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(BEFORE V.N. KHARE, C.J. AND R.C. LAHOTI, B.N. AGRAWAL,
S.B. SINHA AND DR AR. LAKSHMANAN, JJ.)

SAURABH CHAUDRI AND OTHERS

.. Appellants;

Versus

UNION OF INDIA AND OTHERS

.. Respondents.

Writ Petition (C) No. 29 of 2003[†] with Nos. 54, 57, 68, 69, 84, 85, 89, 91,
95, 98-100 of 2003 and Civil Appeal No. 8581 of 2003[‡],
decided on November 4, 2003

A. Universities — Medical colleges — Admission to postgraduate courses — Reservation in government-run medical colleges based on domicile — Constitutionality — Per curiam, held, not prohibited by Art. 15(1) — Constitution of India, Arts. 15(1) and 16(2) — Words and phrases — “place of birth”, “domicile”

B. Universities — Medical colleges — Admission to postgraduate courses — Reservation by way of institutional preference — Validity — Whether it amounts to suspected classification warranting strict scrutiny — Per Khare, C.J., Lahoti and Agrawal, JJ., in view of the doctrine of presumption of constitutionality of a statute, answered in the negative — Further held, strict scrutiny test applicable in USA is not applicable in India — Per Sinha, J., even applying strict scrutiny test it cannot be held that institutional reservation should be abolished at present — Constitution of India — Art. 14 — Suspect classification — Inapplicability of the principle of, in India — Maxims — Ut res magis valeat quam pereat

C. Universities — Medical colleges — Admission to postgraduate courses — Reservation by way of institutional preference — Validity — Per Khare, C.J., Lahoti and Agrawal, JJ. (Sinha, J., concurring), held, intra vires Art. 14 — However, such reservation should be confined to 50% of the seats — Per Lakshmanan, J. (concurring), in Central educational institutions and other institutions of excellence, scope for reservations is minimal and same is the case at the level of superspecialities — In educational institutions affiliated and recognised by State universities constitutional prescription of reservation of 50% seats should be maintained and the rest should be left for open competition based on merits on all-India basis — In private non-minority educational institutions reservation cannot exceed 50% while inter se merit may be assessed by an all-India entrance test or on the basis of marks at the qualifying examination — However, minority-aided institutions can reserve seats to a reasonable extent not necessarily 50% — For the rest of the seats the State can require the observance of the requirement of constitutional reservation — Moreover, unaided institutions are neither bound by Art. 29(2) nor by requirements of constitutional reservation — Constitution of India — Arts. 14, 29(2), 41 and 47 — Classification/Underclassification/Discrimination — Protective discrimination

[†] Under Article 32 of the Constitution of India

[‡] Arising out of SLP (C) No. 1347 of 2002

D. Constitutional Interpretation — Varying concept of — Courts to strive hard to maintain a balance between an emphasis on achieving excellence in all spheres of life, in view of Ch. IV-A of Constitution, and the need for providing reservation to certain classes of people as provided for under the constitutional scheme

E. Constitutional Interpretation — Constitution of India — Nature of, and need for change of law along with passage of time — Per Khare, C.J., Lahoti and Agrawal, JJ., held, it is organic in nature — Being a living organ, it is ongoing — Hence, with the passage of time, the law (regarding reservation, in the present case) must change

The instant writ petitions and an appeal filed by special leave involved the question of constitutionality of reservation whether based on domicile or institution in the matter of admission into postgraduate courses in government-run medical colleges. The facts, for illustration, in one of the said cases were that the petitioners therein were original residents of Delhi. They joined various medical colleges out of Delhi for undertaking their MBBS courses of studies against the 15% all-India quota on qualifying therefor in the All-India Medical Entrance Examination. Thereafter, they applied for, and were granted, admission in postgraduate medical courses in the medical colleges of Delhi. However, the University of Delhi had made it clear that their admission was subject to decision of *Magan Mehrotra case*, then pending before the Supreme Court. After the decision in that case, reported in (2003) 11 SCC 186, Delhi University by a notification dated 31-12-2002 announced that only Delhi University medical graduates would be eligible against the 75% reserved seats of the students from Delhi and not those who had done MBBS under 15% all-India quota from other universities or States. The appellants claiming themselves to be “the residents of Delhi” and “sons of the soil” challenged the said notification as also the reservation made by way of institutional preference as ultra vires Articles 14 and 15. However, during the hearing a larger issue viz. as to whether any reservation, be it on residence or institutional preference, was constitutionally permissible, was raised. The appellants added that the expression “place of birth” in Article 15 was synonymous with “domicile”. On the basis of pleadings of the parties, the following questions arose: (i) whether reservation on the basis of domicile was impermissible in terms of Article 15(1), (ii) whether reservation by institutional preference comes within suspect classification warranting strict scrutiny test, and (iii) whether reservation by institutional preference was valid in terms of Article 14.

Refusing relief to the petitioners, the Supreme Court

Held :

(i) Per curiam

The term “place of birth” occurs in Article 15(1) but not “domicile”. However, Article 16(2) refers to both “domicile” and “residence” apart from place of birth. A distinction, therefore, has been made by the makers of the Constitution themselves to the effect that the expression “place of birth” is not synonymous with the expression “domicile” and they reflect two different concepts. It may be true that both the expressions appeared to be synonymous to some of the members of the Constituent Assembly but the same cannot be a guiding factor. (Para 29)

D.P. Joshi v. State of Madhya Bharat, AIR 1955 SC 334 : (1955) 1 SCR 1215, followed

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Therefore, the question, whether reservation on the basis of domicile is impermissible in terms of Article 15(1), has to be answered in the negative.

(Paras 32, 29, 80 and 93)

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State of U.P. v. Pradip Tandon, (1975) 1 SCC 267, referred to

(ii) Per V.N. Khare, C.J., Lahoti and Agrawal, JJ.

The strict scrutiny test or the intermediate scrutiny test applicable in the United States of America cannot be applied in the present case. Such a test is not applied in the Indian courts. In any event, such a test may be applied in a case where a legislation ex facie is found to be unreasonable. Such a test may also be applied in a case where by reason of a statute the life and liberty of a citizen is put in jeopardy. The Supreme Court since its inception apart from a few cases where the legislation was found to be ex facie wholly unreasonable proceeded on the doctrine that constitutionality of a statute is to be presumed and the burden to prove contra is on him who asserts the same. The courts always lean against a construction which reduces the statute to a futility. A statute or any enacting provision therein must be so construed as to make it effective and operative on the principle expressed in the maxim: *ut res magis valeat quam pereat*. (Para 36)

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CIT v. S. Teja Singh, AIR 1959 SC 352; *Tinsukhia Electric Supply Co. Ltd. v. State of Assam*, (1989) 3 SCC 709 : AIR 1990 SC 123, referred to

Applying the test of presumption of constitutionality, no case has been made out for invoking the doctrine of strict construction or intermediate construction.

(Para 37)

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Per Sinha, J. (concurring)

Even applying the strict scrutiny test, it cannot be held that the institutional reservation should be done away with having regard to the present-day scenario.

(Para 92)

Balram Kumawat v. Union of India, (2003) 7 SCC 628, referred to

(iii) Per V.N. Khare, C.J., Lahoti and Agrawal, JJ.

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The ideal situation, although it might have been to see that only meritorious students irrespective of caste, creed, sex, place of birth, domicile/residence are treated equally but history is replete with situations to show that India is not ready therefor. Sociological condition prevailing in India compelled the makers of the Constitution to bring in Articles 15 and 16 in the Constitution. The said articles for all intent and purport are species of Article 14 which is the genus in a sense that they provide for exception to the equality clause also. Preference to a class of persons whether based on caste, creed, religion, place of birth, domicile or residence is embedded in our constitutional scheme. Whereas larger interest of the country must be perceived, the lawmakers cannot shut their eyes to the local needs also. Such local needs must receive due consideration keeping in view the duties of the State contained in Articles 41 and 47. (Para 39)

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Ram Krishna Dalmia v. Justice S.R. Tendolkar, AIR 1958 SC 538 : 1959 SCR 279, referred to

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For the last five decades the Supreme Court times without number has adopted the efficacy of one criterion or the other for giving preference to a section of students. (Para 40)

Constitutional interpretation is a difficult task. Its concept varies from statute to statute, fact to fact, situation to situation and subject-matter to subject-matter. Perceptions are yet to be perceived by the court which would meet all situations while laying down emphasis for achieving excellence in all spheres of life

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- a keeping in view Chapter IV-A of the Constitution of India which provides for fundamental duties, circumstances and compulsions faced by the State in this behalf and led the courts to uphold a statute providing for reservation for a special class of people. Mostly they suffer from disability either of belonging to an oppressed community or by way of economical, cultural or social imbalances. The courts shall all along strive hard for maintaining a balance. (Para 41)

Missouri v. Holland, 252 US 416 : 64 L Ed 641 (1919); *Jagdish Saran (Dr) v. Union of India*, (1980) 2 SCC 768 : AIR 1980 SC 820, referred to

Frankfurter: *Some Reflections on the Reading of Statutes*, referred to

- b Reservation by institutional preference is not ultra vires Article 14. Article 14 forbids class legislation but does not forbid reasonable classification, which means: (1) it must be based on reasonable and intelligible differentia; and (2) such differentia must be on rational basis. Hence, the argument, whether institutional reservation fulfils the aforementioned criteria or not must be judged on the following:

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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 regards the State's power on the extent of its legislative competence.
 4. Hardship of a few cannot be the basis for determining the validity of any statute.

