



INSTITUTIONAL RESERVATION IN SUPER SPECIALTIES: A *FAUX PAS*

INSTITUTIONAL RESERVATION means giving preference to the students alumni. It was prevalent almost in all institutions throughout the country, especially in the area of medical education. Such reservation apparently gives preference to the institutional students over the merit and excellence of outsiders. 'Equality' and 'excellence' are two conflicting claims difficult to be reconciled. The Constitution, in order to ensure true equality provides for special treatment to socially and educationally backward classes of citizens which is obviously desirable for providing social justice, though at the cost of merit. However, the Constitution does not provide at all for institutional reservation.¹ Therefore, its constitutionality is to be judged on the touchstone of article 14. A large number of cases cropped up in this area concerning the institutional preference for admission into postgraduate medical education and super specialties. The judiciary came forward and laid down detailed principles covering the need of such preference and to limit the extent of such reservation in view of the importance of merit in the context of national interest and international importance of universal excellence in super specialties. An attempt has been made in this paper to evaluate the judicial decisions in this area and to evolve a principle applicable to all-India in the matter of admission to higher medical education and super specialties.

At the outset, it may be pointed out that the primary consideration in selection of candidates for admission to the medical colleges must be merit.² The object of any rules, which may be made for regulating admissions to the medical college, therefore, must be to secure the best and most meritorious students. The reservation on the ground of residence and institutional preference is contrary to the basic principle of equality. In the matter of admission to post-graduate medical courses even for SCs, STs and OBCs dispensing with the requirement of obtaining minimum qualifying marks in written examination is impermissible.³ It is, therefore, difficult to renounce the merit-criterion when the selection is for post-graduate or post-doctoral courses in

1. Art. 15(4) *Constitution of India*.

2. *Pradip Jain v. Union of India*, AIR 1984 SC 1420 at 1430.

3. *Sadhna Devi v. State of UP*, AIR 1997 SC 1120.



specialized subject. The national interest and the demand of universal excellence may even override the interests of the weaker sections. In this context, Krishna Iyer J aptly observed:⁴

To sympathise mawkishly with the weaker sections by selecting substandard candidates, is to punish society as a whole by denying the prospect of excellence, say, in hospital service. Even the poorest, when stricken by critical illness, needs the attention of super-skilled specialists not humdrum second rates.

Thus, the interest of no person, class or region can be higher than that of the nation. The philosophy and pragmatism of universal excellence through equality of opportunity for education and advancement across the nation is part of the constitutional creed.⁵ It is, therefore, the best and most meritorious students that must be selected for admission to technical institutions and medical colleges and no citizen can be regarded as outsider in the constitutional set-up without serious detriment to the 'unity and integrity' of the nation. The Supreme Court has laid down that so far as admissions to post graduate course such as MS, MD and the like are concerned, it would be imminently desirable not to provide for any reservation based on residence or institutional preference.⁶ However, a certain percentage of seats are allowed to be reserved on the ground of institutional preference. But even in this regard, so far as super specialties such as neurosurgery and cardiology are concerned there should be no reservation at all even on the basis of institutional preference and admissions should be granted purely on all-India basis. Further classification made on the basis of super-specialties may serve the interests of the nation better, though interests of individual states may to a small extent, be affected.⁷

The need of a region or institution cannot prevail at the highest scale of specialty where the best skill or talent must be hand-picked by selecting them according to capability. At the level of Ph. D., M.D. or levels of higher proficiency where international measure of talent is made, "where losing one great scientist or technologist in the making is a national loss, the considerations we have expanded upon as important, lose their potency"⁸

4. *Jagdish Saran v. Union of India*, AIR 1980 SC 820 at 834.

5. *Pradip Saran v. Union of India*, AIR 1984 SC 1420, See also, *Jagdish Saran v. Union of India*, *id.* at 827 per Krishna Iyer J.

6. *Pradip Jain, v. Union of India*, *supra* note 2; see also. *Fazal Ghaffoor v. Union of India*, AIR 1989 SC 48; *Hari Prasad v. Dean, Topiwala National Medical College*, AIR 1989 Bom. 281.

