GOVERNMENT OF KERALA

REPORT
OF
THE BACKWARD CLASSES
RESERVATION COMMISSION, KERALA
1970

(IN TWO VOLUMES)

Vol. I
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CHAPTER I

CONSTITUTION OF THE COMMISSION AND ITS PLAN OF WORK

1. Background leading to the appointment of the Commission.

On a request made by the Government of Kerala to the Kerala Public Service Commission for advising 24 candidates from the Bar for appointment as Munsiffs in the scale of Rs. 300-700 in the Judicial Service of the Kerala State, the Public Service Commission issued a Notification in the Kerala Gazette dated 3-12-1963 inviting applications from qualified candidates for direct recruitment from the Bar as Munsiffs in the said service. In that Notification, it was mentioned that, in advising candidates for appointment the “rule of rotation” prescribed in rules 14 to 17 of the General Rules under Part II of the Kerala State and Subordinate Services Rules, 1958 as amended, would be observed. After written examination and interview, the Public Service Commission published a list of 195 candidates arranged in the order of priority, in the Gazette dated 22-9-1964. From that list the Commission advised the Government, 31 persons by applying the principle of reservation and rotation as per rules 14 to 17 of the General Rules in the Kerala State and Subordinate Services Rules, 1958, for appointment as Munsiffs. This advice was accepted by the Government and the appointment order G.O. (MS) No. 387/64/Home dated 29-8-1964 was issued by the Government under article 234 of the Constitution and published in the Kerala Gazette dated 13-10-1964. The list of 31 persons thus appointed did not contain the name of the person who ranked 24, but it included the names of 10 persons who ranked between 26 and 72 in the ranked list of 195. This happened as a result of application of the principles of reservation and rotation. The candidate whose rank was 24, filed writ petition before the High Court of Kerala (O.P. No. 2860/1964—V. Hariharan Pillai Vs. State of Kerala and others). The contentions in the petition including the arguments adduced at the time of hearing were the following:

(a) The “Other Backward Classes” defined in rule 2 (14) and enumerated in the list III of the Schedule to Part I of the Kerala State and Subordinate Services Rules, 1958, are not “Classes” but “Castes” and “Religious Communities” and therefore, reservation of appointments or posts on the ground of religion and/or caste are violative of the rule of equal opportunity and so, it violates article 16 (1) and 16(2) of the Constitution. On this ground, the petitioner contended that these reservation rules were unconstitutional.
(b) To invoke the provisions of article 16 (4) of the Constitution, two conditions must be satisfied, namely,

(i) that there shall be a backward class of citizens, and

(ii) that the said class should, in the opinion of the State, be inadequately represented in the services under the State.

The petitioner contended that, for the reasons mentioned in (a) above, the condition No. (i) above had not been satisfied, and that, as the State Government had not applied their mind, on an objective basis, in forming an opinion regarding the inadequacy of representation in the service in question, condition No. (ii) above also had not been satisfied.

(c) The expression, “Not adequately represented” occurring in article 16 (4) imports considerations of “numbers” as well as “nature” of appointments, and it involves not merely a numerical test, but also a qualitative one. The petitioner pointed out that a perusal of the list of Judicial Officers in the State would bear out that there was adequate representation of the reserved “classes” in the Judicial Service. Therefore, he contended that reservation of appointments in the Judicial Service, in favour of the reserved “classes” was not justified, the infirmity being lack of qualitative analysis of adequacy of representation of the Backward Classes in each service in the State.

(d) Rule 14 of the General Rules in the Kerala State and Subordinate Services Rules, says that where the special rules lay down that the principles of reservation of appointments shall apply to any service, class or category; appointments thereto shall be made on the basis of reservation mentioned in that rule. The Kerala Judicial Service was one for which there were no special rules at the time of making the appointments as per G.O.(MS) No. 387/64/Home dated 29-8-1964. Rule 14 of the said General Rules was, however, amended as follows:

"Where the special rules lay down that the principle of reservation of appointments shall apply to any service, class or category; or where in the case of any service class or category for which no special rules have been issued, the Government have by notification in the Gazette, declared that the principle of reservation of appointments shall apply to such service, class or category, appointments by direct recruitment to such service, class or category shall be made on the basis of reservation".

Under this amendment, the Government issued a Notification declaring that the principle of reservation should apply to the "Kerala Judicial Service". But this amendment was issued only on 28-10-1965, that is, more than one year after the appointment of the
31 persons in question was made. Therefore, the petitioner contended that the application of the principles of reservation was ultra-vires.

(e) The above mentioned amendment to rule 14 was given retrospective effect from 17-12-1958 which is the date of coming into force of the original rule 14 of the General Rules. The petitioner argued that the Governor had no power to make rules retrospectively, under the proviso to article 309 of the Constitution. The petitioner, therefore, contended that the retrospective application of the rule to the petitioner’s case was ultra-vires.

(f) The petitioner also contended that for the reasons mentioned in (d) and (e) above the Government had no power to act under the said retrospective amendment to rule 14 and to declare that the principles of reservation of appointments should apply to the Kerala Judicial Service.

2. Directions of the High Court of Kerala.

The above writ petition was dismissed by the High Court of Kerala in its judgment dated 31-1-1967, copy of which is given in Appendix I. In that judgment, the High Court, however, made the following observations and directions:

"But I have to emphasise one aspect. It may be true to say that the Ezhavas, Muslims and the Latin Catholics belong to communities that are socially and educationally backward. However, the possibility of there being a section large or small in these communities who are advanced and who are not backward, socially, economically or educationally, cannot be ruled out. If there is such a section, no reservation can be made in favour of the members of that section. Similarly the possibility of there being socially, educationally and economically backward sections in the other so-called advanced communities cannot be ignored and there is no reason why the benefit of reservation should not go to the members of those sections if these sections are not adequately represented in the services under the State. It is therefore necessary that investigation should be made regarding this aspect.................

".....................It is however necessary to strike a serious note of warning because the data that have been relied on, like the report of the Committee constituted by the Travancore Government before 1935 and that of the Committee that considered the question in 1957, as well as the Census Report of 1941, which have been relied on, have all become quite obsolete and out of date now. It is essential that relevant data must be collected periodically. The provisions in articles 15(4) and
16 (4) of the Constitution are only transitory provisions and the action taken under that must be modulated from time to time. This can be done only if surveys are made at regular intervals and detailed information collected. While I am not interfering with the selection made on the basis of principles that have more or less been in force for more than two, perhaps three decades, I am not for continuing the system without the matter being looked into afresh”.

“I consider that the 'Backward Classes' have to be drawn from all weaker sections of citizens irrespective of the religion and/or caste to which those sections may belong. With this end in view, it is desirable that the State should undertake a detailed survey as early as possible. There will be no justification in continuing to apply the principles embodied in rules 14 to 17 of the General Rules after 31-3-1968 without a fresh survey and a fresh appraisal of the question involved”.


In pursuance of the above directions of the High Court of Kerala the Government in their order No. (MS) 343/PD dated 17-10-1967 constituted "a Committee with Shri Nettur P. Damodaran, Ex-M.P. as Chairman and with the following persons as members:—

1) Shri C. Achutha Menon,
2) Shri P. K. Kunjachan, M.L.A.,
3) Shri T. M. Savankutty, Advocate, Tellicherry, and
4) Dr. P. K. Gopalkrishnan, Director, Bureau of Economics and Statistics (Member-Secretary)".

Shri P. K. Appa Nayar, Advocate, Perambra, Kozhikode was nominated as member of the Committee in G.O. No. (MS) 418/PD., dated 26-12-1967. Shri Alexander Parambithara, M.L.A. was nominated as member of the Commission as per G.O. No. (MS) 175/PD., dated 1-6-1968. Shri C. Achutha Menon subsequently resigned his membership consequent on his election as Member of Parliament. His resignation was accepted by Government in their letter No. 54695/SD4/69/PD., dated 16-9-1969 with effect from 28-4-1968 A.N. Copies of the G.O. No. (MS) 343/PD., dated 17-10-1967 constituting the Committee and G.O. No. (MS) 50/PD., dated 20-2-1968 supplementing the terms of reference are in Appendix II. This Committee was re-designated as "Backward Classes Reservation Commission" in G.O. No. (MS) 34/68/PD., dated 8-2-1968. In the two Notifications of the same number and date, namely, No. 4111/SD4/68/PD., dated 8-2-1968, the Government directed that "all the provisions of the Commissions of Inquiry Act, 1952 (Act 60 of 1952) shall apply to this Commission".
4. **Terms of reference.**

The terms of reference to the Commission are:

(a) What are the main factors which lead to backwardness of citizens?

(b) What should be the basis for classifying sections of people into backward and non-backward?

(c) In the light of answers to (a) and (b) above, what classes of citizens in the State should be treated as backward for purposes of article 16 (4) of the Constitution and which of such classes are not adequately represented in the services under the State and,

(d) What should be the quantum of reservation and the period for which it is to remain in force so far as the reservation of 40% to "Other Backward Classes" is concerned.

Part (c) of the terms of reference will show that the subject matter of enquiry by this Commission comes under clause (4) of article 16 of the Constitution of India. Article 16 reads as follows:

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

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

(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.

(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."
5. **Significance of the term, “40% to Other Backward Classes” occurring in paragraph 4 (d) above.**

At present 50% of the appointments in the public services, to be made by direct recruitment is set apart for open competition on the basis of merit. Of the remaining 50%, Ten percent (10%) is reserved for Scheduled Castes and Scheduled Tribes, subject to the condition that one out of every five posts reserved for Scheduled Castes/Scheduled Tribes, shall go to a Scheduled Tribe candidate, and only in the absence of a Scheduled Tribe candidate, it shall go to a Scheduled Caste candidate, and that the 4th turn in the 3rd rotation and the 12th turn in the 5th rotation shall go to the Scheduled Tribes candidates, and in the absence of Scheduled Tribes candidates, they shall go to Scheduled Castes candidates. The balance of 40%, is reserved for, and distributed among, the Other Backward Classes as follows:—

(a) Ezhavas and Thiyyas ... 14%
(b) Muslims ... 10%
(c) Latin Catholics ... 4%
(d) S.I.U.C. and Anglo-Indians ... 1%
(e) Scheduled Caste converts to Xianity ... 1%
(f) Other Backward Classes put together (that is, classes other than those mentioned in items (a) to (e) above included in the list of “Other Backward Classes” mentioned in the “Kerala State and Subordinate Services Rules” ... 10%

Total ... 40%

In the Government letter No. 90682/SD4/67/PD dated 18-12-1967, addressed to this Commission, it was clarified that the Scheduled Castes and Scheduled Tribes, for whom there is 10% reservation, need not be included within the purview of this Commission. This is the significance of the term “40% to Other Backward Classes” occurring in para 4 (d) above.

6. **Commission’s Plan of Work.**

(a) **Questionnaire**

The Commission drew up a questionnaire in English (vide Appendix III) with translations in Malayalam, Tamil and Kamada and released it on 13-3-1968. The questionnaire was published in the Gazette. Its gist was also published in the leading newspapers. One thousand eight hundred and thirty-eight answers have been
received from individuals and organisations. The answers were collated, categorised and digested by the Commission.

(b) Written Memoranda

Three hundred and sixty written memoranda were received from individuals and organisations. Those memoranda deal with matters relating to classification of citizens into backward and non-backward, caste disability, population figures, quantum of reservation, period for which the reservation should continue, the necessity for periodical review regarding the progress made by the backward classes, the necessity for taking community-wise statistics of education, economic position, land-holdings, etc., in the decennial census and demands of certain communities in the State, for concessions in the matter of education and appointments. The names of memorialists are given in Appendix IV.

(c) Oral evidence from members of the public.

The Commission visited all the important places in the State for taking evidence. Two thousand and thirty-four persons, some representing their organisations and the remaining persons in their individual capacity, met us and gave evidence on various aspects of the subject-matter of our enquiry. The list of persons who gave oral evidence before us is given in Appendix V. The representations made to this Commission through written memoranda and oral evidence are examined in Chapter V on "Written memoranda and Oral evidence".
CHAPTER II

RETROSPECT ON THE SYSTEM OF RESERVATION OF APPOINTMENTS OR POSTS IN THE SERVICES UNDER THE STATE AND THE EXISTING RULES OF RESERVATION

7. Before we attempt at classification of citizens into backward and non-Backward and assessment of adequacy of representation of the Backward Classes in the services under the State, it is necessary for us to have a retrospect on the system of reservation of appointments or posts in the services under the State. Prior to the formation of the erstwhile State of Travancore-Cochin on 1-7-1949, there was a system of communal rotation for appointment in Government Service in the former Travancore and Cochin States. The rules regulating the recruitment to the Public Services in the erstwhile Travancore State, (which are available in the Travancore Public Service Recruitment Rules, 1111 M.E.) were applied to the erstwhile Travancore-Cochin State. In 1951, the Travancore-Cochin Government constituted a Committee to go into the question of reservation of vacancies for Backward Classes, Scheduled Castes and Scheduled Tribes. In 1952, the Government passed orders on the Committee’s report, in their proceedings No. S2-15238/50/CS dated 17-9-1952 (Copy appended as Appendix VI). The main features of those orders were:

(i) That for purposes of article 16 (4) of the Constitution, "Backward Classes" will comprise the following communities:

- Ezhavas
- Muslims
- Kammalas
- Hindu Nadars
- S. I. U. C.
- Latin Catholics
- Other Hindus
- Other Christians (that is pulayas, parayas and other Scheduled Castes or Backward Community members converted to Christianity).

(ii) That the Scheduled Castes and Scheduled Tribes will comprise the castes and tribes specified as such by the president of India under articles 311 and 342 of the Constitution of India.
(iii) That the Public Services under the State will be divided into the following 3 divisions, namely:

1. Higher division comprising all appointments to posts the initial pay of which is Rs. 175 and above,
2. Intermediate division comprising all appointments to posts the initial pay of which is Rs. 75 and above but less than Rs. 175 and,
3. Lower division comprising all appointments to posts the initial pay of which is less than Rs. 75.

(iv) That all appointments in the Higher Division and 55% of posts in the Intermediate and Lower Divisions shall be made on merit basis.

(v) That the total quantum of reservation of appointments in favour of the Scheduled Castes, Scheduled Tribes and other Backward Classes together shall be 45% of all initial appointments in the Intermediate and Lower Divisions only.

(vi) That, of the above 45%, ten per cent (10%) shall be reserved for the Scheduled Castes and Scheduled Tribes together (with the right to come in by open competition by merit), and distributed among them as follows:

<table>
<thead>
<tr>
<th>Category</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pulaya</td>
<td>34%</td>
</tr>
<tr>
<td>Paraya</td>
<td>11%</td>
</tr>
<tr>
<td>Kurava</td>
<td>11%</td>
</tr>
<tr>
<td>Scheduled Tribes</td>
<td>1%</td>
</tr>
<tr>
<td>Other Scheduled Castes</td>
<td>11%</td>
</tr>
<tr>
<td>Pallan</td>
<td>2%</td>
</tr>
<tr>
<td>Thandan</td>
<td>2%</td>
</tr>
<tr>
<td>Velan</td>
<td>1%</td>
</tr>
</tbody>
</table>

Total 10%

(vii) That the balance of 35% will be reserved for the Other Backward Classes mentioned in the Government Order dated 17-9-1952 (with the right to come in by open competition by merit), and distributed among them as follows:

<table>
<thead>
<tr>
<th>Category</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ezhavas</td>
<td>13%</td>
</tr>
<tr>
<td>Muslims</td>
<td>5%</td>
</tr>
<tr>
<td>Kammalas</td>
<td>3%</td>
</tr>
<tr>
<td>Nadars</td>
<td>3%</td>
</tr>
<tr>
<td>S. I. U. C.</td>
<td>1%</td>
</tr>
<tr>
<td>Latin Catholics</td>
<td>6%</td>
</tr>
<tr>
<td>Other Hindus</td>
<td>2%</td>
</tr>
<tr>
<td>Other Christians (that is Pulayas, Parayas, and other Scheduled Castes or backward community members converted to Christianity)</td>
<td>2%</td>
</tr>
</tbody>
</table>

Total 35%
(viii) That if there is no candidate available from any community within each group for being selected in compliance with the preceding provisions, the said community shall be passed over in making the said selection, and the vacancy filled up by open competition provided that the community so passed over shall get at the earliest possible opportunity the benefit of the vacancy thus forfeited, if a qualified candidate may subsequently be forthcoming from that community during a period of three years, a corresponding omission being made in the number of vacancies due to be filled up by open competition.

(ix) That the above orders were to be in force for a period of 7 years from 17-9-1952.

8. Later on, amendments were made to the above Government order for including the "Vania", "Salias and Pattaryas", "Senai-thalavar (Elavania)" , "Yadava", "Chetties", and "Kerala Mudali" communities in the list of Backward Classes, for purposes of reservation of appointments and for putting "Viswakarmala" in brackets against the word, "Kammala" in the said list of Backward Classes.

9. In the Government Proceedings No. R. Dis. 38083/55/CS dated 9-4-1956, it was ordered that, with the inclusion of Anglo-Indian community in the list of Backward Classes, it was necessary to accommodate the Anglo-Indians within the percentage allowed to "Latin Catholics" and that therefore, the Latin Catholics would have 5% and the Anglo-Indians would have 1% reservation of appointments.

10. On 1-11-1956 the Kerala State came into being. Finding that there were certain differences in the rules of reservation obtaining in the erstwhile Travancore-Cochin State and the Malabar District as defined in sub-section (2) of section 5 of the States Reorganisation Act, 1956 (Act 37 of 1956), the Government issued Orders in the G. P. No. S(D) 2-41489/56/PD dated 6-2-1957 enumerating the groups of citizens who are to be considered as Backward Classes, Scheduled Castes and Scheduled Tribes in the State of Kerala, for purposes of article 16(4) of the Constitution. A copy of these orders is appended (Appendix VII). The salient features of the above Government Proceedings were:

(i) That, instead of the 8 Backward Classes mentioned in para 7(i) above, there would be one Backward Class constituted of 70 communities as shown in Annexure I of Appendix to the Government Proceedings dated 6-2-1957.

(ii) That the Public Services in the Kerala State would be divided into three divisions, namely,
(1) Higher Division comprising all posts the initial pay of which is Rs. 200 and above,
(2) Intermediate Division comprising all posts of which the initial pay is Rs. 80 and above but less than Rs. 200 and,
(3) Lower Division comprising all posts with initial pay of less than Rs. 80.

(iii) That the principle of reservation of appointments would apply to all appointments by direct recruitment to any service, class or category and would be made on the following basis, namely:

(1) Out of every 20 posts, 2 would be reserved for the Scheduled Castes and Scheduled Tribes and 7 for the Backward Classes.

(2) The remaining 11 would be filled by open competition on the basis of merit.

(iv) That the claims of the members of the Scheduled Castes, Scheduled Tribes and Backward Classes would also be considered for the 11 appointments which should be filled on the basis of merit; and where a candidate belonging to a Scheduled Caste, Scheduled Tribe or Backward Class was selected on the basis of merit, the number of posts reserved for Scheduled Castes, Scheduled Tribes or for Backward Classes, as the case may be, would not in any way be affected.

(v) That the appointments under this rule should be made in the order of rotation specified below in every cycle of 20 vacancies:

(1) Open competition  
(2) Backward Classes  
(3) Open competition  
(4) Scheduled Castes & Scheduled Tribes  
(5) Backward classes  
(6) Open competition  
(7) Open competition  
(8) Backward Classes  
(9) Open competition  
(10) Backward Classes  
(11) Open competition  
(12) Scheduled Castes & Scheduled Tribes  
(13) Open competition  
(14) Backward Classes  
(15) Open competition  
(16) Backward Classes  
(17) Open competition  
(18) Open competition  
(19) Backward Classes  
(20) Open competition.
(vi) That the cycle of rotation among the various communities, fixed by the Travancore-Cochin Government Order No. S2-15238/50/CS dated 17-9-1952, would require alteration in the changed circumstances brought about by the reorganisation of the States, for the following reasons, namely:

1. That new communities had come in from the Kasargode and Malabar areas such as Agasa, Arya, Bhandari, Billava, Hegde etc.

2. That a large section of the people belonging to communities like Nadars and S. I. U. C. who were given reservation in the Travancore-Cochin Rules had gone out of the State when the Southern Taluks were transferred to Madras State.

3. That without data regarding the then existing population, etc., of each community included under Backward Classes, Scheduled Castes and Scheduled Tribes in the new State of Kerala, it would not be possible to assign due proportion of reservation which every community should get.

4. That the collection of these statistics cannot but take some time.

(vii) In view of these difficulties the then Government constituted a Committee to advise them as to the best working principle that might be adopted. The Committee advised that, as an interim arrangement, all communities included under the group "Backward Classes" might be taken as one unit and all communities included under the group "Scheduled Castes and Scheduled Tribes" as another so that, any community in the group "Backward Classes" and any community in the group "Scheduled Castes and Scheduled Tribes" might become eligible for any vacancy reserved for the respective groups. The Government accepted the suggestion and ordered accordingly.

(viii) That, if there was no suitable candidate available for selection from the group of communities classified as Backward Classes or from the group of communities classified as Scheduled Castes and Scheduled Tribes in the turn allotted for them in the cycle, the said group would be passed over in making the selection. But the said group would get at the earliest possible opportunity the benefit of the turn thus forfeited; if a duly qualified candidate was forthcoming from that group within a period of 3 years, a corresponding reduction being made in the number of vacancies due to be filled by open competition.
(ix) It was also stated in the above Government proceedings dated 6-2-1957 as follows:—

"Government are alive to the position that, with the abolition of the rotation within the "Backward Classes" and the "Scheduled Castes and Scheduled Tribes", some communities within these Classes, Castes and Tribes may get more representation than others in filling up the reserved vacancies, and that they propose to watch the position for sometime with a view to taking adequate action, if found necessary".

11. In the G. P. No. SD2-41489/56/PD dated 22-7-1957 certain modifications were made to the Government Orders dated 6-2-1957. A copy of the Government proceedings dated 22-7-1957 is appended (Appendix VIII). The salient features of those orders were:—

(i) That the term "Ezha" occurring in item 15 in the list of Backward Classes mentioned in Annexure I of the Appendix to the Government proceedings dated 6-2-1957 (Appendix VII) should be replaced by the term "Ezhas and Thiyyas".

(ii) That the 35% reservation in favour of the Backward Classes would be increased to 40%. In other words, the total quantum of reservation would be 50% (that is, 10% for Scheduled Castes/Scheduled Tribes and 40% for other Backward Classes).

(iii) That the claims of the members of the Scheduled Castes, Scheduled Tribes and Backward Classes should also be considered for the 50% appointments by open competition on merit, and where a candidate belonging to the Scheduled Castes/Scheduled Tribes or Backward Classes was selected on the basis of merit, the number of posts reserved for Scheduled Castes/Scheduled Tribes or for Backward Classes, as the case may be should not in any way be affected.

(iv) That there would be no sub-rotation among Scheduled Castes and Scheduled Tribes.

(v) There would be sub-rotation among the major groups of Backward Classes according to population and relative backwardness. For this purpose the Backward Classes were grouped as indicated below:

(1) Ezhavas and Thiyyas with 14% reservation.
(2) Muslims with 10% reservation.
(3) Latin Catholics with 5% reservation.
(4) Backward Christians (other Christians, that is, Scheduled Castes and Other Backward Community members converted to Christianity) with 1% reservation.
12. In G. O. MS. No. 1526/Public (Rules) Department dated 17-12-1958, it was ordered that the Latin Catholics, S. I. U. C. and Anglo-Indians together would be given 5% reservation. In G. O. No. (P) 258/Public (Services-D) Department dated 31-5-63 it was ordered that the 5% reservation allowed for "Latin Catholics, Anglo-Indians and S. I. U. C." would be split up into "4% for Latin Catholics" and "1% for Anglo-Indians and S. I. U. C. together". In making direct appointment, the above executive orders are being followed by the Public Service Commission, eventhough the relevant rule No. 17(2) of the General Rules in the Kerala State and Subordinate Services Rules, 1958 has not been amended accordingly.

13. Existing rules of recruitment to the Public Services in this State.

The principles embodied in the G. P. No SD2-41489/56/PD dated 22-7-1957 adverted to above have been more or less embodied in the Statutory Rules 14 to 17 of the Kerala State and Subordinate Services Rules 1958, issued as per G. O. No. (MS) 1526 Public (Rules) dated 17-12-1958 and which came into force from 17-12-1958. Some amendments have been issued to those rules subsequently. A copy of the said rules as amended up-to-date, is appended (Appendix IX). They are the existing rules governing reservation of appointments in Kerala now.
CHAPTER III

EXISTING POSITION REGARDING RESERVATION OF APPOINTMENTS OR POSTS IN THE SERVICES UNDER THE STATE

14. Services under the Government.

Rule 14 of the Kerala State and Subordinate Services Rules, 1958 says that where the Special Rules lay down that the principle of reservation of appointments shall apply to any service, class or category, or where in the case of any service, class or category for which no special rules have been issued, the Government have, by Notification in the Gazette, declared that the Principle of reservation of appointments shall apply to such service, class or category; appointments by direct recruitment to such service, class or category shall be made applying the principles of reservation laid down in rules 14 to 17 of the Kerala State and Subordinate Services Rules. According to regulation No. 4(b) of the Kerala Public Service Commission (Consultation) Regulation, 1957, it shall not be necessary for the Public Service Commission to be consulted as respects any of the matters relating to (i) methods of recruitment, (ii) the principles to be followed in making appointments and in making promotions and transfers from one service to another, and (iii) the suitability of candidates for such appointments, promotions or transfers, in the case of the following posts, and other posts in respect of which the Government may, with the concurrence of the Commission, direct that appointments may be made without reference to the Commission:

Posts in State Services.

(1) Secretary, Governor’s Secretariat and Comptroller, Governor’s Household.
(2) Administrator General and Office Trustee.
(3) Law Officers (including Advocate General and Government Pleaders).
(4) Law Reporters.
(5) Chairman and Members of Industrial Tribunals.
(6) Commissioners for Departmental Enquiries.
(7) Heads of Departments.
(8) Members of all India Services employed in the State.
(9) Private Secretaries to Ministers.
(10) Gazetted posts in the Secretariat Cypher Bureau.
(11) Gazetted posts in State-owned Commercial Concerns.
Posts in Subordinate Services.

(1) Staff in the Office of the Comptroller, Governor's Household and in the Household Establishment Staff in the Governor's Secretariat.

(2) Deleted.

(3) Staff for Committees appointed by Government or by the Legislature.

(4) Employees charged to contingencies.

(5) Appointments of personnel retrenched in one service to another service within two years of retrenchment, where the qualifications required are, in the opinion of Government, similar to those in the retrenched service.

(6) Absorption of supernumeraries in one service to another service where qualifications are, in the opinion of Government, similar.

(7) Posts in State-owned Commercial Concerns.

(8) All posts in the Police Department below the rank of SubInspectors of Police (except the clerical staff), Managers, Junior Superintendents, Head Clerks and Assistants of the Special Branch of the Police Department, Typists of Special Branch, Shorthand Reporters and Stenographers of the Police Department.

(9) All posts in the Fire Force Department below the rank of Sub Officers (except the clerical staff).

(10) Members of the personal staff of the Ministers.

(11) Staff of Election Tribunal.

(12) Posts in the Secretariat Cypher Bureau.

Relevant extracts from the Special Rules for the State Services and Subordinate Services, are given in Appendix X. There are about 30 services in respect of which no special rules have been issued. In those cases the Government have, by notifications in the Gazette, declared under rule 14 of the General Rules, that the principles of reservation shall apply to appointments by direct recruitment to those services.

15. Services under the Legislature.

Rule 4 of the Travancore-Cochin Legislature Secretariat (Recruitment and conditions of service) Rules, 1953 as adapted for the Kerala Legislature Secretariat as per para 4 of the Kerala Adaptation of Laws Order, 1956—says that appointments to the posts of Secretary, Assistant Secretary and other Gazetted Officers shall be
made by the Speaker either by promotion or by transfer or deputation from other services including service in University of Kerala and the University of Calicut or by direct recruitment in consultation with the State Public Service Commission and shall be notified in the Gazette. Appointments to the posts of ministerial officers and inferior servants shall be made by the Secretary either by promotion or by transfer from other services, or by direct recruitment in consultation with the State Public Service Commission:

Provided that in the case of direct recruitment, except in the case of inferior servants, the Secretary shall also be present at the time of selection of the candidate by the Public Service Commission.

16. Services under the Municipalities and Municipal Corporations:

Appointments in the 'common service' of Municipalities and Municipal Corporations (that is, appointments in the 'common service' constituted for the employees of Municipalities and Corporations as contemplated in sub-section (i) of section 90 of the Kerala Municipal Corporations Act 1961) are made by a Recruitment Committee constituted by the Government and not by the Public Service Commission. But the principles of reservation of appointments under rules 14 to 17 of the Kerala State and Subordinate Services Rules 1958 are applied in making those appointments by direct recruitment as per rule 14 (2) of the Kerala Municipal Common Service Rules, 1967.

17. Services under the panchayats:

There is no common service in the case of panchayats. Appointments in the services under the panchayats are made by the panchayats themselves. There are no statutory or other orders requiring that the principles of reservation embodied in rules 14 to 17 of the Kerala State and Subordinate Services Rules, 1958 should be applied in making appointments by the panchayats.

18. Services under the Kerala State Electricity Board.

Appointments by direct recruitment in the services under the Kerala State Electricity Board are made through the Kerala Public Service Commission by applying the principles of reservation contained in rules 14 to 17 of the Kerala State and Subordinate Services Rules, 1958.

19. Services under the Universities:

(a) Kerala University:—Rules of reservation of appointments and posts under the Government in favour of scheduled Castes and Scheduled Tribes and Other Backward Classes of citizens shall, so
far as may be, apply in the case of appointments to the services under the Kerala University (vide section 6 of the Kerala University Act, 1969).

(b) Calicut University:—There is no provision in the Calicut University Act, 1968 for reservation of appointments or posts in the services under the Calicut University.

20. Services under the Kerala State Road Transport Corporation:

The Kerala Public Service Commission (Additional Functions as Respects the Kerala State Road Transport Corporation) Act, 1970, provides that the Corporation may consult the Public Service Commission:

(i) on all matters relating to the methods of recruitment of the officers and servants of the Corporation other than the Chief Executive Officer or General Manager and the Chief Accounts Officer;

(ii) on the principles to be followed in making appointments by direct recruitment of the officers and servants of the Corporation other than the Chief Executive Officer or General Manager and the Chief Accounts Officer and on the suitability of candidates for such appointments;

(iii) where the Public Service Commission is consulted on any matter under sub-section (i), it shall be the duty of the Commission to advise the Corporation on that matter;

(iv) in the case of any difference of opinion between the Public Service Commission and the Corporation on any matter, the Corporation shall refer the matter to the Government and the decision of the Government thereon shall be final:

Provided that the Government, before taking a decision against the advice of the Public Service Commission, shall refer the matter to the Commission.

21. Services under the Kerala State Financial Corporation, Kerala State Warehousing Corporation and Government Companies:

The Kerala Public Service Commission (Additional Functions as Respects Certain Corporations and Companies) Bill, 1970 has been passed by the Legislative Assembly on 13-11-1970. It is provided therein that the Kerala State Financial Corporation established under section 3 of the State Financial Corporation Act, 1951, and the Kerala State Warehousing Corporation established under section 18 of the Warehousing Corporation Act, 1962 and the Board of
Directors of Government Companies (that is, all companies as defined in section 3 of the Companies Act, 1956 in which not less than 51% of the paid-up share capital is held by the Government of Kerala), may consult the Kerala Public Service Commission on all matters relating to the method of recruitment of the officers and other employees of those Corporations or Government Companies, as the case may be, and on the principles to be followed in the matter of appointments for direct recruitment of the officers and other employees of those Corporations and Government Companies, as the case may be, and the suitability of candidates for such appointments.
CHAPTER IV

CONSTITUTIONAL PROVISIONS RELATING TO THE TERMS OF REFERENCE

The scope of article 16—Articles 14, 15(1) 16 (1) and 16 (2) “form with the same constitutional code of guarantees and supplement each other”.

22. Necessity for a comparative study of articles 14, 15 and 16:

The subject matter of enquiry by this Commission comes under clause (4) of articles 16 of the Constitution which reads as follows:

“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”.

In para 16 of the Supreme Court decision in Rangachari’s case (AIR-1962-S.C.36-V-49-C6), it has been observed as follows:

“Article 16(1) and 16(2) really give effect to the equality before law guaranteed by article 14 and to the prohibition of discrimination guaranteed by article 15(1). The three provisions form part of the same constitutional code of guarantees and supplement each other”.

It is therefore necessary to have a comparative study of articles 14, 15 and 16.

23. Article 14—Equality before the law and equal protection of the laws:

Article 14 reads as follows:

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

The expression “the State” occurring in this article has been defined in article 12. We will be discussing the effect of that definition in paragraph 28. Article 14 is a general provision, and is subject to the other provisions of the Constitution. “Equal protection of the laws” contemplated in this article, “postulates equal protection of all alike in the same situation and under like circumstances” (vide Supreme Court decision in State of Uttar Pradesh V. Deoman—A. 1960—S. C. 1125—1134). In other words, discrimination by a State is allowable, under a law, in a
proper case, between persons who, in the same situation and like circumstances, are not equals. This differentiation of equals from unequals involves a process of classification. Any classification should be reasonable. The tests for reasonable classification are:

(a) *Intelligible differentia:*—"The classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together, from others left out of the group", and

(b) *Rational relation:*—"The said differentia must have a rational relation to the object sought to be achieved by the statute in question". "If depends on the object of the legislation in view, and whatever has a reasonable relation to the object or purpose of the legislation, is a reasonable basis for classification of the objects coming under the purview of the enactment. What is necessary is that there must be nexus between the basis of classification and the object of the Act under consideration". (vide Budhan V. State of Bihar—A—1955—S. C. 191). 

(c) *Other aspects of classification—scientific perfection or logical completeness not insisted on:*

"Equal protection does not insist that legislative classification should be scientifically perfect or logically complete" (vide Kedarnath V. State of West Bengal—1954—S. C. R. 30).

(d) *Occupational basis for classification:*—The classification may be based on difference in the "nature" of the persons’ trade, calling or occupation or any other object which is sought to be regulated by legislation. Thus for example, a law of prohibition may differentiate between civil and military personnel, or between foreign visitors and Indian citizens. (State of Bombay V. Balasara—1951—S.C.R. 682).

(e) *Geographical basis for classification:*—The basis of classification may be geographical (vide Purushottam V. Desai (1955—2—S.C.R. 887—902; A—1956—SC—20). "The justification for classification may be historical." (vide Lachman V. State of Punjab—A—1963—SC—223—233). Thus, the geographical classification based on historical reasons, of the people of Kerala into those in "Malabar area" and those in "Travancore-Cochin area" for purposes of reservation of seats in educational institutions under article 15 (4) read with clause (2) of article 29, has been held valid (vide Joseph Thomas V. State of Kerala—AIR 1958—Kerala—33). But, "where a territorial division is selected by the Legislature for the purpose of effecting discrimination against a particular race, or class or people residing in that disfavoured area, it cannot still be
held as a reasonable classification” (vide Purushottam’s case referred to above).

(f) Equal protection of the laws under article 14—Not violated if exception is allowed by some other provisions of the Constitution:

“Equal protection of the laws under article 14 will not be violated if some other provision of the Constitution allows that exceptions shall be made”. Thus, there is no violation of the equal protection of the laws of fundamental rights if special provision for protection of interests of women and children is validly made under article 15 (3), or, if reservation of seats in educational institutions is validly made under article 15 (4) read with clause (2) of article 29, in favour of socially and educationally Backward Classes or Scheduled Castes and Scheduled Tribes, or, if reservation of appointments or posts in the services under the State is validly made in favour of Backward Classes, under article 16 (4). “What is necessary is that the basis of the intelligible differentia must have rational relation to the object of the Statute under which the classification is sought to be made”.

(g) Purpose or object—How to be ascertained:

The question arises how the purpose or object of a Statute is to be ascertained. "The purpose or object of any Act has to be ascertained from an examination of its title, preamble and provision (vide Kedarnath V. State of West Bengal—1953—S.C.R. 835). "An argument founded on what is claimed to be the spirit of the Constitution is always attractive for, it has a powerful appeal to sentiment and emotion, but a Court of Law has to gather the spirit of the Constitution from the language of the Constitution. What one may believe or think to be the spirit of the Constitution does not support that view” (vide Supreme Court decision in Kesava Menon V. State of Bombay—1951—S.C.R. 228—232). "What is to be interpreted by the Court is the Statute as it has been finally passed by the Legislature and placed on the Statute Book. Hence, debates in the Legislature, Reports of Committees of the Legislature or any statement made on the introduction of the measure or of the framers of the Act cannot be looked at as affording a guide as to the meaning of the words actually used in the Statute unless, of course, the Statute itself refers to some external material. So, debates in the Constituent Assembly would not ordinarily be admissible in the interpretation of the Constitution” (vide Krishna V. Nallaperumal 1920—43—Mad—550 and State of West Bengal V. Union of India—A—1963—S.C. 1241). "But, as in the case of all external evidence, debates in the Constituent Assembly as well as other historical facts that led to
the adoption of any particular provision may be admissible where there is a latent ambiguity in the terms used in the Constitution, or to ascertain the evils which the statute was intended to remedy. (vide State of West Bengal v. Union of India—A—1963—S.C.124—1247).

24. Article 15—Certain fundamental rights and certain limited exceptions:

Article 15 reads as follows:—

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

(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to 'any disability, liability, restriction or condition with regard to:

(a) access to shops, public restaurants, hotels, and places of public entertainment; or

(b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.

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

(4) Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and Scheduled Tribes."

The expression, "the State" occurring in this article has been defined in article 12. We have discussed the effect of that definition in paragraph 28 below. Articles 15 (1) and 15 (2) guarantee certain fundamental rights. There are two exceptions to article 15 (1). The first exception is made in clause (3). It enables the State to make any special provision for the protection of interests of women and children. The second exception is contained in clause (4). It enables the State to make special provision for the advancement of the socially and educationally backward Classes of citizens or for Scheduled Castes/Scheduled Tribes. These two exceptions to article 15 (1) are not mandatory. They are only permissive. When read with clause (2) of article 29, the exception provision in clause (4)
of article 15 enables the State to make any special provision or reservation of seats in educational institutions. The word "and" occurring in legislative enactments has, in some context, been interpreted as meaning "or". The word "and" occurring in the expression, "socially and educationally backward" has been interpreted by the Supreme Court in Balaji's case (AIR-1963-S.C. 649-V-50-C-101), as follows:—

"The backwardness under article 15 (4) must be social and educational, it is not either social or educational, but it is both social and educational".