- d The court while adjudicating upon the constitutionality of the provisions of the statute may notice all relevant facts whether existing or conceived. The court may therefore notice the following:

(i) The State runs the universities.

(ii) It has to spend a lot of money in imparting medical education to the students of the State.

- e (iii) Those who get admission in postgraduate courses are also required to be paid stipends. Reservation of some seats to a reasonable extent, thus, would not violate the equality clause.

(iv) The criterion for institutional preference has now come to stay. It has worked out satisfactorily in most of the States for the last about two decades.

- f (v) Even those States which defied the decision of the Supreme Court in *Dr Pradeep Jain case*, (1984) 3 SCC 654, had realized the need for institutional preference.

(vi) No sufficient material has been brought on record for departing from this well-established admission criterion.

(vii) Institutional preference is based on a reasonable and identifiable classification.

- g (viii) Giving of such a preference is a matter of State policy which can be invalidated only in the event of being violative of Article 14.

(ix) The students who would get the benefit of institutional preference being on identifiable ground, there is hardly any scope for manipulation.

(Paras 64 to 67 and 70)

- h *D.P. Joshi v. State of Madhya Bharat*, AIR 1955 SC 334 : (1955) 1 SCR 1215; *Chitra Ghosh v. Union of India*, (1969) 2 SCC 228; *D.N. Chanchala v. State of Mysore*, (1971) 2 SCC 293; *M.R. Mini (Minor) v. State of Kerala*, (1980) 2 SCC 216; *Jagdish Saran (Dr)*

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v. Union of India, (1980) 2 SCC 768 : AIR 1980 SC 820; *Pradeep Jain (Dr) v. Union of India*, (1984) 3 SCC 654 : AIR 1984 SC 1420; *Prachi Almeida (Dr) v. Dean, Goa Medical College*, (2001) 7 SCC 640; *Magan Mehrotra v. Union of India*, (2003) 11 SCC 186 : (2003) 3 Scale 101, *relied on*

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Dinesh Kumar (Dr) v. Motilal Nehru Medical College, (1985) 3 SCC 22; *Dinesh Kumar (Dr) (II) v. Motilal Nehru Medical College*, (1986) 3 SCC 727; *Dinesh Kumar v. Motilal Nehru Medical College*, (1987) 4 SCC 122; *Dinesh Kumar v. Motilal Nehru Medical College*, (1987) 4 SCC 459; *Dinesh Kumar v. Motilal Nehru Medical College*, 1989 Supp (2) SCC 428; *Dinesh Kumar v. Motilal Nehru Medical College*, (2003) 11 SCC 191(II) : (1987) 1 Scale 1232; *Dinesh Kumar v. Motilal Nehru Medical College*, (2003) 11 SCC 191(I) : (1987) 2 Scale 222; *Dinesh Kumar v. Motilal Nehru Medical College*, (2003) 11 SCC 192 (I) : (1988) 1 Scale 428; *Dinesh Kumar v. Motilal Nehru Medical College*, (1990) 4 SCC 627; *State of U.P. v. Vineet Singh*, (2000) 7 SCC 262; *Abhinav Aggarwal v. Union of India*, (2001) 3 SCC 425; *K. Duraisamy v. State of T.N.*, (2001) 2 SCC 538; *N. Vasundara v. State of Mysore*, (1971) 2 SCC 22 : 1971 Supp SCR 381, *referred to*

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Parag Gupta (Dr) v. University of Delhi, (2000) 5 SCC 684, *considered*

However, the test to uphold the validity of a statute on equality must be judged on the touchstone of reasonableness. It was noticed in *Dr Pradeep Jain case* that reservation to the extent of 50% was held to be reasonable. Although subsequently, in *Dr Dinesh Kumar case* it was reduced to 25% of the total seats. The said percentage of reservation was fixed keeping in view the situation as then existing. The situation has now changed to a great extent. Twenty years have passed. The country has during this time produced a large number of postgraduate doctors. The Constitution of India is organic in nature. Being a living organ, it is ongoing and with the passage of time, law must change. Horizons of constitutional law are expanding. Having regard to the circumstances of the case, it is proper that the original scheme as framed in *Dr Pradeep Jain case* should be reiterated in preference to *Dr Dinesh Kumar case*. Reservation by way of institutional preference, therefore, should be confined to 50% of the seats since it is in public interest. (Paras 70 to 72)

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Pradeep Jain (Dr) v. Union of India, (1984) 3 SCC 654 : AIR 1984 SC 1420, *affirmed*

Dinesh Kumar (Dr) (II) v. Motilal Nehru Medical College, (1986) 3 SCC 727, *limited*

M.R. Balaji v. State of Mysore, AIR 1963 SC 649 : 1963 Supp (1) SCR 439, *referred to*

Per Sinha, J. (concurring)

Article 14 prohibits discrimination in any form. Discrimination at its worst form would be violative of the basic and essential features of the Constitution. The validity of institutional reservation must be judged on the touchstone of the equality clause contained in Articles 14 and 15. Even applying the said tests, institutional reservation cannot be held to be unconstitutional.

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(Paras 82, 88, 89 and 91)

Islamic Academy of Education v. State of Karnataka, (2003) 6 SCC 697, *relied on*

Pradeep Jain (Dr) v. Union of India, (1984) 3 SCC 654 : AIR 1984 SC 1420; *Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225; *L. Chandra Kumar v. Union of India*, (1997) 3 SCC 261 : 1997 SCC (L&S) 577; *Bhim Singhji v. Union of India*, (1981) 1 SCC 166; *Jennifer Gratz and Patrick Hamacher v. Lee Boilinger*, decided on 23-6-2003, likely to be reported in (2003) 539 US; *Norwalk Core v. Norwalk Redevelopment Agency*, 395 F 2d 920, 931-32 (CA 2 1968); *United States v. Jefferson County Bd. of Ed.*, 372 F 2d 836, 876 (CA 5 1966), *referred to*

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Per Lakshmanan, J. (concurring)

As regards the constitutional validity of institutional/regional/universitywise reservation/preference, in view of the Supreme Court's emphasis on the need to

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- strive for excellence which alone is in the national interest, it may not be possible to sustain its constitutional validity. However, the presently available decisional law is in support of institutional preference to the extent of 50% of the total available seats in the educational institutions concerned. (Para 108)

Pradeep Jain (Dr) v. Union of India, (1984) 3 SCC 654 : AIR 1984 SC 1420; *Jagdish Saran (Dr) v. Union of India*, (1980) 2 SCC 768 : AIR 1980 SC 820; *Indra Sawhney v. Union of India*, 1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1 : (1992) 22 ATC 385; *Preeti Srivastava v. State of M.P.*, (1999) 7 SCC 120 : AIR 1999 SC 2894; *AIIMS Students' Union v. AIIMS*, (2002) 1 SCC 428 : AIR 2001 SC 3262, referred to

- The position with respect to minority-aided institutions is that they are bound by the requirement of constitutional reservation along with other regulatory controls. However, the right to admit students of their choice being part of the right of religious and linguistic minorities, to establish and administer educational institutions of their choice, the managements of these educational institutions can reserve seats to a reasonable extent, not necessarily 50%. Out of the seats left after the deduction of management quota, the State can require the observance of the requirement of constitutional reservation. [Para 108(6)]

As regards the unaided institutions, they have a large measure of autonomy even in matters of admission of students as they are not bound by the constraints of the demands of Article 29(2), nor are they bound by the constraints of the obligatory requirements of constitutional reservation. [Para 108(7)]

- F. Universities — Admission — Medical colleges — Admission to MBBS/BDS courses — Criteria for admission — Interim directions — In AIIMS and medical colleges of Central university, merit should have primacy subject to institutional preference up to 50% of total MBBS seats — In all other respects the decision in *AIIMS Students' Union case*, (2002) 1 SCC 428 would operate — These directions would remain in operation till Parliament makes necessary legislation in that regard taking into consideration the special needs of some small States having regard to their backwardness: economic, social, and educational, and also geographical conditions — Following Supreme Court's normal practice, instead of issuing any directions for making law, hope expressed that the Central Government would act in that regard keeping in view the requirement of coordination in higher education — Constitution of India, Arts. 245 & 246 and Sch. VII List I Entry 66 & List III Entry 25**

- G. Constitution of India — Arts. 32 and 226 — Particular writs — Mandamus — Held, normally is not issued to Government for making law**
Per Khare, C.J., Lahoti and Agrawal, JJ.

- For the purpose of selecting the candidates, it is necessary to hold an all-India entrance examination by an impartial and reputed body. Therefore, the criteria have to be laid down therefor. AIIMS in terms of an order passed by the Supreme Court has been conducting the said examination. It may continue to do so unless a competent body is created by the Central Government in terms of a parliamentary Act or otherwise. All expenses for conducting such examination shall be borne by the Central Government which would also provide the requisite infrastructure therefor. One test shall be held for all the students taking admission throughout the country. This order is passed keeping in view the fact that now one common entrance test is held for admission against 25% of all-India quota and other tests are being held by the respective universities.

