Subject: Constitutional Law-II

Teaching Material of Article 15(4) and Article 16-Unit-II

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Article 15(4) Socially and Educationally Backward Class

Article 15(4) says that, Article 15 and article 29 shall not prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes. This clause was added in the constitution by Constitution (First Amendment) Act, 1951.

Article 15(4) enables the state to make special provisions for promoting the interest and welfare of socially and educationally backward classes of citizens and for the Scheduled Castes and the Scheduled Tribes. It confers discretion and does not create any constitutional duty or obligation. It is enabling provision and cannot be claimed as a matter of fundamental right.

Objective of Article 15(4)

The reason behind the introduction of this provision was that in pre-Independence India, especially in the Caste system, it was often seen that one section was seen and deemed inferior to other section. The Article also provides the State powers to create special provision for women, children, Socially and Educationally Backward Classes, Scheduled Castes and Scheduled Tribes. These powers have been given to the State so that it can create such provision which can help these sections rise up and become equals to the other sections of the society. It can be said that these provisions are meant for the upliftment of those sections of the society which have been downtrodden/poor state for many years. These provisions also help to accomplish the basic ideas behind Article 14 and 15 in bringing about equality and eradicating discrimination.

Socially and Educationally Backward Classes

One of the main question is who comprises Socially and Educationally Backward Classes. Article 15(4) does not lay down any criteria to determine socially and educationally Backward Classes. It leaves the matter to the state to specify backward classes, but courts can go into the question whether the criteria used by the state for said purpose are relevant or not. The question
defining backward classes has been considered by Supreme Court in number of cases. From various judicial decisions following propositions can made:

1. Backwardness under article 15(4) is both social and educational and not either social and educational. It means that a class to be identified as backward should be both socially and educationally backward.
2. Poverty alone cannot be the test of backwardness in India because by and large people are poor and therefore, large section of population will fall under backward category and thus the whole object of reservation would be frustrated.
3. Backwardness should be comparable to the Scheduled caste and scheduled tribes.
4. Caste may be relevant factor to define backwardness, but it cannot be sole or dominant criteria.
5. Poverty, occupation, place of habitation, all contribute to backwardness and such factors cannot be ignored.
6. Backwardness may be defined without any reference to caste as article 15(4) talks about classes and not castes. Therefore, exclusion of caste to ascertain backwardness does not invalidates the classification if it qualifies other tests.

*Balaji vs. State of Maysore (1963)*

In this case an order of Maysore government was issued under article 15(4) which reserved seats for admission to the state medical and engineering colleges for Backward classes and more Backward Classes. This was in addition to the reservation of seats for scheduled caste (15%) and scheduled Tribe (3%). Backward classes and more Backward Classes were designated on the basis of caste and communities. The Court declared the order bad on following grounds:

i. The Court held that the order was solely based on caste without regard to other relevant factors and this was not permissible under Article 15(4).

ii. The test adopted by the state to measure educational backwardness was the basis of the average of the student-population in the last three high school classes of all high schools in the state in relation to thousands citizens of that community. The average of whole state was 6.9 per thousand. This test could not be validly applied.
iii. Article 15(4) does not envisage classification between “Backward classes” and “more Backward Classes”.

In this case the Court equated the “social and educational backwardness” to that of the “Schedule Castes and Schedule Tribes”. The Court observed: “It was realized that in the Indian society there were other classes of citizens who were equally, or may be somewhat less, backward than the Scheduled Castes and Scheduled Tribes and it was thought that some special provision ought to be made even for them.”

