



**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

**BEFORE
HON'BLE SHRI JUSTICE ANAND PATHAK
&
HON'BLE SHRI JUSTICE VINAY SARAF**

WRIT PETITION No. 5901 of 2019

CNR No.: MPHC010141222019

ASHITA DUBEY AND OTHERS

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

WITH

WRIT PETITION No. 10310 of 2019

CNR No.: MPHC010254942019

YOUTH FOR EQUALITY AND OTHERS

Versus

THE STATE OF MADHYA PRADESH

WRIT PETITION No. 11330 of 2019

CNR No.: MPHC010283722019

NAGRIK UPBHOKTA MARGDARSHAK MANCH AND OTHERS

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 16552 of 2019

CNR No.: MPHC010403682019

PRATYUSH DWIVEDI AND OTHERS

Versus

THE STATE OF MADHYA PRADESH AND OTHERS



WRIT PETITION No. 21292 of 2019

CNR No.: MPHC010506362019

SHISHIR AMBHORE

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 25181 of 2019

CNR No.: MPHC010595462019

PIYUSH JAIN

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 25341 of 2019

CNR No.: MPHC010599542019

ANKIT JAIN

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 27154 of 2019

CNR No.: MPHC010013912020

SURYAKANT SHARMA

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 3757 of 2020

CNR No.: MPHC010083722020

SHANTILAL JOSHI AND OTHERS

Versus

STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 3937 of 2020



CNR No.: MPHC010087452020

SHYAM JI KURELE

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 4203 of 2020

CNR No.: MPHC010093632020

VIPIN KUMAR TRIPATHI AND OTHERS

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 4523 of 2020

CNR No.: MPHC010101892020

SAKSHI JAIN

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 5110 of 2020

CNR No.: MPHC010116682020

DHARMENDRA KUMAR PANDEY AND OTHERS

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 6202 of 2020

CNR No.: MPHC010140912020

JYOTI SIRVAIYA

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 6248 of 2020

CNR No.: MPHC010141172020



SHAGUFTA TABASSUM
Versus
STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 6712 of 2020

CNR No.: MPHC010152612020

YOGENDRA DHAR SHARMA
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 8170 of 2020

CNR No.: MPHC010203502020

SMT. MADHURI YADAV
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 8378 of 2020

CNR No.: MPHC010200732020

HEMANT KUMAR JAIN
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 8923 of 2020

CNR No.: MPHC010215672020

CHANDRAKANT DWIVEDI
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 8930 of 2020

CNR No.: MPHC010215742020



SWATENTRA KUMAR JAIN AND OTHERS
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 9328 of 2020

CNR No.: MPHC010226962020

SHIVANGNA SHUKLA AND OTHERS
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 9655 of 2020

CNR No.: MPHC010276262020

ROBIN AGRAWAL
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 12049 of 2020

CNR No.: MPHC010293312020

***MADHYA PRADESH ANUSUCHIT JATI JANJATI PICHHADA VARG
AVAM ALPSANKHYAK ADHIKARI KARMCHARI SANGATHAN***
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 16223 of 2020

CNR No.: MPHC012744402020

RATAN KUMAR PANDEY AND OTHERS
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 20093 of 2020

CNR No.: MPHC012831922020



OM PRAKASH PATEL
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 494 of 2021

CNR No.: MPHC010039742021

1. DR. RAMRAJ SINGH AND OTHERS
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 5298 of 2021

CNR No.: MPHC010113792021

DR. RAMMOHAN SINGH BHADORIA
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 6683 of 2021

CNR No.: MPHC010143672021

SHRADDHA GAUTAM
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 20838 of 2021

CNR No.: MPHC010451732021

ALI SEHARWALA THROUGH HIS NATURAL GUARDIAN (FATHER)
SHAKIT MOIZ SAHERWALA AND OTHERS
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 23252 of 2021

CNR No.: MPHC010475302021



DR. RADHA KRISHNA MISHRA AND OTHERS
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 24919 of 2021

CNR No.: MPHC010508072021

PRABAL PRATAP SINGH AND OTHERS
Versus
STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 25645 of 2021

CNR No.: MPHC010525342021

SHUBHAM PANDEY
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 25924 of 2021

CNR No.: MPHC010530352021

SHARIKA DASH AND OTHERS
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 25972 of 2021

CNR No.: MPHC010531552021

RAJESH KUMAR MEENA AND OTHERS
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 26254 of 2021

CNR No.: MPHC010538372021



SHIV PRASAD JAYSWAL AND OTHERS
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 28853 of 2021

CNR No.: MPHC010595242021

RUSHAM SINGH BAIS AND OTHERS
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 1969 of 2022

CNR No.: MPHC010046782022

NIYATI JAIN
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 2927 of 2022

CNR No.: MPHC010066342022

NIHARIKA TRIPATHI
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 2928 of 2022

CNR No.: MPHC010066382022

KAPIL SAXENA AND OTHERS
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 3013 of 2022

CNR No.: MPHC010068592022



ARUN SHARMA AND OTHERS

Versus

STATE OF M.P. AND OTHERS

WRIT PETITION No. 3668 of 2022

CNR No.: MPHC010083872022

SHIVAM GAUTAM

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 3750 of 2022

CNR No.: MPHC010086342022

ANJU SHUKLA

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 3833 of 2022

CNR No.: MPHC010088242022

ANAMIKA TOMAR

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 6114 of 2022

CNR No.: MPHC010142292022

ROUNAK SHRIVASTAVA

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 6115 of 2022

CNR No.: MPHC010142332022



ROUNAK SHRIVASTAVA
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 6346 of 2022

CNR No.: MPHC010147242022

SATENDRA SINGH BHADAURIA
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 27163 of 2022

CNR No.: MPHC010721662022

NAVIN MEHSRAM
Versus
***THE STATE OF MADHYA PRADESH DEPARTMENT OF GENERAL
ADMINISTRATION AND OTHERS***

WRIT PETITION No. 28322 of 2022

CNR No.: MPHC010663502022

DEVENDRA PRATAP SINGH
Versus
ATAL BIHARI BAJPAI HINDI VISHWAVIDALAYA AND OTHERS

WRIT PETITION No. 28809 of 2022

CNR No.: MPHC010676712022

SUBHASH KUMAR SHUKLA AND OTHERS
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 29444 of 2022

CNR No.: MPHC010691572022



DHRUVNARAYAN DWIVEDI
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 30186 of 2022

CNR No.: MPHC010721682022

AMBIKA SINGH
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 30204 of 2022

CNR No.: MPHC010710592022

SOURABH SONGAR AND OTHERS
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 870 of 2023

CNR No.: MPHC010524742023

AKASH PATHAK
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 2760 of 2023

CNR No.: MPHC010088482023

SMT JOYTI SINGH D/O SHRI DEVENDRA SINGH
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 3893 of 2023

CNR No.: MPHC010095142023



RACHNA VYAS AND OTHERS
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 3896 of 2023

CNR No.: MPHC010095232023

RAKSHA JAIN AND OTHERS
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 3998 of 2023

CNR No.: MPHC010524762023

RAHUL
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 4757 of 2023

CNR No.: MPHC010524772023

PRAVESH BHALSE
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 5014 of 2023

CNR No.: MPHC010524782023

SHIVANI BADOLE
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 5900 of 2023

CNR No.: MPHC010524792023



HARSHAD RAGHUWANSHI
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 6257 of 2023

CNR No.: MPHC010198882023

PARAG SINGH RAGHUVANSHI AND OTHERS
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 7554 of 2023

CNR No.: MPHC010234192023

MAYANK SHARMA
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 9813 of 2023

CNR No.: MPHC010524812023

RAJESH PATEL
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 9892 of 2023

CNR No.: MPHC010524822023

SHEETAL PRAKASH VYAS
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 9901 of 2023

CNR No.: MPHC010524832023



DR. BHASKAR SEN
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 9910 of 2023

CNR No.: MPHC010524842023

DR. ABHILASHA VERMA
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 11155 of 2023

CNR No.: MPHC010682642023

DEEPIKA CHOUHAN
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 16507 of 2023

CNR No.: MPHC010524892023

RAVINDRA RAGHUWANSHI
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 17670 of 2023

CNR No.: MPHC010418382023

SIDDHARTH
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 5596 of 2024

CNR No.: MPHC010135032024



PRAGYA SHARMA AND OTHERS
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 6415 of 2024

CNR No.: MPHC010153112024

REETA TRIPATHI
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 8967 of 2024

CNR No.: MPHC010206542024

ADVOCATE UNION FOR DEMOCRACY AND SOCIAL JUSTICE
Versus
THE STATE OF MP AND OTHERS

WRIT PETITION No. 21074 of 2024

CNR No.: MPHC010454462024

PIYUSH PATHAK AND OTHERS
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 28195 of 2024

CNR No.: MPHC010590932024

PRASHANT PATERIYA AND OTHERS
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 30487 of 2024

CNR No.: MPHC010630642024

KRITI DOHRE AND OTHERS
Versus



THE STATE OF M.P. AND OTHERS

WRIT PETITION No. 40528 of 2024

CNR No.: MPHC010818762024

MADHAVI RAHATEKSR AND OTHERS

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 41682 of 2024

CNR No.: MPHC010840302024

SURYA SHRIVAS AND OTHERS

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 41868 of 2024

CNR No.: MPHC010843962024

MAYANK KUMAR SAHU

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 6654 of 2025

CNR No.: MPHC010129332025

SUDESH BALA JAIN AND OTHERS

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 8296 of 2025

CNR No.: MPHC010159552025

VIKASH KUMAR NANDANIYA AND OTHERS

Versus



THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 17785 of 2025

CNR No.: MPHC010339792025

VIKASH KUMAR NANDANIYA

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 37582 of 2025

CNR No.: MPHC010665072025

ANUBHAV SAINI

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 10612 of 2026

CNR No.: MPHC010207802026

NIRMLA YADAV

Versus

THE STATE OF MADHYA PRADESH

WRIT PETITION No. 15832 of 2026

CNR No.: MPHC010298802026

ABHISEK SONI AND OTHERS

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 16731 of 2026

CNR No.: MPHC010316592026

RITU BADOLE

Versus



THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 16732 of 2026

CNR No.: MPHC010316602026

O. B. C. ADVOCATE WELFARE ASSOCIATION

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 16735 of 2026

CNR No.: MPHC010316662026

KRISHNA NARAYAN VERMA AND OTHERS

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 27335 of 2026

CNR No.: MPHC010489922026

SMT. VANMALA RAJAK AND OTHERS

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 27574 of 2026

CNR No.: MPHC010493542026

SACHIN YADAV

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 27580 of 2026

CNR No.: MPHC010493632026

DEEPAK MEENA AND OTHERS

Versus



THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION No. 27862 of 2026

CNR No.: MPHC010498262026

DR. CHANDRA SHEKHAR TIJARE

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Reserved on : 05.08.2026

Pronounced on : 09.10.2026

Appearance:

Advocates for the Petitioners :-

Shri Aman Lekhi - Senior Advocate (Through V.C.) assisted by Shri Anshul Tiwari- Advocate, Shri Gopal Shankarnarayan - Senior Advocate (Through V.C.) assisted by Shri Kartikaya Singh and Shri Rohan Harne- Advocates, Shri Pradeep Sancheti - Senior Advocate (Through V.C.) assisted by Shri Anshul Tiwari- Advocate, Shri Ankur Chibbar - Senior Advocate (Through V.C.) assisted by Shri Hindesh Pal, Advocate, Ms. Aparajita Singh - Senior Advocate (Through V.C.) assisted by Shri Anshul Tiwari, Advocate, Ms. Shobha Gupta - Senior Advocate (Through V.C.) assisted by Shri Jitendra Kumar Tripathi and Shri Ujjawal Singh -Advocates, Shri Aditya Sanghi - Senior Advocate asisted by Ms. Alka singh and Ms. Vinita Ahuja, Advocates, Shri Anshuman Singh with Shri Viraz Jha and Shri Rohan Harne, Advocates.

Advocates for State/respondents :-

Shri K.M. Natraj - Senior Advocate/Additional Solicitor General assisted by Shri Vatsal Joshi and Shri Chitransh Sharma, Shri Prashant Singh - Advocate General with Shri Harpreet Singh Ruprah-Addl. A.G., Ms. Shweta Yadav and Shri Vivek Sharma - Deputy A.G., Shri Mrinal Gopal Elker, Shri Adwaitya Parasher and Shri Akash Malpani - Advocates



Advocates for other respondents (In support of amendment Act of 2019):-

Mr. P. Wilson - Senior Advocate (Through V.C.) assisted by Shri Pushpendra Kumar Shah, Advocate, Shri Shashank Ratnoo -Advocate (Through V.C.) assisted by Shri Pushpendra Kumar Shah, Advocate, , Shri Rameshwar Singh Thakur - Senior Advocate assisted by Shri Pushpendra Kumar Shah, Shri Parmanand Sahu, Shri R.G. Verma, Shri Vidya Raj Shah, Shri Ramesh Kumar Prajapati, Ms. Abhilasha Lodhi, Shri Rajendra Kumar Choudhary, Shri Akhilesh Prajapati, Advocates, Shri Vinayak Prasad Shah - Advocate, Shri Varun Thakur - Advocate (Through V.C.), Shri Pushpendra Kumar Shah, Advocate, Shri Uday Kumar Sahu - Advocate.

Advocates for respondents (MPPSC):-

Shri Siddharth Sharma with Shri Mayank Upadhyaya and Shri Devendra Prajapati, Advocates and Shri Parag Tiwari and Shri Aditya Pachori, Advocates.

ORDER

Per: Justice Anand Pathak

I.A. No.5321/2023, is an application for constitution of a Special Bench in respect of hearing these matters.

2. This application was filed by the intervener-Akhil Bhartiya OBC Mahasabha in W.P. No.5901/2019 on 18/09/2023 for constitution of Special Bench.

3. The matter travelled to different benches and in some benches, the matter was heard at length, however, hearing was not concluded due to some disruptions and/or the fact that matter was pending before the Hon'ble Supreme Court. Thereafter, the matter was heard by the Division Bench headed by the then



Hon'ble the Chief Justice before he is elevated as the Judge, Supreme Court of India on 2nd June, 2026. Thereafter, Hon'ble the Acting Chief Justice, nominated this Bench to hear these matters vide Administrative Order dated 15/06/2026.

4. With the consent of all the parties, the matter was heard at length for 15 days (comprising of 30 hours of hearing). Therefore, this application (I.A. No.5321/2023) has no meaning at fag end. Hence rejected.

5. Regard being had to the similitude of the issue involved in these cases, all the Writ Petitions were heard analogously at length with the consent of counsel for all the parties and are decided by this common order. However, for factual clarity, facts of **Writ Petition No.5901/2019 (Ashita Dubey and Others Vs. State of M.P. and Others)** are taken into consideration.

6. Several bunch of Writ Petitions are being filed challenging the M.P. Ordinance No.2 of 2019 dated 08/03/2019 as well as the M.P. Lok Seva (Anusuchit Jatiyon, Anusuchit Jan Jatiyon aur Anya Pichhde Varon Ke Liye Arakshan) Sanshodhan Adhiniyam, 2019 (hereinafter referred as the 'Act of 2019') seeking the said Act of 2019 as illegal and *ultra vires* to the Constitution of India.

7. Alongwith W.P. No.5901/2019, some other Writ Petitions, which challenge '**27% of the OBC Reservation**' are filed. These petitions are as under:-

1. WP-5901/2019 1.1 WP-10310/2019 1.2 WP-11330/2019 1.3 WP-16552/2019
1.5 WP-21292/2019 1.6 WP-25181/2019 1.7 WP-25341/2019 1.8 WP-27154/2019



1. WP-5901/2019 1.1 WP-10310/2019 1.2 WP-11330/2019 1.3 WP-16552/2019
 1.10 WP-3937/2020 1.11 WP-4203/2020 1.12 WP-4523/2020 1.13 WP-5110/2020
 1.14 WP-6202/2020 1.17 WP-8378/2020 1.19 WP-8923/2020 1.20 WP-8930/2020
 1.21 WP-9328/2020 1.23 WP-12049/2020 1.24 WP-16223/2020 1.25 WP-20093/2020
 1.26 WP-494/2021 1.28 WP-6683/2021 1.32 WP-20838/2021 1.33 WP-23252/2021
 1.35 WP-25645/2021 1.36 WP-25924/2021 1.38 WP-26254/2021 1.39 WP-28853/2021
 1.40 WP-1969/2022 1.41 WP-2927/2022 1.42 WP-2928/2022 1.44 WP-3668/2022
 1.45 WP-3750/2022 1.46 WP-3833/2022 1.47 WP-6114/2022 1.48 WP-6115/2022
 1.49 WP-6346/2022 1.50 WP-28322/2022 1.51 WP-28809/2022 1.52 WP-29444/2022
 1.53 WP-30204/2022 1.60 WP-27163/2022 1.69 WP-30186/2022 1.55 WP-3893/2023
 1.56 WP-3896/2023 1.57 WP-6257/2023 1.58 WP-7554/2023 1.59 WP-17670/2023
 1.61 WP-9901/2023 1.62 WP-9892/2023 1.63 WP-5900/2023 1.64 WP-9813/2023
 1.65 WP-16507/2023 1.66 WP-4757/2023 1.67 WP-3998/2023 1.68 WP-5014/2023
 1.70 WP-9910/2023 1.71 WP-870/2023 1.72 WP-11155/2023 1.73 WP-5596/2024
 1.74 WP-6415/2024 1.75 WP-8967/2024 1.76 WP-21074/2024 1.77 WP-28195/2024
 1.78 WP-30487/2024 1.79 WP-40528/2024 1.80 WP-41682/2024 1.81 WP-41868/2024
 1.82 WP-6654/2025 1.83 WP-8296/2025 1.84 WP-17785/2025 1.85 WP-37582/2025
 1.86 WP-10612/2026 1.87 WP-15832/2026 1.89 WP-16732/2026 1.90 WP-16735/2026
 1.91 WP-27335/2026 1.92 WP-27574/2026 1.93 WP-27580/2026 1.94 WP-27862/2026

In these writ petitions following reliefs (collectively) are sought:-

“(a) The reservation has been provided to the tune of 27% as per M.P. Ordinance No.2 of 2019 dated 08.03.2019 be declared as Ultra Virus to Article 14, Article 16(4) and Article 16(1) (g) of the constitution of India.

(b) To issue an appropriate writ/order/direction holding that the advertisement dated 14.11.2019 issued by the Respondent no.3 MPPSC is violative of Articles 14, 15, 16, 19 and 21 of the Constitution of India and the same deserves to be set aside by this Hon'ble Court.

(c) That, this Hon'ble Court be pleased to issue an appropriate writ/order/direction holding and declaring that The Madhya Pradesh Lok Seva (Anusuchit Jatiyon, Anusuchit Jan Jatiyon aur Anya Pichhade Vargon ke Liye Aarakshan) Sanshodhan Adhiniyam, 2019 is illegal and ultra vires the Constitution of India.

(d) To issue an appropriate writ/order/direction holding and declaring Madhya Pradesh Lok Seva (Anusuchit Jatiyon, Anusuchit Jan Jatiyon Aur Anya Pichhade Vargon Ke Liye Aarakshan) Sanshodhan Rules, 2019 New Model -Roster (Annexure P/5) is illegal and ultra vires the Constitution of India



(e) *The reservation provided to the tune of 27% as per amendment under Section 4(i) (ii) of the M.P. Lok Sewa (Anusuchit Jatiyon, Anusuchit Janjatiyon or Pichhara Wargon Ke Liye Aarakshan) Sanshodhan Vidheyak, 2019 be declared as Ultra Vires to Article 14, Article 15 Article 16 and Article 19(1)(g) of the constitution of India.*

(f) *To declare the amendment to Section 4(2)(i)(a) and (b) of M.P. Lok Seva (Anusuchit Jatiyon, Anusuchit Jan Jatiyon Evam Anya Pichhade Vergon Ke Liye Arakshan) Adhiniyam, 1994 as ultra vires to Articles 14, 16, 19 and 21 of the Constitution of India. (Annexure P8) and To direct the respondents to undertake entire recruitment process with OBC reservation as 14%.*

(g) *That the fixation of percentage of reservation of Scheduled Tribe and Other Backward Classes provided in the advertisement dated 14.11.2019 in Advt. No. 03/2019 and the corrigendum dated 19.11.2019 in Corrigendum No. 02/03/2019 issued by the M.P. Public Service Commission, Indore (M.P.) be quashed.*

(h) *That the M.P. Public Service Commission, Indore (M.P.) be directed to act in accordance with the statutory legislation as well as the law laid down by the Hon'ble Apex Court in fixing the percentage of reservation of Scheduled Castes, Scheduled Tribe and Other Backward Classes.*

(i) *It is therefore prayed the Provisional select list issued by the respondents may kindly be declared as nonest and the direction be issued to issue the fresh list after computing the reservation for OBC category @14%.*

(j) *That, this Hon'ble Court may kindly be pleased to declare the gazette notification dated 24/12/2019 which provides the 27% reservation for the other backward category candidates, as unconstitutional and ultra vires, in the interest of justice.*

(k) *To direct the respondents to consider the quantum of reservation as well as special reservation that the reservations contemplated in Clause (4) of Article 16 should not exceed 50%.*

(l) *After quashing the same the respondents be directed to prepare a fresh select/ waiting list of selected UR candidates by giving only 14% reservation to OBC candidates and thereafter issue appointment order in favor of the petitioner.*

(m) *Declare the act of respondents, in retrospectively applying the provisions of increased reservation for OBC category i.e. 27% as provided in the Amendment Act, 2019 in the ongoing Selection processes which commenced prior to the enactment of the Amendment Act, as illegal.*

(n) *To set-aside Clause 3 of 3.1 (Reservation Percent) of Admission Process & Guidelines (Pravesh Prakriya Avam Margdarshi Siddhant) Year 2020-21, on the basis of which impugned order dt.31.7.2020 issued by the respondent no.2, declaring it ultra vires to Amendment Act, 2019, in the interest of justice. Hon'ble Court may kindly be pleased to take appropriate action U/S 6 of M.P. Lok Sewa Arakshan Adhiniyam, 1994 against the erring respondents, in the interest of justice and that this Hon'ble Court may kindly be pleased to issue*



directions to the Print Media not to circulate erroneous information regarding OBC Reservation in public at large, in the interest of justice.