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Disparities in such tests should be done away with and merit of the students should be judged on the basis of one test held therefor. (Para 73)

In 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 respects, the decision in *AIIMS Students' Union case*, (2002) 1 SCC 428 shall operate. These directions, however, are interim in nature. Parliament having regard to Entry 66 List I of the Seventh Schedule to the Constitution has the legislative competence which would take care of the country as a whole. While making such a legislation, Parliament, undoubtedly, would take into consideration the special needs of some small States, having regard to their backwardness — economic, social and educational, as also geographical conditions. Parliament has also the legislative competence in terms of Entry 25 List III of the Seventh Schedule. It, for education and particularly higher education where excellence is required, while enacting law must also foresee that in the era of liberalisation and globalisation, Indian citizens must compete with their counterparts of the developed countries. Merit, thus, must be allowed to explore to the fullest extent. (Paras 74 to 76)

AIIMS Students' Union v. AIIMS, (2002) 1 SCC 428 : AIR 2001 SC 3262; *Pradeep Jain (Dr) v. Union of India*, (1984) 3 SCC 654 : AIR 1984 SC 1420, referred to

The courts are normally reluctant to issue any direction to the Central Government for making law. Therefore, instead of issuing any direction in that regard it is hoped and trusted that the Central Government would expeditiously consider making of a legislation or taking such steps as are necessary in that behalf keeping in view the requirement of coordination in higher education in terms of Entry 66 List I of the Seventh Schedule. (Para 77)

Per Lakshmanan, J. (concurring)

For admissions to undergraduate programmes, there are several *different eligibility norms* among the different categories of institutions and among the various States. The preferred option should be for a designated agency or the university concerned to conduct the entrance examination for professional as well as non-professional institutions in the specified subjects. The marks awarded in those subjects should be the basis for determining the merits of the students for admission to the institutions to which they apply. (Paras 94 and 95)

H. Constitution of India — Arts. 245 & 246 and Sch. VII List III Entry 25 & List II Entry 11 (since omitted) — Shifting of the contents of erstwhile Entry 11 of List II to List III as Entry 25 — Effect, if any, on power of the State Legislature to enact law on the subject “education” — Held, in the absence of any parliamentary Act, State still has competence to enact a statute laying down reservation for entry in any courses of study including medical courses (Paras 63 and 62)

T.M.A. Pai Foundation v. State of Karnataka, (2002) 8 SCC 481, followed

I. Universities — Admission — Generally — Medical and other professional courses — Problems faced by students due to different eligibility norms among different categories of institutions and among various States, unplanned growth of institutions, fee structure and certificate hassles — Solution suggested (per Lakshmanan, J.)

(Paras 94 to 101)

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38.	AIR 1958 SC 538 : 1959 SCR 279, <i>Ram Krishna Dalmia v. Justice S.R. Tendolkar</i>	158e, 163a	
39.	AIR 1955 SC 334 : (1955) 1 SCR 1215, <i>D.P. Joshi v. State of Madhya Bharat</i>	156c-d, 158b, 162c, 166a-b	
40.	252 US 416 : 64 L Ed 641 (1919), <i>Missouri v. Holland</i>	165e	e

The Judgments of the Court were delivered by

V.N. KHARE, C.J. (*on behalf of himself, Lahoti and Agrawal, JJ.*)—
Leave granted in the special leave petition.

2. The core question involved in these writ petitions and appeal centres around the constitutional validity of reservation whether based on domicile or institution in the matter of admission into postgraduate courses in government-run medical colleges. f

3. For determination of the said question, factual matrix of the matter is being noticed from Writ Petition (Civil) No. 29 of 2003.

4. The petitioners who are fifty-two in number are original residents of Delhi. They joined various medical colleges out of Delhi for undertaking their MBBS courses of studies against the 15% all-India quota on being qualified therefor in the All-India Medical Entrance Examination. g

5. The appellants intended to join the medical colleges of Delhi for their postgraduate medical courses. They applied for and were granted admission forms having regard to the decision of this Court in *Parag Gupta (Dr) v. University of Delhi*¹. In the Bulletin of Information issued by the University h

¹ (2000) 5 SCC 684

of Delhi, it was stated, that candidates like the appellants would be entitled to admission in postgraduate courses subject to the decision of a matter pending in this Court i.e. *Magan Mehrotra v. Union of India*².

6. A three-Judge Bench of this Court in *Magan Mehrotra*² inter alia, therein held that apart from institutional preference, no other preference including reservation on the basis of residence is envisaged in the Constitution, in view of the decision of this Court in *Pradeep Jain (Dr) v. Union of India*³.

7. Delhi University on or about 31-12-2002 relying on or on the basis of the decision of this Court in *Magan Mehrotra*² issued the following notification:

“In view of the judgment of the Hon’ble Supreme Court of India dated 17-12-2002 in Writ Petition (C) No. 417 of 2000² it is hereby notified that for admission to PG courses during the academic session 2002-03, only Delhi University medical graduates would be eligible against the 75% reserved seats of the students from Delhi (*sic* while those) who have taken admission in the university/States under 15% all-India quota will not be eligible to seek admission in the PG degree/diploma courses of Delhi University against the 75% reserve seats. All concerned may please note.

Accordingly, the students who have done MBBS under 15% all-India quota from the university/States other than Delhi University and have applied for admission to the PG degree/diploma courses are not eligible to appear in PG Medical Entrance Test, 2003 to be held on 9-2-2003. They are advised to apply for the return of the bank draft/cheque.”

8. The appellants claiming themselves to be “the residents of Delhi” and “sons of the soil” filed the writ petition in the court questioning the aforementioned notification dated 31-12-2002 as also reservation made by way of institutional preference for admission to postgraduate medical courses.

9. A Division Bench of this Court having regard to the decision in *Magan Mehrotra case*² which was rendered by a three-Judge Bench of this Court, referred the matter to a Bench of three Judges by an order dated 3-2-2003. However, when the matter was placed before a three-Judge Bench, it by an order dated 7-2-2003 directed the matter to be placed before a Bench of five Judges considering the importance of the matter, but no reason was assigned therefor.

10. The question which was initially raised in the writ petition was as to whether reservation made by way of institutional preference is ultra vires Articles 14 and 15 of the Constitution of India; but during hearing a larger issue viz. as to whether any reservation, be it on residence or institutional preference, is constitutionally permissible, was raised at the Bar.

² (2003) 11 SCC 186 : (2003) 3 Scale 101
³ (1984) 3 SCC 654 : AIR 1984 SC 1420

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11. In view of the importance of the question involved, this Bench in terms of the order dated 1-4-2003 directed issuance of notice to all the States and Union Territories, pursuant where to, except the State of A.P. and the State of Jammu & Kashmir all the States filed their returns and were heard. a

12. Shri Harish Salve, learned Senior Counsel appearing on behalf of the appellants raised two contentions in support of the writ petition. He submitted that in view of the equality clause contained in Articles 14 and 15(1) of the Constitution of India, reservation whether based on domicile or institutional preference would be unconstitutional. The learned counsel took us through the decisions of this Court operating in the field and urged that in view of the passage of time no reservation should be permitted either on the basis of residence or on institutional preference. Reservation on residential criterion, the learned counsel contended, is squarely hit by clause (1) of Article 15 of the Constitution of India. Placing reliance on the debates on the subject at the time of framing of the Constitution, Shri Salve urged that the “place of birth” being synonymous with “domicile”, the observations made contrary thereto in *D.P. Joshi v. State of Madhya Bharat*⁴ are not correct. b c

13. Shri Salve further contended that in terms of the constitutional scheme, reservation is permissible only when there exist compelling government objectives therefor and that too on nominal basis if it can be demonstrated that “rule of merit” should not be allowed to be sustained and when the class in whose favour a departure is sought to be made constitutes a homogeneous group and such departure satisfies the tests of social justice for securing equality upon comparison of such disability suffered by such class or group of persons. The learned counsel submitted that in the matter of reservation the State must scrupulously follow the requirements of clause (4) of Article 15 of the Constitution of India, namely, that the same is needed for the weaker section of society or a homogeneous class and identified by a presidential order issued in that behalf. d e

14. In a case involving higher education even, Shri Salve argued, such a provision must be handled with care and keeping in view a large number of decisions of this Court including *M.R. Balaji v. State of Mysore*⁵ not more than 50% of the total seats can be reserved. The learned counsel would contend that if such reservation is prima facie impermissible having regard to the constitutional scheme, the same would fall within the purview of “suspected classification” and, thus, must pass the “strict scrutiny test” or “intermediate scrutiny test”. Any executive order providing for such reservation, the learned counsel urged, must be construed having regard to the preamble, the fundamental rights of the citizens and in particular Article 19(1)(d), as also the directive principles of State Policy as contained in Part IV of the Constitution of India and in particular, Articles 41 and 47 of the Constitution of India. It was argued that meritorious students suffer from lack of mobility as contradistinguished from the mobility of the employees, and f g

4 AIR 1955 SC 334 : (1955) 1 SCR 1215

5 AIR 1963 SC 649 : 1963 Supp (1) SCR 439

h

- a are required to be protected so as not to suffer any discrimination only on a specious plea of the State “our money, our people”. Domicile of all the citizens of India, Shri Salve urged, should be one, as the concept of State domicile has no role to play in our constitutional scheme. He emphasized that keeping the same in view, a profile check is required to be made so far as meritorious students are concerned, as those who are born and brought up in small towns also would like to have higher education in the metropolitan towns where having regard to the better infrastructure and higher resources, the institution therein would provide a better academic pursuit for them. In terms of Article 14 of the Constitution of India, Shri Salve argued, students cannot form a different class nor any such classification made amongst them would be in public interest. Relying heavily upon the observations made in paragraph 10 of the judgment of this Court in *Dr Pradeep Jain case*³ the learned counsel submitted that as all students are entitled to equal opportunities all sorts of reservations must be given a go-by.

c 15. The learned counsel next contended that in any event, students like the appellants should not be held to have lost their residential status only because they had gone out of their State of origin for pursuing their MBBS course for a period of five years.