Therefore, cumulative effect of social backwardness and educational backwardness is constitutionally insisted on, in the case of article 15 (4). In other words, if a class of citizens is socially backward but not educationally and, vice versa, that class cannot be treated as "backward" under article 15(4), and no special provision can be made for its advancement thereunder. The term used in article 16 (4) is simply, "backward class of citizens" and not, "socially and educationally backward classes of citizens" as in article 15(4). But as the Supreme Court has, in Rangachari's case (AIR-1962-SC-36-V-49-C6) observed "for historical reasons, which are well known, the advancement of the socially and educationally backward classes has been treated by the Constitution as a matter of paramount importance, and that may have to be borne in mind in construing article 16(4)", we have to be very clear about the use of the term "socially and educationally backward" in article 15(4), and the simple use of the term "backward" in article 16(4). For this purpose of comparative study, we give below, a gist of the principles laid down by the Supreme Court in Balaji's case (AIR-1963-S.C.649), Chitralahara's case (AIR-1964-SC-1823) and in P. Rajendran's case (AIR-1968-SC-1012) for the determination of social and educational backwardness of sections of people under article 15(4). The Principles are:—

(a) The juxtaposition of the expressions "Backward Classes" and "Scheduled Castes" in article 15(4) also leads to the reasonable inference that the expression "classes" is not synonymous with "castes". A reading of articles 15 (4), 338 (3), 341 and 342 shows that the Backward Classes for whose improvement special provision is contemplated by article 15 (4) are, in the matter of their backwardness, comparable to Scheduled Castes.

(b) The division of Backward Classes into the "backward" and "more backward" classes is, in substance, a division of population
into the "most advanced" and the "rest", the "rest" being divide into backward and more backward classes and this is not warranted by article 15(4).

(c) If the entire sub-caste, by and large, is backward it may be included in the Scheduled Castes by following the appropriate procedure laid down in article 341 of the Constitution.

(d) The backwardness under article 15 (4) must be both social and educational. It is not either social or educational.

(e) The special provision contemplated in article 15 (4) is for classes of citizens and not for individual citizens as such.

(f) "Caste" is not a synonym for "class", nor can it be equated with "class" (vide Chitralekha's case).

(g) The test of "Caste" would break down as regards the Backward Classes which have no "castes".

(h) In the case of Hindus, caste may be a relevant factor to consider, but its importance should not be exaggerated, and it should not be made the sole or dominant test.

(i) A caste is also a class of citizens and if the caste as a whole is socially and educationally backward, reservation could be made in favour of such a caste on the ground that it is a socially and educationally backward class of citizens within the meaning of article 15 (4) (vide P. Rajendran's case).

(j) In Sagar's case (AIR—1968—SC—1379), the Supreme Court referred to the above decision in Rajendran's case, and observed that it made no departure from the rule enunciated in the earlier cases of Balaji and Chitralekha. In this connection, it appears to us that even though there is no departure from the earlier rules in general, the position taken up by the Supreme Court in Chitralekha's case and reproduced in (c) above, has suffered change, as a result of the decision in Rajendran's case—item No. (i) above.

(k) Social backwardness is, in the ultimate analysis, the result of poverty to a very large extent. The classes of citizens who are deplorably poor, automatically become socially backward. Caste and poverty are both relevant in determining the social and educational backwardness of citizens. Backwardness is ultimately and primarily due to poverty.

(l) The occupations of citizens may also contribute to make classes of citizens socially backward. There are some occupations which are treated as inferior according to conventional beliefs, and classes of citizens who follow these occupations are apt to become socially backward.
(m) The place of habitation plays not a minor part in determining the backwardness of a community of persons. In a sense, the problem of social backwardness is the problem in rural India and classes of citizens occupying socially backward places in rural areas fall within the purview of article 15 (4).

(n) As regards educational backwardness, the Supreme Court has held that, “if the test has to be applied by a reference to the State average of student population, the legitimate view to take would be, that classes of citizens whose average is well or substantially below the State average could be treated as educationally backward”. On this point the Supreme Court did not ”propose to lay down any hard and fast rule”. The Court left that point to be considered and decided by the State in a manner which is consistent with the requirements of article 15 (4).

(o) As regards the extent of the special provisions which the State would be competent to make under article 15 (4) the Supreme Court has observed in Balaji’s case as follows:—

"In this matter again, we are reluctant to say definitely what would be the 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 relevant prevailing circumstances in each case”.

The Court, however, observed that—

"The State 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”.

In this connection, it may be noted that the expression used by the Supreme Court in the above case is, “should be less than 50%”. But in Devadasan’s case (AIR—1964—S.C. 179—V—51—C16), the expression used is “reservation of vacancies in excess of 50% would not be constitutional”. These two expressions denote one and the same thing for all practical purposes, because, the maximum extent of the expression “less than 50%” is 49.999999………which tends to become equal to 50 as soon as the number of the decimal places tends to reach infinity.

25. Article 16—Certain fundamental rights and certain limited exceptions.

Article 16 reads as follows:—

"16 (1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State."
(2) No citizens 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.

(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.

The expression "the State" occurring in this article has been defined in article 12. We will be dealing with the effect of this definition in para 28. From clauses (1) and (2) of article 16, we find that they guarantee equality of opportunity to all citizens (and not to any person as in the case of article 14), in the matter of appointment to any office or any other employment under the State. There are three exceptions to these two fundamental rights of equality of opportunity. They are:

(i) Though any citizen of India, irrespective of his residence, is eligible for any office or employment under the Government of India, residence may be laid down as a condition for particular classes of employment under a State or Union territory, by an Act of Parliament in that behalf.

(ii) The State (as defined in article 12) may reserve any post or appointment in favour of any Backward Class of citizens who, in the opinion of the State, is not adequately represented in the services under the State.

(iii) Offices connected with religious or denominational institutions may be reserved for members professing any particular religion or belonging to a particular denomination.
26. Articles 14 and 16—Principle of equality of opportunity under article 14 is applicable to the interpretation of article 16.

"Article 14 and article 16 contain fundamental rights of equality. Article 14 lays down the general rule of equality whereas article 16 is only an instance of the application of the general rule of equality laid down in article 14. Hence there is no denial of equality of opportunity unless the person who complains of discrimination, is not equally situated with the person or persons who are alleged to have been favoured. Equal protection of the law is an equal protection of all alike in the same situation and under like circumstances. This principle underlying article 14 has accordingly been applied to the interpretation of article 16 (1), namely, that the equality of opportunity guaranteed by it means equality between members of the same class of employees, and not equality between members of separate independent clauses". This is an important aspect of the equality guaranteed by clause (1) of article 16. We shall now pass on to the exception made by clause (4). Under clause (4), reservation of appointments or posts can be made in favour of any Backward Class of citizens which in the opinion of the State is inadequately represented in the services under the State. One important point to be noted in this connection is that the exception provided for, by clause (4), is in favour of any class of citizens and not in favour of individual citizens as such. Therefore, an individual citizen included in a Backward Class named 'A' drawn from the weaker section of one community, cannot come forward with an allegation of discrimination between him and another individual included in a Backward Class named 'B', drawn from another community, if these two classes are drawn in accordance with the principles of reasonable classification adverted to in paragraph 23.

27. Articles 15 and 16—One is more general in its application and the other deals with a limited subject, namely, employment or appointment alone.

Article 16 deals with employment or appointment and nothing else. Article 15 is more general. It deals with every case of discrimination for the advancement of the socially and educationally backward classes of citizens or for the Scheduled Castes/Scheduled Tribes which does not fall expressly under article 16. Hence, although a charge of discrimination may not necessarily fall under article 16, it may still fall under article 15; and will be unconstitutional unless it is saved by one of the saving clauses of article 15. In paragraph 24, we have stated that the social and educational backwardness mentioned in article 15(4) has cumulative effect, and that if a class of citizens is socially backward but not educationally, and vice versa, that class cannot be treated as backward for purposes of
article 15(4), and that, therefore, no special provision for their advancement could be made under article 15(4). It has also been stated therein that the cumulative effect of "social and educational backwardness" posited by article 15(4), is not posited by article 16(4). In Rangachari's case (AIR 1962—S.C.36—V—49—C—6) the Supreme Court has observed as follows:

"For historical reasons which are well known the advancement of socially and educationally backward classes has been treated by the Constitution as a matter of paramount importance, and that they have to be borne in mind in construing article 16(4)"

The Supreme Court has not expressly stated anything about the cumulative effect of social backwardness and educational backwardness, so far as article 16(4) is concerned. Unless otherwise specified, or unless the contrary appears from the context, the word "and" occurring in the expression "socially and educationally backward", used by the Supreme Court in its clarification of article 16(4), will have its natural and ordinary meaning which denotes, "both". In "Sherkhan V. Swami Dayal" (1921—28—C.W.N—79—85—P.C.) it has been held that "the provision of one section cannot be used to defect those of another unless, it is impossible to effect reconciliation between them." The object of articles 15(4) and 16(4) is, broadly speaking, one and the same, namely, advancement for the backward Classes of citizens. There is nothing which prevents us from making reconciliation between the attributes of backwardness under articles 15(4) and 16(4). We therefore consider that under article 16(4) also, the backwardness is not either or educational, but it is both.

28. Analytical study of certain expressions in clause (4) of article 16:

Clause (4) of article 16 reads as follows:

"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 States."

We shall have an analytical study of the expressions underlined above.

(a) "Nothing in article 16 shall prevent the State"

This expression indicates that clause (4) of article 16 is not a mandatory provision, but only a permissive one, enabling the State to act under article 16(4). If the State considers it necessary.
(b) The term "State" occurring in article 16.

For purposes of Part III of the Constitution (in which part, article 16 occurs) the term "the State" is defined, in article 12 of the Constitution, as follows:

"In this part, unless the context otherwise requires, "the State" includes the Government and Parliament of India, the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India."

(c) The term "local authorities" occurring in article 12.

Local authorities are under the exclusive control of the States, and not under the Union, by virtue of entry 5 of List II of the Seventh Schedule to the Constitution. That entry contains a list of some local authorities. In section 3 of the General Clauses Act, 1897, which, according to article 367 of the Constitution, shall be applied for interpreting the Constitution, the term "local authority" is defined as follows:

"Local authority shall mean a Municipal Committee, District Board, body of Port Commissioners, or other authority, legally entitled to, or entrusted by the Government with, the control or management of a Municipal or local fund."

The expression will therefore include a Panchayat, a Port Trust—(vide Court decisions in "Kishan Singh V. State of Punjab—A—1961—Punjab—1(3) F. B. and in "Madras Pinjrapole V. Labour Court—A—1961—Mad—234—239").

(d) The term "other authorities" occurring in article 12.

Other authorities refer to authorities other than those of local self Government, who have the power to make rules, regulations etc., having the force of a law—eg. A Bar Council constituted under the Indian Bar Councils Act, the Devaswom Board, etc., (vide Court decisions in "Namboodiripad Vs. Cochin Devaswom Board—A—1956—T.C—19—21" and in "Basheswar Vs. Income Tax Commissioner—A—1959—S—C—149—158").

(e) The term "all local or other authorities within the territory of India or under the control of the Government of India" occurring in article 12.

According to the Supreme Court, the words, "under the control of the Government of India", control the word, "authorities" and not the word "territory" so that, the expression would read thus: "all local or other authorities within the territory of India or all local or other authorities under the control of the Government of

(f) Object of assigning an enlarged meaning to the expression, "the State" occurring in the various articles in Part III of the Constitution.

From what is stated in (b) to (e) above, it is fairly clear that the expression "the State" occurring in clause (4) of article 16 includes not only the Legislature and the Government but also the "local authorities" and "other authorities". The reason for enlarging the scope of the term "the State" in the manner mentioned above may be seen from the following extract from Dr. Ambedkar's speech in the Constituent Assembly:

"The object of fundamental rights is twofold. Firstly, that every citizen must be in a position to claim those rights. Secondly, they must be binding upon every authority.................. which has got either the power to make laws or the power to have discretion vested in it. Therefore,..................if the fundamental rights are to be clear, they must be binding not only upon the Central Government, they must not only be binding upon the Provincial Government,.............they must also be binding upon District Boards, Municipalities, even Village Panchayals and Taluk Boards, in fact, every authority which has been created by law and which has got certain power to make laws, to make rules or make bye-laws". (vide Constituent Assembly Debates—III—pages 391-2)

(g) Whether the "Local Authorities" and the "Other Authorities" can exercise absolute powers conferred upon the State by clause (4) of article 16.

When the enlarged scope of the expression "the State" occurring in clause (4) of article 16 is applied to the State of Kerala, the term "the State" would include the Government and the Legislature of the State of Kerala and the "Local Authorities" and "Other Authorities" within the territory of the State of Kerala. The term "includes" means, "to enclose", "to comprise as a part", "to take in", "to reckon as a part" etc. In this context, two questions arise: (1) whether the "Local Authorities" or "Other Authorities" as explained in (b) to (e) above, can exercise the power conferred upon "the State", absolutely or independent of the Legislature and this Government, namely, the power to classify the people residing within the respective territorial jurisdiction of the local authorities and other authorities into "backward" and "non-backward" and to decide the question whether reservation of appointments or posts
in the services under those local and other authorities should or should not be made in favour of the Backward Classes, or (ii) whether the Legislative and the Government alone can exercise that power. While replying to the debates in the Constituent Assembly, on matters coming under article 10 of the draft Constitution which corresponds to article 16 of the Constitution, Dr. Ambedkar has stated as follows:

"Somebody asked me: What is a backward community? Well I think, any one who reads the language of the draft itself will find that we have left it to be decided by each local Government. A backward community is a community, which is backward, in the opinion of the Government."

He did not say, as "in the opinion of the Government or of the local authorities or of the other authorities as the case may be," but simply as "in the opinion of the Government" (vide Constituent Assembly debates vol. VII-1-36-1948-49). Again, according to entry No. 5 of List II of the Seventh Schedule to the Constitution, the "Constitution of" and "assignment of powers" to the local authorities in Kerala, are matters coming under the exclusive control of the State of Kerala. Section 6 of the Kerala University Act, 1969, Sections 90 and 367 of the Kerala Municipal Corporations Act, 1961, and the rules made thereunder, section 39 (1) of the Kerala State Financial Corporation Act, etc. etc., also show that the power to lay down policies is vested in the Legislature and that the power to give directives to the local and other authorities, in specified matters, is vested in the Legislature and the Government. A State acts by its legislative, executive and judicial authorities. It can act in no other way. "The executive function comprises both the determination of policy as well as carrying it into execution, the maintenance of law and order, the promotion of social and economic welfare, the direction of foreign policy, in fact, the carrying on, or supervision of the general administration of the State" (vide Rama Jawaya V. State of Punjab-1955-2-S.C.R.-225-236). The word "Government" has been defined to include executive orders of Government or of a Department of Government (vide C. F. Bidi Supply Co. V. Union of India-1956-S. C. R. 267-277). Thus, the laying down of policy, and conferment of powers on local and other authorities are generally within the power of the Legislature and the Government. Thus, the criterion for application of article 12 is whether the "authority" has the power to make "laws" as defined in article 13 of the Constitution, or the power to administer such laws. If any "authority" satisfies this criterion, it is clear that authority is exercising Governmental power under the delegation of powers and, behind its acts thus done, there is the authority of the State. Therefore, we consider that it is not within the exclusive or independent power of the local and other
authorities, themselves, to decide the important policy-cum-administrative question, who are backward classes and whether reservation should or should not be allowed in favour of the Backward Classes. It is in this sense, that we take the word "State" occurring in clause (4) of article 16.

(h) The term “appointments or posts” occurring in article 16 (4)

In Rangachari’s case referred to above, the Supreme Court has stated as follows:—

"Article 16 (2) prohibits discrimination and thus assures the effective enforcement of the fundamental rights of equality, of opportunity guaranteed by article 16(1). The words "in respect of any employment" used in article 16(2) must therefore, include all matters relating to employment as specified in article 16(1). Therefore, promotion to selection posts is included both under article 16(1) and (2)."

The condition precedent for the exercise of the powers conferred by article 16 (4) is that the State ought to be satisfied that any Backward Class of citizens is not adequately represented in its services. This condition precedent may refer either to the numerical inadequacy of representation in the services or even to the qualitative inadequacy of representation. The advancement of the socially and educationally backward classes requires not only that they should have adequate representation in the lowest rung of services but that they should aspire to secure adequate representation in selection posts in the service as well.

(Para 26)—(underlining ours)

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 selection posts.

(Para 27)

(i) The term “any backward class”, occurring in clause (4) of article 16

Certain memorialists and witnesses belonging to the present non-backward communities, have represented to us that, for purposes of article 16 (4), there shall be only one Backward Class in the State. The basis of this representation appears to be that the phraseology used in clause (4) of article 16 is "any Backward Class of citizens" and not "Backward Classes of citizens". On the other hand, certain members of the present Backward Communities who gave evidence
before us expressed their grave concern and fear that if, only one Backward Class is drawn for the State, either from the weaker sections of all the communities or from the weaker sections residing in all the backward areas, the backward sections of the present non-backward communities in the State will snatch away, practically all the appointments in the reserved quota, at the expense of the members of the backward sections of the present backward communities. We consider that there is some force in this representation because educational attainment of the merited order will be necessary for the candidates who complete for appointments, even in the reserved quota. Our experience of life and work in Kerala shows that, for historical reasons, the members of the weaker sections of the present backward communities are not having the same home-atmosphere congenial to educational attainment of the merited order, as the members of the weaker sections of the present non-backward communities. Statistics before us also prove this. Therefore, the former will not be able to stand on their own, and to compete with the latter even in the field of reservation, if reservation is made in favour of a single Backward Class drawn from the weaker sections residing in all the backward areas or from the weaker sections of all the communities in the State put together. If such a thing happens, the object of the Constitution will be frustrated. The argument that there shall be only one Backward Class for the whole State is not correct from the stand-point of interpretation also, for the following reasons:—

If a State should make reservation of appointments or posts, two basic conditions must be satisfied. They are:—

(i) the class of citizens in whose favour reservation is sought to be made shall be backward, and

(ii) the said Backward Class shall be inadequately represented in the services under the State.

Consequently, even if a class is backward, no reservation can be allowed in its favour, if that Backward Class is adequately represented in the services under the State. Keeping these aspects in mind, we will find that the words "any backward class of citizens which is not adequately represented.................", would enable the State, in which there are more Backward Classes than one, to make reservations (i) either individually for any of such classes which is not adequately represented in the services under the State, or (ii) collectively for all such Backward Classes put together. It may be noted that the possibilities of there being more Backward Classes than one, in a State, has not been expressly ruled out by article 16(4). In various decisions of the Supreme Court, e.g., in Rangachari’s case (A.I.R. 1962-SC-36-V-49-C-6) the Supreme Court
has used the term "backward classes" also, in referring to article 16(4). Thus, from the stand-point of interpretation, and with a view to making the provision for reservation really effective, we hold that the expression, "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", would enable the State to make reservation, either individually for each Backward Class, or collectively for all the Backward Classes together. This does not mean that for the same category of purpose or object we are advocating the creation of "Most Backward Class", "More Backward Class" and "Backward Class" by applying different tests for Backwardness. What we mean is, that for the same category of purpose or object, Backward Classes may be delineated by applying the same test, same norm and same method, but when we draw Backward Classes in that way, it may so happen that the Backward Classes may differ from one another so far as their population and the extent of their backwardness are concerned. In such cases different quantum of reservation can be assigned to each, consistent with its population and the extent of its backwardness. That is what we mean by the portion underlined above. The question whether different Backward Classes could be drawn for widely different categories of purposes, by applying different tests, has been discussed in Chapter IX.

(j) The term "backward" occurring in article 16(4)

"Backward" is a relative term. It has not been defined in the Constitution. In his reply to the debates in the Constituent Assembly, on clause (3) of article 10 of the Draft Constitution, which corresponds to clause (4) of article 16 of the Constitution, just before the Assembly's final voting on the said article 10, Dr. B. R. Ambedkar stated as follows:

"Now, Sir, to come to the other question which has been agitating the members of this House, viz., the use of the word "backward" in clause (3) of article 10, I should like to begin by making some general observations so that members might be in a position to understand the exact import, the significance and the necessity for using the word "backward" in this particular clause. If members were to try and exchange their views on this subject, they will find that 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 limitations, 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, 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. If honourable members will bear these facts in mind—the three principles, we had to reconcile—they will see that no better formula could be produced than the one that is embodied in sub-clause (3) of article 10 of the Constitution; they will find that the view of those who believe and hold that there shall be equality of opportunity, has been embodied in sub-clause (1) of article 10. It is a generic principle. At the same time, as I said, we had to reconcile this formula with the demand made by certain communities that the administration which has now—for historical reasons—been controlled by one community or a few communities, that situation should disappear and that the others also must have an opportunity of getting into the public services. 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 per cent of the total posts under the State and only 30 per cent are retained as the unreserved. Could anybody say that the reservation of 30 per cent 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 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 some 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. But I think honourable members will realise that the Drafting Committee which has been ridiculed on more than one ground for producing sometimes a loose draft. Sometimes something which is not appropriate and so on, might have opened itself to further attack that they produced a Draft Constitution in which the exception was so large, that it left no room for the rule to operate. I think this is sufficient to justify why the word 'backward' has been used.

With regard to the minorities, there is a special reference to that in article 296, where it has been laid down that some provision will be made with regard to the minorities. Of course, we did not lay down any proportion. That is quite clear from the section itself, but we have not altogether omitted the minorities from consideration. Somebody asked me: "What is a backward community"? Well, I think any one who reads the language of the draft itself will find that we have left it to be determined by each local Government. A Backward Community is a community which is backward in the opinion of the Government. My honourable friend, Mr. T. T. Krishnamachari asked me whether this rule will be justiciable. It is rather difficult to give a dogmatic answer. Personally I think it would be a justiciable matter. If the local Government included in this category of reservations such a large number of seats. I think one could very well go to the Federal Court and the Supreme Court and say that the reservation is of such a magnitude that the rule regarding equality of opportunity has been destroyed and the court will then come to the conclusion whether the local Government or the State Government has acted in a reasonable and prudent manner. Mr. Krishnamachari asked: "Who is a reasonable man and who is a prudent man? These are matters of litigation, but my honourable friend, Mr. Krishnamachari will understand that the words "reasonable persons and prudent
persons" have been used in very many laws and if he will refer only to the Transfer of Property Act, he will find that in very many cases the words "a reasonable person and a prudent person" have very well been defined and the court will not find any difficulty in defining it. I hope, therefore that the amendments which I have accepted, will be accepted by the House."


The quist of the above speech is that (i) the term "backward" was not present in clause (3) of article 10 of the Draft Constitution, (ii) that the Drafting Committee undertook on its own shoulders the responsibility of introducing the word "backward" which did not originally find a place in the Fundamental Rights, (iii) that the reason why the term "backward" was introduced in clause (3) of the said article 10, was that if the word "backward" was not there, clause (3) would eat up clauses (1) and (2) altogether, (iv) that a backward community is a community which is backward in the opinion of a local Government, and (v) that reservation to be made in favour of Backward Classes which are not adequately represented in the services under the State, should be of a minority of seats.

In the circumstances, Backward Classes will have to be found out by applying the relevant tests, bearing in mind, the general principles of classification already adverted to above.

(k) The term "class" occurring in article 16 (4)

The expression "class" occurring in article 16 (4) has not been defined in the Constitution. In Balaji's case (AIR-1963-S.C. 649-V-50-C-101) the Supreme Court observed that a "class" according to Dictionary meaning, showed division of society according to status, rank, or caste, and that a "class" could not be equated to "caste". In Chitrakshetra's case (AIR 1964-S.C. 1823) the Supreme Court has observed that if we take a caste in a State, which is numerically the largest therein, we would find that though a majority of the people in that caste are socially and educationally backward, an effective minority of that caste may be socially and educationally far more advanced than another small sub-caste the total number of which is far less than the said minority. The Court also observed as follows:—

"If we interpret the expression "classes" as "castes", the object of the Constitution would be frustrated and the people who do not deserve any adventitious aid may get it to the exclusion of those who really deserve, and that the anomaly would not arise, if, without equating "caste" with "class", caste is taken only as one of the relevant considerations to ascertain whether a person belongs to a Backward Class or not. If the entire sub-caste, by and large, is backward,
it may be included in the Scheduled Castes by following the appropriate procedure laid down in article 341 of the Constitution. In other words, the portion underlined above means that, "the possibility of there being non-backward or advanced sections large or small, in the so-called backward communities, cannot be ruled out, and that if there are such sections no reservation can be made in favour of the members of those sections". Similarly, "the possibility of there being backward or non-advanced sections in the so-called forward communities, cannot be ignored, and there is no reason why the benefit of reservation should not go to members of those sections, if those sections are not adequately represented in the services under the State". The above aspect has been expressly stated by the High Court of Kerala in its decision in O.P. No. 2860/1964. Thus a "caste/community" cannot be equated to a "class" for purposes of article 16 (4) unless the caste/community as a whole is socially and educationally backward. And, if a caste/community as a whole is not socially and educationally backward, only the weaker sections in each caste or community or group of communities can be treated as "class" for purposes of article 16(4). It was for the first time that the Supreme Court defined the term "class" in P. Sagar's case (AIR-1968-S.C. 1379), as follows:

"In the context in which it occurs the expression "class" means a homogeneous section of the people grouped together because of certain likenesses or common traits and who are identifiable by some common attributes such as status, rank, occupation, residence in a locality, race, religion and the like".

The above definition of the expression, "class" was repeated by the Supreme Court in Trilokinath Tikoo's case (AIR-1969-S.C.-1-V-56-C).

From the above definition of the term "class" we find:

1. that a "class" means a homogeneous section of the people grouped together.

2. that the grouping of the people into a section should not be in any manner we like but should be on the basis of certain likenesses or common traits; and

3. that the people so grouped together into a homogeneous section, must be identifiable by some common attributes such as status, rank, occupation, residence in a locality, race, religion and the like.

In this context, the following questions arise:

(i) whether the people grouped together into a section should be homogeneous with scientific perfection in each and every detail.

(ii) whether the people in a section must be identifiable by a combination of all the attributes such as status, rank.
occupation, residence in a locality, race, religion and the like, or

(iii) whether it is enough if one or other of the attributes is present for identification.

First, we shall deal with the question of homogeneity. It has been held that, in any classification, the principle of equal protection of laws does not insist that the classification should be scientifically perfect or logically complete. We therefore, take that the first condition of homogeneity, does not insist on mathematical or scientific perfection or logical completeness. The second and third questions are whether, a combination of all the attributes is necessary for identification or whether it is enough if one or other of the several attributes are present for identification. If it is insisted that a combination of all the attributes is necessary, it will be seen that this test would break down so far as conditions obtaining in Kerala are concerned, because "residence in a locality" and "religion", or "residence in a locality" and "occupation", or "residence in a locality" and "rank" cannot be satisfied simultaneously. Other combinations also of the said attributes, will create similar difficulties. We see three words governing the point under consideration. They are:

(a) "likenesses" (Plural sense)

(b) "some" (which means "one or other", "in an indefinite number or quantity", "a little", "not a little", "considerable", "a certain", "certain unspecified", "several", "a few", "approximate number, length etc.")

(c) "and". This is concomitant with a plural concept unless it is interpreted as meaning "or".

The use of the words "likenesses" and the word "and" denotes plural concepts, but the word "some" has both the singular and plural concepts. Therefore, the definition of the word "class" has, as a whole, a plural concept, so far as the attributes for identifiability are concerned. But there is no indication that a combination of all conceivable attributes is necessary for identifiability of people included in a "class". In view of the difficulties pointed out above, it appears to us, that what is intended by the Supreme Court is that a combination of all the conceivable attributes is not necessary for identifiability, and that it may be enough if a considerable number of such attributes is present.

(1) The terms, "in the opinion of the State" and "not adequately represented"

In paras 26 and 28 of the Supreme Court decision in Rangachari's Case (AIR-1962-S.C.36-V-49-C0), it has been stated as follows:—

"The condition precedent for the exercise of the powers conferred by article 16 (4) is that the State ought to be satisfied that
any Backward Class of citizens is not adequately represented in
its services. This condition precedent may refer either to the
numerical inadequacy of representation in the services or
even to the qualitative inadequacy of representation. The
advancement of the socially and educationally Backward
Classes requires not only that they should have adequate repre-
sentation in the lowest rung of services but that they should
aspire to secure adequate representation in selection posts in the
service as well. In the context the expression "adequately re-
presented" imports considerations of "size", as well as "values",
"number" as well as "the nature of appointments" held, so it
involves not merely the numerical test but also the qualitative one.
It is thus by the operation of the numerical and the qualitative
test that the adequacy or otherwise of the representation of
Backward Classes in any service has to be judged, and if that be
so, it would not be reasonable to hold that the inadequacy
of representation can and must be cured only by reserving a pro-
portionately higher percentage of appointments at the initial
stage. In a given case the State may well take the view that
a certain percentage of selection posts should also be reserved,
for reservation of such posts may make the representation of
Backward Classes in the services adequate, the adequacy of
such representation being considered qualitatively. If it is con-
ceded that "posts" in the context refer to posts in the services
and that selection posts may be reserved but should be filled only
in the manner suggested by the respondent, then we see no
reason for holding that reservation of selection posts cannot
be implemented by promoting suitable members of Backward
Class of citizens to such posts as the circulars intended to
do............................" "On the other hand, under the con-
struction by which the word "posts" includes selection posts
the use of the word "posts" is not superfluous but serves a very
important purpose. It shows that reservation can be made not
only in regard to appointments which are initial appointments
but also in regard to selection posts which may fall to be filled
by employees after their employment .........................
Therefore, we are disposed to take the view 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 pro-
viding for reservation of appointments, but also by providing
for reservation of selection posts. In exercising the power under article 16(4) the problem of adequate representation of the Backward Class of citizens must be fairly and objectively considered.

The points that we have to note from the above are:

(i) that the "adequacy" involves not merely the numerical test but also the qualitative one, and that the State may, in a proper case, reserve a reasonable percentage of initial appointments, by direct recruitment, and also of appointments by promotion to selection posts which fall to be filled up by employees after their employment, and

(ii) that the opinion of the State regarding adequacy should be formed by applying its mind, on a fair and objective basis, and that subjective satisfaction will not be enough.

(m) Limit to reservation under article 16(4)—Extent of reservation should not exceed 50%.

In paragraph 18 of the Supreme Court decision in Devadasan's case (AIR 1964-S.C.179-V-51-C-16) it has been held that reservation of vacancies in excess of 50% would not be constitutional.
CHAPTER V

WRITTEN MEMORANDA AND ORAL EVIDENCE—
SUGGESTIONS MADE BY ORGANISATIONS AND
INDIVIDUALS

20. Written Memoranda:

Three hundred and sixty written Memoranda were received by
us from individuals and organisations. The names of the memo-
rialists are given in Appendix (IV). Some of the representations
made by organisations and individuals are seen to be similar.
Therefore, we have categorised the representations. The gist of the
various categorise of representation, is given in column (2) and our
decisions thereon in column (3) below:

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>List of representations</th>
<th>Commission's decisions</th>
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<tbody>
<tr>
<td>(1)</td>
<td>that, the population of the converts from Scheduled Castes to Christianity in 1931 should be reckoned as more than 5 lakhs, because their population according to the census of 1931 was 2,51,515.</td>
<td>(1) In the Census Reports of Cochin or Travancore or Malabar for 1931 and 1941 we could not see the figures of population of the converts from Scheduled Castes. The population of Latin Catholics, Syrian Catholics, etc., has been estimated separately for each. The population of Scheduled Castes converts cannot be estimated correctly because they are found to some extent in all denominations of Christianity. Further a considerable number of Scheduled Castes converts in the erstwhile Travancore-Cochin State were added to the population of the erstwhile Madras State consequent on the reorganisation of States in 1956. For these reasons, we are unable to accept this representation. As in the case of all other communities we will be reckoning the population of Scheduled Castes converts on the basis of the sample survey report of 1968.</td>
</tr>
</tbody>
</table>
(2) The point stressed in the memorandum is that the population of Viswakarmas as in 1961 should be reckoned as 10.25 lakhs, having regard to their growth-rate evidenced by the Malabar Census Reports of 1881 and 1921, and the Cochin Census Reports of 1921 and 1941 and the Travancore Census Reports of 1921, 1931 and 1941. To illustrate this, they have furnished the following figures:

<table>
<thead>
<tr>
<th>Year of Census</th>
<th>Population of Viswakarmas</th>
<th>Population of the erstwhile States of Travancore or Cochin or the Malabar District as the case may be</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) Travancore</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1921</td>
<td>163,724</td>
<td>4,006,062</td>
</tr>
<tr>
<td>1931</td>
<td>208,441</td>
<td>5,095,973</td>
</tr>
<tr>
<td>1941</td>
<td>256,673</td>
<td>6,070,018</td>
</tr>
<tr>
<td>(b) Cochin</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1921</td>
<td>35,017</td>
<td>979,080</td>
</tr>
<tr>
<td>1941</td>
<td>55,418</td>
<td>1,422,875</td>
</tr>
<tr>
<td>(c) Malabar</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1881</td>
<td>51,553</td>
<td>2,043,178</td>
</tr>
</tbody>
</table>

They say that the above figures show that when the percentage of the average increase of all communities in Travancore for the two decades from 1921 to 1941 was 51.57, the increase in respect of the Viswakarma community has been 56.21, and that, in Cochin State, when the percentage of average increase from 1921 to 1941 was 45.50, the increase of that of the Viswakarma community was 54.29. They have also stated that on the basis of the 1881 Census Report, the increase in population of the erstwhile Malabar Dist. in 1921 was 110%, and that the number of members of the Viswakarma community who went to Madras as a result of the States Reorganisation was 24,775. So, when calculated on the basis of the population of 1941 Travancore and Cochin Census Reports and 1921 Madras Census Report adopting the fertility surveys furnished therein, the population of Viswakarma community in the State of Kerala (excluding the Taluks merged in Madras), in 1961 would be
according to the memorialists 10.25 lakhs. The total population of Viswakarmalas in 1941 in the taluks of Agastheeswaram, Kalkulam, Vilavancode, Thovala and Shenjottai was 26,470 and not 24,775 as mentioned in the memorandum. As these five taluks were transferred to the erstwhile State of Madras with effect from 1-11-1956 the difference between 26,470 and 24,775 has to be taken care of in calculating the 1961 population of Viswakarmalas. The memorialists have depended on the fertility rate and the percentage of average increase from 1921 to 1941 in the case of Travancore and Cochin and from 1881 to 1921 in the case of the erstwhile Malabar District. They seem to have applied these basic figures for projecting the 1961 population. There are no community-wise population figures in the Malabar Census Report from 1941 onwards, and in the Travancore Census Report and Cochin Census Report from 1951 onwards. We give below a table of the decennial increase of population of selected communities:

<table>
<thead>
<tr>
<th>Name of community</th>
<th>Decennial increase in population</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1911-1921</td>
</tr>
<tr>
<td>Ezhava (Travancore)</td>
<td>22.3%</td>
</tr>
<tr>
<td>Ezhava (Cochin)</td>
<td>7.5%</td>
</tr>
<tr>
<td>Nair (Travancore)</td>
<td>16.5%</td>
</tr>
<tr>
<td>Nair (Cochin)</td>
<td>8.1%</td>
</tr>
<tr>
<td>Kammala (Travancore)</td>
<td>15.8%</td>
</tr>
<tr>
<td>Kammala (Cochin)</td>
<td>3.9%</td>
</tr>
<tr>
<td>Muslim (Travancore)</td>
<td>19.4%</td>
</tr>
<tr>
<td>Muslim (Cochin)</td>
<td>7.7%</td>
</tr>
<tr>
<td>Xians (Travancore)</td>
<td>29.6%</td>
</tr>
<tr>
<td>Xians (Cochin)</td>
<td>12.7%</td>
</tr>
</tbody>
</table>

From the above table it may be seen that even in the case of Viswakarmas, there is no regular progression in the growth-rate of the community and the method, adopted by the memorialists, of applying the decennial growth rate or even the index of fertility surveys of 1941 for the entire period subsequent to 1941 is not at all scientific. Therefore, the memorialists' demand to correct their estimated population as in 1961 as 10.25 lakhs, is not convincing, and cannot therefore be accepted.

The population of the Viswakarma community in 1964 as estimated in the sample survey of 1964 was 6.25 lakhs'
and that, as estimated in the sample survey report of 1968 is 7.56 lakhs. These two figures are fairly consistent. Therefore, we consider that the statistics in sample survey report of 1968 will be accepted by this Commission in respect of all communities in the State including Viswakarmas.

(3) This Commission will be reckoning the population figures of all communities on the basis of the estimates of community-wise population, given in the sample survey report, 1968.

(4) In the meanwhile Travancore and Cochin States, the last census report containing community-wise population figures, is the census report of 1941 and not of 1951. But in the Malabar area the latest census report containing community-wise population figures is the 1931 census report. Therefore the statement of the memorialists that the latest Community-wise figures available are those obtained in the census report of 1951 is not correct. In estimating the total population of Latin Catholics at 1,015,741, based on the population figures collected from the Bishops' Houses, the memorialists have not excluded the population of the Anglo Indians and the converts from Scheduled Castes who belong to the Latin Catholic denomination. But the population of Latin Catholics, as estimated in the sample survey report of 1968, does not include the population of Anglo-Indians and the converts from Sch. caste to the Latin Catholic church. The population of Latin Catholics excluding Anglo-Indians and converts from Scheduled Castes to Xianity is only 7.31 lakhs according to the sample survey report of 1968. When we add the population of Anglo-Indians and that of the converts from Sch. Caste to the Latin Catholic church to the sample survey estimate of 7.31 lakhs, it will be found that the difference between the church figures and the sample survey figures is very little. The Commission has taken the figures of population of each community, as estimated in the sample survey, 1968.
(5) that, "caste" is not synonymous with "class", that classification of citizens into backward and non-backward on the basis of cast is against the spirit of the Constitution and tends only to recognize and perpetuate cast distinctions that reservation on the basis of cast and Community enjoyed by certain communities for the last 18 years and more has resulted in denial of opportunity and justice to deserving persons simply for the reason that they are not born of parents belonging to communities which are branded as backward, that the Nair Service Society has been pointing out this injustice and discrimination by resolutions passed in conferences and representations to Govt: that the injustice and discrimination involved in the reservation allowed to these so-called backward classes have come up for criticism and condemnation in judicial pronouncements of the Kerala High Court and also of the other High Courts and Supreme Court; that the demands to the popular Governments of the State from time to time to rectify the mistake and chalk out a correct line as contemplated in the Constitution have only proved abortive; that it is high time that the present system of reservation for backward classes other than Sch. Castes and Sch. Tribes on the basis of caste and community be scrapped and backwardness for purposes of Article 16 (4) of the Constitution shall be determined on the basis of economic backwardness only.

