castes and Scheduled Tribes, can serve as an aid to the construction of Article 16(1).

Article 335 occurs in Part XVI of the Constitution which contains some 'Special Provisions Relating to Certain Classes'. Article 335 provides :

> "The claims of the members of the Scheduled Castes and the Scheduled Tribes 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."

This Article does not create any right in the members of the Scheduled Castes and the Scheduled Tribes which they might claim in the matter of appointments to services and posts; one has to look elsewhere, Article 16(4) for instance, to find out the claims conceded to them. Article 335 says that such claims shall be considered consistently with administrative efficiency; this is a provision which does not enlarge but qualify such claims as they may have as members of the Scheduled Castes or Scheduled Tribes. Article 335, it seems clear, cannot furnish any clue to the understanding of Article 16(1).

Article 16(1) which ensures equality of opportunity for all citizens in matters relating to employment or appointment has been described as an instance or incident of the general guarantee of equality contained in Article 14 (see *State of Jammu & Kashmir* v. *T. N. Khosa & Ors.*(1). Article 14 which guarantees equality before the law and equal protection of the laws, it has been held, does not insist on absolute equality of treatment to all persons in disregard of all differences among them but provides for equality among equals only. This Court observed in *T. Devadasan* v. *The Union of India*(2) that "while the aim of this Article is to ensure that invidious distinction or arbitrary discrimination shall not be made by the State between a citizen and a citizen who answer the same description and the differences which may obtain between them and of no relevance for the purpose of applying a particular law, reasonable classification is permissible". Reasonable classification is thus permissible, and often necessary, to achieve this equality. Article 16(1) which is an instance of the application of the general rule of equality with special reference to opportunity for appointments under the State also does not require ". . . . . absolute equality as such. What is guaranteed is the equality of opportunity and nothing more. Article 16(1) or (2) does not prohibit the prescription of reasonable rules for selection to any employment or appointment to any office. Any provision as to the qualifications for the employment or the appointment to office reasonably fixed and applicable to all citizens would certainly be consistent with the doctrine of the equality of opportunity; but in regard to employment, like other terms and conditions associated with and incidental to it, the promotion to a selection post is also included in the matters relating to employment, and even in regard to such a promotion to a selection post all that Article 16(1) guarantees is equality of opportunity to all citizens who enter service"—*General Manager, Southern Railway* v. *Rangachari*(3). Article 16(1) thus contemplates classification on the basis of eligibility for an appointment; those who have

(1) [1974] 1 S. C. R. 771.
(2) [1964] 4 S. C. R. 680.
(3) [1962] 2 S. C. R. 586.

A the qualifications needed for the post form one class; it also implies that the same class of employees constitute a separate unit. In *Sham Sunder* v. *Union of India* (1), this Court explained that "Article 16(1) means equality as between members of the same class of employees" and forbids between the members of this class discrimination and denial of equal opportunity in the matter of promotion.

B The lower division clerks in the Registration Department of the State of Kerala belong to the same class as employees. Article 16(1) ensures to all of them equality of opportunity in the matter of promotion. Rule 13AA and the orders made thereunder giving additional opportunity in this regard to some out of the same class of employees would be obviously void unless the fact that the favoured members of the class belong to Scheduled Castes or Scheduled Tribes made any C difference in the position, as contended. It is argued that Scheduled Castes and Scheduled Tribes constitute a well-recognized class of citizens and, as Article 16(1) permits classification, employees belonging to these castes and tribes may be treated as a separate unit for promotion. It is claimed that Article 46 and Article 335 encourage such further classification within the same class which should therefore be regarded as valid for the purpose of Article 16(1). Two as- D sumptions are implicit in this argument: first, that Article 16(1) is subservient to Article 46 and Article 335 and has no requirements of its own and, secondly, that these two Articles justify the discrimination made by Rule 13AA. I do not consider either of those assumptions to be correct. I have stated already that neither Article 46 nor Article 335 is of any assistance in interpreting Article 16(1). Article 16(1) in clear terms insists on equality of opportunity for all employees E of the same class, and this requirement cannot be dispensed with because of anything in Article 46 or Article 335 which do not in any way qualify the guarantee in Article 16(1). The Article of course permits classification, but only such classification as is reasonable, and the test of reasonableness, having regard to the object of the Article, must be whether the proposed classification helps in achieving this object. Judging by this test, is it possible to hold the sub-division F of lower division clerks into two categories, those who belong to the Scheduled Castes and Scheduled Tribes and those who do not, as reasonable? I do not think so; such classification is not relevent to the object of the Article and, therefore, not reasonable.

Scheduled Castes and Scheduled Tribes are castes and tribes specified by the President under Articles 341 and 342 of the Constitution to be known as such for the purposes of the Constitution. It is G accepted that generally speaking these castes and tribes are backward in educational and economic fields. It is claimed that the expression "Scheduled Castes" does not refer to any caste of the Hindu Society but connotes a backward class of citizens. A look at Article 341 however will show that the expression means a number of existing social castes listed in a schedule; castes do not cease to be castes being put in a schedule though backwardness has come to be associated with them. Article 46 requires the State to promote the economic H interests of the weaker sections of the people and, in particular, of the Scheduled Castes and the Scheduled Tribes. The special reference to

(1) [1969] 1 S. C. R. 312.

