ORIGINAL CIVIL—FULL BENCH

Before Mr. P. V. Rajamannar, Chief Justice, Mr. Justice Viswanatha Sastri and Mr. Justice Somasundaram

SRIMATHI CHAMPAKAM DORAIRAJAN AND ANOTHER, PETITIONERS

v.

THE STATE OF MADRAS, REPRESENTED BY THE CHIEF SECRETARY, RESPONDENT *

1950, July 27

Constitution of India, Arts. 14, 15 (1), 29 (2) *and* 46—*Fundamental Rights—Admission to Colleges—Madras Communal Government Order* (*G.O. No.* 1254, *Education, dated* 17*th May* 1948)—*Illegal*

Article 15 (1) of the Constitution of India in unambiguous terms declares that the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. What that article says is that no person of a particular religion or caste shall be treated unfavourably, when compared with persons of other religions and castes, merely on the ground that he belongs to a particular religion or caste.

Any classification or differentiation of persons reasonably relevant and germane to the recognized principles of good and just government is not unconstitutional. Classification does

* Civil Miscellaneous Petitions Nos. 5255 and 5340 of 1950

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not mean discrimination, and classification which is prohibited by the Constitution cannot justify legislation or State action based thereon. In deciding whether an exercise of governmental power, whether legislative or administrative, violates these principles, the Court is entitled to go behind the face of things and enquire into its fairness in actual working and enforcement.

The right that is recognized and guaranteed against discrimination by Articles 15 (1) and 29 (2) is the personal right of every individual citizen; his caste, race or religion being wholely irrelevant, not only irrelevant, but expressly tabooed from consideration. The significance of the word "only" in Article 15 (1) of the Constitution is that, other qualifications being equal, the race, religion or caste of a citizen should not be a ground of preference or disability.

The communal G.O. violates Article 15 (1) of the Constitution. It makes caste and religion a ground of admission or rejection. By its allotment of a fixed number of seats to students of a particular caste or community, the communal G.O. denies equal treatment for all citizens under like circumstances and conditions, both in the privileges and disabilities imposed.

Part III of the Constitution dealing with "Fundamental Rights" is a categorical statement of the very principles of individual and social justice, whose transgression in the exercise of governmental power is expressly forbidden. The Constitution has struck the balance between government power and the rights of individual citizens and it has to be obeyed. Article 15 (1) controls the "temporary will of a majority by a permanent and paramount law settled by the deliberate wisdom of the whole nation."

Denial of admission is different from discrimination, the former involving a wholesale refusal and the latter a preference of some and rejection of others. Discrimination is hit by Article 15 (1) and denial of admission by Article 29 (2). The fact that the Constitution reverses previous administrative principles and practices widely prevalent in this State is not a ground for neutralising its operation and effect; for Article 15 (1) of the Constitution was specially intended to abrogate, and expressly abrogated, discrimination against citizens on grounds of race, religion or caste.

Article 46 cannot override the provisions of Articles 15 (1) and 29 (2) or justify any law or act of the State contravening their provisions.

PETITIONS praying that in the circumstances stated in the affidavit filed therewith the High Court may be pleased to issue a writ of *mandamus* or any other suitable prerogative writ restraining the respondent and all officers and subordinates thereof from enforcing, observing, maintaining or following or requiring the enforcement, observance, maintenance or following by the concerned authorities in the State of the notification or order generally referred to as the communal G.O. (G.O. No. 1254, Education, dated 17th May 1948) in and by which admissions to the Madras Medical College/Engineering College is sought or purported to be regulated in such a manner as to infringe and involve the violation of the Fundamental Rights referred to in the clauses of the Constitution of India and that the communal G.O. so called being against the Constitution of India, the rules and regulations and restrictions contained therein should not be enforced, observed, maintained or followed or required so to be by any subordinate authority either directly or indirectly and for costs of the application.

The facts of the case and the arguments of Counsel appear fully in the Order.

V. V. Srinivasa Ayyangar, N. R. Raghavachariar and *V. Devarajan* for petitioner in C.M.P. No. 5255 of 1950.

Alladi Krishnaswami Ayyar for *N. Rajagopala Ayyangar* and *V. Sethuraman* for petitioner in C.M.P. No. 5340 of 1950.

Advocate-General (*K. Kuttikrishna Menon*) for respondent in both petitions.

Cur. adv. vult.

ORDER

RAJAMANNAR C.J.—In these two applications substantially the same questions fall to be decided and they were therefore heard together. In Civil

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Miscellaneous Petition No. 5255 of 1950 the petitioner is one Srimathi Champakam Dorairajan. In the affidavit filed by her in support of the application, she states that she is a graduate of the Madras University having passed in 1934 the B.A. degree examination taking Physics and Chemistry for her subjects, that owing to financial and other difficulties she could not join forthwith or seek to join the Medical College, that she has since been able to decide on reading for a medical degree, that she made enquiries with regard to her admission into the Government Medical College at Madras in the M.B.B.S. course, that she ascertained that in respect of admissions into the said College the authorities were enforcing and observing an order of the Government, referred to as the communal G.O., in and by which the admission into the Medical College is to be regulated not by qualification or suitableness of the candidate applying for admission, but by directions involving the making of discriminations between applicant and applicant on the ground of caste, sex, etc., and that in the face of that order she had little or no chance of being admitted into the said College. She contends that the said order of Government is void as it is inconsistent with the provisions of the Constitution of India and operates as an infringement of her personal right as a citizen of the State of Madras, and that the maintenance of that order is an infringement of the Fundamental Rights declared and formulated by the Constitution of India. She therefore prays for the issue of a writ of *mandamus*, or any other suitable prerogative writ, restraining the State of Madras and all its officers and subordinates from enforcing, observing, maintaining or following or requiring the enforcement, observance, maintenance or following by the concerned authorities in the State of the notification or order generally referred to as the communal Government Order, in and by which admissions into the Madras Medical College is sought or

permitted to be regulated in such a manner as to infringe and involve the violation of the Fundamental Rights referred to in the clauses of the Constitution of India, namely, Article 15, clause 1, and Article 29, clause 2.

In Civil Miscellaneous Petition No. 5340 the petitioner is one C. R. Srinivasan. In his affidavit he states that he has passed the Intermediate Examination of the Madras University held in March 1950 in Group I, taking Mathematics, Physics and Chemistry as his optionals, in the first class and obtained for a maximum of 450 marks in the optionals 369 marks ; that he has filed an application for admission to the Engineering College at Guindy, that he learns that the admission in the Engineering College is governed by a Government Order whereby admission is governed by communal proportion (the order already referred to in the previous civil miscellaneous petition), that he apprehends that there is no prospect of his application being considered on its merits with due regard to his qualifications, ignoring considerations of race, caste or religion. The petitioner contends that the said Government Order is inconsistent with Article 15 and Article 29 (2) of the Constitution and prays that the Government may be directed to rescind the order and direct the Committee appointed to select the candidates for admission into the Engineering College to consider his application for admission on its relative merits without reference to considerations of religion, race, caste, language or any of them and to dispose of the same in accordance with the terms of Articles 29 (2) and 15 of the Constitution.

On behalf of the State of Madras, counter-affidavits were filed in the two petitions setting forth practically the same legal contentions. In the counter-affidavit filed in Civil Miscellaneous Petition No. 5255 of 1950 it is stated that the total number of seats available in the four Medical Colleges run by the Government of

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Madras is only 330; that out of these, 17 seats are reserved for students coming from outside the State, 12 seats for discretionary allotment by the Government in consultation with the Surgeon-General; that the balance of seats available are apportioned between four distinct groups of districts in the State, that the seats so apportioned are filled up according to the rule intended to protect the weaker sections of the people and to provide equal opportunities to all, that accordingly out of 14 seats 6 are allotted to Non-Brahmin Hindus, 2 to backward Hindu Communities, 2 to Brahmins, 2 to Harijans, 1 to Anglo-Indians and Indian Christians and 1 to Muslims. The above allocation is claimed to be based not solely on population figures, but that it has been worked out after a due consideration of the numerical strength, literary attainments and the economic conditions of the various communities in the State. Subject to these regional and protective provisions, selection from among the applicants from a particular community from one of the groups of districts is made on certain principles, preference being given in a particular order. No less than twenty per cent of the total number of seats available for students of the State are filled by women candidates separately for each region. It is open to the Selection Committee to admit a larger number of women candidates in any region if qualified candidates are available and if they are eligible for selection on merits *vis-à-vis* the men candidates. On behalf of the State it is contended that the Order of Government regulating admissions to the College is not invalid, because under Article 46 of the Constitution, the State is bound to promote with special care the educational interests of the weaker sections of the people and protect them from social injustice and all forms of exploitation, and that the State has the sole discretion to decide who are weaker sections of the people. It is pleaded that as the number of seats available in educational institutions

maintained by the State represents only a fraction of the number of applications for such seats, quite a large number of applicants have to be denied admission, but such denial is not on grounds only of religion, caste, etc., but on a multiplicity of grounds including the paucity of seats, the necessity for regional and linguistic representations, the necessity for promoting with special care the interests of the backward communities and other factors and that the said order of Government is neither illegal nor opposed to any article of the Constitution of India.

In Civil Miscellaneous Petition No. 5340 of 1950 a counter-affidavit similar to that filed in the previous civil miscellaneous petition was filed on behalf of the State. The total number of seats available in the Government Engineering Colleges is only 395, out of which 21 seats are reserved for students coming from outside the State including refugee students.

Reply affidavits were filed by the petitioners in both the applications. They contain mostly legal arguments which will be noticed later on in the judgment. In Civil Miscellaneous Petition No. 5340 of 1950, a further affidavit was filed on behalf of the State appending three statements, one showing the selection of candidates from the various communities in the respective zones according to the present Government Order, another showing the selection of candidates on the basis of only the marks obtained in part III of the Intermediate Examination and a third showing the percentage of seats which the various communities would get on the basis of population, on the basis of marks obtained in the examinations, on the basis of the existing rules and on the basis of the proposed admissions this year. It is pointed out that if the present Government Order is disregarded and selection is made on the basis of marks, the Brahmin community stands to gain by 172 seats, that Non-Brahmin communities lose fifty per cent of their seats totalling 112 ;

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none of the Harijans would be selected, i.e., they would lose 26 seats and the Muslim community would lose 23 seats.

The applications were fully and ably argued by Mr. V. V. Srinivasa Ayyangar and Mr. Alladi Krishnaswami Ayyar for the two petitioners and by the learned Advocate-General for the State of Madras. None of them was able to cite any authority which directly dealt with the question to be decided and it was common ground that provisions *in pari materia* with the material Articles of the Constitution of India are not to be found in any of the well-known Constitutions of the world.

The two provisions of the Constitution on which learned Counsel for the petitioners strongly relied in support of their contention that the Government Order above mentioned was invalid are clause 1 of Article 15 and clause 2 of Article 29. They run as follows :—

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

* * * *

Art. 29 (2). No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them."