The court further held that the caste of a group of persons cannot be the sole or even predominant factor though it may be a relevant test for ascertaining whether a particular class is a backward class or not. Backwardness under Article 15(4) must be social and educational, and that social backwardness is, in the ultimate analysis, the result of poverty. One’s occupation and place of habitation could be the other relevant factors in determining social backwardness. The Court invalidated the test of backwardness which was based predominantly, if not solely, on caste. In this case the validity of a Mysore Government Order reserving 68 per cent of the seats in the engineering and medical colleges and other technical institutions in favour of backward classes including the Scheduled Castes and Scheduled Tribes was challenged. The Supreme Court characterized Art. 15(4) as an exception to Art. 15(1) [as well as to Art. 29(2)]. The Court held: “A special provision contemplated the Article 15(4) like reservation of posts and appointments contemplated by Article 16(4) must be within reasonable limits. In this matter again, we are reluctant to say definitely what would be provision should be less than 50 per cent; how much less than 50 per cent would depend upon the relevant prevailing circumstances in each case.” Reservation of 68 per cent of seats in that case was found by the Court plainly inconsistent with Article 15(4).

**Post Balaji Case**

*R. Chitralekha vs State Of Mysore*

In this case reservation up to 68% was made by the state of Mysore for backward classes for admission to state medical and engineering colleges. The break-up reservation was 50% seats for Backward classes and more Backward Classes, 15% seats for SCs, 3% seats for STs. 32% seats were left for merit pool.
The Court rejected the rule of 68% reservation. The court emphasized that a special provision contemplated by Article 15(4) must be within a reasonable limits. The interest of weaker section of the society has to be adjusted with the interest of the community as a whole. The general principle laid down by the court is that the maximum limit of reservation should not be more than 50%.

However the court upheld an order of the government that defined "backwardness" without any reference to caste using other criteria such as occupation, income and other economic factors. The Court ruled that while caste may be relevant to determine backwardness, the mere exclusion of caste does not impair the classification if it satisfied other tests.

In Balaji the supreme court clearly indicated that in giving effect to reservation for SCs, STs and OBCs, a balance out to be a struck so that the interest of the backward class, SCs, STs are properly balanced with the interest of other sections of the society. In order to safeguard the interest of The Reserved class, the interest of the community as a whole cannot be ignored. Reservation under article 15 clause 4 must be within a reasonable limit.

**Reservation in admissions**

Questions arise frequently regarding reservation of seats for admission in educational institutions.

*DN chanchala vs state of mysore*

In this case Supreme Court held at the reservation for children of defence personnel, Ex-Defense personal, and political sufferers is valid.

*Nishi Meghu vs state of jammu and kashmir*

In this case for admission to the medical college in a state 60% seats were to be filled on merit 20% from scheduled caste and other reserved categories including socially and educationally backward classes and remaining 20% of seats where earmarked for ensuring 'rectification of Regional imbalances'. The classification made for rectification of regional imbalances was declared invalid as it was too vague.

*Nidmarti Maheshkumar vs. State of Maharashtra*
In this case for the purpose of admission to MBBS course region wise classification was made in the state. The Rule said that the students passing the 12th standard examination from institution within the jurisdiction of one university would claim admission only in the medical colleges in that region and would not be eligible for admission to medical colleges situated within the jurisdiction of another university in the state. The court ruled the classification to be invalid.

_in Preeti Srivastava v. State of M.P_, it was observed as under:

“Article 15(4), which was added by the Constitution First Amendment of 1951, enables the State to make special provisions for the advancement, inter alia, of Scheduled Castes and Scheduled Tribes, notwithstanding Articles 15(1) and 29(2). The wording of Article 15(4) is similar to that of Article 15(3). Article 15(3) was there from the inception. It enables special provisions being made for women and children notwithstanding Article 15(1) which imposes the mandate of nondiscrimination on the ground (among others) of sex. This was envisaged as a method of protective discrimination. This same protective discrimination was extended by Article 15(4) to (among others) Scheduled Castes and Scheduled Tribes. As a result of the combined operation of these articles, an array of programmes of compensatory or protective discrimination have been pursued by the various States and the Union Government...”

