CASES AND COMMENTS

Judicial Review of Designation of Backward Classes—Ramakrishna Singh v. State of Mysore—A.I.R. 1960 Mys. 338.

State schemes providing benefits and preferences for backward classes have come before the Courts on several occasions.[1] The recent case of *Ramakrishna Singh* v. *State of Mysore* [2] is notable as the first in which a Court systematically reviewed the standards used by the Government to prepare its list of backward classes and the methods by which it proposed to distribute the benefits.

The Mysore Government reserved twenty per cent. of seats in the State's professional and technical colleges for members of the Scheduled Castes and Scheduled Tribes and an additional forty-five per cent for other backward classes. One hundred and sixty-four communities—castes, sub-castes and religious groups—were listed as backward classes. They included all the Hindu communities in the State except Brahmins, Banias and Kayasthas and all non-Hindu groups except Parsis and Christians. The Backward Classes, together with the Scheduled Castes and Tribes, comprised over ninety-five per cent. of the population of the State.

The Court conceded that State Governments might draw up such lists independently of either designation by the Central Government, notification by the President or the finding of the Backward Classes Commission, thus clarifying the distinction implicit in the Constitution between the procedure for exclusive Central determination of Scheduled Castes and Tribes [3] and the more flexible arrangements for designation of Backward Classes.

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1. For a discussion of these cases and of the general problems in this area, see my article, "'Protective Discrimination' for Backward Classes in India," 3 Journal of the Indian Law Institute 39 (1961).
2. A.I.R. 1960 Mys. 338 (D.B.).
3. Clauses 25 and 26 of Art. 366 define, respectively, Scheduled Castes and Tribes as those so specified by the President under Arts. 341 and 342 respectively. Art. 338 provides for a Commissioner of Scheduled Castes and Scheduled Tribes to oversee the operation of safeguards for these groups.
4. The Constitution contains no definition of backward classes. Art. 340 provides for the appointment of a Backward Classes Commission "to investigate the conditions of socially and educationally backward classes" and Art. 338(3) provides that the Commissioner of Scheduled Castes and Tribes

The Court also clarified another point implicit in the constitutional scheme by finding that it was permissible for the Government to use caste groups as the units of designation. This is explicitly provided in regard to designation of Scheduled Castes, but was to some extent unclear in regard to backward classes. The Court found that although "it would certainly be open to the Government to determine the classes on any other basis," a "class" for purposes of Art. 15(4) may be "a body of persons grouped together on the basis of their castes."[5] Article 15(4) in its entirety—not merely the reference in it to Scheduled Castes—operates as an exception to the ban on caste classifications of Article 15(1). However, such State power to designate backward classes and to use the caste criterion did not remove the matter from judicial scrutiny. The Court found itself both empowered and obligated to decide whether the preferences were constitutionally justified. To do so, the Court undertook to determine whether the beneficiaries of this scheme were "socially and educationally backward classes as envisaged in Art. 15(4)...."[6] To qualify as such, they must have been chosen by some "intelligible principle" designed to further "the policy and object of the Constitution.....to ameliorate the conditions of really backward classes..."[7] If the classification is arbitrary or the principle of differentiation wholly untenable the court would be entitled to strike it down.

Finding that communities with high percentages of literacy were included, the Court rejected the State's classification as arbitrary on the ground that "literacy is the only possible test for determining educationally backward classes".[8] Furthermore, the Court said the scheme provided no standard for the determination of social backwardness. "It would not be enough to say that these communities are

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shall include in his duties such other groups as the President may specify on receipt of the report of the Backward Classes Commission. It was argued that these provisions amounted to a plan for exclusive Central designation analogous to the exclusive Central control over designation of Scheduled Castes and Tribes, the only difference being the additional provision for the Commission's Report. This was rejected by the Court in *Ramakrishna Singh's*, case which, noting the absence of any provisions corresponding to Art. 366 (25) or (26), pointed out that there was no indication that the Presidential specification of backward classes for purposes of the operations of the Commissioner's of Scheduled Castes and Scheduled Tribes was to define backward classes exhaustively for all constitutional purposes.

5. A.I.R. 1960 Mys. 338, 345.
6. *Id.*, at 346.
7. *Id.*, at 347.
8. *Id.*, at 347.

educationally backward. It will have also to be seen whether they are socially backward." [9] Although it did not suggest what an appropriate test of social backwardness might be, the Court reads the words "socially and educationally" conjunctively rather than disjunctively. Thus to be entitled to preferences a group must be *both* socially backward and educationally backward. The Court does not indicate why it prefers this to the equally plausible disjunctive reading which would allow the Government to give preferences to groups which were *either* socially backward or educationally backward. [10]

The State's classification was further defective because it was based on the census report of 1941. Taking notice of the considerable changes which had taken place between 1941 and 1959, the court held that "the determination of backward classes made in 1959 on the basis of the census report of 1941 can hardly be said to be based on any intelligible principle".[11] This is in striking contrast to an earlier case[12] where another Bench of the same High Court declined to scrutinize a list of backward classes which was actually a Government Order passed in 1921—thirty-four years before. The fact that the Government had not seen fit to revise the list was there accepted as sufficient evidence of its current accuracy. This seems to be the first time a court has explicitly required that the determination be based on an investigation recent enough to be relied upon as reflective of current conditions.

