MANU/TN/0014/1951

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IN THE HIGH COURT OF MADRAS
FULL BENCH

Civil Misc. Petn. Nos. 5255 and 5340 of 1950

Decided On: 27.07.1950

Champakam Dorairajan and Ors. **Vs.** The State of Madras

Hon'ble Judges/Coram:
P.V. Rajamannar, C.J., Vishwanatha Sastri and Nagabushnam Pillai Somasundaram, JJ.

Counsels:
For Appellant/Petitioner/Plaintiff: V.V. Srinivasa Aiyangar, N.R. Raghavachariar and V. Devarajan, Advs. in No. 5255/50 and Alladi Krishnaswami Aiyar, Adv. for N. Rajagopala Aiyangar and V. Sethuraman, Advs. for in No. 5340/50

For Respondents/Defendant: Adv. General i/b., Government Solicitor

JUDGMENT

P.V. Rajamannar, C.J.

1. In these two applns. substantially the same questions fall to be decided & they were, therefore, heard together. In C. M. P. No. 5255 of 1950 the petnr. is one Srimathi Champakam Dorairajan. In the affidavit filed by her in support of the appln., she states that she is a graduate of the Madras University having passed in 1934 the B. A. degree examination taking Physics & Chemistry for her subjects, that owing to financial & 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 & observing an order of the Govt. referred to as the Communal Government Order, in & 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 appct. & appct. on the ground of caste, sex, etc., & 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 Govt. is void as it is inconsistent with the provisions of the Const. Ind. & operates as an infringement of her personal right as a citizen of the State of Madras, & that the maintenance of that order is an infringement of the fundamental rights declared & formulated by the Const. Ind. She, therefore, prays for the issue of a writ of mandamus, or any other suitable prerogative writ restraining the State of Madras & all its officers & 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 & by which admissions into the Madras Medical. College is sought or permitted to be regulated in such a manner as to infringe & involve the violation of the fundamental rights referred to in the clauses of the Const. Ind. namely, Article 15,

Clause (1) & Article 29, Clause (2).

2. In C. m. P. No. 5340 the petnr. 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 & Chemistry as his optionals in the first class & obtained for a maximum of 450 marks in the optionals 369 marks; that he has filed an appln. 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 Civ. Mise. Petn.) that he apprehends that there is no prospect of his appln. being considered on its merits with due regard to his qualifications, ignoring considerations of race, caste & or religion. The petnr. contends that the said Government Order is inconsistent with Article 15 & Article 29(a) of the Constitution & prays that the Govt. may rescind the Order & direct the Committee appointed to select the candidates for admission into the Engineering College to consider his appln. for admission on its relative merits without reference to considerations of religion, race, caste, language or any of them & to dispose of the same in accordance with the terms of Articles 29(2) & 15 of the Constitution.

3. On behalf of the State of Madras, counter affidavits were filed in the two petns. setting forth practically the same legal contentions. In the counter-affidavit filed in C. M. P. No. 5255 of 1950 it is stated that the total number of seats available in the four Medical Colleges run by the Govt. of 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 Govt. 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 & to provide equal opportunities to all, that accordingly out of 14 seats 6 are allotted to non-Brahmin Hindus, 2 backward Hindu communities, 2 to Brahmins, 2 to Harijans, 1 to Anglo-Indians & Indian Christians & 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 attainment & the economic conditions of the various communities in the State. Subject to these regional & protective provisions, selection from among the appcts. 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 20% of the total number of seats available for students of the State are filled by woman candidates separately for each region. It is open to the Selection Committee to admit a large number of women candidates in any region if qualified candidates are available & if they are eligible for selection on merits vis-a-vis the men candidates. On behalf of the State it is contended that the Order of Govt. 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 & protect them from social injustice & all forms of exploitation, & 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 applns. 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 & linguistic representations, the necessity for promoting with special care the interests of the backward communities & other factors & that the said Order of Govt. is neither illegal nor opposed to any Article of the Constitution of India.

4. In C. M. P. No. 5840 of 1950 a counter-affidavit similar to that filed in the previous civ. misc. petn. was filed on behalf of the State.

The total number of seats available in the Govt. Engineering Colleges is only 395 out of which 21 seats are reserved for students coming from outside the State including refugee students.

5. Reply affidavits were filed by the petnrs. in both the applns. They contain mostly legal arguments which will be noticed later on in the judgment. In c. M. P. no. 5340 of 1960 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 & 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 & on the basis of the proposed admissions this year. It is pointed out that if the present Government Order is disregarded & selection is made on the basis of marks, the Brahmin community stands to gain by 172 seats, the Non-Brahmin communities lose 50 per cent. of their seats totalling 112, none of the Harijans would be selected, i, e., they would lose 26 seats & the Muslim community would lose 23 seats

6. The applns. were fully & ably argued by Mr. V. V. Srinivasa Aiyangar & Mr. Alladi Krishnaswami Aiyar for the two petnrs. & 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 & 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.

7. The two provisions of the Constitution on which learned counsel for the petnrs. strongly relied in support of their contention that the Government Order above mentioned was invalids are Clause (1) of Article 15 & Clause (2) of Article 29. Theyrun as follows :

> "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 .....
>
> **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 & 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 petnra. 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.