(o) Declaring the Amendment dated 5th October, 2021 in Madhya Pradesh Medical Education Entrance Rules 2018, whereby as per Section OBC reservation is shown to be 27% as violative of Articles 14 and 19(1)(g) of the Constitution of India and therefore be declared as ultra vires to Constitution of India.

(p) Declaring the Amendment dated 14.08.2019 in Lok Seva (Anusuchit Jatiyon, Anusuchit Jan Jatiyon Aur Anya Pichhade Vargon Ke Liya Arakshan) Sansodhan Adhiniyam, 2019 whereby the reservation of OBC category has been increased from 14% to 27% as violative of Article 14, 19(1)(g) of the Constitution of India and be declared as Ultra Vires to the Constitution of India.

(q). In view of the interim order passed by the Hon'ble Court, the Commission is facing difficulty in declaring the results of various examinations conducted by it. Therefore, in compliance with the directions contained in the interim order passed by the Hon'ble High Court, it is directed that the results of the State Service and other recruitment examinations shall be declared in two parts: 87% of the posts shall be treated as the main part, while the remaining 13% of the posts shall be kept provisional. This 13% includes 13% for the Other Backward Classes (OBC) and 13% for the Unreserved (UR) category.

(r). Candidates provisionally selected in the Preliminary Examination shall be permitted to appear provisionally in every subsequent stage of the examination (Main Examination and Interview). After the final decision of the Hon'ble Court, they shall be selected only against the vacant posts (13%) of the respective category, i.e., the increased/affected category (OBC or Unreserved), and not against the 87% of posts for which selection has already been declared."

(s) A writ of mandamus, commanding the respondents to conduct the counseling only to the reservation as earlier i.e. SC: 16%, ST: 20% and OBC: 14%."

8. Another group of Writ Petitions is filed, which challenges both 'OBC' as well as 'EWS' Reservation'. These Petitions are as under:-

1.9 WP-3757/2020	1.15 WP-6248/2020
1.22 WP-9655/2020	1.27 WP-5298/2021
1.31 WP-21016/2021	1.34 WP-24919/2021
1.43 WP-3013/2022	1.54 WP-2760/2023

In these Writ Petitions, following reliefs are sought:-



“(a) That, this Hon'ble Court may kindly be pleased to declare the guideline/instructions dated 10/01/2020 which provides the 27% reservation for the other backward category candidates and 10% reservation to the EWS category candidates, as unconstitutional and ultra vires, in the interest of justice.

(b) In the alternative and without prejudice, this Hon'ble Court may kindly be pleased to direct the respondent authorities to modify the impugned Circular/Policy by including the OBCs for taking benefit of 10% Reservation along with EWS, in the interest of justice.

(c) Writ of mandamus commanding the respondents to immediately grant the appointment to the EWS category candidates who have qualified the examination and eligible for the post of High School Teacher.

(d) That, the respondent No.2 may be directed to provide opportunity to the petitioner to fill up her choice for availing EWS reservation, and the choice filling portal may be directed to be re- opened, if so required.

(e) declare the Sub-Section (2) of Section 4 of the M.P. Lok Sewa(SC, ST & OBC Reservation) Adhiniyam, 1994 (Ann. P-1) and the impugned Circular dt.2.07.2019 ultra vires to the Articles 14, 15 and 16 of the Constitution.”

9. One Writ Petition is filed in respect of 'Horizontal Reservation as well as

27% OBC Reservation':- 1.16 WP NO. 6712/2020

Reliefs sought in this petition are as under:-

“(a) To declare contrary to law adopting mechanism for application of horizontal reservation in respect of various categories such as women, dependents of freedom fighters, physically handicapped, Ex-servicemen in the State of M.P.

(b) To direct the respondents as horizontal reservation (women, ex-servicemen and dependent of freedom fighter) cannot be adjusted enmasse in the open category but would have to be adjusted against their respective social category i.e. OBC, SC and ST.



(c)To direct the respondents to consider the quantum of reservation as well as special reservation that the reservations contemplated in Clause (4) of Article 16 should not exceed 50%.”

FACTUAL BACKDROP

10. Petitioners are the students of MBBS Course and are aspirants for the NEET (PG) Examination, 2019. Petitioners have collectively filed this writ petition. Petitioners appeared in NEET (PG) Examination, 2019 held in the month of January, 2019. Petitioner no.1 got All India Rank (AIR) 6913, similarly, petitioners no.2 & 3 also cleared the examination with good marks. All the petitioners belong to 'General Category' and they had to appear in the counseling. Process of counseling had to be started from 14.03.2019. Meanwhile, it appears that vide Ordinance No.2 of 2019 (vide Annexure P/4 of the Writ Petition No.5901/2019), Government of Madhya Pradesh brought an amendment by way of Gazette Notification dated 08/03/2019 by which reservation to the 'OBC Category' raised to the extent of 27% instead of existing 14%. Later on Amendment Act was passed. This is the bone of contention.

11. After the amendment dated 08/03/2019, reservation at the time of counseling, raised upto 27%, which according to the petitioners exceeded 50% ceiling as prescribed by the Hon'ble Supreme Court in the case of **Indra Sawhney and Others Vs. Union of India and Others**, reported in 1992 Supp (3) SCC 217. Thus, petitioners challenge vires of the Ordinance dated 08.03.2019 as well as The



M.P. Lok Seva (Anusuchit Jatiyon, Anusuchit Jan Jatiyon aur Anya Pichhde Vargo Ke Liye Arakshan) Sansodhan Adhiniyam, 2019.

12. In 1994, the Government of Madhya Pradesh enacted an Act called 'The Madhya Pradesh Lok Seva (Anusuchit Jatiyon, Anusuchit Janjatiyon aur Anya Pichhade Vargon ke Liye Aarakshan) Adhiniyam, 1994 (hereinafter referred as 'Act of 1994'). This act was framed to provide reservation for the vacancies in public services in favour of the persons belonging to Scheduled Castes, Scheduled Tribes and other Backward Classes of the citizens and for matters connected therewith or incidental thereto. By this act as per Section 4, fixation of percentage for reservation of posts and standard of evaluation were prescribed.

“For Class I to Class IV, reservation for Scheduled Caste was provided as 16%, for Scheduled Tribes 20% and for Other Backward Class (OBC)-14%.”

13. It further appears that the said Act of 1994 was amended vide *Madhya Pradesh Lok Sewa (Anusuchit Jatiyo, Anusuchit Janjatiyo aur anya Pichhda Vargo ke liye Arakshan) Sansothan Adhiniyam, 2002* (for brevity referred as the “Amendment Act, 2002”). Some of the Sections of the Principal Act were amended through the said Amendment Act, 2002. That Act never received Presidential Assent. It further appears that on the basis of said Act of 1994 and Amendment Act of 2002, General Administration Department of Government of



Madhya Pradesh issued a Resolution dated 30.06.2003 whereby reservation for the persons belonging to 'OBC' for public employment, was enhanced from 14% to 27%. The effect of the aforesaid resolution was that the percentage for reservation for the members belonging to the Scheduled Castes/Scheduled Tribes/Other Backward Classes for Public Employment rose to the extent of 63% in total.

14. A Writ Petition No.2798/2003 (Manish Mishra and Others Vs. State of M.P. and Others) was preferred and vide order dated 13.10.2014, the said resolution was quashed and the writ petition was allowed. The SLP against said order is pending consideration before the Supreme Court.

15. Thereafter, in 2019, by the Act of 2019, again reservation was prescribed for 'OBCs' from existing 14% to 27%, therefore, bunch of writ petitions were preferred, as referred above. Categorization of the petitions is already referred in the preceding paragraphs for factual clarity.

16. It appears that vide order dated 19.03.2019, then Division Bench of this Court after hearing the matters, as a measure of interim relief, directed that the respondents/ State shall not provide reservation for more than 14% for the 'OBC Category' Candidates in the admissions made to the colleges on the strength of Ordinance No. 2 of 2019, which was subject matter of those petitions at that point of time.



17. On 28.01.2020, the interim relief was directed to be continued. On 31.01.2020, at the request of Advocate General of the State, it was clarified for the Public Service Commission to proceed for selection of the candidates as per the notification, but the Public Service Commission was directed not to finalize or make any appointments on that basis without seeking prior permission from the Court. On 29th September, 2022 a letter was issued by the General Administration Department addressing to the Secretary, M.P. Public Service Commission, in which it has been directed that looking to the interim relief granted by the Court, result of the examination would be declared in two parts:-

In one part, result would be declared for 87% posts, which were not in point of dispute.

Another list was to be published as provisional list for the remaining 13% posts. In said 13% list, candidates of 'Unreserved Category' as well as 'OBC Category' were directed to be incorporated in two separate lists, so that after decision in these petitions, those 13% (either OBC or UR) would be appointed against those posts as per the judgment.

18. *Per contra*, respondents opposed the contentions and the grounds raised by the petitioners by filing reply.



19. On behalf of the petitioners opposing 27% reservation for the OBC Candidates, and on behalf of the respondents/State opposing the petitioners' claim as well as some counsel appearing in support of OBC reservation, all argued their case at length.

Arguments on behalf of counsel for petitioners:-

Shri Aman Lekhi, Senior Advocate,

20. Shri Lekhi, with his vehemence and eloquence, termed the act of passing the Amendment Act, 2019, as Electoral Gerrymandering or Gerrymandering of Welfare.

21. The Ordinance dated 09.03.2019, was brought just a day before the Model Code of Conduct (for the General Elections of 2019) became effective. The timing of the Ordinance clearly suggests that the real reason for bringing this measure was not a legitimate object but a clear case of electoral opportunism and vote-bank politics. The constitutional principle was sacrificed at the altar of political expediency.

22. As submitted, Article 213 of the Constitution deals with the power to promulgate an Ordinance and requires satisfaction of there being circumstances which render it necessary for the Governor to take “immediate action”. The expression “necessary,” coupled with “immediate action,” requires that the



promulgation of an Ordinance be imperative due to an emergent situation when the Legislature is not in session. There was no emergent situation justifying the promulgation of the Ordinance. Therefore, according to the Senior Counsel, the absence of any urgency, unforeseen contingency, or sudden exigency indicates that constitutional discipline was altogether disregarded.

23. The sheet-anchor of the arguments of the counsel for the petitioner was the discussion of the Constitution Bench judgment of the Supreme Court in **Indra Sawhney & Others Vs. Union of India & Others**, 1992 Supp (3) SCC 217. {In fact, all other counsel also relied on **Indra Sawhney** (supra)}, and the ratio established therein, reiterated by the Supreme Court in **Jaishri Laxmanrao Patil & Anr. Vs. Chief Minister & Ors.**, (2021) 8 SCC 1. While referring to different paragraphs of **Indra Sawhney** (supra), and **Jaishri Laxmanrao Patil** (supra), it was vehemently argued that the 50% ceiling limit for reservation cannot be breached and that a strict rule becomes imperative. While relying upon paragraphs 810 of the judgment rendered in the case of **Indra Sawhney** (supra), it is the submission of learned senior counsel that unless an empirical study based upon geographical location, tribal ecosystem, and historical reasons is carried out, a case cannot be made out for breaching the extraordinary constitutional ceiling of 50%.



24. While dealing with **M. Nagaraj & Others Vs. Union of India & Others**, (2006) 8 SCC 212, and **S.V. Joshi & Others Vs. State of Karnataka & Others**, (2012) 7 SCC 41, the Hon'ble Supreme Court, in **Jaishri Laxmanrao Patil** (supra), held that the Constitution Bench has not laid down any proposition to the effect that if the State wants to exceed 50% reservation, then, it is required to base its decision on quantifiable data. On the contrary, the Constitution Bench of the Supreme Court in **M. Nagaraj** (supra) reiterated the numerical benchmark like 50% rule laid down in **Indra Sawhney** (supra). While referring to paragraph 122 of **M. Nagaraj** (supra), it is submitted that the ceiling limit of 50%, the concept of the creamy layer, and the compelling reasons, namely backwardness, inadequacy of representation, and the concept of administrative efficiency, are all constitutional requirements, without which the structure of equality of opportunity under Article 16 would collapse.

25. Article 16(4) is a facet of Article 16(1), and the reason for limiting reservation to 50% because of the “special provision”, which is inconsonance with the rule of **Indra Sawhney**. The judgment in the case of **Ashoka Kumar Thakur Vs. Union of India & Others**, (2008) 6 SCC 1, was also pressed into service to submit that the cap on percentage is a constitutional requirement and the rule in **Indra Sawhney** (supra) has been repeatedly followed. Reliance placed over the



arguments surfaced in **Jarnail Singh & Ors. Vs. Lachhmi Narain Gupta & Ors.**, (2022) 10 SCC 595 and **Jaishri Laxmanrao Patil Vs. State of Maharashtra**, wherein the Apex Court rejected the argument to refer the judgment rendered in **Indra Sawhney** (supra) to a larger Bench, wherein the ceiling of 50% is upheld.

26. It is also the submission of learned Senior Counsel that the structural integration of OBCs has been carried out in society in Madhya Pradesh and OBCs are at the central point of power in the State of Madhya Pradesh. They have significant numerical representation (5 Chief Ministers in last 20 years). Significant percentage in the Council of Ministers, and about 27% of the total members in the Legislative Assembly. The OBCs have exercised tremendous political influence. It is most evident in the instant case when there is cross-party solidarity to increase the reservation to 27%. It is obvious that they are not marginalized and are in the mainstream. They are actually insiders to power.

27. The 50% ceiling limit is a numerical rule of constitutional principle of balance, and the exception to the said cap, while seemingly permissive, is actually limited and fenced, being narrow and fact-driven where there is an extraordinary situation. Backwardness will justify reservation, but not breach of the 50% limit. Therefore, no circumstance exists substantiating the contention that OBCs are peripheral and not in the mainstream of the political, economic, or social fabric of



the mainstream. Therefore, no extraordinary circumstance exists as described in **para 810 of Indra Sawhney (supra)**.

28. It is the submission of learned senior counsel that when, through different statistical figures, it is established that OBCs are in the mainstream of Madhya Pradesh and are adequately represented in all spheres of life, then breach of the ceiling cannot be undertaken. He also raised the point regarding proportionality vis a vis adequacy. The lack of rational connection with the object sought to be achieved was also raised, and the cases of **Modern Dental College and Research Centre & Ors. Vs. State of Madhya Pradesh & Ors, (2016) 7 SCC 353, K.S. Puttaswamy Vs. Union of India & Ors, (2019) 1 SCC 1, and Anuradha Bhasin Vs. Union of India & Ors., (2020) 3 SCC 637**, were relied upon.

29. Learned senior counsel also referred to the clumsy and slipshod drafting of the Amendment Act of 2019 to exude impression that the impugned amendment is governed according to whims and not by rule, and is born out of sheer irrationality. As submitted, the Amendment Act of 2019 intends to amend the Act of 1994. By the said intended amendment, the amendment in sub-clause (a) and sub-clause (b) of Clause 1 of sub-section 2 of Section 4 of the Principal Act was to be made. However, the draftsman ignored the fact that Section 4(2)(1) was amended in 2002 by the Amendment Act of 2002, and Clauses (a) and (b) of the original Act (Act



of 1994), were merged into Clause 1. Consequently, the sub-categories under sub-clauses (a) and (b) ceased to exist. The amendment in 2019, therefore, was made to those provisions which were not in existence.

Arguments of Shri Gopal Sankaranarayanan, Senior Advocate,

30. Learned Senior Counsel in precise and luculent manner referred to the background of the Amendment Act, 2019. The Madhya Pradesh Lok Seva (Anusuchit Jatiyon, Anusushit Janjatiyon Aur Anya Pichhade Vargon Ke Liye Arakshan) Adhiniyam, 1994, provided for reservation of vacancies in public services and posts under Section 4(2) of the 1994 Act in the following manner:-

“CLASS I & CLASS II - SC-15% | ST-18% | OBC-14% | Total-47%

CLASS III -SC-13% | ST-20% | OBC-14% | Total-47%”

31. On 19.09.1995, the State legislature of Madhya Pradesh passed the 1995 Amendment Bill, proposing to increase reservation to:-

“All Classes – SC -16% | ST-20% | OBC -27% | Total -63%”

32. The 1995 Amendment Bill was sent back by the President under Article 254(2), with a message to limit overall reservation to 50%. However, again on 16.04.2002, the said State Legislature of Madhya Pradesh passed the 2002



Amendment Act, by way of which Section 4(2) of the 1994 Act was amended and reservation was increased to 50%.

33. It appears that on 27.11.2002, the State Legislature of Madhya Pradesh passed the Second 2002 Amendment Bill, increasing reservation again to 63%. However, after reservation for consideration of the President under Article 254(2), the assent was not received. Thereafter, the Second 2002 Amendment Bill was passed again as the 2003 Amendment Bill. By way of resolution dated 30.06.2003, the State of Madhya Pradesh increased reservation for OBCs from 14% to 27%, thereby taking overall reservation to 63%. However, the High Court of Madhya Pradesh, on 13.10.2014, in **W.P. No. 2798 of 2003 (Manish Mishra Vs. State of Madhya Pradesh)**, set aside the resolution dated 30.06.2003 for being ultra vires the 1994 Act and contrary to the law laid down by the Supreme Court in the case of **Indra Sawhney** (supra). The State of Madhya Pradesh challenged the decision in S.L.P. (C) No. 21195 of 2015, and the same is pending consideration.

34. On 08.03.2019, the State Government issued Ordinance No. 2 of 2019, amending Section 4(2) of the 1994 Act and increasing reservation for OBCs from 14% to 27%. As a result, the total reservation increased to 63% (SC -16%, ST - 20%, and OBC - 27%). On 14.08.2019, the Ordinance was passed as the impugned



2019 Amendment Act. The Ordinance and the Amendment Act are under challenge.

35. It is the submission of learned Senior Counsel that 50% ceiling limit prescribed by the Supreme Court has been in existence for 120 years and has remained a measure of equity. On 26.07.1902, it was Maharaja Shahu of Kolhapur who enacted the first reservation law in the country. This law provided that 50% of all vacancies, that arise, would be filled up by backward classes, clearly with a view that the rights of other candidates be also reasonably balanced.

36. It is the consistent view of the Supreme Court that reservation provisions and affirmative action contemplated under Articles 15(4) and 16(4) must be within reasonable limits, so as to ensure that the interests of weaker sections of society are adjusted with the interests of the community as a whole. Learned Counsel relied upon the judgments delivered in the cases of **Indra Sawhney** (supra), and **Jaishri Patil** (supra). He also referred to different judgments where the 50% limit has been reiterated by the Supreme Court in several other Constitution Bench judgments, including:

1. Post Graduate Institute of Medical Education & Research Vs. Faculty Assn.,(1998) 4 SCC 1 (Para 32)

2. Saurabh Chaudri Vs. Union of India, (2003) 11 SCC 146 (Para 72)



3. **M. Nagaraj Vs. Union of India, (2006) 8 SCC 212 (Para 58, 122)**
4. **Ashoka Kumar Thakur Vs. Union of India, (2008) 6 SCC 1 (Para 136, 597, 629)**
5. **K. Krishna Murthy Vs. Union of India, (2010) 7 SCC 202 (Para 67)**
6. **Union of India Vs. Ramesh Ram, (2010) 7 SCC 234 (Para 41)**
7. **Jarnail Singh Vs. Lachhmi Narain Gupta, (2018) 10 SCC 396 (Para 19)**
8. **Chebrolu Leela Prasad Rao Vs. State of A.P., (2021) 11 SCC 401 (Para 150)**
9. **Jaishri Laxmanrao Patil Vs. State of Maharashtra, (2021) 8 SCC 1 (Para 10,17,30,33)**

37. A chart was provided which shows exhaustive 55 cases of the Supreme Court where the Court has sustained application of the 50% ceiling limit:

1. **M.R. Balaji Vs. State of Mysore, 1963 Supp (1) SCR 439**
2. **T. Devadasan Vs. Union of India, (1964) 4 SCR 680**
3. **Triloki Nath Tiku Vs. State of J&K, (1967) 2 SCR 265**
4. **A. Peeriakaruppan (Minor) Vs. State of T.N., (1971) 1 SCC 38**
5. **D.N. Chanchala Vs. State of Mysore, (1971) 2 SCC 293**
6. **State of A.P. Vs. U.S.V. Balram, (1972) 1 SCC 660**
7. **State of U.P. Vs. Pradip Tandon, (1975) 1 SCC 267**
8. **State of Kerala Vs. N.M. Thomas, (1976) 2 SCC 310**
9. **Akhil Bharatiya Soshit Karamchari Sangh (Railway) Vs. UOI, (1981) 1 SCC 246**
10. **S.S. Sharma Vs. Union of India, (1981) 1 SCC 397**
11. **Pradeep Jain Vs. Union of India (1984) 3 SCC 654**
12. **K.C. Vasanth Kumar Vs. State of Karnataka, 1985 Supp SCC 714**
13. **Chakradhar Paswan Vs. State of Bihar. (1988) 2 SCC 214**
14. **Deepak Sibal Vs. Punjab University, (1989) 2 SCC 145**
15. **Indra Sawhney Vs. Union of India, 1992 Supp (3) SCC 217**
16. **Govt. of A.P. Vs. P.R. Vijayakumar, (1995) 4 SCC 520**
17. **Voice (Consumer Care) Council Vs. State of T.N. (I), 1995 Supp (1) SCC 632**
18. **Voice (Consumer Care) Council Vs. State of T.N. (VI), 1995 Supp (1) SCC 640**
19. **V.N. Sunanda Roddy Vs. State of A.P. 1995 Supp (2) SCC 235**
20. **State of Punjab Vs. G.S. Gill, (1997) 6 SCC 129**
21. **Post Graduate Institute of Medical Education & Research Vs. Faculty Assn (1998) 4 SCC 1**
22. **G.R. Chavan Vs. State of Maharashtra, (1998) 9 SCC 48**
23. **Preeti Srivastava (Dr.) Vs. State of M.P., (1999) 7 SCC 120**



24. Parents Assn. Vs. Union of India, (2000) 2 SCC 657
25. AllMS Students' Union Vs. AIIMS, (2002) 1 SCC 428
26. NTR University of Health Sciences Vs. G. Babu Rajendra Prasad, (2003) 5 SCC 350
27. Magan Mehrotra Vs. Union of India, (2003) 11 SCC 186
28. Saurabh Chaudri Vs. Union of India, (2003) 11 SCC 146
29. Nair Service Society Vs. Distt. Officer, Kerala PSC, (2003) 12 SCC 10
30. State of UP. Vs. Pawan Kumar Tiwari, (2005) 2 SCC 10
31. M. Nagaraj Vs. Union of India, (2006) 8 SCC 212
32. Mahesh Gupta Vs. Yashwant Kumar Ahirwar, (2007) 8 SCC 621
33. M.P. Rajya Sahakari Bank Maryadit Vs. State of M.P., (2007) 12 SCC 529
34. Ashoka Kumar Thakur Vs. Union of India, (2008) 6 SCC 1
35. Anil Chandra Vs. Radha Krishna Gaur, (2009) 9 SCC 454
36. Union of India Vs. Rakesh Kumar, (2010) 4 SCC 50
37. K. Krishna Murthy Vs. Union of India, (2010) 7 SCC 202
38. Union of India Vs. Ramesh Ram, (2010) 7 SCC 234
39. State of UP. Vs. Bharat Singh, (2011) 4 SCC 120
40. UP. Power Corpn. Ltd. Vs. Rajesh Kumar, (2012)-7 SCC 1
41. Samta Aandolan Samiti Vs. Union of India, (2014) 14 SCC 745
42. H.K. Pavitra Vs. Union of India, (2017) 4 SCC 620
43. Tripurari Sharan Vs. Ranjit Kumar Yadav, (2018) 2 SCC 656
44. Jarnail Singh Vs. Lachhmi Narais Gupta, (2018) 10 SCC 396
45. Kriti Lakhina Vs. State of Karnataka, (2018) 17 SCC 453
46. Ganesh Sukhdeo Gurule Vs. Tahsildar, (2019) 3 SCC 211
47. Yatinkumar Jasubhai Patel Vs. State of Gujarat, (2019) 10 SCC 1
48. Dega Venkata Harsha Vardhan Vs. Akula Ventaka Harshavardhan, (2019) 12 SCC 735
49. Chebrolu Leela Prasad Rao Vs. State of A.P 2020 SCC Online SC 383
50. Jaishri Laxmanrao Patil Vs. Chief Minister, 2020 SCC Online SC 727
51. Vikas Kishanrao Gawali Vs. State of Maharashtra, 2021 SCC Online SC 170
52. Jaishri Laxmanrao Patil & Anr. Vs. Chief Minister & Ors., (2021) 8 SCC 1
53. Satyajit Kumar Vs. State of Jharkand, 2022 SCC Online SC 954
54. Jarnail Singh Vs. Lachhmi Narain Gupta, 2022 SC Online SC 96
55. Janhit Abhiyan Vs. Union of India (EWS reservation), (2023) 5 SCC 1.