Article 14 of the Constitution was also incidentally referred to. This article embodies the principle of equality before the law, which is a part of the rule of law as enunciated by Professor Dicey and the rule of equal protection of the laws contained in the Fourteenth Amendment to the Constitution of the United States of America. Certain decisions of the Supreme Court of America construing the phrase "the equal protection of the laws" were cited to us, but learned Counsel for petitioners agreed that it was not necessary to rely on them as direct authorities in their favour, because there were other articles in our Constitution which directly supported their contention.

The contention on behalf of the petitioners briefly is that the Fundamental Rights of the petitioners as citizens of India declared by Article 15 (1) and Article 29 (2) of the Constitution would in effect be denied by the enforcement of the order of Government referred to as the communal G.O., because (i) the State is discriminating against them on grounds of religion, caste and sex, and (ii) they are likely to be denied admission on grounds only of religion and caste. All that they pray for is that their applications for admission should be considered on their merits without taking into consideration their religion, caste or sex.

The question is: Is the communal G.O., when applied to the case of the two petitioners, in any way inconsistent with either or both the said provisions of the Constitution ? Has the "Fundamental Right" of the petitioners either under Article 15 or under Article 29 been ignored by the Government in seeking to enforce the said order ?

Article 29, clause 2, expressly refers to admissions to educational institutions. Mr. Alladi Krishnaswami Ayyar invited our attention to the proceedings of the Constituent Assembly which relate to the passing of this article by that Assembly. In the Constitution as originally drafted, the corresponding provision was Article 23 (2) which was in the following terms :—

> "No minority, whether based on religion, community or language, shall be discriminated against in regard to the admission of any person belonging to such minority into any educational institution maintained by the State".

In the place of this provision, the clause as we now find was substituted by an amendment proposed by Pandit Thakur Das Bhargava. The three points of difference between the provision as originally drafted and the provision as substituted were: (i) the words "no citizen" were substituted for the words "no minority", (ii) not only institutions maintained by

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the State but also institutions receiving aid out of State funds were included and (iii) instead of the words "religion, community or language", the words adopted were "religion, race, caste, language or any of them."

Mr. Alladi Krishnaswami Ayyar contended that the right given to a citizen under Article 29 (2) of the Constitution is an individual right given to the citizen as such and not as a member of a community or caste. The right is expressed in unequivocal terms, a right not to be denied admission into any State-maintained or State-aided educational institution on any of the grounds of religion, race, caste or language. There is no reservation in favour of any class of citizens, as for instance, in Article 16, which deals with appointments and offices under the State, clause 4 of which says:

> "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".

On behalf of the State, the learned Advocate-General relied strongly on the word "only" which occurs in Article 29 (2). His contention was that the petitioners would be denied admission not *only* on any of the grounds mentioned in the Article, but also on other grounds, namely, paucity of seats and necessity to make due provision for weaker sections of the citizens. There was some controversy as to the exact connotation of the word "only" in the place where it occurs. Petitioners' Counsel contended that the word meant "merely" or "solely" and that what the Article prohibits is, taking any of these factors into consideration. If one of the reasons for the denial of admission is the fact that the applicant belongs to a particular religion, race or caste, then the denial is wrong. In other words, it is only these grounds or any of them which are mentioned in the

article that are prohibited from being taken into account. There may be other valid grounds for refusing to admit any applicant. If otherwise there is no disqualification or disability attaching to an applicant, he should not be denied admission solely on the ground that he belongs to a particular religion or race or caste. Speaking for myself, I do not think much turns on the presence of the word "only" in the article. Even if that word had been omitted, the effect of the article would probably be the same. (*vide* Article 325 for a similar use of the word "only"). I, however, think that there is some force in the Advocate-General's contention that this article would apply only if the persons of a particular religion, race or caste are totally excluded on the ground of their religion, race or caste, but would not apply when no person of any religion, race or caste is denied admission as such. Now let us look at the case of the present applicants. They say they are likely to be denied admission. On what ground ? They would say that it is because they belong to the Brahmin caste. But is that all ? Is it not also because that they apprehend that their qualifications would not enable them to compete with other Brahmin candidates for the limited number of seats allotted to the Brahmins ? Without reference to other factors, like, e.g., marks and the class secured by the candidate, it cannot be predicated in every case from the simple fact that the applicant is a Brahmin that he will be denied admission. No doubt in the two petitions before us, we were told that the applicants were not included in the provisional list compiled by the Select Committee. That may be so. But if the applicants had probably secured more marks than they actually got, they might well have been included in the list in spite of the fact that they belong to the Brahmin caste. This is one way of looking at the matter. Another way is this. Here is a candidate who, if he had not been a Brahmin, but

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had been a member of another caste or had belonged to another religion, might have secured admission, but because he is a Brahmin, he has been denied admission. The applicants before us, supposing they had been Harijans, would have been certainly admitted on the marks they had got and on their other qualifications. But they have been denied admission, because they are Brahmins. I must confess that there is much to be said for both points of view. I would, however, refrain from deciding these applications on this point either way. But I will indicate my opinion. In my view, it is only when it can be said that under the impugned Government Order a person *per se*, because he belongs to a particular religion or caste, cannot obtain admission into a particular institution that the Article is contravened. I have in mind the instances of the American cases cited to us in which Negroes have been denied admission solely because they are Negroes and the regulations of the educational institution to which they sought admission prohibited completely the admission of the members of the coloured races; see *Sipuel* v. *University of Oklahoma*(1), *Sweatt* v. *Painter*(2) and *McLaurin* v. *Oklahoma State of Regents*(3).

The clause in the Fourteenth Amendment to the United States Constitution which provides for the equal protection of the laws has been always interpreted as a provision for preventing the enforcement of discriminatory measures. The equal protection of the laws has been understood as a pledge of the protection of equal laws; *Yick wo* v. *Hopkins*(4). In the words of Chief Justice TAFT:

"The guarantee was aimed at undue favour and individual or class privilege on the one hand and at hostile discrimination or the oppression of inequality on the other. * * The guarantee was intended to secure equality of

(1) (1948) 92 U.S. Lawyers' Edn. 247; 332 U.S. 631
(2) (1950) 63 L.W. (Journal Section) 89
(3) (1950) 63 L.W. (Journal Section) 91
(4) (1885) 118 U.S. 356

protection not only for all but against all similarly situated"; *Truax* v. *Corrigan*(1).

This clause requires that there shall be no distinction made on the sole basis of race or colour. Though the cases on this subject are legion, it will be not without interest to refer to cases relating to admissions to educational institutions. In *Missouri ex. Rel Gaines* v. *Canada*(2) it was held that a State which precluded Negroes from a State-maintained Law School open to White students could not be said not to have discriminated against Negroes in violation of this clause. In *Sipuel* v. *University of Oklahoma*(3) the Supreme Court held that the equal protection clause required a State-maintained Law School for White students to provide legal education for a Negro applicant. The Court said :

> "The petitioner is entitled to secure legal education afforded by a State institution. To this time it has been denied her although during the same period many White applicants have been afforded legal education by the State. The State must provide it for her in conformity with the equal protection clause of the Fourteenth Amendment and provide it as soon as it does for applicants of any other group."

Two recent decisions decided in June 1950 may also be referred to, namely, *Sweatt* v. *Painter*(4) and *McLaurin* v. *Oklahoma State of Regents*(5). In the former case, an application by a Negro student for admission to the University of Texas Law School was rejected solely because he was a Negro. This was in accordance with the State law which restricted admission to the University to White students. The Supreme Court held that the petitioner was entitled to his full constitutional right, namely, legal education equivalent to that offered by the State to students of other races and that he could not be denied admission solely on the ground that he was a Negro. In the latter case, the

(1) (1921) 257 U.S. 312, 332 (2) (1938) 305 U.S. 337
(3) (1948) 92 U.S. Lawyers' Edn. 247; 332 U.S. 631
(4) (1950) 63 L.W. (Journal Section) 89
(5) (1950) 63 L.W. (Journal Section) 91

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question was whether a State, after admitting a Negro student to graduate instruction in its State University, afford him different treatment from other students solely because of his race. The Supreme Court answered the question in the negative. They held that the Fourteenth Amendment precludes differences in treatment by the State based upon race. As I remarked during the course of the argument—and I understood Mr. Alladi Krishnaswami Ayyar to concede—the American decisions are not directly applicable in construing Articles 15 (1) and 29 (2), though they may have some bearing in construing Article 14 of our Constitution. There is one important difference introduced by Article 29 which is absent in the United States. There it has been held that the equality clause would not be violated by a segregation of the races in separate educational institutions, provided equal facilities for study were provided for the two races. But according to our Constitution, such segregation on grounds of race would be invalid. It may also be noted that the American cases deal with State laws or regulations which totally excluded all Negroes from particular educational institutions. Not a single case has been brought to our notice in which there was no such total exclusion, but only a restriction of the number of seats available for them similar to what we have in the communal G.O. In the American instances, the fact that the applicant was a Negro was sufficient to exclude him from admission to an institution. That is not the case according to the communal G.O., for it is not suggested that any applicant who happens to be a Brahmin would be invariably denied admission to either the Medical or the Engineering College.

Mr. Alladi Krishnaswami Ayyar referred us to the decisions in *McCabe* v. *Atchison T. & S.F.R. Co.*(1)

(1) (1914) 235 U.S. 151

and *Missouri ex. Rel Gaines* v. *Canada*(1) in support of his contention that the right asserted by the applicants in these petitions is a personal and individual right as citizens and not as members of a particular religion or caste. I agree with him. In the recent case of *Sweatt* v. *Painter*(2) Chief Justice VINSON observed :

" It is fundamental that these cases concern rights which are personal and present ".

In *Missouri ex. Rel Gaines* v. *Canada*(1) Chief Justice HUGHES declared thus:

" The petitioner's right was a personal one. It was as an individual that he was entitled to the equal protection of the laws and the State was bound to furnish him within its borders facilities for legal education substantially equal to those the State there afforded for persons of the White race, whether or not other Negroes sought the same opportunity."

I agree that it is no answer to the petitioners' applications to say that other Brahmin students have been admitted into the Medical and Engineering Colleges. The question is, whether there has been any discrimination against the petitioners because they belong to a particular caste.