In the case of _State of U.P. V. Pradeep Tandon_, in admission to medical colleges in U.P. in favour of candidates from- (a) rural areas, (b) hill areas and (c) Uttrakhand area was challenged. The classification was based on geographical or territorial considerations because in governments view the candidates from these areas constituted socially and educationally backward classes of citizens. The Court held that the accent under Article 15(4) was on classes of citizens and the Constitution did not enable the State to bring socially and educationally backward areas within the protection of Article 15(4). It was emphasized that the backwardness contemplated under Article 15(4) was both social and educational and the socially and educationally backward classes of citizens were groups other than the groups based on castes. The traditional unchanging conditions of citizens could contribute to social and educational backwardness. The place of habitation and its environment could be a determining factor in judging the social and educational backwardness. The Court upheld reservations for persons from hill and Uttrakhand areas. It was found that the absence of means of communication, technical processes and educational facilities kept the poor and illiterate people in the remote and
sparsely populated areas backward. However, reservation of seats for rural areas was invalidated because the division of the people on the ground that the people in the rural areas were poor and those in the urban areas were not, was not supported by the facts. Further, the rural population was heterogeneous and not all of them were educationally backward.

The question was again considered in *Jayasree v. State of Kerala*, where the Supreme Court was called upon to determine whether the constitutional protection could be extended to a person who belonged to a backward community but the family’s income exceeded the prescribed limit of certain amount per annum. The court held that in ascertaining social backwardness of a class of citizens, it may not be irrelevant to consider the caste of group of citizens. Castes cannot, however, be made the sole or dominant test as social backwardness which results from poverty is likely to be aggravated by considerations of caste. This shows the relevance of both caste and poverty in determining the backwardness of the citizens but neither caste alone nor poverty alone can be the determining test of social backwardness. It was, therefore, held that the impugned order prescribing the income limit was valid, as the classification was based not on income but on social and educational backwardness. It was recognized that only those among the members of the mentioned castes, whose economic means were below the prescribed limit were socially and educationally backward, and the educational backwardness was reflected to a certain extent by the economic conditions of the group.

*Indra Sawhney v. Union of India* popularly known as Mandal Commission Case.

Upholding the validity of a total of 49.5 per cent reservation (22.5 per cent for SCs and STs and 27 per cent for SEBCs) in the Mandal Commission case, the Court held that barring any extraordinary situation Court mentioned of a far-flung remote area whose population needs special treatment for being brought into the mainstream. For such cases the Court suggested extreme caution and making out of a special case. The 50 per cent limit does not include those members of SEBCs who get selected on their own merit. They are entitled to get adjusted against the open category. The 50 per cent limit, however, applies to all reservations, including those which can be made under Article 16(1), i.e., altogether the reservation should not exceed 50 per cent limit. But this limit applies only to reservations and not to exemption, concessions and relaxations. Therefore 50 per cent limit may not apply to many situations under Article 15(4) and 16(4). For the application of 50 per cent rule a year should be taken as the unit and not the entire
strength of the cadre service or the unit, as the case may be. So long as this limit is observed, carry forward rule is permissible.

The policy of reservation has to be operated year-wise and there cannot be any such policy in perpetuity. The State can review from year to year the eligibility of the class of socially and educationally backward class of citizens. Further, it has been held that Art. 15(4) does not mean that the percentage of reservation should be in proportion to the percentage of the population of the backward classes of the total population.

The Court in the Mandal Commission case has clearly held that Article 15(4) and 16(4) are not exceptions to clauses (1) and (2) of those articles or to Article 14. They are rather the means of achieving the right to equality enshrined in those articles.

Following the Court’s direction the Centre and the States have appointed backward class commissions for constant revision of such classes and for the exclusion of creamy layer from amongst them. Unreasonably high standards for determining the creamy layer have been invalidated and wherever any government has failed to implement the requirement of appointing a commission and exclusion of creamy layer it has issued necessary directions compelling them to do so.

In *Jagdish Saran V. Union of India*, a rule reserving 70 per cent of the seats in the post-graduate medical course to Delhi University medical graduates and keeping 30 per cent open to all, including the Delhi University graduates, was challenged by a medical graduate from Madras University as violating Article 14 and 15. Though the rule was not invalidated in view of imperfect, scanty, fragmentary and unsatisfactory materials, Krishna Iyer, J., explained that (i) where the aspiring candidates are not an educationally backward class, institution-wise segregation or reservation has no place in Article 15; (ii) equality is not negated or neglected where special provisions are made with the larger goal of the disabled getting over their disablement consistently with the general good and individual spirit; (iii) exceptional circumstances cannot justify making of reservations as a matter of course in every University and in every course; (iv) the quantum of reservation should not be excessive or societally injurious, measured by the overall competency of the end product, viz., degree holders; (v) the burden is on the party who seeks to justify the ex-facie deviation from equality. Speaking generally, Krishna
Iyer, J. asserted that unless there is a vital nexus with equal opportunity, broad validation of university-based reservation cannot be built on the vague ground that all universities are practicing it, or that medical graduates resorted to hunger strike to press for higher percentage of reservation of seats.