38. As submitted, High Courts of Andhra Pradesh (2005), Bombay (2014 & 2015), Chhattisgarh (2019), Gujarat (2016), Punjab & Haryana (2015, 2016 & 2017), Madhya Pradesh (2019 & 2020), Rajasthan (2010, 2016 & 2018), and Bihar



(2014 & 2024) have repeatedly applied the 50% rule. As submitted, in most of these cases, the special leave petitions against those judgments have already been dismissed by the Supreme Court. Despite the same, the justification of the State is primarily based on demographic data, showing OBCs constituting a significant portion of the State population. According to various sources, OBCs constitute approximately 50 to 52% of the State population. This remains the only justification for breaching the 50% limit.

39. While relying upon the Constitution Bench judgment in Jaishri Patil (supra), it is submitted that the theory of reservation exceeding 50% on the basis of the population of the backward class, as 85%, was rejected by the Constitution Bench. “Adequate” representation under Article 16(4) does not mean “proportionate” representation. The judgment rendered in the case of Jarnail Singh (supra), was also pressed into service.

40. One of the prime arguments of Shri Gopal Sankaranarayanan, Senior Advocate was the ground of non-consultation with the National Commission for Backward Classes (NCBC) before proceeding with the prescription of reservation. It is submitted by learned Senior Counsel that the 102nd Amendment was introduced on 15.08.2018. It, inter alia, introduced Article 338B and set up the National Commission for Backward Classes as a constitutional body.



41. Under Article 338B(5)(d), the Commission has a duty to advise on the socio-economic development of Scheduled Castes and Backward Classes and to evaluate the socio-economic development under the Union or in the State. Under Article 338B(9), the Union and every State Government was required to consult the Commission on all major policies affecting Scheduled Castes and Backward Classes. In **Jaishri Patil** (supra), consultation with the Commission was held to be mandatory and must be effective and meaningful. In **Pattali Makkal Katchi Vs. A. Mayilerumperumal & Ors.**, (2023) 7 SCC 481 (paragraphs 101 and 103), the Supreme Court held that disregarding the mandatory consultation provision under Article 338B(9) would render the legislation void.

42. The 105th Constitution Amendment was introduced on 15.09.2021, which mandates that under Article 342A(3), the State or Union Territory may prepare a list of socially and educationally backward classes for their own purpose, entries in which may be different from the Central List, whereas the proviso to Article 338B(9) does not mandate consultation with the NCBC of the State for preparation and maintenance of the list of OBCs for the State, but the requirement to consult the Commission on all other major policy matters continue. Major policy matters include the issue of providing OBC reservation over and above the 50% ceiling



limit. In the present case, no consultation with the NCBC was carried out. Same is fatal.

43. Neither consultation with the NCBC was carried out, nor the State carried out contemporaneous survey before taking the decision to increase the quantum of reservation. The report is based on the 1983 Mahajan Commission Report, which is more than 40 years old and in no manner could be said to disclose the information which would be relevant for determining the backwardness and adequacy of representation of a particular community as on the passing of the Amendment Act. He prayed for setting aside of the impugned Amendment Act being *ultra vires* the Constitution.

Arguments of Mr. Pradeep Sancheti, Senior Advocate,

44. Shri Sancheti, apparently master of statistical representation and numerical data, submits that the State of Madhya Pradesh relied upon two reports:

(A) Mahajan Committee Report dated 22.12.1983; and

(B) Dr. B. R. Ambedkar University of Social Sciences, Report dated 27.07.2023 (BRAUSS Report)

45. The recommendation of the State Backward Class Commission dated 09.06.1997, as also that of 2019-2020, are in turn based on the Mahajan Commission Report, 1983, and is not based on any fresh collection of data for this



purpose. Therefore, there is no question of any analysis of such fresh data, which was neither surveyed nor collected. Therefore, it is the submission of learned Senior Counsel that, while considering the aspect in terms of grant of reservation to backward classes, the information and data collected has to be contemporaneous and not outdated. He relied upon **Ram Singh & Ors. Vs. Union of India**, (2015) 4 SCC 697.

46. In these two reports, there is no assessment or conclusion to even suggest that OBCs at large should be considered as falling in exceptional circumstances and extraordinary situations as contemplated in **para 810 of Indra Sawhney**.

47. The recommendation, as well as the affidavit of the State, proceeded on the premise that the judgment in the case of **M. Nagaraj** (supra) supports the view that quantifiable data collected by the State indicating backwardness on educational, economic, and social criteria is a good reason and can form the basis for exceeding 50% reservation. However, this approach is erroneous, and this aspect has been expressly considered in the Constitution Bench judgment in the case of **Jaishri Patil**, where a similar approach adopted by the Backward Classes Commission in Maharashtra (and the Bombay High Court) was held to be expressly incorrect approach based on a misreading of the ratio of **M. Nagaraj** (supra) case. He relied upon paras 16, 462, 464, 470, 477, and 478 of **Jaishri Patil** (supra) Constitution



Bench. He also relied upon the judgment of Chhattisgarh High Court in W.P.(Civil) No. 591/2012(para 84).

48. As submitted, the population of the State of Madhya Pradesh has gone up from approximately 5.21 crore (1983) to 7.26 crore (2011), and the erstwhile State of Madhya Pradesh has been bifurcated into Madhya Pradesh and Chhattisgarh in the year 2000. Thus, the survey conducted in 1983 cannot be held to be relevant at this point of time.

49. Learned counsel also raised doubt over the composition of the Mahajan Commission, which comprised largely of the political class without any expert whereas, in **para 847 of Indra Sawhney** (supra), it is held that there ought to be a permanent body in the nature of a Commission or Tribunal, and the body must be composed of experts in the field, both official or non-official, and must be vested with the necessary power to make proper and effective inquiry. Therefore, measuring from that yardstick, the composition of the Mahajan Committee does not qualify to be having the status of a Backward Classes Commission. He referred to Section 3 of the Commission for Backward Classes Act, 1993 and the provisions of Madhya Pradesh State Backward Classes Commission Act, 1995 (hereinafter referred to as OBC Commission Act) to bring home the analogy that experts are required to be included in the composition of the Commission.



50. The 2023, BRAUSS report, is a post facto report, and the said report cannot lend credence or support to the said decision to grant reservation beyond 50%. As per the BRAUSS report they have surveyed approximately 10,000 people in the entire State (as against a population of around 7.26 crore). Thus, the survey is of a very insignificant number (0.00014%), and that too, out of 10,000 people, less than 5,000 people responded. Another peculiar feature of this survey was that the survey was of persons, citizens, or individuals coming from the OBC category. Therefore, this survey is not a comprehensive survey of the population of other categories. This survey cannot provide any data for comparison between different categories of citizens, such as SC, ST, OBC, and General Category. In the absence of comparison amongst the various categories, the decision and the analysis on the issue of backwardness would only be subjective and not objective.

51. Learned counsel also raised the point regarding proportionality vis-à-vis adequacy. As submitted, if the OBC population is above 50% in the State, then raising the reservation to the extent of 63% amounts to a breach of the ceiling as prescribed in **Indra Sawhney** (supra) and several judgments thereafter, including **Jaishri Laxmanrao Patil** (supra). He also relied upon the Constituent Assembly Debates and the statement of Dr. B.R. Ambedkar, wherein he himself referred to the fact that reservation must be confined to a minority of seats.



52. It is further submitted that neither the 1983 survey nor the 2023 survey fulfills the requirements of law for the reasons as under:

A. It is mandated in various judgments, right from *Indra Sawhney* (supra), that there should be a periodic review of the assessment of backward classes, including inclusion and exclusion therefrom, but the said exercise has not been carried out objectively by the State. No survey has been carried out to consider inclusion and exclusion in the backward class category for reservation purposes.

B. The observation in the 2023 report (BRAUSS report) suggests that some of the communities in the OBC category have progressed further and, in fact, are the most dominant communities in the State or country. According to the 2023 report filed by the State, the most dominant groups in the country include Brahmin, Rajput, Bhumihar, Sikh, Kurmi, Ahir, Jat, Gurjar, Meena, and Reddy. Out of these groups, Kurmi, Ahir, Jat, and Gurjar are included in the list of OBCs in the State of Madhya Pradesh. It is completely contradictory, on the one hand, the State's own report/finding shows that certain OBC groups are the most dominant in the country, while simultaneously invoked extraordinary conditions to exceed 50% limit.

C. It is thus evident that this periodic exercise of inclusion and exclusion in the OBC list on the basis of progress (to be excluded) and regress (to be included) is to be carried out so that the reservation facility may be availed by those who require that benefit. This position is also borne out from **Indra Sawhney** (para 420-422) and **Ashok Kumar Thakur** (supra) (para 292).



D. The State is under a mandatory and statutory obligation, as Section 11 of the M.P. Backward Classes Commission Act, 1995 suggests, to periodically revise the list of backward classes. The provision explicitly mandates revision for the purpose of excluding those classes which have ceased to be backward classes or including new backward classes. This exercise is to be done every ten years.

E. Increasing the quantum of reservation from 14% to 27% for OBCs, which obviously crosses the 50% limit, would mean that even the groups which have progressed, by reason of reservation for the last 40 to 50 years, would continue to receive the benefit. It is neither the mandate of the Constitution nor that of the judgments of the Supreme Court of India from time to time.

F. The 2023 survey was not conducted by the Commission itself, nor was the analysis done by the Commission. Apparently, it was outsourced to University which prepared BRAUSS report, which cannot be considered to be the study or analysis by the Commission.

53. Learned Senior Counsel Sancheti delved deep into the statistics and numericals, although reproduction of all these data is neither practical nor feasible for this Court to reproduce, but certainly it is part of record. However, some relevant data is captured for analysis purpose. However, all statistical data/numerical representation are placed in the synopsis in different volumes at ERP for perusal.

54. Learned Senior Counsel takes the report in the context of backwardness, while considering three aspects, namely- Education, Social and Economic.

**Education:-**

(a). The education data collected by the 2023 study does not indicate any backwardness amongst OBCs. Secondly, the data from the study reveals that OBCs constitute 33.87% of enrollment in higher education. This figure is particularly significant when contrasted with the 14% reservation quota allocated to OBCs. This data unequivocally demonstrates that, in addition to their reservation quota, OBCs are securing approximately 50% of open competition seats. For context, in the State of Madhya Pradesh, a total of 60% of seats are reserved for SC, ST, OBC & Economically Weaker Section categories, leaving 40% in the open category. The data indicates that OBCs are securing 14% of seats through their reservation quota and the remaining 20% from open competition.

(b). According to the 2023 study, 23.91% of OBC respondents have attained a graduate degree or higher. Out of the total population of Madhya Pradesh, 4.4% of the State's total population is graduate. At the national level, it is 5.6% of the total population. In comparison to 4.4% of the State's total population, OBCs with a graduate or higher degree (23.91%), surpass the State average (4.4%), by a multiple of 5.4% or 540%. It also exceeds the national average of 5.6% by a factor of 4.2% or 420%.

(c). Despite this numerical and significant advancement, the 2023 report erroneously concluded that the educational status of the surveyed OBCs has been found to be extremely weak. This conclusion is contrary to the report and reality.



(d). The Department of Higher Education (Government of India), has conducted a comprehensive and exhaustive study of the higher education scenario in India from 2011-12, and the report by State is published under the title of All India Survey of Higher Education (AISHE). As per AISHE report of 2021-22, overall enrollment in higher education is increased by 77%, in which enrollment of SCs increased by 146%, enrollment of STs increased by 180% and enrollment of OBCs increased by 163%, whereas the enrollment of others increased by only 9%. Therefore, the total share of SC, ST and OBC in higher education has increased from 45% to 60%.

(e). It is further submitted that AISHE data shows that 39% of overall students enrollment in higher education is from OBCs, which is not only well above the 14% reservation already provided to them, but is also well above the 27% reservation provided to them under the Amendment Act.

Social:-

The BRAUSS Report 2023 adopted an approach which is expressly considered and declared to be unacceptable by the Apex Court, namely, self-perceived backwardness by a body/different class of people.

(a). The questions suggested, as indicated from the said report, reflect that first, only people from the OBC category or class were interviewed and secondly, they were asked questions such as (i) whether there is discrimination based on caste, (ii) whether their caste is considered inferior to other castes, and (iii) whether there is discrimination due to traditional occupation.



(b). Observations and directions of the Apex Court in relation to the aforesaid incorrect approach are clearly spelt out in **Ram Singh (supra)** (para 55), and **Jaishri Patil (supra)** (para 551).

(c). As submitted by learned senior counsel, the conclusion and recommendation in the BRAUSS report (brought on record on ERP), also reflects a completely irrational and unscientific approach, which clearly amounts to perversity in law. He illustrated the following aspect to bring home the analogy:

(i). 36.4% OBC responded that they had caste-based occupations, while 64.09% responded that they do not do caste-based occupations. Therefore, the report (post facto report) recommended that since 36% of OBC families believe that their caste or community is considered inferior by members of other castes due to caste-based occupation, therefore, a minimum of 36% reservation for education and services is required. This is perverse finding.

(ii). In the study, 63.76% responded that there is no discrimination based on caste. Still, the report recommended that to remove caste discrimination, 30% reservation is required.

(iii). 62.34% of OBC responded that their caste is not inferior to other castes. Despite the majority of respondents stating that their caste is not considered inferior, the 2023 report recommended that 36.76% of OBC respondents to the survey believed that their caste is considered a lower caste by people of other castes/communities. Therefore, they must get 36% reservation.



(iv). 56.87% responded that there is no discrimination due to their traditional occupation. Despite the majority of the respondents admitting that there is no discrimination, still the report recommended otherwise.

Employment/Economic:-

Employment data collected by the 2023 study does not fulfill the extraordinary and exceptional conditions to exceed the 50% limit.

(a). According to secondary data compiled in the 2023 study, around 63.76% of government jobs are garnered by SC, ST & OBC. Out of the three categories, OBC occupied 28.16%, Scheduled Caste 17.58% and ST 17.99% of government positions. This proportion of OBC is demonstrated twice mandating the reservation quota of 14%.

(b) It is submitted that the position is very similar to the State of Bihar where SC,ST,OBCs constitutes 68.52% of the government positions. The Patna High Court noted the same in it's judgment while striking down the act to increase reservation beyond 50% (para 64 of the Patna High Court Judgment in CWJC No.16760 of 2023 dt.20-06-2024).

(c). It is further submitted that the total number of government posts sanctioned for OBCs is 169,304.



(i). The distribution of these sanctioned posts across various service levels for OBCs is as follows: 176 in All India Services, 2,358 in Class-I (First Class), 17,924 in Class-II (Second Class), 1,29,028 in Class-III (Third Class), and 19,818 in Class-IV (Fourth Class) (Refer to Vol II Table No. 5.11, Page 5449). Crucially, a significant 51.17% of the posts sanctioned specifically for OBCs, across all categories, remain vacant and have not been filled by the State (Refer to Vol II Table No. 5.13 and 5.14, Page 5450). The vacancy rates for OBC-sanctioned posts at different levels are: 51.17% for All India Services, 68.24% for Class-I, 25.45% for Class-II, 26.58% for Class-III, and 29.30% for Class-IV (Refer to Vol II Table No. 5.14 Page 5450).

(ii). It is submitted that while the State has failed to fill a substantial 68.24% (more than two-thirds) of the sanctioned posts for OBCs in Class-I positions, it simultaneously contends that the representation of OBCs among first-class officers and employees is merely 9.55% (Ref: Vol II Page 5451). The purported under representation of OBCs is a direct consequence of the State's failure to fulfill its obligation to fill these vacancies, particularly 68.24% of Class-I posts and 51.17% of the total posts sanctioned for OBCs. The mere fulfilment of these existing vacancies would, on a conservative estimate, increase the representation of OBCs in Class-I services by a factor of three and double their representation across all positions from current levels. The failure of the State to fill 68.32% of the sanctioned posts cannot be a ground to invoke exceptional and extra-ordinary condition to exceed the 50% limit.

(d). Out-dated Central Government Service data referred to in the 2023 study and relied on by the State has got not relevance in increasing OBC reservation in Madhya Pradesh.



(e). The 2023 study has relied on class-wise representation in Central Services belonged to the year 1979-1980 and January 1, 2004 (*Vol II Ref: Table 5.5 and 5.6, pg – 5444, 5445*).

(f). It is further submitted that the outdated Central Services data ranging back to 45 years even before the implementation of OBC reservation in Central Services have got no relevance in increasing the reservation for OBCs beyond 50% within the State of Madhya Pradesh through the impugned Act. PLFS data collected by the 2023 study do not fulfill the extraordinary and exceptional condition to exceed the 50% limit.

(g). It is submitted that the 2023 study has erroneously interpreted the Periodic Labour Force Data (PLFS) data to recommend higher reservation for OBCs. It has relied upon the PLFS data (*Vol II Ref: Table 5.7 to 5.9, pg 5446–5447*). The 2023 study says that in 2021-2022, the percentage representation of Other Backward Classes in the periodic labour force was 40.7% of the total population and this clearly shows that the Other Backward Classes (OBCs) have a significant share in the periodic labour force. It is submitted that the contention that the higher share in periodic labour force indicate backwardness and form a ground for increasing the reservation is flawed on multiple grounds.

(h). It is submitted that as per the PLFS data, there is hardly any difference in the labour participation rate as it stands at 41.2% for SCs, 40.7% for OBCs and 39.7% for General Categories and hence no extraordinary and exceptional condition can be attributed to OBCs based on this data.

(i). It is submitted that according to the ANNUAL REPORT, PLFS, 2023-24 published by Ministry of Statistics and Programme Implementation, Government of India, "This Report provides estimates of employment and



unemployment indicators in both rural and urban areas with different levels of disaggregation like gender, age, etc." It is further submitted that as mentioned in the Annexure II of the PLFS annual report, all types of Occupations are covered in the PLFS study, i.e. right from Chief Executive Officers, Senior Officials, Legislators, Science and Engineering professionals, Business and Administrative professionals to elementary occupations like Cleaners, Agricultural workers.

55. In sum and substance, while relying upon the different judgments passed by the Apex Court in the case of **Indra Sawhney (supra)**, **Ashok Thakur (supra)**, **Ram Singh (supra) & Jaishri Patil (supra)**, Shri Sancheti, Senior Advocate, asserted that the impugned Amendment Act, 2019 for raising reservation to the extent of 27% is arbitrary, manifestly illegal and contrary to the mandate of the Apex Court, and thus liable to be set aside.

Ms. Aparajita Singh, Senior Advocate,

56. Ms. Aparajita Singh, Senior Advocate methodically harped over the law of ceiling of 50% reservation and submitted that it was first articulated by Dr. Bhimrao Ambedkar in the Constituent Assembly and reiterated in five Constitution Bench judgments after **Indra Sawhney (supra)**. As submitted, Nine-Judge Bench in **Indra Sawhney (supra)** settled the law of quantum of reservation under Articles 15(4) and 16(4) by holding that it is to be necessarily limited to 50%.



57. As submitted, in the absence of any standard or benchmark, how can the data in respect of OBC be compared with. In the BRAUSS report, only OBC were surveyed; therefore, the data is incomplete and partial. Self-perceived backwardness is no criterion, as propounded by the Apex Court in the case of **Ram Singh** (supra).