- d 16. According to Shri Salve, *Magan Mehrotra*² does not lay down the correct law and it is required to be overruled.

- e 17. Assailing reservation by way of institutional preference, Shri Salve further submitted that the very premise upon which it is based is fallacious inasmuch as the majority of students, in view of the decision of this Court in *Dr Pradeep Jain case*³ having taken admission on the criterion of domicile alone, would again be considered for pursuing their postgraduate studies only on that basis and, thus, reservation by way of institutional preference would amount to an indirect way of doing things as the same would for all intent and purport be based on domicile and, thus, is liable to be struck down.

- f 18. Shri Salve further contended that Delhi University or the States were required to place before this Court sufficient materials to prove that such classification on institutional preference is based on an intelligible differentia. Drawing our attention to the statements made in the counter-affidavit, the learned counsel urged that no such material has been placed except that the said practice is in vogue for a long time.

- g 19. Shri R.F. Nariman, learned Senior Counsel appearing on behalf of some of the students of All India Institute of Medical Sciences (AIIMS) submitted that in view of the decision of this Court in *AIIMS Students' Union v. AIIMS*⁶ out of forty students only six were offered admission in non-clinical subjects which most of the students would not like to pursue. Shri Nariman urged that the plight of the students of AIIMS should be considered

h ³ *Pradeep Jain (Dr) v. Union of India*, (1984) 3 SCC 654 : AIR 1984 SC 1420

² *Magan Mehrotra v. Union of India*, (2003) 11 SCC 186 : (2003) 3 Scale 101

⁶ (2002) 1 SCC 428 : AIR 2001 SC 3262

having regard to the stand taken by or the practice prevalent in other universities, namely, institutional preference and in that view of the matter, the students of the institution are also entitled to equal opportunity to compete with the students of other universities. a

20. Shri Shanti Bhushan, learned Senior Counsel appearing on behalf of the students of Delhi University, on the other hand, submitted that *Magan Mehrotra case*² has been correctly decided. The learned counsel contended that keeping in view the decisions of this Court e.g. *D.P. Joshi*⁴, *Jagadish Saran (Dr) v. Union of India*⁷ and *Pradeep Jain*³ it must be held that reservation by way of institutional preference has held the field for a long time. The impugned notification, Shri Shanti Bhushan urged, having been issued pursuant to the directions of this Court, it is futile to urge that the action on the part of Delhi University in following the same has resulted in arbitrariness. According to the learned counsel, reservation by way of institutional preference is not only a matter of convenience but also forms part of the educational policy. If such a policy is not allowed to have a little play, a student while undergoing different courses of studies may have to take admission in different parts of the country wherefor he would face problems involving different languages, different cultures and different environments. It may not be feasible even for the parents of a middle-class family to send their children out of the State. Furthermore, the learned counsel contended that the chances that the local students would serve the local people cannot be completely ruled out and, thus, such a criterion cannot be said to be illogical or bad in law. b c d

21. As regards application of strict scrutiny test, Shri Shanti Bhushan relying on or on the basis of the decision in *Ram Krishna Dalmia v. Justice S.R. Tendolkar*⁸ submitted that this Court has laid down the law that the constitutionality of a statute must be presumed and the onus to prove that the statute is unconstitutional is upon the person who asserts the same. Only two tests, namely, as to whether the classification is reasonable and based on an intelligible differentia stood the test of time and there is no reason to deviate therefrom. Shri Shanti Bhushan argued that reservation by way of institutional preference had been holding the field since this Court decided *Dr Pradeep Jain case*³ and nothing has been pointed out by the petitioners to show that the said principle should be departed from. e f

22. Shri A. Mariaputham, learned counsel appearing on behalf of Delhi University, supplementing the arguments of Shri Shanti Bhushan, submitted that reservation by way of institutional preference is a definite and identifiable criterion and in that view of the matter it satisfies the test of valid g

2 *Magan Mehrotra v. Union of India*, (2003) 11 SCC 186 : (2003) 3 Scale 101

4 *D.P. Joshi v. State of Madhya Bharat*, AIR 1955 SC 334 : (1955) 1 SCR 1215

7 (1980) 2 SCC 768 : AIR 1980 SC 820

3 *Pradeep Jain (Dr) v. Union of India*, (1984) 3 SCC 654 : AIR 1984 SC 1420

8 AIR 1958 SC 538 : 1959 SCR 279

- classification as contained in Article 14 of the Constitution of India. The reasons assigned in support of institutional preference in various decisions of this Court are still relevant and as such there being no change in the situation, any fresh look or reconsideration thereof is not warranted. This Court, the learned counsel urged, having framed a scheme in *Dr Pradeep Jain case*³ which is binding on all concerned in view of the provisions contained in Articles 141, 142, 143 and 144 of the Constitution of India, may not depart therefrom in view of the fact that this Court in *Magan Mehrotra case*² upon issuance of notice to all the States had clearly directed that the law relating to institutional preference laid down in *Dr Pradeep Jain case*³ should be followed and in particular, directed that the States of Assam, Karnataka, Tamil Nadu and Goa were to follow reservation by way of institutional preference alone.
- 23.** The learned counsel contended that all the States have since amended their rules so as to consider the candidature of those students who had studied in any of the institutions situated in that State on 15% all-India quota and in that view of the matter, the said students do not require a further indulgence. According to the learned counsel, apart from the fact that the students who had gone to pursue their MBBS courses outside the State are entitled to take part in an all-India open competition, they having regard to the amendments made in the rules framed by the States of Karnataka, Assam and others being entitled to institutional preference in the State where they had studied, may not be held to be entitled to a further indulgence of competing with the students of Delhi University in 75% quota on the ground that they are residents of Delhi and thereby bringing back the concept of reservation on domicile indirectly again.
- 24.** Shri Sanjay Hegde, learned counsel appearing on behalf of the State of Karnataka, Shri A. Phukan, learned counsel appearing for the State of Assam and Shri R.S. Suri, learned counsel appearing for the State of Punjab, however, submitted that the States should be allowed to set apart some seats for the local candidates. It was pointed out that unlike other studies, postgraduate medical courses involve practical training and the students are required to work in the hospitals wherein they are paid stipends by the States. It was urged that the States have been finding it extremely difficult to get a good number of local doctors to serve the rural population and, thus, such a criterion, according to the learned counsel, cannot be said to be unconstitutional.
- 25.** Before we embark upon the questions raised at the Bar, we may notice that the States before the decision of this Court in *Dr Parag Gupta case*¹ had been following different criteria as regards grant of preference i.e. either on institution basis or on residence basis or both. The positions

³ *Pradeep Jain (Dr) v. Union of India*, (1984) 3 SCC 654 : AIR 1984 SC 1420

² *Magan Mehrotra v. Union of India*, (2003) 11 SCC 186 : (2003) 3 Scale 101

¹ *Parag Gupta (Dr) v. University of Delhi*, (2000) 5 SCC 684

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prevailing in different States before and after *Dr Parag Gupta case*¹ and at present are given as under:

POSITION BEFORE PARAG GUPTA					a
Sl. No.	State	Nature of preference			
1.	U.P.	Institutional			
2.	Delhi	Institutional			
3.	Maharashtra	Institutional			
4.	Gujarat	Institutional			b
5.	West Bengal	Institutional			
6.	Assam			Residence	
7.	Tamil Nadu			Residence	
8.	Goa			Residence	
9.	Karnataka			Residence	
10.	Madhya Pradesh			Institutional or residence	c
11.	Haryana			Institutional or residence	
12.	Punjab			Institutional or residence	
13.	Rajasthan			Institutional or residence	
14.	Kerala			Institutional or residence	
15.	Orissa			Institutional or residence	
16.	Himachal Pradesh			Institutional or residence	d
17.	Bihar			Institutional or residence	
18.	Pondicherry	25% all-India quota available seats open for all	+	37.5% institutional of	
			+	37.5% of available seats	
POSITION AFTER PARAG GUPTA					e
Sl. No.	State	Nature of preference			
1.	U.P.	Institutional		Residence (15%)	
2.	Delhi	Institutional		Residence (15%)	
3.	Maharashtra	Institutional			
4.	Gujarat	Institutional			f
5.	West Bengal	Institutional			
6.	Assam			Residence	
7.	Tamil Nadu			Residence	
8.	Goa			Residence (10 years)	
9.	Karnataka			Residence	
10.	Madhya Pradesh			Institutional or residence	g
11.	Haryana			Institutional or residence	
12.	Punjab			Institutional or residence	
13.	Rajasthan			Institutional or residence	
14.	Kerala			Institutional or residence	
15.	Orissa			Institutional or residence	
16.	Himachal Pradesh			Institutional or residence	h