the Scheduled Castes and the Scheduled Tribes does not suggest that the State should promote the economic interests of these castes and tribes at the expense of other "weaker sections of the people". I do not find anything reasonable in denying to some lower division clerks the same opportunity for promotion as others have because they do not belong to a particular caste or tribe. Scheduled Castes and Scheduled Tribes no doubt constitute a well-defined class, but a classification valid for one purpose may not be so for another; in the context of Article 16(1) the sub-class made by Rule 13AA within the same class of employees amounts to, in my opinion, discrimination only on grounds of race and caste which is forbidden by clause (2) of Article 16. In the *State of Rajasthan & Ors.* v. *Thakur Pratap Singh*(1) this Court struck down a notification under section 15 of the Police Act issued by the State of Rajasthan exempting the Harijan inhabitants of certain villages from payment of the cost of additional police force stationed in those villages. It was held that the notification discriminated against the law-abiding members of the other communities on the basis only of caste. I do not find it possible to accept that picking out employees belonging to the Scheduled Castes and Scheduled Tribes from the same class of lower division clerks to give them additional opportunity to be promoted as upper division clerks is a measure for the promotion of economic welfare of these castes and tribes. Some incidental financial gain to certain individuals, assuming it results in the welfare of the castes and tribes to which they belong in some remote and indirect way, is not in my view, what Article 46 contemplates; the other view of Article 46 would justify as valid the exemption granted to the Harijan villagers of Thakur Pratap Singh's case from payment of the cost of additional police force. In any case, Article 16(1), as I have sought to explain earlier, does not permit such classification as made by Rule 13AA. That Rule may have been inspired by Article 46 which requires the State to take measures to bridge the educational and economic gap between the weaker sections of the people and other citizens, but Article 46 does not qualify the provisions of Article 16(1). Article 16(1) speaks of equality of opportunity, not opportunity to achieve equality. For reasons I have stated already, Article 335 appears to be even less relevant on the question under consideration.

All I have said above relates to the scope of Article 16(1) only, because counsel for the appellant has built his case on this provision alone. Clause (4) of Article 16 permits reservation of appointments or posts in favour of backward classes of citizens notwithstanding Article 16(1); I agree with the views expressed by Khanna J. on Article 16(4) which comes in for consideration incidentally in this case. The appalling poverty and backwardness of large sections of the people must move the State machinery to do everything in its power to better their condition but doling out unequal favours to members of the clerical staff does not seem to be a step in that direction: tilting at the windmill taking it to be a monster serves no useful purpose.

(1) [1961] Supp. 1. S. C. R. 222.

A It may be pertinent in this connection to refer to the observations of Gajendragadkar J. (as he then was) in *M. R. Balaji & Ors.* v. *State of Mysore*,(1) which, though made in the context of Article 15(4), has relevance for this case also :

> "When Art. 15(4) refers to the special provision for the advancement of certain classes or scheduled castes or scheduled tribes, it must not be ignored that the provision which is authorised to be made is a special provision; it is not a provision which is exclusive in character, so that in looking after the advancement of those classes, the State would be justified in ignoring altogether the advancement of the rest of the society. It is because the interests of the society at large would be served by promoting the advancement of the weaker elements in the society that Art. 15(4) authorises special provision to be made. But if a provision which is in the nature of an exception completely excludes the rest of the society, that clearly is outside the scope of Art. 15(4). It would be extremely unreasonable to assume that in enacting Art. 15(4) the Parliament intended to provide that where the advancement of the Backward Classes or the Scheduled Castes and Tribes was concerned, the fundamental rights of the citizens constituting the rest of the society were to be completely and absolutely ignored."

More recently, in the *State of Jammu & Kashmir* v. *T. N. Khosa & Ors.* (supra) this Court has sounded a note of caution :

> ".....let us not evolve, through imperceptible extensions, a theory of classification which may subvert, perhaps submerge, the precious guarantee of equality. The eminent spirit of an ideal society is equality and so we must not be left to ask in wonderment : what after all is the operational residue of equality and equal opportunity ?"

I believe these words are not just so much rhetoric, but mean to be taken seriously.

I concur with the order proposed by Khanna J.

FAZAL ALI J. I agree with the lucid judgment proposed by my Lord the Chief Justice, but I would like to add a few lines of my own highlighting some of the important aspects which arise in this appeal.

The facts of this appeal lie within a very narrow compass. This appeal by certificate is directed against the judgment of the Kerala High Court dated April 19, 1974. The judgment has struck down r. 13-A.A. of the Kerala State and Subordinate Service Rules, 1958. The impugned rule was substituted by Government Order (P) 21/PD dated January 13, 1972. It appears that the main dispute between the appellants and respondent No. 1 centres round the promotion of some Lower Division Clerks to the grade of Upper Division Clerks.

(1) [1963] Supp. 1 S.C.R, 439.

The grievance of respondent No. 1 before the High Court was that some of the Lower Division Clerks who were members of scheduled castes or scheduled tribes were shown a preferential treatment in that they had been promoted to the higher grade of Upper Division Clerks in spite of the fact that they had not cleared the test prescribed for reaching the said grade. The Government of Kerala selected the respondent for hostile discrimination as against these persons by granting extension after extension to the members belonging to the scheduled castes or tribes so as to enable them to pass the test. The series of such extensions culminated into the order creating r. 13-A.A. which was wholly discriminatory and violative of Art. 16 of the Constitution of India. The plea of respondent No. 1 appears to have found favour with the High Court which held that r. 13-A.A. was discriminatory and was clearly violative of Art. 16(1) of the Constitution and was also beyond the reservation permitted by clause (4) of Art. 16.