58. She refers to Periodic Labour Force Data and the BRAUSS report to submit that it does not represent quantifiable data regarding the Social, Economic and Educational status of OBC and does not provide any ground to breach the 50% ceiling. Learned Senior Counsel refers to different judgments of the Apex Court and different judgments of the High Court to submit that, in absence of contemporaneous data and because of unscientific methodology of data collection, analysis and conclusion, no case is made out for breach of the ceiling.

59. Through a chart prepared in which the overall criteria as per the Mandal Commission vis-a-vis the BRAUSS, 2023 study report, she referred the shortcomings of the report. Through data relating to representation and Chart, she asserted that extraordinary circumstances do not exist for breach of the ceiling.



Shri Ankur Chhibar, Senior Advocate,

60. Learned Senior Advocate relied upon the judgments as referred to above and submitted that the doctrine of Proportionality is now part of Article 14 jurisprudence. He submits that the object sought to be achieved can not be rationally achieved through the amendment.

Ms. Shobha Gupta, Senior Advocate,

61. In this case, petitioner (Rinku Bhadele) is a member of Scheduled Tribe category, and prime submission of counsel for petitioner was that the scope for an ST candidate to get a seat from the unreserved category is restricted if reservation goes from 14% to 27%. She also refers to the fact that no scientific data was collected before proceeding with reservation to 27%. Respondents/State relied upon a 40 years old report of 1983. OBCs are not Socially and Educationally backward. They are progressing well. Their representation has increased from time to time. In Central Government services, in 2014-15, it was 17.74%, which reached 21.98% in 2022-23. 40% of the Ministers have been from the OBC category in the State Cabinet for 20 years. Five Chief Ministers were from the OBC category. Therefore, they are more than adequately represented. Article 16(4) of the Constitution talks about Adequate Representation and not Proportionate Representation.



Shri Aditya Sanghi, Senior Advocate,

62. Shri Aditya Sanghi, learned Senior Counsel, on the basis of different judgments, including the Constitution Bench judgments, asserted that breach of the ceiling is not permissible in view of the mandate of the Apex Court, which is binding on all Courts in the country. OBCs are adequately represented in Higher Education and Public Services.

Shri Anshuman Singh, Advocate,

63. Shri Singh, stressed the argument that determination of the legality of enhancement of reservation to distant situations have to be kept separate:

- (i). Enhancement which keeps aggregate reservation within 50%.
- (ii). Enhancement which takes aggregate reservation beyond 50%.

As submitted, the constitutional tests applicable to these situations are fundamentally different. Where reservation is being increased but aggregate reservation continues to remain within 50%, the State must demonstrate constitutionally permissible compelling reasons, including backwardness and inadequacy of representation, on the basis of relevant quantifiable data as per paragraphs 122 and 123 of **M. Nagaraj (supra)**, which explains the relationship between the ceiling limit and equality of opportunity and the constitutional requirement of maintaining administrative efficiency. According



to him, quantified data concerning backwardness and inadequacy of representation may be relevant when determination of reservation is within the permissible Constitutional ceiling.

64. The fundamental data test operates, once aggregate reservation has already reached 50%. At this stage, merely producing additional data demonstrating backwardness, inadequacy of representation, or population percentage does not justify crossing the ceiling. The State must instead satisfy the exceptional constitutional requirement contained in **paragraph 810 of Indra Sawhney** (supra).

65. The submission that OBCs as a class do not satisfy the exceptional test because they do not inhabit far flung and remote territory or they are geographically isolated from remaining population. They are not socially isolated as a consequence of such geographical conditions, and they are not outsiders of mainstream of life. Therefore, Amendment Act is bad in law and *ultra vires* the Constitution.

Arguments on behalf of the counsel for the Respondents:-

66. Per contra, learned counsel for the respondents vehemently opposed the submissions raised by the petitioners.



Shri K. M. Nataraj, Additional Solicitor General,

67. Shri K.M. Nataraj, learned Additional Solicitor General appeared on behalf of the State and methodically and persuasively took this Court through the genesis of reservation in favour of the Other Backward Classes (OBC) in the State of Madhya Pradesh. As submitted, on 05-09-1980, the Government of Madhya Pradesh ordered for setting up of a Backward Classes Commission under the Chairmanship of Shri Ramji Mahajan (Mahajan Commission) to look into the Social, Education and Backwardness faced by various communities in the State of Madhya Pradesh. The Mahajan Commission concluded that 35% reservation should be made in favour of the OBCs in both, State Services and admission to the Educational Institutions. He referred the Act of 1994 and the Amending Bill of 1995, which did not receive Presidential Assent and also the annual report 1996–1997 prepared by the Madhya Pradesh Backward Classes Commission (MPBCC), recommending reservation in favour of the OBC from 14 % to 27%. He narrated the course of events as unfolded till filling of writ petitions in detail. However, this course of events has already been narrated in the submissions of the petitioners referred in the preceding paragraphs, therefore they are not repeated herein.

The terms of reference of the Mahajan Commission were as follows:-

“i. Which are the socially and educationally backward classes or groups among the actual residents of Madhya Pradesh state and in which revenue districts of the state are these backward classes in majority?



ii. The justification and necessity of making special provisions for the advancement of these backward classes.

iii. What concrete steps can be taken to enable educational and economic progress of these backward classes?

iv. Whether adequate arrangements have been made for the appointment of qualified members from among the backward classes to jobs or posts under the State and whether it is necessary to make provisions in the rules under the proviso to article 309 of the Constitution for ensuring adequate representation to such members as provided in article 16 (4) of the Constitution.

v. Are these backward classes facing social exploitation in this state? If yes, then take concrete steps to resolve the issue.

vi. Whether any group or caste among these backward classes is being treated with untouchability and if yes, suggestions for its redressal.

vii. Has the State Government made adequate and special provisions to ensure admission of members of backward classes in educational institutions supported by the State and receiving aid from State funds in order to enable them to make progress in their education? If not, then what are the concrete measures to achieve this objective.

viii. In order to accelerate the pace of social and economic progress of the backward classes of the state, is it desirable to provide special training and



financial assistance to the members of these classes? If yes, then what is its form?”

2.3. The Mahajan Commission relied upon questionnaires and data collected directly from citizens, including data on the backward class population and on the representation of backward class persons in government posts.

2.4. The Mahajan Commission made the **following key recommendations:**

i. Recommended that 35% reservation be provided to backward classes in state services. Reservation should also be implemented in promotion and selection positions Recruitment should be based on merit, and successful candidates should not be accommodated within reservation quota.

ii. Recommended 35% seats should be reserved in all educational institutions run by the State and aided by the state funds including technical, professional and scientific institutions.

68. On 29th June 1995, the Madhya Pradesh State Backward Classes Commission Act, 1995 (“OBC Commission Act”) was published in the Madhya Pradesh Official Gazette. This led to the establishment of the Madhya Pradesh State Backward Classes Commission (MPBCC) as per Section 3 of the said Act. The MPBCC gave its annual report for 1996–1997 referring the population of the backward classe in the State of M.P. approximately 50% of the total population. It advised that the law should be amended at the State level to increase the reservation in the services from 14 % to 27% for backward classes.



69. The MPBCC published its annual report as per Section 14 of the OBC Commission Act for 1999–2000. It again reiterated that reservation be raised from 14% to 27%, equal to the reservation made by the Central Government. The MPBCC in its annual report for 2000–2001, reiterated the same demand. The MPBCC till 2009-2010 continued to reiterate the demand for 27% reservation. All these recommendations were prior to the Amendment Act of 2019.

70. As post facto measure, the State Government constituted a five-member Madhya Pradesh Backward Classes Welfare Commission on 02.09.2021, which undertook a statewide study and made recommendation for 35-36 % for the OBC in Education and in Services.

71. Shri K. M. Nataraj, learned Additional Solicitor General, also delved into the concept of reservation and refers the case of **M. Nagaraj** (supra) and submits that formal equality means that the law treats everyone equal and does not favour anyone either because he belongs to the advantaged sections of society or to the disadvantaged sections of society. The concept of "**Proportional Equality**" expects the State to take affirmative action in favour of the disadvantaged sections of the society within the framework of liberal democracy.

72. It is submitted that if equality of opportunity guaranteed under Article 16(1) of the Constitution means effective material equality taking into account of the Social, Economic and Educational backgrounds of the members of the SC, ST and



OBC, then Article 16(4) is not an exception to Article 16(1). Article 16 is, after all, a facet of the grand principle embraced by the Article 14 of the Constitution. Therefore, reservations are thus not an exception to the rule of equality of opportunity, they are rather the true fulfillment of effective and substantive equality by accounting for the structural conditions into which people are born. He refers the judgment rendered by the Apex Court in the case of **B.K. Pavitra and Others Vs. Union of India and Others** reported in (2019) 16 SCC 129, para 112

It is further submitted that, in the realm of Article 16(4), opinion of the State is necessary because the State may take an appropriate decision looking to the inadequacy of representation in the services under the State. Therefore, as per the judgments of the Apex Court in the case of **N.M. Thomas** (supra), **B.K. Pavitra** (supra), **S.V. Joshi** (supra) and **UP. Power Corpn.** (supra), it is submitted that 50% ceiling can be breached because the Constitution does not prescribe watertight compartment of 50% ceiling.

73. As submitted, basic structure doctrine cannot be a ground for striking down of enactment, but breach of provisions of the Constitution can be a ground. Here, for maintaining adequate representation, the Amendment Act was conceptualized.

74. It is submitted that list of OBC Communities/Groups is not challenged, and in the Madhya Pradesh, around 383 communities as of now, are under OBC category as per the Mahajan Commission Report.



75. Learned counsel for the respondents/State further submits that ground for challenging a Statute are limited. A law made by the Parliament or the Legislature can be struck down by the Court on two grounds:

- i. lack of legislative competence;
- ii. Violation of any of the fundamental rights guaranteed in Part III of the Constitution, or of any other constitutional provision.

76. Here, no ground is available to challenge the instant statute except the breach of 50% ceiling as fixed in the case of **Indra Sawhney** (supra). No enhancement can be struck down by just saying that it is arbitrary. Learned counsel for the respondent/ state refers the case of **State of A.P. and Others Vs. Mcdowell & Co. and Others**, (1996) 3 SCC 709 in support of his submission as well as judgment of **Anjum Kadari and Another Vs. Union of India and Others**, (2025) 5 SCC 53.

77. It is further submitted that law of reservation has been evolved on permissible limits of reservation under the Constitution. While referring Article 15(1) & (4) and the judgment rendered by the Apex Court in the case of **M.R. Balaji Vs. State of Mysore**, 1963 Supp (1) SCR 439, to bring home the analogy that nothing in this Article 15(4) or Article 29(2) of the Constitution prevents the



State from making any special provision for the advancement of any socially and educationally backward classes of the citizens. Article 15(4) like Article 16(4) is an enabling provisions, it does not impose an obligation, but merely leaves it to the discretion of the appropriate government to take suitable action, if necessary. The minority judgment of the apex court in the case of **N.M. Thomas** (supra) was also relied upon, wherein breach of ceiling 50% limit was discussed.

78. He also referred the judgments in the case of **Indra Sawhney** (supra), **M. Nagaraj** (supra), **Ashok Kumar Thakur** (supra) and **Jaishri Laxmanrao Patil** and supported the impugned action of the State.

79. As submitted, the judgments passed by the Courts cannot be read as Statute. The observations of the Courts are neither to be read as Euclid Theorem nor as provisions of a statute, and that too, taken out of their context. These observations must be read in the context, in which they appeared to have been stated. Judgments of the Courts are not to be construed as statute, as referred in the case of **Collector of Central Excise, Calcutta Vs. Alnoori Tobacco Products and Another**, (2004) 6 SCC 186 and **Sanjay Dubey Vs. State of Madhya Pradesh and Another**, (2023) 17 SCC 187.

Before parting, he discussed “Triple C” parameters:

- i. Consciousness,
- ii. Caution and,
- iii. Conscience.



Shri P. Wilson, learned Senior Advocate,

80. In some of the cases viz. W.P. No.3668/2022, 27335/2026 and 27574/2026, Shri P. Wilson, learned Senior Advocate, appeared on behalf of the interveners and those petitioners, who want 27% reservation. Therefore, effectively Shri Wilson opposed the contention of the petitioners who were against the Amendment Act of 2019.

81. Learned senior counsel for the petitioners again gone through the social/economic condition prevailing in the state of Madhya Pradesh and the background of constitution of different Commissions and reports submitted therein. As submitted, the key recommendations of Mahajan Commission in respect of Social status, Educational status and Political status of such nature where OBC required reservation to the extent of 27%. A detailed tabular representation is depicted in his synopsis by the counsel for the petitioners, which is part of the record, through which details of recommendations of Mahajan Commissions are represented.

82. On the basis of said report, it is the submission of learned counsel for the petitioners that if that report is seen along with the BRAUSS report (2023), then it is clear that data is contemporaneous and empirical. The study is based on primary field data collected from the surveyed OBC respondents across the State. Details of



the representation is reflected in BRAUSS report and the same is reproduced by the counsel for the intervener in following manner:-

Government Category	Service	OBC Representation - BRAUSS Report, Table 5.15 (2021-22)
All India Services		13.76%
Class I		9.55%
Class II		23.16%
Class III		28.33%
Class IV		32.56%
Total/ Overall		28.16% (against OBC voter population share of 48.6%)

83. It is further submitted that ceiling of 50% is not inflexible. The State Government in view to bring social justice, has to consider all the intrinsic factors which are prevalent in the State, which may be unique to the State itself. Following the blanket approach such as the ceiling limit of 50% may contribute to “Social Injustice” instead of “Social Justice”. He refers the judgment of the Apex Court in the case of **N. M. Thomas** (supra), in which ceiling of 50% was breached.

84. He also submits that as per the judgment of the Indra Sawhney (supra), 50% is the rule but in extraordinary situations, it can be breached and in the State of Madhya Pradesh, such extraordinary situation exists, which is reflected from different reports submitted from time to time. He also refers OBC population share (48% to 51%), OBC representation in Government Services (1983) by Mahajan



Commission - 8.71% overall, OBC representation in Class I post - 9.55% (2021-22) (BRAUSS report) and submits that ceiling can be breached in peculiar fact situations.

85. As submitted, Constitution is a dynamic document and it must evolve to meet the necessities of contemporary times. The Hon'ble Supreme Court of India has time and again held that constitutional interpretation must evolve to meet the felt necessities of contemporary times, which may have paradigms never imagined or imaginable by the founding fathers. In support of his submission, he referred the judgments in the cases of **Ashok Kumar Gupta** (supra) and **Akhil Bharatiya Soshit Karamchari Sangh (Railway) Vs. Union of India**, (1981) 1 SCC 246.

86. It is further submitted that the writ petitions challenging the impugned Amendment Act do not establish any ground for challenging the constitutional vires of a legislation. He reiterates the argument that except the lack of legislative competence, as discussed in the case of State of A.P. (supra) para 43, violation of any of the fundamental rights guaranteed in Part III of the Constitution or any other constitutional provision, or manifest arbitrariness Act cannot be challenged [See: **Shayara Bano Vs. Union of India and Others**, (2017) 9 SCC 1 (para 82 & 101)].

87. The writ petitions challenging the constitutional vires merely rely upon the judgment of the Supreme Court in the case of **Indra Sawhney** (supra), rather



than pleading violation of any of the fundamental rights enshrined under Part III of the Constitution. He also relied upon the judgment delivered by the Apex Court in the case of **Dr. Ashwini Kumar Vs. Union of India and Another**, (2020) 13 SCC 585.

88. Another ground raised by the counsel for the petitioners is that in W.P. No.27335/2026 (Smt. Vanmala Rajak and Others Vs. State of M.P. and Others) and W.P. No.27574/2026 (Sachin Yadav and Others Vs. State of M.P. and Others) are the candidates of OBC category and they are falling into the category of 13% withheld post seeking appointment order for the post of Primary/ High School Teachers in accordance with the Circular dated 02.09.2021. Therefore, even if, any decision arises out of the present bunch of writ petitions, can only be prospective and not retrospective. In other words, even if this Court declares the impugned Amendment Act ultra vires to the Constitution, even then such judgment cannot be applied retrospectively because it will create an anomalous situation.

89. If the 13% posts are awarded to the General/ Open Category candidates, the merit criterion for the Open Category will be reduced. As a result, the reserved OBC candidates, who were selected in their respective reserved category, who now may become meritorious candidates due to such reduction in the cut-off marks, will also be eligible to be appointment under the Unreserved Category. Therefore,



modality of the judgment in the present case, could only be prospective and not retrospective, as being extremely difficult and not practically possible.

Shri Shashank Ratnoo, Advocate,

90. Shri Shashank Ratnoo, Advocate very methodically and meticulously put across his point. While giving the factual and legislative backdrop of the issue involved, he stressed the empirical foundation of the impugned amendment. It is well settled that the exercise of power under Article 16(4) of the Constitution must be founded on:

(i) identification of backwardness; and

(ii) inadequacy of representation in public services, based on quantifiable material [as per **M. Nagaraj (supra)** case], the impugned amendment satisfies both requirements on the basis of a continuous and multi-source empirical record spanning four decades.

91. While referring to the Ramji Mahajan Commission Report (1983), and the Backward Classes Commission Reports between 1996 to 2001, he stressed over Institutional Continuity and termed the BRAUSS report (2023) as manifestation of facts, which were already there. Therefore, contemporaneous empirical validation is available with the BRAUSS report. According to him, the assessment is cumulative, data is continuous, relative, and unrebutted.



92. Learned counsel stressed over the fact that actual operation of the 27% reservation regime demonstrates structural inconsistency and arbitrariness. The State has, at different points in time and across different examinations, simultaneously applied divergent reservation frameworks, including:-

- (a) full implementation of 27% OBC reservation;
- (b) restriction of OBC reservation to 14% pursuant to the interim orders; and
- (c) adoption of the 87-13% bifurcation formula, under which 13% posts are kept in abeyance with provisional results.

93. The consequence of such fragmented implementation is twofold; first, candidates similarly situated are treated differently depending on the timing or nature of the recruitment process in which they participate; second, the integrity of the selection process itself is compromised by mid-course alterations and shifting criteria.

94. Learned counsel also raised the point regarding Equality of Law vs. Equality of Facts.

95. Article 14 guarantees equality before the law. Article 16(1) guarantees equality of opportunity. These provisions, read in isolation, prescribe formal equality - identical treatment for all persons irrespective of their social, educational or economic position. But the Constitution's framers recognised that formal



equality applied to persons who are not, in fact, equal perpetuates and deepens inequality. The guarantee of equal treatment becomes, in such circumstances, a guarantee of unequal outcomes. The Hon'ble Supreme Court in **State of Kerala v. N.M. Thomas**, (1976) 2 SCC 310, held - and this position is now settled - that Article 16(4) is not an exception to the equality guarantee; it is the equality guarantee in operation, recognising that substantive equality requires differentiated treatment for groups that are substantively unequal.

96. The facts of Madhya Pradesh are, with respect, startling. A community comprising 51% of the State's population occupies 8.24% of its government services (Table no. 5.15 @pg 5451, Vol. II). This is not a marginal disparity to be addressed by modest affirmative action. It is a structural exclusion - documented across four decades of institutional inquiry - that represents the precise condition the Constitution's framers sought to remedy. To apply the same standard to MP as was applied in cases where backward class communities constituted smaller, less heterogeneous groups, and to use that standard to deny enhanced reservation, would be to apply equality of law to produce a result that is manifestly unequal in fact.

97. The reports must be read in this constitutional light. The Mahajan Commission, the Annual Reports, and the BRAUSS Report do not merely satisfy a



legal threshold - they reveal a social reality so acute that refusal to act is itself a constitutional choice.

98. Dr. Ambedkar had, in the Constituent Assembly Debates (Vol. VII, Pg. 701-702; Pg.2-3, Vol. III, CC), in defending the inclusion of the word 'backward' in Article 16(4), remarked that "reservations must be confined to a minority of seats to preserve the rule of equality." To decontextualise this statement and suggest that he envisioned a strict 50% limit would be a gross misinterpretation.

99. While these arguments may have held in the EWS case, they cannot be put forth now as the inclusion of EWS in the reserved categories has changed the landscape completely. We are now in unique times where every caste, class, and community enjoys the benefit of affirmative action regardless of the historical backwardness suffered by them.

100. Learned counsel for the petitioners also raised two distinct questions, which according to him, must be addressed separately

Category 1. Whether reservations are justified at all for OBCs in Madhya Pradesh. This is the threshold question of backwardness and inadequacy of representation – whether the exercise of power under Article 16(4) is permissible in the first place.

Category 2. What is the appropriate quantum of reservation – specifically, whether 32% is constitutionally permissible or whether the



14% quantum mandated by the interlocutory stay ought to operate as the ceiling ?

101. This distinction is not merely structural - it is determinative. On Category 1, the Petitioners have produced no counter-evidence whatsoever. The data establishing OBC backwardness and inadequacy of representation stands uncontested on the record. The Petitioner does not argue - and cannot argue that OBCs in Madhya Pradesh are not backward, or that they are adequately represented in State services. Category 1 is, therefore, settled in favour of the State.

102. The entire challenge is confined to Category 2 - the extent of reservation. This has crucial implications for the burden of proof, the standard of review, and the relief available to the Petitioner. The Petitioner must demonstrate not merely that 27% is excessive, but that the State's assessment - founded on four decades of institutional data - is unreasonable or perverse. That is an extremely high threshold, and none of the petitioners has come close to meeting.

103. At the outset, it is crucial to emphasize that the fifty per cent ceiling has been breached by all the reserved categories as a whole, i. e., The Scheduled Castes, the Scheduled Tribes, the Other Backward Classes and the Economically Weaker Sections. not just by the OBCs in particular.



104. As this Hon'ble Court adjudicates on whether a breach of the said 50% ceiling limit is permissible, the fundamental question of what constitutes a breach or who has breached the 50% mark needs to be answered.

105. The onus of justifying exceptional circumstances has been put only on the shoulders of the Other Backward Classes, even though reasonably such exceptional circumstances need to be and are justified by all SCs, STs, and OBCs.