(6) that, reservation has been continuing for the last 35 years, that members of the backward communities have come up in large numbers from the Engineering, Medical etc. colleges, that many of these backward communities have got excessive representation in the services and that, therefore, the system of reservation of appointments in the public service should be discontinued forthwith. It will be enough if the poor students belonging to all communities in the State are given financial assistance for their education.

(7) that, it is not scientific to give reservation of appointments or posts on economic basis, under Article 16 (4)—Economic should not be a factor at all.

(5) The points raised by the Memorialists have been dealt with in Chapters VII and VIII.

(6) The question of financial assistance to poor students is outside the terms of reference. With regard to the suggestion for stopping the system of reservation forthwith, please see the chapters VIII and IX.

(7) Please see Chapters VII and VIII.
(8) that, the criteria for classification of citizens into “backward” and “non-backward” should be “caste” and “caste” alone, because, “caste” is still a social and educational depressant, and communities like Ezhavas and Thiyyas, by and large, are still hampered by the absence of educational background and the handicaps attached to “caste”.

(9) that, in the background of historical reasons of India, the Constitution makers when they used the word “class” in clause (4) of article 15 and article 16 meant only certain castes or communities. Hence “caste” can reasonably be equated with “class”.

(10) that, any attempt to interpret article 15(4) and article 16(4) of the Constitution with reference to economic backwardness is really something alien to the Articles. That was not the intention of the Constitution makers. The articles contemplate preferential treatment to such of those weaker sections who, owing to historical reasons of caste or religion were not allowed to progress like the other sections of the society. To eradicate economic backwardness of particular sections, other legislative measures are necessary.

(11) that, social backwardness leads to educational backwardness, educational backwardness lead to social backwardness and both these two kinds of backwardness cause economic backwardness. So in classifying citizens into backward and non-backward, all these three aspects may have to be considered.

(12) that, the progressive sections of the citizens of the State should either be excluded from the benefit of reservation or their percentage of reservation should be reduced.

(13) that, because parents in the Latin Catholic families are generally uneducated, and because there is lack of home atmosphere congenial to education, this community is not able to offer candidates against recruitment-requisites of the Public Service Commission for higher posts. For the quota thus lost, or the turns passed over, from time to time, the Latin Catholics may be compensated by:

(8) Please see Chapter VII.

(9) “Caste” can be equated with “Class” only if the caste as a whole, is socially and educationally backward (vide AIR-1968-S.C.-1012 and AIR 1968-S.C-1379)

(10) Please see Chapters VII and VIII.

(11) Please see Chapter VII.

(12) Please see Chapters VII, VIII and IX.
<p>| | | |</p>
<table>
<thead>
<tr>
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</thead>
<tbody>
<tr>
<td>(1)</td>
<td>(2)</td>
<td>(3)</td>
</tr>
<tr>
<td>(a) recruiting members of the Latin Catholics community who are already in service and occupying lower posts to higher grades directly if they have the minimum qualification prescribed for the post.</td>
<td>(13) Request No. (a), is, in effect, a request for applying principles of reservation in the field of promotion also. This has been examined in Chapter IX.</td>
<td>(b) Please see Chapters VIII and IX.</td>
</tr>
<tr>
<td>(b) enhancing the quota fixed for the Latin Catholics in the public services proportionate to their population.</td>
<td>(14) This is not possible because the very object of fixing economic limit is to exclude the progressed sections of each community from the field of reservation and to draw backward classes from the weaker sections of all communities.</td>
<td>(15) Factors (1) to (4) have not the required rational relation directly to the object of article 16 (4). Factor No. (5) may be relevant.</td>
</tr>
<tr>
<td>(13)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(14) that, income limit should not be fixed as a qualification for applying for appointments in the reservation quota and that if the Commission feels it proper to fix income ceiling, it is suggested that the selected candidates from backward classes shall be grouped into two categories viz., (a) candidates who come within the income limits, and (b) candidates who do not come within the income limits. The concession shall first be given to the candidate belonging to the first group. If sufficient number of candidates are not available in that group to fill up the prescribed quota, candidates from the second group shall be considered.</td>
<td></td>
<td>(16) Please see Chapter VII.</td>
</tr>
<tr>
<td>(15) that, the basis of classification of citizens into backward and non-backward should be the number of representatives from each community in public bodies such as (1) M.P.s., (2) M.L.A.s. (3) Municipal Councillors, (4) Panchayat members and (5) Doctors, Engineers, Judges, College Lecturers, Secretaries to Government etc.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(16) that, “caste” and “occupational stigma” should be the criteria for classification of citizens into backward and non-backward, because even today caste of a section plays a major part in determining their social status, and occupations like washing clothes, toddy-tapping etc., carry their social stigma from one generation to another.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(17) that, all those who follow occupation of fishing should be given reservation of appointments.</td>
<td></td>
<td>(17) Please see Chapter VII.</td>
</tr>
<tr>
<td>(18) that, the factors for classification should be “economic”, “land owned” and “land possessed” and “appropriation of appointments”</td>
<td></td>
<td>(18) Please see Chapter VII.</td>
</tr>
</tbody>
</table>
(19) This is against the Constitutional provisions in articles 16(1) and 16(2). The request is not covered by the limited exception provided for by article 16(4).

(20) The case of the Ezhavas and Thiyas of Kerala as a whole has been taken into consideration for purposes of classification and for assessment adequacy of representation of the backward section thereof.

(21) Please see Chapters VII and VIII.

(22) Please see Chapters VIII & IX.

(23) Please see Chapter IX.

(24) As the subject matter of enquiry is related to appointments, the levels of education to be taken into account will, normally, be the levels of minimum educational qualifications prescribed for the majority of appointments. The level of University degree will be one among them.

(25) The question of backwardness and its extent will be determined on an objective basis, by applying the relevant tests. The term “literacy” means the condition of being literate. The expression “literate” includes all those who are able to read and write and all educated persons without a University degree. Therefore, S.S.L.C. holders and undergraduates also come under the term “literate”. Please also see Chapters VII and VIII.

that, the system of open competition should be abolished forthwith and all jobs should be distributed among the various communities in the proportion of their population.

that, economic, social and educational backwardness and the poor representation in the services under the State, of the Ezhavas of the Palghat, Alathur and Chittur Taluks may be taken into consideration and they may be retained in the list of backward classes.

that, if the Commission considers that “economic” should also be one of the factors for classification of citizens into backward and non-backward, then, the members of those families whose aggregate annual income is below Rs. 10,000 should be treated as backward.

that, appointments in all branches of employment which are not now under the Public Service Commission should be made on the basis of reservation of the level and in the manner now in existence.

that, in addition to reservation quota for Latin Catholics, they may be allowed to complete in the open merit pool.

that, the level of education at which the educational backwardness has to be assessed may be “University Degrees”.

that, whatever criteria are applied for classification, Muslims will be found to be very backward and that the educational backwardness of the various classes of citizens should be assessed taking into consideration the educational attainment at the levels of S.S.L.C. and graduation and not at the level of literacy.
(26) that, the order of precedence, in reckoning and giving weight to backwardness of the reserved classes should not be descending, like the one from Ezhavas, Muslims, Latin Catholics, etc., but should be ascending like the one from Sch. castes converts to Christianity, Latin Catholics etc.

(27) that, the following communities may be included in the Scheduled Castes:

| (a) | Thachan (Thalshhan) community |
| (b) | Converts from Sch. castes |
| (c) | Pandithars, Tamil Pandithars, Vilakkithala Nairs, Ezhavathy, Arayavathy, Kavuthiyam, Maruthvar, Thiyavathy, Naduthon, Aduthon, Osan whose traditional occupation is hair-cutting and shaving |
| (d) | Chavalakkaran |
| (e) | Chemmar |
| (f) | Kusavan, Kulala, Velaar, Kumbaran, Odan etc., communities whose traditional occupation is pot-making. |
| (g) | Malay Panicker |
| (h) | Velavaidya |
| (i) | Perumannans of Malabar area |
| (j) | Kaniyan |
| (k) | Vanika Valsya |
| (l) | Vaduga, Veerasiva |
| (m) | Boyan or Naicken |
| (n) | Arayas, Muggan, Makkuyan, Marakkan and Arayapanicker, Valan |
| (o) | Malayans of Kasaragode Taluk |
| (p) | Veluthedathu Nair |
| (q) | Hindu Nadar |

(28) that, the following communities may be given all the concessions allowed to Scheduled Castes:

| (a) | Converts from Sch. Castes |
| (b) | Viswakarmalas |

The order of precedence, in reckoning and giving weight to backwardness of the backward classes will be commensurate with the extent of backwardness, the degree of adequacy of representation and the population of the backward sections of the various communities or groups of communities.

This is outside the purview of this Commission.
(c) Pandithars, Tamil Pandithars, Vilakkithala Nairs, Ezhavathy, Arayavathy, Kavuthiyam, Maruthuvur, Thiyavathy, Neduthon, Aduthon, Ossan whose traditional occupation is hair-cutting and shaving

(d) Kusavan, Kulala, Velaar, Kumbaran, Odan etc., communities whose traditional occupation is pot-making

(e) Vanika Vaisya

(f) Veerasaiva

(g) Chakkamar

(h) Pattarya, Chaliyan, Thanthuvayan Chetti, Chettiyan (Chaliya Chettiyan)

(i) Ulladans of all Districts in Kerala

(j) Illathar (Tamil Ezhuvia, Illa Vellar, Illathu Pillai)

(k) Yadavas

(29) that the following communities may be included in the list of Other Backward Classes: (29) Please see Chapter VIII.

(a) Kumarakshatriya community

(b) Vilkurup community of Malabar area

(30) that, each of the following communities may be treated as separate class and each may be given separate percentage of reservation. (30) Please see Chapter VI.

(a) Thachan (Thakshan)

(b) Pandithars

(c) Ezhuthachan

(d) Vanika Vaisya

(e) Anglo-Indians

(f) Vannan
(31) that, the existing total quantum of reservation in favour of the backward classes other than Scheduled Castes and Scheduled Tribes should be raised. The following are the categories of suggestions made by memorialists:

(a) from 40% to 50%
(b) " to 60%
(c) " to 65%
(d) " to 70%
(e) " to 80%

(32) that, the separate percentage of reservation enjoyed by the Viswakarmalas prior to 1958 may be revived and an enhanced percentage of reservation for which they are eligible, should be assigned to them.

(33) that, reservation should be proportionate to the population of each community in the technical institutions and public services.

(34) that, a special quota of posts such as those borne on the Engineering establishment may be given to the Viswakarma community, the members of which have a special aptitude and the technical know-how, for the efficient handling of the duties of those posts.

(35) that, the Constitution should be amended to distribute appointments in the proportion of population of each community.

(36) that, proportionate representation should be given to Ezhava community in all the Government institutions (State and Central), quasi Government institutions and other concerns under the control of Government in which Government have interest, and priesthood in temples disregarding caste.

(31) These representations will go against the intention of the Constitution makers, and the various decisions of the Supreme Court on matters coming under article 16(4), namely that a “Special provision under, articles 16(4) should not be above 50%”.

(32) The backward class in which the Viswakarmalas, Vilkurup, etc., are included will be given separate quota of reservation.

(33) The population of the weaker sections of groups of communities which are inadequately represented in the services under the State (and not the entire population of each of the communities in particular sectors) can be taken as one of the relevant factors to be reckoned in deciding the quantum of reservation.

(34) This is outside the purview of this Commission.

(35) This is not within the purview of this Commission.

(36) The request regarding representation to each class of citizens in proportion to the entire population of such community is against the constitutional provisions. The question of reservation of appointments or posts in Government owned and Government controlled institutions etc., in favour of backward classes has been examined in Chapters IV, VIII and IX.
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<tr>
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<tbody>
<tr>
<td>(37)</td>
<td>that, 75% of all appointments in the services under the Kerala State and the Central Government may be reserved for the Harijans.</td>
<td>(37)</td>
</tr>
<tr>
<td>(38)</td>
<td>that, the percentage of reservation for Scheduled Castes and Scheduled Tribes may be raised from 10 to 25%</td>
<td>(38)</td>
</tr>
<tr>
<td>(39)</td>
<td>that the Muslims are more backward than the Harijans in certain respects, that their representation in the services is far below their population ratio, and that the percentage of reservation may be re-fixed as follows:</td>
<td>(39)</td>
</tr>
<tr>
<td>(a)</td>
<td>Scheduled Castes and Scheduled Tribes</td>
<td>10%</td>
</tr>
<tr>
<td>(b)</td>
<td>Muslims</td>
<td>20%</td>
</tr>
<tr>
<td>(c)</td>
<td>Elavas and Thiyyas</td>
<td>25%</td>
</tr>
<tr>
<td>(d)</td>
<td>Latin Catholics etc.</td>
<td>8%</td>
</tr>
<tr>
<td>(e)</td>
<td>Xiian converts from Harijans</td>
<td>2%</td>
</tr>
<tr>
<td>(f)</td>
<td>Other Backward Classes</td>
<td>10%</td>
</tr>
<tr>
<td>(g)</td>
<td>Open competition</td>
<td>25%</td>
</tr>
<tr>
<td>(40)</td>
<td>that, reservation in favour of all communities should be abolished after 5 years except in the case of Scheduled Castes and Scheduled Tribes.</td>
<td>(40)</td>
</tr>
<tr>
<td>(41)</td>
<td>that, it is not necessary to put a particular period for which reservation should continue. It is necessary to continue reservation on the basis of proportional representation to each community until the wide gulf between the existing backward communities and forward communities in the matter of securing higher appointments is bridged.</td>
<td>(41)</td>
</tr>
<tr>
<td>(42)</td>
<td>that, reservation of appointments in the services under the State should be continued until the backward communities reach the level of the forward communities in the matter of securing appointments.</td>
<td>(42)</td>
</tr>
<tr>
<td>(43)</td>
<td>that, reservation may be continued for an indefinite period till the economic and educational position of the backward classes improve.</td>
<td>(43)</td>
</tr>
<tr>
<td>(44)</td>
<td>that, reservation should continue till the social and other backwardness is removed</td>
<td>(44)</td>
</tr>
</tbody>
</table>
(45) that, considerable time will be necessary to rescue the victims of age-long social injustice, like Ezhavas and Thiyas. Therefore, reservation should continue till backward communities reach the level of the forward communities.

(46) that, reservation should be continued till economic socialism is established.

(47) that the opinion expressed by the Supreme Court in Balaji’s case that, “social backwardness is, in the ultimate analysis, the result of ‘poverty to a very large extent’, applies to the Latin Catholic community also. So the original idea for fixing the percentage of reservation for each backward community, below the proportionate quota which that community was entitled to, on the basis of its population, was that along with the candidates of the community getting selected on merit basis to open vacancies also, a fair proportionate quota for that community could be secured. But, so far as the Latin Catholic community is concerned, the practical working of the scheme has shown that the chances of Latin Catholic candidates getting selected against open vacancies on the basis of merit is almost nil, and that candidates from this community were not selected to the I.A.S. I.P.S. etc., cadres, either by direct recruitment or by promotion. Hence justice demands the continuance of reservation of appointments to Latin Catholics for another 2 or 3 decades.

(48) that, reservation may continue for the following periods.

(a) 10 years (d) 25 years
(b) 15 " (e) 30 "
(c) 20 " (f) 100 "

and the position may be reviewed after that.

(49) that, the principle of reservation of initial appointments by direct recruitment, may be made applicable to appointments by promotion also, whether the promotion be to selection posts or non-selection posts in the services under the Government.
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<tbody>
<tr>
<td>(50)</td>
<td>that, the principles of reservation of appointments may be made applicable, not only to all appointments in the services under the Government, but also to the appointments in the services under the ‘Industrial concerns’, ‘Local authorities’ ‘Corporations’, ‘Bodies’ and ‘Companies’</td>
<td>(50) Please see Chapters IV and IX</td>
</tr>
<tr>
<td>(51)</td>
<td>that, the present assignment of “turns” for Scheduled Castes and Scheduled Tribes, may be changed and they may be given the 2nd, 6th, 12th and 20th “turns” in a cycle of twenty.</td>
<td>(51) Please see Chapter IX</td>
</tr>
<tr>
<td>(52)</td>
<td>that, the fourth or fifth appointments in a cycle of 20 may be assigned to the Viswakarmalas.</td>
<td>do.</td>
</tr>
<tr>
<td>(53)</td>
<td>that, when the claims of the Viswakarma community are passed over for want of suitable candidates, the carry-forward rule and the principle of reservation of vacancies within a period of three years may be applied.</td>
<td>do.</td>
</tr>
<tr>
<td>(54)</td>
<td>that, the Public Service Commission rules may be amended in order to enable the backward classes to get appointments to vacancies reserved for Scheduled Castes and Scheduled Tribes whenever candidates from such castes and tribes are not available</td>
<td>do.</td>
</tr>
<tr>
<td>(55)</td>
<td>that, the Vanika Vaisya Community which owing to any reason, is not able to get appointments on each occasion on which the Public Service Commission makes advice for recruitment, should be given appointment in the next occasion</td>
<td>do.</td>
</tr>
<tr>
<td>(56)</td>
<td>that, at present Mukkuvas of Vallayil, Mahe, Chali and Gopalpettah in Malabar area who are fishermen following Roman (Latin) Catholic faith are not given any of the concessions enjoyed by their counter-parts in the T-C area. So they may be given such privileges and benefits.</td>
<td>(56) They stand absorbed and reckoned under Latin Catholics and are eligible for all kinds of “concessions, “Privileges” and “benefits” for which the Backward Class of Latin Catholics is eligible.</td>
</tr>
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(57) that, the present classification of citizens as Scheduled Castes and Scheduled Tribes in certain areas and as Other Backward Classes in certain other areas may be abolished and classification may be made applicable throughout the State in the case of Scheduled Castes & Scheduled Tribes.

(58) This is accepted.

(59) that, the Latin Catholics should not be clubbed with Anglo Indians and SIUC for purposes of classification and for allotment of reservation quota.

(60) that, the Basel Mission community was merged with the Church of South India on 27-9-1947. The communities which were merged with the C.S.I. are not backward communities now, whereas S.I.U.C. etc. are in the list of backward communities. Therefore, the ex-Basel Mission community may also be treated as backward.

(61) The weaker section of the Basel Mission community has been included in the list of Backward Classes.

(62) that, the Nadar community in general (i.e., Hindu Nadars and Christian Nadars together) may be given separate sub-rotation based on their numerical strength and special provision be made for the absorption of Hindu Nadars in public services.

(57) The Scheduled Castes and Scheduled Tribes Orders (Amendment) Bill now before the Parliament provides for this. Till the Bill becomes law, the regional residue of such Scheduled Castes/Scheduled Tribes will have to be included in the list of Other Backward Classes.

(59) This has been done in three compartments, namely, "Gazetted", "Non-gazetted" and "Last Grade" separately.

(61) The Nadar Christians belong to various denominations of Christianity. All denominations of Christianity have been included in the list of communities prepared by us. The Nadar Christians stand included and reckoned in the various denominations of Christianity to which they belong.

(62) It is not possible to reckon the population and other statistics relating to "Nadar community in general" in addition to the population and other statistics of the various denominations of Christianity, to which they belong because there will be overlapping and duplication of statistics.
that, reservation of appointments should be allowed to the Hindu Nadars] and Xian Nadars put together and the percentage of reservation should be proportionate to their population.

that, the Nadars and Visvakarmalas are at present included in the group of communities, known as "Other Backward Classes put together" for which there is 10% reservation of appointments at present, that they are aggrieved very much to observe that the progress of the "Other Backward Communities put together" has been barred by wrong statistics regarding their total population, and that, therefore, the Commission may recommend that the 1971 census be enumerated community-wise and correct figures of various communities obtained.

This cannot be done for the reasons mentioned above.

After 1931 in the Malabar area and 1941 in the T.C. area, there is no caste-wise enumeration in Census Reports. Since the coming into force of the Indian Constitution, the question of stopping caste-wise enumeration in Census was dealt with by Sardar Vallabhai Patel in his address to the Census Conference in February, 1950 as follows:

"Formerly there used to be elaborate caste tables which were required in India partly to satisfy the theory that it was a caste-ridden country and partly to meet the needs of administrative measures dependent upon caste system. In the forthcoming Census, this will no longer be a prominent feature." Accordingly this change was introduced in the census from 1951 onwards. There is an argument that this is a loss so far as the research students, the ethnologists, sociologists, and demographers are concerned. Now, if a recommendation is made that caste-wise enumeration should be adopted from the 1971 Census onwards, it will not be fruitful because there is no time to go through the numerous formalities. If caste-wise enumeration is adopted in 1981, there will be a gap of 50 years from 1931 to 1981 so far as the Malabar area is concerned and 40 years from 1941 to 1981 so far as the T.C. area is concerned. This long gap will be a serious break in continuity of caste-wise information, required by research workers, ethnologists, sociologists, demographers etc. As regards the needs of administrative measures, for e.g. necessity for statistics required by Commissions or committees, it may be noted that the decennial statistics supplied by Census Reports
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may not always be of direct use to the Commissions or Committees because in the Appellate decision dated 3rd April, 1964 in W. A. No. 164 of 1963, of the High Court of Kerala it has been observed:—

"An"enduring conclusion, however should not be based on data that are not absolutely up to date or on judicial experience which such data may disprove or modify."

Therefore we are of the opinion that caste-wise enumeration of Statistics in the Census need not be recommended.

30. Oral evidence:

Two thousand and thirty-four persons gave oral evidence before us, some representing their organisations and the remaining in their individual capacity. The points raised by them are more or less the same as mentioned in the memoranda dealt with in para 29.
CHAPTER VI

GROUPING OF COMMUNITIES—COMMUNITIES/
GROUPS OF COMMUNITIES TO SERVE AS
DRAWING BOARD

31. Drawing of Backward Classes from communities or groups of communities—
Constitutional aspects:

According to the directions of the High Court of Kerala in its decision
dated 31-1-1967, in “V. Hariharan Pillai Vs. State of Kerala—O.P. No. 2860
of 1964” and of the Supreme Court, in its decisions in:

(i) R. Chitralekha Vs. State of Mysore—Civil Appeals Nos. 1056

(ii) State of Andhra Pradesh Vs. P. Sagar—(AIR 1968 S.C.1379-
V-55-C-269) and

(iii) Trilokinath Tikoo Vs. State of Jammu and Kashmir—(AIR-
1969-S.C. 1-V-56-C-1)

(a) a “caste” is also a “class” of citizens, if the “caste”, as a whole, is
socially and educationally backward and reservation could be made in favour
of such a caste on the ground that it is a socially and educationally backward
class of citizens.

(b) if a caste or community as a whole is not socially and educationally
backward, the weaker section thereof should be found out by applying the
relevant tests for backwardness, and only the weaker section thus found out,
can be treated as “Backward Class”. In Chapter VII, we would be explain-
ing why we do not propose to draw Backward Classes from geographical
groups of citizens or occupational groups and why we propose to draw Back-
ward Classes from communities or groups of communities, irrespective of the
caste or religion to which they belong. In this Chapter, we are dealing with
the question of “grouping of communities”, so that communities or groups
of communities may serve as a drawing board for purposes of classification
of citizens into backward and non-backward. Relevant aspects of the question
of grouping are discussed in the following paragraphs.

32. Necessity for grouping:

It is seen that there are many communities in the State whose population
is very small. The constitutional position is that the total quantum of re-
servation under article 16(4) cannot exceed 50%. The extent of backward-
ness, inadequacy of representation and the population of the weaker section
of each community or/and group of communities will be some of the relevant
criteria for distribution of the total quantum of reservation of appointments.
or posts among the various Backward Classes which are inadequately represented in the services under the State. In the case of the weaker sections of communities, whose population is less than, say, one lakh, the percentage of reservation is likely to be far below one percent. Each Backward Class whose quantum of reservation is far below one percent, is not likely to get any appointment at all in the reserved quota, during the period of currency of a ranked list of eligible candidates prepared by the Public Service Commission or other competent authority, especially when the number of vacancies in a service or class or category to be filled up is very small. For this reason, it is necessary in the interest of such small communities themselves, to group them as far as possible, on the basis of some likenesses or common traits, occupation etc., and ability for competition in the reserved quota. Bigger communities can also be grouped together on the above basis, so that the number of classes may be as small as possible.

33. One and the same community is "Scheduled Caste/Scheduled Tribe" in certain parts of the State, and "Other Backward Class" in certain other parts of the State.

The Scheduled Castes and Scheduled Tribes are outside the terms of reference to this Commission. But, according to the existing Presidential Orders under articles 341 and 342 of the Constitution, some communities like the Ayyanavar, Bharathar, Kakkalan, Mannan, Perumannan., Thandan, Ulladan, Vannan, Velan etc., are at present, in the list of "Other Backward Classes" in the Malabar District (as defined in sub-section (2) of section 5 of the States Reorganisation Act), and in the list of Scheduled Castes throughout the State except Malabar District. Similarly, certain communities like Bathada, Hasla, etc., are Scheduled Castes in the Kasargode Taluk, but they are "Other Backward Classes" in certain other parts of the State. There are similar other differences in classification between the same communities living in different parts of the State. It is really anomalous to treat any group or section of people, as "Scheduled Castes/Scheduled Tribes" in one region of this small state and as "Other Backward Class" in another region. This anomaly can be removed, only when the Scheduled Castes/Scheduled Tribes Orders (Amendment) Bill now before the Parliament becomes law. Therefore, in cases where certain communities are listed as Scheduled Castes/ Scheduled Tribes, in certain parts of the State, those communities will get the benefit of reservation etc., allowed to the Scheduled Castes/ Scheduled Tribes. But their regional residues living in other parts of the State, will not get that benefit. There are 6 such regional residues of Scheduled Castes/ Scheduled Tribes. It is necessary to include them, in the list of communities; otherwise, the weaker sections of the regional residues of those scheduled Castes/Scheduled Tribes will not be either in the list of "Scheduled Castes/ Scheduled Tribes" or in the list of "Other Backward Classes". Therefore, we have included them in the list of communities with the letters A, B, C, D, E, F marked against the names of the respective communities. The communities against the name of which, the letter "A" is put (for example, Ayyanavar A) are not "Scheduled Castes and Scheduled Tribes", but are "Other Backward Classes" in the Malabar District only. Similarly, the letter 'B' denotes,
“Other Backward Classes throughout the State except Malabar District”, letter “C” “other Backward Classes throughout the State except Kasargode Taluk” and the letter “D” “Other Backward Classes throughout the State except Malabar District excluding Kasargode Taluk”. The letter “E” denotes “Other Backward Classes in Kasargode Taluk” and the letter “F” “Other Backward classes in Malabar District excluding Kasargode Taluk”.

34. Alphabetical order in which the names of communities are arranged—Slight deviation to facilitate easy reference:

The names of communities have been arranged by us in one series alphabetical order for each group, except in the case of Group V in which the above mentioned “regional residues” are included. In that group, the names of communities have been arranged in the alphabetical order in two series, one series for “communities which form the regional residues” and the other for “communities other than the regional residues”. This arrangement is made with a view to enabling those who apply for community certificates and the certifying authorities, to find out easily the names of communities included in each group.

35. Different names for one and the same community:

There are 600 and odd names of communities in this State, as shown in Appendix XI. Some of them are different names for one and the same community. The applicants for appointments have the freedom to write in their application for appointments, any of the several names by which their community is known. Therefore, it is necessary to include all such known names in the list; otherwise a certifying authority can refuse to give a community certificate to an applicant, on the ground that the name of the community, which the applicant says he belongs to, is not expressly mentioned in the list of communities. We are told that there have been instances of such difficulties and refusal. During the taking of evidence from members of the general public, we have tried to ascertain the different names by which certain communities are known and also the names of communities which are not seen in the list now maintained by the Kerala Public Service Commission and the Director of Harijan Welfare. We have included all the known names of communities in the list of communities prepared by us.

36. Definition of the term “class” occurring in article 16(4) and the grouping of Small communities belonging to different regions and whose population is very small:

In P. Sagar's case (AIR—968-S.C.1379) and in Trilokmath Tikoo's case (AIR-1969-S.C.1-V-56-C), the Supreme Court has defined the term “class” occurring in articles 16(4) (vide paragraph 28(K)). From the above definition, we find:

(1) that a class means a homogeneous section of the people grouped together,
(2) that the grouping of the people into a section should not be in any manner we like, but should be on the basis of certain likenesses or common traits, and

(3) that the people so grouped together into a homogeneous section must be identifiable by some common attributes such as status, rank, occupation, residence in a locality, race, religion and the like.

There are certain communities in this State, for example, the Buddhists the Jains, the Sikhs, the Parsis and the Jews whose total population is estimated, as below three thousand. Each of these communities is not, as a whole socially and educationally backward. But the presence of a section which is socially and educationally backward, in each of these communities, cannot be gainsaid. Therefore, they cannot be left out. They have been included in various groups of communities having regard to mainly their ability or otherwise to compete with others. We are going to delineate Backward Classes by drawing the weaker sections from communities or groups of communities. Therefore, we have to keep an eye on the definition of the expression "class" even at the time of grouping. In paragraph 2.4(k), we have examined the effect of the above-mentioned definition of the term, "class", and have come to the conclusion that scientific perfection or logical correctness is not necessary for satisfying the condition of "homogeneity", and that a combination of all the conceivable attributes, such as "status", "rank", "occupation" etc., is not necessary to satisfy the requirements of "identification" and that it is enough if a considerable number of the above attributes is present. On the above basis, we have grouped the communities into twelve. These 12 groups are given in Appendix XI. When Backward Classes are formed by drawing the weaker section from each of the communities or groups of communities, the people included in each Backward Class will form a homogeneous section having some common traits such as social, education and economic status, rank etc.
CHAPTER VII

FACTORS WHICH LEAD TO BACKWARDNESS OF CITIZENS FOR PURPOSES OF ARTICLE 16(4) OF THE CONSTITUTION

37. Certain general aspects:

(a) The factors and the basis of application of those factors should have rational relation to the object of article 16 (4).

Conditions vary from State to State. The factors leading to backwardness will vary according to those conditions, and also in accordance with the purpose of the object of the statute under which the classification into “backward” and “non-backward” is sought to be made. That takes us to the question, what the object or purpose of article 16 (4) is. Any one who reads that article, will find that the purpose or object of article 16 (4) is to make the inadequacy, if any, of representation in the services under the State, of the Backward Classes, adequate by making provision for reservation of appointments or posts in their favour. Thus, the object is exclusively connected with gaining of adequate appointments or posts or gaining of adequate representation in the services. It does not embrace anything else. Therefore, the factors that we choose and the basis of their application for classification, should have rational relation or rational nexus to the “gaining of appointments or posts” in the services under the State.

(b) Is there any Constitutional objection to delineate Backward Classes by drawing the weaker sections from each community or each group of communities.

What should be the drawing board from which Backward Classes could be drawn? Should be Backward Classes be citizens of social groups, regional groups, occupational groups, economic groups or any other groups? Will it be unconstitutional to find out Backward Classes by drawing the weaker sections from each community or each group of communities? In “Chitralekha Vs. State of Mysore”—(AIR 1964-S-C-1823), the Supreme Court has observed that though the majority of the people in a caste might be socially and educationally backward, an effective minority might be socially and educationally far more advanced than another small sub-caste the total number of which is far less than the said minority. The above observation has been elaborately explained by the High Court of Kerala in its decision dated 31-1-1967 in O.P. No. 2860 of 1964 (V. Hariharan Pillai Vs. State of Kerala). The High Court has observed that the possibility of there being socially, economically and educationally non-backward or advanced sections, large or small, in the present so called backward-communities could not be ruled out and that if there are such sections, no reservation could be made in favour of the members of those sections. The court has also observed that
the possibility of there being socially, educationally and economically backward sections in the other so-called advanced communities could not be ignored and that there is no reason why the benefit of reservation should not go to the members of those sections, if those sections are not adequately represented in the services under the State.

In P. Rajendran’s case (AIR 1968-S.C.-1012), dealing with certain matters coming under article 15 (4), the Supreme Court observed that “it must not be forgotten that a caste is also a class of citizens and if a caste as a whole is socially and educationally backward, reservation could be made in favour of such a caste on the ground that it is a socially and educationally backward class of citizens within the meaning of article 15 (4). The fact that social and educational backwardness was specified by caste, did not necessarily mean that caste was the sole criterion and the persons belonging to those castes were also not a socially, and educationally backward class of citizens”. The Court concluded that; “though the list was prepared caste-wise the castes included therein were as a whole, socially and educationally backward, and therefore, the list was not violative of article 15”. This decision was referred to by the Supreme Court in P. Sagar’s case (AIR-1968-S.C. 1379) dealing with certain matters coming under article 16 (4), and it was observed that it made no departure from the rule enunciated in the earlier cases of “Balaji” and “Chitralekha”. From the above, it follows that if a caste/community is as a whole backward socially and educationally, it can be treated as a “class” for purposes of article 16 (4) also, and that if a caste/community is not as a whole backward socially and educationally, it cannot as a whole, be treated as a “class”, but there is no objection to treat the socially and educationally weaker section of caste/community as a socially and educationally Backward Class, and that reservation could be made in favour of any such Backward Class if it is not adequately represented in the services under the State. Therefore, there is no constitutional objection to form Backward Classes by drawing the weaker sections from each community, or from each group of communities, by applying the relevant tests, in accordance with the general principles of classification adverted to in Chapter IV of this report.

38. Factors or tests adopted:

(i) Test of habitation (Residence in undeveloped areas)

The first of the terms of reference to this Commission is, “what are the factors which lead to backwardness of citizens”. We shall first examine the practicability of a geographical classification, so far as Kerala is concerned. The question whether classification could be made on geographical basis has been briefly dealt with in paragraph 23 (3). One of the justifications for geographical classification may be, “historical”. To illustrate, if the Malabar area which was integrated with the erstwhile State of Travancore-Cochin to form the State of Kerala, is found to be backward for historical reasons and if those historical reasons still exist, discrimination could be made on geographical basis, the differentia being struck between the “Malabar area” and “Travancore-Cochin area”. There might have been some difference in
facilities for transport, education etc., between those two areas owing to historical reasons, but the same has tapered during the last 14 years from 1956 and its continuance is only in a lesser degree than before. One or two witnesses who demanded separate allocation of appointments or posts for the Malabar area, were under the impression that they would get the benefit of separate allocation for the Malabar area, and then, within that area, another reservation in favour of the Backward Classes. "Where a differentiation made on geographical basis was reasonable due to historical reasons, it would cease to be reasonable when those historical reasons disappear" (vide Jai Lal Vs. Delhi Administration A-1962-S-C-1781-1784). "Where a territorial division is selected for the purpose of effecting discrimination against a particular race or class of people residing in that disfavoured area, it could not still be upheld as a reasonable classification" (vide Purushottam Vs. Desai 1955-2-S.C.R-887-902). Although Malabar area was comparatively backward in the number of educational institutions, hospitals and roads, it cannot be said that, that area as a whole is backward in the sphere of commerce and industries, appointments etc. We consider that there is no need for a territorial allocation of appointments or posts, between Malabar and Travancore-Cochin areas now.

Another demand made to us was that residence in the littoral tracts and hilly areas might be treated as a factor leading to backwardness under article 16(4) and that regional allocation, as well as reservation in favour of the socially and educationally weaker sections of each community living in those areas might be made. With the working of the Five Year Plans and provision for better facilities of transport, communication, education etc., the rural areas in the State have developed considerably, and means of communication are easy now-a-days. We find rich an educated people also living in the littoral and hilly tracts. It is difficult now-a-days to say that an entire village or taluk or district of this State is backward in point of educational attainment, appropriation of appointment, etc. Even in a comparatively backward taluk, those who reside sufficiently near educational institutions therein, will be educationally more advanced, both in number and in values, than those who live away from such institutions. So, they may be able to obtain appointments more easily than those who reside away from such institutions. Thus, the conditions in Kerala are such that if allocation of appointments or posts is made on geographical basis, in favour of those residing in the littoral and hilly areas, or other regions, the result would be that the educationally forward people residing in such areas will snatch away those reserved posts at the expense of those who really deserve. This is because members of the non-backward section of the undeveloped areas, who will naturally have educational attainment of a more merited order than the rest of the people of those areas, will alone be benefited eventhough the allocation is made in the name of "residence in backward areas". For this reason, it will be difficult to strike an intelligible and reasonable regional differentiation. Therefore, we consider that, in Kerala, "residence in backward areas", need not be accepted as a factor leading to backwardness for purposes of article 16 (4) of the constitution.
(ii) Test of occupation

Certain witnesses stressed the need for taking "low occupations" or "stigma attached to traditionally low occupations" as a factor leading to backwardness. This is based on the conventional belief that stigma is attached to certain traditionally low occupations, that this social stigma leads to social and educational backwardness, which, in turn, leads to backwardness in the field of appointment. Certain witnesses in rural areas told us that the school boys belonging to communities to whose traditional occupations, social stigma is not attached, addressed their class-mates, not by their names, but by the name of the traditionally low designation itself for example, "இந்துவுடன் பெண்" or "என்னவால் விழியை அரசை" which means, "you, a barber", or "you the son of a barber" and that this disparaging address, disheartened the boys concerned. In the result, a sense of helpless frustration and inferiority complex was created in the minds of the boys so addressed, and their enthusiasm for attending school was abated. This leads to their educational backwardness. Others opposed this suggestion saying that there is no such thing now as occupational stigma, much less, this mode of address. Some others said that though some amount of social stigma is seen attached to certain traditional occupations, such as those of barbers, washermen, fishermen, all kinds of leather-workers, scavengers, pottery workers, smiths, carpenters, wood sawers, toddy-tappers, tree climbers, and all kinds of manual labourers or coolies, even today, by conventional belief, the modern concept of dignity of labour is fighting successfully against the old concept of occupational stigma. While we should not recommend anything which would perpetuate such social evils, it would be unwise on our part to shut our eyes against them. Another aspect of the factor of occupation is that certain occupations of the people of Kerala which is a densely populated State, very often undergo substantial change. An agricultural labourer, or a barber, or a fisherman, or a toddy tapper of today may become a shop-keeper tomorrow. Therefore, a citizen who is today outside an occupational Backward Class, may successfully try to come within that classification, by changing his occupation. For this reason, the identification of persons occupation-wise, would become practically difficult. On account of this, the certifying authorities also will find certain difficulties. For the reasons mentioned above, we consider that it is not necessary to take "low occupations" as a unitary and independent factor for classification of citizens into backward and non-backward for purposes of article 16 (4). But the backwardness of certain classes of people, owing to stigma attached to low occupations, will be taken care of by us, when we apply the test of "social backwardness due to historical reasons", which, we will be dealing with, in the last portion of this Chapter. Our suggestion, therefore, is that occupational stigma may be one of the constituents of "social backwardness due to historical reasons" which will be a factor for classification of citizens into "backward" and "no-backward" for purposes of article 16 (4).