1 *Parag Gupta (Dr) v. University of Delhi*, (2000) 5 SCC 684

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a	17.	Bihar			Institutional or residence
	18.	Pondicherry	25% all-India	+	37.5% institutional of
			quota available	+	37.5% of available seats
			seats		
			open for all		

PRESENT POSITION

	Sl. No.	State	Nature of preference		
b	1.	U.P.	Institutional		
	2.	Delhi	Institutional		
	3.	Maharashtra	Institutional		
	4.	Gujarat	Institutional		
	5.	West Bengal	Institutional		
c	6.	Assam	Residence		
	7.	Tamil Nadu	Residence		
	8.	Goa	Residence (10 years)		
	9.	Karnataka	Residence (10 years)		
	10.	Madhya Pradesh	Institutional or residence		
d	11.	Haryana	Institutional or residence		
	12.	Punjab	Residence		
	13.	Rajasthan	Institutional or residence		
	14.	Kerala	Institutional or residence		
	15.	Orissa	Institutional or residence		
e	16.	Himachal Pradesh	Institutional or residence		
	17.	Bihar	Institutional or residence		
	18.	Pondicherry	25% all-India quota	+	37.5% institutional of
			available seats	+	37.5% of available seats
			open for all		

26. It is neither in doubt nor in dispute that before the scheme was evolved in *Dr Pradeep Jain case*³ notices had been issued to all the States and all of them were fully heard. But despite the same, the orders passed by this Court in *Dr Pradeep Jain case*³ had been flouted with impunity, inter alia, by the States of Assam, Karnataka, Goa and Tamil Nadu. Now it transpires that even the State of Punjab has also not been following the said decision.

27. The necessity of issuing notices by this Court again in *Magan Mehrotra case*² must be considered from that angle. In *Magan Mehrotra case*², this Court not only reiterated that the reservation by way of institutional preference be maintained but also directed the aforementioned States to follow the same.

28. The questions must, therefore, be considered in the aforementioned factual backdrop.

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³ *Pradeep Jain (Dr) v. Union of India*, (1984) 3 SCC 654 : AIR 1984 SC 1420

² *Magan Mehrotra v. Union of India*, (2003) 11 SCC 186 : (2003) 3 Scale 101

29. The first question that arises for consideration is, **whether the reservation on the basis of domicile is impermissible in terms of clause (1) of Article 15 of the Constitution of India.** The term “place of birth” occurs in clause (1) of Article 15 but not “domicile”. If a comparison is made between Article 15(1) and Article 16(2) of the Constitution of India, it would appear that whereas the former refers to “place of birth” alone, the latter refers to both “domicile” and “residence” apart from place of birth. A distinction, therefore, has been made by the makers of the Constitution themselves to the effect that the expression “place of birth” is not synonymous to the expression “domicile” and they reflect two different concepts. It may be true, as has been pointed out by Shri Salve and pursued by Mr Nariman, that both the expressions appeared to be synonymous to some of the members of the Constituent Assembly but the same, in our opinion, cannot be a guiding factor. In *D.P. Joshi case*⁴ a Constitution Bench held so in no uncertain terms.

30. This Bench is bound by the said decision.

31. In *State of U.P. v. Pradip Tandon*⁹ this Court observed: (SCC p. 277, para 29)

“29. The reservation for rural areas cannot be sustained on the ground that the rural areas represent socially and educationally backward classes of citizens. This reservation appears to be made for the majority population of the State. Eighty per cent of the population of the State cannot be a homogeneous class. Poverty in rural areas cannot be the basis of classification to support reservation for rural areas. Poverty is found in all parts of India. In the instructions for reservation of seats it is provided that in the application form a candidate for reserved seats from rural areas must submit a certificate of the District Magistrate of the district to which he belonged that he was born in rural area and had a permanent home there, and is residing there or that he was born in India and his parents and guardians are still living there and earn their livelihood there. The incident of birth in rural areas is made the basic qualification. No reservation can be made on the basis of place of birth, as this would offend Article 15.”

32. Answer to the said question must, therefore, be rendered in the negative.

33. The second question that arises for our consideration is, **whether reservation by way of institutional preference comes within the suspected classification warranting strict scrutiny test.**

34. Once it is held that clause (1) of Article 15 of the Constitution of India is not attracted, the only question which survives is as to whether the same attracts the wrath of Article 14 of the Constitution of India. Article 14 forbids class legislation but permits reasonable classification subject to the

⁴ *D.P. Joshi v. State of Madhya Bharat*, AIR 1955 SC 334 : (1955) 1 SCR 1215

⁹ (1975) 1 SCC 267

conditions that it is based on an intelligible differentia and that the differentia must have a rational relation to the object sought to be achieved.

a **35.** In *Ram Krishna Dalmia case*⁸ this Court categorically held: (AIR pp. 547-48, para 11)

b “ ‘It is now well established that while Article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. In order, however, to pass the test of permissible classification two conditions must be fulfilled, namely, (i) that 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 (ii) that that differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification may be founded on different bases, namely, *geographical*, or according to *objects or occupations or the like*. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration. It is also well established by the decisions of this Court that Article 14 condemns discrimination not only by a substantive law but also by a law of procedure.’

c The principle enunciated above has been consistently adopted and applied in subsequent cases. The decisions of this Court further establish—

d (a) that a law may be constitutional even though it relates to a single individual if, on account of some special circumstances or reasons applicable to him and not applicable to others, that single individual may be treated as a class by himself;

e (b) that there is always a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles;

f (c) that it must be presumed that the legislature understands and correctly appreciates the need of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds;

(d) that the legislature is free to recognise degrees of harm and may confine its restrictions to those cases where the need is deemed to be the clearest;

g (e) that in order to sustain the presumption of constitutionality the court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation; and

h (f) that while good faith and knowledge of the existing conditions on the part of a legislature are to be presumed, if there is nothing on

⁸ *Ram Krishna Dalmia v. Justice S.R. Tendolkar*, AIR 1958 SC 538 : 1959 SCR 279

the face of the law or the surrounding circumstances brought to the notice of the court on which the classification may reasonably be regarded as based, the presumption of constitutionality cannot be carried to the extent of always holding that there must be some undisclosed and unknown reasons for subjecting certain individuals or corporations to hostile or discriminating legislation. a

The above principles will have to be constantly borne in mind by the court when it is called upon to adjudge the constitutionality of any particular law attacked as discriminatory and violative of the equal protection of the laws.” (emphasis supplied) b

36. The strict scrutiny test or the intermediate scrutiny test applicable in the United States of America as argued by Shri Salve cannot be applied in this case. Such a test is not applied in the Indian courts. In any event, such a test may be applied in a case where a legislation ex facie is found to be unreasonable. Such a test may also be applied in a case where by reason of a statute the life and liberty of a citizen is put in jeopardy. This Court since its inception apart from a few cases where the legislation was found to be ex facie wholly unreasonable proceeded on the doctrine that constitutionality of a statute is to be presumed and the burden to prove contra is on him who asserts the same. The courts always lean against a construction which reduces the statute to a futility. A statute or any enacting provision therein must be so construed as to make it effective and operative “on the principle expressed in the maxim: *ut res magis valeat quam pereat*”. (See *CIT v. S. Teja Singh*¹⁰ and *Tinsukhia Electric Supply Co. Ltd. v. State of Assam*¹¹.) c d

37. Applying the test of presumption of constitutionality, no case has been made out for invoking the doctrine of strict construction or intermediate construction. e

38. The third question that arises for our consideration is, **whether the reservation by institutional preference is valid.** India is one country and all its citizens should be treated equally. The essence of equality is enshrined in Article 14 of the Constitution of India. But does it mean that the equality clause must be applied to all citizens in all situations? It is true that the country should strive to achieve a goal of excellence which in turn would mean that meritorious students should not be denied the pursuit of higher studies. This itself brings us to the question, who is to judge the merit and what are the standards therefor? It is extremely difficult to lay down a foolproof criterion. Success or failure of a candidate in one examination or the other may not lead to an infallible conclusion as regards the merit of a candidate so as to achieve excellence. The larger question, therefore, would be how and to what extent balance should be struck? f g

39. The ideal situation, although it might have been to see that only meritorious students irrespective of caste, creed, sex, place of birth, domicile/residence are treated equally but history is replete with situations to h