106. Learned counsel also raised the objection of judicial review under Article 16(4) and while relying upon the **Indra Sawhney** (supra), **M. Nagraj** (supra) and **B.K. Pavitra (II)** (supra) submits that cumulative effect of these judgments is that judicial review in the matter of reservation is existence based and not sufficiency based. In the present case, empirical foundation is based upon the multiple commission and multiple reports.

107. It is further submitted that 50% ceiling is a rule of 'Prudence' and not a constitutional embargo and while referring to para 810 of **Indra Sawhney** (supra) submits that reasoning adopted by the Apex Court does not apply universally. Exceptional circumstances exists in the state of Madhya Pradesh.

108. An exhaustive synopsis has been submitted by learned counsel in this regard to indicate that extraordinary circumstances exists in the State of Madhya Pradesh to breach the ceiling of 50%.



109. Learned counsel for the petitioner also stressed over the judgment passed in the case of **Janhit Abhiyan Vs. Union of India (EWS reservation)**, (2023) 5 SCC 1, and submitted that the 50% ceiling has already been breached by the reservation given to the 'EWS Category'. One of the Judges held that ceiling of 50% does not have the trappings of any such essential feature collectively enumerated in the case of **Kesavanada Bharti Vs. State of Kerala**, AIR 1973 SC 1461. Post Janhit legal position has changed.

110. It is further submitted that no mandatory requirement exists for consultation with NCBC; therefore, omission of consultation with the NCBC is not fatal to the validity of the amendment. The quantum of OBC reservation in the State services is a matter within the State's exclusive social policy domain under Article 16(4) r/w Article 342-A(3) of the Constitution.

111. So far as alleged drafting defects are concerned, the legislative intent is to be seen and the intent of the Amendment Act, 2019 is unambiguous, therefore, the amendment is to be read in that context.

112. Learned counsel also raised the point that adequate representation does not mean proportionate representation, but still proportionality remains a relevant indicator of inadequacy, particularly where the proportional deficit is as extreme as



it is in the State of Madhya Pradesh. The State has demonstrated inadequacy factually, therefore, the amendment deserves to be saved.

Shri Vinayak Prasad Shah, Advocate,

113. Shri Vinayak Shah, learned counsel appeared in W.P.No.8967/2024 (PIL), W.P. No.22389/2024 and W.P. No.7009/2020. These petitions raised mixed questions, regarding quantum of representation of OBC and regarding EWS reservation etc. Learned counsel for the petitioners argued at length. He refers Section 4 of the Adhiniyam of 1994 as well as GAD Resolutions dated 19.08.1958 and 21.06.1973 and submitted quantum of representation (reservation for SC & ST) is in proportion to their population. However, such reservation proportionate to the population is not available to OBC. According to him, the principle of equality as enshrined in Article 14 of the Constitution is violated because of two yardsticks adopted; one for OBC and another is for SC/ ST.

114. While referring to the right to equality guaranteed under Articles 14, 15 and 16 of the Constitution, learned counsel raised the point regarding adequate representation. According to him, the word “adequate” is to be interpreted because there is no definition provided in the Constitution about adequate representation.

115. EWS has already given reservation as vertical reservation, whereas, as per word used in Articles 15(6) and 16(6) of the Constitution, it should be



horizontal reservation. Maximum limit has been provided for EWS reservation under Articles 15(6) and 16(6), but no maximum limit has been provide for reservation under Article 16(4) of the Constitution.

116. Referring to various judgments of the Supreme Court like, **N.M. Thomas** (supra), **Indra Sawhney** (supra) and **Jaishri Laxmanrao Patil** (supra), learned counsel submitted that need for interpretation of the words “any Backward Class of Citizens” as well as the words “not adequately represented” has arisen. According to his submission, doctrine of stare decisis as per Article 141 of the Constitution is tilted in favour of reservation because the uncertainty of law should be removed. He also raised point of distinction between 'Law declared' and 'Law made'. As submitted, the Supreme Court has the power to interpret the Constitution of India, so as the High Court. Therefore, High Court can interpret ceiling limit.

117. While, invoking the tools of interpretation, he submitted that intention and purpose of any provision or act is to be seen as per well-recognized principles of interpretation and while interpreting a constituent or organic statute, that construction, which is most beneficial to the widest possible amplitude of powers must be adopted. He also refers that intention of the legislature is to be seen, rather than the drafting. Therefore, the statute must be read as a whole and not in a piecemeal.



118. The Statute must be read as a whole including Preamble, Democracy, Republic, Sovereignty, Justice, Equality of Status and Opportunity, object to establish an Egalitarian Society etc are the concepts must be seen while considering a statute. According to him, in the Constitution, quantum is determined on the basis of population and to make statute effective and workable, it is imperative that proportionate representation should be given.

119. In support of his submission, he relied upon the decision rendered by the Apex Court in the case of Commissioner of Income Tax Vs. M/s Hindustan Bulk Carriers, M/s Damani and Others reported in (2003) 3 SCC 57. Learned counsel also referred to the judgment of the Apex Court in the case of Edukanti Kistamma (Dead) through LRs. and Others Vs. S. Venkatareddy (Dead) through LRs. and Others reported in (2010) 1 SCC 756.

120. He further submits that interpretation of beneficial legislation ought to be in favour of beneficiaries and not otherwise, as it would be against the legislative intent. Therefore, purposive interpretation or mischief rule of interpretation also also to be seen and for that he referred to several judgments as contained in the synopsis, including the case of **Bengal Immunity Co. Ltd Vs. State Of Bihar & Ors.**, (1955) 1 SCC 763, **Kesavananda Bharati** (supra) and other decisions.



121. He referred the background of reservation right from the Jyotiba Phule Report before the Hunter Commission dated 19.10.1882, Government of India Act, 1935, the Miller Committee Report, 1919 in the first round table round conference and Kaka Kalelkar Commission Report etc. and submits that all reveals the necessity of raising of reservation facility from 14% to 27%.

122. Learned counsel advanced legal submissions, referred different judgments, Means Test, Width Test, and Inversion Test to rhetorically submit that under our Constitution, sovereignty vests in the people and Judges being not representatives of the people, therefore, they must consider the Acts made by the Parliament in that light and therefore, a statute cannot be struck down by reason of the directions of the Supreme Court.

123. He has gone through contents of different reports and the judgments to substantiate his arguments. Shri Vinayak Prasad Shah referred ancient scriptures including *Manusmriti* and submits that because of long drawn injustice caused to the backward classes, reservation is mandatory and it should be proportionate. According to him, ratio of a case cannot be deciphered taking one line from here or there.



Shri Rameshwar Thakur, Senior Advocate,

124. Shri Rameshwar Thakur, learned Senior Advocate tried to reinvigorate the discussion by making submissions at length that EWS Reservation is for Economically Weaker Sections (EWS), but excludes the creamy layer of OBC and therefore, it is a contradiction. 1.5% of Unreserved Category is getting 10% reservation and therefore, EWS reservation should be Horizontal not Vertical. He referred the fact that at present, OBC category has 92 castes in the State of Madhya Pradesh. Earlier, Keer, Meena and Pardi were part of Scheduled Caste. Later on, they are excluded from the SC and are now in OBC category.

125. He also referred to the historical background of getting reservation and refers the Kaka Kalelkar Commission Report, Mahajan Commission Report and BRAUSS Report to submit that because of the historical reason, reservation has been provided. Adequate reservation means proportionate reservation.

Shri Varun Thakur, Advocate,

126. Shri Varun Thakur, Advocate for the petitioner stressed over the interplay of ratio decidendi viz a viz obiter and submits that in Jan Abhiyan case, observation of one of the Hon'ble Judges is obiter dicta about Basic Structure/ EWS reservation. He also referred the judgments of Apex Court in the cases of **Arun Kumar Aggarwal Vs. State of Madhya Pradesh & Ors** reported in (2014) 13 SCC 707 and **Career Institute Educational Society Vs. Om Shree Thakurji**



Educational Society reported in (2023) 16 SCC 458. As submitted, 50% ceiling limit is part of Obiter in all judgments.

Shri Uday Sahu, Advocate,

127. Mixed with law and rhetoric, learned counsel for the respondents in support of Amendment Act of 2019 argued at length. He referred the law of natural justice and submits that counsel for the petitioners could not point out which fundamental right is breached, therefore, in absence of any such distinction being made out, petitions deserve to be dismissed and validity of the Amendment Act of 2019 deserves to be upheld. He refers the historical wrong committed over OBCs and the purpose of reservation.

128. He also refers that Dr. B.R. Ambedkar wanted annihilation of caste system and according to him, caste system should be removed and if not removed, then ceiling of 50% should be breached.

129. It is also submitted that principles of natural justice were violated when OBC parties were not heard in the case of Indra Sawhney (supra). The respondent was the State and not OBC association. He also raised the point of 'Bias' and explained different types of Biases/Prejudices. According to him, the legislature is not bound by the law declared by the Supreme Court of India, and the Court has no power to amend the legislature.



130. According to him, ratio of a case cannot be decided by taking one line from here or there. He also raised the point that the judgments cannot be interpreted by the Constitutional Courts, they have to interpret the legislation. As submitted, the Court cannot make legislation. It is the domain of legislature. Since the word “adequate” has not been interpreted yet therefore, it is difficult to decipher the meaning of the word “adequate”. Looking to the adversities faced by the members of the OBC community over a long period, it is imperative that reservation be given in proportion to their population.

131. Shri Vinayak Shah and Shri Uday Sahu, Advocates read out several excerpts of different reports and ancient scriptures including *Manusmriti* to substantiate their arguments about reservation/proportionate reservation.

Mr. Pushpendra Kumar Shah,

132. It is the submission of learned counsel for the petitioners that 27% reservation is upheld in **Indra Sawhney's** case (supra) and regarding breach of ceiling, the conclusion as surfaced in para 810 is obiter and not ratio. 50% ceiling limit is judicial limit and there is no bar to legislate beyond 50%. He also referred the judgment of the Apex Court in the case of **Dr. Ashwini Kumar** (supra).

133. Learned counsel also raises the point regarding prospective application of Amendment Act, 2019. According to him, no stay was given in the case,



therefore, the posts, which are filled up from the members of reserved category, those appointments be saved because rule of game cannot be changed mid-way.

134. Heard learned counsel for the parties at length and perused the record, pleadings, documents and respective synopses submitted by them.

135. **"Man is born free, but everywhere he is in chains".**

136. Famous opening line of "The Social Contract" written by the Genevan philosopher Jean-Jacques Rousseau, reminds us about Natural Freedom, Societal Chains, and Regulatory Mechanism vis-à-vis human beings. This quote became the battle cry of the French Revolution, and concepts like Liberty, Equality, and Fraternity were reinvented for the modern world. Our Constitution reflects these concepts with added attribute of Justice (Social, Economic, and Political) in Preamble. Equality has been and is perhaps the single greatest craving of all human beings at all points of time.

137. The Doctrine of Equality has many facets. It is a dynamic and an evolving concept. Its main facets relevant to Indian society have been referred to in the Preamble and the Articles under the sub-heading **"Right to Equality" (Articles 14 to 18)**. In short, the goal is equality of status and of opportunity. Articles 14 to 18 must be understood not merely with reference to what they say, but also in the light



of the several articles in Part IV {(Articles 38, 39, 39A, 41, & 46) Directive Principles of State Policy} read with Article 335 of the Constitution of India.

I. Global Comparative Approaches to Affirmative Action:-

138. Reservation is part of affirmative action taken by different societies from time to time for bringing marginalized members of the society into mainstream. Affirmative action manifests differently across the globe, depending on a nation's constitutional framework, demographic makeup and unique historical conflicts. Different nations/societies showcase a clear spectrum of approaches ranging from highly restrictive individual policies to legally enforced economic mandate and even soft corporate inclusion models.

139. In the United States, affirmative action is historically aimed at giving under representative individual a fair shot at the starting line rather than guarantying a specific demographic outcome at the finish line. There, the target groups were primarily African-Americans, Hispanic-Americans, Native Americans and Women. Methodology used was holistic reviews, expanded outreach and targeted recruitment. However, rigid racial quotas or point system have long been unconstitutional.

140. Following the **2023 Supreme Court ruling (Students for Fair**



Admission Vs. Harward), colleges nationwide are banned from using race as a factor in admission.

141. South Africa adopts The Hard Target Redressal Model and operates under one of the world's most aggressive and legally enforceable affirmative action model, designed to transition economic control to the black majority, following decades of systemic operation under apartheid. Employment Equity (EE) and Broad -Based Black Economic Empowerment (B-BBEE) are legal instruments for affirmative action.

142. United Kingdom (UK) adopts “Positive Action” Tie -Breaker Model. Like most of the European Union, the U.K. heavily favours strict anti-discrimination laws and completely outlaws rigid corporate or educational identities quotas which it labels as illegal “Positive Discrimination”. Regulated under the **Equality Act**, employers are allowed to practice Positive Action. This means a company can proactively run targeted training programme or recruitment drive to encourage under represented demographics (such as women in tech or ethnic minorities) to apply. The Tie-Breaker rule contemplates an employer can only use a protected trait (like race or gender) as a deciding hiring factor if they are choosing two candidates of completely equal merit. It can never be used to hire a less qualified candidate over a more qualified one.



143. Brazil took a historic step towards racial equity in 2012 by enacting Federal Laws designed to redressed centuries of slavery and deep socio economic division. Law 12,711 (the Quota Law), all federal public universities are legally mandated to reserve at least 50% of their enrollment slots for students who attended public high schools. Within that 50% pool, sub-quotas are proportionally distributed to Black, mixed-race (Pardo), and Indigenous Students based on the local demographics of each State. The government enforces a mandate targeting 30% representation of Black citizens in senior, high-level civil service and decision-making roles.

144. Canada emphasizes a cooperative approach towards inclusion, focusing on data-transparent reporting rather than enforcing legal penalties. Governed by the "Employment Equity Act", the policy targets four "designated groups": Women, Indigenous peoples, persons with disabilities, and visible minorities. Federally regulated private-sector employers and public institutions have to report their inclusion and they have to create flexible internal hiring plans to bridge the gap.

145. Broader European Union (EU) and the Netherlands approach equality through a lens of strict merit neutrality, generally favoring merit-blind processes over identity-conscious selections. Referred to as "Positive Action" or "Diversity Management", under Dutch law, prioritizing a candidate based on race, gender, or origin is technically classified as discrimination and is prohibited. However, preferential hiring is legally permitted under very narrow, strict conditions: a



company must prove a group is severely under represented, candidates must possess completely equal qualifications, and the policy must be a temporary tie-breaker.

146. Rather than enforcing quotas on race or immigration status, the Dutch focus heavily on objective, unbiased recruitment infrastructure. Thus, it appears that affirmative action policies vary significantly worldwide, dynamically shaped by unique national histories of exclusion, wrongs, inequality, and legal philosophy.

147. While the goals remain similar, countries diverge heavily on whether they use strict mandatory quotas or soft, voluntary encouragement. Two contrasting philosophies; (1) The Social Justice Argument (Pro Generation) and (2) The Economic Equality Argument (Pro-Withdrawal/Exit) are most fiercely debated aspect of Affirmative Action Globally.

II. Affirmative Action in India: Historical Context and Frame Work:-

148. India, after independence in 1947, decided to adopt affirmative action through reservation. The proceedings of the Constituent Assembly disclose a persistent and strident demand from certain sections of the society for providing reservations in their favor in the matters of public employment. While speaking on the Draft Article 10(3) [corresponding to Article 16(4)], Dr. Ambedkar had stated:



"We have quite a massive opinion which insists that although theoretically it is good to have the principle that there shall be equality of opportunity, there must at the same time be a provision made for the entry of certain communities which have so far been outside the administration."

149. It was this demand which was mainly instrumental for the incorporation of Clause (4) in Article 16. In response to this demand, and also in realization of its obligation to provide for such reservations in favor of backward sections of the society, the Central Government appointed a Backward Class Commission under Article 340 of the Constitution on January 29, 1953. The Commission, properly known as Kaka Kalelkar Commission, was required to investigate the conditions of socially and educationally backward classes within the territory of India and the difficulties under which they labour, and to make recommendations as to the steps that should be taken by the Union or any State to remove difficulties and to improve their conditions.

150. The Commission was of the opinion that the social position which a community occupies in the caste hierarchy would also have to be considered, as well as its representation in government service.



151. The Commission submitted its report on March 30, 1955. Commission looked into Social, Economic and Educational backwardness amongst backward classes.
152. The Chairman of the Commission, Kaka Kalelkar, however, had second thoughts after signing the report. In the enclosing letter addressed to the President, he virtually pleaded for the rejection of the report on the ground that the reservations and other remedies recommended on the basis of caste would not be in the interest of society and country.
153. The Memorandum of Action appended to the report of the Commission, while placing it on the table of the Parliament as per Article 340(3) on September 3, 1956, pointed out that caste system is the greatest hindrance in the way of our progress to egalitarian society, and that in such a situation, recognition of certain specified castes as backward may serve to maintain and perpetuate the existing distinction on the basis of caste. The Memorandum also found fault with certain tests adopted by the Commission for identifying the backward classes. It expressed the opinion that a more systematic and elaborate basis has to be evolved for identifying the backward classes. **Be that as it may.** The report was never discussed by the Parliament.



154. On August 14, 1961, the Central Government wrote to all the State Governments, stating, *inter alia*, that while the State Governments have the discretion to choose their own criteria for defining backwardness, in view of the Government of India, it would be better to apply Economic Tests than to go by Caste. The letter stated further, rather inexplicably, that even if the Central Government were to specify under Article 338(3), certain groups of people as belonging to “Other Backward Classes,” it will still be open to every State Government to draw up its own list for the purposes of Articles 15 and 16.

155. In the year 1979, by an order made by the President of India under Article 340 of the Constitution, the Backward Classes Commission was appointed to investigate the conditions of socially and educationally backward classes within the territory of India. This Commission was popularly known as the Mandal Commission. The Commission evolved eleven ‘indicators’ or ‘criteria’ for determining social and educational backward classes. These eleven indicators were grouped under three broad heads, that is, Social, Educational and Economic.

156. In view of the decision of the Supreme Court limiting the total reservation to 50% (purportedly, judgment of **M.R. Balaji and others Vs. State of Mysore and others**, AIR 1963 SC 649, and **T. Devadasan Vs. Union of India**, AIR



1964 SC 179, the Commission recommended 27% reservation in favour of OBCs (in addition to 22.5% percent already existing for SC and ST). Vide Office Memorandum dated 13.08.1990, 27% of vacancies in civil posts and services and under the Government of India were directed to be reserved for Socially and Educationally Backward Classes (SEBC).

157. A revised memorandum was issued in 1991, stipulating that within the 27% of vacancies in civil posts and services under the Government of India reserved for SEBC, preference was to be given to candidates belonging to the poorer sections of the SEBC. In case a sufficient number of such candidates were not available, unfilled vacancies were directed to be filled by other SEBC candidates. 10% of vacancies in further civil posts and services under the Government of India were directed to be reserved for other economically weaker sections of society who were not covered by any of the schemes of reservation. Probably, the letter dated 14 August 1961 and the revised memorandum of 1991 apparently laid the foundation of 10% reservation for Economically Weaker Sections. Later, it was realized by the Constitution (103rd Amendment) Act, 2019, while inserting clause (6) in Article 16.

158. In hindsight, before Constituent Assembly, during discussion, several members complained that the expressions "backward" and "backward classes"



are quite vague and are likely to lead to complications in future. They also suggested that appointments to public services should be made purely on the basis of merit. Some others suggested that such reservations should be available only for a period of the first 10 years of the Constitution.

159. To this criticism, the Vice-President of the Assembly, Dr.H.C. Mookherjee, replied that:

“The clause which has so long been under discussion affects particularly certain sections of our population—sections which have in the past been treated very cruelly and we are today prepared to make reparations for the deeds of our ancestors.”

160. After the discussion proceeded for some more time, Shri K.M. Munshi, who was a member of the Drafting Committee, rose to explain the content of the word "backward". He said:

"What we want to secure by this clause are two things. In the Fundamental Right, in the first clause, we want to achieve the highest efficiency in the services of the State, highest efficiency which would enable the services to function effectively and promptly. At the same time, in view of the conditions in our country prevailing in several provinces, we want to see that backward classes, classes who are really backward, should be given scope in the State services, for it is realized that State services give a status and an opportunity to serve the country. And this opportunity should be extended to every



community, even among the backward people. That being so, we have to find out some generic term and the word 'backward class' was the best possible term."

161. Ultimately, Dr. B.R. Ambedkar, the Chairman of the Drafting Committee, got up to clarify the matter. His speech, which put an end to all discussion and led to the adopting of Draft Article 10(3)[later Article 16(4)], is worth quoting in extenso since it throws light on several questions relevant herein:

"... there are three points of view which it is necessary for us to reconcile if we are to produce a workable proposition which will be accepted by all. Of the three points of view, the first is that there shall be equality of opportunity for all citizens. It is the desire of many Members of this House that every individual who is qualified for a particular post should be free to apply for that post, to sit for examinations and to have his qualifications tested so as to determine whether he is fit for the post or not and that there ought to be no hindrance in the operation of this principle of equality of opportunity.

"Another view mostly shared by a section of the House is that, if this principle is to be operative and it ought to be operative in their judgment to its fullest extent—there ought to be no reservations of any sort for any class or community at all, that all citizens, if they are qualified, should be placed on the same footing of equality so far as the public services are concerned. That is the second point of view we have. Then we have quite



a massive opinion which insists that, although theoretically it is good to have the principle that there shall be equality of opportunity, there must at the same time be a provision made for the entry of certain communities which have so far been outside the administration. As I said, the Drafting Committee had to produce a formula which would reconcile these three points of view, firstly, that there shall be equality of opportunity, secondly, that there shall be reservations in favour of certain communities which have not so far had a 'proper look-in' so to say into the administration...."

"...The seats to be reserved, if the reservation is to be consistent with sub-clause (1) of Article 10, must be confined to a minority of seats. It is then only that the first principle could find its place in the Constitution and effective in operation.