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It may be necessary here to mention a few admitted facts. In the first place it is not disputed that respondent No. 1 himself passed the test necessary for promotion to the Upper grade on November 2, 1971. It is, therefore, manifest that whatever grievance the respondent No. 1 may have against the other clerks, he cannot put forward his claim for being promoted earlier than November 2, 1971 i.e. before the time he passed the test. In these circumstances extensions granted by the Government to the clerks belonging to the scheduled castes or tribes from 1958 to 1972 and thereafter upto 1974 will affect the respondent No. 1 only after November 2, 1971 and not before that. Secondly it is also not denied that the Lower Division Clerks belonging to the scheduled castes and tribes were undoubtedly senior to the respondent No. 1 and had been promoted on the express condition that unless they passed the test prescribed by the Government they would have to be reverted. This was obviously done to advance and lift the members of the scheduled castes and tribes who were backward class of citizens so that they may be able to compete with the other stronger sections of the society. It may also be mentioned here that the promotees were not completely exempted from the test but they were given extension of time for passing the test. Thus it is obvious that but for the passing of the test the respondent No. 1 could not have any other claim to promotion as Upper Division Clerk. The respondent No. 1 was previously serving as a Lower Division Clerk in the Registration Department at Kottayam but is at present serving in Chitty Auditor's Office at Kottayam. Lastly it is also admitted that the promotees against whom the respondent No. 1 has a grievance were undoubtedly members of the scheduled castes or tribes and such Lower Division Clerks belonging to the scheduled castes or tribes will hereafter be referred as 'the promotees' for the purpose of brevity.

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In the background of these admitted facts, we have now to see whether r. 13-A.A. violates Art. 16(1) of the Constitution in any way. The High Court has struck down r. 13-A.A. on three grounds:

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(1) that it is beyond the permissible limits of clause (4) of Art. 16;

A (2) that by virtue of the carry-forward rule the Government has promoted more than 62% of the clerks belonging to the scheduled castes and tribes and have thereby destroyed the concept of equality; and

(3) that the rule is discriminatory inasmuch as it makes an uncalled for distinction between the members of the same service and classification made by the Government is B neither reasonable nor rational.

It may be mentioned here that the High Court has not disputed that the members of the scheduled castes and tribes were not adequately represented in the services under the State of Kerala which is the positive case of the appellants before us. The High Court has traced the history of the various orders passed by the Government of C Kerala from 1951 to 1972 granting extensions for two years, three years and so on, to the promotees a fact which was not at all germane for the purpose of this case—because the respondent No. 1 who was the petitioner before the High Court himself admitted that he had passed the test held on November 2, 1971. Thus the conduct of the Government in granting extensions prior to November 2, 1971 was wholly irrelevant in order to decide the question of discrimination as D canvessed by respondent No. 1.

Mr. M. M. Abdul Khader, Advocate General of Kerala appearing for the appellants submitted two points before us. In the first place he argued that r. 13-A.A. did not provide for reservation as contemplated by clause (4) of Art. 16 of the Constitution and the High Court was, therefore, in error in striking down the rule because it exceeded the permissible limits of clause (4) of Art. 16. Secondly it was sub- E mitted that the members of the scheduled castes and tribes were not only members of one caste but for historical reasons they are a special class by themselves and they have been given an exalted status under the Constitution itself. There is thus nothing in Art. 16(1) of the Constitution to prevent the State from making reasonable classification in order to boost up the members of the scheduled castes and tribes by giving concessions without imperilling the efficiency of the services. F The State action in the instant case was, therefore, justified by the Advocate General of Kerala on the ground that it had only implemented the directive principles contained in Part IV of the Constitution. Mr. L. N. Sinha, Solicitor-General appearing for the Attorney General of India and Mr. R. K. Garg appearing for the intervener State of U.P. also more or less supported the stand taken by the Advocate General of Kerala.

G Mr. T. S. Krishnamoorthy Iyer appearing for the respondent No. 1, however, submitted that classification could only be made under clause (4) of Art. 16. In the instant case even if the provisions contained in r. 13-A.A. be deemed a reservation within the meaning of clause (4) of Art. 16 they exceed the permissible limits and destroy the concept of equality. Secondly it was argued that as the respondent No. 1 and the promotees were members of the same class of H service they were equally circumstanced and any discrimination made in favour of the promotees was clearly hit by Art. 16(1) of the Consti-

tution. It was also faintly suggested by him that there was no reliable evidence to show that the members of the scheduled castes and tribes were not adequately represented in the services under the State so as to justify any classification being made in their favour.

In order to understand the arguments put forward by the parties it may be necessary to examine the nature and extent of the provisions of Art. 16 of the Constitution of India. Article 16 may be extracted as follows :

> "16 .(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.
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> (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 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.
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> (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.
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> (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."

It is no doubt true that Art. 16(1) provides for equality of opportunity for all citizens in the services under the State. It is, however, well-settled that the doctrine contained in Art. 16 is a hard and reeling reality, a concrete and constructive concept and not a rigid rule or an empty formula. It is also equally well-settled by several authorities of this Court that Art. 16 is merely an incident of Art. 14, Art. 14 being the genus is of universal application whereas Art. 16 is the species and seeks to obtain equality of opportunity in the services under the State. The theory of reasonable classification is implicit and inherent in the concept of equality for there can hardly be any country where all the citizens would be equal in all respects. Equality of opportunity would naturally mean a fair opportunity not only to one section or