**Article 15 (5)**

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

Art 15(5) was introduced by the Constitution (Ninety-third Amendment) Act, 2005, so as to bring private unaided institutions into the ambit of reservations. The reference to Article 19(1)(g) is a response to the judgment in T.M.A. Pai Foundation case, which held that the running of an educational institution falls within Article 19(1)(g)’s guarantee of the freedom of profession. In bringing private educational institutions within the ambit of reservations, the Amendment covers a possible 19(1)(g) challenge by excluding its application. And lastly, the Amendment excludes from its ambit, minority educational institutions, that have their own set of constitutionally guaranteed rights under Article 30.

Art 15(5) is only limited to providing reservations in educational institutions, whereas Art 15(4) has a wider scope. Art 15(5) requires the State to make a law to achieve these objectives, whereas for Art 15(4), the executive can take required measures without making any law. That is why the Parliament enacted the Central Educational Institutions (Reservation in Admission) Act, 2006, to give effect to Art 15(5).

**Ashoka Kumar Thakur v. Union of India**

The constitutional validity of article 15(5) was challenged on the ground of being violative of article 14 as it excludes minority educational institutions. The court held exclusion of minority educational institutions from Article 15(5) is not violative of Article 14 of the Constitution as the
minority educational institutions, by themselves, are a separate class and their rights are protected by other constitutional provisions.

**Article 16**

**Equality in Matter of Public Employment**

Article 16(1)-There shall be quality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

Article 16(2)- No citizen shall, on grounds only of religion, race, caste, sex, descent place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.

Article 16(1) is a facet of Article 14. Article 14 and Article 16(1) are closely inter-connected with each other. Article 16(1) takes its roots from Article 14. Article 16(1) particularizes the generality of Article 14 and identifies, in a constitutional sense, “equality of opportunity” in matters of employment in state. Article 14 applies to all person but Article 16(1) applies only to citizens is main difference between these two articles. We can say that Article 16 is an instance of the application of the general rule of equality before law laid down in Article 14 and of the prohibition of discrimination in Article 15(1) with respect to the opportunity for employment or appointment to any office under the State.

In *Gazula Dasaratha Rama Rao v. State of A.P* Court held that:

“Article 14 guarantees the general right of equality; Articles 15 and 16 are instances of the same right in favour of citizens in some special circumstances. Article 15 is more general than Article 16, the latter being confined to matters does not mention descent as one of the prohibited grounds of discrimination as Article 16 does.”

Art. 16 deals with a very limited subject, that is public employment. The Scope of Article 15(1) is much wider as it covers the entire range of state activities. The ambit of Art. 16(2) is restrictive in scope than that of Art. 15(1) because Art. 16(2) is confined to employment or office under the state, meaning services under the Central and State Governments and their instrumentalities, Art. 15 being more general in nature covers many varied situations of discrimination. Further, the
prohibited grounds of discrimination under Art. 16(2) are somewhat wider than those under Art. 15(2) because Article 16(2) prohibit discrimination on the additional grounds or descent and residence apart from religion, race, caste, sex and place of birth.

In Clause (1) the general rule is laid down that there shall be equal opportunity for citizens in matters relating to ‘employment’ or ‘appointment to any office’ under the State. What is guaranteed is the equality of opportunity.

*Reserve Bank of India vs. Gopinath Sharma.*

In this case the Court held that adherence to the rule of equality in public employment is a being feature of our constitution and the rule of law is its core, the court cannot disable itself from making an order in consistent with article 14 and 16 of the constitution.