In my opinion, these applications must be decided in favour of the petitioners on the terms of Article 15(1). That article in unambiguous terms declares that the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. " Discriminate against " means " make an adverse distinction with regard to ", " distinguish unfavourably from others " (Oxford Dictionary). What the article says is that no person of a particular religion or caste shall be treated unfavourably, when compared with persons of other religions and castes, merely on the ground that he belongs to a particular religion or caste. Now what

(1) (1938) 305 U.S. 337 (2) (1950) 62 L.W. (Journal Section) 89

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does the communal G.O. purport to do ? It says that a limited number of seats only are allotted to persons of a particular caste, namely, Brahmins. The qualifications which would enable a candidate to secure one of those seats would necessarily be higher than the qualifications which would enable a person of another caste or religion, say, Harijan or Muslim to secure admission. A perusal of the statements filed on behalf of the State demonstrates this fact amply. We find, for instance, that while the four Brahmin candidates selected from Rayalaseema to the Engineering College secured marks ranging from 398 to 417, the two Harijan candidates who were selected secured only marks between 214 and 231. It appears to me that, in view of these facts, it is impossible for the State to contend that there has been no discrimination. If a Harijan candidate who gets 231 marks can be admitted, but a Brahmin candidate even if he gets 390 is not admitted, there is obvious disparity in the treatment of the candidates because they belong to different castes.

In a way the learned Advocate-General did not deny the fact of discrimination. Only he attempted to justify such discrimination on grounds of public policy and as necessary to bring about social justice by promoting the interests of the educationally backward sections of the citizens. In this connexion Article 46 of the Constitution was very strongly relied on by the Advocate-General. It runs thus :

> " 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."

This article occurs in Part IV of the Constitution which contains directive principles of State policy which, according to Article 37, are not enforceable by any Court but are nevertheless fundamental in the

governance of the country and have to be applied by the State in making laws. Though the G.O. in question was passed long prior to the coming into force of the Constitution, it was sought to be justified as carrying out the principle adopted by the Constitution in Article 46. The Advocate-General drew a vivid picture of the injustice which would result if no discrimination were made between, say, Brahmins and Harijans, and both the applications were dealt with on merits. If the marks standard were to be applied uniformly, the result would be, he stated, that while 249 Brahmin candidates would secure admission, no Harijan and only 3 Muslims would be selected.

It is an undeniable fact that the citizens of the Indian Union profess different religions and belong to several castes and speak many languages. One should probably also add that they belong to different races. There are many articles of the Constitution which expressly refer to these differences and there are other Articles which clearly imply their existence. There are minorities as well as majorities based on religion, caste or language. One finds running through the Constitution two underlying conceptions which inform the entire scheme of national life envisaged by it. One is the principle of equality, not only of status but also of opportunity; and the other is the establishment of a social order based on social, economic and political justice. As necessarily following from such an ideal, there is the exhibition of an anxiety to promote the interests of the backward and weaker sections of the people. With this end in view, the Constitution provides for safeguarding their interest in several respects. Article 16 (4) is an instance already mentioned. There are other provisions as well. Part XVI contains special provisions relating to certain classes. There are provisions for reservation of seats in the House of the People and in the Legislative Assemblies of every State for the Scheduled

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Castes and Tribes. Power is given to the President to nominate members of the Anglo-Indian community if that community is not adequately represented. Article 335 enjoins the claims of the members of the Scheduled Castes and the Scheduled Tribes to be taken into consideration consistent 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. Articles 336 and 337 are special provisions for the Anglo-Indian community in the matter of services and education. According to Article 338, there shall be a Special Officer for the Scheduled Castes and Scheduled Tribes whose duty shall be to investigate all matters relating to the safeguards provided for them under the Constitution and report to the President upon the working of those safeguards. Article 340 provides for the appointment by the President of a Commission to investigate the conditions of socially and educationally backward classes within the territory of India and the difficulties under which they labour and to make recommendations as to the steps that should be taken by the Union or any State to remove such difficulties and to improve their condition and as to the grants that should be made for the purpose by the Union or any State.

Granting that one of the objectives of the Constitution is to provide for the uplift of the backward and weaker sections of the people, which *inter alia* is embodied in Article 46, can we hold that the State is at liberty to do anything to achieve that object ? The obvious answer is " yes ", so long as no provision of the Constitution is contravened and no Fundamental Right declared by the Constitution is infringed or impaired. It may be conceded that in one sense Articles which prohibit discriminatory treatment in any matter relating to the State are inconsistent by themselves with any action on the part of the State

to make provisions specially favourable to the backward and weaker sections of the people. That is why we find exceptions have been made expressly to the principle of non-discrimination in certain specified matters, the most important of which is in respect of appointments and offices under the State. After reiterating the principle of non-discrimination in Article 16 (2), Article 16 (4) makes an exception and provides for discrimination in favour of backward classes of citizens.

Now there is no such provision for reservation as regards admissions into educational institutions. Whether the omission to make such reservation was deliberate or accidental we cannot speculate. The learned Advocate-General pressed upon us the condition of educational backwardness which prevails among several sections of the people in the State, and represented that unless special reservations are made in favour of such sections, the State cannot promote adequately their educational interests. Presumably this state of affairs was well-known to the representatives of this part of the country in the Constituent Assembly. If they and others who felt a similar difficulty had urged upon the Assembly the necessity for such a provision for reservation, the Assembly might well have agreed to a provision similar to Article 16 (4) in respect of admissions to educational institutions as well. Actually, however, there is no such provision and we do not feel justified in adding a new provision by way of an exception to the expressed declaration made in Article 15 (1) and Article 29 (2). In our opinion, Article 46 cannot override the provisions of these two Articles or justify any law or act of the State contravening their provisions.

The learned Advocate-General contended that, in all State legislation and executive action, classification is inevitable and there is nothing in the Constitution which prohibits such classification. It is true

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that the equal protection of laws clause of the Fourteenth Amendment to the Constitution of the United States has been often held not to preclude legislative classification provided it is reasonable and not arbitrary. As Chief Justice TAFT observed in the leading case of *Truax* v. *Corrigan*(1) :

> "In adjusting legislation to the need of the people of a State, the legislature has a wide discretion and it may be, I fully concede, that perfect uniformity of treatment of all persons is neither practical nor desirable, though classification of persons is constantly necessary."

Mr. Justice FRANKFURTER in a later case observed :

> "The equality at which the Equal Protection Clause aims is not a disembodied equality. The Fourteenth Amendment enjoins the equal protection of the laws and laws are not abstract propositions. They do not relate to abstract units A, B and C, but are expressions of policy arising out of special difficulties addressed to the attainment of specific needs by the use of specific remedies. The Constitution does not require things which are different in fact or opinion to be treated in law as though they were the same."

Two things, however, cannot be overlooked. Firstly, that classification does not necessarily mean discrimination and, secondly, classification which is prohibited by the Constitution cannot justify legislation or State action based thereon. That is why the Supreme Court of the United States has in innumerable cases held discriminatory legislation to be bad, particularly in cases where the ground of discrimination has been race or colour. No one has attempted even to adduce the argument that discrimination against the coloured races is only one kind of classification and therefore permissible.

In this connexion the Advocate-General relied on certain observations in two decisions of the American Supreme Court, but they are not of any material assistance to him. In *Republic Natural Gas Co.* v. *Oklahoma*(2) the Supreme Court was called upon to

(1) (1921) 257 U.S. 312 (2) (1948) 334 U.S. 62

decide the validity of an order made by the Oklahoma State Corporation Commission requiring a producer of natural gas to market *pro rata* gas of another producer in the same field. The order was upheld, because it was held to be in the exercise of the power of the State to preserve the correlative rights of producers of natural gas in the same field. Mr. Justice DOUGLAS observed in the course of his judgment thus:

"Oklahoma's power to regulate correlative rights in the Hugotan field does not stem from her interest merely in the preservation of natural sources. It stems rather from the basic aim and authority of any Government which seeks to protect the rights of its citizens and to secure a just accommodation of them when they clash."

It will be seen that there could be no question of discrimination in this matter. In *Toomer* v. *Witsell*(1) a majority of the Supreme Court of America held that the imposition of a discriminatory licence fee for boats owned by non-residents was without reasonable basis and therefore a violation of the Privileges and Immunities Clause. That clause so far as relevant reads as follows:—

"The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States."

In dealing with this clause, Chief Justice VINSON said:

"Like many of the constitutional provisions the Privileges and Immunities Clause is not absolute. It does ban discrimination against citizens of other States where there is no substantial reason for the discrimination beyond the mere fact that they are citizens of other States. But it does not preclude disparity of treatment in the many situations where there are perfectly valid independent reasons for it. Thus the enquiry in each case must be concerned with whether such reasons do exist and whether the degree of discrimination bears a close relation to them."

It was found that the discrimination against non-residents was so great that its practical effect was virtually exclusionary and it was held that the levy

(1) (1948) 334 U.S. 385

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was invalid. I fail to see how the principle of this decision can be applied to the cases before us.

The learned Advocate-General laid great stress on the fact that one of the ideals of the Republic of India is the establishment of social justice and protection of weaker sections from social injustice. Expressions like "social justice" and "social injustice" are very vague and elastic in their connotation and it is often difficult to determine whether any particular action of the Government leads to social injustice or not. It is said that without some provision like that contained in the communal G.O., no member or very few members of the backward communities can secure admission to colleges with limited accommodation like the Medical and Engineering Colleges and to deny them the opportunity to obtain professional education would be to perpetuate social injustice. That is one side of the medal. But there is also the other side, that candidates well qualified otherwise and with more than average merit should be denied opportunity to secure such education, because they belong to castes or communities more advanced than others. Of course the most satisfactory solution would be to provide equal and adequate facilities to all applicants. If on account of various causes the State is unable to do so, then, as the Articles of the Constitution stand at present, it is difficult to see how the State can make a discrimination between applicant and applicant on the ground of religion or caste and restrict the number of seats that could be secured by applicants of any particular religion or caste, or prescribe different qualifications to applicants of different religions and castes, to the advantage of some and to the disadvantage of others.

In my opinion, both the applications must be allowed and there should be a direction that the applications of the two petitioners should be considered without any discrimination being made against

them on grounds of religion, race or caste. It is not for us to say what circumstances should be taken into account, what qualifications should be prescribed, what tests should be applied in making a selection. As Mr. Alladi Krishnaswami Ayyar rightly pointed out during the course of his argument, marks may not be the one and only criterion. All that we should say on these applications is that grounds of religion, race or caste cannot be the basis of selection.

Mr. V. V. Srinivasa Ayyangar, in Civil Miscellaneous Petition No. 5255 of 1950, contended that his client was being discriminated against even on the ground of sex. That does not seem to be correct. On the other hand, there appears to be a special provision in favour of women candidates, a provision which may probably be justified by Article 15 (3). As stated already, in the counter-affidavit filed on behalf of the State, not less than twenty per cent of the total number of seats available for students of the State are filled by women candidates separately for each region, and it is open to the Selection Committee to admit a larger number of women candidates in any region if qualified candidates are available in that region and if they are eligible for selection on merits *vis-a-vis* the men candidates in accordance with the general principles governing such admissions as laid down in the rules. I fail to see how the petitioner can complain that any discrimination is being made against her on the ground of sex.

The writs issued will be made absolute in the terms mentioned above. There will be no order as to costs.