A the other but to all sections by removing the handicaps if a particular section of the society suffers from the same. It has never been disputed in judicial pronouncements by this Court as also of the various High Courts that Art. 14 permits reasonable classification. But what Art. 14 or Art. 16 forbid is hostile discrimination and not reasonable classification. In other words, the idea of classification is implicit in the concept of equality because equality means equality to all and
B not merely to the advanced and educated sections of the society. It follows, therefore, that in order to provide equality of opportunity to all citizens of our country, every class of citizens must have a sense of equal participation in building up an egalitarian society, where there is peace and plently, where there is complete economic freedom and there is no pestilence or poverty, no discrimination and oppression, where there is equal opportunity to education, to work, to earn their
C livelihood so that the goal of social justice is achieved. Could we, while conferring benefits on the stronger and the more advanced sections of the society, ignore the more backward classes merely because they cannot come upto the fixed standards? Such a course, in my opinion, would lead to denial of opportunity to the backward classes resulting in complete annihilation of the concept of equality contained in Arts. 14 and 16. The only manner in which the objective of equality as con-
D templated by the founding fathers of our Constitution and as enshrined in Arts. 14 and 16 can be achieved is to boost up the backward classes by giving them concessions, relaxations, facilities, removing handicaps, and making suitable reservations so that the weaker sections of the people may compete with the more advanced and in due course of time all may become equals and backwardness is banished for ever. This can happen only when we achieve complete economic and social
E freedom. In our vast country where we have diverse races and classes of people, some of whom are drowned in the sea of ignorance and illiteracy, the concept of equality assumes very important proportions. There are a number of areas in some States like Kashsmir, Sikkim, hilly areas of U.P., Bihar and the South, where due to lack of communication or transport, absence of proper educational facilities or because of old customs and conventions and other environmental reasons, the
F people are both socially and educationally backward. Could we say that the citizens hailing from these areas should continue to remain backward merely because they fall short of certain artificial standards fixed by various institutions? The answer must be in the negative. The directive principles enshrined in our Constitution contain a clear mandate to achieve equality and social justice. Without going into the vexed question as to whether or not the directive principles con-
G tained in Part IV override the fundamental rights in Part III there appears to be a complete unanimity of judicial opinion of this Court that the directive principles and the fundamental rights should be construed in harmony with each other and every attempt should be made by the Court to resolve any apparent inconsistency. The directive principles contained in Part IV constitute the stairs to climb the high
H edifice of a socialistic State and the fundamental rights are the means through which one can reach the top of the edifice. I am fortified in my view by several decisions of this Court to which I will refer briefly.

In *Re. The Kerala Education Bill,* 1957(1) this Court observed at p. 1022 : A

> "Nevertheless, in determining the scope and ambit of the fundamental rights relied on by or on behalf of any person or body the court may not entirely ignore these directive principles of State policy laid down in Art IV of the Constitution but should adopt the principle of harmonious construction and should attempt to give effect to both as much as possible." B

In *Mohd. Hanif Quareshi & others* v. *The State of Bihar*(2) this Court observed as follows :

> "The directive principles cannot over-ride this categorical restriction imposed on the legislative power of the State. A harmonious interpretation has to be placed upon the Constitution and so interpreted it means that the State should certainly implement the directive principles but it must do so in such a way that its laws do not take away or abridge the fundamental rights....." C

In *I. C. Golak Nath & Others* v. *State of Punjab & Anr.*(3) it was observed by this Court : D

> "At the same time Parts III and IV constituted an integrated scheme forming a self-contained code. The scheme is made so elastic that all the Directive Principles of State Policy can reasonably be enforced without taking away or abridging the fundamental rights." E

In Chandra Bhavan Boarding and Lodging, Bangalore v. *The State of Mysore and Anr.*(4) this Court observed :

> "It is a fallacy to think that under our Constitution there are only rights and no duties. While rights conferred under Part III are fundamental, the directives given under Part IV are fundamental in the governance of the country. We see no conflict on the whole between the provisions contained in Part III and Part IV. ..... The mandate of the Constitution is to build a welfare society in which justice social, economic and political shall inform all institutions of our national life. The hopes and aspirations aroused by the Constitution will be belied if the minimum needs of the lowest of our citizens are not met." F G

Finally the matter has been extensively considered by the Full Court in *His Holiness Kesavananda Bharati Sripadagalvaru* v. *State of Kerala & Anr.*(5) where Shelat and Grover, JJ., observed : (p. 427)

> "While most cherished freedoms and rights have been guaranteed the Government has been laid under a solemn H

(1) [1959] S. C. R. 995.
(2) (1959) S. C. R. 629, 648.
(3) [1967] 2 S. C. R. 762, 789-790.
(4) [1970] 2 S. C. R. 600, 612.
(5) [1973] 4 S. C. C. 225.

A duty to give effect to the Directive Principles. Both Parts III and IV which embody them have to be balanced and harmonised—then alone the dignity of the individual can be achieved."

They further observed : (p. 459)

B "Our Constitution-makers did not contemplate any disharmony between the fundamental rights and the directive principles. They were meant to supplement one another. It can well be said that the directive principles prescribed the goal to be attained and the fundamental rights laid down the means by which that goal was to be achieved."

Hegde and Mukherjea, JJ., observed : (p. 503).

C "Our founding fathers were satisfied that there is no antithesis between the Fundamental Rights and the Directive Principles. One supplements the other. The Directives lay down the end to be achieved and Part III prescribes the means through which the goal is to be reached."

Ray, J., as he then was and now C.J., observed : (p. 580)

D "But the Directive Principles are also fundamental. They can be effective if they are to prevail over fundamental rights of a few in order to subserve the common good and not to allow economic system to result to the common detriment. It is the duty of the State to promote common good."