Article 16(2) is an elaboration of a facet of article 16(1). Public employment is a facet of right to equality provided under article 16 of the constitution of India. the state, although is a model employer, its right to create posts and recruit people therefore emanates from the statutes or statutory rules and rules framed under the provisio appended to article 309 of the constitution of India. The recruitment rules are to be framed with a view to give equal opportunity to all citizens of India in title for being considered for recruitment in the vacant post.

Article 16(2) lays down specific grounds on the basis of which citizens are not to be discriminated against each other in respect of any appointment or office under the State. The scope of clause (1) of Article 16 is wider than the scope of clause (2), because discrimination on grounds other than those mentioned in clause (2) of the Article 16 has to be weighed and judged in the light of the general principles laid down in clause (1).

**Scope of Article 16 (1) and (2)**

The world discrimination in article 16(2) involves an element of unfavorable vice. Article 14 guarantees right of equality generally, articles 15 and 16 are instances of the same right of equality in specific situations. Article 14 is the genus while article 16 is a species. Article 14 and 16 form part of the same constitutional code of guarantees and supplements each other. We can say that article 16 is only an instance of the application of the general rule of equality laid down in Article 14 and it should be construed as such. Equality in article 16 clause 1 means equality as
between member of the same class of employees, and not equality between members of separate, independent, classes.

Equal protection of laws does not postulate equal treatment of all persons without distinction, it merely guarantees the application of same laws alike without discrimination to all person similarly situated. We can say that article 16 does not bar a reasonable classification of employees for reasonable test for selection. Equality of opportunity of employment means selection, it means equality as between members of the same class of employees and not equality between members of separate, independent, classes. There can be no denial of equality of opportunity unless the person who complaints of discrimination is equally situated with the person or persons who are alleged to have been favoured. Those who are similarly circumstanced are entitled to equal treatment.

*Union of India vs. SC Bagaria*

This Case deals with the Army Act which classifies Army officers into various categories based on the requirement of armed forces. The court held that such classification cannot be regarded as arbitrary.

*Office:*

The term office used in article 16 means subsisting, permanent, substantive position, having an existence independent of the person feels it, which is filled in succession by successive holders and which has more or less a public character to which duties are attached.

The equality guaranteed by article 16(1) takes within its fold all stages of service. The expression matters relating to employment in article 16 clause 1 is not restricted only to the initial stage of employment; the expression "appointment to an office" article 16 clause 1 does not mean merely the initial appointment. it includes all matters in relation to employment both prior, and subsequent, to the employment which are incidental to the employment and which forms part of the terms and conditions of such employment, such as, salary, periodical increment, leave, promotion etc.
**Article 16(3) and (4): Exception to Article 16(1)&(2)**

Article 16(3)-Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory prior to such employment or appointment.

Article 16(4)-Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the service under the State.

Under article 16(3) Parliament May make a law to prescribe a requirement as to residence within a state or union territory for eligibility to be appointed with respect to a specified classes of appointments or post. In other words article 16(2) which bans discrimination of citizens on the ground of Residence, only in respect of any office or employment under the state, can be qualified as regards 'residence' and 'residential qualification' imposed on the right of appointment in the state for specified appointments.

Article 16(3) incorporates safeguard to ensure that is not abused. Power has been given to the Parliament and not the state legislatures to relax the principle of non discrimination on the ground of residence so that only a minimum relaxation is made in this regard. Under article 16 (3) Parliament has enacted the Public Employment (Requirement as to Residence) Act 1957. The Act repeals all laws in force prescribing a requirement as to residence within the state or union territory except Himachal Pradesh, Manipur, Tripura and Telangana.

The supreme court in *A.V.S Narasimha Rao vs. state of Andhra Pradesh* declare that part of the act unconstitutional which prescribed residence as qualification for government services in one part of Andhra Pradesh state. The court held that parliament can impose the residential qualification for services in the whole state, but not in part of the state.