7. *Id.* at 1443 per AN. Sen, J.

8. *Jagdish Saran v. Union of India*, *supra* note 4 at 829, quoted and followed by Bhagwati, J., in *Pradip Jain v. Union of India*, *supra* note 2 at 1441.



Now the significant question for consideration is: can university acting within the constitutional parameters create a new kind of discrimination, that is, reservation for students of particular university? It may be pointed out here that the institutional reservation is generally provided under the pressure of students or locals, and sometimes on the basis of regional interest and institutional continuity. The university authorities cannot dare to violate the constitutional provision, and present their inability to handle the students' unrest as a shield. Such a situation arose before the Supreme Court in *Jagdish Saran's*⁹ case where the court rejected the Delhi University's reservation strategy, merely because the government was faced with students fasts and ministers desired a compromise formula.¹⁰ The constitutionality of institutional reservation must be founded on facts of educational life and the social dynamics of equal opportunity. "Political panic does not *ipso-facto* make constitutional logic."¹¹ It is only on the basis of reasonable classification that institutional reservation may be provided to a limited extent.¹² The court has upheld the institutional reservation on the ground of continuity of the study, convenience, stability and familiarity with the educational environment, in which students had gone through.¹³

The institutional reservation in such case is not covered under articles 15 or 16 of the Constitution. The only provision of the Constitution on the touchstone of which such reservation can be required to be tested is article 14. Thus, in order to be constitutionally permissible it must stand the test of that article. This issue raises a delicate and complex problem involving consideration of diverse factors in the light of varying social and economic facts and calls for a balanced and harmonious adjustment of competing interest. It is only on justified grounds that a departure from the principle of selection can validly be made. Thus, such departure can be justified only on equality oriented grounds. For whatever be the principle of selection, it must satisfy the test of equality.¹⁴ The scheme of admission to medical colleges may, therefore, depart from the principle of selection based on merit, where it is necessary to do so, for the purpose of bringing about real equality of opportunity between those who are unequals.¹⁵

9. *Ibid.*

10. *Id.* at 827

11. *Ibid.*

12. *Pradip Jain v. Union of India*, *supra* note 2 at 1443.

13. *Jagdish Saran v. Union of India*, *supra* note 4 at 837, per Pathak J quoted and followed in *Deepak Kumar Singh v. Vice-Chancellor, Benaras Hindu University*, AIR 1998 All 145 at 147.

14. *Pardip Jain v. Union of India*, *supra* note 2 at 1432.

15. See for example, *D.N. Chanchala v. State of Mysore*, AIR 1971 SC 1763; *State of UP v. Pradip Tandon*, AIR 1975 SC 563.



Now, the next question to be considered is in what ways the institutional reservation can be validly made. In *Gujarat University v. Rajiv Gopinath Bhatt*,¹⁶ the rule providing for first preference for candidates of Gujarat University, second preference to candidates from other universities of the state, and further provision that, any vacancy remaining after this shall remain unfilled, was challenged on the ground of violation of article 14. The Supreme Court struck down the part of the above rule and directed that it is only just and proper that the university should examine and give a fresh look at the said rule making provision for filling up even such vacancies. In *State of Rajasthan v. Ashok Kumar*,¹⁷ the Supreme Court considered the validity of the provision for addition of five percent of marks as weightage to college-based institutional preference. The Supreme Court declared the college based preference unconstitutional and observed:¹⁸

What may 'appear' to be equal treatment accorded in obeisance to the equality-doctrine embodied in Art. 14 of the Constitution in its application, in 'reality' may result in denial of equality and may accordingly be liable to be condemned for defying the equality doctrine.