VISWANATHA SASTRI J.—These two applications raise substantially the same questions. The applicant in Civil Miscellaneous Petition No. 5255 of 1950 is a Brahmin lady, and in Civil Miscellaneous Petition No. 5340 of 1950, a Brahmin male student, who sought, but did not get admission to the Medical

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and Engineering Colleges maintained by the State of Madras. The applicants impugn the legality of a government order, G.O. No. 1254, Education, dated 17th May 1948, regulating the admission of students to these colleges. Though this government order, referred to as the communal G.O. in the arguments before us and in this judgment, was passed before the Constitution of India was enacted, it is common ground that it is being acted upon and enforced by the State and its officers in selecting students for admission to the Engineering and Medical Colleges. Taking the Engineering Colleges of the State—the position is much the same as regards the Medical Colleges—the total number of seats available is in the region of 400. Under the direction of the Government as embodied in the communal G.O., twelve out of these seats are reserved for allotment by the ministers of Government at their discretion. Twenty-one seats are reserved for students coming from outside the State. The remaining seats are apportioned and allotted among four groups of districts comprised in the State, popularly known as Rayalaseema, Andhra, Tamilnad and Kerala. The seats apportioned and allotted to each of these four divisions are filled up in this way; taking 14 seats as a unit, Non-Brahmin Hindus are allotted 6 seats, Non-Brahmin backward Hindus 2 seats, Brahmins 2 seats, Harijans 2 seats, Anglo-Indians and Indian Christians 1 seat, and Muslims 1 seat. Both "forward" Non-Brahmins and "backward" Non-Brahmins are grouped together for the purpose of selection. The appellation of the various communities is not mine. Subject to the above overriding allotments based on regional and communal and caste divisions, selection of candidates from each community is made on the basis of marks obtained by students in the Intermediate, B.A., or B.Sc., examinations of the universities in the State. As a result of applying the above rules of selection

during the current year, 77 Brahmins, 224 Non-Brahmins, 51 Christians, 26 Muslims and 26 Harijans have been selected for admission to the Engineering Colleges. The 12 seats reserved for allotment at the discretion of Government have been filled up presumably on the same or a slightly different basis. If the rule of allotment of seats according to castes and communities had been ignored and the selection of candidates had been made on the basis of merit, that is to say, the marks obtained by the candidates in the qualifying examinations, irrespective of their castes, community or religion, 249 Brahmins, 112 Non-Brahmin Hindus, 22 Christians, 3 Muslims and no Harijans would have been selected. The result of applying the communal G.O. is that 172 Brahmin candidates who would have been admitted on the basis of a uniform standard or test of eligibility for all candidates, have been refused admission, and 112 Non-Brahmin candidates, who would have been refused admission on the same basis, have been selected. These figures have been taken from the statements filed by the respondent. The applicant in Civil Miscellaneous Petition No. 5340 of 1950 avers—and this averment is not denied—that though he got more marks than many candidates of other castes and communities, he has been refused admission while the latter have been admitted.

The contentions of the applicants are that the rules laid down by Government for admission of students are based on criteria which the State is prohibited from taking into account by the Constitution of India; that the rules discriminate against citizens on the ground of their caste or religion, and thereby violate the rights guaranteed to the applicants under Articles 15 (1) and 29 (2) of the Constitution; and that the State of Madras should be directed by a writ of *mandamus* to consider their applications for admission on their merits without reference to the communal

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G.O. The respondent states that the allocation of seats on caste, communal and religious basis was made after due consideration of the numerical strength, literary attainments and economic condition of the different communities in the State and in the discharge of the obligation laid upon the State by Article 46 of the Constitution to promote with special care the educational and economic interests of the "weaker sections" of the people. The respondent denies that the rules framed by it for the admission of students transgress the law in any manner.

It might be useful at the outset to have a look at the circumstances that led to the emergence of the Constitution of India. Help from extraneous facts existing at the time of the framing of the Constitution might be obtained in ascertaining the intention of its framers, though that intention must, primarily and in the ultimate resort, be ascertained from the language of the enacted words. Though the Constitution of India is a blend of many principles and even turns of expression taken from the Constitutions of other States and the Government of India Act, 1935, it is nevertheless *sui generis*. I make this observation at the outset in order to explain why I have not been able to derive any considerable benefit from the judicial exposition and development of American constitutional law during the course of a century and half. This is not to say that I have not listened with interest to the numerous decisions cited before us by learned Counsel on both sides. Most of the rules with regard to constitutional powers and limitations found hidden in the interstices of the American Constitution have been brought out and formulated only by judicial decisions which purport to interpret the Fourteenth Amendment or rather the two phrases "due process of law" and "equal protection of the laws" found in section 1 of the Fourteenth Amendment. These judge-made principles and doctrines of America are found stated in a

categorical manner and almost in the language of the decisions, in the Articles of the Constitution of India so far as the makers of our Constitution thought fit to adopt them. In *A. K. Gopalan* v. *The State*(1), the learned CHIEF JUSTICE of the Supreme Court of India recently sounded a note of caution against placing implicit reliance on American precedents without due regard to the fact that our Constitution, unlike the American, runs into details and considerably narrows the scope for judicial interpretation and without paying due attention to the difference in language between the Articles of the two constitutions. It is for this reason, and not out of any disrespect to the arguments of learned Counsel or the very eminent American judges whose decisions were cited before us, that I have made a somewhat parsimonious use of the embarrassing wealth of American precedents.

The Constitution of India, as its preamble proclaims, is an ordinance of the people of India having its sanction in the popular will and, for its aim, the establishment of a new structure of security, social, political and economic, for all its citizens on the basis of justice, liberty and equality. These are the great objects which the Constitution and the government established by it are intended to serve and promote. But the preamble does not furnish any definition of the respective rights of the citizens and of the State exercising governmental power. Part III of the Constitution deals with that topic, and I shall presently refer to the relevant Articles. It is not difficult to understand why the makers of our Constitution who, as representatives of the people, were fashioning an instrument for the governance of a free republic, were so much concerned with the threat to individual liberty and civil rights from governmental activity as to place in the forefront of the Constitution the chapter

(1) [1950] S.C.R. 88

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on "Fundamental Rights". They had long and costly experience of the previous regime with its frequent encroachments on the personal liberty of citizens, especially during the period of the last world war; its emphasis on, if not encouragement of communal and other differences which seriously weakened national unity; and its discriminating practices in favour of individuals and communities designed to win their support. With a vivid recollection of their physical, intellectual and emotional struggles against an alien Government, it is not surprising that the makers of our Constitution were apprehensive lest the freedom of the individual citizen—using "freedom" in the same comprehensive sense in which it is used in Article 19—be curtailed unduly by any abuse of political or social power in the future. Further, the average citizen had also learnt by this time to prize certain fundamental freedoms like personal liberty, freedom of speech and peaceful assembly, the right of all men to equality under the law and to equal opportunity for securing their material well-being. The last world war had been widely proclaimed as one fought for establishing the freedom and dignity of man and for putting an end to the tyranny of authoritarian government. The people of this country had also become painfully aware of the evils of communal discord and distrust culminating as they did in the partition of the country, and were presumably keen on eradicating the virus of communalism which had infected the body politic. Part III of the Constitution of India reflects these widely prevalent feelings and ideas of the time and is both a reaction to the evils of the past and a guarantee of constitutional liberty to the citizen in the future. The rights singled out for such protection and guarantee are such as might be regarded as highly important to a citizen in a free civilized State and are appropriately styled "Fundamental Rights". These rights of the individual citizen

were regarded by the framers of the Constitution to be of so transcendent a character as to deserve special enunciation and an express constitutional guarantee against government encroachment, legislative or administrative. On the face of the Constitution itself, the provisions regarding "Fundamental Rights" occupy the forefront, evidently because they have been considered to be of great national importance. The Articles relating to "Fundamental Rights" have come up to be looked upon as muniments of a citizen's rights and obligations, whose inviolability is secured by constitutional restraints imposed on government. The protection of these guaranteed rights of the citizen and the enforcement of the limitations imposed on the acts of government, are both secured by judicial process which is, to quote an American case,

> "the device of self-governing communities to protect the rights of individuals and minorities as well against the power of members, as against the violence of public agents transcending the limits of lawful authority even when acting in the name and wielding the force of government."; *Hurtado* v. *People of California*(1).

The Constitution derived its birth from the deliberations of the Constituent Assembly, a body representative of the people of India. It is a matter of common knowledge that the task of framing the Constitution took over two years, and many experienced and distinguished statesmen as well as able and skilled constitutional lawyers were engaged in this task. The Constitution must clearly be regarded as an instrument which was fashioned with great deliberation, with full knowledge of the working of other republican constitutions and with an intimate appreciation of the peculiar local conditions. There were difficulties in attaining ready agreement on many matters, natural enough in the case of large assemblages of people drawn from different

(1) (1884) 110 U.S. 516, 536

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communities and representing divergent interests. Amendments and alternative proposals were discussed, debated and weighed against each other. There were intricate networks of current politics and communal and local rivalries. The Constitution as it finally emerged struck a balance between the rights and privileges of the citizen and the powers of government. It accommodated and defined the spheres of operation of the two competing doctrines, namely, the right of the individual citizen to life, liberty, and property, and the power of the State to impose restraints on the exercise or enjoyment of those rights in the interests of good government and the welfare of the State as a whole. It is true that under our present democratic constitution, Government acts more often as a friend than as a foe of individual freedom. Nevertheless, conflicts might arise between a citizen and the Government if the constitutional rights of the citizen are violated by the exercise of governmental power. The Courts are therefore empowered and enjoined to resolve such conflicts by an impartial interpretation of the Constitution.

We have been told on high authority that a Constitution must not be construed in any narrow and pedantic sense, especially a federal constitution with its nice balance of jurisdictions and of individual rights and State power, and that we must approach it in a broad and liberal spirit, so as, if possible, to validate legislative and administrative action. A person who assails the legislative or administrative action of Government must carry the burden of demonstrating beyond doubt its unconstitutionality. We have also been warned by equally high authority that we have to interpret the Constitution on the same principles of interpretation as apply to ordinary law and that we have no right to stretch or twist the language in the interests of any political, social or constitutional theory. The principle that in inter-

preting a Constitution, a construction beneficial to the exercise of legislative or executive power should be adopted, may not be of any great help when the statutory provisions that fall to be considered relate to constitutional guarantees of the freedom and civil rights of individual citizens against abuse of governmental power. We must assume that there was a sufficient, and indeed a grave need, for the enactment of the chapter on "Fundamental Rights" as part of the Constitution. The question before us is not as to the expediency, still less as to the wisdom of these provisions, but is one of law depending on the construction of the relevant Articles of the Constitution. It is no doubt a legitimate, and in the case of a Constitution, a cogent argument, that the framers could not have meant to enact a measure leading to manifestly unjust or injurious results to the nation and that any admissible construction which avoids such results ought to be preferred. Having regard to the precise and comprehensive provisions of Part III of the Constitution, we are not in the happy position of a learned Judge of the United States, who is said to have observed that there was no limit to the power of judicial legislation under the "due process" clause of the Fifth and Fourteenth Amendments, except the sky. I consider it to be both legally and constitutionally unsound, even though the invitation has been extended to us by learned Counsel, to eviscerate the Constitution by our own conceptions of social, political or economic justice. Keeping these principles in mind, I proceed to consider the relevant Articles of the Constitution.