¹⁰ AIR 1959 SC 352

¹¹ (1989) 3 SCC 709 : AIR 1990 SC 123

- a show that India is not ready therefor. Sociological condition prevailing in India compelled the makers of the Constitution to bring in Articles 15 and 16 in the Constitution. The said articles for all intent and purport are species of Article 14 which is the genus in a sense that they provide for exception to the equality clause also. Preference to a class of persons whether based on caste, creed, religion, place of birth, domicile or residence is embedded in our constitutional scheme. *Whereas larger interest of the country must be perceived, the lawmakers cannot shut their eyes to the local needs also. Such local needs must receive due consideration keeping in view the duties of the State contained in Articles 41 and 47 of the Constitution of India.*

(emphasis ours)

- b 40. For the last five decades this Court times without number has adopted the efficacy of one criterion or the other for giving preference to a section of students.
- c 41. Constitutional interpretation is a difficult task. Its concept varies from statute to statute, fact to fact, situation to situation and subject-matter to subject-matter. Perceptions are yet to be perceived by the court which would meet all situations while laying down emphasis for achieving excellence in all spheres of life keeping in view Chapter IV-A of the Constitution of India which provides for fundamental duties, circumstances and compulsions faced
- d by the State in this behalf led the courts to uphold a statute providing for reservation for a special class of people. Mostly they suffer from disability either of belonging to an oppressed community or by way of economical, cultural or social imbalances. The courts shall all along strive hard for maintaining a balance. While interpreting the Constitution, we must notice the following view of Justice Holmes expressed in *Missouri v. Holland*¹² [US at p. (433)]:

- e “[W]hen we are dealing with words that also are a constituent act, like the Constitution of the United States, we must realise that they have called into life a being the development of which could not have been foreseen completely by the most gifted of its begetters. It was enough for them to realise or to hope that they had created an organism; it has taken
- f a century and has cost their successors much sweat and blood to prove that they created a nation. *The case before us must be considered in the light of our whole experience, and not merely in that of what was said a hundred years ago.*” (emphasis supplied)

- g 42. Equally important is an elucidation of Justice Frankfurter contained in the article “*Some Reflections on the Reading of Statutes*”[†]. This Court also in *Jagdish Saran (Dr) v. Union of India*⁷, a decision which is applicable in the fact situation of this case, stated the law thus: (SCC p. 772, para 7)

“Law, constitutional law, is not an omnipotent abstraction or distant idealization but a principled, yet pragmatic, value-laden and result-

h 12 252 US 416 : 64 L Ed 641 (1919)

† Ed.: See Walter F. Murphy: *Courts, Judges and Politics*

7 (1980) 2 SCC 768 : AIR 1980 SC 820

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oriented, set of propositions applicable to and conditioned by a concrete stage of social development of the nation and aspirational imperatives of the people. *India Today* — that is the inarticulate major premise of our constitutional law and life.” a

43. In *D.P. Joshi case*⁴ advantage given to local residents as regards payment of capitation fee was upheld. A Constitution Bench of this Court in *Chitra Ghosh v. Union of India*¹³ stated the law thus: (SCC pp. 232-33, para 9)

“9. It is the Central Government which bears the financial burden of running the medical college. It is for it to lay down the criteria for eligibility. From the very nature of things it is not possible to throw the admission open to students from all over the country. The Government cannot be denied the right to decide from what sources the admission will be made. *That essentially is a question of policy and depends inter alia on an overall assessment and survey of the requirements of residents of particular territories and other categories of persons for whom it is essential to provide facilities for medical education.* If the sources are properly classified whether on territorial, geographical or other reasonable basis it is not for the courts to interfere with the manner and method of making the classification.” (emphasis supplied) b c

44. The matter came up for consideration again in *D.N. Chanchala v. State of Mysore*¹⁴ and *M.R. Mini (Minor) v. State of Kerala*¹⁵ wherein a similar note was struck. d

45. In *Dr Jagadish Saran case*⁷ this Court had occasion to consider the question as to whether grant of institutional preference was a valid basis for admission. This case dealt with admission in postgraduate courses of Delhi University. Krishna Iyer, J. with whom Pathak, J. concurred in no uncertain terms upheld such preference. e

46. A large number of decisions on the point were taken into consideration by this Court in *Dr Pradeep Jain case*³. Upon a detailed analysis of the constitutional provisions, case-laws as also the practical difficulties faced by the States, students as also the institutions, it was held: (SCC pp. 672-73, para 10) f

“What is, therefore, necessary is to set up proper and adequate structures in rural areas where competent medical services can be provided by doctors and some motivation must be provided to the doctors servicing those areas. But, as the position stands today, there is considerable paucity of seats in medical colleges to satisfy the increasing demand of students for admission and some principle has, therefore, to be evolved for making selection of students for admission to the medical g

⁴ *D.P. Joshi v. State of Madhya Bharat*, AIR 1955 SC 334 : (1955) 1 SCR 1215

¹³ (1969) 2 SCC 228

¹⁴ (1971) 2 SCC 293

¹⁵ (1980) 2 SCC 216

⁷ *Jagadish Saran (Dr) v. Union of India*, (1980) 2 SCC 768 : AIR 1980 SC 820

³ *Pradeep Jain (Dr) v. Union of India*, (1984) 3 SCC 654 : AIR 1984 SC 1420

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- a colleges and such principle has to be in conformity with the requirement of Article 14. Now, the primary imperative of Article 14 is equal opportunity for all across the nation for education and advancement and, as pointed out by Krishna Iyer, J. in *Jagadish Saran (Dr) v. Union of India*⁷ ‘this has burning relevance to our times when the country is gradually being “broken up into fragments by narrow domestic walls” by surrender to narrow parochial loyalties’. What is fundamental, as an enduring value of our polity, is guarantee to each of equal opportunity to unfold the full potential of his personality. Anyone anywhere, humble or high, agrestic or urban, man or woman, whatever be his language or religion, place of birth or residence, is entitled to be afforded equal chance for admission to any secular educational course for cultural growth, training facility, speciality or employment. It would run counter to the basic principle of equality before the law and equal protection of the law if a citizen by reason of his residence in State A, which ordinarily in the commonality of cases, would be the result of his birth in a place situate within that State, should have opportunity for education or advancement which is denied to another citizen because he happens to be resident in State B. It is axiomatic that talent is not the monopoly of the residents of any particular State; it is more or less evenly distributed and given proper opportunity and environment, everyone has a prospect of rising to the peak. What is necessary is equality of opportunity and that cannot be made dependent upon where a citizen resides. If every citizen is afforded equal opportunity, genetically and environmentally, to develop his potential, he will be able in his own way to manifest his faculties fully leading to all-round improvement in excellence. The philosophy and pragmatism of universal excellence through equality of opportunity for education and advancement across the nation is part of our founding faith and constitutional creed. The effort must, therefore, always be to select the best and most meritorious students for admission to technical institutions and medical colleges by providing equal opportunity to all citizens in the country and no citizen can legitimately, without serious detriment to the unity and integrity of the nation, be regarded as an outsider in our constitutional set-up. Moreover, it would be against national interest to admit in medical colleges or other institutions giving instruction in specialities, less meritorious students when more meritorious students are available, simply because the former are permanent residents or residents for a certain number of years in the State while the latter are not, though both categories are citizens of India.
- g Exclusion of more meritorious students on the ground that they are not resident within the State would be likely to promote sub-standard candidates and bring about fall in medical competence, injurious in the long run to the very region. ‘It is no blessing to inflict quacks and medical midgets on people by wholesale sacrifice of talent at the threshold. Nor can the very best be rejected from admission because that will be a national loss and the interests of no region can be higher than
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those of the nation.’ The primary consideration in selection of candidates for admission to the medical colleges must, therefore, be merit. The object of any rules which may be made for regulating admissions to the medical colleges must be to secure the best and most meritorious students.” a

But it was observed: (SCC p. 661, para 1)

“... whether, consistently with the constitutional values, admissions to a medical college or any other institution of higher learning situate in a State can be confined to those who have their ‘domicile’ within the State or who are resident within the State for a specified number of years or can any reservation in admissions be made for them so as to give them precedence over those who do not possess ‘domicile’ or residential qualification within the State, irrespective of merit.” b

47. The right of development in a developing country is acknowledged in international treaties, charters and conventions. c

48. Referring to the State mentality and pointing out to law that there does not exist any separate State domicile in India, this Court specifically banished the residential requirement for the purpose of admission into postgraduate medical courses for all times. It directed: (SCC pp. 690-93, para 22)

“22. So much for admission to the MBBS course, but different considerations must prevail when we come to consider the question of reservation based on residence requirement within the State or on institutional preference for admission to the postgraduate courses, such as, MD, MS and the like. There we cannot allow excellence to be compromised by any other considerations because that would be detrimental to the interest of the nation. It was rightly pointed out by Krishna Iyer, J. in *Jagadish Saran case*⁷, and we wholly endorse what he has said: d

‘The basic medical needs of a region or the preferential push justified for a handicapped group cannot prevail in the same measure at the highest scales of speciality where the best skill or talent, must be handpicked by selecting according to capability. At the level of PhD, MD, 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. Here equality, measured by matching excellence, has more meaning and cannot be diluted much without grave risk. (SCC pp. 778-79, para 23) e

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If equality of opportunity for every person in the country is the constitutional guarantee, a candidate who gets more marks than another is entitled to preference for admission. Merit must be the test f