(iii) Test of Caste

(a) The term, "caste" is generally used in two senses. When we say "Nair-caste", "Ezhava-caste", etc., we generally mean the "Nair community"
and “Ezhava community” respectively. But, in a sentence like, in the case of Hindus, caste may be a relevant factor to consider, in determining the social backwardness of citizens, but its importance should not be exaggerated, and it should not be made the sole or dominant test”, we may have to take the word, “caste” to mean the disabilities arising out of “untouchability” or “near untouchability”, or the vestiges thereof. A large number of witnesses who gave evidence before this Commission suggested that “caste” and “caste alone” should be taken as the factor leading to backwardness of citizens, for purposes or article 16 (4) of the Constitution. The reasons for this suggestion were said to be that the system of caste denied social justice and opportunities for education, to a very large section of the people till very recently, and that this situation led to their social and educational backwardness which, in turn, contributed to their backwardness in the field of appointment, and that caste is practised even now in many parts of the rural areas in the State. Our attention was invited to the following extract from pages 339 and 340 of the “Cochin Tribes and Castes” by Shri L. K. Ananthakrishna Iyer published 61 years back:—“If a Chogán or Ezhava dares to pollute a Nayar by approaching nearer than the prescribed distance, he was at liberty to cut him down. They were not permitted to enter within a native court of justice as they might pollute the Judges who were members of higher castes.

They cannot approach Brahmin houses or temples, nor can they pass through Brahmin villages in Palghat. They are not allowed to take water from the wells of high caste-men. It is disappointing to see that their children are not admitted into the Zamorins College, Calicut, though as Christian converts, they are welcome”. Our attention was also invited to the following extract from page 481 of Volume II of the Travancore State Manual by Shri Nagamiah:—“On account of the prejudices and exclusiveness of caste, the Government and private schools were shut against the Backward Classes, while religious scruples prevented their joining the Mission Schools. Thus, for long years, they remained without receiving the rudiments of education”. Certain witnesses told us that Shri Alummootil Channar who was an Ezhava by caste, and who was one of the richest man of those days in Central Travancore, was not allowed by caste-Hindus to travel along certain roads, immediately outside the walls of certain Hindu temples, even though Scheduled Caste members could travel along those roads on their conversion to some faith other than Hinduism. The Channar had to get down from his car at a certain distance from any of those roads, walk along a circuitous lane and reach another distant point where his driver, who was a Nair, would be waiting with the car for the arrival of his “economic boss”. This, according to the witness, is only one of the many instances which shows that life in these parts of the country, was based on “caste” and not on “economic” position. Some witnesses have narrated to us several instances of denial of admissions to educational institutions, denial of appointments in the public services, and even denial of access to Courts and public offices and roads in the recent past. In the Kerala Kaumudi dated 3-11-1963, a collection of orders issued by the High Court and Government of the erstwhile State of Travancore, and by certain other authorities of that Government, had been published. Owing to fear of length we do not reproduce them here. But they show how
difficult it was for the members of the low-castes, like Ezhavas, etc., to get admission to schools and appointments in Government service and why such communities were relegated to the background in the field of appointments.

(b) During the time of His Highness the abdictated Maharaja of Cochin, persons belonging to communities like Ezhavas, etc. were not allowed even to present a memorandum to His Highness by approaching near the door of the Fort at Trippunithura or to present petitions to the Dewan in the Huzur Cutchery (Government Secretariat) at Ernakulam, eventhough converts from such communities were welcome. It was only a few years back that the public bathing tanks in Trichur Town were declared open to all castes. But the high caste people who used to bath in the tanks till then, did not like to continue to bath in these tanks.

(c) We shall mention a few of the many instances narrated to us of caste disabilities obtaining in Kerala even today. The Secretary of Sree Narayana Dharma Paripalana Yogam, Cannanore who gave evidence before us, told us that he had to wash the glass in which drinking water was given to him when he visited a Nayar house very near to the Cannanore Municipal limit. Many instances have been narrated to us in which (i) buildings let on rent by high caste people, to other persons on the understanding that the lessees were high caste people, were got vacated when it was known that they were Ezhavas/Thiyas and other low-castes, (ii) low caste-members are being prevented from drawing water from wells in private houses, whereas high caste members are not thus prevented, (iii) a Pauchayat Peon, in Arakkuzha belonging to a low cast, who went to the house of a high-caste man to paint the house-number and ward-number on its front door, was pursuaded by the house owner to give him the Peon’s brush and paint, so that, the owner could himself do the peon’s work without getting the house polluted by the touch of the low caste, peon, (iv) untouchability is practised in private places, in the rural areas and in places of public resort like barber shop, tea shop, etc., in Aadoo, Badoopadam, Manjeswar, Kasargode, Kanjagad, Cannanore, Kakkad, Peruthatta, Kuthiyoor, Payassi, Attappady, Uruvanchery, Talliparamba, Kaliyar, Pediyoor, Sreekantapuram, Manantoddy, Badagara, Azhiyoor, Kadathanad, Elathur, Korapuzha, Tirur, Valancherry, Achipra Athavanad, Kottakkal, Mattanoor, Ernad, Elankur, Pullencherry, Nilambur, Amarambalam, Manjeri, Cherplassery, Perinthalmanna, Kozhinjampa, Ottappalam, Paruthippally, Arakkuzha, Valappad, Cranganore, Palai, Thodupuzha, Mannanam, Neyyattinkara, Kanjiramattom, etc., etc. In many of the above places in the north, tea and coffee are served to members of low castes, in Chiratta (coconut shell) and glasses reserved for them in a corner of hotels conducted by caste Hindus. There have been many instances of practice of untouchability in the form of refusal to shave or cut hair of low-caste people in barber shops of high caste people. The District Welfare Officer, Harijan Welfare Department, Cannanore who gave evidence before us, said that he received many complaints to the effect that low-caste people were given tea and coffee in coconut shells or glasses reserved for them in separate places in hotels conducted by high caste people, and that high-caste barbers refused to
render the services of "shaving" or "hair-cutting" to low caste people. When he inspected the said places, the offenders removed those coconut shells or glasses, and immediately after his departure, the hotel people put them back.

(d) The following is a list of cases coming under the Untouchability (Offences) Act, 1955 for offences of this category:

<table>
<thead>
<tr>
<th>Name of District</th>
<th>No. of cases registered</th>
<th>No. of cases in which the accused were convicted or which were compounded</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Trivandrum</td>
<td>62</td>
<td>36</td>
</tr>
<tr>
<td>Quilon</td>
<td>19</td>
<td>12</td>
</tr>
<tr>
<td>Alleppey</td>
<td>3</td>
<td>.</td>
</tr>
<tr>
<td>Kottayam</td>
<td>4</td>
<td>2</td>
</tr>
<tr>
<td>Ernakulam</td>
<td>34</td>
<td>15</td>
</tr>
<tr>
<td>Trichur</td>
<td>18</td>
<td>5</td>
</tr>
<tr>
<td>Palghat</td>
<td>10</td>
<td>6</td>
</tr>
<tr>
<td>Kozhikode</td>
<td>22</td>
<td>1</td>
</tr>
<tr>
<td>Cannanore</td>
<td>18</td>
<td>11</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>190</strong></td>
<td><strong>88</strong></td>
</tr>
</tbody>
</table>

(2) For the period from 1961-65

<table>
<thead>
<tr>
<th>Name of District</th>
<th>No. of cases registered</th>
<th>No. of cases in which the accused were convicted or which were compounded</th>
</tr>
</thead>
<tbody>
<tr>
<td>Trivandrum</td>
<td>24</td>
<td>11</td>
</tr>
<tr>
<td>Quilon</td>
<td>2</td>
<td>.</td>
</tr>
<tr>
<td>Alleppey</td>
<td>3</td>
<td>.1</td>
</tr>
<tr>
<td>Kottayam</td>
<td>3</td>
<td>.</td>
</tr>
<tr>
<td>Ernakulam</td>
<td>2</td>
<td>.</td>
</tr>
<tr>
<td>Trichur</td>
<td>2</td>
<td>.2</td>
</tr>
<tr>
<td>Palghat</td>
<td>3</td>
<td>.</td>
</tr>
<tr>
<td>Kozhikode</td>
<td>7</td>
<td>.4</td>
</tr>
<tr>
<td>Cannanore</td>
<td>21</td>
<td>.8</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>67</strong></td>
<td><strong>26</strong></td>
</tr>
</tbody>
</table>

(3) For the period from 1965 to 1-1-1968

<table>
<thead>
<tr>
<th>Name of District</th>
<th>No. of cases registered</th>
<th>No. of cases in which the accused were convicted or which were compounded</th>
</tr>
</thead>
<tbody>
<tr>
<td>Quilon</td>
<td>1</td>
<td>.</td>
</tr>
<tr>
<td>Trichur</td>
<td>1</td>
<td>.</td>
</tr>
<tr>
<td>Palghat</td>
<td>3</td>
<td>.2</td>
</tr>
<tr>
<td>Kozhikode</td>
<td>2</td>
<td>.2</td>
</tr>
<tr>
<td>Cannanore</td>
<td>20</td>
<td>.17</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>27</strong></td>
<td><strong>21</strong></td>
</tr>
</tbody>
</table>
We have been told by various witnesses that the number of cases which reach the Court would only be one out of a hundred because of the ignorance and the financial inability of persons against whom the offences were committed. The names of communities of the parties on whom these offences were practised, are Pulaya, Paraya, Chaklian, Kurava, Thiyya, Mavilan and other low castes.

(e) Swami Anandthirth sent us the following telegram from Kumbla, Kasargode on 9-7-1970:

"KASARAGOD POLICE ANNOYED WITH MY UNTOUCHABILITY AND TEMPLE ENTRY COMPLAINTS MYSELF DENIED ENTRY IN NALAMBALAM THAIRA TEMPLE POLICE REFUSED ACTION SUB-INSPECTOR’S EXPLANATION THAT CASE WAS NOT REGISTERED BECAUSE OBSTRUCTED PERSONS IS NOT HARIJAN UNACCEPTABLE AND REVEALS INDIFFERENCE TO TEMPLE ENTRY LEGISLATION ENQUIRY CONDUCTED SEVENTEEN LATER EVADING THE KERALA ACT SEVEN OF 1955 SPECIFICALLY MENTIONED IN COMPLAINT IGNORED AND LEGAL OPINION NOT SOUGHT DESPITE MY REPRESENTATION THIS IS CLEAR INSTANCE OF DERELICTION OF DUTY INSPECTOR’S CONCLUSION THAT NO ACT CAN PROVIDE FOR ENTRY IN TEMPLE EXEMPTED FROM HINDU RELIGIOUS ENDOWMENT ACT UNWARRANTED AND NEEDS LEGAL SCRUTINY INSPECTOR SIDES ACCUSED DECLARING THAT THOSE CLAIMING ENTRY IN SUCH TEMPLES COULD BE KICKED OUT SUCH INCITING WORDS FROM INSPECTOR ENCOURAGES REACTIONARIES AGAINST ME MYSELF RECENTLY ASSAULTED IN KASARAGODE THREAT EXPERIENCED AT BRAHMIN TEMPLE NEAR INSPECTOR’S RESIDENCE DANGER APPREHENDED PRAY PREVENT UNTOWARD HAPPENINGS BY GIVING ME PROTECTION FROM REACTIONARIES AND SAVE ME FROM THOSE FLOUTING GOVERNMENT POLICY KINDLY ORDER STERN ACTION AGAINST DERELICTION OF DUTY PRAY ISSUE INSTRUCTION TO TAKE NECESSARY ACTION ON MY COMPLAINT AND REDRESS GRIEVANCE".

(f) Hotels conducted by caste Hindus both in the rural and urban areas in all the District of the State bear some names like "...... Brahmin
Hotel”, “Nair Hotel”, “Potti Hotel”, etc. The evidence is that if anybody belonging to any caste, high or low, gives the name board of a hotel as “Pulaya Hotel”, even a Pulaya will not enter it and take food from there. In the Kerala Kaumudi dated 27-6-1970 there was an advertisement, a true English translation of which is given below:—

“CLASSIFIED ADVERTISEMENT

Wanted expert makers of pickles
for preparing pickles in a Pickles Company in Trivandrum—Persons belonging to the Brahmin or Potti caste alone need apply.

Post Box No. 89,
Trivandrum—1”

(Underlining ours)

The statements and instances mentioned in (e), (d), (e) and (f) above are upto-date and are self-speaking. That the evidence mentioned above are not exaggerated, is proved also by the statistics given above, of punishments awarded to offenders by Courts, under the Untouchability (Offences) Act, 1955. Although, instances that took place in the erstwhile Travancore State, Cochin State and Malabar area, and narrated to us by the witnesses were facts, it is relevant to remember that backward castes have asserted themselves, and many an arrow of light has been powerfully shot against the darkness of caste in the past, by our eminent leaders belonging to both the so-called “low castes” and “high castes” and personages of the erstwhile ruling families. In the result, we have had the benefit of the Travancore Temple Entry Proclamation of 1112 M.E., The Cochin Temple Entry Proclamation of 1123 M.E., the Madras Temple Entry Authorisation Act of 1947, articles 15, 16, 17, etc. of the Constitution of India, Untouchability (Offences) Act, 1955 and the Kerala Temple Entry (Removal of Disability) Act, 1965. But, from our own experience of life in Kerala, and from the large volume of evidence before us, we find that the system of caste which was bodily killed by constitutional and statutory provisions, has not yet completely disappeared. It has left its vestiges in many a positive form and they act as social and educational depressants. At page 234 of the “Discovery of India” (3rd Edition), Shri Jawaharlal Nehru has observed that the system of caste, and much that goes with it, are wholly incompatible with political democracy, much less with economic democracy. Between these two conceptions—caste and democracy—conflict is inherent, and only one of them can survive. From what is actually obtaining in Kerala today, (vide facts and data given above) we feel that, in a political democracy, or economic democracy, in a welfare States, habits of thought and customary action in the social field can die only “hard and slow”, though the position may be different in a
dictatorship of the Proletariat. We need not travel beyond the following wise observations of the High Court of Kerala in its decision in Writ Appeal No. 164 of 1963, to find out the general reasons why “caste” has not completely disappeared, and why it has left its vestiges which act as a social and educational depressant:

“Conformity in such cases does not synchronise with the promulgation of statutory enactments, or constitutional documents. Time has to play its part, and time alone transmutes the ideals of law into the realities of everyday life. No one can say that the introduction of progressive measures is the end, and not the beginning of a process of amelioration. Habits of thought die hard and slow, and occupations like toddy-tapping carry their social stigma from one generation to another and through decades of conduct and behaviour”.

We should approach this problem with the dispassionate and open mind of a reformist also. “Caste disabilities” should not either be exaggerated and perpetuated, or be whittled down with a motive behind. We, therefore, suggest that caste should not be the sole or dominant test, but the social and educational backwardness, if any, arising from the practice of caste in the past, and from the pranks of vestiges of caste, if any, in the present, should be taken care of, in the test of “social backwardness due to historical reasons”.

(iv) Test of education:

Some witnesses represented to us that although a very small section of certain communities might be found to be somewhat economically well off, it would be found that, that section, by and large, was lacking in the requisite educational standard for gaining appointments in the public services and that, therefore, considering their educational backwardness, such sections should not be deprived of the benefit of reservation. Others opposed this on the ground that members of such sections took to trade and commerce and other business with the object of making money and leading a happy life and that, therefore, they should not be included in any Backward Class.

As already stated by us, the factors that we choose for classification of citizens into “backward” and “non backward” for purposes of article 16(4) must have rational relation to the object of the constitutional provision, namely, making the inadequacy, if any, of representation in the services under the State, of the Backward Classes, adequate, and that reservation cannot be made in favour of a community as a whole unless, it is socially and educationally backward as a whole. If a community as a whole is not backward socially and educationally then the section, if any, thereof, large or small, which is socially and educationally backward should be found not by applying the relevant tests, and reservation made in favour of such sections if they are not adequately represented in the services under the State. We find that the said object is exclusively related to the gaining of appointment in the services under the State by Backward Classes. Both “education” and “money” are relevant factors although no one can get any appointment
by money alone. Education, and not money, is the direct door for gaining appointment. The factor of education has therefore proximate and more rational relation than money, the object of article 16(4). So, we suggest that the test of education may be the most important test.

(v) Economic test:

Some witnesses suggested that "economic" and "economic alone" should be the criterion for deciding backwardness of citizens, for purposes of article 16 (4). According to them any kind of backwardness is ultimately the result of poverty. This suggestion stands opposed by the evidence given by other witnesses who said that "economic" should not be a factor at all, for purposes of article 16(4). The main justification for this argument is said to be that the object of article 16(4) is connected only with appointment, and that money alone will not enable anybody to gain appointment for which specific educational qualifications have been prescribed. They cited, for example, the social backwardness of the late, Sri Alummott Channar who belonged to the Ezhva community which occupy a lower step in the ladder of caste, and who was one of the richest men of his time in Central Travancore. The colour prejudices existing in certain economically advanced countries, and the social disabilities to which rich but coloured men have to suffer in such countries were also cited as example to show that social backwardness is not the result of poverty alone. Even in the field of reservation, there is competition among the candidates belonging to the Backward Class concerned. So educational attainment of the merited order is necessary, not only for gaining appointments in the field of open competition, but also in the field of reservation. What is necessary for the attainment of education of the merited order, by a student, is a home-atmosphere congenial to education, such as presence of qualified parents or brothers or sisters, etc. of the student, who have sufficient leisure to serve as his coach, or in the absence of such qualified and leisured coach at home, the student or other members of his family on whom he depends, should have sufficient money to maintain the family and to engage private tutors for extra coaching. Experience shows that except in the case of very few families where there are retired but efficient teachers, the home-atmosphere of the former type mentioned above, is absent. In such cases, the home-atmosphere of the latter type mentioned above will be necessary. Therefore, money or wealth is a very relevant factor. It has rational relation to the object of article 16(4) in the sense that it contributes to educational attainment of the merited order which is necessary for obtaining appointments. We therefore suggest that economic test may be an important test.

(vi) Test of appropriation of appointments:

Those who hold appointments in public services, or in the services under authorities functioning under a statute and having the power to make rules, byelaws, etc. which have the force of law are, in fact, exercising those powers of the State (as defined in article 12) which are exercised through its executive
authorities. In other words, they exercise Governmental power to the extent delegated to them by or under the rules. So, the gaining of appointments or posts in the services under the Government or in the services under statutory authorities, not only contributes to the well-being and social status of the employees themselves and their families, but also enables the employees and the class of citizens to which they belong, to have some sort of "look" into the administration of the State. Many an evidence recorded by us, supports this view. More or less equal important is seen attached by the society at large, to the gaining of those appointments in the private sector also, which carry with them a fixity of tenure and unfluctuating income. When we say that appointments in the services under the Government and statutory authorities, enable the holders thereof, and the class of citizens to which they belong, to have some sort of "look" into the administration of the State, let us not be misunderstood that we are unmindful of the fact that the said officers have practically nothing to do with the making of policies. What we mean is that even under the present administrative set up in the State, the officers, at various levels, exercise some measure of Governmental power to the extent of delegation of powers. Therefore, appropriation of an adequate number of appointments in the services under the State, by the members of a class of citizens, is considered as a sign of ability to stand on their own a sign of non-backwardness of that class of citizens. Conversely, lack of appropriation of an adequate number of appointments in the services under the State, by the members of a class of citizens is considered as an index of the backwardness of that class of citizens. So, lack of appropriation of adequate number of appointments in the services under the State may be taken as a factor leading to backwardness. In this context, it is necessary to remember the exact wording of clause (4) of article 16. That clause says that nothing in article 16 shall prevent the State from making 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. Under this constitutional provision, we have to do two things, namely, (i) to find out the Backward Classes, and (ii) to assess the adequacy of representation in the services under the State, of the Backward Classes. For purposes of (i) above, we are suggesting 4 tests, namely, the tests of educational attainment, economic position, appropriation of appointment, and social backwardness due to historical reasons. All these tests will be applied equally to all Communities/groups of communities applying the same "norm". The statistic that we would be using for this would be the statistics relating to communities/groups of communities. As soon as all the four tests are applied, we will be able to delineate Backward Classes by drawing the weaker sections from each community or group of communities, irrespective of the caste or religion to which it belongs, and irrespective of the fact whether the communities/groups of communities from which we draw the weaker sections, are at present treated as backward or non-backward. The index showing the backwardness of each class has necessarily to be in terms of economic limit. As regards (ii) above, we will have to go through the following process. With the help of these indices, we will be eliminating the progressed section from each community/group of communities. To facilitate this
elimination, we have collected the income wise number of families, with their average strength, in each group and the family-income-wise number of appointments held by the members belonging to each community/group of communities. From those statistics we would be working out the data regarding population and appropriation of appointments by the members belonging to the Backward Classes formed by drawing the weaker section of each-community/group of communities. Then, we would be assessing the adequacy of appointments in the services under the State, of the Backward classes. Thus, there are two stages for the application of statistics of appointments one at the stage of classification of citizens into backward and non-backward, and the other, at the stage of assessment of adequacy of representation of the Backward Classes (not of communities or groups of communities). Therefore, the point that we would like to emphasise is that these two stages should not be confused with each other. As the inability to obtain adequate number of appointments by any class of citizens is an indication of its backwardness, this factor would stand the test of “intelligible differentia” and “rational relation” adverted to in Chapter IV. We would, therefore, suggest that, “appropriation of appointments” in the services under the State may be one of the four tests.

(vii) Test of social backwardness due to historical reasons:

The problem of ascertaining social backwardness of groups of citizens due to historical reasons, is really a difficult one. The process is almost subjective. We have to attack this problem with a dispassionate and judicious mind and sift out the real evidence from exaggerated ones. The removal of disabilities arising out of untouchability of unapproachability of the Scheduled Castes or of Other Backward Classes does not “synchronise with the promulgation of constitutional and statutory provision” or with their conversion to some faiths other than Hinduism. In the case of converts from Scheduled Castes, the degree of social segregation of the new converts is almost the same as that before their converon. As a matter of fact, we are told by many witnesses that these converts are constrained to set up their own separate churches and separate cemeteries in Kerala. A new convert from a Scheduled Caste, can normally marry only a new convert from his/her own caste. A large section of the Muslims observe Purdah. Till very recently (that is even in 1958) there was a social taboo by which Muslims children were socially prevented from being sent to schools and colleges before they completed a course of religious education till 8 to 12 years of age. All this has led to the social and educational backwardness of Muslim in general, and of their women in particular. We have heard certain witnesses saying that social backwardness due to purdah and aversion of Muslims to education through the medium of English need not be taken care of, in ascertaining backwardness of citizens. There is an equally strong, or equally weak argument that backwardness due to conventional stigma attached to certain traditionally low occupations and the backwardness due to the practice of caste against certain sections of Hindus in the past, and the backwardness of certain victims of the vestiges of caste in the present, need not
be taken care of in ascertaining backwardness of citizens. All these are backwardness due to historical reasons. The demand to ignore the same is against the uncontestable principles of general social justice. To those who oppose this social justice, we have nothing more to say than reminding them that the “much proclaimed” political freedom, and fundamental rights and social justice can have no meaning or importance for the Scheduled Castes/ Scheduled Tribes and other Backward Classes, unless the backwardness or lack of equality of opportunity, from which they suffer, are taken care of, and redressed as quickly as possible. Some witnesses were also of the opinion that everybody who speaks or acts in favour of “reservation” does so, because of his “caste consciousness”, “caste loyalties” and “Caste aspirations”, and they professed that they have unmixed and chaste national outlook. In this context it is relevant to remember the general advice contained in the following observations of the High Court of Mysore in its judgment in “D.G. Viswanath Versus Chief Secretary to the Government of Mysore AIR-1964-Mysore-132-V-51-C-35”:

“The misfortune is that while the members of each community complain that members of the communities other than their own are communal, they feel that members of their own community are not sufficiently communal. The vicious circle can be broken, only if the members of the community who have been benefited by the existing social order, first shed their communal thinking”.

One important aspect of the evidence given by the members of the public is that certain members of the present backward communities vehemently argued that the backwardness of all kinds is the result of social disabilities that arose from caste, occupational stigma and other social customs and taboos that existed in our uneven social structure in the past and which continues today, and that the economic factor has nothing to do with article 16(4) which speaks about reservation of appointments. On the other hand, certain members of the present non-backward communities have vehemently argued that backwardness of all kinds is the result of poverty alone that article 16(4) does not speak of “socially and educationally backward classes”, but only “backward class”, and that the said class is the economically backward class. These two kinds of views have to be examined closely, before we decide whether “social backwardness due to historical reasons” should be one of the tests for backwardness under article 16(4).

In article 15(4) the term used is “socially and educationally backward classes of citizens”. In Balaji Vs. State of Mysore, the Supreme Court has given the ruling that the word “and” occurring in article 15(4) means “both” and not “either” or “or”. In the result, the backwardness under article 15(4) should be both social and educational. The effect of this judicial interpretation is that if a class of citizens is backward “socially” but not “educationally”, and vice-versa, that class shall not be included in the list of Backward Classes. There is no such term as “socially and educationally” in article 16(4). The term used therein is simply, “any backward class of citizens”. The question
arose, what the kind of backwardness contemplated by article 16(4) is. In
articles 15(4) and 340, the term used is socially and educationally
backward classes”. In Rengachari’s case (AIR 1962-S.C.-36-V-49-C.6) the Supreme
Court has observed as follows:—

“For historical reasons which are well known, the advancement of
the socially and educationally backward classes has been treated by the
Constitution as a matter of paramount importance and that may have
to be borne in mind in construing article 16(4)”.

(underlining ours)

The portion underlined above clarifies the scope of the simple term “backward”
occurring in article 16(4). It is therefore clear that the Backward Classes
contemplated by article 16(4) are the classes of citizens who, for historical
reasons, are socially and educationally backward. This raises the question
whether the cumulative effect of social backwardness and educational
backwardness posited by article 15(4) is constitutionally insisted on by article 16(4).
The Supreme Court has not expressly stated anything about the cumulative
effect of social backwardness and educational backwardness, so far as article
16(4) is concerned. Unless otherwise specified, or unless the contrary appears
from the context, the word “and” occurring in the expression “socially and
educationally backward”, used by the Supreme Court in its clarification of
article 16(4), will have its natural and ordinary meaning which denotes,
“both”. In “Sherkhan V. Swami Dayal— 1921-28-C.W.N.-79-85-P.C.”,
it has been held that “the provision of one section cannot be used to defeat
those of another unless, it is impossible to effect reconciliation between them”.
The object of articles 15(4) and 16(4) is, broadly speaking, one and the same,
namely, advancement of the Backward Classes of citizens. There is nothing
which prevents us from making reconciliation between the attributes of
backwardness under articles 15(4) and 16(4). This principle of harmonious
construction of different provisions of the Constitution in order to reconcile
them with one another has been applied to several cases by the Supreme
Court (vide Venkataramana Vs. State of Mysore; State of Madras Vs. Chem-
pakam; Sharma Vs. Shrikrishna; and Nanavathy Vs. State of Bombay).
We therefore consider that under article 16(4) also, the backwardness is not
either social or educational, but it is both.

Till very recently, “economic” was not a factor at all leading to social
backwardness. Disabilities of “untouchability” or “near untouchability”
arising out of caste, stigma attached to low occupations, and social customs
like practice of purdah and, social taboos like prohibition of education
through the medium of English till the Muslim children underwent a course
of religious education till 8 to 12 years of age, are the constituents of what
we call “social backwardness due to historical reasons”. Those conditions
obtain in varying degrees in the social life of Kerala even today, in the form
of very clear vestiges of the said social evils. Today, both “social backwardness
due to historical reasons” and “economic backwardness” are relevant—(In
this context, it is relevant to remember that the Supreme Court has observed
in Balaji’s case, that though caste should not be taken as the sole or dominant
factor "social backwardness which results from poverty is likely to be aggrava-
vated by considerations of caste to which the poor citizens may belong, but
that only shows the relevance of both caste and poverty in determining the social back-
wardness of citizens"). In the future, when life becomes established completely
on economic equality, a time may come when “social backwardness” can be
equated to “economic backwardness”. Therefore, so far as Kerala is con-
cerned, social backwardness has two attributes, namely, “backwardness due
to historical reasons of caste, occupational stigma etc.” and “backwardness
due to poverty”. In its decision dated 31-1-1967, in O.P.No. 2360/64, the
High Court of Kerala also seems to have treated “economic backwardness”
as distinct from “social backwardness due to historical reasons”. Relevant
extract from the said decision of the High Court is given below:—

"............. But, I have to emphasise one aspect, it may be true
to say that the Ezhavas, Muslims and Latin Catholics belong to communi-
ties that are socially and educationally backward. However, the
possibility of there being a section, large or small, in these communities
who are advanced and who are not backward, socially, economically
and educationally, cannot be ruled out. If there is such a section no
reservation can be made in favour of the members of that section. Simi-
larly, the possibility of there being socially, educationally and economi-
cally backward section in the other so-called advanced communities
cannot be ignored and there is no reason why the benefit of reservation
should not go to the members of those sections if those sections are not,
adequately represented in the services under the State”.

The use of the term, “socially and educationally” by the Supreme Court
in Rangachari's case, to which reference has already been made by us, and
the use of the terms “socially”, “educationally” and “economically”, in the
decision of the High Court quoted above, contain the answer to those members
of the present non-backward communities who argued that the backwardness
under article 16(4) of the Constitution was only “economic” backwardness
and also to those members of the present backward communities who argued
that “economic” had nothing to do with article 16(4). In this connection,
a doubt may reasonably arise whether the term, “socially and educationally
backward” used by the Supreme Court, and the term, “socially, educationally
and economically backward”, used by the High Court of Kerala, are one and
the same or are different from each other. A distinction has been made
between the terms “social” and “economic”, in the preamble to the Consti-
tution which is reproduced below:—

WE, THE PEOPLE OF INDIA, HAVING SOLEMNLY resolved
to constitute India into a SOVEREIGN DEMOCRATIC REPUBLIC
and to secure to all its citizens;

JUSTICE, social, economic and political;

LIBERTY of thought, expression, belief, faith and worship;
EQUALITY of status and of opportunity; and to promote among them all;

FRATERNITY assuring the dignity of the individual and the unity of the Nation;

IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.

(underlining ours)

Article 46 of the Constitution reads as follows:—

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

In paragraph 36 of the Supreme Court decision in Balaji’s case, it has been observed as follows:—

"............In our country where social and economic conditions differ from State to State, it would be idle to expect absolute uniformity of approach, but in taking executive action to implement the policy of article 15(4) it is necessary for the State to remember, that the policy which is intended to be implemented is the policy which has been declared by articles 46 and the Preamble of the Constitution. It is for the attainment of social and economic justice that article 15(4) authorises the making of special provision for the advancement of the communities, therein contemplated even if such provisions may be inconsistent with the fundamental rights guaranteed under articles 15 and 29 (2). The context therefore requires that the executive action taken by the State must be based on an objective approach free from all extraneous pressures. The said action is intended to do social and economic justice and, must be taken in a manner that justice is and should be done".

(underlining ours)

The above clarification applies equally to articles 15(4) and 16(4), because article 46 and the Preamble have equal application to all provisions in the Constitution.

Thus, the Supreme Court and the High Court of Kerala have both used the term, “social backwardness” as meaning “economic backwardness”, and “social backwardness due to historical reasons of caste, occupational stigma etc.”. Therefore, it is clear that the expression, “socially and educationally backward” used by the Supreme Court, and the use of the term, “socially, educationally and economically” used by the High Court of Kerala are one and the same. This construction recognises the factual existence of classes of citizens who are backward “educationally”, “economically”,...
and "socially due to historical reasons". We have already adopted the economic test, as one of the tests for backwardness. It is therefore not necessary to include "poverty" again as a constituent of social backwardness due to historical reasons. Thus, the all round retardation due to the practice of caste till the recent past, the backwardness due to the pranks of the vestiges of caste in the present, the backwardness due to occupational stigma, purdah, aversion of Muslims, till recently, to education through the medium of English, other social taboos resulting in social backwardness will be the constituents of "social backwardness due to historical reasons". We would therefore suggest that social backwardness due to historical reasons may be one of the four tests.
CHAPTER VIII

BASIS OF CLASSIFICATION OF CITIZENS INTO BACKWARD AND NON-BACKWARD—MANNER AND METHOD OF APPLICATION OF THE TESTS FOR BACKWARDNESS AND DELINEATION OF BACKWARD CLASSES

39. In Chapter VII, we have answered the question raised in the first of the terms of reference. The second of the terms of reference is, "what should be the basis of classifying sections of people into backward and non-backward". The factors leading to backwardness, having been covered by the first of the terms of reference, the second can only mean, "what is the norm or yardstick for measuring backwardness in the field of each factor, and what are the manner and method of application of the tests adopted". The third of the terms of reference is, "what class of citizens in the State should be treated as backward for purposes of article 16 (4) of the Constitution and which of such classes are not adequately represented in the services under the State". In this Chapter, we will deal with the second of the terms of reference and the former part of the third of the terms of reference leaving the latter part thereof to be dealt with in the next Chapter.

40. General aspects about application of tests:

The tests adopted by the Commission are:—

(i) the test of education;
(ii) the test of appropriation of appointments;
(iii) the test of social backwardness due to historical reasons; and
(iv) the economic test.

We have to apply these tests to the groups of citizens (Groups I to XII mentioned in Appendix (XI), and find out the Backward Classes therefrom. In doing so, we have to determine:—

(a) The norm with reference to which, the attainment or position of each group of citizens in the field of each of the 4 tests should be measured.

(b) The levels at which the attainment or position of each group of citizens in the field of each test should be measured with reference to the norm, that is to say:—

(i) What should be the level at which the educational attainment of each group has to be measured? Should it be primary, secondary, graduation or other levels?

(ii) Whether the appropriation of appointment by members of each group of citizens should be measured separately for each of the well defined
categories of appointments like "Last Grade (Class IV)", "Non-gazetted" and "Gazetted", or whether it is enough if appropriation of appointments by members of each group of citizens, in the various services under the State as a whole is measured with reference to the norm.

(iii) Whether the test of appropriation of appointments should be limited to the appointment in the services under the Government or whether it should be applied to appointment in the services under the Legislature the local authorities and other authorities mentioned in article 12 of the constitution.

(iv) What should be the aggregate-annual-family-income-level at which the economic position of each group of citizens should be measured with reference to the norm.

(c) The manner and method of application of each of the 4 tests, that is to say:

(i) Whether each test should be applied independently, and Backward Classes delineated from each group immediately after application of each test, or

(ii) Whether all the tests should be applied to each group of citizens simultaneously.

We shall deal with the above points (a) to (c) with reference to each of the tests adopted by us.

41. The norm and level for the test of education and the method of comparison.

It is necessary to remember the judicial pronouncements on this point. In Balaji's case, the Supreme Court has observed as follows:

"... It may be conceded that in determining the educational backwardness of a class of citizens, the literacy test supplied by the Census Reports may not be adequate; but it is doubtful if the test of the average of student population in the last three High School Classes is appropriate in determining the educational backwardness. Having regard to the fact that the test is intended to determine who are educationally Backward Classes, it may not be necessary or proper to put the test as high as has been done by the Committees. But even assuming that the test applied is rational, and permissible under article 15 (4), the question still remains as to whether it would be legitimate to treat castes or communities which are just below the State average as educationally Backward Classes. If the State average is 6.9 per thousand, a community which satisfied the said test or is just below the said test cannot be regarded as backward. It is only communities which are well below the State average that can properly be regarded as educationally Backward Classes of citizens. Classes of citizens whose average of student population works below 50% of the State average are, obviously educationally Backward Classes of citizens. Therefore, in our opinion, the State was not justified in including in the list of Backward Classes, castes or communities whose average of student
population per thousand was slightly above, or very near, or just below the State average.” (Para 26)

(Underlining ours)

“............ In regard to the Muslims, the majority view in the Committee was that the Muslim community as a whole should be treated as socially backward. This conclusion is stated merely as a conclusion and no data or reasons are cited in support of it. The average of student population in respect to this community works at 5 per thousand and that, in our opinion, is not so below the State average that the community could be treated as educationally backward in the State of Mysore. Therefore, we are not satisfied that the State was justified in taking the view that communities or castes whose average of student population was the same as, or just below, the State average, should be treated as educationally Backward Classes of citizens. If the test has to be applied by a reference to the State average of student population, the legitimate view to take would be that the classes of citizens whose average is well or substantially below the State average can be treated as educationally backward. On this point again, we do not propose to lay down any hard and fast rule, it is for the State to consider the matter and decide it in a manner which is consistent with the requirements of article 15 (4)”.

(Para 28)

From the above it may be seen that the Supreme Court has:—

(i) referred to the inadequacy of the literacy test supplied by the Census Report;

(ii) expressed doubt about the propriety of taking the average of the student population of each community at the level of the 8th, 9th and 10th standards with the object of putting each of those communities in the list of Backward Classes;

(iii) observed that it was not correct to put a community whose average of student population did not work “well below”, the State average, in the list of Backward Classes;

(iv) observed that classes of citizens whose average of student population worked below 50% of the State average were obviously educationally Backward Classes of citizens;

(v) not laid down any hard and fast rule in the matter, but left it to be considered and decided by the Government, in a manner consistent with the requirements of the concerned Constitutional provision.