Quite apart from the absence of intelligible principles of classification, the Court found the scheme unconstitutional because of the extent of the beneficiaries. This generous inclusion of ninety-five per cent. of the population brought the scheme into trouble on two accounts. First, under the guise of providing for backward classes it became, in effect, a scheme of discrimination against the five per cent., who were

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9. *Id.* at 348.
10. While Art. 15(4) mentions "socially and educationally backward classes," Art. 16(4), providing for reserved posts in government service, refers to "any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State." The Court's stress on the modifiers raises the question whether it is in fact the same group that is being referred to. Does backward mean the same thing in Art. 16 where it is accompanied by neither modifier? Neither the government, the courts nor the Backward Classes Commission has made a distinction between these groups.
11. A.I.R. 1960 Mys. 338, 347.
12. *Kesava Iyengar* v. *State of Mysore*, A.I.R. 1956 Mys. 20 (D.B.).

excluded on caste and religious grounds in violation of Art. 15(1). [13] Second, the Constitution authorizes preferences only for the backward. The ninety-five per cent. included groups that were not backward at all or were at most "comparatively backward". The inclusion of the latter, says the Court, is not allowed by the Constitution, for the constitutionality of preferences depends on their being for the benefit of the "really backward". The Court does not indicate how it would isolate the "really backward" who are legitimate recipients of preferences under Art. 15(4). Although it sets no numerical limit to the portion of the population which may be specified as backward it does imply that there is some limited number of identifiable persons or groups who might qualify.

The Court goes on to consider another feature of the scheme which is of great portent for the future administration of preferences—the permissibility of compartments, a question which dramatizes the difficulties of combining the principle of protective discrimination for the backward with that of equal opportunity and selection by merit. Is the State confined to one aggregate reservation for all whom it designates as backward or may it make separate reservations for component parts of the backward group? [14]

Under the Mysore scheme the backward classes were arranged in fourteen groups (ranging from two to more than one hundred communities) and each group was assigned a portion of the reservation (from 1.2% to 8.5% of the total seats). Among the features of this scheme that the High Court found to be invalid are two which concern the validity of compartments. First, the arrangement of the groups so that "each group of backward classes includes one relatively forward class" made it possible that "the limited percentage reserved for each group . . . would be captured by those communities who are more forward leaving the really backward with no chances of getting

13. The same Court had quashed a previous Government order in which "all communities other than Brahmins" were declared backward classes. The order in question in the *Ramakrishna Singh* case merely excluded four more groups and enumerated all of the included communities: A.I.R. 1960 Mys. 338, 349.

14. In *Kesava Iyengar* v. *State of Mysore*, op. cit. *supra* foot-note 12, the Court, having conceded that a reservation must be of less than fifty per cent. of posts, went on to uphold a reservation of seventy per cent. on the ground that "each backward class is an independent class whose claim for appointment can be sustained under Art. 16(4)..." *Id.* at 24. Thus the State was permitted to reserve a separate portion of the total reservation for each backward community.

any seats."[15] The Court held that such an arrangement, by diverting benefits from "really backward" to "relatively forward" groups, failed to meet the requirement of the *Raghuramulu* case that the arrangement be for the benefit of the backward classes.[16] Here, the Court's holding is based on its conclusion that some of the favoured groups are not legitimate recipients of preferences at all. But the Court's reasoning would seem to invalidate any scheme of compartments which combined in a single compartment groups of disparate backwardness—even where both groups were legitimate recipients of benefits.

This argument does not dispose of the question of compartments, for it is really only an objection to the arrangement of the groups. But the Court has a second and more basic argument against compartments. Under the Mysore scheme, members of each backward class "can only compete for the seats . . . reserved for that group and are not eligible for the remaining seats reserved for the backward classes . . . They are debarred from capturing the said remaining seats in open competition amongst the members of the backward classes . . . "[17] Extending the principle of the *Raghuramulu* case the court holds that a backward class must be able to compete not only for the unreserved seats (as in the *Raghuramulu* case) but also for *all* of the reserved seats. That is, while the fundamental rights of the general public may be abridged by State power to permit preferences for members of backward class A, the Court finds that Art. 15(4) does not authorise abridgement of the fundamental rights of backward class B in order to permit preferences for backward class A. Since compartments restrict the rights of the Bs to compete for the seats reserved for the As, they are unconstitutional.[18]