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⁷ *Jagadish Saran (Dr) v. Union of India*, (1980) 2 SCC 768 : AIR 1980 SC 820

a when choosing the best, according to this rule of equal chance for equal marks. This proposition has greater importance when we reach the higher levels of education like postgraduate courses. After all, top technological expertise in any vital field like medicine is a nation's human asset without which its advance and development will be stunted. The role of high-grade skill or special talent may be less at the lesser levels of education, jobs and disciplines of social inconsequence, but more at the higher levels of sophisticated skills and strategic employment. To devalue merit at the summit is to temporise with the country's development in the vital areas of professional expertise. In science and technology and other specialised fields of developmental significance, to relax lazily or easily in regard to exacting standards of performance may be running a grave national risk because in advanced medicine and other critical departments of higher knowledge, crucial to material progress, the people of India should not be denied the best the nation's talent lying latent can produce. If the best potential in these fields is cold-shouldered for populist considerations garbed as reservations, the victims, in the long run, may be the people themselves. Of course, this unrelenting strictness in selecting the best may not be so imperative at other levels where a broad measure of efficiency may be good enough and what is needed is merely to weed out the worthless. (SCC p. 785, para 39)

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e Secondly, and more importantly, it is difficult to denounce or renounce the merit criterion when the selection is for postgraduate or postdoctoral courses in specialised subjects. There is no substitute for sheer flair, for creative talent, for fine-tuned performance at the difficult heights of some disciplines where the best alone is likely to blossom as the best. To sympathise mawkishly with the weaker sections by selecting sub-standard 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 superskilled specialists, not humdrum second-rates. So it is that relaxation on merit, by overruling equality and quality altogether, is a social risk where the stage is postgraduate or postdoctoral. (SCC p. 786, para 44)'

g These passages from the judgment of Krishna Iyer, J. clearly and forcibly express the same view which we have independently reached on our own and indeed that view has been so ably expressed in these passages that we do not think we can usefully add anything to what has already been said there. We may point out that the Indian Medical Council has also emphasized that playing with merit, so far as admissions to postgraduate courses are concerned, for pampering local feeling, will boomerang. We may with advantage reproduce the recommendation of the Indian

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Medical Council on this point which may not be the last word in social wisdom but is certainly worthy of consideration:

‘Students for postgraduate training should be selected strictly on merit judged on the basis of academic record in the undergraduate course. All selection for postgraduate studies should be conducted by the universities.’ a

The Medical Education Review Committee has also expressed the opinion that ‘all admissions to the postgraduate courses in any institution should be open to candidates on an all-India basis and there should be no restriction regarding domicile in the State/Union Territory in which the institution is located’. So also in the policy statement filed by the learned Attorney General, the Government of India has categorically expressed the view that: b

‘So far as admission to the institutions of postgraduate colleges and special professional colleges is concerned, it should be entirely on the basis of all-India merit subject to constitutional reservations in favour of Scheduled Castes and Scheduled Tribes.’ c

We are therefore of the view that so far as admissions to postgraduate courses, such as MS, MD and the like are concerned, it would be eminently desirable not to provide for any reservation based on residence requirement within the State or on institutional preference. But, having regard to broader considerations of equality of opportunity and institutional continuity in education which has its own importance and value, we would direct that though residence requirement within the State shall not be a ground for reservation in admissions to postgraduate courses, a certain percentage of seats may in the present circumstances, be reserved on the basis of institutional preference in the sense that a student who has passed MBBS course from a medical college or university, may be given preference for admission to the postgraduate course in the same medical college or university but such reservation on the basis of institutional preference should not in any event exceed 50 per cent of the total number of open seats available for admission to the postgraduate course. This outer limit which we are fixing will also be subject to revision on the lower side by the Indian Medical Council in the same manner as directed by us in the case of admissions to the MBBS course. But, even in regard to admissions to the postgraduate course, we would direct that so far as superspecialities 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 merit on all-India basis.” d
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It in no uncertain terms directed: (SCC p. 693, para 24)

“24. The decisions reached by us in these writ petitions will bind the Union of India, the State Governments and Administrations of Union Territories because it lays down the law for the entire country and h

moreover we have reached this decision after giving notice to the Union of India and all the State Governments and Union Territories.”

a **49.** A scheme, thus, came to be framed by this Court which is a law within the meaning of Article 141 of the Constitution of India and is binding on all the States in terms of Article 144 of the Constitution of India. The principal considerations which weighed with the Court for arriving at the aforementioned conclusion were: (SCC pp. 686-87, para 19)

b “There can be no doubt that the policy of ensuring admissions to the MBBS course on all-India basis is a highly desirable policy, based as it is on the postulate that India is one nation and every citizen of India is entitled to have equal opportunity for education and advancement, but it is an ideal to be aimed at and it may not be realistically possible, in the present circumstances, to adopt it, for it cannot produce real equality of opportunity unless there is complete absence of disparities and inequalities — a situation which simply does not exist in the country today. There are massive social and economic disparities and inequalities not only between State and State but also between region and region within a State and even between citizens and citizens within the same region. There is a yawning gap between the rich and the poor and there are so many disabilities and injustices from which the poor suffer as a class that they cannot avail themselves of any opportunities which may in law be open to them. They do not have the social and material resources to take advantage of these opportunities which remain merely on paper recognized by law but non-existent in fact. Students from backward States or regions will hardly be able to compete with those from advanced States or regions because, though possessing an intelligent mind, they would have had no adequate opportunities for development so as to be in a position to compete with others. So also students belonging to the weaker sections who have not, by reason of their socially or economically disadvantaged position, been able to secure education in good schools would be at a disadvantage compared to students belonging to the affluent or well-to-do families who have had the best of school education and in open all-India competition, they would be likely to be worsted.”

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50. A distinction was made therefore between the undergraduate course i.e. MBBS course and postgraduate medical course as also superspeciality courses. The Court, therefore, sought to strike a balance of rights and interests of all concerned.

g **51.** However, the percentage of seats to be allotted on all-India basis, however, came to be modified in *Dinesh Kumar (Dr) v. Motilal Nehru Medical College*¹⁶ in the following terms: (SCC p. 28, para 5)

“5. We would also like to clear up one misunderstanding which seems to prevail with some State Governments and universities in regard

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to the true import of our judgment dated 22-6-1984³. They have misinterpreted our judgment to mean that 30% of the *total number* of *seats* available for admission to MBBS course in a medical college should be kept free from reservation on the basis of residence requirement or institutional preference. That is a total misreading of our judgment. What we have said in our judgment is that after providing for reservation *validly made*, whatever seats remain available for non-reserved categories, 30% of such seats at the least, should be left free for open competition and admission to such 30% open seats should not be based on residence requirement or institutional preference but students from all over the country should be able to compete for admissions to such 30% open seats. To take an example, suppose there are 100 seats in a medical college or university and 30% of the seats are validly reserved for candidates belonging to Scheduled Castes and Scheduled Tribes. That would leave 70 seats available for others belonging to non-reserved categories. According to our judgment, 30% of 70 seats, that is, 21 seats out of 70 and not 30% of the total number of 100 seats, namely, 30 seats, must be filled up by open competition regardless of residence requirement or institutional preference.” (emphasis in original)

52. Changes were made in the formula in *Dinesh Kumar (Dr) (II) v. Motilal Nehru Medical College*¹⁷ (SCC at p. 733). This Court thereafter times without number issued directions from time to time regulating admissions in different courses of studies, meticulous supervision and conduct of examinations by the universities as also all-India tests in the following[†]:

1. *Dinesh Kumar (Dr) (III)*¹⁸
2. *Dinesh Kumar (Dr) (IV)*¹⁹
3. *Dinesh Kumar (Dr) (V)*²⁰
4. *Dinesh Kumar (Dr) (VI)*²¹
5. *Dinesh Kumar (Dr) (VII)*²²
6. *Dinesh Kumar (Dr) (VIII)*²³
7. *Dinesh Kumar (Dr) (IX)*²⁴

53. The State of Assam, it appears, was specifically directed to follow institutional preference by this Court by an order dated 2-2-1996 in Writ Petition (Civil) No. 625 of 1995.