8. The contention on behalf of the petnrs. briefly is that the fundamental rights of the petnrs. as citizens of India declared by Article 15(1) & Article 29(2) of the Constitution would in effect be denied by the enforcement of the Order of Govt. referred to as the communal G. O., because (1) the State is discriminating against them on grounds of

religion, caste & sex, & (2) they are likely to be denied admission on grounds only of religion & caste. All that they pray for is that their applns. for admission should be considered on their merits without taking into consideration their religion, caste or sex.

9. The question is : Is the communal G. O. when applied to the case of the two petnrs. in any way inconsistent with either or both the said provisions of the Constitution? Has the fundamental right of the petnrs. either under Article 15 or under Article 29 been ignored by the Govt. in seeking to enforce the said Order ?

10. Article 29, Clause (2) expressly refers to admissions to educational institutions. Mr. Alladi Krishnaswami Aiyar 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 & the provision as substituted were (1) the words "no citizen" were substituted for the words "no minority", (2) not only institution maintained by the State but also institutions receiving aid out of State funds were included, (3) instead of the words "religion, community or language", the words adopted were "religion, race, caste, language or any of them".

11. Mr. Alladi Krishnaswami Aiyar 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 & 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 & 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."

12. 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 petnrs. would be denied admission not only on any of the grounds mentioned in the article, but also on other grounds, namely, paucity of seats & 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" & 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 appct. 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 appct. If otherwise there is no disqualification or disability attaching to an appct., 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 appcts. 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 & the class secured by the candidate, it cannot be predicated in every case from the simple fact that the appct. is a Brahmin that he will be denied admission. No doubt in the two petns. before us, we were told that the appcts. were not included in the provisional list compiled by the Select Committee. That may be so. But if the appcts. 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 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 appcts. before us, supposing they had been Harijans, would have been certainly admitted on the marks they had got & on their other qualifications. But they have been denied admission, because they are Brahmina. I must confess that there is much to be said for both points of view. I would, however, refrain from deciding these applns. 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 & 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. Board of Regents, 92 U. S. Lawyers' Edn. p. 247 : 332 U. S. 631, Sweatt v. Painter, 63 M. L. W. (journal) 89 & Me Laurin v. Oklahoma State of Regents, 63 M. L. W. (Journal) 91.

13. 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 (Yickwo v. Hopkins, 118 U. S. 356). In the words of Taft C. J. :

> "The guarantee was aimed at undue favour & individual or class privilege on the one hand & at hostile discrimination or the oppression of inequality on the other.... The guarantee was intended to secure equality of protection not only for all but against all similarly situated." (257 U. S. 312 at 332).

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, 205 U. S. 337, 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. Board of Regents, 332 U. S. 631 the S. Ct. held that the equal protection clause required a State-

maintained Law School for White students to provide legal education for a Negro appct. The Court said :

> "The petnr. 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 appets, 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 & provide it as soon as it does for appcts. of any other group."

Two recent decisions decided in June 1950 may also be referred to, namely, Sweatt v. Painter, 63 M. L. W. (journal) 89 & Me Luarin v. Oklahoma State Regents, 63 M. L. W.) 91. In the former case an appln. 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 S. C. held that the petnr. was entitled to his full constitutional right, namely, legal education equivalent to that offered by the State to students of other races & that he could not be denied admission solely on the ground that he was a Negro. In the latter case the 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 S. Ct. answered the question in the negative. They held that 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 Aiyar to concede--the American decisions are not directly applicable in construing Articles 16(1) & 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 with totally excluded all Negroes from particular educational institutions. Not a single case has been brought to our notice in which there was any such total exclusion, but there was 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 appct. 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 appct. who happens to be a Brahmin would be invariably denied admission to either the Medical or the Engineering Colleges.

14. Mr. Alladi Krishnaswami Aiyar referred us to the decision in Mc Cabe v. Atchison, 235 U. S. 151 & Missouri ex Bel. Gaines v. Canada, 305 U. S. 337, in support of his contention that the right asserted by the appct. in these petns. is a personal & individual right as citizens & not as members of a particular religion or caste. I agree with him. In the recent case of Sweatt v. Painter, 63 M. L. W. J89, as Vinson C. J. observed:

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

In Missouri ex Eel. Gaines v. Canada, 305 U. S. 337, Hughes C. J. declared thus:

> "The petnr.'s right was a personal one. It was as an individual that he was entitled to the equal protection of the laws & 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 petnrg.' applns. to say that other Brahmin students have been admitted into the Medical & Engineering colleges. The question is: whether there has been any discrimination against the petnrs. because they belong to a particular caste.

15. In my opinion, these applns. must be decided in favour of the petnrs. on the terms of Article 16(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 & castes merely on the ground that they belong to a particular religion or caste. Now what 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.

16. 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 & as necessary to bring about social justice by promoting the interests of the educationally backward sections of the citizens. In this connection Article 46 of the Constitution was very strongly relied on by the learned 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 Ct. but are nevertheless fundamental in the governance of the country & 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 & Harijans, & both the applns. 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 & only three Muslims would be selected.