Article 14 is in these terms :

> "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."

The Article applies to citizens as well as non-citizens found here. The first part of the Article is of Irish and the latter part of American origin. The words

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" equal protection of the laws " have been the subject of judicial interpretation in numerous decisions of the Supreme Court of America, many of which have been cited before us. If I were to rest my decision in this case solely on the provisions of Article 14, I would be bound to examine individually the several decisions cited to us interpreting the same language of section 1 of the Fourteenth Amendment of the American Constitution. But in the view I take, it is unnecessary to pursue the course of American decisions to the full length. I shall content myself with stating what, in my view, is the effect of the decisions.

One cannot shut one's eyes to the fact that inequality is a fundamental or basic fact in actual life. Absolute equality, there is not, among human beings. It is a matter of common sense that you cannot treat an adult and a child, a sane man and an idiot or lunatic, a millionaire and a pauper, a convict and an innocent man, a literate and an illiterate person, an engineer and a bricklayer, a qualified physician or surgeon and a quack, as occupying the same or equal position in actual life. Though Article 14 recognizes a general or constitutional equality among all human beings, some distinction, some classification, some gradation or differentiation either in legislative practice or in day-to-day administration is inevitable, if one has to reconcile constitutional or legal equality with the facts of life and the needs of public administration. The whole system of State taxation, particularly income-tax, rests on a classification or differentiation of citizens according to their income and capacity to pay. The insane and feeble-minded persons might be put in a special class or category by themselves. Persons serving the public, as for instance, inn-keepers, vendors of foodstuffs, common carriers, medical practitioners, factory and mine owners, might be subjected to special regulations designed to ensure public health, safety or convenience. Again, part

of the area of a State may be affected by diseases originating in local conditions, and appropriate legislative or administrative action confined to that locality may be taken. This power of the State to ensure public health, safety, morals, in short, the general welfare of the people, has been styled the "police power" in American decisions. This power to govern men and things is inherent in every State and it involves classification, differentiation and abridgment of individual freedom. So long as the power is exercised *bona fide* and in a reasonable manner for the end designed and subject to the express provisions of the Constitution, the exercise of that power is not hit at by Article 14, though to some extent it might trench upon the freedom of the individual citizen. Clauses 2 to 6 of Article 19 of our Constitution expressly permit regulation and control of the exercise of their fundamental rights by citizens. But the classification or differentiation of citizens in the exercise of this power

> "must 'always' rest upon some difference which bears a reasonable and just relation to the Act in respect of which the classification is proposed and can never be made arbitrarily and without any such basis"; *Gulf C. & S. F. Ry. Co.* v. *Ellis*(1).

The guarantee of equality before law and equal protection of the laws given to the citizen by Article 14 of the Constitution does not require that absolutely the same rules shall apply to all persons irrespective of differences of circumstances. It merely enacts that equal protection and security of the laws should be given to all under like circumstances and conditions in the enjoyment of their civil rights.

The identical language in section 1 of the Fourteenth Amendment in America was, to quote only a few typical decisions, explained as follows :—

> "The fundamental rights to life, liberty, and the pursuit of happiness, considered as individual possessions, are secured

(1) (1897) 165 U.S. 150, 155

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by these maxims of constitutional law which are the monuments showing the victorious progress of the race in securing to men the blessings of civilization under the reign of just and equal laws, so that, in the famous language of the Massachussetts Bill of Rights, the Government of the Commonwealth 'may be a Government of laws and not of men'. For, the very idea that one man may be compelled to hold his life, or the means of living or any material right essential to the enjoyment of life at the mere will of another, seems to be intolerable in any country where freedom prevails, as being the essence of slavery itself..... The equal protection of the laws is a pledge of the protection of equal laws"; *Yick Wo* v. *Hopkins*(1).

This last statement was substantially adopted and much the same language was used in *Connolly* v. *Union Sewer Pipe Co.*(2) and *German Alliance Insurance Co.* v. *Hale*(3).

"The equal protection of the laws means subjection to equal laws, applying alike to all in the same situation"; *Southern Railway Co.* v. *Greene*(4).

"The Fourteenth Amendment does not prohibit legislation which is limited in the objects to which it is directed or by the territory within which it is to operate. It merely requires that all persons subject to such legislation shall be treated alike under like circumstances and conditions, both in the privileges conferred and in the liabilities imposed"; *Hayes* v. *Missouri*(5).

Class legislation or administrative action discriminating in substance and in effect though not in form, against some citizens and favouring others, is unconstitutional as violating the guarantee of equal protection of the laws given to all persons by section 1 of the Fourteenth Amendment corresponding to Article 14 of our Constitution. Any classification or differentiation of persons reasonably relevant and germane to the recognized principles of good and just Government is not unconstitutional. In deciding whether an exercise of Governmental power, whether legislative or administrative,

(1) (1885) 118 U.S. 356
(2) (1902) 184 U.S. 540, 559
(3) (1911) 219 U.S. 307, 319
(4) (1910) 216 U.S. 400, 412
(5) (1887) 120 U.S. 68, 71

violates these principles, the Court is entitled to go behind the face of things and enquire into its fairness in actual working and enforcement. Colourable legislation or administrative action in the pretended exercise of the "police power" of the State designed to cause or actually resulting in an invasion of the rights of a particular class or section of citizens would be unconstitutional. The rule is thus stated :

"Though the law itself be fair on its face and impartial in appearance, yet, if it is applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution"; *Yick Wo* v. *Hopkins*(1).

It is argued by the learned Advocate-General that different rules have to be applied to different castes and communities in the matter of admission to colleges in view of the disparity in their educational and economic conditions. The allotment of 8 seats out of every 14 for Non-Brahamin Hindus, as compared with 2 seats each for Brahmins and Harijans, and 1 seat each for Christians and Muslims, is said to be a reasonable and permissible classification having regard to the educational and economic conditions and needs of the various communities. I am unable to assent to the suggestion of the Advocate-General that Non-Brahmin Hindus constitute one of the "weaker sections of the community". A community which has furnished successive Vice-Chancellors of great distinction for all the three Universities in this State, several law officers of the State like Advocate-Generals, Public Prosecutors and Government Pleaders, distinguished Judges of this Court, competent administrative officers functioning both in the Union Government and as heads of districts and departments in this State, physicians, surgeons and obstetricians of all-India reputation, industrial magnates, mill-owners and entrepreneurs of great business ability and affluence,

(1) (1885) 118 U.S. 356

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and nine out of twelve Ministers of this State administering its affairs to-day, cannot, with any sense of appropriateness, be described as a weak section of the body politic requiring discriminative protection against other sections. In all the competitive walks of life the members of the Non-Brahmin Hindu community are in the forefront having won their place, I dare say, by reason of their ability, industry, educational attainments and organizing capacity. I am not bound, as a Judge, to affect a cloistered aloofness or seclusion from facts that every person in the State is aware of and to insist pedantically on detailed evidence of matters of common knowledge especially when dealing with the constitutional rights and privileges of citizens. I am by no means clear that the communal G.O. allotting 8 out of 14 seats for Non-Brahmin Hindus and 2 seats each for Brahmins and Harijans and 1 seat each for Christians and Muslims is not a discrimination violative of Article 14 of the Constitution. As, however, this point was touched upon, but not fully argued on behalf of the applicants, I do not rest my conclusion on the ground that the communal G.O. is in violation of Article 14 of the Constitution.

Article 14 of the Constitution enacts a general rule while the succeeding articles are particular applications of that rule. The exercise of Government power, be it legislative or executive, would be illegal and unconstitutional if it violates the rights and privileges guaranteed to citizens by these Articles.

Article 15 runs thus :

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

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

Article 29 (2) runs as follows :—

"No citizen shall be denied admission into any educational institution maintained by the State or receiving aid

out of State funds on grounds only of religion, race, caste, language or any of them."

The right to develop his natural faculties, physical and intellectual, is an incontestable right of every citizen and inheres in him. The gift of public education through institutions maintained by the State or with State aid is intended to improve the personal significance and stature of the individual citizen and to enable him to qualify for any lawful profession or employment. Every citizen is a beneficiary entitled to the benefit of this gift from the State if he has the requisite aptitude or qualification. Equality of opportunity for enjoying the amenities provided by the State to all citizens, subject only to such regulations as may be made in the interests of good government and public welfare, is guaranteed by Article 14. The makers of the Constitution were not content with enacting a general provision like Article 14, leaving the rights of citizens to the vicissitudes of judicial interpretation. They were aware of the huge mass of judicial decisions, not always consistent nor speaking with one voice, that had accumulated in America round the words "equal protection of the laws", in section 1 of the Fourteenth Amendment. With this knowledge and with their experience of the baneful results of discriminatory rules and practices based on considerations of caste, race or religion, resulting in undue advantage to certain communities and serious detriment to other sections of the public, they enacted Article 15 containing an express prohibition of discrimination by the State against any citizen on grounds of caste, race, religion, etc. Article 29 (2) forbids denial of admission to a citizen to educational institutions maintained by the State or receiving State aid only on grounds of caste, race or religion. Evidently the right of a citizen to receive the benefit of education provided at State expense, if he had the requisite qualification, was regarded as of so important a character

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as to require a categorical statement and a special guarantee in Article 29 (2). Though the Articles are expressed in strong negative terms, the negative necessarily implies and involves the affirmative.

The right that is recognized and guaranteed against discrimination by Articles 15 (1) and 29 (2) is the personal right of every individual citizen, his caste, race or religion being wholly irrelevant, not only irrelevant, but expressly tabooed from consideration. The rights of a caste or community do not come into the picture at all. The previous tendency to think in terms of majorities and minorities and of caste, race or religion, in adjusting the relations between the citizen and the State was resolutely combated and definitely shut out.