He further observed : (p. 589)

E "Parts III and IV of the Constitution touch each other and modify. They are not parallel to each other. Different legislation will bring in different social Principles. These will not be permissible without social content operating in a flexible manner."

F Jaganmohan Reddy, J., observed : (p. 640)

"There can be no doubt that the object of the Fundamental Rights is to ensure the ideal of political democracy and prevent authoritarian rule, while the object of the Directive Principles of State Policy is to establish a welfare State where there is economic and social freedom without which political democracy has no meaning. What is implicit in the Constitution is that there is a duty on the Courts to interpret the Constitution and the laws to further the Directive Principles which under article 37, are fundamental in the governance of the country."

Palekar, J., observed : (p. 711)

H "The Preamble read as a whole, therefore, does not contain the implication that in any genuine implementation of the Directive Principles, a fundamental right will not suffer any diminution."

Mathew, J., observed: (p. 878)

> "I can see no incongruity in holding, when article 37 says in its latter part "it shall be the duty of the State to apply these principles in making laws", that judicial process is State action and that the judiciary is bound to apply the Directive Principles in making its judgment."

Beg, J., observed: (p. 902)

> "Perhaps, the best way of describing the relationship between the fundamental rights of individual citizens, which imposed corresponding obligations upon the State and the Directive Principles, would be to look upon the Directive Principles as laying down the path of the country's progress towards the allied objectives and aims stated in the Preamble, with fundamental rights as the limits of that path, ..."

Chandrachud, J., observed: (p. 962)

> "Our decision of this vexed question must depend upon the postulate of our Constitution which aims at bringing about a synthesis between 'Fundamental Rights' and the 'Directive Principles of State Policy', by giving to the former a pride of place and to the latter a place of permanence. Together, not individually, they form the core of the Constitution. Together, not individually, they constitute its true conscience."

In view of the principles adumbrated by this Court it is clear that the directive principles form the fundamental feature and the social conscience of the Constitution and the Constitution enjoins upon the State to implement these directive principles. The directives thus provide the policy, the guidelines and the end of socio-economic freedom and Arts. 14 and 16 are the means to implement the policy to achieve the ends sought to be promoted by the directive principles. So far as the Courts are concerned where there is no apparent inconsistency between the directive principles contained in Part IV and the fundamental rights mentioned in Part III, which in fact supplement each other, there is no difficulty in putting a harmonious construction which advances the object of the Constitution. Once this basic fact is kept in mind, the interpretation of Arts. 14 and 16 and their scope and ambit become as clear as day.

In the instant case one of the main planks of the argument put forward by Mr. M. M. Abdul Khader, Advocate-General, Kerala, was that so far as the scheduled castes and the scheduled tribes were concerned they had been given an exalted and privileged status under the Constitution and in the directive principles contained in Part IV which contain a mandate to the State to consider their claims. It is necessary to consider this aspect of the matter in a little detail, because the main argument of Mr. Abdul Khader has been that the scheduled castes and tribes did not fall at all within the mischief of clause (2) of Art. 16 which prohibits discrimination on the ground of caste etc. The scheduled caste is not caste as mentioned in Art. 16(2). I am inclined to agree with the argument advanced by the Advocate General that the word

A 'caste' appearing after 'scheduled' is really a misnomer and has been used only for the purpose of identifying this particular class of citizens which has a special history of several hundred years behind it. The scheduled castes and scheduled tribes have been a special class of citizens who have been so included and described that they have come to be identified as the most backward classes of citizens that we have in our country. Article 366 clauses (24) & (25) of the Constitution read thus:

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366 "(24) "Scheduled Castes" means such castes, races o rtribes or parts of or groups within such castes, races or tribes as are deemed under article 341 to be Scheduled Castes for the purposes of this Constitution;

(25) "Scheduled Tribes" means such tribes or tribal communities or parts of or groups within such tribes or tribal communities as are deemed under article 342 to be Scheduled Tribes for the purposes of this Constitution;"

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These constitutional provisions, therefore, create a presumption in favour of scheduled castes and scheduled tribes that they are backward classes of citizens. It is not disputed that the members of the scheduled castes and scheduled tribes are specified in the notifications issued under

D Arts. 341 and 342 of the Constitution and, therefore, they must be deemed to be scheduled castes and scheduled tribes for the purposes of the Constitution.

Article 46 of the Constitution runs thus:

"The State shall promote with special care the educational and economic interests of the weaker sections of the people,

E and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation."

Properly analysed this article contains a mandate on the State to take special care for the educational and economic interests of the weaker sections of the people and as illustrations of the persons who constitute

F the weaker sections the provision expressly mentions the scheduled castes and the scheduled tribes.

A combined reading of Art. 46 and clauses (24) & (25) of Art. 366 clearly shows that the members of the scheduled castes and the scheduled tribes must be presumed to be backward classes of citizens, particularly when the Constitution gives the example of the scheduled castes

G and the scheduled tribes as being the weaker sections of the society.

Similarly Art. 335 which expressly provides that the claims of the members of the scheduled castes and the scheduled tribes shall be taken into consideration runs thus:

"The claims of the members of the Scheduled Castes and

H the Scheduled Tribes 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."

Thus in view of these provisions the members of the scheduled castes and the scheduled tribes have been given a special status in the Constitution and they constitute a class by themselves. That being the position it follows that they do not fall within the purview of Art. 16(2) of the Constitution which prohibits discrimination between the members of the same caste. If, therefore, the members of the scheduled castes and the scheduled tribes are not castes, then it is open to the State to make reasonable classification in order to advance or lift these classes so that they may be able to be properly represented in the services under the State. This can undoubtedly be done under Art. 16(1) of the Constitution.