17. It is an undeniable fact that the citizens of the Indian Union profess different religions & belong to several castes & 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 & 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 & the other is the establishment of a social order based on social, economic & political justice. As necessarily following from such an ideal, there is the exhibition of an anxiety to promote the interests of the backward & weaker sections of the people. With this end in view, the Constitution provides for safeguarding their interests 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 & in the Legislative Assemblies of every State for the Scheduled 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 & the Scheduled tribes to be taken into consideration consistent with the maintenance of efficiency of administration in the making of appointments to services & posts in connection with the affairs of the Union or of a State. Articles 336 & 337 are special provisions for the Anglo-Indian community in the matter of services & education. According to Article 338, there shall be a Special Officer for the scheduled castes & scheduled tribes whose duty shall be to investigate all matters relating to the safeguards provided for them under the Constitution & 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 & educationally backward classes within the territory of India and the difficulties under which they labour & to make recommendations as to the steps that should be taken by the Union or any State to remove such difficulties & to improve their condition & as to the grants that should be made for the purpose by the Union or by the State.

18. Granting that one of the objectives of the Constitution is to provide for the uplift of the backward & 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 & 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 & weaker sections of the people. That is why we find exceptions have been made expressly to the principles of non-discrimination in certain specified matters the most important of which is in respect of appointments & offices under the State. After reiterating the principle of non-discrimination in Article 16(2), Article 16(4) makes an exception & provides for discrimination in favour of backward classes of citizens.

19. 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, & 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 on the Constituent Assembly. If they & 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 & we do not feel justified in adding a new provision by way of an exception to the expressed declaration made in Article 16(1) & 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.

20. The learned Advocate General contended that in all State legislation & executive action, classification is inevitable & there is nothing in the Constitution which prohibits such classification. It is true 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 & not arbitrary. As Taft C. J. observed in the leading case of Trumax C. Corrigan, 257 U. S. 312 :

> "In adjusting legislation to the need of the people of a State, the Legislature has a wide discretion & it may be, I fully oonoede, that perfect uniformity of treatment of all persons is neither practical nor desirable, though classification of persons is constantly necessary." Frankfurter J. in a later case observed :
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> > "The equality at which the Equal Protection Clause aims is not a disembodied equality. The Fourteenth Amendment enjoins the equal protection of the laws & laws are not abstract propositions. They do not relate to abstract units A, B, & 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 clarification does not necessarily mean discrimination & secondly classification which is prohibited by the Constitution cannot justify legislation or State action based thereon. That is why the S. C. 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 & therefore permissible.

21. In this connection the Advocate General relied on certain observations in two decisions of the American S. C., but they are not of any material assistance to him. In Republic Natural Gas Co. v. Oklahoma, 334 U. S. 62, the S. C. was called upon to 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. Douglas J. 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 & authority of any Govt. which seeks to protect the rights of its citizens & 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, 334 U. S. 385, a majority of the S. C. of America held that the imposition of a discriminatory licence fee for boats owned by non-residents was without reasonable basis & 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 Vinson C. J. 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 & 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 & it was held that the levy was invalid. I fail to gee how the principle of this decision can be applied to the cases before us.

22. 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 & protection of weaker sections from social injustice. Expressions like "social justice" & "social injustice" are very vague & elastic in their connotation & it is often difficult to determine whether any particular action of the Govt. 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 & Engineering Colleges & 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 & 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 & adequate facilities to all appcts. 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 appct. & appct. on the ground of religion or caste & restrict the number of seats that could be secured by appcts. of any particular religion or caste, or prescribe different qualifications to appcts. of different religions & castes, to the advantage of some & to the disadvantage of others.

23. In my opinion, both the applns, must bs allowed & there should be a direction that the applns. of the two petnrs. 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 Aiyar rightly pointed out during the course of his argument, marks may not be the one & only criterion. All that we should say on these applns. is that grounds of religion, race or caste cannot be the basis of selection.

24. Mr. V. V. Srinivasa Aiyangarin C. M. P. 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 20% 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 in that region & 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 petnr. can complain that any discrimination is being made against her on the ground of sex.

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

Vishwanatha Sastri, J.

26. These two applns, raise substantially the same questions. The appct. in C. M. P. no. 5255 of 1950 is a Brahmin lady, & in o. m. P. No. 5340 of 1950 a Brahmin male student, who sought, but did not get admission to the Medical & Engineering Colleges maintained by the State of Madras. The appcts. impugn the legality of a Govt. Order, G. o. no. 1254--Education dated 17-5-1948, regulating the admission of students to these colleges. Though this Govt. Order, referred to as the Communal G. O. in the arguments before us & in this judgment, was passed before the Constitution of India was enacted, it is common ground that it is being acted upon & 'enforced by the State & its officers in selecting students for admission to the Engineering & Medical Colleges. Taking the Engineering College 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 Govt. as embodied in the Communal G. O., 12 out of these seats are reserved for allotment by the Ministers of Govt. at their discretion. 21 seats are reserved for students coming from outside the State. The remaining seats are apportioned & allotted among four groups of districts comprised in the States, popularly known as Rayaleseema, Andhra,. Tamilnad & Berala. 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, Brahmin 2 seats, Harijans 2 seats, Anglo-Indians & Indian Christians one seat, & Muslim one seat. Both "forward" Non-Brahmins & "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 & communal & 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. Se. 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 Govt. have been filled up presumably on the same or a slightly different basis. If the rule of allotment of seats according to castes & communities had been ignored & 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 caste, community or religion, 249 Brahmins, 112 Non-Brahmin Hindus, 22 Christians, 3 Muslims & 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, & 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 resp. The appct. in C. M. P. No. 5340 of 1950 avers--and this averment is not denied--that though he got more marks than many candidates of other castes & communities he has been refused admission while the latter have been

admitted.