The learned Advocate-General sought diligently to persuade us that the strength of his argument lurked in the word " only " found in Article 15 (1) of the Constitution. The meaning of Article 15 (1) would be wholly unaffected if the word " only " were deleted from it. I might here observe that the phraseology of this article, like that of Article 325 relating to electoral rights, has been adopted from American decisions dealing with discriminatory legislation directed against Negroes and citizens of Asiatic origin. I was told by one of the learned Counsel, whose literary attainments are far greater than mine, that the expression " discriminate against a citizen on grounds only of caste " was not happy English, though the Oxford Dictionary defines " discriminate against " as " make an adverse distinction with regard to ; distinguish unfavourably from others ". I find, however, that the expression is used frequently in American decisions and it is evidently a good Americanism imported into our Constitution. But whatever be the source, the plain meaning of this plain enactment is that the State shall not make a distinction between one citizen and another on the ground of his caste,

race or religion. The significance of the word " only " is that, other qualifications being equal, the race, religion or caste of a citizen should not be a ground of preference or disability. The use of the words " or any of them " in Articles 15 (1) and 29 (2) after the words " religion, race, caste, etc." shows emphatically that not one of the enumerated grounds, namely, race, religion, caste, etc., is a valid ground for admitting or refusing admission to students into educational institutions maintained by the State or with State aid.

This is perhaps a convenient place to examine some of the American decisions cited to us, though, as I have said, the language of our Constitution is specific and emphatic and there is not the same scope for judicial interpretation here as there is in America. The discrimination in America was based on colour. Negroes and persons of Japanese or Chinese origin were the victims of discrimination. The Jim Crow Laws and the " Yellow Peril " threatening California, the " White Man's Paradise ", were the subject of frequent controversy. Notwithstanding the civil war, as a result of which Negroes were freed from slavery, and the enactment of the Fourteenth Amendment guaranteeing to all persons the equal protection of the laws, and the Fifteenth Amendment giving the right to vote to all citizens irrespective of colour, discrimination against Negroes and citizens of Asiatic origin, direct or indirect, open or covert, " simple or sophisticated", has been a persistent feature of state legislation, especially in the southern states of America. The Supreme Court has declared such legislation unconstitutional if it violated the clause as to " equal protection of the laws". The law has been progressively built up by Judges who very often discarded the doctrine of *stare decisis* in their attempt to reconcile the Constitution with the needs of a changing world and a socialist economy. The phrase " equal protection of the laws " has been

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interpreted as meaning that similar or substantially similar amenities and privileges should be provided for Negroes and citizens of Asiatic origin as for the white people. " Similar, but not the same " was the rule of construction adopted by the Supreme Court. It was held to be quite legal and constitutional to provide separate and exclusive accommodation for white people in inns, hotels, tramcars, omnibuses, railways, schools, etc., provided that substantially similar accommodation or amenity was provided for the coloured citizen elsewhere. Such a discrimination would be unconstitutional in India under Article 15. The tendency of the Supreme Court has been somewhat liberal in the matter of recognizing the equal rights of Negroes and citizens of Asiatic origin with reference to property, but somewhat conservative though progressive, in recognizing social equality.

In *Oyama* v. *California*(1) a Japanese father had a son who was born in America and therefore became an American citizen. The Supreme Court upheld the right of the latter to acquire land anywhere in the United States, overruling previous decisions sustaining State laws which discriminated against people of Japanese origin residing in America. The Court relied on the following observations in *Hirabayashi* v. *U.S.*(2) :—

" Distinctions between citizens solely because of their ancestry are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality."

In *Shelley* v. *Kraemer* (3) restrictive covenants in agreements excluding coloured persons from the ownership or occupancy of property covered by such agreement were held not to be legal. The following passage in the judgment is instructive :—

" The rights created by the first section of the Fourteenth Amendment are, by its terms, guaranteed to the individual. The rights established are personal rights. It is, therefore, no answer to these petitioners to say that the Court may also

(1) (1948) 332 U.S. 633 (2) (1942) 320 U.S. 81, 100
(3) (1948) 334 U.S. 1, 22

be induced to deny white persons rights of ownership and occupancy on grounds of race or colour.

.. .. Equal protection of the laws is not achieved through indiscriminate imposition of inequality."

In *Buchanan* v. *Warley*(1) the Court upheld the right of a white man to sell his property to a coloured man, declaring the unconstitutionality of a State law enforcing segregation by inhibiting occupancy of property by a Negro. This decision has, I understand, been criticised as giving greater protection to the property of Negroes than had been accorded to their personal rights.

With reference to educational matters, the Negro, whose tenacity both in the playing ground as well as in the arena of constitutional fight has been remarkable, has been scoring. Incidentally this line of cases would illustrate how the fabric of the American Constitution has been and is being built by the Judges of the Supreme Court. In *Plessy* v. *Ferguson*(2) the Court said :—

"The object of the amendment (Fourteenth) was undoubtedly to enforce the absolute equality of the two races before the law, but in the nature of things it could not have been intended to abolish distinctions based on colour or to enforce social as distinguished from political equality, or a commingling of the two races upon terms unsatisfactory to either. Laws permitting, and even requiring, their separation in places where they are liable to be brought into contact do not necessarily imply the inferiority of either race to the other, and have been generally, if not universally, recognized as within the competency of State legislatures in the exercise of their police power. The most common instance of this is connected with the establishment of separate schools for white and coloured children, which has been held to be a valid exercise of the legislative power."

In *Missouri ex. Rel Gaines* v. *Canada*(3) a Negro was refused admission to the School of Law of the State University of Missouri, and he applied to the Supreme Court. It was held by that Court that there

(1) (1917) 245 U.S. 60 (2) (1896) 163 U.S. 537
(3) (1938) 305 U.S. 337

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was a denial of the equal protection of the laws to the applicant and that the refusal was improper. The Court observed :

"The basic consideration is . . . . as to what opportunity Missouri itself furnishes to white students and denies to Negroes solely upon the ground of colour. The admissibility of law separating the races in the enjoyment of privileges afforded by the State rests wholly upon the equality of the privileges which the laws give to the separated groups within the state. The question here is not of a duty of the state to supply legal training or of the quality of the training which it does supply, but of its duty when it provides such training to furnish it to the residents of the state upon the basis of an equality of right. By the operation of the laws of Missouri a privilege has been created for white law students which is denied to Negroes by reason of their race. The white resident is afforded legal education within the state; the Negro resident having the same qualifications is refused it there, and must go outside the state to obtain it. That is a denial of the equality of legal right to the enjoyment of the privilege which the state has set up."

After the second world war when Negroes fought by the side and in front of white soldiers, judicial opinion has tended to improve the position of Negroes considerably in the matter of professional and collegiate education. Two recent decisions of the Supreme Court in *Sweatt* v. *Painter*(1) and *McLaurin* v. *Oklahoma State of Regents*(2), have been placed before us and they illustrate the expansion of the constitutional rights of the Negro. In the former case it was held by the Supreme Court that a Negro was entitled to be admitted to the Law School of the University of Texas, from which he was sought to be excluded on grounds which would, perhaps, have been upheld by the Judges of the Supreme Court of a previous generation. Another law school for Negroes had been established *pendente lite*, but it had fewer professors, fewer law books and had not the same high academic reputation

(1) (1950) 63 L.W. (Journal Section) 89
(2) (1950) 63 L.W. (Journal Section) 91

of the older institution established for the white population. The Supreme Court observed :

" In terms of number of the faculty, variety of courses and opportunity for specialization, size of the student body, scope of the library, availability of law review and similar activities, the University of Texas Law School is superior. What is more important, the University of Texas Law School possesses to a far greater degree those qualities which are incapable of objective measurement, but which make for greatness in a law school. Such qualities, to name but a few, include reputation of the faculty, experience of the administration, position and influence of the *alumni*, standing in the community, traditions and prestige. It is difficult to believe that one who had a free choice between these Law Schools would consider the question close."

In the second of the two decisions above referred to, a Negro was admitted to a college for the pursuit of higher studies to qualify him for aD octorate. At first he was completely segregated in the class room by a wired fence and he was later on assigned a seat in the class room specified for coloured students, a separate table in the library on the ground floor and a special table in the cafeteria. The Supreme Court held that these distinctions were illegal and unconstitutional and observed :

" They signify that the state, in administering the facilities it affords for professional and graduate study sets McLaurin apart from the other students. The result is that the appellant (Negro) is handicapped in his pursuit of effective graduate instruction. Such restrictions impair and inhibit his ability to study, to engage in discussions and exchange views with other students and in general, to learn his profession."

In view of the peremptory and specific provision contained in Article 15 (1) of the Constitution of India, it would be unnecessary to rely upon the American decisions taking a liberal view of the rights of the Negro in the matter of admission to State Colleges. At the same time, it is interesting to note that the Judges of the Supreme Court felt bound under the impact of changing political and economic conditions both in America and in the world, to make a departure

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from their previous pronouncements restricting the rights of the Negro. In my opinion, the communal G.O. violates Article 15 (1) of the Constitution. It statedly classifies students seeking admission to State Colleges, on the basis of caste and religion and allots a definite number of seats to students belonging to particular castes or communities irrespective of their merit. It makes caste and religion a ground of admission or rejection. In its working, it results in the adoption of different qualifications and different standards for students seeking admission to the same institution according to their caste, community or religion. By its allotment of a fixed number of seats to students of a particular caste or community, the communal G.O. denies equal treatment for all citizens under like circumstances and conditions, both in the privileges conferred and disabilities imposed. In its effect and operation the communal G.O. discriminates very markedly against members of a particular caste and shuts out students having high qualifications solely on the ground of their caste or religion and lets in others with inferior qualifications on the same ground. The " charter of liberties of the student world ", which the sponsors of the Constitution proudly proclaimed they were enacting, has been so abridged and mutilated by the communal G.O. as to reduce it to a charter of servitude for a class of deserving students who have the misfortune to belong to a particular caste or religion.

It was argued by the learned Advocate-General that there was here no discrimination based on the ground of caste or religion. He maintained that other considerations such as want of sufficient accommodation for all applicants for admission, and the duty of the Government to advance the educational and economic interests of the backward classes, to ensure social justice for all sections of the public and to prevent State or State-aided Colleges from being

monopolised by one section of the public to the detriment of others, guided the action of Government. I am free to admit that these considerations are legitimate and proper to be taken into account in shaping or formulating Government policy. But they have to be accommodated within the frame work of the Constitution. Here I may observe that I do not think so ill of our Constitution as to suppose that these principles of good Government and social and economic justice were ignored or not given due weight by its makers when they enacted Article 15 (1). Individual rights of citizens of so fundamental and transcendent a character, as for example, the right of every citizen to develop his faculties to the best advantage with the aid of the educational facilities provided by the State or at State expense, were considered to be so inviolable that the power of the Government to interfere with such rights, according to its changing notions of policy or expediency, was put under strict restraint by the Constitution. If the persons in charge for the time being of a State, elected no doubt by a majority of voters at the polls, were free to enforce their own notions of social and economic justice unfettered by constitutional restraints, there is a possibility of serious and undeserved hardship and injury to large classes of citizens who are in a minority. To avoid this possible abuse of Government power the framers of the Constitution erected the steel frame of Fundamental Rights on which alone Government could build. Part III of the Constitution is itself a categorical statement of those very principles of individual and social justice whose transgression in the exercise of Governmental power is expressly forbidden. The Constitution has struck the balance between Government power and the rights of individual citizens and it has to be obeyed. Article 15 (1) controls the

> "temporary will of a majority by a permanent and paramount law settled by the deliberate wisdom of the nation",

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to quote the words of the learned CHIEF JUSTICE of the Supreme Court of India in *A. K. Gopalan* v. *The State of Madras*(1).