Article 16 (4) under article 16(4), the state can make reservation of appointments for post in favour of any backward class of citizens which, in the opinion of state, is not adequately represented in the public services under their state. The term state denotes both the central government and state government and their instrumentalities.
In the case of *Mohan Kumar Singhania vs Union of India* the supreme court held that article 16 (4) is an enabling provision conferring a discretionary power under state for making any provision observation of a appointments or posts in favour of any backward class of the citizen which in the opinion of the state, is not adequately represented in the service of the state. This clause neither imposes any constitutional duty nor confers any fundamental right on anyone for claiming reservation.

In *K.C Vasanth Kumar vs State of Karnataka* the supreme court laid down to test to determine backward classes; first they should be comparable to the scheduled caste and Scheduled Tribes in the matter of their backwardness; and, secondly they should satisfy the means test, that is to say, the test of economic backwardness, laid down by the state government in the context of the prevailing economic conditions.

In the case of *Post-Graduate Institute of Medical Education and Research, Chandigarh vs Faculty Association*, the constitutional Bench of the Supreme Court held that there cannot be reservation in a single cadre promotion post or a single post.

*State of Jammu and Kashmir vs. Triloki Nath khosha*, the assistant engineers were classified into diploma holders and degree holder and more promotional avenues were provided to degree holder. The court upheld the classification as reasonable.

In the case of *Markendeya vs State of Andhra Pradesh* difference in pay scale between graduate supervisors holding degree in engineering and non-graduate supervisors being diploma and licence- holders was upheld.

In the case of *Government Branch Press vs DB Belliappa* the court held that the protection of article 16 is available even to a temporary government servant if he has been arbitrarily discriminated against and single out for harsh treatment in preference to is juniors similarly circumstances.

In the case of *Apparel Export Promotion Council vs AK Chopra* the Supreme Court held that an incident of sexual harassment of a female at a place of work, amounts to violation of fundamental right to gender equality under article 16 clause 2.
Union of India vs. Dr. Kohli the rule requiring that the professor in Orthopaedics must have a post-graduate degree in particular speciality is valid.

Devdasan v. Union of India

The Supreme Court was required to adjudge the validity of the carry forward rule. The carry forward rule envisaged that in a year, 17½ per cent posts were to be reserved for Scheduled Castes/Tribes; if all the reserved posts were not filled in a year for want of suitable candidates from those classes, then the shortfall was to be carried forward to the next year and added to the reserved quota for that year, and this could be done for the next two years. The result of the rule was that in a year out of 45 vacancies in the cadre of section officers, 29 went to the reserved quota and only 16 posts were left for others. This meant reservation upto 65% in the third year, and while candidates with low marks from the Scheduled Castes and Scheduled Tribes were appointed, candidates with higher marks from other classes were not taken.

Basing itself on the Balaji principle, the Supreme Court declared that more than 50 per cent reservation of posts in a single year would be unconstitutional as it per se destroys Art. 16(1). The Court emphasized that in the name of advancement of backward communities, the Fundamental Rights of other communities should not be completely annihilated. The Court held that as Article 16(4) was a proviso or an exception to Art. 16(1), it should not be interpreted so as to nullify or destroy the main provision, as otherwise it would in effect render the guarantee of equality of opportunity in the matter of public employment under Art. 16(1) wholly illusory and meaningless.

The overriding effect of Cl. (4) of Art. 16 on Cls. (1) and (2) could only extend to the making of a reasonable number of reservations of appointments and posts in certain circumstances. A ‘reasonable number’ is one which strikes a reasonable balance between the claims of the backward classes and those of other citizens.

The Court emphasized that each year of recruitment has to be considered by itself and the reservation for backward communities should not be as excessive as to create a monopoly or to disturb unduly the legitimate claims of other communities.
In *State of Kerala V. N.M. Thomas*, the Supreme Court held that it was permissible to give preferential treatment to Scheduled Castes/Tribes under Art. 16(1) outside Art. 16(4). In this case in a dissenting opinion, Subba Rao, J., had express the opinion that Art. 16(4) was not an exception to Art. 16(1), but was a legislative device by which the framers of the Constitution had sought to preserve a power untrammeled by the other provisions of the Article. It was a facet of Art. 16(1) as “it fosters and furthers the idea of equality of opportunity with special reference to under privileged and deprived classes of citizens.