27. The contentions of the appets, are that the rules laid down by Govt. 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, & thereby violate the rights guaranteed to the appcts. under Articles 16(1) & 29(2) of the Constitution; & that the State of Madras should be directed by a writ of mandamus to consider their applng. for admission on their merits without reference to the Communal G. O. The resp. states that the allocation of seats on caste, communal & religious basis was made after due consideration of the numerical strength, literary attainments & economic condition of the different communities in the State & in the discharge of the obligation laid upon the State by Article 46 of the Constitution to promote with special care the educational & economic interests of the "weaker sections" of the people. The reap. denies that the rules framed by it for the admission of students transgress the law in any manner.

28. 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 & in the ultimate resort, be ascertained from the language of the enacted words. Though the Constitution of India is a blend of many principles & even turns of expression taken from the Constitutions of other states & 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 & development of American constitutional law during the course of a century & half. This is not to say that I have not listened with interest to numerous decisions cited before us by learned counsel on both sides. Most of the rules with regard to constitutional powers & limitations found hidden in the interstices of the American Constitution have been brought out & formulated only by judicial decisions which purport to interpret the 14th Amendment or rather the two phrases "due process of law" and "equal protection of the laws" found in Section 1 of the 14th Amendment. These Judge-made principles & doctrines of America are found stated in a categorical manner & 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 of Madras, MANU/SC/0012/1950 : 1950CriLJ1383, the learned Chief Justice of the Section C. 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 & considerably narrows the scope for judicial interpretation & without paying due attention to the difference in language between the articles of the two Constitutions. It is for this reason, & 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.

29. The Constitution of India, as its preamble proclaims, is an ordinance of the people of India having its sanction in the popular will & for its aim, the establishment of a new structure of security, social, political & economic, for all its citizens on the basis of justice, liberty & equality. These are the great objects which the Constitution & the Govt. established by it are intended to serve & promote. But the preamble does not furnish any definition of the respective rights of citizens & of the State exercising governmental power. Chapter III of the Constitution deals with that topic, & I shall presently refer to the relevant articles. It is not difficult to understand why the makers

of our Constitution 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 & civil rights from governmental activity as to place in the forefront of the Constitution the chapter on "Fundamental Rights." They had long & 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 & other differences which seriously weakened national unity; & its discriminating practices in favour of individuals & communities designed to win their support. With a vivid recollection of their physical, intellectual & emotional struggles against an alien Govt. 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 & peaceful assembly, the right of all men to equality under the law & to equal opportunity for securing their material well-being. The last world war had been widely proclaimed as one fought for establishing the freedom & dignity of man & 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 & distrust culminating as they did in the partition of the country & were presumably keen on eradicating the virus of communalism which had infected the body politic. Chapter III of the Constitution of India reflects these widely prevalent feelings & ideas of the time & is both a reaction to the evils of the past & a guarantee of constitutional liberty to the citizen in the future. The rights singled out for such protection & guarantee are such as might be regarded as highly important to a citizen in a free civilised State & 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 & 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 & obligations whose inviolability is secured by constitutional restraints imposed on Govt. The protection of these guaranteed rights of the citizen & the enforcement of the limitations imposed on the acts of Govt., 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 & minorities as well against the power of numbers, as against the violence of public agents transcending the limits of lawful authority even when acting in the name & wielding the force of Govt :" Hurtado v. California, (1884) 110 U. S. 516 .

30. 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, & many experienced & distinguished statesmen as well as able & 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 & 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 communities & representing divergent interests. Amendments & alternative proposals

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

31. We have been told on high authority that a Constitution must not be construed in any narrow & pedantic sense, especially a Federal Constitution with its nice balance of jurisdictions & of individual rights & state power, & that we must approach it in a broad & liberal spirit, so as, if possible, to validate legislative & administrative action. A person who assails the legislative or administrative action of Govt. must carry the burden of demonstrating beyond doubt its unconstitutionally. 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 & that we have no right to stretch or twist the language in the interest of any political social or constitutional theory. The principle that in interpreting 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 & civil rights of individual citizens against abuse of governmental power. We must assume that there was a sufficient & 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 leas 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, & 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 & that any admissible construction which avoids such results ought to be preferred. Having regard to the precise & comprehensive provisions of Chap. 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 5th & 14th Amendments, except the sky. I consider it to be both legally & 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.

32. 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 & lithe latter part, of American origin. The words "equal protection of the laws" have been the subject of judicial interpretation in numerous decisions of the S. C. 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 14th 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. 33. 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 commonsense that you cannot treat an adult & a child, a sane man & an idiot or lunatic, a millionaire & a pauper, a convict & an innocent man, a literate & an illiterate person, an engineer & a bricklayer, a qualified physician or surgeon & a quack, as occupying the same or equal position in actual life. Though Article 14 recognises 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 & 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 & capacity to pay. The insane & 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 food stuffs, common carriers, medical practitioners, factory & mine owners, might be subjected to special regulations designed to enure public health, safety or convenience. Again, part of the area of a State may be affected by diseases originating in local conditions, & 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 & things is inherent in every State & it involves classification, differentiation & a ridgement of individual freedom. So long as the power is exercised bona fide & in a reasonable manner for the end designed & 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 & 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 & just relation to the act in respect of which the classification is proposed & can never be made arbitrarily & without any such basis." Gulf G. & S. F. By. Co. v. Ellis, (1897) 165 U. S. 150 at p. 155.