It was found in this case that the addition of five percent of marks amounted to a difference of 137.5 marks by way of college-wise institutional preference which was, in the opinion of the court, a mockery of the merit-criterion. Such rule, in the opinion of the court, has to be buried unceremoniously, as unconstitutional being violative of article 14 of the Constitution of India. It is remarkable to note here that the court found on statistical basis that, in Medical College, Jaipur, in post-graduate courses, for the preceding two years, not a single candidate from the university, other than the University of Rajasthan could seek admission. The ordinance of the university was rightly declared unconstitutional and quashed by the Supreme Court. It is, therefore, settled that the college-wise, as well as university-wise preference and allocation of seats is unconstitutional.¹⁹

In *Hari Prasad v. Dean, Topiwala National Medical College*,²⁰ the rules of the Greater Bombay Municipal Corporation for admission to post-graduate courses at the Municipal Medical Colleges was challenged. The impugned rule provided for preference to be given first to the institutional candidate, secondly to candidates from other municipal

16. AIR 1996 SC 2066.

17. AIR 1989 SC 177.

18. *Id.* at 178.

19. *Ibid.*, see also, *Sunil v. Bombay Municipal Corporation*, AIR 1987 Bom 291.

20. AIR 1989 Bom. 281.



medical colleges, thirdly to candidates from other constituent medical colleges of the University of Bombay and fourthly, to candidates from any other Indian university. The above rule was struck down by the court as being violative of article 14. The Bombay High Court, following *Pradip Jain's*²¹ and *Nidamarti's*²² cases laid down that for the post-graduate courses such as MD, MS etc. at least 30% of the seats have to be kept open for merit on country-wide basis.²³ The court further laid down that so far as the seats in the super specialties, as in the present case, were concerned, reservation on any ground except those permitted by the Constitution is illegal, being in breach of article 14 of the Constitution. The court in this respect laid down guidelines for all admissions to super specialties in all medical colleges in the state which include:²⁴

1. All the seats in the super-specialties wherever they are available (except those which are subject to constitutional reservations) shall be filled in by holding an entrance examination of all the qualified applicant students from the state;
2. The examination should be held by the Board of Examination constituted for the purpose by the State Government in consultation with the University or Universities to which the colleges in which the seats are available, are affiliated;
3. For such examination, the marks reserved for the practical and viva-voce should not exceed 18% of the total marks as suggested by this Court earlier.

Another significant question in the context of institutional preference may arise when a combined admission test for admission to post-graduate medical is conducted for all the medical colleges in the state: can institutional reservation be provided in such situation? This issue was raised before the Supreme Court in *P.K. Goel v. U.P. Medical Council*.²⁵ In this case the guidelines of Lucknow University providing for college-wise institutional preference was in question. The impugned rule provided for the preparation of merit list on the basis of marks obtained at the competitive entrance examination of each college out of the institutional candidates of that college. The institutional seats meant 75% of total seats in an institution after excluding 25% seats to be filled by all India entrance examination. The court following *Ashok*

21. *Supra* note 2.

22. *Nidamarti v. State of Maharashtra*, AIR 1986 SC 1362.

23. *Supra* note 20 at 283

24. *Id.* at 284.

25. AIR 1992 SC 1475.



*Kumar's*²⁶ and *Thukral Anjali's*²⁷ cases, struck down the rule of college wise institutional preference as being violative of article 14. The court directed the state government to make admission for post-graduate medical courses in all the seven medical college on the basis of a combined merit list.

The most important question in relation to institutional reservation is: to what extent the institutional preference, if any, may be made for admission to post-graduate medical courses barring the super-specialties? The reservation must be geared to getting over the handicap. Therefore, the quantum of reservation should not be excessive or injurious to the societal interest, measured by the overall competency of the end product that is degree-holders.²⁸ There is no doubt that such reservation cannot completely exclude admission of students from other universities. It cannot be extended where minimum qualifications are absent. At the same time all the best talent cannot be completely excluded by wholesale reservation. Therefore, a certain percentage must be kept open for meritorious performance. Bhagwati J in *Pradip Jain's*²⁹ case, following Krishna Iyer J in *Jagdish Saran's* case,³⁰ condemned the wholesale reservation on the ground, *inter alia*, of institutional preference excluding all students not satisfying this requirement regardless of merit. The learned judge speaking through the court, laid down such wholesale reservation to be unconstitutional and void as being in violation of article 14 of the Constitution.³¹ The court further laid down that 'such reservation on the basis of institutional preference should not in any event exceed 50 percent of the total number of the open seats available for admission to the post-graduate course.'³²

The quantum of reservation broadly explained above was, however, subsequently fixed in *Dinesh Kumar's* case.³³ The Supreme Court laid down that instead of making available for admission to post-graduate course on all India basis, 50% of the open seats after taking into account any reservations validly made, not less than 25% of the total number of seats, without taking into account any reservation, shall be made available for being filled on the basis of all India entrance

26. *Supra* note 17.