The majority accepted this view of Subba Rao, J. Accordingly, and the Court observed: Art. 16(4) is not in the nature of an exception of Art. 16(1). It is a facet of Art. 16(1) which fosters and furthers the idea of equality of opportunity with special reference to an under privileged and deprived class of citizens. Thus, Art. 16(1) being a facet of the doctrine of equality enshrined in Art. 14 permits reasonable classification just as Art. 14 does. The majority ruled that Art. 16(4) is not an exception to Art. 16(1). Art. 16(1) it permits reasonable classification for attaining equality of opportunity assured by it.

Thomas marks the beginning of a new judicial thinking on Art. 16 and leads to greater concessions to SC, ST and other backward persons. If the Supreme Court had stuck to the view propagated in earlier cases that Art. 16(4) was an exception to Art. 16(1), then no reservation for any other class, such as army personnel, freedom fighters, physically handicapped, could have been made in services.

The fact situated in Thomas was that the Kerala Government made rules to say that promotion from the cadre of lower division clerks to the higher cadre of upper division clerks depended on passing a test within two years. For SCs and STs, exemption could be granted for a longer period. These classes were given two extras years to pass the test. This exemption was challenged as discriminatory under Art. 16(1) on the ground that Art. 16 permitted only reservation in favour of backward classes but it was not a case of reservation of posts for SCs and STs under Article 16(4) and that these persons were not entitled to any favoured treatment in promotion outside Art. 16(4).

By majority, the Supreme Court rejected the argument. It ruled that Art. 16(1) being a facet of Art. 14, would permit reasonable classification and, thus, envisaged equality between the
members of the same class of employees but not equality between members of a separate, independent class. Classification on the basis of backwardness did not fall within Art. 16(2) and was legitimate for the purposes of Art. 16(1). Giving preference to an under-represented backward community was valid and would not contravene Arts. 14, 16(1) and 16(2). Art. 16(4) removes any doubt in this respect. The classification of employees belonging to SC and ST for allowing them an extended period of two years for passing the special tests for promotion is a just and reasonable classification having rational nexus to the object of providing equal opportunity for all citizens in matters relating to employment or appointment to public office. The majority adopted a very liberal attitude in Thomas as regards SCs and STs and backward classes. The result of the pronouncement is to enable the state to give the backward classes a preferential treatment in many different ways other than reservation of posts as envisaged in Art. 16(4). Preferential treatment for one is discriminatory treatment for another and, therefore, it is necessary to draw a balance between the interests of the backward classes and the other classes. The Supreme Court has shown consciousness of this danger and, therefore, has laid down a few criteria which a classification must fulfil, viz.:

- the basis of the classification has to be backwardness;
- the preferential treatment accorded to backward classes has to be reasonable and must have a rational nexus to the object in view, namely, adequate representation of the under-represented backward classes;
- The overall consideration of administrative efficiency should be kept in view in giving preferential treatment to the backward classes.

It is obvious that in Thomas, the Court has taken a more flexible view of Art. 16(1) than had been taken by it in earlier cases. It is now clearly established that Art. 16(4) does not cover the entire field covered by Arts. 16(1) and (2) and some of the matters relating to employment in respect of which equality of opportunity is guaranteed by Arts. 16(1) and (2) do not fall within Art. 16(4).

In *Akhil Bhartiya Soshit Karamchari Sangh (Railway) V. Union of India*, the Supreme Court again went into the question of reservation in public services vis-à-vis Art. 16. The Court upheld
reservation of posts at various levels and making of various concessions in favour of the members of the SC and ST.

The Court reiterated the Thomas proposition that under Art. 16(1) itself, the state may classify, “based upon substantial differentia, groups or classes” for recruitment to public services and “this process does not necessarily spell violation of Article 14 to 16” Art. 16(2) expressly forbids discrimination on the basis of ‘caste’. SC and ST are not castes within the ordinary meaning of caste. These are backward human groups. There is a great divide between these persons and the rest of the community.