The guarantee of equality before law & 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 & security of the laws should be given to all under like circumstances & conditions in the enjoyment of their civil rights.

34. The identical language in Section 1 of the 14th Amendment in America, was to quote only a few typical decisions, explained as follows :

> "The fundamental rights to life, liberty, & the pursuit of happiness, considered as individual possessions, are secured by these maxims of constitutional law which are the monuments showing the victorious progress of the race in securing to men the blessings of civilisation under the reign of just & equal laws, so that, in the famous language of the Massachusetts Bill of Bights, the Govt. of the Commonwealth 'may be a Govt. of laws & 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, (1886) 118 U. S.

357.)

This last statement was substantially adopted & much the same language was used in Connolly v. Union Sewer Pipe Co., (1902) 184 U. S. 540, & German Alliance Insurance Co. v. Hale, (1911) 219 U. S. 307, 319 :

> "The equal protection of the laws means subjection to equal laws, applying alike to all in the same situation"--(Southern Railway Co. v. Greene, (1910) 216 U.S. 400, .)

The 14th 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 persona subject to such legislation shall be treated alike under like circumstances & conditions; both in the privileges conferred & in the liabilities imposed"--Hayes v. Missouri, (1887) 120 U.S. 68, 71.

Class legislation or administrative action discriminating in substance & in effect though not in form, against some citizens & favouring others, is unconstitutional as violating the guarantee of equal protection of the laws given to all persons by Section 1 of the 14th Amendment, corresponding to Article 14 of our Constitution. Any classification or differentiation of persons reasonably relevant & germane to the recognised principles of good & just Government is not unconstitutional. In deciding whether an exercise of governmental power, whether legislative or administrative, violates these principles, the Ct. is entitled to go behind the face of things & enquire into its fairness in actual working & 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 & impartial in appearance, Jet, if it is applied & administered by public authority with an evil eye & an unequal hand, so as practically to make unjust & 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, (1886) 118 U. S. 357.

35. It is argued by the learned Advocate General that different rules have to be applied to different castes & communities in the matter of admission to colleges in view of the disparity in their educational & economic conditions. The allotment of 8 seats out of every 14 for Non-brahmin Hindus, as compared with 2 seats each for Brahmins & Harijans, & one seat each for Christian & Muslims, is said to be a reasonable & permissible classification having regard to the educational & economic conditions & 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 & Govt. Pleaders, distinguished Judges of this Court, competent administrative officers functioning both in the Union Govt., & as heads of districts & departments in this State, physicians, surgeons & obstetricians of all-India reputation, industrial magnates, mill-owners & entrepreneurs of great business ability & affluence, & nine out of twelve ministers of this. State administering, its affairs today, 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 & organising 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 & to insist pedantically on detailed evidence of matters of common knowledge especially when dealing with the constitutional rights & privileges of citizens. I am by no means clear that the communal G. O. allotting 8 out of 14 seats for Non-Brahmin Hindus & 2 seats each for Brahmins & Harijans & one seat each for Christians & 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 appcts., I do not rest my conclusion on the ground that the communal G.O. is in violation of Article 14 of the Constitution.

36. Article 14 of the Constitution enacts a general rule while the succeeding articles are particular applications of that rule. The exercise of Govt. power, be it legislative or executive, would be illegal & unconstitutional if it violates the rights & 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 & 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 & intellectual, is an incontestable right of every citizen & 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 & stature of the individual citizen & to enable him to qualify for any lawful profession of 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 & 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 14th Amendment. With this knowledge & with their experience of the baneful results of discriminatory rules & practices based on considerations of caste, race or religion resulting in undue advantage to certain communities & serious detriment to other sections of the pub. lie, 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 as to require

a categorical statement & a special guarantee in Article 29(2). Though the articles are expressed in strong negative terms, the negative necessarily implies & involves the affirmative. The right that is recognised & guaranteed against discrimination by Articles 16(1) & 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 & minorities & of caste, race or religion, in adjusting the relations between the citizen & the State, was resolutely combated & definitely shut out.

37. The learned Advocate General sought diligently to persuade us that the strength of his argument lurked in the word "only" found in Article 16(1) of the Constitution. The meaning of Article 16(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 & 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 Ameri can decisions & it is evidently a good America nism imported in 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 & 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 casbe of a citizen should not be a ground of preference or disability. The use of the words "or any of them" in Articles 16(1) & 29(2) after the words "religion, race, caste etc." shows emphatically that not one of the enume rated grounds namely, race, religion, caste, etc., is a valid ground for admitting or refusing admission to students to educational institu tions maintained by the State or with State aid.

38. 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 & emphatic & there is not the same scope for judicial interpretation here as there is in America. The discrimination in America was based on colour. Negroes & 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, & the enactment of the 14th Amendment guaranteeing to all persons the equal protection of the laws, & the 15th Amendment giving the right to vote to all citizens irrespective of colour, discrimination against Negroes & 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 S. C. 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 & a socialist economy. The phrase "equal protection of the laws" has been interpreted as meaning that similar or substantially similar amenities & privileges should be provided for Negroes & citizens of Asiatic origin as for the white people. "Similar, but not the same" was the rule of construction adopted by the S. C. It was held to be quite legal & constitutional to provide separate & 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 S. C. has been somewhat liberal in the matter of recognising the equal rights of Negroes & citizens of Asiatic origin with reference to property, but somewhat conservative though progressive, in recognising social equality,

39. In Oyamma v. California, (1948) 332 U. S. 633, a Japanese father had a son who was born in America & therefore, became an American citizen. The S. C. 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 Ct. relied on the following observations in Hirabayashi v. U. S., (1942) 320 U. S. 81, 100 :

> "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. Kraemert (1948) 834 U. S. 1, 22, 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 1st section of the 14th Amendment are, by its terms, guaranteed to the individual. The rights established are personal rights. It is, therefore, no answer to these petnrs. to say that the Ct. may also be induced to deny White persons rights of ownership & occupancy on grounds of race or colour .... Equal protection of the laws is not achieved through indiscriminate imposition of inequality."