27. *Municipal Corporation of Greater Bombay v. Thukral Anjali*, AIR 1989 SC 1194.

28. *Supra* note 4.

29. *Supra* note 2.

30. *Supra* note 4.

31. *Pradip Jain's* case, *supra* note 2 at 1440.

32. *Id.* at 1443, see also, *Nidamarti v. State of Maharashtra*, *supra* note 22.

33. *Dinesh Kumar v. Motilal Nehru Medical College, Allahabad*, AIR 1986 SC 1877.



examination.³⁴ The Government of India, must be congratulated for giving the above suggestion and 'to strive for excellence' as the above law was laid down on that basis. However, the suggestion as to the weightage of 15% of the total marks obtained by student at the entrance examination to be given if he has put in a minimum of three years of service, was rejected by the court. The court was of the view that no weightage should be given to a candidate for rural service rendered by him so far as admissions to post graduate course are concerned.³⁵

It is noteworthy here that the Supreme Court has ultimately framed the scheme for admission to post-graduate courses on the basis of all India entrance examination which is in force for a couple of decades.³⁶ The court also directed the Government of India to arrange for the conduct of the all India entrance examination for post-graduate courses by the All India Institute of Medical Sciences and to provide the necessary facilities and finance which may be required.³⁷

The trend of the judiciary in the recent years is that 'the higher you go in any discipline, lesser should be the reservation – of whatever kind'.³⁸ The word of caution issued by Krishna Iyer J is more relevant today that 'reservation must be kept in check by the demands of competence.'³⁹ The trend, however, is towards reducing the reservations and providing greater weight to merit.⁴⁰ Keeping pace with this trend, the medical institutions have been classified into two classes – one, which has the regional character or the state character, and the other which is of national importance. The All India Institute of Medical Sciences, New Delhi and the Institute of Medical Sciences, BHU were treated as institutions of national character not confined to cater to the need of any state or region.⁴¹ The High Courts of Delhi and Allahabad adopted a higher level of preference for merit and excellence over institutional preference. In *Delhi* case, the court struck down

34. *Id.* at 1883.

35. *Id.* at 1888.

36. See, *Dinesh Kumar v. Motilal Nehru Medical College, Allahabad*, AIR 1985 SC 1415 (First case), AIR 1986 SC 1877 (Second case), AIR 1987 SC 2396 (Third case); the scheme was finally made enforceable from the academic session 1988-89.

37. *Id.* second case, at 1885.

38. *Sadhna Devi v. State of UP*, AIR 1997 SC 1120, at 1124.

39. See, Krishna Iyer, J., in *Jagdish Saran v. Union of India*, *supra* note 4 at 82. See also, *Pradip Jain v. Union of India*, *supra* note 2 at 1440 per Bhagwati J; *Deepak Kumar Singh v. Vice-Chancellor, Benaras Hindu University, Varanasi*, *supra* note 13 at 150.

40. *Mohanbir Singh Chawla v. Panjab University, Chandigarh*, AIR 1997 SC 788; *Deepak Kumar Singh v. Vice-Chancellor, BHU*, *supra* note 13 at 150.

41. See, *Chanemouga Soundaram C v. All India Institute of Medical Sciences*, AIR 1996 Del 291 and *Deepak Kumar Singh's case*, *supra* note 13 at 152.