These observations were made in a case that arose in Mysore and therefore it is necessary to study the background of the impugned orders of the Mysore Government. The Mysore Government took the average of the student population of Mysore in the last three classes of High Schools in that State per thousand population of that State. They also took the average of the student population of each community in that State at the above-mentioned level, per
thousand population of that community. The former is called the State average of student population of the last three High School classes, and the latter the average of student population of the community concerned. The Government of Mysore ordered that those communities each of whose average of student population was below or equal to the State average, was, as a whole, backward and, that those among them whose average of student population was less than 50% of the State average would be treated as more backward. They compared the backwardness of communities with the position of the most advanced communities. In addition to that, the Government of Mysore provided for a total reservation of 68% of the seats in the Medical, Engineering etc., Colleges of Mysore. All this was struck down by the Supreme Court. Although, in a different context, the Supreme Court has clarified that, even if the majority of a community was socially and educationally backward, there would be an effective minority in it which was far more advanced than another small sub-caste/community which was not in the list of Backward Classes - (vide Chitralekha’s case)-and that such advanced sections of the so-called Backward Communities did not deserve any adventitious aid. But when that section also is included in the entire community to which it belongs, it gets reservation, whereas a similar section in a non-advanced community does not get it. That is one of the improprieties pointed out by the Supreme Court. In Kerala we find, on a preliminary scrutiny of the statistics before us, that no community in this State is, as a whole, backward. At the same time none can contradict the factual existence of a weaker section (Backward Class) in each community. Our duty therefore is to find out the weaker section of each community or each group of communities. In doing so, we can apply the test of education, the test of appropriation of appointments, the test of social backwardness due to historical reasons, and the economic test, and then by assigning a reasonable economic limit to each community or each group of communities, we can draw the socially and educationally backward section from each community or each group of communities.

The first point to be examined is whether literacy test, or the test at any other level of education would be sufficient and reasonable for purposes of article 16 (4). This takes us to the question what is meant by literacy test. The term, “literacy” means condition of being literate. According to the Champer’s Twentieth Century Dictionary (Revised Edition), the expression “literate” includes all those who are able to read and write a simple letter, and all educated persons without a University degree. Therefore, all those who can read and write and all educated persons up to and including undergraduates, come within the term, “literate”. In the 1961 Census Report, it is mentioned that “literate” include persons who can both read and write and who have passed written examination or examinations in proof of educational standards. The point to be noted is that those who apply the literacy test, should not be under the impression that they are applying a test of “number or percentage of persons in a group of citizens who can only read and write simple letter”. By literacy test, they would, in fact, be applying a test of number or percentage of persons in a group of citizens who know, not only how to read and write, but also of those educated persons in the group without a University degree.
In other words, the test of education at the level of the last three High School classes, is included in the literacy test.

In this connection, we have to note that the conditions in Kerala are different from those in Mysore, in the field of education. According to the 1961 Census Report, Delhi took the pride of place and, Kerala the second, in the matter of literacy. The rate of literacy in Delhi and Kerala was 527 and 468 respectively per thousand, and that in Mysore, 254 per thousand. Similarly, the number of students in the last three High School classes of Mysore was 6.9 per thousand, at the time of the Nagan Gowda Committee, while that of students in the last three High School classes in Kerala in 1964-65 came to 33.87 per thousand and in 1968-69, to 37.05 per thousand. Therefore, the level of education in Kerala is higher than that in Mysore.

In Kerala the educational backwardness of the different groups of citizens will not be seen reflected in the Lower Primary or Upper Primary classes because the majority of children from all groups of citizens attend these lower classes. Therefore, both the Lower Primary and Upper Primary classes are too low to be considered for assessing educational backwardness of citizens, especially for purposes of article 16 (4).

S.S.L.C. stage, on the other hand, is a take-off stage for University education and S.S.L.C. holder is one equipped with the minimum educational qualification for a very large number of appointments in the services under the State.

We have already stated that, in its decision in Rangachari's case, the Supreme Court has held that article 16 (4) enables the State to make reservation, not only in initial appointment by direct recruitment to the lowest rung of the services, but also in appointments by promotion to selection posts, in a proper case. Selection posts include almost all the Gazetted posts. The minimum general educational qualification is graduation for many of the selection-posts, and post-graduation in the case of a few. So, in a proper case, if the Government order that a certain per cent of selection-posts should be reserved for Backward Classes, there should be sufficient number of graduates at least, belonging to Backward Classes to be appointed, by promotion to the selection posts. Even for many of the appointments in the non-selection categories of posts also, degree and double degree are the prescribed minimum educational qualifications in Kerala. Thus, for a very large number of posts, both in the selection categories and non-selection categories, degree and double degree, as the case may be, are the minimum educational qualifications.

Post-graduate courses are very few and the number of seats in some of such courses is infinitesimally small. Further, a post-graduate course of studies is not an attraction for all citizens in the community at large; only the select few with high intellect and inherent aptitude for research and higher studies, are attracted by that course of studies. Therefore, we consider this course of studies as too high a standard to be considered as a constituent of general education.
For the various reasons stated above, and having regard to the fact that the ultimate object of applying the test of education is to find out the capacity of each group of citizens to gain appointments, the levels of education at which the test should be applied, should be those which are the minimum educational qualifications for the majority of appointments in the services under the States, we consider that S.S.L.C. and graduate courses in Arts and Science, Law, Ayurveda, Agriculture, Veterinary Science, Medicine and Engineering may be the levels of education to be taken into account in applying the test of education.

The norm for the test of education may be the percentage of population of each group of citizens. The educational attainment of each group of citizens at each of the above mentioned levels, as indicated by the percentage of student population belonging to each group, on the total number of such students in Kerala, will be compared with the percentage of population of that group itself, instead of comparing it with the educational attainment of the most forward community. The test of education will not be applied as an independent test and elimination of the educationally non-backward section from each group, will not be made immediately after application of this test, because nobody can say whether the educationally advanced section of a group of communities would be advanced also in the economic field or in the field of appropriation of appointment. Hence, the socially, educationally and economically advanced section will be eliminated from each group only after all the tests are applied.

42. The norm and level for the test of appropriation of appointments:

What should be the levels of appointment which should be taken into consideration? It has been held that the inadequacy of representation in the services, which is a condition precedent to the making of provision for reservation, has to be assessed not only numerically, but also qualitatively. In Kerala, there are at present, 53 State Service, 53 Subordinate Services and 1 Last Grade Service. The question arises whether qualitative analysis adverted to in the decision of the Supreme Court in Rangachari’s case should be made in respect of appointments in each of these 107 Services separately, or whether it is enough if it is made in respect of a reasonable number of well-defined categories of services, viz. “Last Grade (Class IV)”, “Non-gazetted” and “Gazetted”. Although in as lightly different context, the Supreme Court has observed, in Devadasan’s case, (AIR-1964-S.C-179-V-51-C-16), as follows:

“This provision—(Article 16 (4)—therefore, contemplates reservation of appointments or posts in favour of Backward Classes who are not adequately represented in the services under the State. Where, therefore, the State makes a rule providing for reservation of appointments or posts for such Backward Classes, it could not be said to have violated article 14 merely because the members of the more advanced classes will not be considered for appointment to those posts eventhough they may be equally, or even more, meritorious
than members of the Scheduled Castes or merely because such reservation is not made in every kind of service under the State. (underlining ours)

Having regard to the conditions obtaining in Kerala in the matter of appointment, and in view of the portions underlined in paragraph 28(h) and in the above quotation, we are of the opinion that the requirement of qualitative analysis would be substantially met, if we make the qualitative analysis of representation, separately for each of the three compartments of services, namely, the “Last grade”, the “Non-gazetted” and the “Gazetted” categories. This qualitative analysis is constitutionally necessary only at the stage of assessment of adequacy of representation of the Backward Classes, after the said classes are drawn. But, we consider that it is better to adopt the method of qualitative analysis for application of the test of appropriation of appointment at the stage of classification also.

In this context, reference may be made to paragraph 38 (vi) wherein we have explained the difference between—

(i) the application of the “test of appropriation of appointments”, to each community or group of communities; with a view to drawing Backward Classes, by utilising the statistics relating to each community or group of communities, and

(ii) the assessment of adequacy of representation in the services under the State, of the Backward Classes, by utilising the statistics relating to the Backward Classes, worked out from the statistics relating to communities, after the said classes are drawn.

Another aspect of the application of this test to each community or group of communities is, that it will be applied separately in the three compartments mentioned above, not only in respect of the services under the Government and the Legislature, but also in respect of the services under the local and other authorities. (vide article 12 of the Constitution and our analysis in sub-paras (a) to (g) of paragraph 28).

The norm may be the percentage of population of each group of citizens. The level at which the appropriation of appointments of each group should be taken into consideration, may be “Last Grade”, “Non-Gazetted” and “Gazetted” appointments, separately. The comparison of the attainment of each group of citizens in each of the above three compartments may be made with the percentage of population of that group itself, instead of with the attainment or position of the most advanced group of citizens. For the reasons mentioned in the case of the test of education, the test of appropriation of appointments also will not be applied as an independent test and, ousting of the advanced section of each group will not be effected immediately after application of this test alone. As already stated by us, the result of all the 4 tests would be borne in mind and the advanced section ousted from each group after applying all the four tests.
43. Test of social backwardness due to historical reasons

In paragraph 38 (vii) we have explained the constituents of social backwardness due to historical reasons. Excepting the statistics of punishments awarded to the offenders under the Untouchability (Offences) Act, 1955, there are no statistics for this test. The application of this test is therefore objective-cum-subjective. The position of each group of citizens is examined below.

**Group I (Ezhavas, Thiyyas, etc.)**

The population of this group is 44,57,808 which works out to 22.19% of the total population of the State. The occupation of the majority of this group is coirmaking, coconut fibre making, agriculture and manual labour on daily wages, toddy-tapping etc. It may be seen from paragraph 38 (ii), (iii) and (vii) that Ezhavas and Thiyyas were suffering from the disabilities on account of caste and occupational stigma, and that they were denied entry into educational institutions and public services, in the past. This led to their social and educational backwardness, which contributed to their backwardness in the field of appointment. From the statistics of punishments awarded to offenders under the Untouchability (Offences) Act, 1955, given in paragraph 38 of this report, it may be seen that the offences coming under the penal provisions of the Act have been committed against Ezhavas and Thiyyas even in 1965. There are also evidences like the one given by the Secretary, Sree Narayana Dharma Paripalana Yogam, Cannanore to the effect that he had to wash the glass in which water was given to him for drinking, when he visited a Nayar family in 1968. From paragraph 38 it can be seen that there are many other forms of vestiges of caste, practised even now. The weaker section of this group of citizens whose traditional occupation is toddy-tapping etc. is suffering from occupational stigma also. Therefore, Group I may be included in the list of groups of citizens the weaker section of which has social backwardness due to historical reasons.

**Group II (Muslims)**

The population of this group of citizens is 3,812,322 which works out to 19.12% of the total population of the State. The observance of Purdah by the Muslim women, especially in the Malabar area, has contributed to the social and educational backwardness of this group. Even in 1958, when the Government College at Madapally was started, a big conference under the leadership of Mulas (Muslim priests) gathered in the Badagara mosque and passed a resolution that before the Muslim children completed a course of religious education till 8-12 years of age, they should not be sent to schools and colleges for education through the medium of English. This also led to their backwardness in modern education. On page 489, Volume II - 'Cochin Tribes and Castes', it is stated that the original Muslims came to Kerala as sailors and merchants, and many of the Muslims here are said to be the descendants of the off springs of Arabs from unions with Thiyya or Choga and other low caste women. A good number of Muslims are fishermen, agricultural labourers, pedlars and daily-wage earners. It is clear from what is stated...
above, that a very large section of this group of citizens is socially and educationally backward on account of occupational stigma, observance of purdah and the aversion to education through the medium of English till very recently. This group may be included in the list of groups the weaker section of which have social backwardness due to historical reasons.

**Group III (Syrian Christians, etc.)**

The total population of this group is 3,214,278. They form 16% of the total population of the State. Although this group is generally non-backward in the social field, there are manual labourers on daily wages in this group also and a few converts from backward communities. The weaker sections of this group have therefore occupational stigma, and some amount of social disability in the case of the new converts. Therefore, the weaker section of this group consists of some persons who have social backwardness due to historical reasons.

**Group IV (Nairs etc.)**

The population of this group of citizens is 2,905,775. The percentage of population of this group is 14.46. Though this group is generally non-backward in the social field, there are manual labourers to whose occupations, what is called low occupational stigma is attached. The weaker section of this group consist of some persons to whom low occupational stigma is attached.

**Group V (Ezhavathys, Arayans, Valans, Kusavans, Kaniyans etc.)**

The population of this group is 851,603. They form 4.24% of the total population of the State. The members of this group are suffering from occupational stigma and caste disability of the type more or less similar to those mentioned in the case of Group I. Therefore, this group may be included in the list of groups the weaker section of which has social backwardness due to historical reasons.

**Group VI (Viswakarmalas etc.)**

The population of this group of citizens is 756,178 which works out to 3.76% of the total population of the State. The members of this group suffer from occupational stigma and caste disability, of the type more or less similar to those mentioned in the case of Group I. This group may be included in the list of groups of citizens the weaker section of which has social backwardness due to historical reasons.

**Group VII (Latin Catholics other than Anglo-Indians and Scheduled Castes Converts)**

The population of this group is 731,207. The percentage of population of this group is 3.64. During the 16th and 17th centuries the Portuguese converted to Christianity large numbers of the poor backward fishing castes inhabiting the coastal regions. Their descendants who form a good percentage of the coastal population, especially in the Central and Southern regions are
still engaged in fishing as their chief occupation. They were enjoying a special patronage from the Portuguese. But with the fall of the Portuguese power, they became, by and large, relegated to the background. What with their occupation and other historical reasons, they are even now very backward, in education and financial and social status. Therefore, the weaker section of this group of citizens has social backwardness due to historical reasons.

Group VIII (Vilakkithala Nair, Velithadathu Nair, Vania, Chekkala, Salia, Yadava etc.)

The population of this group is 435,396 which forms 2.17% of the population of the State. The weaker sections of this group have social backwardness due to historical reasons. This group may be included in the list of groups of citizens, the weaker section of which has social backwardness due to historical reasons.

Group IX (Brahmins, Kshatriya, etc.)

The population of this group of citizens is 353,329. They form 1.76% of the total population of the State. This group generally is socially non-backward, but the possibility of there being a section in this group, the members of which do some kind of manual labour like cooking etc., cannot be ruled out. Those members may have some kind of occupational stigma.

Group X (Converts from Scheduled Castes to Christianity)

This group forms 1.50% of the total population of the State, their population being 301,912. The degree of social segregation of the Scheduled Castes Converts to Christianity is the same as before their conversion. This group may be included in the list of groups of citizens, the weaker section of which has social backwardness due to historical reasons.

Group XI (Ezhuthachan, Maravan, etc.)

The population of this group of citizens is 260,042 forming 1.30% of the total population of the State. The evidence is that the weaker section of this group has social backwardness due to historical reasons. This group may be included in the list of groups of citizens the weaker section of which has social backwardness due to historical reasons.

Group XII (Vellalas, Chetties etc.)

The population of this group is 151,150 which forms 0.75% of the total population of the State. Generally, this group is socially non-backward. But there are daily wage manual labourers belonging to the weaker section of this group who have occupational stigma.

The social backwardness due to historical reasons, of each group of citizens, will be borne in mind at the time of classification of citizens into backward and non-backward, assessment of adequacy of representation of the
Backward Classes in the services under the State, and distribution of the total quantum of reservation among the various Backward Classes.

44. Economic test—Norm and level:

What should be the maximum aggregate annual income of an average family of five, to enable it to prosecute the education of 3 children, by struggling through conditions of debt and undeserved poverty. These conditions vary from family to family. Our aim is to find out the maximum amount of income, below which conditions of debt and poverty will prevail, in varying degrees, depending upon the degree of frugality, hard manual labour, tightening of belt etc. Such income will also vary slightly from rural to urban areas and even from place to place in such areas. We shall now switch on to the expenditure side and find out the corresponding income of an average family of five which will be in perpetual debt and other conditions of poverty. In rural areas, the number of Schools and Colleges is few and far between, and means of communication are difficult. If living is cheaper in rural areas generally, than that in urban areas, the cost of education in High Schools and Colleges, in rural areas is comparatively higher than that in urban areas. Therefore, the slight advantage in one respect, stands almost amended by the slight disadvantage, in the other. For this reason, we do not consider it necessary to differentiate between rural and urban areas, so far as the all-round expenditure of an average family of five in Kerala is concerned.

Some witnesses suggested to us that reservation of appointments or post in favour of Backward Classes need be made only if the members thereof are persons, each of whose aggregate annual income is below the per-capita income of the State. They argue that the element of poverty is there, and that reservation is to be given in favour of the weaker sections of society and not in favour of those who really do not deserve any adventitious aid. Thus presented, the above argument looks reasonable and attractive, and therefore, it has to be examined closely. The per-capita income of Kerala, based on current prices, and the cost of living index in Ernakulam are given below:

<table>
<thead>
<tr>
<th>Year</th>
<th>Per capita income based on current prices</th>
<th>Year</th>
<th>Cost of living index in Ernakulam</th>
</tr>
</thead>
<tbody>
<tr>
<td>1964-65</td>
<td>Rs. 359.40</td>
<td>1965</td>
<td>632 points</td>
</tr>
<tr>
<td>1965-66</td>
<td>Rs. 404.20</td>
<td>1966</td>
<td>698</td>
</tr>
<tr>
<td>1966-67</td>
<td>Rs. 457.20</td>
<td>1967</td>
<td>749</td>
</tr>
<tr>
<td>1967-68</td>
<td>Rs. 505.00</td>
<td>1968</td>
<td>799</td>
</tr>
<tr>
<td>1968-69</td>
<td>(figures not yet ready)</td>
<td>1969</td>
<td>837</td>
</tr>
</tbody>
</table>

From the above table, it may be seen that the latest available per-capita income of Kerala, based on current prices, is Rs. 505.00. At this rate, the income of...
An average family of five would be Rs. 505 \times 5 \text{ Rs. 2.525 only.} The question arises whether an average family of five with an aggregate annual income of Rs. 2,525 and below, would be able to maintain itself and prosecute the education of three children, even after doing their own household work, exercising strict economy in expenditure, limiting items of household expenditure on bare necessities of life, avoiding all sorts of luxuries and entertainments, and always remaining in debt and undeserved poverty. The answer is plainly in the negative. If that be so, what is the advantage in making reservation of appointments, only in favour of those members of the society, each of whose aggregate annual income is less than the per-capita income of the State, in the present set up of the society?

Another set of evidence is that scavengers, coolies on daily wages, shoe-polishers, tree-climbers, log-sellers, wood-carvers, watchers at burial grounds, grave-diggers, snake charmers, certain other low occupational classes, those who live in inaccessible hilly areas, beggars etc. etc., and the children of such persons are the really Backward Classes and that, therefore, reservation of appointments or posts need be made, only in their favour. Undoubtedly, all those persons and the rest whose aggregate annual income is below the per-capita income of the State do deserve the benefit of reservation. But, can they, or their children, some of whom generally resume the traditional occupations of their parents after attending schools for two or three years, and who even relapse into illiteracy, avail themselves of the benefit of reservation of appointments of posts? The framers of the Constitution have treated the advancement of these traditionally neglected social classes and other economically weaker sections of society, as a matter of very great importance. Therefore, we consider that it is necessary to take steps for the effective and quick removal of the real evil lurking behind. In our opinion, these neglected classes should first of all be given free education, free food, free clothing, free extra coaching and free residence in residential schools, if they should be enabled to avail themselves of the advantage offered by reservation, at least in the future. Then only the attractive provisions for the reservation of appointments or posts, in favour of these neglected members of the society, can have a tangible and practical content. We, therefore, suggest that the Government may also take steps for educational advancement of such members of the society in the manner suggested above.

Bearing the above-mentioned futility of making provision for the reservation of appointments or posts only in favour of those members of the society, each of whose aggregate annual income is less than the per-capita income of the State, we shall examine what should be the reasonable expenditure required for an average family of five in Kerala, to maintain itself in conditions of debt and poverty, and to prosecute the education of three children. Given below is a rough but realistic estimate:

\[
\text{Number of members in the family (servant not included)}
\]

5
(i) Rice 2½ Edangazhis, that is about 3 kilograms (Kanji and curry in the morning, rice and curry for the midday meal and Kanji and curry in the evening) at 1/8 Edangazhi of uncooked rice per head for Kanji and 1/4 Edangazhi of uncooked rice per head for the rice and curry, at Rs. 2 per Edangazhi Rs. 5.00 per day

(ii) Pulses-1/2 Edangazhi for curry Rs. 1.50 per day

(iii) Vegetables and fish " 2.00 "

(iv) 4 ounces of coconut oil for cooking and for bath " 0.75 "

(v) Coconut " 0.90 "

(vi) Salt, Onion, Chillies and other condiments " 0.50 "

(vii) Milk for 5 persons " 1.60 "

(viii) Sugar, tea or coffee " 0.75 "

(ix) Firewood " 1.00 "

(x) Medicine " 0.75 "

(xi) Clothing, tailoring and soap for washing (washing being done by self) " 2.00 "

(xii) Rent, light and water (at Rs. 70+Rs. 12+ Rs. 2 = Rs. 84 per mensem) " 2.80 "

(xiii) Education of 2 children at schools and one at college (tuition fee, books, umbrellas but no shoes at Rs. 120 p.m. for three students) " 4.00 "

(xiv) Income-tax " 1.00 "

24.55 or 25.00 per day

Rs. 750 p.m.

It may be noted that this rough estimate does not include servant’s food and pay, washing charges and charges on account of any luxury item, because our aim is to arrive at a reasonably realistic estimate of minimum expenditure of an average family of five, which has to work hard, to be extremely frugal, to tighten its belts and to live in conditions of debt and “undeserved want”. The above estimate of monthly minimum expenditure of Rs. 750 works out to Rs. 9,000 per annum. We are inclined to make a cut of Rs. 1,000 from the above estimate total annual expenditure and reduce the income to meet this expenditure to Rs. 8,000 per annum, so that the family may indisputably be one in debt and “undeserved want”. The reasonableness of this amount is examined below. The economic limit of aggregate annual family income
fixed by the Government of Kerala in May, 1965, for the purpose of drawing Backward Classes who are eligible for reservation of seats in educational institutions is Rs. 6,000. With the general rise in wages and prices from 1965 to 1970, the value of money has gone down. We have given above, the per-capita income based on current prices, and the cost of living index in Ernakulam from 1964-65 onwards. We find that, on the basis of the increase in the cost of living index of Ernakulam from 1965 to 1969, the proportionate increase on the said amount of Rs. 6,000 would be Rs. 1,946. On the basis of increase in the per-capita income from 1964-65 to 1967-68, the increase on Rs. 6,000 mentioned above, comes to Rs. 2,400. On the basis of either of these two increases, namely Rs. 1,946 and Rs. 2,400, the amount of Rs. 8,000 per annum suggested by us, is only reasonable. Therefore we suggest that the income ceiling for the economic test may be “Rs. 8,000 and below”, per annum for a family. The norm may be the percentage of population of each group of citizens. The level may be level of families whose aggregate annual income from all sources is “Rs. 8,000 and below”. The attainment or position of each group of citizens will be compared with the percentage of population of that group itself, instead of that of the most advanced group of communities.

45. Preparation of appendices showing the attainments or position of each group of citizens in the fields of the various tests:

The Scheduled Castes and Scheduled Tribes are outside the terms of reference to this Commission. The communities in the State except scheduled Castes/Scheduled Tribes have been grouped into 12 and given the Group Numbers, Group I, Group II, Group III etc. and Group XII in Appendix XI. The name of groups, the population of each group as per Sample Survey, 1968 conducted by the Bureau of Economics and Statistics on behalf of this Commission, and the percentage of population of each group, are given in columns (2), (3) and (4) of each of the Appendices XII (A) to XII (I).

We shall now prepare the appendices showing the percentage of population and the attainment or position of each group of citizens and the working sheet for the delineation of Backward Classes:

*Education*

(a) The percentage of population of each group of citizens, the number of students in Standard X belonging to each group for the year 1968-69 and the percentage of the said students in the total number of such students in Kerala for the year 1968-69 are given in columns (4) to (6) of Appendix XII (A).

(b) The number of students belonging to each group of citizens, in each of the graduate courses for the year 1968-69 and the percentage of the said students on the total number of such students in Kerala for that year, are given in columns (5) and (6) of each of the Appendices XII (B) to XII (I).
Appointments

The number of appointments held by members of each group of citizens, in the three compartments, namely (i) Last Grade (Class IV), (ii) Non-gazetted and (iii) Gazetted, and the percentages of appointments held by members of each group of citizens, in the above mentioned three compartments, on the total number of such appointments in Kerala, are given in respect of the services under each of the institutions mentioned below, in the appendices shown against each institution:

(a) The Government and the Legislature—in columns (5) to (10) of Appendix XIII (A)
(b) The Kerala State Electricity Board—in columns (5) to (10) of Appendix XIII (B)
(c) The Kerala State Road Transport Corporation—in columns (5) to (10) of Appendix XIII (C)
(d) The Kerala University in columns—(5) to (10) of Appendix XIII (D) (vide also Note under (d) below)
(e) The Municipalities and Municipal Corporations in columns (5) to (10) of Appendix XIII (E)
(f) The Panchayats in columns (5) to (8) of Appendix XIII (F) (There are no Gazetted appointments in the services under the Panchayats. Hence, columns (5) to (8) only instead of columns (5) to (10)
(g) The Industrial Concerns fully owned by the Government—in columns (5) to (10) of Appendix XIII (G)
(h) The Companies, not less than 51% of the paid up share capital of which, is held by the Government of Kerala—in columns (5) to (10) of Appendix XIII (H).

Economic test

Statement showing the percentage of families in each group of citizens whose aggregate annual income from all sources taken together, as in 1968 is “Rs. 8,000 and below” is given in Appendix XVIII.

Consolidated statements for each of the four tests

(a) Consolidated statement showing the percentages of educational attainments of members of each group of citizens at the levels of S.S.L.C. course and at each of the graduate courses, is given in Appendix XIV. Source: Appendices XII (A) to XII (I).]
(b) Consolidated statement showing the percentage of appointments held by members of each group of citizens, in the Last Grade category as in 1968, in the services under the Government and the Legislature, the Kerala State Electricity Board, the Kerala State Road Transport Corporation, the Kerala University, the Municipalities and Municipal Corporation, the Panchayats, the Industrial concerns fully owned by the Government; the Companies not less than 51% of the paid up share capital of which is held by the Government of Kerala, the Kerala State Financial Corporation, the Fisheries Corporation, the Tourist Corporation, the Plantation Corporation, the Coir Corporation, the Handloom Corporation, the Cashew Corporation, the Khadi and Village Industries Board and the Warehousing Corporation, is given in columns (4) to (12) of Appendix XV. [Source: Appendices XIII (A) to XIII (I)].

(c) Consolidated statement showing the percentage of appointments held by members of each group of citizens, in the services under the Government and the Legislature and all the institutions mentioned in (b) above, in the Non-Gazetted category, as in 1968 is given in Appendix XVI. [Source: Appendices XIII (A) to XIII (I)].

(d) Consolidated statement showing the percentage of appointments held by members of each group of citizens, in the services under the Government and the Legislature and all the institutions mentioned in (b) above, in the Gazetted category, as in 1968 is given in Appendix XVII. [Source: Appendices XIII (A) to XIII (I)].

**Note:** The statistics relating to the services under the Calicut University are not included in the appendices because, at the time when the statistics relating to the Kerala University were collected, there was no Calicut University, and when that University came into being, a part of the staff in the services under the Kerala University was transferred to the services under the Calicut University. Therefore, in order to avoid duplication of statistics, the data relating to the staff under the Calicut University have not been included in the appendices.

(e) Statement showing the percentage of families in each group of citizens, whose aggregate annual income from all sources taken together is “Rs. 8,000 and below” as in 1968, is given in Appendix XVIII. It may be noted that when the percentage in column (7) of the said appendix increases from the “norm” the backwardness will increase. This is because, the families which fall within the range of zero rupee to Rs. 8,000 inclusive, are poor families for purposes of article 16 (4). Hence, when the percentage of poor families in a group increases from the “norm”, the poverty or backwardness also increases.

Appendices XIV to XVIII and paragraph 43 of the report, regarding the test of social backwardness due to historical reasons, are the working sheets or drawing Backward Classes from each group of citizens.
Delineation of Backward Classes:

If a candidate belonging to a Backward Class which, on assessment of adequacy of representation in the services, is found to be inadequately represented, wants to apply for appointment in the reserved quota, he will have to produce a certificate showing that he belongs to a backward Class for which reservation is made. For obvious reasons, such a certificate cannot be obtained in terms of any indicator of educational attainment of that class, or of the index of appropriation of appointment by that class. In a scheme of drawing Backward Classes from communities, on applying the relevant tests the above certificate has necessarily to be in terms of the candidate’s community and family income. Such a certificate can be easily obtained. Therefore, keeping in our mind the result of the 4 tests for backwardness, we have to delineate Backward Classes, in terms of community and family income.

Paragraph 43 of the report contains our assessment of social backwardness of the various groups of citizens, due to historical reasons. Appendices XIV to XVIII give the percentage of attainments of each of the groups of citizens in the field of education, appropriation of appointments, and in the economic field. The attainments are widely different from group to group. We consider that the norm with which the attainment of each group should be compared in order to assess the extent of backwardness or non-backwardness of each group of citizens may be the percentage of population of that group itself. If we compare the backwardness of the various groups with the attainment of the most advanced classes, the result would be that we would have to assign different economic limits to each of the different groups of citizens, commensurate with its attainment, and in relation to the most advanced classes of the society. In other words, if we assign, “Rs. 5000 and below”, as the economic limit for backwardness of the most advanced class, in view of the existence of a weaker section therein, then the economic limits to be assigned to each of the less advanced classes would, for example, be something like, “Rs. 5,500 and below”, “Rs. 6,000 and below”, “Rs. 6,500 and below”, “Rs. 7,000 and below”, and “Rs. 7,500 and below.” The result would be that in effect, we would be creating different layers or different strata of Backward classes which has been objected to by the Supreme Court in its decision in Balaji’s case.

There may be different Backward Classes in the sense that their adequacy of representation based on the strength of the various weaker sections is of different extent. For different extents of inadequacy, different quantum of reservation is allowable. But that is basically different from assigning different economic limits to different communities or groups of communities for purposes of classifying citizens into backward and non-backward.

There is also another reason why different economic limits should not be assigned to the different communities, for drawing Backward Classes from them. It is this: In the example cited above, the Backward Class drawn from the most advanced group of citizens would be assigned “Rs. 5,000 and below” as the range of aggregate annual family income, and the Backward Class
drawn from least advanced group of citizens would be assigned “Rs. 8,000 and below” as the range of aggregate annual family income. In our discussion on the “economic test” we have stated what constitutes poverty for purposes of article 16 (4). There, we have clearly stated that the expenditure required for an average family of five, to enable it to prosecute the education of 3 children by struggling through conditions of debt and “undeserved want”, should be taken as the basis for fixing maximum annual aggregate family income, in order to style that family as one in debt and “undeserved want”. We have also given the details of quantity of edible articles etc. required for such family. If we say that one Edangazhi of rice would be required per day for a poor family belonging to the backward section drawn from a group of communities, named (A), we cannot say that a lesser quantity of rice would be enough for a poor family belonging to the backward section drawn from another group of communities, named (B). For this reason also, there will be no justification for assigning different economic limits to the different Backward Classes. We have discussed this topic in detail, because, some witnesses who appeared before us, stressed the need for assigning different economic limits to different Backward Classes, commensurate with the extent of their backwardness.

On analysing the percentage of attainments of the various groups of citizens, we find that some of them are far above the norm, namely, the percentage of their own population while others are below it. As we have already stated, there is no community in the State which can be said to be socially, educationally and economically backward, as a whole. The data in Appendices XIV to XVIII prove this. At the same time, the factual existence of a weaker section in each group, cannot be ruled out. In Chitralekha’s case, the Supreme Court has observed as follows:—

“To illustrate, take a caste in a State which is numerically the largest therein. It may be that though a majority of the people in that caste are socially and educationally backward, an effective minority may be socially and educationally far more advanced than another small sub-caste the total number of which is far less than the said minority. If we interpret the expression “classes” as “castes”, the object of the Constitution will be frustrated, and the people who do not deserve any adventitious aid, may get it to the exclusion of those who really deserve.”

The above principle has been elaborately explained by the High Court of Kerala in its decision dated 31-1-1967 in O.P. No. 2860/1964 in which the High Court has observed that the possibility of there being sections large or small, in the present so-called backward communities, which are advanced and not backward socially, economically and educationally, could not be ruled out, and that if there are such sections no reservation could be made in favour of the members of those sections. Similarly, the possibility of there being socially, educationally and economically backward sections in the present so-called advanced communities could not be ignored and there is no reason why the benefit of reservation should not go to the members of those sections if those sections are not adequately represented in the services under the States
Therefore, our duty is only to draw the socially, educationally and economically weaker section from each of the group of citizens irrespective of the caste or community to which it belongs, and to assess the adequacy of representation of each such section, in the services under the State. Having analysed the statistics given in the Appendices XIV to XVIII, we are of the opinion that families of each group of citizens, the aggregate annual income of each of which is Rs. 8,000 and below, will constitute the weaker sections in each group for purposes of article 16 (4) of the Constitution. Accordingly, we delineate Backward Classes as follows:

“Only citizens who are members of families each of which has an aggregate annual income, that is to say, income of all members in the family from all sources taken together, of “Rs. 8,000 and below” (Rupees eight thousand and below) and which belong to any of the groups of citizens marked I to XII in Appendix XI, will constitute the Backward Classes belonging to the respective Groups, for purposes of article 16 (4) of the Constitution. The term, “family” means the applicant for appointment, his/her spouse, if any, and the applicant’s parents if the applicant is residing with and/or dependent on them.”
CHAPTER IX

ADEQUACY OF REPRESENTATION OF THE BACKWARD CLASSES, IN THE SERVICES UNDER THE STATE, QUAN-
TUM OF RESERVATION AND PERIOD FOR WHICH RESERVATION MAY CONTINUE

47. General aspects of adequacy of representation—Norm, level, and method—Listing of Backward Classes inadequately represented and deserving of reservation

(a) General aspects:

If a State wants to make provision for reservation of appointments or posts under article 16(4), two conditions must be fulfilled under that article. They are:

(i) that there shall be a Backward Class or Backward Classes of citizens;

(ii) that the said class or classes shall be inadequately represented in the services under the State.

In Chapter VIII we have drawn the weaker sections from each of the groups of citizens in the State (other than Scheduled Castes and Scheduled Tribes which are outside our terms of reference) irrespective of the caste or religion to which they belong, and have delineated them as the socially, educationally and economically Backward Classes in the State for purposes of article 16(4) of the Constitution. Thus, the first condition mentioned above stands satisfied. Those Backward Classes which satisfy condition No. (ii) above, deserve reservation of appointments or posts in the services under the State. We shall now proceed with the work of assessment of adequacy of representation in the services under the State, of each of the 12 Backward Classes, and make a list of the inadequately represented Backward Classes in favour of which reservation of appointments or posts may be made.

(b) Opinion formed by the State about adequacy—The power to form this opinion is limited to certain extent—Ruling of Supreme Court to be borne in mind:

Adequacy of representation in the services under the State, of the Backward Classes has to be made by the State by applying its mind. In paragraph 28(1) we have stated that the Supreme Court has observed that the said adequacy should be assessed not only numerically but also qualitatively. We have also stated in paragraph 42 that it is not necessary to make the qualitative assessment in respect of each of the one hundred and odd services under the Government and that the constitutional requirement of qualitative analysis would be substantially met if we assess the adequacy of representation in the 3 compartments of service, namely, “Last Grade”, “Non-gazetted”
and "Gazetted". It has also been observed by the Supreme Court in Rangachari's case, that adequacy should be assessed on a fair and objective basis. What remains to be examined, so far as the assessment of adequacy of representation is concerned, is what exactly are the scope and extent of the power conferred by article 16(4) on the State to form an opinion regarding adequacy. Generally, any opinion formed under a power conferred on an authority by a Statute, will be an opinion formed in exercise of discretion of that authority and, in certain cases where the said authority is an expert in the matter specified in the Act, it will also be an expert opinion. Such an opinion cannot ordinarily be challenged on grounds of propriety or sufficiency. The questions:—

(i) whether the power of an authority to form an opinion under a Statute is limited, and if so, to what extent;
(ii) whether the opinion formed by the said authority is justiciable; and,
(iii) whether there is any limitation to the grounds on which the Courts can question the validity of an opinion formed by such an authority;

were examined by the Supreme Court in the Barium Chemicals Ltd; Vs The Company Law Board (Civil Appeal No. 381 of 1966 dated 4-5-1966—A.I.R.1967 S.C. 295 -V-54-C-59). In that decision, the Supreme Court observed as follows:—

"Though an order passed in exercise of powers under a Statute cannot be challenged on the ground of propriety or sufficiency it is liable to be quashed on the ground of malafide, dishonesty or corrupt purpose. Even if it is passed in good faith and with the best of intentions to further the purpose of the legislation which confers the power, since authority has to act in accordance with and within the limits of that legislation, its order can also be challenged if it is beyond those limits or is passed on grounds extraneous to the legislation or if there are no grounds at all for passing it or if the grounds are such that no one can reasonably arrive at the opinion or satisfaction requisite under the legislation. In any one of these situations, it can well be said that the authority did not honestly form its opinion or that, in forming it, it did not apply its mind to the relevant facts".

In view of the above observation, the Constitutional position regarding the power of the State to form an opinion about adequacy of representation under article 16(4) is limited, and the grounds for judicial review of the opinion formed by the State, are also limited, to the extent, mentioned in the above observation of the Supreme Court.