In Buchman v. Wagley, 1917-245 U. S. 60, the Ct. upheld the right of a White man to sell his property to a coloured man declaring the unconstitutionally 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.

40. 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 & is being built by the Judges of the S. C. In Plassey v. Ferguson, (1896) 163 U. S. 537, the Ct. said :

> "The object of the Amendment (14th) 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, & 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, & have been generally, if not universally, recognised 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 & coloured children, which has been held to be a valid exercise of" the legislative power."

41. In Missouri Ex Rol Games v. Canada, (1938) 305 U. S. 337, a Negro was refused admission to the School of Law of the State University of Missouri, & he applied to the S. C. It was held by that Court, that there was a denial of the equal protection of the laws to the appct & that the refusal was improper. The Ct. observed :

> "The basic consideration is .... as to what opportunity Missouri itself furnishes to White students & denies to Negroes solely upon the ground of colour. The admissibility of laws 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, & 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."

42. After the second world war where Negroes fought by the side & in front of White soldiers, judicial opinion has tended to improve the position of Negroes considerably in the matter of professional & collegiate education. Two recent decisions of the S. C. in Sweatt v. Painter, 63 M. L. W. 39 & Me Laurin, v. Oklakama, 63 M. L..W 91 have been placed before us & they illustrate the expansion of the constitutional rights of the Negro. In the former case it was held by the S. C. 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 heen upheld by the Judges of the S. C. of a previous generation. Another law school for Negroes had been established pendente lite, but it had fewer professors, fewer law books & had not the same high academic reputation of the older institution established for the White population. The S. C. observed :

> "In terms of number of the faculty, variety of courses & opportunity for specialization, size of the student body, scope of the library, availability of law review & 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 & influence of the alumni, standing in the community, traditions & 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 a doctorate. At first he was completely segregated in the class room by a wired fence & 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 & a special table in the cafeteria. The S. C. held that these distinction were illegal & unconstitutional & observed :

> "They signify that the state, in administering the facilities it affords for professional & graduate study sets Mc. Laurin apart from the other students.

> The result is that the applt. (Negro) is handicapped in his pursuit of effective graduate instruction. Such restrictions impair & inhibit his ability to study, to engage in discussions & exchange views with other students & in general, to learn his profession."

In view of the peremptory & specific provision contained in Article 16(1), Const. Ind., 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 S. C. felt bound under the impact of changing political & economic conditions both in America & in the world, to make a departure from their previous pronouncements restricting the rights of the Negro. In my opinion, the communal G. O. violates Article 16(1) of the Constitution. It statedly classifies students seeking admission to State colleges on the basis of caste & religion & allots a definite number of seats to students belonging to particular castea or communities irrespective of their merit. It makes caste & religion a ground of admission or rejection.

In its working, it results in the adoption of different qualifications & 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 & conditions, both in the privileges conferred & disabilities imposed. In its effect & operation the communal G. O. discriminates very markedly against members of a particular caste & shuts out students having high qualifications solely on the ground of their caste or religion & 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 & 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.

4 3 . 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 appcts. for admissions, & the duty of the Govt. to. advance the educational & economic interests. of the backward classes, to ensure social justice for all sections of the public & 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 Govt. I am free to admit that these considerations are legitimate & proper to be taken into account in shaping or formulating Govt. policy. But they have to be accommodated within the framework 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 & social & economic justice were ignored or not given due weight by its makers when they enacted Article 16(1). Individual rights of citizens of so fundamental & 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 Govt. to interfere with such rights according to ita 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 & economic justice unfettered by constitutional restraints, there is a possibility of serious & undeserved hardship & 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 Govt. could

build. Part III of the Constitution is itself a categorical statement of those very principles of individual & social justice whose transgression in the exercise of governmental power is expressly forbidden. The Constitution has struck the balance between government power & the rights of individual citizens & it has to be obeyed. Article 16(1) controls the "temporary will of a majority by a permanent & paramount law settled by the deliberate wisdom of the whole nation", to quote the words of the learned Chief Justice of the S. C. of India in A.K. Gopalan v. The State of Madras, MANU/SC/0012/1950 : 1950CriLJ1383.

44. 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 Govt. colleges. Therefore, some citizens have to be winnowed out. The prescribing of some qualifications & standards for admission of students is, therefore, inevitable. The qualifications may vary with the different branches of academic or professional studies. Special qualification or aptitudes for particular types of education may be laid down, based on physical fitness, marks obtained in preparatory examinations & so on. They must, however, be reasonably relevant to the recognised purposes of professional or other kind of education & 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 though 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 16(1). If, for instance, students belonging to a certain community or caste by reason of their caste discipline, habits & modes of life, satisfy the prescribed requirements in larger number 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 teats unrelated to education, academic or professional.