33% reservation for institutional students in admission to post-graduate medical courses as discriminatory and violative of article 14 of the Constitution. The court further laid down that as the AIIMS was established to be a model institution for education, teaching and research for the entire country, there can be no reservation of seats on a university based preference catering to regional needs.⁴² The court pointed out that, reservation was introduced in 1978 without any reason except a demand of the students. Since then, the institutional quota has resulted in substantial deterioration of standards in AIIMS.⁴³ The Delhi High Court following *Anjali Thukral's*⁴⁴ and *PK Goel's*⁴⁵ cases went to the extent of holding that the principle of 'institutional continuity is no longer acceptable'.⁴⁶ It is noteworthy here that, in the instant case, the court struck down 33% quota for institutional reservation despite the fact that 39.5% seats were available for open category.⁴⁷

In *BHU case*⁴⁸ the Allahabad High Court found the reservation of 75 percent seats to the post-graduate studies in medical sciences, to the students who had passed MBBS examination from the institute, without any justification.⁴⁹ As reported to the court, there are 50 seats for MBBS course and for the post-graduate course at the institute there are 83 seats. In this situation, there appears to be no competition. The institutional preference is given only on the basis that the students may be granted some stability and continuity, but this preference cannot be granted, in the opinion of the court, to all the students who had joined MBBS course in the institute.⁵⁰ In the final analysis, the court allowed the institutional preference in the instant case, to the extent of 50% of the total seats of the MBBS course, for post-graduate course.⁵¹ The above principle laid down by the court in its operation reduced the institutional reservation in post-graduate course from 75% to the tune of about 30% of the total seats of post-graduate course. The operation of earlier quota of 75% had in fact resulted in deterioration of merit and standard as the students who had failed in 17 subjects in MBBS had also been granted admission in post-graduate course.⁵²

42. *Ibid.*

43. *Id.* at 304.

44. *Municipal Corporation of Greater Bombay v. Thukral Anjali*, *supra* note 27.

45. *PK Goel v. UP Medical Council*, AIR 1992 SC 1475.

46. *Supra* note 41 at 299.

47. *Id.* at 292.

48. *Supra* note 13.

49. *Ibid.*

50. *Ibid.*

51. *Id.* at 154.

52. *Id.* at 153.



In the larger interest of the nation, therefore, it is dangerous to depreciate merit and excellence in any field. As the institute of BHU has no regional character, there does not seem to be any justification for giving any institutional preference to any student who has passed MBBS examination in super-specialty courses. The reason given by the Allahabad High Court in the aforesaid decision that the best talent should be produced by inviting the best talent at the national level is correct.⁵³

The preferential treatment must be consistent with the mandate of article 14 of the Constitution guaranteeing equality of opportunity.⁵⁴ Special provisions even for the SC and ST cannot be made for super specialty courses, however, special provision for specialty courses should be minimum.⁵⁵ The court subsequently in *AIIMS Students Union's case*⁵⁶ further reduced the quantum of institutional preference to 25% of the seats available to open category in the post graduate courses. In assessing the reasonability one of the factors to be taken into consideration would be - whether the character or quantum of reservation would stall or accelerate achieving the ultimate goal of excellence enabling the nation constantly rising to higher levels.⁵⁷ The preference has to be prescribed without making an excessive or substantial departure from the rule of merit and equality. It has to be kept within limits. Minimum standards cannot be so diluted as to become practically non-existent. Such marginal institutional preference is tolerable at post graduate level but is rendered intolerable at still higher level such as that of super specialty. In the case of institutions of national significance such as AIIMS additional considerations against promoting reservation or preference of any kind destructive of merit becomes relevant.⁵⁸

The court, *inter alia*, issued the following directions:⁵⁹

1. The institutional reservation for AIIMS candidates is declared *ultra vires* the constitution and hence is struck down.
2. By way of institutional preference the institutional candidates, *i.e.*, those who have graduated from the institute shall be preferred for admission against 25% seats available to open

53. *Id.* at 154. see particularly, *Fazal Ghaffoor v. Union of India*, AIR 1989 SC 48, the learned Judge however did not cite this decision in his judgment.

54. *Thapar Institute of Engineering & Technology v. State of Punjab*, AIR 2001 SC 3262 at 3273.

55. *Preeti Srivastava v. State of Madhya Pradesh*, AIR 1999 SC 2894.