(c) Assessment should be fair and objective—Statistics relating to Backward Classes worked out from those relating to communities:

In paragraph 28(1) we have quoted the Supreme Court decision in Rangachari's case, to the effect that the opinion of the State regarding adequacy
of representation of the Backward Classes, in the services under it, should be formed by application of its mind on a fair and objective basis and that subjective satisfaction on an arbitrary basis, would not be enough. The objective assessment of adequacy should be of the representation of each of the Backward Classes and not of the communities or groups of communities from which the said classes have been drawn. We have, therefore, to work out the population of, and the number of appointments appropriated by, each of the Backward Classes, separately in each of the said 3 compartments of service. The statistics already collected by us from Heads of Government Departments, from Local Authorities like Municipalities, Municipal Corporations etc. and other Authorities like the Kerala State Electricity Board, the Kerala State Road Transport Corporation, Government Companies etc. contain particulars of:

(i) number of appointments in the “Last grade”, “Non-gazetted” and “Gazetted” categories held by persons belonging to each group of communities, and

(ii) aggregate annual income of families of such persons.

As the families in each group, the aggregate annual income of each of which is “Rs. 8,000 and below” constitute the Backward Class drawn from each group, we could work out, from (i) and (ii) above, the number of appointments in the “Last grade”, “Non-gazetted” and “Gazetted” categories, held by members of each Backward Class.

From the Sample Survey Report, 1968, we have worked out the number of families in each group, the aggregate annual income of each of which is “Rs. 8,000 and below”. The average strength of families in each group is given in the said Sample Survey Report. From these two, we could work out the population of each Backward Class drawn from each group of communities. These statistics will enable us to assess adequacy of representation of each Backward Class on an objective basis.

(d) Statistics of population of each Backward Class and percentage of appointments held by members of each Backward Class in the services under the Legislature, Government, Local Authorities and Other Authorities—Furnished separately:

The population of each Backward Class, its percentage of population on the total population of all the Backward Classes put together; the number of appointments held by members of each Backward Class and the percentage of the said appointments on the total number of such appointments held by all the Backward Classes together, in each of the three separate compartments, “Last grade”, “Non-gazetted” and Gazetted” in the services under the “Government”, “Legislature”, “Local Authorities” and “Other Authorities” separately, are given in appendices XIX (A) to XIX (I).
(e) Statistics of population and appointments in the services under the State—Consolidated in 3 compartments, “Last grade”, “Non-gazetted” and “Gazetted”:

The consolidated statement showing the number of appointments in the services under the State, held by members of each Backward class, in each of the said three compartments separately, the percentage thereof on the total number of such appointments held by all the Backward Classes, and the percentage of population of each Backward Class on the total population of the Backward Classes, are given in Appendix XX. The assessment of adequacy may embrace all the services under the State as defined in article 12, but it may be made separately for each of the three compartments of services, namely, “Last grade”, “Non-gazetted” and “Gazetted”.

(f) Type of attainment to be taken into account in assessing adequacy of representation:

Among the 12 backward Classes of citizens we have drawn, some belong to groups of communities which at present enjoy the benefit of reservation and others to groups of communities which do not. The members of the Backward Classes which enjoy reservation can compete in the open merit pool also, in exercise of their individual right as citizens, guaranteed under clauses (1) and (2) of article 16. Therefore, in the case of the Backward Classes drawn from the groups of communities which are classified at present as backward, the number of appointments, appropriated by the members thereof takes in, appointments gained through open competition and reservation together. But, in the case of Backward classes drawn from groups of communities which are at present classified as non-backward, the number of appointments appropriated by members thereof consists of appointments, gained through open competition only.

In assessing adequacy of representation in the services under the State of a Backward class, the question arises whether the attainment to be taken into consideration should be the one in the field of reservation and open competition together, or in the field of open competition alone. Suppose there was no system of reservation of appointments or posts in favour of any class of citizens, and that the State was considering the question of making reservation in favour of Backward Classes for the first time. Under article 16(4), the State has first of all to assess adequacy of representation and, only if the representation is found to be inadequate, reservation could be made. Suppose the State formed a fair and objective opinion that a particular Backward Class had a representation which was substantially below the point of adequacy, that in accordance with the said opinion, the State made a provision for reservation in favour of the said Backward Class, with the right to come in by open competition also, that the said provision continued for sometime and that a review was made after that. As a result of the first review of the progress made by the Backward Classes, suppose, the State found that the above-mentioned Backward Class had not shown any improvement in its ability to stand on its own and, compete with others in the
open merit pool, and that therefore, the State ordered continuance of the reservation in favour of that Backward Class. During the second periodical review, suppose the State found that the percentage of appointments which that Backward Class had been able to appropriate in open competition, had increased, that the said increased percentage was substantially below the point of adequacy, that the percentage of appointments appropriated by it through reservation and by open competition together was slightly above the point of adequacy and that the State ordered continuance of reservation on the ground that the said Backward Class could not obtain that number of appointments in open competition, which was equal to the point of adequacy.

Instead of allowing the reservation to continue like that, could the State have ordered stoppage of reservation, on the ground that there was a slight increase in the ability of that Backward Class to compete in open merit pool? The answer is, "No", because if reservation was taken away at that stage on the ground mentioned above, it would go against the finding of the State regarding "inadequacy", and the said Backward Class would have relapsed into inadequacy, which was not intended by the State. Further, if reservation in favour of the said Backward Class was stopped in a case like this, the State would be going against the intention of the Constitution makers. The State would also have gone against the spirit of the following observation of the Supreme Court, in Devadasan's case (AIR—1964-S.C.179-V-51-G-16), namely:

"Where the object of a rule is to make reasonable allowance for the backwardness of members of a class by reserving certain proportion of appointments for them in the public services of the State, what the State would, in fact, be doing would be to provide the members of the Backward Class with an opportunity equal to that of the members of the more advanced classes in the matter of appointments to the public services".

(underlining ours)

In the case illustrated by us, the Backward Class appropriated, in the fields of reservation and open competition together, a percentage of appointments which was slightly above the "norm". But the finding of the State was that the percentage of appointments that the said Backward Class was really able to appropriate through open competition alone was substantially below the point of adequacy. The basis of that finding is that the said Backward Class would have relapsed into inadequacy if reservation was taken away. If, on the other hand, the State ordered stoppage of reservation, what the State would in fact, be doing would be, to deny the said Backward Class, the "equal opportunity" adverted to in the above observation of the Supreme Court. In other words, the State would be doing something against the object of the rule in article 16(4). For the various reasons mentioned above we suggest that, in the matter of assessment of adequacy of representation, the attainment of each Backward Class to be taken into account, should be the one in the field of open competition alone and, not that in the field of reservation and open competition together, but, for the reasons mentioned in
sub-paragraphs (i) and (j) below, the three categories of comparison, mentioned in the said sub-paragraph (j) would become necessary for assessing adequacy of representation.

(g) “Norm” for adequacy:

In Devadasan’s case (AIR-1964-S.C.-179-V-51-C-16), the Supreme Court has observed:

“What precise method should be adopted for giving adequate representation to the Backward Classes is a matter for the Government to consider. But the Court will interfere where the State fails to strike a reasonable balance between the claims of the Backward Classes and other classes of employees. . . . . . . . Reservations of vacancies in excess of 50% would not be constitutional”.

The Chamber’s Twentieth Century Dictionary (Revised Edition) gives the meaning of “adequate” as, “sufficient”, “competent”, and the Oxford English Dictionary, says that the term “adequate” means “commensurate in fitness”, “sufficient”, “suitable”, “equal in magnitude and extent”.

In the observation of the Supreme Court quoted in sub-para (i) above, about the object of the rule in article 16(4), reference has been made to “opportunity equal to that of the members of the more advanced classes, in the matter of appointments to public services”. The Dictionary meaning of the term, “adequate” also connotes “equality in magnitude and extent”. The object of the rule in article 16(4) as stated in the above observation of the Supreme Court is, “to make a reasonable allowance for the backwardness of the members of a class by reservation of appointments”. In other words, in the language of article 16(4) itself, the object of the rule in that article is to make “inadequacy”, adequate. When this object of making inadequacy adequate is concentric with equality of opportunity according to the above observation of the Supreme Court and according to Oxford English Dictionary, it is clear that any method of assessment of inadequacy or adequacy, should not extinguish the attributes of equal opportunity, but should also be similarly concentric with equality of opportunity. Therefore, the basis of adequacy of representation of a Backward Class should be related to some attributes which are capable of indicating that the Backward Classes are coming nearer and nearer to the more advanced classes of the society in the matter of standing on their own, and successfully competing with them in the open merit pool. It has already been stated that by giving reservation of appointments, in favour of a Backward Class, what the State would, in fact, be doing would be, to provide the members of that class with an opportunity equal to that of the more advanced classes. By the portion underlined above, one is likely to be persuaded to think, that the attainment of a Backward class should be compared, with the attainment of some of the “more advanced classes” of the society. In our opinion this does not seem to be the intention of the Supreme Court, which made the above observation, because, what the Court seems to have intended was that, by reserving a
certain proportion of appointments or by giving a certain quantum of reservation, the State would be giving the members of the Backward Classes and opportunity equal to that of the members of the more advanced classes." In other words, it would mean that it is only an equality of opportunity to gain appointment and, not an absolute equality with the accumulated attainment of any one of the more advanced classes. Further, on a fair and objective basis and, without being arbitrary, it is impossible to choose a section of people from the various unequally advanced sections of the society, with reference to the accumulated attainment of which, the adequacy of attainment of a Backward Class could be assessed. At the same time, it should not be forgotten that, what the Constitution makers had in their mind was the quicker removal of the inequality or inadequacy of representation. The basis of choice of "norm" should not therefore, be very technical and pedantic but must be broad and liberal enough to get the inequality removed as quickly as possible. We, therefore, consider that the "norm" for adequacy, and the method of comparison of the attainment of each Backward Class in the field of competition (whether it be a Backward Class drawn from a group of the present non-backward communities or from a group of the present backward communities) should not be liable to the charge of "infirmity in comparing a Backward Class with the most advanced class or with any one of the more advanced classes of the society", but should be such as to ensure some measure of "equal opportunity" to each Backward Class. When the number of appointments appropriated by a Backward Class is expressed in terms of percentage, it will ensure a considerable measure of equality of treatment to each Backward Class, in the matter of assessment of adequacy, in the sense that there is percentage assessment, which is related to its own population. And if the attainment of each Backward Class in the field of appointment is compared with the percentage of population of that Backward Class itself on the total population of all the Backward Classes together, it will avoid the above mentioned infirmity of comparison of the attainment of a Backward Class with that of any of the more advanced classes of the society. We, therefore, suggest that the percentage of appointments appropriated by a Backward Class on the total number of such appointments appropriated by all the Backward Classes together, may be compared with the percentage of population of that Backward Class itself on the total population of all the Backward Classes together. The "norm" for assessment of adequacy may, therefore, be the said percentage of population of that Backward Class itself.

(h) Levels at which the attainments should be reckoned:

In view of what we have stated in paragraph 42, we suggest that the levels at which adequacy of representation should be assessed, shall be "Last Grade", "Non-gazetted" and "Gazetted" compartments of the services under the State.

(i) Certain aspects of statistics in Appendices XIX & XX

The percentages of appropriation of appointments given in Appendices XIX and XX have been worked out by us from statistics of employees in position as on 1-6-1968, in the services under the State, obtained from Heads of
Government Departments and other institutions. They relate to appointments appropriated through open competition alone, so far as the Backward Classes drawn from groups of communities which are at present classified as non-backward, are concerned. In the case of those Backward Classes which are drawn from groups of communities which are at present classified as backward, the statistics given in the said appendices relate to appointments appropriated through open competition and reservation together. From the total number of such appointments relating to such a long period, it may not be possible, at this distance of time, to shift out the number of appointments secured separately by open competition or through reservation. We have, therefore, examined the question whether it would be possible to assess the adequacy of representation of each of the 12 Backward Classes delineated in paragraph 46 on the basis of the advices made by the Public Service Commission. The statistics relating to all employees in position in the services under the State are absolutely necessary for assessment of adequacy. But the Public Service Commission would not be able to furnish statistics relating to all employees in position in the various services under the State. Further, the Public Service Commission could not furnish statistics of advices made by it for appointment of candidates belonging to Group III, Group IV, Group IX and Group XII separately. The statistics in respect of these four Groups could be furnished by the Public Service Commission only under a single head, "Forward communities". Thus it is not possible to assess the adequacy of representation of each of the 12 Backward Classes, solely on the basis of statistics obtained from the Heads of Departments, etc. (Appendices XIX and XX) or of those from the Public Service Commission. We have to utilise both in the manner mentioned below.

(j) Method of comparison:

If the percentage of appointments held by members of any Backward Class in the field of open competition in any of the three compartments is below the norm, that Backward Class may be treated as inadequately represented in the services under the State, in that compartment. If the said percentage of appointments in any of the three compartments is equal to or above the norm, that Backward Class may be treated as adequately represented in that compartment. As already stated, the statistics of appointments given in Appendices XIX and XX relate to appointments appropriated in the field of open competition alone, so far as Backward Classes drawn from the present non-backward communities are concerned. But in the case of Backward Classes drawn from communities which have been enjoying reservation, the said statistics relate to appointments appropriated through reservation and open competition together. Therefore, owing to the difficulty of obtaining the statistics of appointments appropriated by each of the 12 Backward Classes in the field of open competition alone, either from the Heads of Departments etc. or from the Public Service Commission, the following 3 categories of comparison have become necessary: in order to assess the adequacy of representation of each of the 12 Backward Classes:—
Category (i)

In the case of backward Classes drawn from groups of communities which are at present classified as non-backward and which have had no reservation, if the percentage of appropriation of appointments in any compartment is below the norm, they will be treated as inadequately represented, in that compartment, and if the said percentage is equal to or above the "norm" they will be treated as adequately represented.

Category (ii)

In the case of the Backward Classes drawn from groups of communities which are at present classified as Backward, a part of the appointments appropriated by them would be those by open competition and the remaining, through reservation. Therefore, if the percentage of appointments appropriated by any Backward Class of this category through reservation and open competition together (which percentage will, of course, be higher than the percentage of appointments appropriated by open competition alone) is below the "norm" that Backward Class can be treated as inadequately represented.

Category (iii)

If the percentage of appointments appropriated by any Backward Class of category (ii) above, in the field of open competition and reservation together is equal to or above the "norm", the position would be different from that given in category (ii) above. In such cases, we will find out the percentage of appointments which each of such Backward Classes had been able to appropriate by open competition alone during a reasonable period, say, 3 years from 1965-66 to 1967-68.

The result of assessment of adequacy of representation of each of the 12 Backward Classes is given below:

(k) Assessment of adequacy of representation in the services under the State, of each of the 12 Backward Classes

(i) Backward Class drawn from Group I (Ezhavas, Thiyas, Billavas etc. and Buddhists)

The population of this Backward Class is estimated to be 4,409,218 which forms 24.59% of the total population of the 12 Backward Classes. The percentages of appointments held by this Backward Class on the total number of appointments held by all the Backward Classes together, in the "Last grade", "Non-gazetted" and "Gazetted" categories as in 1968 are 21.47, 19.64 and 16.51 respectively. As explained in Chapter VII, this Backward Class has social backwardness due to historical reasons. All the communities except Buddhists in Group I from which this Backward Class has been drawn, have been enjoying reservation. The above-mentioned percentages of appointments appropriated by this Backward Class are those of appointments appropriated by it both by open competition and through reservation together.
Those percentages, are less than the “norm” of 24.59%. This shows that this Backward Class is not adequately represented in any of the three compartments, namely, “Last grade”, “Non-gazetted” and “Gazetted” in the services under the State.

(ii) Backward Class drawn from Group II (Muslims - all denominations following Islam)

The population of this Backward Class is estimated to be 3,811,199 which forms 21.25% of the total population of the 12 Backward Classes. The percentages of appointments held by this Backward Class on the total number of appointments held by all the Backward Classes together, in the “Last Grade”, “Non-gazetted” and “Gazetted” categories as in 1968 are 9.45, 9.17 and 6.29 respectively. As explained in Chapter VII, the Backward Class has social backwardness due to historical reasons. The Muslim community from which this Backward Class is drawn has been enjoying reservation. The above mentioned percentages of appointments appropriated by this Backward Class are those of appointments, appropriated by it both by open competition and through reservation together. Those percentages are less than the “norm” of 21.25%. This shows that this Backward Class is not adequately represented in any of the three compartments, namely, “Last grade”, “Non-gazetted” and “Gazetted” in the services under the State.

(iii) Backward Class drawn from Group III (Syrian Christians, Jews, Parsis, C.S.I., C.M.S., L.M.S., S.I.U.C., Anglo-Indians etc. and all other denominations of Christianity other than Latin Catholics and converts from Scheduled Castes)

The Secretary to the Bishop of the Diocese of Madhaya Kerala (Church of South India), Kottayam has, in his letter dated 15-7-1969 informed this Commission as follows:

“The Diocese of Madhaya Kerala consists of members of the Church of South India (C.S.I.). The Church of South India was constituted on 27th September, 1947, by union of Dioceses of Madras, Dornakal, Tinnevelly and Travancore-Cochin and the Church of India, Burma and Ceylon, Madras, Madura, Malabar, Jaffna, Kannada and Travancore Councils of the South India United Church (S.I.U.C.) and south India Province of the Methodist church. The Church of India, Burma and Ceylon is an Anglican Church that is connected with the Church of England. After the formation of the Church of South India there are no Anglican, S.I.U.C. or Methodist churches in South India or in any part of Kerala”.

Thus, the “S.I.U.C.” (South India United Church), “C.M.S.” etc. are said to have joined the C.S.I. (Church of South India) which was formed with effect from 27th September, 1947. According to rule 17 of the Kerala State & Subordinate Services Rules, 1958, the S.I.U.C. and Anglo-Indian Communities are treated as Backward Classes for purposes of reservation of appointment in the public services. As a result of the formation of the Church of South India in which the S.I.U.C. also is said to have joined, the S.I.U.C. is said
to have ceased to exist. But for purposes of reservation as per rules 14 to 17 of the said rules, S.I.U.C. candidates have to produce a certificate to the effect that they belong to the S.I.U.C. But, as the S.I.U.C. is said to have ceased to exist from 27-9-1947, there might be some practical difficulty either on the part of the applicant or the certifying authority to get or give such a certificate. This difficulty was pointed out to the Government by the Kerala Public Service Commission. To remove this difficulty the Government have, in their letter No. 54086/SD4/69/Public (Services-D) Department dated 10-10-1969, informed the Public Service Commission that the classification, "S.I.U.C." under the Kerala State & Subordinate Services Rules, 1958, might be made applicable to persons who were previously members of the S.I.U.C. and the children born to such persons. The matter was, however, referred by the Government to this Commission for consideration.

It is informally understood that certain sections of the people who, with others, are said to have formed the Church of South India (C.S.I.) in 1947 have raised certain disputes regarding their merger with the C.S.I. It is neither necessary nor proper on our part to examine that dispute. But, when we called for statistics of appointments held by members of various communities, from Heads of Departments and Heads of Schools and Colleges (both Government and Private), we received the said statistics under the heads, "S.I.U.C.," "C.M.S.," "L.M.S.," "C.S.I." etc. This shows that some of the members of the South India United Church (S.I.U.C.), C.M.S., L.M.S., etc. who with others, are said to have joined to form the C.S.I. in 1947, continue to give the name of their community as they used to do before 1947. If all the members of these churches, old or new, do not follow one and the same practice in giving the names of their communities, it is likely to lead to overlapping or duplication of statistics.

The S.I.U.C., Anglo-Indians, Latin Catholics, and Converts from Scheduled Castes to Christianity are at present in the list of Backward Classes for purposes of reservation of appointments in the public services, while other denominations of Christianity are not in the said list. According to the decision of the High Court of Kerala, in O.P. No. 2860/1964, this Commission has to apply the relevant tests to each community and draw the really backward section from each community (if there is such a section in it), irrespective of the caste or religion to which each community may belong. When the weaker sections were thus drawn, some were found to be so small that, if each of them was treated as separate, the quantum of reservation that could be assigned to each of them would be of the order of, say, 0.01%. The weaker section which is eligible for such a small percentage of reservation only, will not practically get any appointment at all, especially in cases where the number of advices to be made by the Public Service Commission happens to be small. At present the S.I.U.C. and Anglo-Indians are treated as one unit for purposes of reservation of appointments. If they are separated, the practical difficulty mentioned above would arise in the case of each. Further, the statistics of appointments that we have obtained from the Kerala Public
Service Commission are in respect of these two communities together. The ability of these two communities put together, to stand on their own and compete with others in the open merit pool is discussed below.

The population of the S.I.U.C. and Anglo-Indians together, as in 1968, is estimated at 0.22% of the total population of the State, as per the Socio-Economic and Educational Survey of Households, 1968, conducted by the Bureau of Economics & Statistics, on behalf of this Commission. The actual student population in Standard X, of these two communities, collected directly by us from Heads of Schools in the State (both Government and Private) is 0.48% of the total number of such students in all such schools in Kerala. This is far above the percentage of population of these two communities. Similar is the position of these two communities, so far as the student population in the graduate courses is concerned. These two communities are therefore educationally not backward. In the economic field also, these two communities are not backward. From the list of advices made by the Public Service Commission, for appointment in vacancies in the “Last grade”, “Non-gazetted” and ‘Gazetted” categories through open competition and reservation separately, it is seen that these two communities have been able to appropriate appointments through open competition during the three years, 1965-66, 1966-67 and 1967-68 as shown below:

<table>
<thead>
<tr>
<th>Year</th>
<th>Non-gazetted (Merit basis)</th>
<th>Gazetted (Merit basis)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1965-66</td>
<td>0.71%</td>
<td>2.15%</td>
</tr>
<tr>
<td>1966-67</td>
<td>0.35%</td>
<td>1.18%</td>
</tr>
<tr>
<td>1967-68</td>
<td>0.46%</td>
<td>0.29%</td>
</tr>
</tbody>
</table>

The above percentages are substantially above their percentage of population. But in the “Last grade” the representation of these two communities is not adequate.

Therefore, it is only appropriate if these two communities are grouped with Group III in Appendix XI namely, “Syrian Christians, C.S.I., C.M.S. etc.” The Syrian Christians etc. are also found to be inadequately represented in the “Last grade”. For the reasons mentioned above, we have clubbed the C.S.I., C.M.S., L.M.S., S.I.U.C., Anglo-Indians Syrian Christians and all other denominations of Christianity (except Latin Catholics and converts from Scheduled Castes to Christianity) into one group of citizens, listed in Group III, in Appendix XI.

At present, the C.S.I. community is not in the list of Backward Classes. That was the reason why the difficulty pointed out by the Public Service Commission regarding the applicability of principles of reservation to the erstwhile S.I.U.C. arose. Now that we have included the C.S.I., C.M.S., L.M.S., S.I.U.C., etc., that is to say, all denominations of Christianity other than Latin Catholics and converts from Scheduled Castes, in the group of citizens listed
in Group III, the above mentioned difficulty to get community-certificate, will not arise. From this group we have drawn one Backward Class. This Backward Class has been delineated as the socially, educationally and economically Backward Class of Group III. So, even if the members of the backward section of the S.I.U.C., C.M.S., etc., churches give their community name as C.S.I., or S.I.U.G. or C.M.S., etc., hereafter, there would be no difficulty so far as the production of community-certificate is concerned.

We shall now pass on to the question of adequacy of representation in the services under the State, of the Backward Class drawn from Group III. The population of this Backward Class is estimated to be 3,113,564 which forms 17.36% of the total population of the 12 Backward Classes. All the sections included in this Backward Class except S.I.U.C., and Anglo-Indians are not enjoying reservation of appointments or posts. The appointments held by the members of this Backward Class are, by and large, those appropriated through open competition. The appointments secured through reservation are only those secured by the members belonging to the S.I.U.C. and Anglo-Indians. The percentages of appropriation of appointments by this Backward Class in the “Last grade”, “Non-gazetted” and “Gazetted” categories are 13.85, 19.02 and 20.23 respectively. It may be seen that in the case of “Last grade” alone, the percentage of appropriation of appointments is below the norm of 17.36. In each of the “Non-gazetted” and “Gazetted” categories, the attainment is above the norm. Therefore, the representation of this Backward Class is adequate so far as appointments in the “Non-gazetted” and “Gazetted” compartments are concerned, but it is inadequate so far as appointments in the “Last grade” category is concerned.

(iv) Backward Class drawn from Group IV (Nair, Nedungadi, etc.)

The population of this Backward Class is estimated to be 2,825,285 which works out to 15.75% of the population of the 12 Backward Classes. None of the sections included in this Backward Class had reservation of appointments at any time. The appointments appropriated by members of this Backward Class therefore relate to the appropriation in the open merit pool alone. The percentage of appropriation of appointment in the services under the State, of this Backward Class is 35.53 in the Last Grade, 33.76 in the Non-gazetted and 34.96 in the Gazetted category. These percentages are far above the norm of 15.75%. Therefore this Backward Class may be treated as adequately represented in each of the 3 compartments, namely, “Last grade”, “Non-gazetted” and “Gazetted” in the services under the State.

(v) Backward, Class drawn from Group V (Kusavan, Arayan, Ezhavathy, Hindu Nadar etc.)

The population of this Backward Class is estimated to be 846,834 which forms 4.72% of the total population of the 12 Backward Classes. The percentage of appointments held by this Backward Class on the total number of appointments held by all the Backward Classes together, in the “Last grade”,
“Non-gazetted” and “Gazetted” categories as in 1968 in 4.65, 2.87 and 1.76 respectively. As explained in Chapter VII, this Backward Class has social backwardness due to historical reasons. All the communities in Group V from which this Backward Class is drawn, have been enjoying reservation. The above mentioned percentages of appointments appropriated by this Backward Class are those of appointments appropriated by it both by open competition and through reservation together. Those percentages are less than the “norm” of 4.72%. Therefore this Backward Class may be treated as inadequately represented in each of the three compartments, namely, “Last grade”, “Non-gazetted” and “Gazetted” in the services under the State.

(vi) Backward Class drawn from Group VI (Viswakarmalas etc.)

The population of this Backward Class is estimated to be 753,305 which forms 4.20% of the total population of the Backward Classes. The percentage of appointments held by this Backward Class on the total number of appointments held by all the Backward Classes together, in the “Last grade”, “Non-gazetted” and “Gazetted” categories as in 1968 is 1.99, 3.53 and 1.32 respectively. As explained in Chapter VII, this Backward Class has social backwardness due to historical reasons. All the communities in Group VI from which this Backward Class is drawn have been enjoying reservation. The percentage of appointments appropriated by this Backward Class both by open competition and through reservation together is less than the “norm” of 4.20%. Therefore this Backward Class may be treated as inadequately represented in each of the three compartments, namely, “Last grade”, “Non-gazetted” and “Gazetted” in the services under the State.

(vii) Backward Class drawn from Group VII (Latin Catholics other than Anglo-Indians and converts from Scheduled Castes)

The population of this Backward Class is estimated to the 719,654 which is 4.01% of the total population of all the 12 Backward Classes. The percentages of appointments held by the members of this Backward Class in the “Last grade”, “Non-gazetted” and “gazetted” categories are 4.48, 3.31 and 2.57 respectively. As explained in Chapter VII, this Backward Class has social backwardness due to historical reasons. From the above percentages of appropriation of appointments, it may be seen that the attainment of this Backward Class in each of the “Non-gazetted” and “Gazetted” categories is below the “norm” of 4.01%. This Backward Class is therefore inadequately represented in these two compartments. The attainment in the “Last grade” is slightly above the “norm”. The members of the group from which this Backward Class is drawn have been enjoying reservation. Therefore, the appropriation of appointments in the three compartments is through open competition and reservation together. The question whether the members of this Backward Class are able to stand on their own, was examined with reference to the advices made by the Kerala Public Service Commission for appointment of candidates belonging to this Backward Class
in the fields of reservation and open competition separately. The position is as given in the following tables:

<table>
<thead>
<tr>
<th>Year</th>
<th>Total No. of applications received from members of the Last Grade</th>
<th>No. of applications made by the P.S.C. for appointments in the Last Grade</th>
<th>No. of applications made by the P.S.C. for appointments in the Last grade in the reservation quota</th>
<th>No. of applications made in the Last grade in the reservation quota</th>
<th>Total No. of applications received from all communities for appointments in the Last Grade</th>
<th>Percentage of column (4) on column (9)</th>
<th>Percentage of column (5) on column (9)</th>
<th>Percentage of column (6) on column (9)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1965-66</td>
<td>1465</td>
<td>15 10.2</td>
<td>34 2.32</td>
<td>49 3.34</td>
<td>9279</td>
<td>220 2.37</td>
<td>200 2.37</td>
<td>200 2.37</td>
</tr>
<tr>
<td>1966-67</td>
<td>1042</td>
<td>2 0.19</td>
<td>33 3.15</td>
<td>35 3.34</td>
<td>8648</td>
<td>181 2.09</td>
<td>181 2.09</td>
<td>181 2.09</td>
</tr>
<tr>
<td>1967-68</td>
<td>402</td>
<td>2 0.50</td>
<td>10 2.49</td>
<td>12 2.99</td>
<td>24236</td>
<td>504 2.08</td>
<td>504 2.08</td>
<td>504 2.08</td>
</tr>
</tbody>
</table>

From the above data, it is seen that the percentage of appointments appropriated by this Backward Class, in the "Last grade", through open competition in each of the three years 1965-66, 1966-67 and 1967-68 is far below the norm of 4.01%. Column (11) of the above table shows that even in the matter of qualified applications for appointment in vacancies in the "Last grade", Latin Catholics are really backward. For the reasons mentioned above, this Backward Class may be treated as inadequately represented in the compartment of Last Grade also.

(viii) Backward Class drawn from Group VIII (Ambattan, Chakkala Pandither, Veluthedathu Nair, Vilakkithala Nair, Saliya, Tadava etc.)

The population of this Backward Class is estimated to be 432,376 which forms 2.41% of the total population of the 12 Backward Classes. The appointments appropriated by this Backward Class are those secured through open competition and reservation together. This Backward Class has appropriated 2.80% appointments in the "Last grade", 2.48% in the "Non-gazetted" and 1.57% in the "Gazetted" compartments separately. It is fairly clear that the appropriation in the "Gazetted category" is below the "norm" of
2.41% and, hence this Backward Class may be treated as inadequately represented in the “Gazetted” category. As the appropriation in each of the “Last grade” and “Non-gazetted” categories is slightly above the “norm” the question whether this Backward Class has been able to stand on its own and compete with others in the open merit pool in the “Non-gazetted” and “Last grade” categories, was examined with reference to the advices made by the Public Service Commission for appointment of candidates belonging to this Backward Class in the fields of open competition and reservation separately.

The position is as shown in the table below:

<table>
<thead>
<tr>
<th>Year</th>
<th>Total No. of advices made by the P.S.C. for appointment to vacancies in the respective grade</th>
<th>No. of advices made for appointment in the respective grade, in the merit pool</th>
<th>Percentage of column (3) on column (2)</th>
<th>No. of advices made for appointment to vacancies in the respective grade to the for reservation quota</th>
<th>Merit plus Reservation quota, i.e., total of columns (3) and (5)</th>
<th>Percentage of column (7) on column (2), i.e., Percentage of columns (3) and (5)</th>
<th>Total No. of valid applications for appointment received from all communities</th>
<th>No. of valid applications from the Backward Class</th>
<th>Percentage of column (10) on Column (9)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1965-66</td>
<td>1465</td>
<td>20</td>
<td>1.37</td>
<td>28</td>
<td>1.91</td>
<td>48</td>
<td>3.28</td>
<td>9279</td>
<td>384</td>
</tr>
<tr>
<td>1966-67</td>
<td>1042</td>
<td>8</td>
<td>0.76</td>
<td>25</td>
<td>2.39</td>
<td>33</td>
<td>3.63</td>
<td>8648</td>
<td>309</td>
</tr>
<tr>
<td>1967-68</td>
<td>402</td>
<td>3</td>
<td>0.75</td>
<td>15</td>
<td>3.73</td>
<td>18</td>
<td>4.48</td>
<td>2436</td>
<td>746</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Year</th>
<th>Total No. of advices made by the P.S.C. for appointment to vacancies in the respective grade</th>
<th>No. of advices made for appointment in the respective grade, in the merit pool</th>
<th>Percentage of column (3) on column (2)</th>
<th>No. of advices made for appointment to vacancies in the respective grade to the for reservation quota</th>
<th>Merit plus Reservation quota, i.e., total of columns (3) and (5)</th>
<th>Percentage of column (7) on column (2), i.e., Percentage of columns (3) and (5)</th>
<th>Total No. of valid applications for appointment received from all communities</th>
<th>No. of valid applications from the Backward Class</th>
<th>Percentage of column (10) on Column (9)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1965-66</td>
<td>4761</td>
<td>41</td>
<td>0.86</td>
<td>91</td>
<td>1.91</td>
<td>132</td>
<td>2.77</td>
<td>40435</td>
<td>1468</td>
</tr>
<tr>
<td>1966-67</td>
<td>5172</td>
<td>42</td>
<td>0.81</td>
<td>149</td>
<td>2.88</td>
<td>191</td>
<td>3.69</td>
<td>32635</td>
<td>1209</td>
</tr>
<tr>
<td>1967-68</td>
<td>2842</td>
<td>46</td>
<td>1.62</td>
<td>64</td>
<td>2.25</td>
<td>110</td>
<td>3.87</td>
<td>60953</td>
<td>1868</td>
</tr>
</tbody>
</table>

From the above tables it may be seen that the percentage of attainment of this Backward Class in the open merit pool is substantially below the
"norm". The percentages of qualified applications submitted by members of this Backward Class, for appointments to posts in the above 2 categories, are given in column (11) of the above 2 tables. It is seen therefrom that though there is sufficient number of valid applications for appointments in vacancies in the above two compartments, very few are selected in the open merit pool. This too shows the inability of the members of this Backward Class to stand on their own and compete with others in the open merit pool. Therefore, this Backward Class may be treated as inadequately represented in the compartments of "Last grade" and "Non-gazetted" also.

(ix) Backward Class drawn from Group IX (Ambalavasi, Brahmin, Kshatriya etc).

The population of this Backward Class is estimated to be 316,583 which works out to 1.77% of the total population of the 12 Backward Classes. None of the sections included in this Backward Class had reservation of appointments at any time. The percentage of appointments appropriated by members of this Backward Class therefore relates to the appropriation in the open merit pool alone. The percentage of appropriation of appointments in the services under the State, of this Backward Class as in 1968 is 2.18 in the "Last Grade", 3.95 in the "Non-gazetted" and 12.53 in the "Gazetted" categories. These percentages are far above the "norm" of 1.77%. Therefore, this Backward Class may be treated as adequately represented in each of the 3 compartments, namely, "Last grade", "Non gazetted" and "Gazetted" in the services under the State.

(x) Backward Class drawn from Group X (Scheduled Castes converts to Christianity).

The population of this Backward Class is estimated to be 301,459 which forms 1.68% of the total population of the 12 Backward Classes. As explained in Chapter VII, this Backward Class has social backwardness due to historical reasons. All the converts from Scheduled Castes to Christianity from whom this Backward Class has been drawn are now enjoying reservation. Therefore, the appointments, held by members of this Backward Class are those appropriated by them through open competition and reservation together. The percentage of appointments held by this Backward Class on the total number of appointments held by all the 12 Backward Classes together, in the "Last grade", "Non-Gazetted" and "Gazetted" categories as in 1968, is 1.16, 0.40 and 0.20 respectively. Each of the above percentages, is below the "norm" of 1.68%. Therefore, this Backward Class may be treated as inadequately represented in each of the compartments, namely, "Last grade", "Non-gazetted" and "Gazetted" in the services under the State.

(xi) Backward Class drawn from Group XI (Ezhuthachen, Kalari Panicker, Maravan, Reddiar etc.)

The population of this Backward Class is estimated to be 256,661 which forms 1.43% of the total population of the 12 Backward Classes. The percentage of appointments held by this Backward Class on the total number
of appointments held by all the 12 Backward Classes together, in the "Last grade", "Non-gazetted" and "Gazetted" categories as in 1968 is 1.33, 0.90 and 0.81 respectively. As explained in Chapter VII, this Backward Class has social backwardness due to historical reasons. The appointments held by members of this Backward Class are those appropriated by members thereof through open competition and reservation together. Each of the above percentages of appointments appropriated by this Backward Class both by open competition and through reservation together is less than the "norm" of 1.43%. This Backward Class may therefore be treated as inadequately represented in each of the three compartments, namely, "Last grade", "Non-gazetted" and "Gazetted" in the services under the State.

(xii) Backward Class drawn from Group XII (Vellalas, Attingal Chetties, Peroorkada Chetties, etc.)

The population of this Backward Class is estimated to be 148,187 which works out to 0.83% of the total population of the 12 Backward Classes. The percentage of appointments appropriated by this Backward Class, in the services under the State is 1.11 in the "Last grade", 0.97 in the "Non-gazetted" and 1.25 in the "Gazetted" categories. These percentages are above the "norm" of 0.83%. Therefore, this Backward Class may be treated as adequately represented in each of the 3 compartments, namely, "Last grade", "Non-gazetted" and "Gazetted" in the services under the State.