45. 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 & that seat has been filled up, while a Hindu who has got 300 marks 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 & Non-brahmins would be the same, except that the discrimination is based on caste & 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 principle to sub-cashes & sub-divisions of each sub-caste ? There are Smarthas & Vaishnavites among Brahmins & among the Smarthas & Vaishnavas there are further sub-divisions. There are more sub-divisions among Non-brahmins than it is possible to enumerate. Islam & Christianity do not exhibit so many differences, It was with a view to exterminate these communal & class consideration in the realm of State activity, that Article 16(1) has been enacted. The communal G. O. is subversive of this basic provision of the Constitution.

46. I was not able to understand--I am not sure I am any wiser now--the argument of the learned Advocate 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 16(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 S. C. held :

"The 15th 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, (1939) 307 U. S. 268.

Again, as observed in Shelley v. Kraemer, (1948) 334 U. S. 1, 22, "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 16(1) ignores the language & purpose of the Article. This argument may be relevant to an interpretation of Article 39(2) as I shall show presently. The prohibition in Article 16(1) is against differentiation between one citizen & another citizen on the ground of caste, race or religion. The rights that are protected & 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 & guarantees. The right guaranteed is the personal right of every individual citizen qua citizen, & 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.

47. Learned counsel for the appsts. took their stand mainly on Article 29(2) & the Advocate General adroitly turned his counterattack against them on their own chosen ground. Not sufficient importance was given to Article 16(1) in the course of the arguments. To avoid a long discussion, I take the liberty of stating the argument of the resp. in the form of a syllogism. The appcts. have been refused admission because (a) they are Brahmins ; (b) Brahmins have an allotment of only two seats out of 14 on the basis of some principle of communal justice & (c) the two seats have already been filled up by other Brahmin candidates. A denial of admission based on these three grounds is not a denial only or solely or exclusively on the ground of the appcts. being Brahmins, which alone is prohibited by Article 29(2). This, in substance is the contention of the Advocate-General & 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 & the latter a preference of some & rejection of others. Discrimination is hit at by Article 16(1) & 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 16(1) of the Constitution. For this reason I refrain from referring to the original draft of Article 29(2) & the speeches in the Constituent Assembly at the time when Art 29(2) in its present form was enacted.

48. The learned Advocate. General further contended that it was open to the Govt. to take candidates in proportion to the numerical strength of the various communities & that this was also one of the considerations which weighed with the Govt. in enforcing the communal G. O. This contention is again shipwrecked on the language of Article 16(1) of the Constitution. If you classify students seeking admission to colleges according to the castes & the communities to which they belong & fix & 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 two out of 14 seats allotted for his community, & these two seats have been filled up by Brahmin students with higher marks. A Non-brahmin student who obtains 850 marks is admitted because there are 8 seats but of 14 allotted

for his community & 8 students with more than 350 marks have not been forthcoming. The Brahmin is rejected & the Non-brahmin is admitted only because the former is a Brahmin & 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 & 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 ?

49. 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 recognised by the Constitution. In my opinion, this is far-fetched argument. Article 337 purports to be a special transitory provision occurring in the Chapter entitled "Special provisions relating to certain classes". Anglo-Indian educational institutions had been receiving in pre-independence days lavish grants from Govts., 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 & therefore provided a limited measure of protection to Anglo-Indian institutions for a strictly limited period. Article 331 is a special provision & in any case, it is a part of the Constitution itself. The absence of any similar provision for other communities in Articles 16(1) & 29(2) is an argument against the resp.

50. It was further argued that Article 16(4) of the Constitution provided for the reservation of appointments or posts for backward classes of citizens & 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 back" ward classes, & 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 16(1) is peremptory that no distinction on the basis of caste, race or religion should be made between one citizen & another in the exercise of his constitutional rights & 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 10 per cent. of the total marks as against a 40 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 & different standards for students seeking admission, the said qualifications & standards varying with their caste, community or religion.

51. 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 & economic interests of the weaker sections of the people, particularly the scheduled castes & tribes. Article 46 occurs in Part IV dealing with "Directive principles of State Policy". It is a Code of morals & ideals for State Govts. like the commandments of the Bible. Article 37 expressly states that the provisions of Part IV shall not be enforceable by any Ct. The rights conferred by Articles 16(1) & 29(2) are expressly made justiciable by Articles 32 & 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 & does not purport to override the provisions of Article 16(1) & it must be read subject to the

provisions, 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 Advocate-General really comes to this : that discrimination is shut out by the front door of Article 16(1) but immediately readmitted by the backdoor of Arb. 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 Govt. in the exercise of the powers & the discharge of the duties specified in Article 46 of the Constitution. The same old classification of communities on the basis of caste & religion, into Brahmins, & non-Brahmins, Christians, Muslims & Hindus, is kept up & enforced. There is nothing to show that the Govt. applied its mind to a determination of who the "weaker sections" of the people were, before allotting seats in the Engineering & Medical Colleges to the different castes & communities. Even in the same caste or community there are stronger & weaker sections. Economically, culturally & educationally, a caste is not a homogenous 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 14 seats are allotted to them. It is not as if two seats are reserved for them & the remaining seats are thrown open to Harijans along with other communities to be filled upon 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, & the remaining 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 water-tight compartments according to the caste or religion & 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.