"If honourable Members understand this position that; we have to safeguard two things, namely the principle of equality of opportunity and at the same time satisfy the demand of communities which have not had so far representation in the State, then, I am sure they will agree that unless you use such qualifying phrase as 'backward' the exception made in favour of reservation will ultimately eat up the rule altogether. Nothing of the rule will remain. That I think if I may say so, is the justification why the Drafting Committee undertook on its own shoulders the responsibility of introducing the word 'backward' which, I admit, did not originally find a place in the fundamental right in the way in which it was passed by this Assembly...."



162. Discussion of Constituent Assembly and statement of Dr. B.R.Ambedkar throw light over the concept of reservation for backward classes and this speech and thought is reiterated and resonated in all the judgments delivered by the Supreme Court of India from time to time in different cases of different aspects of Reservation. Dr. Ambedkar clarified the position that reservation must be confined to a minority of seats. Knowing fully well the import of Articles 14 to 18 (Right to Equality) in its entirety, and trinity of Articles 14, 15, and 16, as referred to by the Apex Court, this statement was made because Dr. Ambedkar further refers the words "**then only**" as precondition (Minority of Seats) so that the principle could find its place in the Constitution and remain effective in operation. Dr. Ambedkar was aware of Article 335 of the Constitution also. Therefore, Articles 14, 15, 16 are to be seen with Article 335 of the Constitution also.

163. Conclusions come out clearly from perusal of different modes of Affirmative Actions across the globe and debates of Constituent Assembly that these actions are for specific objects, without undermining efficiency in administration and governance, for limited/minority of seats, temporal in nature and giving sufficient space to merit in major proportion.

164. Here, question of reservation is not material in a way that petitioners are not aggrieved by the reservation given to Other Backward Classes (OBCs), but are aggrieved only in respect of percentage of reservation because, according to them,



it breaches the 50% ceiling prescribed by the Apex Court. However, before proceeding further, relevant Articles are to be seen for bringing clarity to the issue.

III. Constitutional Provisions : Verdicts: Analysis:-

165. Under Part III (Fundamental Rights), Right to Equality is enshrined in Article 14, which appears to be the genus of this Part, of which Articles 15 and 16 are species {See: **State of Kerala & Anr. Vs. N.M. Thomas & Ors., (1976) 2 SCC 310**}.

166. Similarly, as decided by the Apex Court, Article 16(4) is not a proviso to Article 16(1). In fact, Article 16(1) is a facet or an elaboration of the principle underlying Article 14. Clause (2) of Article 16 is also an elaboration of a facet of Clause (1) of Article 16. Thus, Article 16(4) is not an exception to Article 16(1), but that it was merely an emphatic way of stating a principle implicit in Article 16(1). Article 16 reads as under:

“16. Equality of opportunity in matters of public employment:

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

(2)No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or



discriminated against in respect of, any employment or office under the State.

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

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

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

[In article 16 of the Constitution after clause 4, the following clauses shall be inserted through Constitution (Seventy-seventh Amendment) Act, 1995]

(4B) Nothing in this article shall prevent the State from considering any unfilled vacancies of a year which are reserved for being filled



up in that year in accordance with any provision for reservation made under clause (4) or clause (4A) as a separate class of vacancies to be filled up in any succeeding year or years and such class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty per cent, reservation on total number of vacancies of that year.

[The Constitution (Eighty-first Amendment) Act, 2000, aimed to protect reservations for SCs and STs in the backlog of vacancies. A new clause (4B) was added to Article 16 of the Constitution of India by the 81st Amendment Act of 2000, after clause (4A). This gave the states the authority to treat unfilled reserved vacancies from one year as a separate class of vacancies to be filled in the following year or years. The new provision stated that such vacancies must not be included in the vacancies of the year in which they are filled, in order to calculate the overall vacancy reservation ceiling of 50% for that year. This modification essentially eliminated the 50% cap on reservations for backlog vacancies.]

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



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

167. A perusal of Article 16(4) indicates that backward class of citizens can be given benefit of reservation of appointments or posts if, in the opinion of the State, they are not adequately represented in the services under the State.

168. To understand whether OBCs are adequately represented in the State of Madhya Pradesh, reliance is placed by the State Government on two reports:

(a) Mahajan Committee Report dated 22nd December, 1983; and

(b) Dr. B. R. Ambedkar University of Social Sciences, Report dated 27th July, 2023 (BRAUSS Report)

169. The recommendations made by the State Backward Class Commission in 1996–97, as also in the year 2019–20, are in turn based on the Mahajan Commission Report of 1983 and not based on any fresh collection of data for this purpose. Therefore, at the time of Amendment Act of 2019, only the Mahajan Committee Report of 1983 was existing. The information and the data collected has to be contemporaneous and not outdated, as mandated by the



Apex Court in the case of **Ram Singh** (supra). Relevant extract, para 52 reads as under:

*“52. A very fundamental and basic test to determine the authority of the Government's decision in the matter would be to assume the advice of NCBC against the inclusion of the Jats in the Central List of Other Backward Classes to be wrong and thereafter by examining, in that light, whether the decision of the Union Government to the contrary would pass the required scrutiny. Proceeding on that basis what is clear is that save and except the State Commission Report in the case of Haryana (Justice K.C. Gupta Commission Report) which was submitted in the year 2012, all the other reports as well as the literature on the subject would be at least a decade old. The necessary data on which the exercise has to be made, as already observed by us, has to be contemporaneous. **Outdated statistics cannot provide accurate parameters for measuring backwardness for the purpose of inclusion in the List of Other Backward Classes.** This is because one may legitimately presume progressive advancement of all citizens on every front i.e. social, economic and educational. Any other view would amount to retrograde governance. Yet, surprisingly the facts that stare at us indicate a governmental affirmation of such negative governance inasmuch as decade old decisions not to treat the Jats as backward, arrived at on due consideration of the existing ground realities, have been reopened, in spite of perceptible all-round development of the nation. This is the basic fallacy inherent in the impugned governmental decision that has been challenged in the present proceedings. The*



percentage of the OBC population estimated at “not less than 52%” (Indra Sawhney [Indra Sawhney v. Union of India, 1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1 : (1992) 22 ATC 385]) certainly must have gone up considerably as over the last two decades there has been only inclusions in the Central as well as the State OBC Lists and hardly any exclusion therefrom. This is certainly not what has been envisaged in our constitutional scheme.”

170. The case of **M. Nagaraj** (supra) also supports the view that contemporaneous quantifiable data is to be collected for ascertaining backwardness and inadequacy of representation. This aspect has been further expressly considered in the Constitution Bench judgment in the case of **Jaishri Patil** (Paragraphs 16, 462, 464, 470, 477, and 478), where a similar approach adopted by the Backward Class Commission in Maharashtra was held to be an expressly incorrect approach, based on a misreading of the ratio in **M. Nagaraj's case**.

171. The time gap between 1983 and 2019 is wide. The population of the State has gone from approximately 5.21 crore (in 1983) to 7.26 crore (in 2011). Meanwhile, the State of Madhya Pradesh has been bifurcated into Madhya Pradesh and Chhattisgarh in the year 2000. Thus, the survey conducted in 1983 cannot be held to be relevant at this point of time. Even otherwise, the



composition of the Mahajan Commission consisting of political members, without any subject/domain experts, was contrary to the letter and spirit of the National Commission for Backward Classes Act (NCBC Act) and the Madhya Pradesh State Commission for Backward Classes Act (MPSBC Act). Both Acts contemplate that some non-official members must be subject experts or persons having special knowledge in matters relating to backward classes.

172. So far as the BRAUSS Report is concerned, it is a post-facto report. Even if this aspect is overlooked because as pointed out by Mr. Shashank Ratnoo that the report is a manifestation of facts already existing, even then, the limited extent of the survey conducted renders the report vulnerable. Around 10,000 people in the entire State were surveyed against a population of 7.26 crore. Thus, the survey is of a very insignificant/minuscule number (0.00014%) and that too, out of 10,000 people, less than 5,000 responded, as argued by Shri Sancheti, Senior Advocate.

173. If 10,000 people are surveyed that too only of OBC category then it is also a step contrary to the mandate of Apex Court where wide range of surveys are contemplated including all sections of society to bring comparative study in discussion. Here, only OBC people were surveyed therefore, comparative study is the remote possibility.



174. While discussing numerical or statistical representation we have to keep in mind that officially no caste census has been held in post Independence era in State of Madhya Pradesh, therefore, exact population of all categories is tentative and approximate.

IV Adequate Representation:

175. It is worth mentioning the fact that since 2003, the State of Madhya Pradesh has four Chief Ministers from the OBC community and nearly a quarter of the century is ruled by OBC leadership. More than 25% of Ministers and MLAs are from the OBC category. The important aspects of Education, Social and Economic viz-a-viz State of M.P. are considered below:

Education status:-

(a). The education data collected by the 2023 study does not indicate backwardness amongst OBCs. The data from the study reveals that OBCs constitute 33.87% of enrollment in higher education. This figure is particularly significant when contrasted with the 14% reservation quota allocated to OBCs. This data unequivocally demonstrates that, in addition to their reservation quota, OBCs are securing approximately 50% of open competition seats. For context, in the State of Madhya Pradesh, a total of 60% of seats are reserved for SC, ST, OBC & Economically Weaker Section categories, leaving 40% in the open category. The data indicates that OBCs are securing 14% of seats through their reservation quota and the remaining 20% from open competition.



(b). According to the 2023 study (BRAUSS report), 23.91% of OBC respondents have attained a graduate degree or higher. Out of the total population of Madhya Pradesh, 4.4% of the State's total population is graduate. At the national level, it is 5.6% of the total population. In comparison to 4.4% of the State's total population, OBCs with a graduate or higher degree (23.91%), surpass the State average (4.4%), by a multiple of 5.4% or 540%. It also exceeds the national average of 5.6% by a factor of 4.2% or 420%.

(c). Despite this numerical and significant advancement, the 2023 report erroneously concluded that the educational status of the surveyed OBCs has been found to be extremely weak. This conclusion is contrary to the AISHE report and the reality.

(d). The Department of Higher Education (Government of India), has conducted a comprehensive and exhaustive study of the higher education scenario in India from 2011-12, and the report by State is published under the title of All India Survey of Higher Education (AISHE). As per AISHE of 2021-22, overall enrollment in higher education is increased by 77%, in which enrollment of SCs increased by 146%, enrollment of STs increased by 180% and enrollment of OBCs increased by 163%, whereas the enrollment of others increased by only 9%. Therefore, the total share of SC, ST and OBC in higher education has increased from 45% to 60%.

(e). It is further submitted that AISHE data shows that 39% of overall students enrollment in higher education is from OBCs, which is not only well above the 14% reservation provided to them, but is also well above the 27% reservation provided to them under the Amendment Act.



Social status:-

The BRAUSS Report 2023 adopted an approach which is expressly considered and declared to be unacceptable by the Apex Court, namely, self-perceived backwardness by a body/different class of people.

(a). The questions suggested, as indicated from the said report, reflect that first, only people from the OBC category or class were interviewed and secondly, they were asked questions such as (i) whether there is discrimination based on caste, (ii) whether their caste is considered inferior to other castes, and (iii) whether there is discrimination due to traditional occupation.

(b). Observations and directions of the Apex Court in relation to the aforesaid incorrect approach are clearly spelt out in **Ram Singh** (para 55), and **Jaishri Patil** (para 551).

(c). As submitted by learned senior counsel Shri Sancheti, the conclusion and recommendation in the BRAUSS report (brought on record on ERP), also reflects a completely irrational and unscientific approach (which clearly amounts to perversity in law). He rightly illustrated the following aspects to bring home the analogy:

(i). 36.4% OBC responded that they had caste-based occupations, while 64.09% responded that they do not do caste-based occupations. Therefore, the report (post facto report) recommended that since 36% of OBC families believe that their caste or community is considered inferior by members of



other castes due to caste-based occupation, therefore, a minimum of 36% reservation for education and services is required.

(ii). In the study, 63.76% responded that there is no discrimination based on caste. Still, the report recommended (ignoring 63.76% figure) that to remove caste discrimination, 30% reservation is required.

(iii). 62.34% of OBC responded that their caste is not inferior to other castes. Despite the majority of respondents stating that their caste is not considered inferior, the 2023 BRAUSS report recommended that 36.76% of OBC respondents to the survey believed that their caste is considered a lower caste by people of other castes/communities. Therefore, they must get 36% reservation.

(iv). 56.87% responded that there is no discrimination due to their traditional occupation. Despite the majority of the respondents admitting that there is no discrimination, still the report recommended otherwise. This is apparently self perceived backwardness more, than reality.

Employment/Economic status:-

Employment data collected by the 2023 (BRAUSS Report) study does not fulfill the extraordinary and exceptional conditions to exceed 50% limit.

(a). According to secondary data compiled in the 2023 study, around 63.76% of government jobs are garnered by SC, ST & OBC. Out of the three categories, **OBCs occupied 28.16%**, Scheduled Caste 17.58% and ST 17.99% of



government positions. This proportion of OBC is demonstrated twice mandating the reservation quota of 14%.

(b) The position is very similar to the State of Bihar where SC,ST,OBCs constitutes 68.52% of the government positions. **The Patna High Court noted the same in it's judgment while striking down the Act to increase reservation beyond 50%** (Para 64 of the Patna High Court Judgment in CWJC No.16760 of 2023 dt.20-06-2024).

(c). This aspect also deserves consideration that the total number of government posts sanctioned for OBCs is 1,69,304.

(i). The distribution of these sanctioned posts across various service levels for OBCs is as follows: 176 in All India Services, 2,358 in Class-I (First Class), 17,924 in Class-II (Second Class), 1,29,028 in Class-III (Third Class), and 19,818 in Class-IV (Fourth Class) (Refer to Vol II Table No. 5.11, Page 5449). Crucially, a significant 51.17% of the posts sanctioned specifically for OBCs, across all categories, remain vacant and have not been filled by the State (Refer to Vol II Table No. 5.13 and 5.14, Page 5450). The vacancy rates for OBC-sanctioned posts at different levels are: 51.17% for All India Services, 68.24% for Class-I, 25.45% for Class-II, 26.58% for Class-III, and 29.30% for Class-IV (Refer to Vol II Table No. 5.14 Page 5450).

(ii). The State has failed to fill a substantial 68.24% (more than two-thirds) of the sanctioned posts for OBCs in Class-I positions, it simultaneously states that the representation of OBCs among first-class officers and employees is merely 9.55% (Ref: Vol II Page 5451). The



purported underrepresentation of OBCs is a direct consequence of the State's failure to fulfill its obligation to fill these vacancies, particularly 68.24% of Class-I posts and 51.17% of the total posts sanctioned for OBCs. The mere fulfilment of these existing vacancies would, on a conservative estimate, increase the representation of OBCs in Class-I services by a factor of three and double their representation across all positions from current levels. The failure of the State to fill 68.32% of the sanctioned posts cannot be a ground to invoke exceptional and extraordinary condition to exceed the 50% limit.

(d). Out-dated Central Government Service data referred to in the 2023 study and relied on by the State has got no relevance in increasing OBC reservation limit in Madhya Pradesh.

(e). The 2023 study has relied on class-wise representation in Central Services belonged to the year 1979-1980 and January 1, 2004.

(f). The outdated Central Services data ranging going back 45 years even before the implementation of OBC reservation in Central Services have got no relevance in increasing the reservation for OBCs beyond 50% within the State of Madhya Pradesh through the impugned Act. PLFS data collected by the 2023 study do not fulfill the extraordinary and exceptional condition to exceed the 50% limit.

(g). 2023 study has erroneously interpreted the Periodic Labour Force Data (PLFS) data to recommend higher reservation for OBCs. It has relied upon the PLFS data. The 2023 study says that in 2021-2022, the percentage representation of Other Backward Classes in the periodic labour force was 40.7% of the total population and this clearly shows that the Other Backward



Classes (OBCs) have a significant share in the periodic labour force. It is submitted that the contention that the higher share in periodic labour force indicate backwardness and form a ground for increasing the reservation is flawed on multiple grounds.

(h). As per the PLFS data, there is hardly any difference in the labour participation rate as it stands at 41.2% for SCs, **40.7% for OBCs** and 39.7% for General Categories and hence no extraordinary and exceptional condition can be attributed to OBCs based on this data.

(i). According to the ANNUAL REPORT, PLFS, 2023-24 published by Ministry of Statistics and Programme Implementation, Government of India, "This Report provides estimates of employment and unemployment indicators in both rural and urban areas with different levels of disaggregation like gender, age, etc." It is further submitted that as mentioned in the Annexure II of the PLFS annual report, all types of Occupations are covered in the PLFS study, i.e. right from Chief Executive Officers, Senior Officials, Legislators, Science and Engineering professionals, Business and Administrative professionals to elementary occupations like Cleaners, Agricultural workers.

176. All the data as referred above is based upon the BRAUSS Report 2023 and/or data provided by counsel for petitioners, especially Shri Pradeep Sancheti, Senior Advocate. Incidentally, respondents did not raise dispute about the statistical figures given by the counsel for petitioners.

177. However, from the online sources, certain facts and figures reveal a picture totally otherwise as presented by respondents. A tabular representation is given



herein below to demonstrate how OBCs are adequately represented, and they are forwarded to such extent where they are not only exhausting their own quota of reservation but are standing in merit lists of different services over and above general/unreserved candidates. Therefore, they are getting themselves placed in general category and exhausting the seats from general category candidates. The facts referred above can be seen from another perspective. Admittedly, the total extent of reservation nowadays is 60% after the inclusion of 10% EWS. Therefore, a person falling under the unreserved general category and who is not in EWS gets 40% of the total seats (minority seats). Out of those 40% seats, OBC candidates (even SC candidates) at times, stand in the merit list and, in such a situation, take seats from the general/unreserved category, because they score more marks than the cut-off marks for general/unreserved category candidates. In that condition, they take up seats of general category/unreserved candidates also. Therefore, their total representation goes beyond 27%. A tabular representation is given herein below:-



MP HIGH COURT EXAMINATION -2015 to 2025

S.No	MP high court Exam Name	Total Seats	Total no. of filled up seats in UR	Meritori ous OBC/SC /ST Selected in UR seats	Total OBC Selected in total Number of seats	Total UR Selected
01	English stenographer (HC) 2015	28 UR-14 Obc-04 SC-05 ST-05	All	OBC-03 SC- 01	07	10
02	Stenographer Grade -2 (District Court) year 2015	53 UR-21 OBC-08 SC-05 ST-19	All	OBC-10 SC- 01 ST-02	18	08
03	Civil Judge Class-2 (entry level) exam - 2015	96 UR-27 OBC-18 SC-16 ST-35	All	OBC-02 SC- 02	20	23
04	EPABX Operation Exam 2016	Only 01	All	OBC-01	01	00 URin waiting List
05	Assistant Grade 3 (HC) exam - 2016	50 UR- 25 OBC-07 SC-08 ST-10	All	OBC-08 SC-03	15	12
06	Translator - 2016	07 UR-04 OBC-01 SC-01 ST-01	02	OBC-01 Topper is OBC categor y	02	01
07	Civil Judge Class-2 exam - 2016	101 UR-51 OBC-14 SC-16	All	OBC-04 SC-01	18	46



		ST-20				
08	Civil Judge Class-2 exam - 2017	93 UR-47 OBC-12 SC-15 ST-19	46	OBC-04	16	42
09	Stenographer Grade - 3(District Court) 2017	517 UR-253 OBC-70 SC-82 ST-112	All	OBC-29 SC-20	68+29= 97	204
10	Civil Judge Class-2 exam - 2018	140 UR-70 OBC-20 SC-22 ST-28	66	OBC-04 SC-01	24	61
11	Assistant Grade -3 year 2018	49 UR-25 OBC-07 SC-08 ST-09	23	OBC-09 SC-02	16	12
12	Civil Judge Class-2 exam - 2019	217 UR-99 OBC-27 SC-31 ST-60	93	OBC-07 SC-02	25+7= 32	84
13	Civil Judge Class-2 exam - 2019 Phase-2	251 UR-102 OBC-29 SC-32 ST-88	98	OBC-13 ST-01	12+13= 25	84
14	Junior Judicial Assistant (HC) 2021	54 UR-27 OBC-08 SC-09 ST-10	All	OBC-10 SC-03	18	14



15	Personal Assistant (HC) Exam 2021	22 UR-11 OBC-03 SC-03 ST-05	All	Topper of the exam OBC-01	04	10
16	Civil Judge Class-2 exam - 2021	270 UR-82 OBC-38-37 SC-36-26 ST-114-05	79	OBC-06 SC-02	37+6= 43	71
17	Civil Judge Class-2 exam - 2022	191 UR-43 OBC-09 SC-18 ST-121	41	09	5+9= 14	32
18	Junior Judicial Assistant (HC) 2024	40 UR-21 OBC-5 SC-6 ST-08	All	OBC-08 SC-03	13	10
19	Data processing assistant 2025	41 UR-19 SC-07 ST-09 OBC-6	18	OBC-08 SC-01	8+5= 13	09

(source: <https://portal.mphc.gov.in/recruitment-result>)**MPPSC EXAMINATION 2014 to 2018**

S.No	MPPSC Exam Name	Total Seats	Total no. of filled up seats in UR	Meritorious OBC Selected in UR seats	Total OBC Selected in total Number of seats	Total UR Selected
01	State service exam-2014 (post vise data) Deputy District	19 UR-09 SC-03	All	03	6	06



	Magistrate	ST-04 OBC-3				
02	State service exam-2014 Deputy Superintendent of Police	56 UR-23 SC-07 ST-17 OBC-09	All	OBC-03 ST-01	12	19
03	State service exam-2014 Finance Service (Junior Pay Scale) Treasury Officer	44 UR-23 SC-07 ST-08 OBC-06	All	01	07	22
04	State service exam-2014 Assistant commissioner and assistant registrar of cooperation society- 2014	13 UR-09 SC-00 ST-04 OBC-00	8	02	02	06
05	State service exam-2014 Chief executive officer – 2014 (janpad panchyat)	60 UR-35 SC-08 ST-08 OBC-09	34	02 Topper is OBC Category	11	32
06	State service exam-2014 Block development officer 2014	98 UR-51 SC-17 ST-13 OBC-17	All	10	27	41
07	State service exam-2014 Assistant Director 2014 (Public Relations Department)	16 UR-07 SC-05 ST-01 OBC-03	All	01 Topper is OBC Category	04	06
08	State service exam-2014 Child Development Project Officer 2014	12 UR-05 SC-03 ST-03 OBC-01	All	01	02	04
	State service exam-2014	22		02		