Before, however, examining the nature of classification that can be made by the Government under Art. 16(1) of the Constitution it may be necessary to state three principles which are supported by abundant authority :

(1) That Art. 16 is merely an incident of Art. 14 and both these articles form a part of the common system seeking to achieve the same end. I am fortified in my view by several decisions of this Court. In *State of Jammu & Kashmir* v. *Triloki Nath Khosa & Ors.*(1) this Court observed : (p. 783)

> "Article 16 of the Constitution which ensures to all citizens equality of opportunity in matters relating to employment is but an instance or incident of the guarantee of equality contained in article 14. The concept of equal opportunity undoubtedly permeates the whole spectrum of an individual's employment from appointment through promotion and termination to the payment of gratuity and pension."

In *Mohammad Shujat Ali and others* v. *Union of India and others*(2) this Court observed :

> "Article 14 ensures to every person equality before law and equal protection of the laws and Article 16 lays down that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. Article 16 is only an instance or incident of the guarantee of equality enshrined in Article 14; it gives effect to the doctrine of equality in the sphere of public employment. The concept of equal opportunity to be found in Article 16 permeates the whole spectrum of an individual's employment from appointment through promotion and termination to the payment of gratuity and pension and gives expression to the ideal of equality of opportunity which is one of the great socio-economic objectives set out in the Preamble of the Constitution."

In *Govind Dattatray Kelkar and others* v. *Chief Controller of Imports & Exports and others,*(3) this Court observed :

(1) [1974] 1 S. C. R. 771, 783. (2) [1975] 3 S. C. C. 76, 102.
(3) [1967] 2 S. C. R. 29, 33.

A "Art. 16 of the Constitution is only an incident of the application of the concept of equality enshrined in Art. 14 thereof. It gives effect to the doctrine of equality in the matter of appointment and promotion. It follows that there can be a reasonable classification of the employees for the purpose of appointment or promotion."

B The same view was expressed by this Court in *S. G. Jaisinghani* v. *Union of India and ohers.*(1)

In *The General Manager, Southern Railway* v. *Rangachari*(2) this Court observed :

"In this connection it may be relevant to remember
C that Art. 16(1) and (2) really give effect to the equality before law guaranteed by Art. 14 and to the prohibition of discrimination guaranteed by Art. 15(1). The three provisions form part of the same constitutional code of guarantees and supplement each other. If that be so, there would be no difficulty in holding that the matters relating to employment must include all matters in relation to em-
D ployment both prior, and subsequent, to the employment which are incidental to the employment and form part of the terms and conditions of such employment."

(2) It is also well-settled that Art. 16 applies to all classes of appointment including promotions and selection posts. It has been observed by this Court in *C. A. Rajendran* v. *Union of India and Ors.*(3) :

E "The first question to be considered in this case is whether there is a constitutional duty or obligation imposed upon the Union Government to make reservations for Scheduled Castes and Scheduled Tribes either at the initial stage of recruitment and at the stage of promotion in the Railway Board Secretariat Service Scheme.

F The relevant law on the subject is well-settled. Under Art. 16 of the Constitution there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State or to promotion from one office to a higher office thereunder. Articles 14, 15 and 16 form part of the same constitutional code of guarantees and
G supplement each other. In other words, Art. 16 of the Constitution is only an incident of the application of the concept of equality enshrined in Art. 14 thereof. It gives effect to the doctrine of equality in the matter of appointment and promotion. It follows therefore that there can be a reasonable classification of the employees for the purpose of appointment and promotion."

H (3) That Article 16 permits a valid classification.

(1) [1967] 2 S.C.R. 703, 712. (2) [1962] 2 S.C.R. 586, 597.

(3) [1968] 1 S.C.R. 721, 728-729.

In *State of Jammu & Kashmir* v. *Triloki Nath Khosa and others* (supra) it was observed by this Court :

> "Since the constitutional code of equality and equal opportunity is a charter for equals, equality of opportunity in matters of promotion means an equal promotional opportunity for persons who fall, substantively, within the same class. A classification of employees can therefore be made for first identifying and then distinguishing members of one class from those of another."

The same view has been expressed by this Court in *C.A. Rajendran's* case; in *S. G. Jaisinghani's* case; *Rangachari's* case and *Mohammad Shujat Ali's* case, quoted supra.

The concept of equality or equal opportunity as contained in Art. 16 does not mean that same laws must be applicable to all persons under every circumstance. Indeed if this artificial interpretation is put on the scope and ambit of Art. 16 it will lead to channelisation of legislation or polarisation of rules. Differences and disparities exist among men and things and they cannot be treated alike by the application of the same laws but the law has to come to terms with life and must be able to recognise the genuine differences and disparities that exist in human nature. Legislature has also to enact legislation to meet specific ends by making a reasonable and rational classification. In *Morey* v. *Doud*(1) it was so aptly observed :

> "To recognise marked differences that exist in fact is living law; to disregard practical differences and concentrate on some abstract identities is lifeless logic."

Coming now to Art. 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 Art. 16.

Category II—Clause (2) of Art. 16.

Category III—Clause (4) of Art. 16.

Clause (1) of Art. 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 the 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;

A (iii) it should not select any person for hostile discrimination at the cost of others.

Now let us see whether r. 13-A.A. can be justifiable under clause (1) of Art. 16. Rule 13-A.A. of the Rules reads thus :

> "Notwithstanding anything contained in these rules, the Government may, by order, exempt for a specified period, any
> B member or members, belonging to a Scheduled Caste or a Scheduled Tribe, and already in service, from passing the tests referred to in rule 13 or rule 13A of the said Rules."