52. I may briefly advert to one other point which arose during the course of the arguments. Article 16(3) allows the reservation of educational institutions exclusively for the benefit of women. There is no such correspondent provision for males, & Article 16(1) is wide & general in its terms. It is, however, significant that Article 29(2) omits all reference to sex & place of birth among the prohibited grounds of discrimination. It may, therefore, be reasonably argued that educational institutions intended exclusively or primarily for men could be maintained by the State without a violation of the Constitution.

53. To sum up : Articles 14 & 16(1) of the Constitution are plain & indeed, quite intractable. Their language is express, explicit & peremptory. They guarantee certain valuable personal rights to every citizen. These rights are made inviolable by the exercise of Govt. power except in conformity with the Constitution. The State is prohibited by Article 16(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 chap. III. It prohibits the State from discriminating against citizens seeking to avail themselves of opportunities provided by the State for their intellectual development & 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 & religion for purposes of admission to Govt. Medical & Engineering Colleges, which allots seats in definite & fixed proportions to different castes & religions & communities & which operates effectively to shut out a large number of students with higher qualifications & to let in a large number of students

with lower qualifications, solely, on account of their belonging to particular caste & communities, discriminates against citizens on the ground of caste, community or religion, & therefore violates Art, 16(1) of the Constitution. It is unnecessary to decide whether it is also hit at by Art, 14 as being a colourable exercise of Govt. power depriving the citizen of the protection of equal laws. Declaration of a guaranteed right in Article 16(1) of the Constitution would be worthless if the Govt. could disregard or nullify it by executive acts like the Communal G. O. The fact that the Constitution reverses previous administrative principles & practices widely prevalent in this State is not a ground for neutralising its operation & effect, for, Article 16(1) of the Constitution was specially intended to abrogate & expressly abrogated, discrimination against citizens on grounds of race, religion or caste.

54. The appeal made by the learned Advocate-General to some vague & undefined principle of social justice, does not justify a Ct. of construction--& 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 & the judiciary are all bound alike. Does social justice or the welfare of the State require a suppression of the integrity & 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 & 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 organisations comprising citizens of all communities. The need for improving the economic & educational level of backward classes is there, but there are many legitimate methods of satisfying this need without causing detriment to other communities & 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 & colour & religious differences, to be fostered & recognised 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 & 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 be very 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 & on the same footing as others, is a deprivation, in the competitions of life, of one of the most essential means of existence; & this for no sin or fault of theirs & for no other reason than that they belong to a particular caste or religion. Article 16(1) of the Constitution of India would become an empty bubble if the communal G. O. regulating admission of students were held to be legal & constitutional.

55. For these reasons, I agree with my Lord the Chief Justice in the form of the order which he proposes to make & in the direction as to costs.

Nagabushnam Pillai Somasundaram, J.

56. The question that falls to be decided in these two petns. is whether the G. O. No. 1254--Education dated 17-5-1948 which regulates the admission of students into Medical & Engineering Colleges is valid under the present Constitution. The facts are fully set out in the judgment of :my Lord the Chief Justice that 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 recognised & laid down by representatives of the people & it is maintained upto date by those in authority

& they are the accredited representatives of the people. There is therefore behind it the sanction & the will of the people of the 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 16(1) & 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 & it was practically so conceded at the Bar. It is also conceded that provisions similar to Articles 16(1) & 29(2) are not to be found in any of the Constitutions of other countries in the World & no direct authority bearing on the point is available.

57. The contention of the petnrs. is that the discrimination in Article 16(1) & the denial in Article 29(2) should on no account be based on religion, race, caste or language or any of them & 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" & according to canons of interpretation of statutes the word must be given a meaning appropriate to the context & 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 she 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, nice, 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 & must have been conscious of the fact that this Sub-Continent of India is composed of people of varying degrees of culture & civilization differing from State to State. They may legitimately have thought that in the circumstances it would not be safe to enact a rigid & inelastic rule that the caste, religion, language etc., should not be the basis of selection at all & that it might hamper & fetter the policy of the State in the Govt. of the country. Therefore the term "only" was included for emphasising that the denial or discrimination should not be on the sole ground of caste etc. & 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 16(1) & 29(2). It is neither possible nor necessary for us to state what are those circumstances or facts or policies 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 & 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., & Articles 16(1) & 29(2) are contravened ; because the Articles postulate the taking of other considerations than religion, race, caste etc., some of which might bring in the question of religion, race, caate, etc.. & 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.

58. Article 46 of the Constitution is a very relevant & 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 the Chapter relating to Directive Principles of State Policy. Article 37 states that though the provisions in that part are not enforceable in Ct., nevertheless the principles therein are fundamental in the Governance of the country. I emphasise 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 & to Governors of the Ooloniea & to those of India by the British Govt. 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 & 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 & give effect to the principle contained in Article 46. Those responsible for the Constitution were perfectly aware of these provisions & in fact Article 29(2) was passed after Art, 46 was passed. The use of the word "fundamental" is significant in view of the uso 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 & administering the laws laid down in various articles of the Constitution. The framere were perfectly conscious that in administering Article 16(1) & 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 16(1) & 29(2) must be road 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.

59. It is contended that the right conferred by Articles 16(1) & 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 like 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 & 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.

60. 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 & my learned brother Viswanatha Sastri for the view they have taken. I would therefore, agree though not without hesitation in the order proposed by my Lord the Chief Justice.

61. By the 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 & 46 thereof.