(1) **Delineation of Backward Classes which are inadequately represented in the services under the State and in favour of which reservation of appointments may be made**:

On the basis of the above assessment of adequacy of representation, the Backward Classes which are inadequately represented in the services under the State and in favour of which, reservation of appointments or posts may be made are delineated as follows:

"The Backward Classes whose group numbers are specified in column (2) of the following table 1 and which are shown as inadequately represented in the "Last grade", "Non-gazetted" or "Gazetted" compartment as the case may be, in column (3), (4) or (5) of the said table, are the Backward Classes inadequately represented in the compartment concerned of the services under the State, for purposes of article 16(4) of the Constitution".
<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Group</th>
<th>Number of Backward Classes</th>
<th>&quot;Last grade&quot;</th>
<th>&quot;Non-gazetted&quot;</th>
<th>&quot;Gazetted&quot;</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Group</td>
<td>I (The backward section of Ezhava, Thiyya, Billava, etc., and Buddhists)</td>
<td>Inadequately</td>
<td>Inadequately</td>
<td>Inadequately</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>represented</td>
<td>represented</td>
<td>represented</td>
</tr>
<tr>
<td>2</td>
<td></td>
<td>II (The backward section of Muslims, that is the backward section of all denominations</td>
<td>do.</td>
<td>do.</td>
<td>do.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>following Islam)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td></td>
<td>III (The backward section of Syrian Christians, Jews, Parsis Anglo-Indians, S.I.U.C.,</td>
<td>do.</td>
<td>Adequately</td>
<td>Adequately</td>
</tr>
<tr>
<td></td>
<td></td>
<td>C.M.S., L.M.S., C.S.I. and all other denominations of Christians excluding Scheduled</td>
<td></td>
<td>represented</td>
<td>represented</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Castes Converts and Latin Catholics)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4</td>
<td></td>
<td>IV (The backward section of Nairs, including Nedungadi, Eradi, etc.)</td>
<td>Adequately</td>
<td>do.</td>
<td>do.</td>
</tr>
<tr>
<td>5</td>
<td></td>
<td>V (The backward section of Arayan, Valan, Ezhavathy, Hindu Nadar, Kudumbi, Kusavan, Yogi,</td>
<td>Inadequately</td>
<td>Inadequately</td>
<td>Inadequately</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Pandaram etc.)</td>
<td>represented</td>
<td>represented</td>
<td>represented</td>
</tr>
<tr>
<td>6</td>
<td></td>
<td>VI (The backward section of Kammalas, etc.)</td>
<td>do.</td>
<td>do.</td>
<td>do.</td>
</tr>
<tr>
<td>7</td>
<td></td>
<td>VII (The backward section of Latin Catholics other than Anglo-Indians and Sch. Castes</td>
<td>do.</td>
<td>do.</td>
<td>do.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Converts)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sl. No.</td>
<td>Group</td>
<td>Number of Backward Classes</td>
<td>Compartment of service in which each Backward Class is adequately or inadequately represented in the services under the State</td>
<td></td>
<td></td>
</tr>
<tr>
<td>--------</td>
<td>-------</td>
<td>-----------------------------</td>
<td>-------------------------------------------------------------------------------------------------</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>&quot;Last grade&quot; &quot;Non-gazetted&quot; &quot;Gazetted&quot;</td>
<td></td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>Group</td>
<td>VIII (The backward section of Ambattan, Chakkala, Salia, Veluthedathu Nair, Vilakkithala Nair, Yadava, etc.)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Inadequately represented Inadequately represented Inadequately represented</td>
<td></td>
<td></td>
</tr>
<tr>
<td>9</td>
<td></td>
<td>IX (The backward section of Brahmins Kashmiriya, Ambalavasi, Sikh, etc.)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Adequately represented Adequately represented Adequately represented</td>
<td></td>
<td></td>
</tr>
<tr>
<td>10</td>
<td></td>
<td>X (The backward section of Scheduled Castes Converts to Christianity)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Inadequately represented Inadequately represented Inadequately represented</td>
<td></td>
<td></td>
</tr>
<tr>
<td>11</td>
<td></td>
<td>XI (The backward section of Ezhuthachan, Koteyar, Kumareshwari, Naidu, etc.)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>do. do. do.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>12</td>
<td></td>
<td>XII (The backward section of Vellalas, Chetties, etc.)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Adequately represented Adequately represented Adequately represented</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
48. **Total quantum of reservation and distribution thereof:**

(a) **Present position — Last grade and Non-gazetted categories:**

At present there is 40% reservation of vacancies for initial appointment by direct recruitment to posts in the “Last grade” category and “Non-gazetted” category in favour of Backward Communities other than Scheduled Castes and Scheduled Tribes. The Scheduled Castes and Scheduled Tribes are at present having 10% reservation of initial appointment by direct recruitment in the “Last grade” category and “Non-gazetted” category. Of this ten percent, 8% reservation has been earmarked in favour of all the Scheduled Castes put together and 2% in favour of all the Scheduled Tribes put together. The provisos to rules 14(a) and 14(c) of the Kerala State and Subordinate Services Rules, 1958, say also that one out of every 5 posts reserved for scheduled Castes and Scheduled Tribes shall go to a Scheduled Tribe candidate and only in the absence of a Scheduled Tribe candidate, it shall go to a Scheduled Caste candidate, and that the 4th turn in the 3rd rotation and the 12th turn in the 5th rotation shall go to Scheduled Tribe candidates, and in the absence of Scheduled Tribe candidates, they shall go to scheduled Caste candidates. In the “Last grade” there are posts like those of Mochi, Head peon, etc. to which appointments are made by promotion based on seniority without applying the principles of reservation. Similarly, in the “Non-gazetted” category there are posts like those of Upper Division Clerks, Junior Superintendents etc., to which appointments are made by promotion based on seniority without applying the principles of reservation.

(b) **Present position Gazetted category:**

According to the Special Rules issued under the Kerala State and Subordinate Services Rules, 1958 and according to the declaration issued by Government by Notification in the Gazette under rule 14 of the General Rules, certain Gazetted posts are filled up by direct recruitment on the advice of the Kerala Public Service Commission by applying the principles of reservation in favour of Backward Classes and Scheduled Castes and Scheduled Tribes. Those posts may be seen in Appendix X. Some of the remaining gazetted posts are filled up by promotion of suitable employees in the feeder categories by selection, on the advice of the Departmental Promotion Committees or by transfer from other services in accordance with the Special Rules concerned, without applying the principles of reservation.

In addition to what is stated above, rule 17-A of the said rules provides for reservation of a special number of posts in any service, class, or category or grade to be filled by direct recruitment exclusively, from among scheduled Castes and Scheduled Tribes. In G.O. (P) 263/70 Public (Services-D) Department dated 6-8-1970, the Government have ordered as follows:

“(i) A detailed evaluation of the backlog in representation of the Scheduled Castes and Scheduled Tribes in Government service from 1950 onwards will be made by Government.

3/1290
(ii) Pending such evaluation a special recruitment of Scheduled Castes and Scheduled Tribes candidates will be made to one gazetted post each in departments where the total number of posts is less than 100 and 1% of the Gazetted posts in other departments. A special recruitment of Scheduled Castes and Scheduled Tribes candidates will be made to 5% of the non-gazetted posts in each department filled up by direct recruitment; provided that by such special recruitments the total number of Scheduled Castes and Scheduled Tribes in each category should not exceed the percentages fixed for them under the Rules.

(c) Total quantum of reservation and distribution thereof—suggestions by this Commission:

What should be the total quantum of reservation to be made in favour of the Backward Classes which are inadequately represented in each of the 3 compartments, namely, “Last grade”, “Non-gazetted” and “Gazetted” separately. The constitutional position is that the total quantum of reservation in a service, a class or category in favour of the inadequately represented Backward Classes and Scheduled Castes and Scheduled Tribes together shall not exceed 50% [vide Paragraph 28 (m)]. What should be the actual percentage not exceeding 50%, is a matter for the State to determine, on a fair and objective basis, having regard to the circumstances obtaining in each case. From paragraph 47 (1) it may be seen that:

(1) Backward Classes with group Numbers IV, IX and XII are adequately represented in each of the compartments of “Last grade”, “Non-gazetted” and “Gazetted”. Therefore no reservation of appointments or posts can be made in favour of those Backward Classes.

(2) Backward Classes with group Number III is adequately represented in the “Non-gazetted” and “Gazetted” categories, but inadequately represented in the “Last grade” category. Therefore, reservation of appointments in the “Last grade” category can be made in favour of the members of the Backward Class of Group III.

(3) Backward Classes with Group Numbers I, II, V, VI, VII, VIII, X and XI are inadequately represented in each of the said 3 compartments. Therefore, reservation may be made in each of the three compartments in favour of the members of the Backward Class of those groups.

The population of each Backward Class which is inadequately represented in the “Last grade” and the percentage of population of each such Backward Class on the total population of all the Backward Classes which are inadequately represented in the “Last grade” are given in columns (3) and (4) respectively, of Appendix XXI. Similarly the population of each Backward Class inadequately represented in the “Non-gazetted” category in the services under the State and the percentage of population of each such Backward Class on the total population of all Backward Classes which are
inadequately represented in the “Non-gazetted” category are given in columns (6) and (7) respectively of Appendix XXI. The population of each Backward Class which is inadequately represented in the “Gazetted” category in the services under the State, and the percentage of population of each such Backward Class on the total population of all the Backward Classes which are inadequately represented in the “Gazetted” category, are given in columns (9) and (10) respectively of Appendix XXI.

Having regard to:—

(i) The above mentioned percentages of population of the Backward Classes which are not adequately represented in each of the above 3 categories in the services under the State:

(ii) The extent of inadequacy of representation of each Backward Class, in the services under the State in each of the 3 compartments, namely “Last grade”, “Non-gazetted” and “Gazetted” and

(iii) The extent of social backwardness due to historical reasons, of the inadequately represented Backward Classes,

we recommend that the total quantum of reservation in favour of Backward Classes other than Scheduled Castes and Scheduled Tribes shall be 38% of the general vacancies arising each year of recruitment, in each of the 3 compartments of services, namely, “Last grade”, “Non-gazetted” and “gazetted”, separately, the existing 8% reservation in favour of Scheduled Castes and 2% in favour of SC. Tribes, being left as they are. The quota for open competition shall be 52% of the general vacancies that arise each year of recruitment in each of the said three compartments. The expression, “general vacancies” means, vacancies in each compartment, that remain to be filled up, after making appointments by transfer, if any, according to the special Rules. The distribution of the total quantum of reservation of 38% in each of the 3 compartments, among the various inadequately represented Backward Classes other than Scheduled Castes and Scheduled Tribes, shall be as shown in the following Tables II, III and IV respectively:—

Last Grade category:

(1) The total quantum of reservation shall be 38% of the general vacancies in the “Last grade” category, occurring each year of recruitment.

(2) The reservation shall apply only to the initial appointments by direct recruitment, and not to appointments by promotion of employees in the feeder categories.
(3) The above-mentioned reservation of 38% shall be distributed among the inadequately represented Backward Classes as shown below:

**TABLE II**

*Last Grade*

<table>
<thead>
<tr>
<th>St. No.</th>
<th>Group</th>
<th>Number of Backward Classes</th>
<th>Percentage of reservation that may be assigned in favour of each of the inadequately represented Backward Classes</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>I</td>
<td>(The backward section of Ezhava, Thiyya, Billava, etc. and Buddhists)</td>
<td>11 (Eleven)</td>
</tr>
<tr>
<td>2</td>
<td>II</td>
<td>(The backward section of Muslims, that is, the backward section of all denominations following Islam)</td>
<td>10 (Ten)</td>
</tr>
<tr>
<td>3</td>
<td>III</td>
<td>(The backward section of Syrian Christians, Jews, Parsis, Anglo-Indians, S.I.U.C. G.M.S., L.M.S., C.S.I. and all other denominations of Christians excluding Scheduled Castes Converts and Latin Catholics)</td>
<td>8 (Eight)</td>
</tr>
<tr>
<td>4</td>
<td>IV</td>
<td>(The backward section of Nairs, including Nedungadi, Eradi, etc.)</td>
<td>Adequately represented. Hence no reservation.</td>
</tr>
<tr>
<td>5</td>
<td>V</td>
<td>(The backward section of Ayran, Valan, Ezhavathy, Hindu Nadar, Kudumbi, Kusavan, Yogi, Pandaram, etc.)</td>
<td>2 (Two)</td>
</tr>
<tr>
<td>6</td>
<td>VI</td>
<td>(The backward section of Kammalas, etc.)</td>
<td>2 (Two)</td>
</tr>
<tr>
<td>7</td>
<td>VII</td>
<td>(The backward section of Latin Catholics other than Anglo-Indians and Scheduled Castes Converts)</td>
<td>2 (Two)</td>
</tr>
<tr>
<td>8</td>
<td>VIII</td>
<td>(The backward section of Ambattan, Chakkala, Salia, Veluthedathu Nair, Vilakkithala Nair, Yadava etc.)</td>
<td>1 (One)</td>
</tr>
<tr>
<td>9</td>
<td>IX</td>
<td>(The backward section of Brahmins, Kshatriya, Ambalavasi, Sikh etc.)</td>
<td>Adequately represented. Hence no reservation.</td>
</tr>
<tr>
<td>10</td>
<td>X</td>
<td>(The backward section of Scheduled Castes Converts to Christianity)</td>
<td>1 (One)</td>
</tr>
<tr>
<td>11</td>
<td>XI</td>
<td>(The backward section of Ezuthachan, Koteyar, Kumarakshatriya, Naidu etc.)</td>
<td>1 (One)</td>
</tr>
<tr>
<td>12</td>
<td>XII</td>
<td>(The backward section of Vellalas, Chetties, etc.)</td>
<td>Adequately represented. Hence no reservation.</td>
</tr>
</tbody>
</table>

Total: 38 (Thirty-eight)
Non-gazetted category

(1) The total quantum of reservation shall be 38% of the general vacancies in the "Non-gazetted" category, occurring each year of recruitment.

(2) The reservation shall apply only to initial appointments by direct recruitment and not to appointments by promotion of employees in the feeder categories.

(3) The above-mentioned reservation of 38% shall be distributed among the inadequately represented Backward Classes as shown below:

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Group</th>
<th>Number of Backward Classes</th>
<th>Percentage of reservation that may be assigned in favour of each of the inadequately represented Backward Classes</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>I</td>
<td>(The backward section of Ezhava, Thiyya, Billava, etc. and Buddhists)</td>
<td>14 (Fourteen)</td>
</tr>
<tr>
<td>2</td>
<td>II</td>
<td>(The backward section of Muslims that is, the backward section of all denominations following Islam)</td>
<td>12 (Twelve)</td>
</tr>
<tr>
<td>4</td>
<td>IV</td>
<td>(The backward section of Nairs including Nedungadi, Eradi, etc.)</td>
<td>Adequately represented.</td>
</tr>
<tr>
<td>5</td>
<td>V</td>
<td>(The backward section of Arayan, Valan, Ezhavathy, Hindu Nadar, Kudumbi, Kusavan, Yogi, Pandaram, etc., etc.)</td>
<td>3 (Three)</td>
</tr>
<tr>
<td>6</td>
<td>VI</td>
<td>(The backward section of Kammalas, etc.)</td>
<td>Adequately represented.</td>
</tr>
<tr>
<td>7</td>
<td>VII</td>
<td>(The backward section of Latin Catholics other than Anglo-Indians and Scheduled Castes Converts)</td>
<td>3 (Three)</td>
</tr>
<tr>
<td>8</td>
<td>VIII</td>
<td>(The backward section of Ambattan, Chakkala, Salia, Veluthedathu Nair, Vilakkithala Nair, Yadava, etc.)</td>
<td>1 (One)</td>
</tr>
</tbody>
</table>
TABLE III—(Concl.)

<table>
<thead>
<tr>
<th>(1)</th>
<th>(2)</th>
<th>(3)</th>
</tr>
</thead>
<tbody>
<tr>
<td>9</td>
<td>IX</td>
<td>(The backward section of Brahmins, Kashtriya, Ambalavasi, Sikh, etc.)</td>
</tr>
<tr>
<td>10</td>
<td>X</td>
<td>(The backward section of Scheduled Castes Converts to Christianity)</td>
</tr>
<tr>
<td>11</td>
<td>XI</td>
<td>(The backward section of Ezhuthachan, Koteyar, Kumarakshatriya, Naidu etc.)</td>
</tr>
<tr>
<td>12</td>
<td>XII</td>
<td>(The backward section of Vellalas, Chetties, etc.)</td>
</tr>
</tbody>
</table>

Total 38 (Thirty eight)

Gazetted category:

As already stated in paragraph 48(b) certain Gazetted posts mentioned in the Special Rules (Appendix X) are filled up by transfer of employees from other services and a part of the remaining Gazetted posts is filled up by direct recruitment applying the principles of reservation and the remaining part by promotion of employees in the feeder categories without applying the principles of reservation, on the advice of the Departmental Promotion Committees. We would suggest that:

1. Those vacancies in the Gazetted category, which the Government may consider it necessary to be filled up in the exigencies of service, by transfer of employees from other services, shall be so filled up after making necessary provision therefor in the Special Rules.

2. The remaining vacancies in each Grade in each service in the Gazetted category shall be treated as "General vacancies in each grade in each service".

3. Fifty (50) per cent of the general vacancies in each grade in each service in the Gazetted category shall be filled up by direct recruitment by the Public Service Commission.

4. The remaining 50 (fifty) per cent of the general vacancies in each grade in each service in the Gazetted category shall be filled up by promotion of employees in the feeder category concerned.

5. Thirty-eight per cent (38%) of the vacancies to be filled up by initial appointments by direct recruitment referred to in (3) above and thirty-eight per cent (38%) of the vacancies to be filled up by appointments by promotion referred to in (4) above shall be reserved in favour of the inadequately
represented Backward Classes other than Scheduled Castes and Scheduled Tribes. On this basis, the appointments coming under (3) and (4) above shall be made separately by applying the principles of reservation. The said reservation of 38% in each of the cases coming under (3) and (4) above shall be distributed among the inadequately represented Backward Classes other than Scheduled Castes/Scheduled Tribes as shown in the table below:

**TABLE IV**

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Group Number of Backward Classes</th>
<th>Percentage of reservation that may be assigned in favour of each of the inadequately represented Backward Classes</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Group I (The backward section of Ezhava, Thiyya, Billava, etc., and Budhists)</td>
<td>14 (Fourteen)</td>
</tr>
<tr>
<td>2</td>
<td>Group II (The backward section of Muslims that is the backward section of all denominations following Islam)</td>
<td>12 (Twelve)</td>
</tr>
<tr>
<td>4</td>
<td>Group IV (The backward section of Nairs including Nedungadi, Eradi, etc.)</td>
<td>do.</td>
</tr>
<tr>
<td>5</td>
<td>Group V (The backward section of Arayan, Valan, Ezhavathy, Hindu Nadar, Kudumbi, Kusavan, Yogi, Pandaram, etc.)</td>
<td>3 (Three)</td>
</tr>
<tr>
<td>6</td>
<td>Group VI (The backward section of Kammalas, etc.)</td>
<td>3 (Three)</td>
</tr>
<tr>
<td>7</td>
<td>Group VII (The backward section of Latin Catholics other than Anglo-Indians and Scheduled Castes Converts)</td>
<td>3 (Three)</td>
</tr>
<tr>
<td>8</td>
<td>Group VIII (The backward section of Ambattan, Chakkala, Salla, Veluthedathu Nair, Vilakkithala Nair, Yadava, etc.)</td>
<td>1 (One)</td>
</tr>
<tr>
<td>9</td>
<td>Group IX (The backward section of Brahmins, Kshatriya, Sikh, etc.)</td>
<td>Adequately represented. Hence no reservation.</td>
</tr>
</tbody>
</table>
TABLE IV—(Concl.)

<table>
<thead>
<tr>
<th>(1)</th>
<th>(2)</th>
<th>(3)</th>
</tr>
</thead>
<tbody>
<tr>
<td>10</td>
<td>X</td>
<td>(The backward section of Scheduled Castes Converts to Christianity)</td>
</tr>
<tr>
<td>11</td>
<td>XI</td>
<td>(The backward section of Ezhuthachan, Koteyar, Kumarakshatriya, Naidu etc.)</td>
</tr>
<tr>
<td>12</td>
<td>XII</td>
<td>(The backward section of Vellulas, Chetties, etc.)</td>
</tr>
</tbody>
</table>

Total 38 (Thirty eight)

Note:—The above mentioned reservation of 38% in Tables II, III and IV above does not embrace the 10% reservation as per rules 14 to 17 of the General Rules and the special recruitment advertised to in paragraph 48(b) above, in favour of Scheduled Castes and Scheduled Tribes.

(d) Procedural difficulty in the matter of reservation of appointments by promotion to selection posts:

In the case of appointments by promotion to selection posts, there is no reservation in favour of Backward Classes or Scheduled Castes/Scheduled Tribes now except what is mentioned in paragraph 48(b) above. If and when our recommendations to apply the principles of reservation in making appointments by promotion to selection posts in the Gazetted category are accepted by Government, the following procedural difficulties will arise. Promotions to selection posts in the Gazetted category are now made (and will be made if and when our recommendations are accepted) by selecting suitable employees from the feeder categories for the services concerned. In a very large number of cases, the employees in the feeder categories have even now to wait, and will have to wait hereafter also, for years together to get a promotion. So, when promotion to a selection grade becomes due to an employee in a feeder category for the lowest Gazetted post, he would almost have reached the maximum of his scale of pay, which when combined with the other ingredients of his aggregate annual family income, would be above Rs. 8,000 per annum. So by the time he is ripe for promotion, he goes out of the Backward Class, because the economic limit for a Backward Class family is Rs. 8,000 per annum. If this is the case of officers in the feeder category for each of the lowest Gazetted categories of posts, no mention need be made about cases of those in the feeder categories for higher gazetted posts. To illustrate: In the case of posts of Section Officers which are in the feeder category for promotion to the posts of Under Secretaries in the Government Secretariat, Public Service Commission, etc., the economic limit may have to be raised at least to Rs. 9,000 per annum per family. In the case of posts of Under
Secretaries, which are in the feeder category for promotion to selection posts of Deputy Secretaries, the economic limit may have to be raised at least to Rs. 13,000 per annum per family. In the case of posts of Deputy Secretaries, which are in the feeder category for promotion to selection posts of Joint Secretaries, the economic limit may have to be raised at least to Rs. 15,000 per annum per family. There are certain other feeder categories, the posts which carry scales of pay, the maximum of which is Rs. 1,300 per mensem with the usual D.A., in certain Departments. In the case of this feeder category, the economic limit may have to be raised to Rs. 17,000 per annum per family. Therefore, when the State finds that the Backward Classes are inadequately represented in the Gazetted category in the services under the State and, wants to make provision for reservation of posts in their favour, it can effectively do so, only if the economic limit of Rs. 8,000 is suitably raised to different limits on the lines indicated above. The question to be considered is whether this can be done.

(e) Why reservation of appointments by promotion to selection posts is necessary, and how the procedural difficulty could be overcome:

The question why reservation of appointments by promotion to selection posts is necessary and how the procedural difficulties pointed out above could be overcome is discussed below:

Replying to the debates in the Constituent Assembly on clause 3 of article 10 of the draft Constitution, which corresponds to clause 4 of article 16 of the Constitution, Dr. Ambedkar has stated as follows:

".....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.....Secondly, there shall be reservation in favour of certain communities which have not so far had "a proper look in", so to say, into the administration......At the same time—as I said—we had to reconcile this formula with the demand made by certain communities that the administration which has now—for historical reasons—been controlled by one community or a few communities—that situation should disappear and others also must have an opportunity of getting into the public services".

(vide Constituent Assembly Debates—Vol.VII-Nos.1-36-1948-49)

The expressions, "a proper look in" into the administration of the State, and "opportunity of getting into the public services" denote representation of the Backward Classes, not only in the lowest rung of the services like peons and other last grade employees and Lower Division Clerks but also, in vacancies arising in all categories of Gazetted posts, because the officers holding Gazetted posts, in the higher and higher grades actually exercise governmental power to the extent of delegation of powers. That is the significance
of the expression, "the administration of the State" occurring in Dr. Ambedkar's speech. In this connection, it is necessary to remember that the Constituent Assembly passed article 10 of the draft Constitution immediately after Dr. Ambedkar's reply speech, and that therefore, it was the intention of the Constitution makers to enable the State to make provision for the entry of the inadequately represented Backward Classes in the public services and thereby to have a "proper look in" into the administration of the State. Unless members of the Backward Classes get appointments to the higher gazetted posts also, it cannot be said that the intention of the Constitution makers has been fulfilled. In Rangacheri's case, the Supreme Court has observed that, adequacy of representation should be assessed not only numerically but also qualitatively and that, in a proper case, reservation could be made, not only in the lowest rung of the services, but also in making appointments by promotion to selection posts also.

We find that the Backward Classes drawn from Groups I, II, V, VI, VII, VIII, X and XI are not adequately represented in the services in the Gazetted category also. Hence the State may make reservation of appointments by promotion to selection posts in the various grades in the gazetted category also, according to the Supreme Court decision adverted to above. But, any reservation under article 16 (4) can be, only in favour of the inadequately represented Backward Classes. According to our recommendation in Chapter VIII, the economic limit for a Backward Class family is Rs. 8,000 and below" per annum. Unless this is raised suitably, the Backward Classes will not be able to avail themselves of the opportunities offered by reservation in selection posts. But if the economic limit is raised from Rs. 8,000 to Rs. 9,000 Rs. 13,000 Rs. 15,000 and Rs. 17,000 it is likely to be interpreted as creating different layers or strata of Backward Classes or the creation of "Backward Classes" and "less Backward Classes", which has been objected to by the Supreme Court in its decision in Balaji's case. Paragraphs 29 and 37 of the said decision are reproduced below:—

"In this connection, it is necessary to add that the sub-classification made by the order, between Backward Classes and more Backward Classes does not appear to be justified under article 15 (4). Article 15 (4) authorises special provision being made for the really Backward Classes. In introducing two categories of Backward Classes what the impugned order, in substance purports to do is to devise measures for the benefit of all the classes of citizens who are less advanced compared to the most advanced classes in the State, and that, in our opinion, is not the scope of article 15 (4). The result of the method adopted by the impugned order is that nearly 90% of the population of the State is treated as backward, and that illustrates how the order in fact divides the population of the State into most advanced and the rest, and puts the latter into two categories of Backward and more Backward. The classification of the two categories, therefore, is not warranted by article 15 (4)."

(Para 29)
“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. Rangachari, AIR 1962 SC. 36. 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 selection posts. This conclusion was reached on the basis that it served to give effect to the intension 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 widespread 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 on obligation, but merely leaves it to the discretion of the appropriate Government to take suitable action, if necessary”.

(Para 37) (underlining ours)

The three main points to be noted from the above decision are:—

(i) That reservation under article 15 (4) or 16 (4) should not exceed the permissible limit of 50%, and

(ii) That the classification of the two categories, “Backward” and “More Backward” is not warranted by article 15 (4).

(iii) That the provisions of article 15 (4) are similar to those of article 16 (4).
The quantum of reservation that we have recommended has not gone beyond the permissible limit. The only point to be examined is whether the suggestion to raise the economic limit of Rs. 8,000 to the reasonable limits mentioned in the illustration given in paragraph 48 (d) above, would tantamount to creation of 5 different kinds of Backward Classes and if so, whether it will suffer from the infirmity pointed out in item (ii) read with item (iii) above. Prima facie, it may. But it may be relevant to remember that in the Mysore Government order impugned in Balaji's case, the classification was for purposes of reservation of seats in the pre-professional class in Medicine, and the 1st year of the integrated course in Engineering. These seats are practically in one category, namely, the 1st entrance class. But, in the case under consideration by us, the appointments in the lower rungs of the services for which reservation is recommended with an economic limit of Rs. 8,000 and the appointments in selection posts are in widely different categories. The classification in the Mysore case was based solely on castes and communities and there was no economic test. In the case under consideration by us there is an economic test. Thus, the facts and circumstances of the Mysore case are entirely different from those of the case under consideration by us. There is a procedural difficulty, as pointed out above, to apply the same economic limit to the Backward Class families the members of which are eligible for appointment by promotion to selection posts and by direct recruitment to posts in the lower rungs of the services. This procedural difficulty was not raised by anybody in Rengachari's case. When the State makes a finding that certain Backward Classes are inadequately represented in the selection categories of posts, it must be enabled to give effect to the Supreme Court decision in Rengachari's case that article 16 (4) authorises the State, in a proper case, to make provision for reservation not only in making appointments to the lower rung of the services, but also in appointments by promotion to selection posts. For these reasons, we consider that the Supreme Court might not have intended to apply its observation regarding different layers or strata of Backward Classes, that is, about the creation of "Backward Classes" and "More Backward Classes", to the case of reservation of vacancies in the selection posts.

The Constitutional requirement for an economic test in classifying citizens into backward and non-backward, arose mainly from two angles. One is the Preamble of the Constitution which says, "................ to secure to all its citizens: Justice, social, economic and political". The other is the directive principles in article 46 of the Constitution which reads as follows:—

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

(underlining ours)

The power to make provision for reservation of appointments by promotion to selection posts, is conferred on the State by article 16 (4) of the Constitution which occurs in Part III (Fundamental Rights) of the Constitution. In
dealing with the question of law arising from the Kerala Education Bill, 1957, referred to the Supreme Court by the President under article 143 of the Constitution, the Supreme Court has dealt with the question whether the Fundamental Rights or the Directive Principles of State policy would prevail. There the Supreme Court has observed:

"The directive principles of State policy have to conform to and run as subsidiary to the Chapter on Fundamental Rights. Nevertheless in determining the scope and ambit for the fundamental rights relied on by or on behalf of any person or body, the Court may not entirely ignore these directive principles of State policy laid down in Part IV of the Constitution, but to adopt the principles of the harmonious construction and should attempt to give effect to both as much as possible." (vide Supreme Court decision in reference on Kerala Education Bill—AIR—1958—SC—1956).

(underlining ours)

Therefore, for the reasons:

(1) that, the observation of the Supreme Court in Balaji’s case that classification of two categories, that is, “Backward Classes”, and “More Backward Classes” was in relation to similar categories (namely, Pre-professional class in Medicine and the first year of the Engineering Course) of admission to the Medical and Engineering Colleges, and not in relation to widely different categories of admission,

(2) that, in the case under consideration by us there are widely different categories of posts, namely, “selection posts” and “non-selection posts”, with widely different economic attributes,

(3) that, there is insurmountable procedural difficulty to apply one and the same economic limit to families belonging to the inadequately represented Backward Classes, in the matter of appointments by promotion to selection posts (Gazetted posts) and, appointments by direct recruitment to non-selection posts (Non-gazetted posts),

(4) that, the number of candidates with higher qualifications (both general and technical) would be negligibly small, in families belonging to the inadequately represented Backward Classes coming within the economic limit of “Rs. 8,000 and below” per annum per family,

(5) that, in view of (3) and (4) above, if different economic limits are not assigned to families belonging to inadequately represented Backward Classes, in the matter of appointments by promotion, and by direct recruitment to selection posts (Gazetted posts) on the one side, and appointments by direct recruitment to non-selection posts (Non-gazetted posts) on the other side, the object of the Constitution, namely to make provision for reservation of appointments by promotion and direct recruitment to selection posts (Gazetted posts), in a proper case, would be frustrated and,
(6) that, the above points were not placed before the Supreme Court by anybody at any time,

(a) either the Government may assign different “aggregate-annual-income-limits” reasonably higher than Rs. 8,000 more or less equal to the amounts suggested in paragraph 48 (d) above, to the inadequately represented Backward Class families, for purposes of reservation of appointments by promotion to selection posts in each grade in each service (Gazetted category) and also for purposes of appointments by direct recruitment to vacancies in each grade in each service in the Gazetted category, or

(b) the Government may initiate action to place the whole matter before the Government of India for taking steps under article 143 of the Constitution which reads as follows:—

“(1) If at any time it appears to the President that a question of law or fact has arisen, or is likely to arise, which is of such a nature and of such public importance that it is expedient to obtain the opinion of the Supreme Court upon it, he may refer the question to that Court for consideration and the Court may, after such hearing as it thinks fit, report to the President its opinion thereon.

(2) The President may, notwithstanding anything in the proviso to article 131 refer a dispute of the kind mentioned in the said proviso to the Supreme Court for opinion and the Supreme Court shall, after such hearing as it thinks fit, report to the President its opinion thereon.”

49. Reservation not a bar against candidates in a Backward Class to compete in the open merit pool:

Notwithstanding that a class of citizens has been declared by competent authority as backward for purposes of article 16 (4) of the Constitution and given the benefit of reservation of appointments or posts thereunder, it does not take away the right of members of that class from competing in the open merit pool, and securing as many appointments as possible. A few appointments that may be appropriated by members of the said Backward Class in open merit pool, are appointments secured by them in their individual right as a citizen guaranteed under articles 16 (1) and 16 (2) and not as members of a Backward Class. That situation cannot be reckoned for cutting down the percentage of reservation that has been fixed for the Backward Class as a whole under article 16 (4). The percentage of reservation once fixed can be changed only on the basis of the result of an objective review. Therefore, we suggest that nothing in the rules of reservation of appointments or posts, shall bar the right of members of the Scheduled Castes and Scheduled Tribes, and Backward Classes other than Scheduled Castes and Scheduled Tribes, for whom reservation has been made under article 16 (4) from competing in the unreserved merit pool, and where a candidate belonging to a Scheduled Caste Scheduled Tribe or Backward Class other than Scheduled Castes and Scheduled Tribes is selected on the basis of merit alone, the number of posts reserved for
Scheduled Castes, Scheduled Tribes or Backward Classes other than Scheduled Castes and Scheduled Tribes as the case may be, shall not in any way be affected.

50. **Integrated cycle combining the rotation and sub-rotation in Rules 14 to 17 of the Kerala State and Subordinate Services Rules, 1958:**

The existing cycle, rotation in a cycle, and sub-rotation in a "turn in a rotation" are worked out on the basis that Ezhavas and Thiyas are entitled to a reservation of appointments of 14%, the Muslims 10%, the Latin Catholics 4%, the S.I.U.C. and Anglo-Indians together 1%, the Converts from Scheduled Castes to Christianity 1% and the "Other Backward Classes put together" 10%. Our recommendations envisage changes not only in the classification but also in the total quantum of reservation and distribution thereof. Therefore, it is necessary to revise the existing cycle, rotation in a cycle and sub-rotation in a turn in a rotation. On a scrutiny of the existing cycle, rotation and sub-rotation, we find them only fair and just. Therefore, we would suggest that the general run of the existing cycle, rotation and sub-rotation may be maintained and the slight changes consequent on the changes referred to above, may be effected with the least possible disturbance to the general run of the existing cycle, rotation and sub-rotation. For obvious reasons, we do not make a cycle, rotation and sub-rotation. They may be made by the Government for the "Last grade", "Non-gazetted" and "Gazetted" separately, in consultation with the Kerala Public Service Commission which is the authority to advice candidates for appointments in accordance with the orders of reservation that may be passed by the Government, even though clause (4) of article 320 of the Constitution says that nothing in clause (3) of the said article shall require the Public Service Commission to be consulted as respects the manner in which any provision referred to in clause (4) of article 16 may be made, or, as respects the manner in which effect may be given to the provision of article 335. Government may also take steps to effect mutatis mutandis changes in Rules 14 to 17 of the Kerala State and Subordinate Services Rules, 1958 and the Special Rules.

51. **Carry-forward rule:**

If there is no suitable candidate for selection from a particular Backward Class, or from the Group, classified as "Scheduled Castes and Scheduled Tribes” allotted to them in the integrated cycle combining the rotation and sub-rotation, the said Backward Class or Group shall be passed over and the vacancy shall be filled up in the following manner:

If a suitable candidate is available for selection in the “Backward Class” or “Group” immediately next to the passed over “Backward Class” or “Group” in the said cycle, he shall be selected. If no such candidate is available in that “Backward Class” or “Group”, selection shall be made from the “Backward Class” or “Group” next following, strictly in the order of rotation. If no suitable candidate is available for selection in any of the “Backward Classes”,
or "Groups", selection shall be made from among the open competition candidates. The benefit of the turn thus forfeited to a "Backward Class" or "Group" by reason of its being passed over, shall be restored to it, at the earliest possible opportunity, if a suitable candidate from that "Backward Class" or "Group" is available for selection, by making adjustment against the claims of the "Backward Class" or "Group" that derived the extra benefit by reason of such passing over:

Provided that, in no year, reservations including carry-forward-vacancies to a category of post shall exceed 50% of the total number of vacancies for which selection by direct recruitment to that category is resorted to in that year.

52. _Appointments and posts to which the Principles of reservation should be made applicable—Certain laws to be amended:

(a) Clause (4) of article 16 of the Constitution speaks about "services under the State" and not "services under the Government". The expression, "the State" occurring in clause (4) of article 16 of the Constitution has been defined, in article 12, to include not only the Legislature and the Government but also the "Local authorities" and "Other authorities". The term "Other authorities" means "authorities other than those of Local Self Government, which have been created by law and which have the power to make rules and regulations, bye-laws etc., having the force of a law as defined in article 13" (vide Supreme Court decisions in Basheshar V. Income Tax Commissioner-A-1959-S. C. 149-158; Ramamoorthy V. Chief Commissioner-A-1963-S. C. 1464-1467-8; Kochumoni V. State of Madras-A-1959-S. C. 725-730; and Namboodiripad V. Cochin Devaswom Board-A-1956-T. C. 19-21). In this connection reference may be made to paragraph 28 (f) of this report, from which it may be seen that the object of assigning by article 12, an enlarged meaning to the expression, "the State", occurring in the various articles in Part III of the Constitution, is to make the "Fundamental Rights" binding upon every authority created by "law" and which has the powers to make rules, "bye-laws" etc. having the force of law. From the Supreme Court decision quoted in paragraph 27, it may be seen that, for historical reasons, which are well-known, the advancement of the socially and educationally Backward Classes has been treated by the Constitution as a matter of paramount importance and that, it may have to be borne in mind in construing article 16 (4). In paragraph 30 of the Supreme Court decision in Balaji's case (AIR. 1963-S. C. 649-V-50-C-101) it has been observed that no one could dispute the proposition that political freedom and even fundamental rights could have very little meaning or significance for the Backward Classes and for Scheduled Castes and Scheduled Tribes, unless the backwardness or inequality from which they suffer, are immediately redressed. The provision for reservation of appointments or posts, contained in clause (4) of article 16 is an exemption from fundamental rights. This exemption was provided for in article 16 for the immediate or at least a quicker redressal of the inadequacy and inequality from which the Backward Classes suffer in
the field of appointments. It is plainly clear that the immediate or at least a quicker redressal of the inadequacy of representation of the Backward Classes in the services would require immediate or at least a quicker enlargement of the field in which and the levels at which the reservation of appointments or posts is now allowed. There is nothing which precludes us from the conclusion that the object of assigning, by article 12, an enlarged meaning to the expression, “the State” occurring in clause (4) of article 16 is to make the Fundamental Rights as well as the exemption therefrom provided for, in the said clause (4) binding, not only on the Government but also on the “Local Authorities” and “Other Authorities” created by law and which have got the powers to make rules, bye-laws etc., having the force of law. Therefore, the recommendation of this Commission regarding reservation of initial appointments by direct recruitment and reservation of appointments by promotion to selection-posts may be made applicable, not only to the services under the Legislature and Government, but also to the services under the “Local Authorities” and “Other Authorities” mentioned above, including all industrial concerns fully owned by the Government, all Companies not less than 51% of the paid-up share capital of which is held by the Government of Kerala the Kerala State Financial Corporation, the Kerala Fisheries Corporation, the Kerala Tourist Corporation, the Kerala Plantation Corporation, the Kerala Coir Corporation, the Kerala Handloom Corporation, the Kerala Cashew Corporation, the Kerala Khadi and Village Industries Board, the Kerala Warehousing Corporation and similar other institutions.