What the rule does is merely to authorise the Government to exempt for a specified period any member or members of the scheduled castes and scheduled tribes from passing the tests referred to in r. 13 and r. 13A. It may be noticed that this rule does not at all give a complete licence.
C A Lower Division Clerk who is a member of the scheduled caste or schedule tribe could not be promoted without passing any test at all so as to destroy the concept of equality. It merely gives a special concession or a temporary relaxation to backward class of citizens in order to lift them, advance them and enable them to compete with the stronger sections of the society. Thus the basis of the rule is undoubtedly both
D rational and reasonable.

Article 335 of the Constitution contains a mandate to the State for considering the claims of the members of the scheduled castes and the scheduled tribes consistently with the maintenance of efficiency of administration. By giving the special concessions to the promotees this mandate is sought to be obeyed by the Government. Mr. T. S. Krishnamoorthy Iyer counsel for the respondent No. 1 submitted that the
E mandate given in Art. 335 is violated because by granting exemption to the members of the scheduled castes and tribes the standard of efficiency of the services would be impaired. We are, however, unable to agree with the argument. Both the respondent No. 1 and the promotees were members of the same service and had been working as Lower Division Clerks for a pretty long time. The promotees who were members of the scheduled castes and tribes are admittedly senior to
F respondent No. 1 and have gained more experience. Further the rule does not grant complete exemption to the promotees from passing the test; it only provides for grant of extension of time to enable them to clear the test. In these circumstances it cannot be held that the State's action in incorporating r. 13-A.A. in any way violates the mandate contained in Art. 335. In these circumstances, therefore, I am clearly satisfied that the concession given in r. 13-A.A. amounts to a
G reasonable classification which can be made under Art. 16(1) of the Constitution and does not amount to the selection of the respondent No. 1 for hostile discrimination so as to be violative of Art. 16(1) of the Constitution of India.

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

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> "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 Art. 16(2) then they do not fall within the mischief of Art. 16(2) at all. Thus the case of the promotees squarely falls within the four corners of Art. 16(1) and can be justified as based on reasonable classification.

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 favourtism 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 r. 13-A.A. is fully justified by Art. 16 of the Constitution.

This brings us to the consideration of Category-III which is clause (4) of Art. 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 Art. 16 of the Constitution cannot be read in isolation but has to be read as part and parcel of Art. 16(1) & (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 Art. 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 Art. 16(4) of the Constitution which is completely exhaustive on this point. That is to say clause (4) of Art. 16 is not an exception to Art. 14 in the sense that whatever classification can be made can be done only through clause (4) of Art. 16. Clause (4) of Art. 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 Art. 16 deals exclusively with reservation and not other forms of classification which can be made under Art. 16(1) itself. Since clause (4) is a special provision regarding reservation, it can safely be held that it overrides Art. 16(1) to that extent and no reservation can be made under Art. 16(1). It is true that there are some authorities of this

A Court that clause (4) is an exception to Art. 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.

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

C 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 Art. 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 D sought to be achieved by Art. 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 E 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 Art. 16(1) because it does not fall within the reservation contemplated by clause (4) of Art. 16? It is obvious that the F 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 far-fetched 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 G 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 Art. 16(1) and not under clause (4) of Art. 16.

For these reasons, therefore, I respectfully agree with the observations of Subba Rao, J., as he then was in *T. Devadasan* v. *The Union of India and Anr*(1) where he observed :

H "That is why the makers of the Constitution introduced cl. (4) in Art. 16. The expression "nothing in this article" is a legislative device to express its intention in a most

(1) [1964] 4 S.C.R. 680.

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

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

Now analysing clause (4) of Art. 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.

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's case* supra.

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

So far as this is concerned it was suggested by Mr. Krishnamoorthy Iyer appearing for respondent No. 1 that there is no material on the record to show that the promotees were not adequately represented in the services under the State and the Government had not issued any notification declaring this fact. It, however, appears that this point was not canvassed before the High Court at all. Nevertheless the appellants have produced before us sufficient materials to show that the members of the scheduled castes and the scheduled tribes were not adequately and properly represented in the services under the State and particularly in the Registration Department with which we are dealing in this appeal. It is clear from Annexure 'A' of the Appeal Paper Book that there were as many as 2254 non-gazetted employees in the Registration Department out of which members of the scheduled castes and tribes are only 198. It has also been stated in the counter-affidavit before the High Court that the members of the scheduled castes and tribes form about 8 per cent. of the population of the State of Kerala. This, therefore, clearly shows that the promotees were inadequately represented in the services under the State and, therefore, they fulfil the second condition required by clause (4) of Art. 16.

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

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 Art. 16(1) of the Constitution indirectly. At the same time clause (4) of Art. 16 does not fix any limit on the power of the Government to make reservation. Since clause (4) is a part of Art. 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 Art. 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%. 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% of the population and the Government, in order to give them proper representation, reserves 80% 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 Art. 16? The answer must necessarily be in the negative. The dominant object of this provision is to take steps to make inadequate representation adequate.