Let me not be misunderstood. The economic resources of the State are limited. It is impossible to provide seats for all students seeking admission to Government Colleges. Therefore, some citizens have to be winnowed out. The prescribing of some qualifications and standards for admission of students is therefore inevitable. The qualifications may vary with the different branches of academic or professional studies. Special qualifications or aptitudes for particular types of education may be laid down, based on physical fitness, marks obtained in preparatory examinations and so on. They must, however, be reasonably relevant to the recognized purposes of professional or other kind of education and the qualifications prescribed must be the same for all citizens seeking admission to a State or State-aided educational institution, irrespective of whether they belong to this or that caste, community or religion. It may be that through the fortuitous operation of a rule which, in itself is not discriminatory, a special advantage is enjoyed by some citizens belonging to a particular caste or community. This advantage is not taken away by Article 15 (1). If, for instance, students belonging to a certain community or caste by reason of their caste discipline, habits and modes of life, satisfy the prescribed requirements in larger numbers than others, it is not permissible to shut them out on that score. Nor is it permissible to lay down wholly fanciful, arbitrary or irrational tests unrelated to education, academic or professional.

If, other qualifications being equal, a Christian who has got 500 marks is excluded on the ground that only one seat is allotted to Christians and that seat has been filled up, while a Hindu who has got 300 marks

(1) [1950] S.C.R. 88

is admitted on the ground that 350 seats allotted for Hindus have not been filled up, there is clearly a discrimination against a Christian citizen on the ground only of his being a Christian. The position with reference to the Brahmins and Non-Brahmins would be the same, except that the discrimination is based on caste and not on religion. Now, if we are going to classify on the basis of castes, where are we to stop ? If exclusive privileges of a discriminatory character are to be granted to one caste, why not extend the same principles to sub-castes and sub-divisions of each sub-caste ? There are Smarthas and Vishnavites among Brahmins and among the Smarthas and Vishnavas there are further sub-divisions. There are more sub-divisions among Non-Brahmins than it is possible to enumerate. Islam and Christianity do not exhibit so many differences. It was with a view to exterminate these communal and class considerations in the realm of State activity, that Article 15 (1) has been enacted. The communal G.O. is subversive of this basic provisions of the constitution.

I was not able to understand—I am not sure, I am any wiser now—the argument of the learned Adovcate-General that if one Brahmin or Christian student is admitted, there is no question of discrimination amongst Brahmins or Christians within the meaning of Article 15 (1). This argument is sought to be seriously supported by citation of some American decisions. It is best answered in the language of one of those decisions dealing with a legislation requiring Negroes to apply for registration within a fortnight on pain of losing their right to vote. The Supreme Court held :

" The Fifteenth Amendment nullifies sophisticated as well as simple-minded modes of discrimination. It hits onerous procedural requirements which effectively handicap exercise of the franchise by the coloured race although the abstract right to vote may remain unrestricted as to all races."; see *Lane* v. *Wilson*(1).

(1) (1939) 307 U.S. 268

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Again, as observed in *Shelley* v. *Kraemer*(1):

"Equal protection of the laws is not achieved through indiscriminate imposition of inequalities."

The contention that there must be an exclusion of Brahmins or Christians altogether in order to constitute discrimination within the meaning of Article 15 (1) ignores the language and purpose of the Article. This argument may be relevant to an interpretation of Article 29 (2) as I shall show presently. The prohibition in Article 15 (1) is against differentiation between one citizen and another citizen on the ground of caste, race or religion. The rights that are protected and guaranteed by this Article are the personal rights of each individual citizen, his caste, race or religion being wholly ruled out of consideration. It is not the rights of a caste or community or the rights of citizens as representing or forming integral parts of a caste or community, that this Article deals with and guarantees. The right guaranteed is the personal right of every individual citizen *qua* citizen, and not as belonging to a particular caste or professing a particular religion. The American decisions already cited emphasise that the right is the personal right of each individual citizen unaffected by his race or colour.

Learned Counsel for the applicants took their stand mainly on Article 29 (2) and the Advocate-General adroitly turned his counter-attack against them on their own chosen ground. Not sufficient importance was given to Article 15 (1) in the course of the arguments. To avoid a long discussion, I take the liberty of stating the argument of the respondent in the form of a syllogism. The applicants have been refused admission, because, (*a*) they are Brahmins; (*b*) Brahmins have an allotment of only 2 seats out of 14 on the basis of some principle of communal justice; and (*c*) the 2 seats have already been filled up by other Brahmin candidates. A denial of admission based

(1) (1948) 334 U.S. 1, 22

on these three grounds is not a denial only or solely or exclusively on the ground of the applicants being Brahmins, which alone is prohibited by Article 29 (2). This, in substance, is the contention of the Advocate-General and it looks plausible. It may not be a complete answer to say that the right guaranteed under Article 29 (2) is the individual right of a citizen. Denial of admission is different from discrimination, the former involving a wholesale refusal and the latter a preference of some and rejection of others. Discrimination is hit at by Article 15 (1) and denial of admission by Article 29 (2). Whatever difficulty there may be in holding that the communal G.O. offends Article 29 (2), in my opinion, it flies in the face of Article 15 (1) of the Constitution. For this reason I refrain from referring to the original draft of Article 29 (2) and the speeches in the Constituent Assembly at the time when Article 29 (2) in its present form was enacted.

The learned Advocate-General further contended that it was open to the Government to take candidates in proportion to the numerical strength of the various communities and that this was also one of the considerations which weighed with the Government in enforcing the communal G.O. This contention is again shipwrecked on the language of Article 15 (1) of the Constitution. If you classify students seeking admission to colleges according to the castes and the communities to which they belong and fix and allot a number of seats for students of each caste or community according to the numerical strength of the members of that caste or community, you are differentiating between citizens on the ground of caste or religion. A Brahmin student who gets 450 marks is told that he has no seat because there are only 2 out of 14 seats allotted for his community, and those 2 seats have been filled up by Brahmin students with higher marks. A Non-Brahmin student who obtains 350 marks is admitted because there are 8 seats out of 14

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allotted for his community and 8 students with more than 350 marks have not been forthcoming. The Brahmin is rejected and the Non-Brahmin is admitted only because the former is a Brahmin and the latter, a Non-Brahmin. If a Brahmin student had turned overnight into a Non-Brahmin—assuming such a feat were possible—he might have been admitted and a Non-Brahmin, if he were proved to be in fact a Brahmin under Non-Brahmin disguise, would have been rejected. What else is this but patent discrimination on the basis of caste ?

The learned Advocate-General referred us to Article 337 of the Constitution in support of his contention that discrimination on the basis of communities was recognized by the Constitution. In my opinion, this is far-fetched argument. Article 337 purports to be a special transitory provision occurring in Part XVI entitled "Special Provisions Relating to Certain Classes." Anglo-Indian educational institutions had been receiving in pre-independence days lavish grants from Governments, very much in excess of the scale prescribed for other institutions. The makers of the Constitution considered that it would work a hardship if this preferential treatment were stopped all at once and therefore provided a limited measure of protection to Anglo-Indian institutions for a strictly limited period. Article 337 is a special provision and in any case, it is a part of the Constitution itself. The absence of any similar provision for other communities in Articles 15 (1) and 29 (2) is an argument against the respondent.

It was further argued that Article 16 (4) of the Constitution provided for the reservation of appointments or posts for backward classes of citizens and that in order to enable them to obtain the benefit of this reservation, preferential treatment in the matter of admission to colleges had to be extended to them. This is an ingenious but unsound argument. It is

significant that there is no such reservation in favour of backward classes in Article 15. The makers of the Constitution made specific provisions for conferring special privileges on backward classes, and Article 16 (4) is one such provision. There is no corresponding provision either in Article 15 or in Article 29 reserving seats for backward classes in educational institutions maintained by the State or with State aid. On the other hand, the language of Article 15 (1) is peremptory that no distinction on the basis of caste, race or religion should be made between one citizen and another in the exercise of his constitutional rights and one such right is the right to admission to State or State-aided institutions, provided he has the prescribed general qualifications. It will be ludicrous to suggest that in order to enable the backward classes to enter public service, a provision could be made entitling a student of the backward class to a pass in the Intermediate, Bachelor of Arts or Science Examinations of the University if he gets ten per cent of the total marks as against a forty per cent minimum fixed for other students. It is not the less objectionable if under the guise of allotment of seats to different communities you set different qualifications and different standards for students seeking admission, the said qualifications and standards varying with their caste, community or religion.

Lastly, it was contended that the communal G.O. was justified by Article 46 of the Constitution, which directs the State to promote with special care the educational and economic interests of the weaker sections of the people, particularly the scheduled castes and tribes. Article 46 occurs in Part IV dealing with "Directive Principles of State Policy." It is a Code of morals and ideals for State governments like the commandments of the Bible. Article 37 expressly states that the provisions of Part IV shall not be enforceable by any Court. The rights conferred by

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Articles 15 (1) and 29 (2) are expressly made justiciable by Articles 32 and 226 of the Constitution. Article 46 lays down the general policy to be followed by the State in the sphere of legislation or executive action. It cannot and does not purport to override the provisions of Article 15 (1) and it must be read subject to the provision, according to the elementary rule of statutory interpretation, that the different parts of a statute should, as far as possible, be construed so as to avoid a conflict. The contention of the Advócate-General really comes to this: that discrimination is shut out by the front door of Article 15 (1) but immediately readmitted by the backdoor of Article 46. There are also other difficulties in the way of upholding his contention. The communal G.O. in the form in which it is now worked has been in existence for a long time prior to the coming into force of the Constitution. It has not been framed or issued by the Government in the exercise of the powers and the discharge of the duties specified in Article 46 of the Constitution. The same old classification of communities on the basis of caste and religion, into Brahmins, and Non-Brahmins Christians, Muslims and Hindus, is kept up and enforced. There is nothing to show that the Government applied its mind to a determination of who the "weaker sections" of the people were, before allotting seats in the Engineering and Medical Colleges to the different castes and communities. Even in the same caste or community there are stronger and weaker sections. Economically, culturally and educationally, a caste is not a homogeneous body. Further, it is not the case that the communal G.O. advances the educational interests of the weaker sections. Taking the case of Harijans as an illustration, two out of fourteen seats are allotted to them. It is not as if two seats are reserved for them and the remaining seats are thrown open to Harijans along with other communities to be filled up on a competitive basis. If there are six Harijans

who have secured higher marks than all the candidates of the other communities, only two Harijans would be admitted, and the remaining four will be denied admission solely on the ground of their being Harijans. In this sense, the G.O. discriminates against backward classes. In any case, it is an indiscriminate imposition of inequalities, on the basis of caste, race, or religion. The communal G.O. divides citizens into watertight compartments according to caste or religion and prefers citizens of one caste or community to the detriment of others, even though the qualifications of the students who are preferred are inferior to those of the students who are rejected.