09	Commercial Tax Officer 2014	UR-11 SC-04 ST-04 OBC-03	All	Topper is OBCCate gory	05	08
10	State service exam-2014 Excise sub inspector 2014	50 UR-15 SC-02 ST-29 OBC-04	All	05	09	08
11	State service exam-2014 Sub registrar 2014	23 UR-14 SC-6 ST-00 OBC-03	13	2	05	11
12	State service exam-2014 Assistant Labour officer	11 UR-01 SC-03 ST-04 OBC-03	00	--	03	00
13	State forest exam-2014 Forest Ranger	100 UR-50 SC-16 ST-20 OBC-14	49	10	24	39
14	State forest exam-2014 Assistant Conservator of Forests	23 UR-14 SC-00 ST-06 OBC-03	All	05	08	09
15	State engineering service 2014 Assistant engineer (CIVIL) panchyat and rural development	161 UR-84 SC-24 ST-30 OBC-23	All	07	30	66
16	State engineering service 2014 Assistant engineer (CIVIL) water resource development	58 UR-29 OBC-08 SC-09 ST-12	28	08	16	20



17	State engineering service 2014 Assistant engineer (Mechanical) public health engineering department	11 UR-07 SC-02 ST-00 OBC-02	06	02	04	04
18	State engineering service 2014 Assistant engineer (Mechanical) Water resource department	14 UR-07 SC-02 ST-03 OBC-02	All	02 Topper is OBC Category	04	03
19	Sate service examination 2015 Assistant director	09 UR-05 SC-01 ST-00 OBC-03	All	02	05	03
20	Sate service examination 2015 Chief executive officer Janpad panchyat	12 UR-09 SC-01 ST-00 OBC-02	All	03 Topper is OBC category	05	06
21	Sate service examination 2015 Cooperative Inspector / Cooperative Extension Officer 2015	18 UR-09 SC-03 ST-03 OBC-03	08	02	05	06
22	State engineering exam - 2016 Assistant engineering (Electrical) water resource development	06 UR-03 SC-01 ST-01 OBC-01	All	01	02	02
23	State engineering exam - 2016 Assistant engineering (mechanical) public health mechanical department	15 UR-08 SC-02 ST-03 OBC-02	All	03 Including topper is of OBC category	05	05
24	State engineering exam - 2016 Assistant engineering (CIVIL) urban development and environment department	79 UR-39 SC-13 ST-16 OBC-11	All	09 Topper is OBC category	20	27
25	State service exam-2016 (post vise data) Deputy District Magistrate	27 UR-14 SC-04 ST-05	All	OBC-02 SC-01	06	11



		OBC-4				
26	State public service exam-2016 Deputy Superintendent of Police	50 UR-25 SC-08 ST-10 OBC-07	All	07	14	18
27	State service exam-2016 Municipal officer grade-B	13 UR-08 SC-00 ST-04 OBC-01	All	02	03	06
28	State service exam-2016 Assistant Director 2016 (Public Relations Department)	02 UR-01 OBC-00 SC-00 ST-01	All	01 OBC got selected in UR	01	00
29	State service exam-2016 Assistant Director (Woman and child department)	08 UR-03 SC-02 ST-03 OBC-00	All	01	01	02
30	State service exam-2016 Child development project officer	27 UR-14 SC-06 ST-03 OBC-04	All	04	08	10
31	Information technology exam 2016 System analyst (Commercial tax department)	06 UR-03 SC-01 ST-01 OBC-01	All	01	02	02
32	Information technology exam 2016 System Manager Commercial tax department – registrar)	UR-01	All	OBC got selected in UR Category	01	00
33	Information technology exam 2016	18 UR-09	8	02	05	06



	Assistant Programmer (Commercial tax department)	SC-03 ST-03 OBC-03				
34	Information technology exam 2016 Assistant Programmer (Finance department)	Total 01 post	All	OBC got selected in UR Category	01	0
35	State service exam- 2017 Deputy District Magistrate	27 UR-14 SC-04 ST-05 OBC-04	All	04	08	10
36	State service exam- 2017 Deputy Superintendent of Police	45 UR-23 SC-07 ST-09 OBC-06	All	04	10	19
37	State service exam- 2017 Chief municipal officer Grade C	13 UR-09 SC-04 ST-00 OBC-00	All	03	03 Topp er is OBC categ ory	06
38	State service exam-2017 Assistant Director Industry/Management	12 UR-06 SC-02 ST-02 OBC-02	All	02	04	04
39	State service exam-2017 Additional Assistant Development Commissioner (Chief executive) janpad panchayat	05 UR-03 SC-01 ST-00 OBC-01	All	01	02	02
40	State engineering exam - 2017 Assistant engineering	42 UR-21 SC-07	20	05	11	15



	(CIVIL)	ST-08 OBC-06				
41	State service exam-2018 (post vise data) Deputy District Magistrate	27 UR-14 Sc-04 ST-05 OBC-04	All	04 Topper is OBC category	08	10
42	State public service exam- 2018 Deputy Superintendent of Police(GD) home (police) department	10 UR-05 SC-02 ST-02 OBC-01	All	01	02	04
43	State service exam-2018 Assistant Director (OBC welfare department)	12 UR-06 SC-02 ST-04 OBC-00	All	02	02	04
44	State service exam-2018 Inspector (OBC welfare department)	21 UR-09 SC-03 ST-05 OBC-04	All	03	07	06
45	State forest exam -2018 Assistant conservator of forest -2018	06 UR-03 SC-01 ST-01 OBC-01	All	01 Topper is OBC category	02	02



MPPSC EXAMINATION 2021-2025

MPPSC Exam Name	Total Seats (100%)	UR Seats (27%) REMAINING	Meritorious OBC Selected in UR seats	Total SC+ST+OBC+EWS selected in Total Seats	Total OBC Selected in total Number of seats
DSP RADIO 2021	12	4	3(75%)	12(100%)	5(41.66%)
Asstt.Proff. Political Science 2022	113	43	14(32.55%)	96(84.95%)	28(24.77%)
Asstt .Proff Sociology 2022	77	43	13(30.23%)	58(75.32)	28(36.36%)
State Service Exam 2023	204	72	28(38.89%)	172(84.31%)	58(28.43%)
Asstt. Professor Geograpy2024	84	15	6(40%)	77(91.67)	30(35.71%)
Asstt. Professor Geology Exam 2024	13	3	2(66.67%)	10(76.92%)	4(30.76%)
ASS. PROFESSOR ECONOMICS 2024	112	12	2(16.6%)	94 (83.92%)	43(38.39%)
Food Safety Officer Exam 2025	109	30	15(50%)	95(87.15%)	39(35.77%)
Mining Inspector Exam 2025	74	22	10(45.45%)	56(75.67%)	23(31.08%)
Transport Sub Inspector2025	31	10	3(30%)	23(74.19%)	7(22.50%)

(source: mppsc.gov.in)

178. Data reveals that, at times, around 70% to 75% of seats are occupied by SC / ST/ OBC/ EWS candidates, and general category candidates have to satisfy themselves with 20% to 25% of seats only. Data, prima facie, indicates that OBCs are securing 14% seats through their reservation quota and, at times, 15% to 20% from the open competition. Reservation sought by them is 27%,



but they are achieving an access in public services, more than 27%. Therefore, the very foundation on which OBCs claim reservation expansion from 14% to 27% comes under doubt. In fact they are adequately represented.

179. The tables referred to above indicates Class III (Ministerial/Secretarial), Class II (Civil Services/Engineering/Police Services), Civil Judges, and Collegiate Services (Assistant Professor, etc.). Even the data referred above indicates that percentage of OBCs with graduate or higher degree (23.91%), surpass the State average (4.4%), by a multiple of 5.4% or 540%. It also exceeds the national average of 5.6% by a factor of 4.2% or 420%. This data is illustrative in nature. Therefore, BRAUSS report is rendered vulnerable because it only surveyed 10,000 OBC people and it did not take care of other classes to reach to just and proper conclusion.

180. The position of a person is always comparative and not absolute. Looking to the overall socio-economic condition of State of Madhya Pradesh, the data in respect of the OBCs is not only encouraging but infact overwhelming.

181. That data, coupled with the fact that State is politically dominated by OBCs, with four CMs in regular succession, one after another, and more than



25% of Ministers and MLAs are from the OBC category, no case is made out to harp over inadequacy of representation in Political, Educational, Economic, or Social field. All parameters demonstrate adequacy of representation and even advancement of status overall. Such welcome steps are to be celebrated, rather than lamented. Much has been done. Still, much is to be done. However, differently.

182. Even otherwise, reservation is not an issue. What is in issue is the extent of reservation. If the extent of reservation is excessive, then it makes an inroad into the principle of equality under Article 16(1). Extent of reservation, as stated above, will depend on the facts of each case. Backwardness and inadequacy of representation are compelling reasons for the State Governments to provide representation in public employment not otherwise. Not on the basis of proportionate representation. Therefore, if in a given case the court finds excessive representation under the State Enactment then such an Enactment would be liable to be struck down since it would amount to derogation of the constitutional requirements.

V. Adequate Representation and Efficiency in Administration:

183. Article 335 of the Constitution of India deals in respect of claims of Scheduled Castes and Scheduled Tribes to services and posts. It further



contemplates claims of the members of SC/ST to be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State. This aspect, right from Constituent Assembly Debates to different pronouncements of the Apex Court from time to time, is stressed over (efficiency in administration) while discussing the issue of reservation from time to time. Some excerpts of Constituent Assembly debates are already discussed earlier.

184. In **M.R. Balaji's case**, it has been held by the Constitution Bench in the following manner:-

“37. Whilst we are dealing with this question, it would be relevant to add that the provisions of Article 15(4) are similar to those of Article 16 (4) which fell to be considered in the case of General Manager, Southern Railway v. Rangachari⁴ . In that case, the majority decision of this Court held that the power of reservation which is conferred on the State under Article 16(4) can be exercised by the State in a proper case not only by providing for reservation of appointments, but also by providing for reservation of selections posts. This conclusion was reached on the basis that it served to give effect to the intention of the Constitution-makers to make adequate safeguards for the advancement of Backward Classes and to secure their adequate representation in the



Services. The judgment shows that the only point which was raised for the decision of this Court in that case was whether the reservation made was outside Article 16(4) and that posed the bare question about the construction of Article 16(4). The propriety, the reasonableness or the wisdom of the impugned order was not questioned because it was not the respondent's case that if the order was justified under Article 16(4), it was a fraud on the Constitution. Even so, it was pointed out in the judgment that the efficiency of administration is of such a paramount importance that it would be unwise and impermissible to make any reservation at the cost of efficiency of administration; that, it was stated, was undoubtedly the effect of Article 335. Therefore, what is true in regard to Article 15(4) is equally true in regard to Article 16 (4). There can be no doubt that the Constitution-makers assumed, as they were entitled to, that while making adequate reservation under Article 16(4), care would be taken not to provide for unreasonable, excessive or extravagant reservation, for that would, by eliminating general competition in a large field and by creating wide-spread dissatisfaction amongst the employees, materially affect efficiency. Therefore, like the special provision improperly made under Article 15 (4), reservation made under Article 16(4) beyond the permissible and legitimate limits would be liable to be challenged as a fraud on the Constitution. In this connection it is necessary to emphasise that Article 15(4) like Article 16(4) is an enabling provision; it does not impose an obligation, but merely leaves it to the discretion of the appropriate Government to take suitable action, if necessary."



185. In **T. Devadasan** (supra) the Apex Court discussed the 50% ceiling on reservation, adequate representation under Section 16(4) and efficiency in administration under Article 335, vis-à-vis equality under Article 14. Relevant extract reads as under:

*“8. It is these instructions of the Government of India which are being challenged by the petitioner in this petition which he has presented to this Court under Article 32 of the Constitution. His contention is that Article 16(1) of the Constitution provides that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. Mr Gopalakrishnan, who appears for the petitioner, concedes that under clause (4) of Article 16 it is open to the State to make provision for reservation of appointments or posts in favour of any backward class of citizens which in the opinion of the State, is not adequately represented in the services of the State. But his contention is that this reservation cannot be so extensive as to nullify or destroy the right conferred by clause (1) of Article 16. He points out that according to the previous decisions of this Court, clause (4) is merely an exception to clause (1) of Article 16, which, being subservient to the main provision cannot be so interpreted as to render the main provision meaningless. **His next contention is that clause (4) of Article 16 is to be read with Article 335 of the Constitution which, while providing for the consideration of the claims of members of Scheduled Castes and Tribes, reiterates that the efficiency of administration should be maintained and not***



allowed to suffer. His next contention is that as no reservation of posts in favour of members of Scheduled Castes and Tribes is made in the offices of the Lok Sabha and Rajya Sabha and the Supreme Court or in the Armed Forces, Article 14 of the Constitution is infringed. Then, according to him, the standard for all candidates must be the same and the Union Public Service Commission has no power to recommend for appointment candidates from Scheduled Castes and Tribes for appointment to the reserved posts even though they have secured far less marks than the candidates belonging to the more advanced communities. These are the main points which Mr Gopalakrishnan has urged.

21. Considerable argument was advanced before us by Mr Gopalakrishnan on the basis of Article 335 of the Constitution which reads thus:

"The claims of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State."

The need for the maintenance of efficiency of administration, even when giving effect to the provisions of Article 16(4) has been emphasised in Rangachari case². It is, therefore, not necessary for us to say anything more on the point."



186. The Hon'ble Apex Court in **General Manager, Southern Railway Vs. Rangachari**, AIR 1962 SC 36 laid down the law as under:

31. I now read Article 16(4):

“Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.” Before I turn to the actual words used in the article I must refer to what I consider is implicit in that Article. The article provides for reservation of appointments or posts and it seems to me obvious that it is implicit in the article that the reservation of appointments or posts cannot go to the length of reserving all appointments or posts or even to the length of reserving a majority of them. The reason why I say that all appointments or posts cannot be reserved under Article 16(4) — (though that would be the result if the widest possible interpretation is given to the words used in the article) — is that if all appointments or posts could be reserved under Article 16(4) it would mean complete destruction of the fundamental right guaranteed under Article 16(1). It could not be the intention of the Constitution-makers that the proviso of exception in Article 16(4) should be so used as to destroy completely the fundamental right enshrined in Article 16(1), Nor do I think that it is permissible under Article 16(4) to reserve a majority of appointments or posts, for that again, in my opinion, though it may not completely destroy the fundamental right guaranteed under Article 16(1) will certainly make it practically illusory. Again it could not



be the intention of the Constitution-makers that Article 16(1) should be so interpreted as to make the fundamental right guaranteed under Article 16(1) illusory. I may in this connection refer to Article 335, which occurs in Part XVI dealing with Special Provisions relating to certain Classes, which reinforces what I have said above. That article provides that “the claims of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State”. Now the scheduled tribes and the scheduled castes are included in the words “backward class of citizens” used in Article 16(4). Therefore in considering the claims of, at any rate, a part of, those included in Article 16(4) — (and I presume the same will apply to the whole) the maintenance of efficiency of administration must be kept in mind, for the reservation provided in Art 16(4) is to meet the claims of the members of the scheduled castes and the scheduled tribes. Reservation, therefore; of all appointments or posts or even a majority of them is certain to result in the impairment of efficiency of administration and therefore what I consider as implicit in Article 16(4) is borne out also by the provision in Article 335. It is in this background that the interpretation of Article 16(4) falls to be considered.”

187. The Hon’ble Apex Court in **N.M. Thomas** (supra) further laid down the law as under:



*“44. Our Constitution aims at equality of status and opportunity for all citizens including those who are socially, economically and educationally backward. The claims of members of Backward Classes require adequate representation in legislative and executive bodies. If members of Scheduled Castes and tribes, who are said by this Court to be Backward Classes, can maintain minimum necessary requirement of administrative efficiency, not only representation but also preference may be given to them to enforce equality and to eliminate inequality. Article 15(4) and 16(4) bring out the position of Backward Classes to merit equality. Special provisions are made for the advancement of Backward Classes and reservations of appointments and posts for them to secure adequate representation. These provisions will bring out the content of equality guaranteed by Articles 14, 15(1) and 16(1). The basic concept equality is equality of opportunity for appointment. Preferential treatment for members of Backward Classes with due regard to administrative efficiency alone can mean equality of opportunity for all citizens. Equality under Article 16 could not have a different content from equality under Article 14. Equality of opportunity for unequals can only mean aggravation of inequality. Equality of opportunity admits discrimination with reason and prohibits discrimination without reason. Discrimination with reasons means rational classification for differential treatment having nexus to the constitutionally permissible object. **Preferential representation for the Backward Classes in services with due regard to administrative efficiency is permissible object and Backward Classes are a rational classification recognised by our***



Constitution. Therefore, differential treatment in standards of selection are within the concept of equality.”

188. The Hon’ble Apex Court in the **M. Nagaraj (supra)** discussed the efficiency of the State administration in the following manner:

“121. The impugned constitutional amendments by which Articles 16(4-A) and 16(4-B) have been inserted flow from Article 16(4). They do not alter the structure of Article 16(4). They retain the controlling factors or the compelling reasons, namely, backwardness and inadequacy of representation which enables the States to provide for reservation keeping in mind the overall efficiency of the State administration under Article 335. These impugned amendments are confined only to SCs and STs. They do not obliterate any of the constitutional requirements, namely, ceiling limit of 50% (quantitative limitation), the concept of creamy layer (qualitative exclusion), the sub-classification between OBCs on one hand and SCs and STs on the other hand as held in Indra Sawhney [1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1 : (1992) 22 ATC 385] , the concept of post-based roster with inbuilt concept of replacement as held in R.K. Sabharwal [(1995) 2 SCC 745 : 1995 SCC (L&S) 548 : (1995) 29 ATC 481] .

122. We reiterate that the ceiling limit of 50%, the concept of creamy layer and the compelling reasons, namely, backwardness, inadequacy of representation and overall administrative efficiency are all constitutional requirements without which the structure of equality of opportunity in Article 16 would collapse.



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

189. The Hon’ble Apex Court in **Ashok Kumar Thakur** (supra) discussed in following manner:-

"666. Caste has divided this country for ages. It has hampered its growth. To have a casteless society will be realisation of a noble dream. To start with, the effect of reservation may appear to perpetuate caste. The immediate effect of caste-based reservation has been rather unfortunate. In the pre-reservation era people wanted to get rid of the backward tag—either social or economical. But post reservation, there is a tendency even among those who are considered as “forward”, to



seek the “backward” tag, in the hope of enjoying the benefits of reservations. When more and more people aspire for “backwardness” instead of “forwardness” the country itself stagnates. Be that as it may. Reservation as an affirmative action is required only for a limited period to bring forward the socially and educationally backward classes by giving them a gentle supportive push. But if there is no review after a reasonable period and if reservation is continued, the country will become a caste divided society permanently. Instead of developing a united society with diversity, we will end up as a fractured society forever suspicious of each other. While affirmative discrimination is a road to equality, care should be taken that the road does not become a rut in which the vehicle of progress gets entrenched and stuck. Any provision for reservation is a temporary crutch. Such crutch by unnecessary prolonged use, should not become a permanent liability. It is significant that the Constitution does not specifically prescribe a casteless society nor tries to abolish caste. But by barring discrimination in the name of caste and by providing for affirmative action Constitution seeks to remove the difference in status on the basis of caste. When the differences in status among castes are removed, all castes will become equal. That will be a beginning for a casteless egalitarian society.

190. The Hon’ble Apex Court in **Jarnail Singh (supra)** affirmed the similar principles which reads as under:



“15. Indra Sawhney (1) [Indra Sawhney v. Union of India, 1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1] was then referred to and distinguished as follows : (Chinnaiah case [E.V. Chinnaiah v. State of A.P., (2005) 1 SCC 394 : (2008) 2 SCC (L&S) 329] , SCC p. 417, paras 38-40)

“38. On behalf of the respondents, it was pointed out that in Indra Sawhney case [Indra Sawhney v. Union of India, 1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1] the Court had permitted subclassification of Other Backward Communities, as backward and more backward based on their comparative underdevelopment, therefore, the similar classification amongst the class enumerated in the Presidential List of Scheduled Castes is permissible in law. We do not think the principles laid down in Indra Sawhney case [Indra Sawhney v. Union of India, 1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1] for subclassification of Other Backward Classes can be applied as a precedent law for subclassification or subgrouping Scheduled Castes in the Presidential List because that very judgment itself has specifically held that subdivision of Other Backward Classes is not applicable to Scheduled Castes and Scheduled Tribes. This we think is for the obvious reason i.e. the Constitution itself has kept the Scheduled Castes and Scheduled Tribes List out of interference by the State Governments.

39. Legal constitutional policy adumbrated in a statute must answer the test of Article 14 of the Constitution. Classification whether permissible or not must be judged on the touchstone of the object sought to be



achieved. If the object of reservation is to take affirmative action in favour of a class which is socially, educationally and economically backward, the State's jurisdiction while exercising its executive or legislative function is to decide as to what extent reservation should be made for them either in public service or for obtaining admission in educational institutions. In our opinion, such a class cannot be subdivided so as to give more preference to a minuscule proportion of the Scheduled Castes in preference to other members of the same class.

40. Furthermore, the emphasis on efficient administration placed by Article 335 of the Constitution must also be considered when the claims of Scheduled Castes and Scheduled Tribes to employment in the services of the Union are to be considered.”

Finally, the Court held : (SCC p. 418, paras 43-44)

“43. The very fact that the members of the Scheduled Castes are most backward amongst the Backward Classes and the impugned legislation having already proceeded on the basis that they are not adequately represented both in terms of clause (4) of Article 15 and clause (4) of Article 16 of the Constitution, a further classification by way of micro-classification is not permissible. Such classification of the members of different classes of people based on their respective castes would also be violative of the doctrine of reasonableness. Article 341 provides that exclusion even of a part or a group of castes from the Presidential List can be done only by Parliament. The logical corollary thereof would be that the State Legislatures are forbidden from doing that. A uniform



yardstick must be adopted for giving benefits to the members of the Scheduled Castes for the purpose of the Constitution. The impugned legislation being contrary to the above constitutional scheme cannot, therefore, be sustained.