56. *AIIMS Students Union v. AIIMS*, AIR 2001 SC 3262.

57. *Id.* at 3273.

58. *Id.* at 3281.

59. *Id.* at 3284



category candidates and not 25% seats discipline wise out of the total post-graduate seats for AIIMS undergraduate as suggested by the Academic Committee.

It appears from the above directions that the court struck down the institutional reservation for AIIMS candidates, however, allowed the preference against 25% seats for them in view of necessity of the situation. This shows poor constitutionalism on the part of the Supreme Court.

The court ultimately in *Saurabh Chaudari*⁶⁰ settled the law on the institutional reservation and partially modified the stand taken in the *AIIMS Students Union*.⁶¹ The sole question in this case, therefore, was as to whether reservation by way of institutional preference is *ultra vires* article 14 of the Constitution of India? The court answered in negative. The court followed the *Pradeep Jain*⁶² and *Jagdish Saran's*⁶³ cases in arriving at this conclusion. The decision of institutional reservation to be unconstitutional in *AIIMS Students Union* case,⁶⁴ in the opinion of the court, was keeping in view the peculiar situation obtaining in the case of AIIMS. Article 14 forbids class legislation but does not forbid reasonable classification which means – 1) must be based on reasonable and intelligible differentia; and 2) such differentia must be on rational basis.⁶⁵ The court laid down the criteria to judge the above test on the following:⁶⁶

1. There is presumption of constitutionality;
2. The burden of proof is upon the writ petitioners as they have questioned the constitutionality of the provisions;
3. There is a presumption as regard the state's power on extent of its legislative competence;
4. Hardship of few cannot be the basis for determining the validity of the statute.

The court further held that the reservation by way of institutional preference, therefore, should be confined to 50% of the seats since it is in public interest.⁶⁷ The court preferred *Pradeep Jain's* case to

60. *Saurabh Chaudari v. Union of India*, AIR 2004 SC 361.

61. *Supra* note 56.

62. *Supra* note 2.

63. *Supra* note 4.

64. *Supra* note 56.

65. *Supra* note 60 at 380 per V.N. Khare, CJI (for himself and on behalf of R.C. Lohati and B.N. Agarwal, JJ.) S. B. Sinha and Dr. A. R. Lakshmanan, JJ., concurring.

66. *Id.* at 381 (the court followed the *Pradeep Jain* case).

67. *Id.* at 382.



Dr. Dinesh Kumar's case.⁶⁸ For the purpose of selecting the candidates it is necessary to hold the all India entrance examination by an impartial and reputed body. The court was, therefore, of the opinion that in the AIIMS and the medical colleges of the central university, merit should have primacy, subject of course to institutional preference to the extent of 50% of the total seats in the MBBS course. In all other respect the decision in the *All India Institute of Medical Sciences Students Union* case shall operate.

The concept of reservation implies classification. The valid classification requires an intelligible differentia and the rational nexus to the object sought to be achieved. What object is sought to be achieved by making a classification between the MBBS from a university and on the other hand, MBBS from other university, and giving preference to the former? Such classification is a *faux pas*, having no relation with the perspective of social justice. Let merit and excellence prevail over institutional preference, lest it loses the battle.

Hence, 'equality' and 'excellence' are two conflicting interests difficult to be reconciled. In order to ensure true equality, the Constitution of India gives preference to 'equality' over merit and 'excellence', and provides for special treatment to 'socially and educationally backward classes of citizens'. However, the institutional reservation, especially in super specialties and higher education has not been provided anywhere in the Constitution, and its constitutionality is to be judged on touchstone of article 14. While allowing a certain percentage of institutional reservation in post graduate medical education, the judiciary adopted a 'no reservation' in super specialties, for upholding the national interest, universal excellence and as matter of international importance of the best talent. The institutional preference in super specialties has almost been emaciated in view of the thrust for 'higher level of excellence' in the area of medical sciences, and it does not fit into the perspective of social justice. The judiciary requires a uniform level of standard from all institutions in the country, and even higher, from the higher place of learning.

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68. *Supra* note 36.

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