I may briefly advert to one other point which arose during the course of the arguments. Article 15 (3) allows the reservation of educational institutions exclusively for the benefit of women. There is no such corresponding provision for males, and Article 15 (1) is wide and general in its terms. It is however significant that Article 29 (2) omits all reference to sex and place of birth among the prohibited grounds of discrimination. It may therefore be reasonably argued that educational institutions intended exclusively or primarily for women could be maintained by the State without a violation of the Constitution.

To sum up: Articles 14 and 15 (1) of the Constitution are plain and, indeed, quite intractable. Their language is express, explicit and peremptory. They guarantee certain valuable personal rights to every citizen. These rights are made inviolable by the exercise of Government power except in conformity with the Constitution. The State is prohibited by Article 15 (1) from discriminating against any citizen on the ground of his caste or religion, when he attempts to exercise constitutional rights guaranteed to him by Part III. It prohibits the State from discriminating against citizens seeking to avail themselves of opportunities provided by the State for their intellectual

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development and material advancement by joining educational institutions maintained at the expense of the State, on the ground of caste or religion, if they satisfy reasonable tests prescribed alike for all citizens similarly situated. The communal G.O., which classifies citizens according to their caste and religion for purposes of admission to Government Medical and Engineering Colleges, which allots seats in definite and fixed proportions to different castes and religions and communities, and which operates effectively to shut out a large number of students with higher qualifications and to let in a large number of students with lower qualifications, solely on account of their belonging to particular castes and communities, discriminates against citizens on the ground of caste, community or religion, and therefore violates Article 15 (1) of the Constitution. It is unnecessary to decide whether it is also hit at by Article 14 as being a colourable exercise of Government power depriving the citizen of the protection of equal laws. Declaration of a guaranteed right in Article 15 (1) of the Constitution would be worthless if the Government could disregard or nullify it by executive acts like the communal G.O. The fact that the Constitution reverses previous administrative principles and practices widely prevalent in this State is not a ground for neutralizing its operation and effect, for, Article 15 (1) of the Constitution was specially intended to abrogate, and expressly abrogated, discrimination against citizens on grounds of race, religion or caste.

The appeal made by the learned Advocate-General to some vague and undefined principle of social justice does not justify a Court of construction—and construction of the Constitution is the whole of our task—in refusing to obey the plain command of the Constitution by which the legislature, the executive and the judiciary are all bound alike. Does social justice or the welfare of the State require a suppression of the

integrity and freedom of the individual personality of a citizen by reason of his belonging to a particular caste ? I do not apprehend any calamitous or untoward results from our decision in view of the rapid progress—economic and educational—now being made by all sections of the people under our democratic republican Constitution. An appreciable amount of constructive work for the uplift of Harijans is done not only by the State but by non-official organizations comprising citizens of all communities. The need for improving the economic and educational level of backward classes is there, but there are many legitimate methods of satisfying this need without causing detriment to other communities and individual citizens. May it not be met by a process of levelling up rather than levelling down ? Is the lynch spirit having its rootage in caste and colour and religious differences, to be fostered and recognized as a principle of State Policy ? That the end justifies the means was no part of the creed of the makers of our Constitution who drew their inspiration not from Machiavalli but from Mahatma Gandhiji. It would be strange if, in this land of equality and liberty, a class of citizens should be constrained to wear the badge of inferiority because, forsooth, they have a greater aptitude for certain types of education than other classes. It would ever be unjust—it is now unconstitutional—to deprive deserving youths of a particular community of a right of so elementary a character, that deprivation of its enjoyment in common with and on the same footing as others, is a deprivation, in the competitions of life, of one of the most essential means of existence ; and this for no sin or fault of theirs and for no other reason than that they belong to a particular caste or religion. Article 15 (1) of the Constitution of India would become an empty bauble if the communal G.O. regulating admission of students were held to be legal and constitutional.

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For these reasons I agree with my Lord the CHIEF JUSTICE in the form of the order which he proposes to make and in the direction as to costs.

SOMASUNDARAM J.—The question that falls to be decided in these two petitions is whether the G.O. No. 1254, Education, dated 17th May 1948, which regulates the admission of students into Medical and Engineering Colleges is valid under the present Constitution. The facts are fully set out in the judgment of my Lord the CHIEF JUSTICE and it is unnecessary for me to restate them here ; nor is it necessary for me to state the circumstances in which the G.O. was passed. If I remember right the principle behind it was recognized and laid down by representatives of the people and it is maintained up to date by those in authority and they are the accredited representatives of the people. There is therefore behind it the sanction and the will of the people of this State. We are not called upon here to comment on the circumstances that have led up to this G.O. Nor do I think it necessary to enter into a discussion of the principles underlying the draft Constitution or the background of Article 29 (2). We are here concerned only with the validity of the Order. The decision on the question turns upon the proper interpretation of Articles 15 (1) and 29 (2) of the Constitution. A number of American decisions were cited before us but they are not of material assistance in arriving at the decision and it was practically so conceded at the Bar. It is also conceded that provisions similar to Articles 15 (1) and 29 (2) are not to be found in any of the Constitutions of other countries in the world and no direct authority bearing on the point is available.

The contention of the petitioners is that the discrimination in Article 15 (1) and the denial in Article 29 (2) should on no account be based on religion, race, caste or language or any of them and they should not form the basis of selection. The term

"only" in both the sections according to them means "because of". On the other hand, the contention of the learned Advocate-General is that emphasis must be laid on the word "only" and, according to canons of interpretation of statutes, the word must be given a meaning appropriate to the context and it cannot be ignored in the construction unless it would lead to an absurdity. The meaning of the term may vary with the context. In my opinion, there is considerable force in the contention of the Advocate-General. The word "only" in the Oxford Dictionary has the following meanings: solely, merely, exclusively, by or of itself alone, without anything else. "Only" in the context therefore means solely or for this reason alone. So construed, the Articles mean that the discrimination or denial should not be on the ground of religion, race, caste or language *alone*. It follows therefore that one of the grounds of discrimination or denial may be on the basis of religion, race, caste, language, but it should not be the sole ground. It may be that the ground of denial or discrimination may involve or bring in the question of caste, etc., but it would not be on that sole ground, i.e., a ground unaffected by any other consideration than that based on religion, race, caste, etc. It appears to me that the framers of the Constitution have used the word "only" deliberately. In my opinion, the framers were and must have been conscious of the fact that this sub-continent of India is composed of people of varying degrees of culture and civilization differing from State to State. They may legitimately have thought that in the circumstances it would not be safe to enact a rigid and inelastic rule that the caste, religion, language, etc., should not be the basis of selection at all and that it might hamper and fetter the policy of the State in the Government of the country. Therefore the term "only" was included for emphasising

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that the denial or discrimination should not be on the sole ground of caste, etc., and that circumstances in each State or carrying out certain policies may involve denial or discrimination on the ground of caste, etc., but that such denial or discrimination would not be in contravention of Articles 15 (1) and 29 (2). It is neither possible nor necessary for us to state what those circumstances or facts or policies are which the State may legitimately take into account or pursue or adopt. Where the construction of a section is doubtful, it is competent for us to look into the preamble which states that all citizens should have equality of opportunity. How this equality of opportunity in the matter of education should be worked out is a matter entirely for the State depending on various circumstances and, if it is worked out in a particular way *bona fide*, it cannot be said that in the matter of working out, denial or discrimination in the matter of admission involves the ground of caste, etc., and Articles 15 (1) and 29 (2) are contravened; because the Articles postulate the taking of considerations other than religion, race, caste, etc., some of which might bring in the question of religion, race, caste, etc., and some of which might not. It is only if the denial or discrimination is based on the bare ground of religion, race, caste, etc., the Articles are hit.

Article 46 of the Constitution is a very relevant and important Article to be considered in this connection. It runs thus :

> "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."

This is placed in Part IV relating to Directive Principles of State Policy. Article 37 states that though the provisions in that part are not enforceable

in Court, nevertheless the principles therein are fundamental in the governance of the country. I emphasize the word "fundamental" in the Article. In this connection I may usefully refer to the speech made by Dr. Ambedkar when he introduced the Draft Constitution for consideration by the Constituent Assembly:

> "The Directive Principles are like the Instrument of Instructions which are issued to the Governor-General and to Governors of the Colonies and to those of India by the British Government under the 1935 Act. What are called Directive Principles is merely another name for Instrument of Instructions . . . . The only difference is that they are instructions to the Legislature and the Executive. Whoever captures power will not be free to do what he likes with it. In the exercise of it he will have to respect these Instruments of Instructions which are called Directive Principles. He cannot ignore them."

It is therefore the duty of the State to respect and give effect to the principle contained in Article 46. Those responsible for the Constitution were perfectly aware of these provisions and in fact Article 29 (2) was passed after Article 46 was passed. The use of the word "Fundamental" is significant in view of the use of the same word in Part III of the Constitution. The principles in this chapter are therefore as fundamental as those in Part III. The Constitution provides for the exercise of these principles in the governance of the country and administering the laws laid down in various Articles of the Constitution. The framers were perfectly conscious that in administering Article 15 (1) and Article 29 (2) the State has to deal with other grounds than those mentioned therein. Article 46 may not override the Articles in Part III. But, as contended by the Advocate-General, Articles 15 (1) and 29 (2) must be read with Article 46 of the Constitution. In distributing the seats the State can take into account the fundamental principles embodied in the Article which it cannot ignore.

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It is contended that the right conferred by Articles 15 (1) and 29 (2) is an individual right. It may be so, but the extent of the right is that conferred by the articles which, as I have pointed out, is not an unqualified right as contended for. It is again urged that it is unqualified is clear from the omission of a clause similar to Article 16 (4) in Article 29 (2). Article 16 (4) gives effect only to the fundamental principle contained in Article 46 and, as I have pointed out, Article 29 (2) was passed after Article 46 and the omission of a clause similar to Article 16 (4) does not preclude the State from giving effect to the principle contained in Article 46, which they are bound to.

This is the view of the two articles which I am inclined to take. At the same time, I must admit that there is considerable force in the arguments advanced by my Lord the CHIEF JUSTICE and my learned brother VISWANATHA SASTRI J. for the view they have taken. I would therefore agree, though not without hesitation, in the order proposed by my Lord the CHIEF JUSTICE.

By Court:

We certify that the case involves a substantial question of law as to the interpretation of the Constitution, in particular Articles 14, 15, 29 and 46 thereof.

Solicitor for respondent: *H. M. Small.*

N.K.