(b) If any local authority or other authority within this State, created by law, has not been conferred with power to make regulations or rules or bye-laws, the law under which such authorities were created may be amended with a view to giving them such power, so that those authorities may come directly within the purview of articles 12 and 16 of the constitution. (vide paragraph 28 (i) of this report).

(c) In section 3 of the Kerala Public Service Commission (Additional Functions As Respects, The Kerala State Road Transport Corporation) Act, 1970, provision has been made requiring the said Corporation to consult the Kerala Public Service Commission in certain specified matters. Rules under section 4 of the said Act have also been issued. The Act or Rules mentioned above do not provide for reservation of appointments or posts in the services under the said Corporation. The mere fact that the said Act confers additional functions on the Kerala Public Service Commission in respect of appointments in the services under the Corporation will not by itself enable that Commission, to observe the rules of reservation of appointments contained in Rules 14 to 17 of the Kerala State and Subordinate Services Rules, 1958 in making advices for appointment in vacancies in the services under the Corporation. By the Act or Rules in question, the Board of Directors also are not bound to apply the principles of reservation in making appointments. It is not also binding on them to agree to the advice tendered by the Public Service Commission. Our finding in paragraph 28 of this report is that the Legislature and the Government have alone got the power to take a decision on the policy-cum-administrative question regarding the principles on which Backward Classes should be delineated and to form an opinion regarding adequacy.
of representation of the said classes in the said services. Government may, therefore, initiate action for making specific provisions in the above-mentioned Act, and similar other Acts, as the case may be, saying that the principles of reservation contained in rules 14 to 17 of the Kerala State and Subordinate Services Rules, 1958, shall mutatis mutandis be applied in making appointments in vacancies in the services under the Corporations, Companies, Boards or other institutions as the case may be.

(d) Action may be initiated by Government in making provision similar to the one suggested in (c) above, in the Kerala Public Service Commission (Additional Functions As Respects Certain Corporations and Companies) Bill 1970 passed by the Legislative Assembly on 13-11-1970.

(e) If, when action is initiated on the lines suggested in (a), (b), (c) and (d), it is found that the proposed law in relation to any of the “authorities” or “institutions” mentioned above, falls under any of the matters enumerated in the Concurrent List in the Seventh Schedule, and contains any provision repugnant to the provisions of an earlier law made by the Parliament or an existing law with respect to that matter, it is not necessary to drop the action. In such cases, action may be continued and the law made by the State Legislature be reserved for the consideration by the President—Vide article 254(2) of the Constitution.

(f) Our recommendation regarding reservation of initial appointments by direct recruitment may be made applicable to the following categories of posts also:

(i) All employees whether part-time or full-time charged to contingencies which are now excluded from the purview of the Public Service Commission.

(ii) All posts in the Fire Force Department below the rank of Sub Officers (except the clerical staff) which are now excluded from the purview of the Public Service Commission, if and when appointments to those posts are made by direct recruitment.

(iii) All posts in the Police Department below the rank of Sub Inspectors of Police (except the clerical staff), Manager, Junior Superintendents, Head Clerks and Assistants of the Special Branch of the Police Department, Typists of the Special Branch, Shorthand Reporters and Stenographers of the Police Department (which are not now within the purview of the Public Service Commission), if and when appointments to these posts are made by direct recruitment.

53. Period for which reservation may continue:

Having regard to the population of the weaker sections of the various groups of citizens which are not adequately represented in the services under the State and taking into consideration the extent of their backwardness in the social, educational and economic fields, and in the field of appointment, we would suggest that the reservation of initial appointment by direct recruitment and of appointments by promotion to selection posts suggested by us, may continue for a period of 10 (Ten) years at the end of which the position be reviewed.
CHAPTER X

SUMMARY OF RECOMMENDATIONS AND ACKNOWLEDGMENTS

54: The summary of our recommendations is given below:

Terms of reference

(a) What are the main factors leading to backwardness of citizens?

Recommendations

The main factors leading to backwardness of citizens, for purposes of article 16 (4) are:

(1) Lack of requisite educational attainment (Test of education)
(2) Lack of money or wealth (Economic test)
(3) Lack of ability to appropriate adequate number of appointments (Test of appropriation of appointments) and
(4) Caste disability, occupational stigma and social taboos acting as depressants in the field of education.

[(Paragraph 838 (ii), 38 (iii), 38 (iv), 38 (v), 38 (vi) and 38 (vii)]

(b) What should be the basis for classifying sections of people into backward and non-backward?

Recommendations

The main factors leading to backwardness of citizens having been covered by the term of reference No. (a) above, the term of reference No. (b) can only, mean, "what are the levels at which the norm with reference to which and the method by which each of the tests adopted, could be applied". We recommended that:

(5) S.S.L.C. and graduate courses shall be the levels at which the test of education shall be applied.
(6) the "Last grade (Class IV)", the "Non-gazetted" and "gazetted" categories of appointments in the services under the State (as defined in article 12 of the Constitution) shall be the levels at which the test of appropriation of appointment shall be applied.
(7) "Rs. 8,000 and below" shall be the level of aggregate annual family income at which the economic test shall be applied.
(8) The norm or yardstick with reference to which the attainment or position of each group of citizens, in the field of each of the tests adopted, is to be compared (except the test of social backwardness) shall be the percentage of population of that group itself. The
comparison of attainment of a group of citizens shall not be made with the attainment of the most advanced group or of any of the more advanced groups of citizens.

(9) The percentage of student population belonging to each group of citizens, at each of the levels mentioned in (5) above, on the total number of such students in Kerala, shall be compared with the ‘norm’, namely the percentage of population of that group itself.

(10) The percentage of appointments appropriated by each group of citizens in each of the 3 categories of services, namely, “Last Grade”, “Non-gazetted” and “Gazetted” mentioned in (6) above, on the total number of such appointments in the State shall be compared with the ‘norm’, namely, percentage of population of that group itself.

(11) The percentage of households whose aggregate annual income is “Rs. 8,000 and below” in each group of citizens on the total number of such households in the State shall be compared with the ‘norm’, namely, the percentage of population of that group itself. There is one peculiarity about this comparison. In the case of items (9) and (10) above, when the percentage of attainment of a group of citizens increases, the backwardness decreases proportionately and when the said percentage becomes equal to or above the “norm”, the backwardness ceases to exist. But, in the case of households whose aggregate annual income is “Rs. 8,000 and below”, in each group of citizens, when their percentage on the total number of such households in the State, increases from the “norm”, the backwardness also increases and not decreases. This is because the families which fall within the range of zero rupees to Rs. 8,000 inclusive, are poor families for purposes of article 16 (4). Hence, when the percentage of poor families in a group of citizens increases “from the norm” the backwardness of that group in the economic field also increases.

(12) The test of education shall not be applied as a separate test and, elimination of the educationally non-backward section of each group of citizens shall not be made immediately after application of this test because, nobody can say whether the educationally advanced section of each group would be advanced in the field of the other tests also. Similarly is the case with the application of the other tests. All the tests shall be applied simultaneously.

(13) The test of social backwardness due to historical reasons cannot be applied thoroughly on an objective basis. The only data available are those relating to the punishments awarded to offenders under the Untouchability (Offences) Act, 1955, for the period from 1956 to 1968. In paragraph 43 we have assessed the extent of social backwardness of each of the 12 groups of citizens on an objective sum-subjective basis.

[Paragraphs 38 (ii), 38 (iii), 38 (iv), 38 (v), 38 (vi), 38 (vii) and 41 to 45]
Term of reference

(c) In the light of answers to (a) and (b) above, what classes of citizens in the State should be treated as backward for purposes of article 16(4) of the Constitution and which of such classes are not adequately represented in the services under the State?

Recommendations

(14) Backward Classes—Delineated

Only citizens who are members of families each of which has an aggregate annual income, that is to say, income of all members in the family from all sources taken together, of “Rs. 8,000 and below” (Rupees eight thousand and below) and which belong to any of the groups of citizens marked I to XII in Appendix XI, will constitute the Backward Classes belonging to the respective groups, for purposes of article 16 (4) of the Constitution. The term, “family” means the applicant for appointment, his/her spouse, if any, and the applicant’s parents if the applicant is residing with and/or dependent on them.

(Paragraph 46)

(15) Backward Classes which among them are inadequately represented

The Backward Classes whose group numbers are specified in column (2) of the following table I, and which are shown as “inadequately represented” in the “Last grade”, “Non-gazetted” or “Gazetted” compartment as the case may be, in column (3), (4) or (5) of the said table, are the Backward Classes inadequately represented in the compartment concerned of the services under the State, for purposes of article 16 (4) of the Constitution.
<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Group</th>
<th>Number of Backward Classes</th>
<th>Last grade</th>
<th>Non-gazetted</th>
<th>Gazetted</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1)</td>
<td>(2)</td>
<td>(3)</td>
<td>(4)</td>
<td>(5)</td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>Group I</td>
<td>(The backward section of Ezhava, Thiyya, Billava, etc., and Buddhists)</td>
<td>Inadequately represented</td>
<td>Inadequately represented</td>
<td>Inadequately represented</td>
</tr>
<tr>
<td>2</td>
<td>&quot;</td>
<td>II (The backward section of Muslims, that is the backward section of all denominations following Islam)</td>
<td>do</td>
<td>do</td>
<td>do</td>
</tr>
<tr>
<td>3</td>
<td>&quot;</td>
<td>III (The backward section of Syrian Christians, Jews, Parsis, Anglo-Indians, S.I.U.C., C.M.S., L.M.S., C.S.I. and all other denominations of Christians excluding Scheduled Castes Converts and Latin Catholics)</td>
<td>do</td>
<td>Adequately represented</td>
<td>Adequately represented</td>
</tr>
<tr>
<td>4</td>
<td>&quot;</td>
<td>IV (The backward section of Nairs, including Nedungadi, Eradi, etc.)</td>
<td>Adequately represented</td>
<td>do</td>
<td>do</td>
</tr>
<tr>
<td>5</td>
<td>&quot;</td>
<td>V (The backward section of Arayan, Valan, Ezhavathy, Hindu Nadar, Kudumbi, Kusavan, Yogi, Pandaram etc.)</td>
<td>Inadequately represented</td>
<td>Inadequately represented</td>
<td>Inadequately represented</td>
</tr>
<tr>
<td>6</td>
<td>&quot;</td>
<td>VI (The backward section of Kammalas, etc.)</td>
<td>do</td>
<td>do</td>
<td>do</td>
</tr>
<tr>
<td>7</td>
<td>&quot;</td>
<td>VII (The backward section of Latin Catholics other than Anglo-Indians and Sch. Castes Converts)</td>
<td>do</td>
<td>do</td>
<td>do</td>
</tr>
<tr>
<td>8</td>
<td>&quot;</td>
<td>VIII (The backward section of Ambattan, Chakkala, Salia, Veluthedathu Nair, Vilakkithala Nair, Yadava, etc.)</td>
<td>do</td>
<td>do</td>
<td>do</td>
</tr>
<tr>
<td>No.</td>
<td>(The backward section of)</td>
<td>Represented</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>-----</td>
<td>--------------------------</td>
<td>-------------</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>(The backward section of Brahmins, Kshatriya, Ambalavasi, Sikh, etc.)</td>
<td>Adequately represented</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>(The backward section of Scheduled Castes Converts to Christianity)</td>
<td>Inadequately represented</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>11</td>
<td>(The backward section of Ezhuthachan, Koteyar, Kumarakshatriya, Naidu, etc.)</td>
<td>do.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>12</td>
<td>(The backward section of Vellalas, Chetties, etc.)</td>
<td>Adequately represented</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

[Paragraph 47 (1)]
Term of reference

(d) What should be the quantum of reservation and the period for which it is to remain in force so far as the reservation of 40% to the Other Backward Classes is concerned?

Recommendations

(16) Having regard to the total population of the inadequately represented Backward Classes, the extent of their inadequacy of representation and the extent of their social backwardness due to historical reasons, we recommend that the total quantum of reservation in favour of Backward Classes other than Scheduled Castes and Scheduled Tribes shall be 38% of the general vacancies arising each year of recruitment, in each of the 3 compartments of services, namely, “Last Grade”, “Non-gazetted” and “Gazetted” separately, the existing 8% reservation in favour of Scheduled Castes and 2% in favour of Scheduled Tribes, being left as they are. The quota for open competition shall be 52% of the general vacancies that arise each year of recruitment in each of the said three compartments. The expression “General vacancies” means vacancies in each compartment that remain to be filled up after making appointments by transfer, if any, according to the Special Rules.

[Paragraph 48 (c).]

Last Grade category

(17) The reservation of appointments in the “Last grade” shall apply only to initial appointments by direct recruitment and not to appointments by promotion of employees in the feeder categories.

(18) The 38% reservation of general vacancies arising each year of recruitment in the “Last grade” shall be distributed among the inadequately represented Backward Classes as shown in the following Table II:

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Group</th>
<th>Number of Backward Classes</th>
<th>Percentage of reservation that may be assigned in favour of each of the inadequately represented Backward Classes</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1)</td>
<td>(2)</td>
<td>(3)</td>
<td></td>
</tr>
<tr>
<td>1 Group</td>
<td>I</td>
<td>(The backward section of Ezhava, Thiyya, Billava, etc. and Buddhists)</td>
<td>11 (Eleven)</td>
</tr>
<tr>
<td>2</td>
<td>II</td>
<td>(The backward section of Muslims, that is, the backward section of all denominations following Islam)</td>
<td>10 (Ten)</td>
</tr>
<tr>
<td>(1)</td>
<td>(2)</td>
<td>(3)</td>
<td></td>
</tr>
<tr>
<td>-----</td>
<td>-----</td>
<td>-----</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>&quot;</td>
<td>IV</td>
<td>(The backward section of Nairs, including Nedungadi, Eradi, etc.)</td>
</tr>
<tr>
<td>5</td>
<td>&quot;</td>
<td>V</td>
<td>(The backward section of Arayan, Valan, Ezhavathy, Hindu Nadar, Kudumbi, Kusavan, Yogi, Pandaram, etc.)</td>
</tr>
<tr>
<td>6</td>
<td>&quot;</td>
<td>VI</td>
<td>(The backward section of Kammalas, etc.)</td>
</tr>
<tr>
<td>7</td>
<td>&quot;</td>
<td>VII</td>
<td>(The backward section of Latin Catholics other than Anglo-Indians and Scheduled Castes Converts)</td>
</tr>
<tr>
<td>8</td>
<td>&quot;</td>
<td>VIII</td>
<td>(The backward section of Ambattan, Chakkala, Salia, Veluthedathu Nair, Vilakkithala Nair, Yadava etc.)</td>
</tr>
<tr>
<td>9</td>
<td>&quot;</td>
<td>IX</td>
<td>(The backward section of Brahmins, Kshatriya, Ambalavasi, Sikh etc.)</td>
</tr>
<tr>
<td>10</td>
<td>&quot;</td>
<td>X</td>
<td>(The backward section of Scheduled Castes Converts to Christianity)</td>
</tr>
<tr>
<td>11</td>
<td>&quot;</td>
<td>XI</td>
<td>(The backward section of Ezhuthachan, Koteyar, Kumarakshatriya, Naidu etc.)</td>
</tr>
<tr>
<td>12</td>
<td>&quot;</td>
<td>XII</td>
<td>(The backward section of Vellalas, Chetties, etc.)</td>
</tr>
</tbody>
</table>

Total

38 (Thirtyeight)

[Paragraph 48 (c)]

Non-gazetted category:

(19) The reservation of appointments in the “Non-gazetted” category shall apply only to initial appointments by direct recruitment and not to appointments by promotion of employees from the feeder categories.

3/1290
The 38% reservation of general vacancies arising each year of recruitment in the “Non-gazetted” category shall be distributed among the inadequately represented Backward Classes as shown in the following Table III.

TABLE III

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Group Number of Backward Classes</th>
<th>Percentage of reservation that may be assigned in favour of each of the inadequately represented Backward Classes</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Group I (The backward section of Ezhava, Thiyya, Billava, etc. and Budhists)</td>
<td>14 (Fourteen)</td>
</tr>
<tr>
<td>2</td>
<td>II (The backward section of Muslims that is, the backward section of all denominations following Islam)</td>
<td>12 (Twelve)</td>
</tr>
<tr>
<td>4</td>
<td>IV (The backward section of Nairs including Nedungadi, Eradi, etc.)</td>
<td>do.</td>
</tr>
<tr>
<td>5</td>
<td>V (The backward section of Arayan, Valan, Ezhavathy, Hindu Nadar, Kudumbi, Kusavan, Yogi, Pandaram, etc.)</td>
<td>3 (Three)</td>
</tr>
<tr>
<td>6</td>
<td>VI (The backward section of Kamalas, etc.)</td>
<td>3 (Three)</td>
</tr>
<tr>
<td>7</td>
<td>VII (The backward section of Latin Catholics other than Anglo-Indians and Scheduled Castes Converts)</td>
<td>3 (Three)</td>
</tr>
<tr>
<td>8</td>
<td>VIII (The backward section of Ambattan, Chakkala, Salia, Veledathu Nair, Vilakkithal Nair, Yadava, etc.)</td>
<td>1 (One)</td>
</tr>
<tr>
<td>9</td>
<td>IX (The backward section of Brahmans, Kshatriya, Sikh, Ambalavasi, etc.)</td>
<td>Adequately represented. Hence no reservation.</td>
</tr>
<tr>
<td>10</td>
<td>X (The backward section of Scheduled Castes Converts to Christianity)</td>
<td>1 (One)</td>
</tr>
<tr>
<td>11</td>
<td>XI (The backward section of Ezhuthachan, Kotiyar, Kumarakshatriya, Naidu etc.)</td>
<td>Adequately represented. Hence no reservation.</td>
</tr>
<tr>
<td>12</td>
<td>XII (The backward section of Vellalas, Chetties, etc.)</td>
<td></td>
</tr>
</tbody>
</table>

Total 38 (Thirty eight)
Gazetted Category:

At present, in certain services, some Gazetted posts (Selection posts) mentioned in the Special Rules (Appendix X) are filled up by transfer of employees from other services, a part of the remaining posts is filled up by direct recruitment applying the principle of reservation, and the remaining part by promotion of employees from the feeder categories without applying the principles of reservation. We recommend that:

(21) Those vacancies in the Gazetted category, which the Government may consider it necessary to be filled up in the exigencies of service, by transfer of employees from other services shall be so filled up after making necessary provision therefor in the Special Rules.

(22) The remaining vacancies in each Grade in each service in the Gazetted category shall be treated as “General vacancies in each grade in each service”.

(23) Fifty (50) percent of the general vacancies in each grade in each service in the Gazetted category shall be filled up by direct recruitment by the Public Service Commission.

(24) The remaining 50 (Fifty) percent of the general vacancies in each grade in each service in the Gazetted category shall be filled up by promotion of employees in the feeder category concerned.

(25) Thirtyeight percent (38%) of the vacancies to be filled up by initial appointments by direct recruitment referred to in (23) above and thirtyeight percent (38%) of the vacancies to be filled up by appointments by promotion referred to in (24) above, shall be reserved in favour of the inadequately represented Backward Classes other than Scheduled Castes and Scheduled Tribes. On this basis, the appointments coming under (23) and (24) above shall be made separately by applying the principle of reservation. The said reservation of 38% in each of the cases coming under (23) and (24) above shall be distributed among the inadequately represented Backward Classes other than Scheduled Castes/Scheduled Tribes as shown in the following Table IV.

**TABLE IV**

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Group Number of Backward Classes</th>
<th>Percentage of reservation that may be assigned in favour of each of the inadequately represented Backward Classes</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1)</td>
<td>(2)</td>
<td>(3)</td>
</tr>
<tr>
<td>1</td>
<td>Group I (The backward section of Ezhava, Thiyya, Billava, etc. and Buddhists)</td>
<td>14 (Fourteen)</td>
</tr>
<tr>
<td>2</td>
<td>Group II (The backward section of Muslims that is, the backward section of all denominations following Islam)</td>
<td>12 (Twelve)</td>
</tr>
<tr>
<td>(1)</td>
<td>(2)</td>
<td>(3)</td>
</tr>
<tr>
<td>-----</td>
<td>-----</td>
<td>-----</td>
</tr>
<tr>
<td>4</td>
<td>IV</td>
<td>(The backward section of Nairs including Nedungadi, Eradi, etc.) do.</td>
</tr>
<tr>
<td>5</td>
<td>V</td>
<td>(The backward section of Arayan, Valan, Ezhavathy, Hindu Nadar, Kudumbi, Kusavan, Yogi, Pandaram, etc.) 3 (Three)</td>
</tr>
<tr>
<td>6</td>
<td>VI</td>
<td>(The backward section of Kammalas, etc.) 3 (Three)</td>
</tr>
<tr>
<td>7</td>
<td>VII</td>
<td>(The backward section of Latin Catholics other than Anglo-Indians and Scheduled Castes Converts) 3 (Three)</td>
</tr>
<tr>
<td>8</td>
<td>VIII</td>
<td>(The backward section of Ambattan, Chakkal, Satia, Veluthedathu Nair, Vilakkithala Nair, Yadava, etc.) 1 (One)</td>
</tr>
<tr>
<td>9</td>
<td>IX</td>
<td>(The backward section of Brahmins, Khatriya, Ambalavasi, Sikh, etc.) Adequately represented. Hence no reservation. 1 (One)</td>
</tr>
<tr>
<td>10</td>
<td>X</td>
<td>(The backward section of Scheduled Castes Converts to Christianity) 1 (One)</td>
</tr>
<tr>
<td>11</td>
<td>XI</td>
<td>(The backward section of Ezhuthachan, Koteyar, Kumarakshatriya, Naidu etc.) Adequately represented. Hence no reservation. 1 (One)</td>
</tr>
<tr>
<td>12</td>
<td>XII</td>
<td>(The backward section of Vellala, Chetties, etc.)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Total 38 (Thirty eight)</td>
</tr>
</tbody>
</table>

[Paragraph 48 (c)]

Certain procedural difficulties in the matter of reservation of appointments by promotion to selection posts (Gazetted) and how it could be overcome:

(16) Promotion to selection posts (Gazetted posts) are made (and may have to be made if and when our recommendations are accepted by Government) by selecting suitable employees from the feeder categories of the services concerned. In a very large number of cases the employees in the feeder categories have been now to wait (and may have to wait hereafter also) for years together to get a promotion. So, when promotion to a selection post becomes due to an employee in a feeder category for the lowest gazetted post, he would
almost have reached the maximum of his scale of pay, which when combined with other ingredients of his aggregate annual family income, would be above Rs. 8,000 per annum. So, by the time he is ripe for promotion, he goes out of the Backward Class, because the economic limit suggested by us for a Backward Class family is “Rs. 8,000 and below” per annum. If this is the case of officers in the feeder category for each of the lowest Gazetted categories of posts, no mention need be made about cases of those in the feeder categories for higher Gazette posts. In the case of the feeder categories for the various higher Gazetteed posts, the economic limit of “Rs. 8,000 and below” may have to be raised to “Rs. 9,000 and below”, “Rs. 13,000 and below”, “Rs. 15,000 and below” and “Rs. 17,000 and below” if the members of the inadequately represented Backward Classes should be enabled to avail themselves of the benefit of reservation, if reservation is allowed in their favour. As interpreted by the Supreme Court in Rangachari’s case (AIR-1962-S.C. 36-V-49-C-6) the term “Posts” occurring in article 16(4) of the Constitution means “selection posts” and if a State finds that Backward Classes are inadequately represented in the selection categories of posts, the State has the power to make reservation of selection posts also. But under article 16 (4) of the Constitution, reservation can only be in favour of Backward Classes inadequately represented in the services. Further, in paragraphs 29 and 37 of the Supreme Court decision in Balaji’s case (AIR-1963-S.C. 649) it has been observed that:

(a) classification of the two categories, “Backward” and “More Backward” is not warranted by article 15 (4) and,

(b) the provisions of article 15(4) are similar to those of article 16 (4).

The question therefore arises whether the assignment of different economic limits of “Rs. 8,000 and below”, “Rs. 9,000 and below”, “Rs. 13,000 and below”, “Rs. 15,000 and below” and “Rs. 17,000 and below” would be interpreted as creating “Most Backward” “More Backward” and “Backward” Classes, which has been objected to by the Supreme Court in Balaji’s case, in which it has also been observed that the provisions of article 15(4) are similar to those of article 16 (4). But we find that the observation of the Supreme Court in Balaji’s case was in relation to reservation of seats in the pre-professional class in Medicine, and the first year of the integrated course in Engineering. These two courses are the first entrance classes and are, in that respect, similar. So, classification of citizens into more than one category may not have rational relation to the object of that classification. But the case under consideration by us is basically different from the Mysore case. The lowest rung of the public services and the higher Gazetteed posts are widely different in every respect. If only one economic limit can be applied to families in the Backward Classes, the candidates belonging to which are to be promoted to the selection posts which may be reserved for them, they cannot get the benefit of reservation. The reservation would become infructuous. If that is the situation, the further question arises in what way, the object of the Constitution makers, as interpreted by the Supreme Court, namely, to make inadequacy of representation of the Backward Classes in the compartment of selection posts (Gazetted posts) adequate can be carried out. For the reasons that:—
(i) the observation of the Supreme Court in Balaji’s case that classification of two categories, that is, “Backward Classes”, and “More Backward Classes” was in relation to similar categories (namely, Pre-professional class of Medicine and the first year of the Engineering course) of admissions to the Medical/Engineering Colleges and not in relation to widely different categories of admission,

(ii) in the case under consideration by us, there are widely different categories of posts, namely, “selection posts” and “non-selection posts” with widely different economic attributes,

(iii) there is insurmountable procedural difficulty to apply one and the same economic limit to families belonging to the inadequately represented Backward Classes, in the matter of appointments by promotion to selection posts (Gazetted posts) and, appointments by direct recruitment to non-selection posts (Non-gazetted posts),

(iv) the number of candidates with higher qualifications (both general and technical) would be negligibly small, in families belonging to the inadequately represented Backward Classes coming within the economic limit of “Rs. 8,000 and below” per annum per family,

(v) in view of (iii) and (iv) above, if different economic limits are not assigned to families belonging to inadequately represented Backward Classes, in the matter of appointments by promotion and by direct recruitment to selection posts (Gazetted posts) on the one side, and appointments by direct recruitment to non-selection posts (Non-gazetted posts) on the other side the object of the Constitution, namely to make provision for reservation of appointments by promotion and direct recruitment to selection posts in a proper case, would be frustrated and,

(vi) the above points were not placed before the Supreme Court by anybody at any time,

we recommend that:

(i) either the Government may assign to the inadequately represented Backward Class families, different “aggregate-annual-income-limits” reasonably higher than Rs.8,000, more or less equal to the amounts suggested above for purposes of reservation of appointments by promotion to selection posts (Gazetted posts) in each grade in each service and also for purposes of appointments by direct recruitment to vacancies in each grade in each service in the Gazetted category, or

(ii) the Government may initiate action to place the whole matter before the Government of India for taking steps under article 143 of the Constitution which reads as follows:

“(1) If at any time it appears to the President that a question of law or fact has arisen, or is likely to arise, which is of such a nature and of such public importance that it is expedient to obtain the opinion of the Supreme Court upon it, he may refer the question to that Court for consideration and the Court may, after such hearing as it thinks fit, report to the President its opinion thereon.
(2) the President may, notwithstanding anything in the proviso to article 131 refer a dispute of the kind mentioned in the said proviso to the Supreme Court for opinion and the Supreme Court shall, after such hearing as it thinks fit, report to the President its opinion thereon.”

[Paragraph 48 (d)]

Reservation not a bar against candidates in a Backward Class to compete in the Open Merit Pool

(27) Nothing in the rules of reservation of appointments or posts shall bar the right of members of the Scheduled Castes, Scheduled Tribes and Backward Classes other than Scheduled Castes/Scheduled Tribes for whom reservation has been made under article 16 (4), from competing in the unreserved merit pool, and where a candidate belonging to a Scheduled Caste, Scheduled Tribe or Backward Class other than Scheduled Castes/Scheduled Tribes is selected on the basis of merit alone, the number of posts reserved for Scheduled Castes/Scheduled Tribes or Backward Classes other than Scheduled Castes/Scheduled Tribes as the case may be, shall not in any way be affected.

(Paragraph 49)

Integrated cycle combining the rotation and sub-rotation in Rules 14 to 17 of the Kerala State and Subordinate Services Rules, 1958

(28) The recommendations of this Commission envisage changes in the existing classification, total quantum of reservation and distribution thereof. Therefore, it is necessary to revise the existing cycle, rotation and sub-rotation. The integrated cycle, rotation and sub-rotation may have to be made separately for the “Last grade”, “Non-gazetted” and “Gazetted” compartments of the services. We recommend that the general run of the existing cycle, rotation and sub-rotation may be maintained and the slight changes consequent on the changes referred to above, may be effected with the least possible disturbance, in consultation with the Public Service Commission.

(Paragraph 50)

Carry Forward Rule

(29) The existing rule 15 (Carry Forward Rule) may be retained as it is.

(Paragraph 50)

Amendments to rules 14 to 17 of the Kerala State and Subordinate Services Rules, 1958.

(30) Government may also take steps to effect mutatis mutandis changes to rules 14, 16 and 17 of the General Rules in the Kerala State and Subordinate Services Rules, 1958, and the Special Rules in accordance with the orders that they might pass on our recommendations.

(Paragraph 50)
Appointments and posts to which the principles of reservation should be made applicable—Certain laws to be amended.

(31) Clause (4) of article 16 of the Constitution speaks about “services under the State” and not “services under the Government”. The expression, “the State” occurring in clause (4) of article 16 of the Constitution has been defined, in article 12, to include not only the Legislature and the Government but also the “Local authorities” and “Other authorities”. The term “Other authorities” means “authorities other than those of local self Government, which have been created by law and which have the power to make rules and regulations, byelaws etc., having the force of a law as defined in article 13” (vide Supreme Court decisions in Basheshwar V. Income Tax Commissioner A-1959-S.C. 149-158; Ramamoorthy V. Chief Commissioner-A-1963-S.C.1464-1467-8; Kochumni V. State of Madras-A-1959-S.C.725-730; and Namboodiri- pad V. Cochin Devawom Board A-1956-T.C.19-21). In this connection reference may be made to paragraph 28 (f) of this report, from which it may be seen that the object of assigning, by article 12, an enlarged meaning to the expression, “the State”, occurring in the various articles in Part III of the constitution, is to make the “Fundamental Rights” binding upon every authority created by law and which has the powers to make rules, “byelaws” etc. having the force of law. From the Supreme Court decision quoted in paragraph 27, it may be seen that the advancement of the socially and educationally backward classes has been treated by the Constitution as a matter of paramount importance and that, it may have to be borne in mind in construing article 16 (4). In paragraph 30 of the Supreme Court decision in Balaji’s case (AIR-1963-S.C.649-V-50-C-101), it has been observed that no one could dispute the proposition that political freedom and even fundamental rights could have very little meaning or significance for the Backward Classes and Scheduled Castes and Scheduled Tribes, unless the backwardness or inequality from which they suffer are immediately redressed. The provision for reservation of appointments or posts, contained in clause (4) of article 16, is an exemption from fundamental rights. This exemption was provided for, in article 16, for the immediate or at least a quicker redressal of the inadequacy or inequality from which the Backward Classes suffer, in the field of appointments. It is plainly clear that the immediate or at least a quicker, redressal of the inadequacy of representation of the Backward Classes in the services would require immediate or at least a quicker enlargement of the field in which and the levels at which reservation of appointments or posts is now allowed. There is nothing which precludes us from the conclusion that the object of assigning by article 12, an enlarged meaning to the expression, “the State” occurring in clause (4) of article 16, is to make the fundamental rights, as well as the exemption therefrom provided for in the said clause (4), binding not only on the Government but also on the “Local Authorities” and “Other Authorities” created by law, and which have got the powers to make rules, byelaws etc. having the force of law. Therefore, the recommendations of this Commission regarding reservation of initial appointments by direct recruitment and, reservation of appointments by promotion to selection posts, may be made applicable, not
only to the services under the Legislature and Government, but also to the services under the "Local authorities" and "Other authorities" mentioned above, including all industrial concerns fully owned by the Government, all Companies not less than 51% of the paid-up share capital of which is held by the Government of Kerala, the Kerala State Financial Corporation, the Kerala Fisheries Corporation, the Kerala Tourist Corporation, the Kerala Plantation Corporation, the Kerala Coir Corporation, the Kerala Handloom Corporation, the Kerala Cashew Corporation, the Kerala Khadi and Village Industries Board, the Kerala Warehousing Corporation and similar other institutions.

[Paragraph 52(a)]

(32) If any Local authority or other authority within this State, created by law, has not been conferred with power to make regulations or rules or bye-laws, the law under which such authorities were created may be amended with a view to giving them such power, so that those authorities may come directly within the purview of articles 12 and 16 of the Constitution.

[Paragraph 52(b)]

(33) In Section 3 of the Kerala Public Service Commission (Additional Functions As Respects The Kerala State Road Transport Corporation) Act, 1970, provision has been made requiring the said Corporation to consult the Kerala Public Service Commission in certain specified matters. Rules under section 4 of the said Act have also been issued. The Act or Rules mentioned above do not provide for reservation of appointment or posts in the services under the said Corporation. The mere fact that the said Act confers additional functions on the Kerala Public Service Commission in respect of appointments in the services under the Corporation will not by itself enable that Commission to observe the rules of reservation of appointments contained in Rules 14 to 17 of the Kerala State and Subordinate Services Rules, 1958, in making advices for appointment in vacancies in the services under the Corporation. By the Act or Rules in question, the Board of Directors also are not bound to apply the principles of reservation in making appointments. It is not also binding on them to agree to the advice tendered by the Public Service Commission. Our finding in paragraph 28 of this report is that the Legislature and the Government alone have got the power to take a decision on the policy-cum-administrative question regarding the principles on which Backward Classes should be delineated and to form an opinion regarding adequacy of representation of the said classes in the said services. Government may therefore, initiate action for making specific provisions in the above-mentioned Act, and similar other Acts, as the case may be, saying that the principles of reservation contained in rules 14 to 17 of the Kerala State and Subordinate Services Rules, 1958 shall, mutatis mutandis,
be applied in making appointments in vacancies in the services under the Corporations, Companies, Boards or other institutions as the case may be.

[Paragraph 52(c)]

(34) Action may be initiated by Government in making provision similar to the one suggested in recommendation No. (33), in the Kerala Public Service Commission (Additional Functions as Respects Certain Corporations and Companies) Bill, 1970 passed by the Legislative Assembly on the 13th November, 1970.

[Paragraph 52 (d)]

(35) If when action is initiated on the lines suggested in recommendation Nos. (31), (32), (33) and (34), it is found that the proposed law in relation to any of the "authorities" or "institutions" mentioned above, falls under any of the matters enumerated in the Concurrent List in the Seventh Schedule, and contains any provision repugnant to the provisions of an earlier law made by the Parliament or an existing law with respect to that matter, it is not necessary to drop the action. In such cases, action may be continued and the law made by the State Legislature be reserved for the consideration of the President—vide article 254(2) of the Constitution.

[Paragraph 52 (e)]

(36) Our recommendation regarding reservation of initial appointments by direct recruitment may be made applicable to the following categories of posts also:—

(i) All employees whether part-time or full-time charged to contingencies which are now excluded from the purview of the Public Service Commission.

(ii) All posts in the Fire Force Department below the rank of Sub-Officers (except the clerical staff) which are now excluded from the purview of the Public Service Commission, if and when appointments to those posts are made by direct recruitment.

(iii) All posts in the Police Department below the rank of Sub-Inspectors of Police (except the clerical staff), Manager, Junior Superintendents, Head Clerks and Assistants of the Special Branch of the Police Department, Typists of the Special Branch, Shorthand Reporters and Stenographers of the Police Department (which are not now within the purview of the Public Service Commission), if and when appointments to these posts are made by direct recruitment.

[Paragraph 52 (f)]
Period for which reservation may continue

(37) Having regard to the population of the weaker sections of the various groups of citizens which are not adequately represented in the services under the State and taking into consideration the extent of their backwardness in the social, educational and economic fields, and in the field of appointment, we would suggest that the reservation of initial appointments by direct recruitment and appointment by promotion to selection posts suggested by us may continue for a period of 10 (Ten) years at the end of which the position be reviewed.

(Paragraph 53)

Neglected Classes of the Society—Measures to improve educational position

(38) We would also make a recommendation on a point which has come to our notice during our taking of evidence from members of the public, although it does not directly come under the terms of reference. Certain members of the public have stressed the point that scavengers, coolies, shoe-polishers, tree-climbers, log-sellers, wood-carvers, watchers at burial grounds, grave-diggers, snake-charmers, certain other low occupational classes, those who live in inaccessible hilly areas, beggars etc. and the children of such persons are the really Backward Classes and that, therefore, reservation of appointments or posts need be made, only in their favour. Undoubtedly, all those persons do deserve the benefit of reservation. But they, or their children some of whom generally resume the traditional occupation of their parents after attending schools for 2 or 3 years and who even relapse into illiteracy, cannot avail themselves of the benefit of reservation of appointments or posts. The framers of the Constitution have treated the advancement of those traditionally neglected social classes and other economically weaker sections of the society as a matter of paramount importance. Therefore, we consider that it is necessary to take steps for the effective and quicker removal of the real evil lurking behind. In our opinion, those neglected classes should first of all be given free education, free food, free clothing, free extra coaching and free residence in residential schools, if they should be enabled to avail themselves of the advantage offered by reservation at least in the future. We therefore, suggest that Government may take steps for the educational advancement of such members of the society in the manner mentioned above.

(Paragraph 44)

55. Acknowledgments

We are very grateful to the members of the public who sent replies to our questionnaire, and gave oral evidence and written memoranda. We thank the Press for having given wide publicity to our questionnaire and programmes. Our thanks are due to the State Bureau of Economics and Statistics for the
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