Thus, reservation in selection posts in railways for SC and St was held valid. The quantum of reservation (17½%) in railway services for SC and ST was held not excessive and the field of eligibility was not too unreasonable. The carry forward rule for three years was held not bad.

Under the Carry forward rule, the quota for SC and ST could go up to a maximum of 66% of posts. This was upheld with the remark that figures on paper were not so important as the facts and circumstances in real life which showed that the quota was never fully filled. But this fixation was subject to the rider that, as a fact, in any particular year, there would not be a substantial increase over 50% in induction of reserved candidates. Here the Court took the actual facts, rather than the paper rules, into consideration.

*Indra Sawhney v. Union of India*

The Supreme Court has taken cognizance of many complex but very momentous questions having a bearing on the future welfare and stability of the Indian Society. The Supreme Court has delivered a very thoughtful, creative and exhaustive opinion dealing with various aspects of the reservation problem. Basically reservation in government services, is anti-meritocracy, because when a candidate is appointed to a reserved post it inevitably excludes a more meritorious candidate. But reservation is now a fact of life and it will be the ruling norm for years to come. The society may find it very difficult to shed the reservation rule in the near future. But the Court’s opinion has checked the system of reservation from running riot and has also mitigated some of its evils.

Three positive aspects of the Supreme Court’s opinion may be highlighted:
- the over-all reservation in a year is now limited to a maximum of 50%.

- amongst the classes granted reservation, those who have been benefited from reservation and have thus improved their social status (called the ‘creamy layer’ by the Court), should not be allowed to benefit from reservation over and over again. This means that the benefit of reservation should not be misappropriated by the upper crust but that the benefit of reservation should be allowed to filter down to the lowliest so that they may benefit from reservation to improve the position.

- Three, an element of merit has now been introduced into the scheme of reservation. This has been done in several ways, e.g.:
  
  i. promotions are to be merit-based and are to be excluded from the reservation rule;
  
  ii. certain posts are to be excluded from the reservation rule and recruitment to such posts is to be merit based;
  
  iii. Minimum standards have to be laid down for recruitment to the reserved posts. In facts, the Courts has insisted that some minimum standards must be laid down even though the same may be lower than the standards laid down for the non-reserved posts.

In *Ashoka Kumar Thakur V. State of Bihar*, the Supreme Court has assessed the validity of unrealistically high levels of income or holdings of other conditions prescribed by the Legislatures of UP and Bihar as criteria to identify the creamy layer. For example, while the Supreme Court in the Mandal case has categorically said that the Children of IAS or IPS, etc. without anything more could not avail the benefit of reservation, in the scheme drawn in UP and Bihar, a few more conditions were added for falling in the creamy layer, such as, he/she should be getting a salary or Rs. 10,000/- p.m. or more; the wife or husband to be a graduate and owing a house in an urban area. OR, if a professional doctor, surgeon, lawyer, architect, etc., he should be having an income not less than Rs. 10 lakh, his/ her spouse is a graduate and having family property worth Rs. 20 Lakhs. Similar conditions were added in case of others, such as, traders, artisans, etc.
The Supreme Court has quashed these conditions as discriminatory. The Court has ruled that these conditions laid down by the two States have no ‘nexus’ with the object sought to be achieved. The criterion laid down by the two States to identify the creamy layer are violative of Art. 16(4), wholly arbitrary, violative of Art. 14, and against the law laid down by the Supreme Court in the Mandal case, where the Court has expressed the view that a member of the All India Service without anything more ought to be regarded as belonging to the “creamy layer”.

**Probable Questions:**

1. Explain in detail the concept of reservation for ‘socially and educationally backward classes’.
2. “*Article 15(4) and Article 16(4) are intended to uplift the deprived sections of the society*” Comment
3. Comparatively analyze the scope and ambit of Article 15(4) and Article 16(4).
4. “*Economic condition cannot be the sole criteria for determining Backwardness*”. Comment in light of Balaji and Indra Sawhney case.
5. “*Reservation to deprived sections of society is mere discretion of state and cannot be claimed as a matter of right*”. Comment