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This brings us to the validity of the carry-forward rule which also has been touched by the High Court. It has been held by the High Court that as a result of the special rule adopted by the State 34 out of 51 vacancies have been filled up by the members of the scheduled castes and tribes, thus far exceeding the 50 per cent limit which has been laid down by this Court. It is true that in *T. Devadasan's case* (supra) the majority judgment of this Court did strike down a rule which permitted carry-forward of the vacancies. With respect, however, I am not able to agree with this view because such a rule some times defeats the ends of Art. 16 itself. By the carry-forward rule what is meant is that if suppose there are 50 vacancies in a year, 25 of such vacancies are set apart for backawrd classes of citizens and if out of these 25 only 10 such candidates are available, then the remaining 15 vacancies instead of being kept vacant which may result in inefficiency and stagnation are filled up from other classes but the deficiency is sought to be made up in the next year or in the year next to that. I can see no objection to this course being adopted which is fully in consonance with the spirit of clause (4) of Art. 16. The main idea is to give adequate representation to the backward classes of citizens if they are not adequately represented in the services. What difference does it make if instead of keeping the reserved vacancies vacant from year to year as a result of which work of the Government would suffer they are allowed to be filled up by other candidates and the number of vacancies so filled up are kept reserved for the next year to accommo-

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date candidates from backward classes. This does not and cannot destroy the concept of equality, nor result in hostile discrimination to one or the other. There can be no doubt that reservation to the extent of 50% is permissible and if the candidates to that extent are not available, and those vacancies could not be filled up by other candidates then such candidates would not get any appointment at all. It is only by chance that some of the candidates of the backward classes not being available that the other candidates are appointed. In fact if the carry-forward rule is not allowed to be adopted it may result in inequality to the backward classes of citizens who will not be able to be absorbed in public employment in accordance with the full quota reserved for them by the Government. Thus if the carry-forward rule is not upheld, then backwardness will be perpetrated and it would result ultimately in a vacuum. For these reasons, therefore, I am of the opinion that the High Court was in error in holding that the State's action in filling 34 vacancies out of 51 by members of the scheduled castes and tribes was illegal and could not be justified.

(iv) Reservation should not be made at the cost of efficiency.

This is a very important condition for the application of clause (4) of Art. 16. No reservation can be made at the cost of efficiency which is the prime consideration. But one should not take an artificial view of efficiency. A concession or relaxation in favour of a backward class of citizens particularly when they are senior in experience would not amount to any impairment of efficiency. It is, however, not necessary for me to dilate on this aspect because in my view the relaxation contained in r. 13-A.A. of the rules does not fall within clause (4) of Art. 16 but falls squarely within clause (1) of Art. 16 as shown above, and, therefore, I am of the opinion that the High Court was in error in holding that r. 13-A.A. was *ultra vires* and was violative of Art. 16 as it thought that this rule came within the mischief of clause (4) of Art. 16.

Before closing this judgment I would like to allay a serious apprehension that has been expressed by learned counsel for respondent No. 1 that if the Court is to give a wide and liberal interpretation to Art. 14 and Art. 16, the guarantees of fundamental right to equality might be completely eroded in due course of time. I have given my anxious consideration to this argument and I am clearly of the opinion that the apprehension expressed by the learned counsel does not appear to be well founded. This Court has upheld in several cases classifications graver and more damaging than the one made in the present case without affecting the concept of equality. For instance in *Triloki Nath Khosa's case* (supra) this Court upheld a classification made by the State between the members of the same service, recruited from the same source and holding the same posts on the ground that one set of members having possessed a higher qualification, namely, a degree in engineering, could constitute a separate class and could be differently treated from the other members of the same service who were merely diploma holders. What had happened in that case was that the service of Engineers was one integrated service consisting of

A Assistant Engineers who were merely diploma holders and those who were degree holders. The Government passed an order by which the degree holders could be promoted to higher grade of service, namely, to the posts of Executive Engineer or Superintending Engineer, which was however blocked to those Assistant Engineers who were merely diploma holders. This rule was struck down by the High Court of B Janmu & Kashmir but the Supreme Court on appeal held that qualification was a reasonable ground of classification and by virtue of the qualification the Assistant Engineers who were degree holders could be shown a preferential treatment. The position does not appear to be worse in this case and on a parity of reasoning the Government has merely extended the time prescribed for departmental tests for the promotees by treating them as a special class for two reasons—(1) that C they were senior to and more experienced than the respondent No. 1; and (2), that they belonged to backward classes being members of the scheduled castes and tribes and for historical reasons they did not have sufficient opportunity to develop their genius and intellectual capacity as others could do. I, therefore, see no reason to hold that this classification was in any way unreasonable or arbitrary. The conditions under which classification has to be made, as pointed out by D me, are so strict and stringent that the apprehension of erosion of the concept of equality appears to be illusory. We must remember that the Courts are meant to interpret and not make the law. As Justice Frankfurter observed :

> "A Judge must not re-write a statute, neither to enlarge nor to contract it."

E Finally there can be no doubt that if the State action in a particular case amounts to an arbitrary classification or a hostile discrimination which is violative of Art. 16 of the Constitution the Court is there to act as sentinel on the *qui vive* in order to strike down such an action.

For the reasons given above, I have come to the conclusion that F r. 13-A.A. of the rules is a valid piece of statutory provision which is fully justified under Art. 16(1) of the Constitution of India and does not fall within the purview of Art. 16(4).

I would, therefore, allow the appeal, set aside the judgment of the High Court and direct the *status quo ante* to be restored. In the circumstances of this case, I leave the parties to bear their respective G costs.

ORDER

Order by Majority—

The validity of Rule 13AA of the Kerala State and Subordinate Services Rules, 1958 and two orders, Exhibits P-2 and P-6 is upheld. H The judgment of the High Court is set aside and the appeal is allowed. Parties will pay and bear their own costs.

P.B.R.