15. A.I.R. 1960 Mys. 338, 351.
16. In *Raghuramulu* v. *State of Andhra Pradesh*, A.I.R. 1958 A.P. 129 (D.B.), it was held that where backward classes secure more seats by merit than are reserved for them, the reservation cannot be used to limit them to a prescribed number. An interpretation of a reservation which made it in effect a ceiling was struck down on the ground that it did not advance the cause of the backward classes. Rules providing preferences were to be confined in their operation to cases in which the backward classes were benefited, for Article 15(4) which authorized the abridgement of fundamental rights in order to make special provision for backward classes could not be used to abridge the rights of the backward classes.
17. A.I.R. 1960 Mys. 338, 351.
18. It is unclear whether this argument might be extended to invalidate the separation of reservations for Scheduled Tribes and Castes from those for backward classes. Do backward classes have a right to complain that they

The Court's two arguments against compartments, both inferred from the principle that reservations must be for the benefit of the backward, are ultimately inconsistent. The first objection—the unfairness of competition between members of groups of unequal backwardness—could presumably be remedied by more precise or equitable arrangement of compartments; the second objection—that all of the backward, whatever disparities may exist among them, must be free to compete for every reserved seat—can be met only by complete elimination of compartments.

Thus the principle that reservations must operate for the benefit of the backward does not provide a solution to the problem of compartments. Backwardness is not a single isolable trait; it exists in kinds and degrees. The backward are not a uniform group. By whatever standards the "backward classes" are selected, some of them will be more backward than others. Whatever arrangement is proposed for the distribution of preferences among them, it will work to the advantage of some and the detriment of others; *e. g.*, the "most backward" would be disadvantaged by a single competition, while the "least backward" might be disadvantaged by compartmental competition.

It might well be argued that the whole system of protective discrimination rests on the notion that, because of disparities of resources and background, the backward must be protected against open competition with the general public. But a single uncompartmented reservation for all of the backward tends to reproduce within that group the same kind of unfairness that protective discrimination is designed to eliminate. If the backward are to be protected against open merit competition with the general public, why cannot the most backward be protected against such competition with other sections of the backward? Again, protective discrimination is aimed at channelling benefits

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are not allowed to compete for seats reserved for the Scheduled Castes and Scheduled Tribes or vice versa? Do the Scheduled Tribes have a right to complain that they are not allowed to compete for seats reserved for Scheduled Castes or vice versa? Can compartments be arranged within these groups?

The Court in *Ramakrishna Singh's* case seems willing to allow some compartmentalization, for it upheld the separate reservations for these groups while striking down the scheme for backward classes.

An argument for separate compartments for Scheduled Castes and Tribes might be found in the wording of Art. 15(4) itself which mentions them separately from and alternatively to backward classes. But no such textual argument is available in the case of reservations in government employment under Art. 16(4), which does not mention Scheduled Castes and Tribes separately. But *cf.* Art. 46 and Art. 335.

according to need. But uncompartmented competitions may well give the least benefit to those who have the greatest need.

The ultimate objection to compartments seems to rest on the assumption that there is some pre-ordained constitutional group of "really backward" persons who may be the beneficiaries of preference but may never be disadvantaged by preference for others. But this is unconvincing, for there is nothing in Articles 15 or 16 to indicate that State power to make provisions for backward classes falls short of power to limit preferences to one backward class in order to benefit another. Both articles seem to anticipate a plurality of backward classes. The wording of the articles does not indicate that every class which is found backward for one purpose must be treated as backward for every purpose or that all classes found backward for a particular purpose must be treated uniformly. And there is no indication that persons who are designated as backward do not share with other citizens the possibility of having their fundamental rights limited to the extent that it is for the purpose of benefiting (other) backward groups. Thus, there appears to be no constitutional bar on the use of the compartment device by the State. It may be asserted that the use of compartments, even if constitutionally permissible, has the undesirable feature of providing what are in effect guaranteed communal quotas. To some extent this is inherent in any scheme of protective discrimination in which the classes are designated along communal lines. It cannot be eliminated merely by eschewing compartments but only by substituting other criteria of backwardness.