44. For the reasons stated above, we are of the considered opinion that the impugned legislation apart from being beyond the legislative competence of the State is also violative of Article 14 of the Constitution and hence is liable to be declared as ultra vires the Constitution.”

191. In the Constituent Assembly, Dr. Ambedkar referred to reservation for a minority of seats. Incorporation of Article 335 and the nexus of different judgments of the Apex Court on efficiency of administration make it imperative that persons of brilliance and perseverance (from SC/ST/OBC/EWS/UR) be given a sky to soar and flutter high in the sky. Uncaged and unchained. Otherwise, the quote of Rousseau (referred above) haunt them and frustrate their aspirations, ambitions and amelioration. This sky should be made available to all categories of candidates without any restriction to express themselves.

192. Today, the modern world is witnessing the biggest disruptors like **Artificial Intelligence, Climate Change, Mental Health, Hydrogen Fuel, Space Exploration, Machine Learning, Quantum Computing, Water**



Scarcity, Energy Management, and Alternative Sources of Energy, to enlist a few. These challenges are not only Civilizational, but even Existential in nature. When the world is whisking fast with technological maneuvering, then efficiency in administration (which includes Innovation/Technological Advancements/good governance) assumes importance. Constitution is a dynamic document, and its provisions has to be seen from the vantage point of the time in which we are living and challenges we (as humanity) are facing.

VI Adequacy of representation vis-à-vis 50% ceiling limit:

193. In the Constituent Assembly debates, Dr. Ambedkar himself clarified that reservation shall be for a minority of seats so as to maintain efficiency in administration and to give merit a chance to flourish. For the first time, the Constitution Bench in **M.R. Balaji (supra)** prescribed the ceiling of 50% which reads as under:

“34. The learned Advocate-General has suggested that reservation of a large number of seats for the weaker sections of the society would not affect either the depth or efficiency of scholarship at all, and in support of this argument, he has relied on the observations made by the Backward Classes Commission that it found no complaint in the States of Madras, Andhra, Travancore-Cochin and Mysore where the system of recruiting candidates



from other Backward Classes to the reserve quota has been in vogue for several decades. The Committee further observed that the representatives of the upper classes did not complain about any lack of efficiency in the offices recruited by reservation (p. 135). This opinion, however, is plainly inconsistent with what is bound to be the inevitable consequence of reservation in higher university education. If admission to professional and technical colleges is unduly liberalised, it would be idle to contend that the quality of our graduates will not suffer. That is not to say that reservation should not be adopted; reservation should and must be adopted to advance the prospects of the weaker sections of society, but in providing for special measures in that behalf care should be taken not to exclude admission to higher educational centres to deserving and qualified candidates of other communities. A special provision contemplated by Article 15(4) like reservation of posts and appointments contemplated by Article 16 (4) must be within reasonable limits. The interests of weaker sections of society which are a first charge on the States and the Centre have to be adjusted with the interests of the community as a whole. The adjustment of these competing claims is undoubtedly a difficult matter, but if under the guise of making a special provision, a State reserves practically all the seats available in all the colleges, that clearly would be subverting the object of Article 15(4). In



this matter again, we are reluctant to say definitely what would be a proper provision to make. Speaking generally and in a broad way, a special provision should be less than 50%; how much less than 50% would depend upon the present prevailing circumstances in each case. In this particular case it is remarkable that when the State issued its order on 10-7-1961, it emphatically expressed its opinion that the reservation of 68% recommended by the Nagan Gowda Committee would not be in the larger interests of the State. What happened between 10-7-1961, and 31-7-1962, does not appear on the record. But the State changed its mind and adopted the recommendation of the Committee ignoring its earlier decision that the said recommendation was contrary to the larger interests of the State. In our opinion, when the State makes a special provision for the advancement of the weaker sections of society specified in Article 15(4), it has to approach its task objectively and in a rational manner. Undoubtedly, it has to take reasonable and even generous steps to help the advancement of weaker elements; the extent of the problem must be weighed, the requirements of the community at large must be borne in mind and a formula must be evolved which would strike a reasonable balance between the several relevant considerations. Therefore, we are satisfied that the reservation of 68% directed by the impugned order is plainly inconsistent with Article 15(4).”



194. However, later on, in **N.M. Thomas** (supra), minority opinion of Hon'ble Shri Justice Fazal Ali and Hon'ble Shri Justice Krishna Iye (as they then were) raised doubt over ceiling of 50%. However, in **T. Devadasan** (supra), this ceiling of 50% was maintained.

195. Then comes **Indra Sawhney**, a Nine-Judge Bench decision of the Hon'ble Supreme Court of India, which clarified the position once and for all. Although the celebrated and opt quoted paragraph is 810, but to get a better perspective, it is imperative that earlier paragraphs be also incorporated to bring home the analogy logically and convincingly:

“807. We must, however, point out that clause (4) speaks of adequate representation and not proportionate representation. Adequate representation cannot be read as proportionate representation. Principle of proportionate representation is accepted only in Articles 330 and 332 of the Constitution and that too for a limited period. These articles speak of reservation of seats in Lok Sabha and the State legislatures in favour of Scheduled Tribes and Scheduled Castes proportionate to their population, but they are only temporary and special provisions. It is therefore not possible to accept the theory of proportionate representation though the proportion of population of backward classes to the total population would certainly be relevant. Just as every power must be exercised reasonably and fairly, the power conferred by clause (4) of Article 16 should also be exercised



in a fair manner and within reasonable limits — and what is more reasonable than to say that reservation under clause (4) shall not exceed 50% of the appointments or posts, barring certain extraordinary situations as explained hereinafter. From this point of view, the 27% reservation provided by the impugned Memorandums in favour of backward classes is well within the reasonable limits. Together with reservation in favour of Scheduled Castes and Scheduled Tribes, it comes to a total of 49.5%. In this connection, reference may be had to the Full Bench decision of the Andhra Pradesh High Court in V. Narayana Rao v. State of A.P. [AIR 1987 AP 53 : 1987 Lab IC 152 : (1986) 2 Andh LT 258] , striking down the enhancement of reservation from 25% to 44% for OBCs. The said enhancement had the effect of taking the total reservation under Article 16(4) to 65%.

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



contemplated reservation being “confined to a minority of seats” (See his speech in Constituent Assembly, set out in para 693). No other member of the Constituent Assembly suggested otherwise. It is, thus, clear that reservation of a majority of seats was never envisaged by the Founding Fathers. Nor are we satisfied that the present context requires us to depart from that concept.

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

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

811. In this connection it is well to remember that the reservations under Article 16(4) do not operate like a communal reservation. It may well happen that some members belonging to, say, Scheduled Castes get selected in the open competition field on the basis of their own merit; they will not be counted against the quota reserved for



Scheduled Castes; they will be treated as open competition candidates.”

196. Preceding paragraphs make it clear that reservation of majority of seats was never envisaged by the Founding Fathers, nor Constitution Bench was satisfied that the present context requires them to depart from that concept. Paragraph 809 in categorical terms mandates that the irresistible conclusion that follows is the reservation contemplated in clause (4) of Article 16 should not exceed 50%. Selection of words in paragraphs 808, 809, and 810 establishes the spirit/ratio of the order for fixing ceiling of reservation up to 50%.

197. Yes, ceiling can be broken, but under extraordinary situations inherent in the great diversity of this country and the people. Above mentioned paragraphs refer so. Some relaxation “**may**” become imperative. It means sufficient discretion is given, whereas while fixing ceiling of 50%, word “**shall**”/“**should**” is used. This indicates that no scope is left for interpretation of one's liking.

198. In Madhya Pradesh on the basis of discussion made above, no such exigency or extraordinary situations exist to exceed 50% reservation. In the case of **Jaishri Patil (supra)**, reliance over paragraph 810 is made, and even the prayer for referring the matter to a Larger Bench was declined. This



indicates that Constitution Bench consider 50% ceiling limit as sacrosanct (more or less).

199. In **Jaishri Patil (supra)** it is referred that **Indra Sawhney (supra)** has been followed in four Constitution Bench Judgments:

(i) **Post Graduate Institute of Medical Education and Research, Chandigarh & Ors. v. Faculty Association & Ors., (1998) 4 SCC 1**

(ii) **M. Nagaraj (supra)**

(iii) **K. Krishna Murthy Vs. Union of India, (2010) 7 SCC 202;**

(iv) **Chebrolu Leela Prasad Rao Vs. State of A.P., (2021) 11 SCC 401.**

200. The judgment in **Jaishri Patil (supra)** settled the position further and reiterated the ceiling of 50% in categorical terms. After this judgment, it is established again that the ceiling of 50% for reservation cannot be breached. The said judgment also looked into the extent of judicial review by the Constitutional Court in the context of safeguards for protecting the fundamental right of equality and to safeguard against the attempts to undermine the same. The said judgment traced the law while referring to various judgments, including in the Barium Chemicals case.

201. Therefore, the 50% ceiling limit cannot be breached in any manner, and/or at least no such case is made out regarding backwardness of OBCs,



Inadequacy of Representation, and Educational/Social/Economic status to suggest Affirmative Actions like reservation to the extent of 27% to the OBCs for the State of Madhya Pradesh.

202. Learned counsel for the respondent raised the point of ratio *vis-a-vis* obiter to bring home the analogy that observations made by the Apex Court in the case of **Indra Sawhney** (supra) in para 810 are to be treated as obiter. However, those observations are very much part of the discussion and constitute ratio; they are not obiter. A specific question was framed in **Indra Sawhney** (supra) as Question No.6, and the same has been answered in specific terms. While answering the said question, para 810 was declared by Constitution Bench as law of the land regarding ceiling limit of 50%.

203. Later on, **Jaishri Patil** (supra) again discussed the issue in detail. Specific submission regarding reference to a larger bench was denied by the Apex Court, and the Apex Court maintained the ratio of the judgment rendered in the case of **Indra Sawhney** (supra).

204. Several High Courts—Rajasthan, Chhattisgarh, Bihar, Andhra Pradesh, Bombay, Gujrat, etc. have already discussed this issue and thereafter declared



breach of the ceiling of 50% as unconstitutional and set aside the attempt of State Governments to raise the quota from 50% to some more percentage.

205. In case of **Jaishri Patil (supra)**, one argument taken was that the population of backward classes is 85% and reservation upto 50% limit only would be disproportionate. However, said argument is repelled by the Constitution Bench while holding that proportionate representation cannot be given, only adequate representation can be given. In the present case also, the State Government has made out a case only for adequate representation within the ceiling limit of 50% and not beyond that. No proportionate representation can be given.

206. In case of **Jaishri Patil**, it has been held as under:

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



extraordinary situation contemplated by Indra Sawhney [Indra Sawhney v. Union of India, 1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1] judgment and both the Commission and the High Court fell in error in accepting the above circumstances as extraordinary circumstance for exceeding the 50% limit. At this stage, we may notice that what was said by Dr Ambedkar in the Constituent Assembly Debates dated 30-11-1948 while debating draft Article 10(3) [Article 16(4) of the Constitution]. Dr Ambedkar by giving an illustration said : (CAD Vol. VII)

“... Supposing, for instance, we were to concede in full the demand of those communities who have not been so far employed in the public services to the fullest extent, what would really happen is, we shall be completely destroying the first proposition upon which we are all agreed, namely, that there shall be an equality of opportunity. Let me give an illustration. Supposing, for instance, reservations were made for a community or a collection of communities, the total of which came to something like 70% of the total posts under the State and only 30% are retained as the unreserved. Could anybody say that the reservation of 30% as open to general competition would be satisfactory from the point of view of giving effect to the first principle, namely, that there shall be equality of opportunity? It cannot be in my judgment. Therefore the seats to be reserved, if the reservation is to be consistent with clause (1) of Article 10, must be confined to a minority of seats. It is then only that the first principle could find its place in the Constitution and effective in operation.”



207. It is well settled that adequate representation in Article 16(4) does not mean proportionate representation In **Jarnail Singh (supra)**, this principle was explained as under:

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

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



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

208. Backwardness and inadequate representation are factors to be considered for the grant of reservations to the extent of 50%. However, beyond 50%, if reservation is to be given, then extraordinary circumstances must exist. In the present case, no such extraordinary circumstances existed to justify breach of the 50% ceiling limit.

VII No Consltation with NCBC:

209. The 102nd Amendment Act was introduced on 15.08.2018. It, inter alia, introduced Article 338B and set up the National Commission for Backward Classes as a constitutional body. As per Article 338B(9), the Union and every State Government are required to consult the Commission on all major policy matters affecting Socially and Educationally Backward Classes (SEBCs). Main reason for the introduction of NCBC was to ensure a permanent body which would objectively, without being pressured by the dust and din of electoral politics, consider the claims of inclusions based on scientific and objective criteria.



210. The 105th Amendment Act was introduced on 15.09.2021, incorporating Article 342A and inserting a proviso in Article 338B (9). Proviso to Article 338B (9) reads as under:

“338B. National Commission for Backward Classes.—

(9). The Union and every State Government shall consult the Commission on all major policy matters affecting the socially and educationally backward classes:

Provided that nothing in this clause shall apply for the purposes of clause (3) of article 342A.”

211. Clause (3) was introduced in Article 342A(3). It reads as under:-

“342A. Socially and educationally backward classes.

(3) Notwithstanding anything contained in clauses (1) and (2), every State or Union territory may, by law, prepare and maintain, for its own purposes, a list of socially and educationally backward classes, entries in which may be different from the Central List.”

212. While the proviso does not mandate consultation with the NCBC by the State for preparation and maintenance of the list of OBCs for the State, the requirement to consult the Commission for all other major policy matters continues.



213. This would include the issue of providing OBC reservations over and above the 50% ceiling limit. The NCBC ought to have been consulted on the question whether extraordinary circumstances as stated in **paragraph 810, Indra Sawhney** (supra), existed to breach the 50% ceiling or not.

214. Apex Court in **Pattali Makkal Katchi** (supra), held that disregarding the mandatory consultation would be fatal:

“101. Mr Sankaranarayanan argued that providing internal reservation is a major policy matter, which should have been undertaken by the State only with the consultation of the National Commission for Backward Classes. As, admittedly, there was no consultation, the 2021 Act is void. Article 338-B(9) provides that the Union and the State Government shall consult the Commission on all major policy matters affecting the SEBCs. A proviso was inserted by the 105th Amendment Act, by which it was specified that clause (9) of Article 338-B would not be applicable to lists of SEBCs that are prepared and maintained by the States. However, the 2021 Act was brought into force prior to the 105th Amendment Act. Having concluded that the 105th Amendment Act was prospective in its operation, it necessarily follows that the State was required to have consulted the Commission on major policy matters prior to the 105th Amendment Act. There cannot be any dispute regarding internal reservation being provided to a specific community qualifying as a major policy decision. The point that falls for consideration is the



consequence of non-consultation by the State Government with the National Commission for Backward Classes before providing internal reservation.

103. The consequence of disregarding a mandatory consultation provision would normally render the legislation void as it is in breach of an obligatory requirement to consult an expert constitutional body. However, we refrain from going into this issue in view of our earlier conclusion that the 2021 Act does not withstand scrutiny under Articles 14, 15 and 16 of the Constitution.”

215. Therefore, on this count also, M.P. Ordinance No.2 of 2019 as well as the Amendment Act 2019, lacks preparedness and passed in undue haste. This reason may (or may not) have been conclusive to strike down the Act, but coupled with the discussion made above, the Amended Act of 2019 appears to have been made in utter haste to the extent where certain drafting errors crept into it. Although Legislative intent is to be seen when the validity of an Act is seen, however, such drafting errors indicate the undue haste and ill-preparedness on the part of the respondents.

216. Cumulatively, a case for interference is made out, and the M.P. Ordinance No.2 of 2019 as well as the Amendment Act of 2019, which raises the percentage of reservation from 14% to 27% to the members of OBC category, is declared ultra vires to the constitutional provisions and contrary to the ceiling



limit of 50% as fixed by the Supreme Court of India in **Indra Sawhney** (supra) and later on reiterated in **Jaishri Patil** (supra) in specific terms.

217. Resultantly, the Amendment Act is declared ultra vires to the Constitution and is hereby struck down.

218. If any appointments have been made pursuant to the Amendment Act of 2019, especially before the interim order is passed, then what would be the fate of the candidates who were recruited earlier, would be the question.

219. In the present case, after filing of the writ petitions in respect of medical students, admission as per the Amendment Act of 2019 was stayed, but not the appointments made in different services. It appears from the proceedings that the original stay order was passed on 19.03.2019, but it is clarified vide order dated 31.01.2020. Thereafter, the State Government vide GAD order dated 29th September 2022 clarified that total appointments shall be made to the extent of 87%, and candidates for the remaining 13% from both categories (Unreserved as well as OBC) would be selected, but their list shall not be declared. That list would be subject to final outcome of the petitions. The order dated 29th September, 2022, issued by GAD can be the bottom line from where the amendment had to lose its relevance and effect. Normally, when any Act is



declared unconstitutional, then it is applied retrospectively but taking reliance from the Constitution Bench judgment in the case of **Chebrolu Leela Prasad Rao** (supra), the appointments made before the order dated 29th September, 2022, can be saved. Relevant discussion is in paragraphs 167, 168, and 169 which reads as under:

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

168. We cannot ignore the fact that a similar G.O. was issued by the erstwhile State Government of Andhra Pradesh in the year 1986, which was quashed by the State Administrative Tribunal, against which an appeal was preferred in this Court, which was dismissed [State of A.P. v. A. Janardhana Rao, Civil Appeal No. 2305 of 1991, order dated 20-3-1998 (SC)] as withdrawn in the year 1998. After withdrawal of the appeal from this Court, it was expected of the erstwhile State of Andhra Pradesh not to resort to such illegality of providing 100% reservation once again. But instead, it issued GOMs No. 3 of 2000, which was equally impermissible, even if the A.P. Regulation of Reservation and Appointment to Public Services Act, 1997 would have been amended, in



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

169. Resultantly, we allow the appeals, and save the appointments made so far conditionally with the aforesaid riders. The cost of appeal is quantified at rupees five lakhs and to be shared equally by the States of Andhra Pradesh and Telangana.”



220. Said judgment was relied upon recently by the Hon'ble Apex Court in the case of **The Government of Andhra Pradesh & Ors. v. M. Rama Rao & Ors., SLP (Civil) No.34255-34256/2015**. Placing reliance upon the Constitution Bench judgment delivered in **Chebrolu Leela Prasad Rao** (supra) as well as in the case of **M. Rama Rao** (supra), in the peculiar facts and circumstances of the case, where prior to the order dated 29.09.2022, certain appointments must have been made by the Recruiting Agencies, viz. M.P. Public Service Commission (M.P.P.S.C.) or Employees' Selection Board, of members of the OBC category on the basis of reservation of 27% instead of 14%. The additional 13% appointments of candidates of OBC category, if any, made prior to 29.09.2022, shall be saved.

221. After 29.09.2022, if any appointments are made more than 14% for OBC candidates, they shall be treated as null and void (in excess of 13%) and these appointments shall have to go. In their place 13% unreserved category candidates shall be given appointment. Concerned selection agencies viz. MPPSC or Employees' Selection Board or any other agency shall have to declare result henceforth. All the writ petitions preferred by the petitioners challenging the Amendment Act, 2019, are allowed. The Amendment Act, 2019, is **struck down**. The remaining petitions which were filed for additional



reservation for OBC plus EWS reservation and Horizontal Reservation, etc., shall be treated as decided as dismissed in view of this order.

VIII CONCLUSION:-

We may summarize thus as under:-

(1) M.P. Ordinance No.2 of 2019 as well as Amendment Act, 2019 prescribed percentage of reservation from 14% to 27% in domain of public services. However, on the basis of data available in Higher Education and Public Services as demonstrated in earlier paragraphs and tables, it appears that OBCs are adequately represented as per Article 16(4) of the Constitution of India. They are, very much, part of Mainstream.

(2) This case is not about grant of reservation but extent of reservation. OBCs are certainly entitled to get reservation to the extent of 14%. However, case is not made out for increasing the reservation from 14% to 27%. No extraordinary conditions or emergent situations exist as per para 810 of the judgment rendered by Hon'ble Apex Court in the case of **Indra Sawhney** (supra) and later on reiterated in the case of **Jaishri Laxmanrao Patil** (supra). Therefore, ceiling limit of 50%, as fixed by the Supreme Court of India, is to be adhered to. Thus, OBCs are entitled for reservation to the extent of 14%, not 27%, in Public Services and Higher Education.



(3) Appointments made in pursuance to Amendment Act, 2019, till 29.09.2022, when General Administration Department (State of Madhya Pradesh) clarified the position about interim relief shall be saved and OBC candidates, who are appointed in excess to 14% (to the extent of 27%) between this period i.e. March 2019 to 29.09.2022 shall continue in their jobs and shall not be removed. Their appointments are saved. These posts would be subsumed/adjusted in next three recruitment drives.

(4) All appointments are made after 29.09.2022, to the extent of 87% only. For remaining 13% candidates, appointment shall be given from list of unreserved category. In other words, those 13% posts shall be filled up by unreserved category candidates to make it 100% seats.

(5) All Recruitment Agencies viz. M.P.P.S.C. or M.P. State Employees Selection Board etc. shall do the needful for giving appointments to 13% unreserved category candidates within three months as an outer limit.

(6) All the petitions stand disposed of accordingly.

222. Before parting, we record our appreciation and indebtedness to the valuable assistance rendered by all learned counsel appeared in all these cases and enlightened us with their erudition and articulation. Their oral submissions and



written synopses were source of valuable assistance to us. We also record our appreciation to the hard work and assistance rendered by our Law Researchers and stenographers for preparation of this order. Hearing of this case was an enlightening experience.

(ANAND PATHAK)
JUDGE

(VINAY SARAF)
JUDGE

VC/Anil/skt