Related to the question of compartments within a reservation is the question of the permissibility of "layers" of preference—*i. e.*, the sorting of backward classes into groups, some of which receive more preference than others. Such differentiated or layered preferences are in use. *E. g.*, in Madras a section of backward classes labelled "most backward" receives additional preferences; in Uttar Pradesh there are two lists of backward classes: the first receives educational concessions only; the second receives concessions in both education and State employment. [19] Such arrangements seem appropriate once it is recognized that among the backward, some are more backward than others in particular respects and are more necessitous and/or more deserving of help of certain kinds. The Constitution seems to envisage that preferences for Scheduled Castes and Tribes will be more extensive than those for backward classes, a distinction corresponding to their relative lack of resources and opportunities. It would

19. Report of the Commissioner for Scheduled Tribes and Scheduled Castes, 1957-58, p. 9.

be strange where the Government prohibited from distinguishing among backward classes in order to make preferences commensurate with the backwardness of the recipients. The broad discretion vested in the State by Articles 15 (4) and 16 (4) would seem to cover such arrangements.

Courts may be faced with another kind of attack on arrangements for compartments or for layers of preference—an attack not on the constitutional permissibility but on their application in particular schemes of preference. It may be claimed that a scheme of compartments or layers actually operate to the disadvantage of a "more backward" group while benefiting the less backward. In the *Ramakrishna Singh* case, the Court indicated that schemes which benefited the "relatively less backward" at the expense of the "really backward" were invalid. The implication was that the former were not legitimate recipients of preferences at all. But it is easy to visualize the case in which both groups are "really backward" but one is clearly more backward than the other. In such a case are the Courts to intervene to see that the most backward of the groups are not disadvantaged by the scheme? *e.g.*, may a group complain that its relative backwardness entitles it to inclusion among the groups receiving the greatest quantum of preferences? Such questions could be decided only if the Courts were willing to apply some objective standards of backwardness. The willingness of the Court in *Ramakrishna Singh* to invalidate a scheme of preference on the ground that unequals were treated equally indicates that the same standards might be applied to invalidate schemes where the respective quanta of preferences are incommensurate with relative backwardness.

The *Ramakrishna Singh* case establishes the possibility of close judicial scrutiny of designations of backward classes. In this it runs counter to an earlier line of cases which tended to accept governmental determinations as conclusive. In *Kesava Iyengar* v. *State of Mysore*,[20] another Bench of the same Court upholding reservation of judicial posts declined to scrutinize the adequacy of the State's classification on the ground that "doubtless the State is the sole authority to classify the communities as 'backward classes'".[21] In *Gurmukh Singh* v. *Union of India* [22] and *Michael* v. *Venkateswaran* [23] the Courts declined to review standards used by the President in his determination of Scheduled Castes. The

20. *Op. cit. supra*, note 12.
21. *Id.*, at 28.
22. A.I.R. 1952 Punj. 143 (F.B.).
23. A.I.R. 1952 Mad. 474 (D.B.).

latter cases could be distinguished from *Ramakrishna Singh* since they involve the designation of Scheduled Castes, over which the highest Central authorities were given explicit and exclusive constitutional power.[24] Even the *Kesava Iyengar* case might be distinguished on the ground that it is concerned with reserved posts under Art. 16(4) rather than with benefits under Art. 15(4). The distinction seems a tenuous one, however, unless it is argued that Art. 16(4) which provides that seats may be reserved for "any backward class which in the opinion of the State is not adequately represented in the services under the State" implies a greater discretion in the designating agency. However it is clear that the State's "opinion" is determinative only of the inadequacy of representation in the services and is no more conclusive as to backwardness than are its determinations under Art. 15(4).[25] But none of these distinctions are very substantial. Thus the basic question, the scope of judicial review of governmental designations of backward groups, remains. *Ramakrishna Singh* and the earlier cases represent widely divergent views of the powers and duties of the courts in this area. Undoubtedly before long the Supreme Court[26] will deal with the question and will lay down guidelines for the Courts in the delicate task of insuring that preferences for the backward operate to advance the "EQUALITY of status and opportunity" at which the Constitution aims.

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24. Consult note 4 *supra*.
25. It seems clear that mere under-representation is not sufficient to constitute backwardness as required by Art. 16(4). See *State of Jammu and Kashmir* v. *Jagar Nath*, A.I.R. 1958 J. & K. 14 (D.B.), aff'g A.I.R. 1958 J. & K. 1; *Semble Venkataramana* v. *State of Madras*, [1951] S.C.J. 318. It might also be argued that "any backward class" in Art. 16(4) is broader than the "socially and educationally backward classes" in Art. 15(4). *Cf.* note 10 *supra*.
26. The only case involving benefits to backward classes to have reached the Supreme Court is the *Venkataramana* case, *op. cit.*, *supra* note 25, where it held invalid the filling of posts in accordance with an order that divided all available posts according to communal quotas among Harijans, Backward Hindus, Muslims, Christians, Non-Brahmin Hindus and Brahmins. Reservation was permitted solely for backward classes and it was "in the circumstances impossible to say that classes of people other than Harijans and Backward Hindus may be called Backward Classes." The Court did not indicate the degree to which the Court would subject such State determinations of backwardness to detailed review.