³ *Pradeep Jain (Dr) v. Union of India*, (1984) 3 SCC 654 : AIR 1984 SC 1420

¹⁷ (1986) 3 SCC 727

[†] See also *Dinesh Kumar (Dr) v. Motilal Nehru Medical College*, (2003) 11 SCC 192 (II)

¹⁸ *Dinesh Kumar (Dr) v. Motilal Nehru Medical College*, (1987) 4 SCC 122

¹⁹ *Dinesh Kumar (Dr) v. Motilal Nehru Medical College*, (1987) 4 SCC 459

²⁰ *Dinesh Kumar (Dr) v. Motilal Nehru Medical College*, 1989 Supp (2) SCC 428

²¹ *Dinesh Kumar (Dr) v. Motilal Nehru Medical College*, (2003) 11 SCC 191(I) : (1987) 1 Scale 1232

²² *Dinesh Kumar (Dr) v. Motilal Nehru Medical College*, (2003) 11 SCC 191(II) : (1987) 2 Scale 222

²³ *Dinesh Kumar (Dr) v. Motilal Nehru Medical College*, (2003) 11 SCC 192 (I) : (1988) 1 Scale 428

²⁴ *Dinesh Kumar (Dr) v. Motilal Nehru Medical College*, (1990) 4 SCC 627

- 54.** A deviation to the said dicta, however, was sought to be made by a two-Judge Bench of this Court in *Dr Parag Gupta case*¹. In the said decision
- a some of the students complained that whereas the students who had undergone studies in other universities were entitled to reservation by way of domicile or institutional preference, but they, although had successfully competed in all-India entrance test in MBBS course, are not being permitted to compete with their fellow students of Delhi University on the ground of institutional preference, although they belong to the same class of students.
- b **55.** This Court in *Dr Parag Gupta*¹ did not lay down any law. It dealt with the situation on equitable and humanitarian grounds but while doing so, it indisputably deviated from the law laid down in *Dr Pradeep Jain case*³ only by way of an interim arrangement. It inadvertently created reservation on domicile which was forbidden in *Dr Pradeep Jain case*³. The said provisional directions being binding on Delhi University came to be followed
- c in subsequent years. The sympathetic consideration shown by this Court in *Dr Parag Gupta case*¹ came to be misapplied by the Allahabad High Court in *Vineet Singh case*^{*} wherein the High Court directed consideration of cases of the students who belonged to the State of U.P. irrespective of the fact whether they had gone out of their home State on 15% all-India quota or not. This Court in *State of U.P. v. Vineet Singh*²⁵ clarified the position holding that the
- d High Court was wrong in extending the benefit in *Dr Parag Gupta case*¹ to other students and reiterated that *Dr Parag Gupta*¹ decision was confined to the students who had gone to other States under 15% all-India quota. The ratio of the judgment in *Dr Parag Gupta case*¹ came to be reiterated in *Abhinav Aggarwal v. Union of India*²⁶.
- e **56.** In *Prachi Almeida (Dr) v. Dean, Goa Medical College*²⁷ a problem was faced by a student from Delhi who was admitted into Goa Medical College under the 15% all-India quota. She was denied admission in Goa on the ground that she was not a resident of the said State. She, however, was married in Goa. This Court followed *Dr Pradeep Jain case*³ and directed that the student cannot be denied admission on the basis of residence requirement holding that if the candidate had done MBBS course in that State such a
- f candidate would be eligible for admission in the postgraduate medical course therein.
- 57.** Some students of Delhi University, thereafter filed a writ petition questioning the residential reservation in *Magan Mehrotra v. Union of India*². A Bench of this Court therein by an order dated 11-9-2002 noticing the

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1 *Parag Gupta (Dr) v. University of Delhi*, (2000) 5 SCC 684

3 *Pradeep Jain (Dr) v. Union of India*, (1984) 3 SCC 654 : AIR 1984 SC 1420

* WP No. 3098 of 1999, dated 1-5-2000 (All)

25 (2000) 7 SCC 262

26 (2001) 3 SCC 425

27 (2001) 7 SCC 640

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2 *Magan Mehrotra v. Union of India*, (2003) 11 SCC 186 : (2003) 3 Scale 101

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conflict between the decisions in *Dr Pradeep Jain*³ on the one hand and *Dr Parag Gupta*¹ on the other, issued notices to all the States excepting the States of Jammu & Kashmir and Andhra Pradesh and referred the matter to a three-Judge Bench. In *Magan Mehrotra*² this Court held that the decision in *Dr Parag Gupta*¹ is contrary to the decision in *Dr Pradeep Jain*³ stating: (SCC p. 190, paras 8-9) a

“8. ... A bare look at the judgment of the three-Judge Bench in *Pradeep Jain case*³ and two-Judge Bench in *Parag Gupta case*¹ in relation to the question of preference in the postgraduate course, it cannot but be held that *Parag Gupta case*¹ took a different view by upholding the residential preference, in essence, which was contrary to the judgment of the three-Judge Bench in *Pradeep Jain case*³. Independently, on examining the issue of preference, we are also of the considered opinion that the decision rendered by this Court in *Pradeep Jain case*³ had taken the correct criterion into consideration and we therefore, agree with the principles evolved and the ratio given in *Pradeep Jain case*³ so far as it relates to admission into the postgraduate courses and the question of institutional preference to be given to those who had studied their undergraduate courses in the very institution as against the 15% quota on all-India basis. In this view of the matter, the impugned Bulletin of Information issued by Delhi University in relation to the postdoctoral (DM/MCh) postgraduate degree must be held to be contrary to the direction of this Court in *Pradeep Jain case*³ and the same is accordingly quashed. However, this order shall be made effective from the next academic session. b

9. We, however, direct the States of Assam, Tamil Nadu, Goa and Karnataka to follow the pattern of institutional preference as has been indicated by this Court in *Pradeep Jain case*³ and reiterated by us today.” c

58. We may, however, notice that this Court in *K. Duraisamy v. State of T.N.*²⁸ upheld the sources for admission by giving preference to the doctors working in the hospitals in the postgraduate courses on the ground that the same constitutes a valid classification. d

59. The discussions on this topic would remain incomplete if we fail to notice a recent decision of this Court in *AIIMS Students' Union*⁶ rendered by one of us, Hon'ble Lahoti, J. wherein this Court, keeping in view the peculiar situation obtaining in the case of *AIIMS*⁶, held institutional reservation to be unconstitutional. It, however, keeping in view the necessity of giving institutional preference to students who had studied from AIIMS, directed that such preference be given to the extent of 25% of students instead of 33%. However, keeping in view the fact that there were forty seats in MBBS e

3 *Pradeep Jain (Dr) v. Union of India*, (1984) 3 SCC 654 : AIR 1984 SC 1420

1 *Parag Gupta (Dr) v. University of Delhi*, (2000) 5 SCC 684

2 *Magan Mehrotra v. Union of India*, (2003) 11 SCC 186 : (2003) 3 Scale 101
28 (2001) 2 SCC 538 f

6 *AIIMS Students' Union v. AIIMS*, (2002) 1 SCC 428 : AIR 2001 SC 3262 g

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course whereas 132 seats in postgraduate courses, the institutional preference to be given to the students of AIIMS came to about 82.5%.

a **60.** In this context it is relevant to examine the *relevance of an entry in the State List or the Concurrent List*.

61. “Education” appears both in the Union List as also in the Concurrent List. The relevant entries in the Constitution are as under:

List I

b “66. Coordination and determination of standards in institutions for higher education or research and scientific and technical institutions.”

List III

“25. Education, including technical education, medical education and universities, subject to the provisions of Entries 63, 64, 65 and 66 of List I; vocational and technical training of labour.”

c **62.** An argument has been advanced that different interpretation is needed having regard to the shift of constitutional entry from List II to List III. One of us in *T.M.A. Pai Foundation v. State of Karnataka*²⁹ had to say the following: (SCC p. 597, para 183)

d “Further, under clause (2) of Article 246 Parliament and subject to clause (1) the legislature of any State are empowered to make law with respect to any of the matters enumerated in List III Seventh Schedule and under clause (3) of Article 246, the legislature of any State is empowered to enact law with respect to any of the matters enumerated in List II in the Seventh Schedule subject to clauses (1) and (2). From the aforesaid provisions it is clear that it is Article 246 and other articles which either empower Parliament or the State Legislature to enact law and not the entries finding place in the three lists of the Seventh Schedule. Thus the function of entries in the three lists of the Seventh Schedule is to demarcate the area over which the appropriate legislatures can enact laws but do not confer power either on Parliament or the State Legislatures to enact laws. It may be remembered, by transfer of the entries, the character of the entries is not lost or destroyed. In this view of the matter by transfer of contents of Entry 11 of List II to List III as Entry 25 has not denuded the power of the State Legislature to enact law on the subject ‘Education’ but has also conferred power on Parliament to enact law on the subject ‘Education’.”

e **63.** Shifting of the entry from the State List to the Concurrent List is not, thus, relevant inasmuch as the State in the absence of any parliamentary Act has the legislative competence to enact a statute laying down reservation for entry in any course of studies including medical courses.

f **64.** The sole question, therefore, is as to whether reservation by way of institutional preference is ultra vires Article 14 of the Constitution of India. We think not. Article 14, it will bear repetition to state, forbids class legislation but does not forbid reasonable classification, which means: (1)

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must be based on reasonable and intelligible differentia; and (2) such differentia must be on rational basis.

65. Hence, we may also notice the argument, whether institutional reservation fulfils the aforementioned criteria or not must be judged on the following:

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 regards the State's power on the extent of its legislative competence.

4. Hardship of a few cannot be the basis for determining the validity of any statute.

66. The court while adjudicating upon the constitutionality of the provisions of the statute may notice all relevant facts whether existing or conceived.

67. This Court may therefore notice the following:

(i) The State runs the universities.

(ii) It has to spend a lot of money in imparting medical education to the students of the State.

(iii) Those who get admission in postgraduate courses are also required to be paid stipends. Reservation of some seats to a reasonable extent, thus, would not violate the equality clause.

(iv) The criterion for institutional preference has now come to stay. It has worked out satisfactorily in most of the States for the last about two decades.

(v) Even those States which defied the decision of this Court in *Dr Pradeep Jain case*³ had realized the need for institutional preference.

(vi) No sufficient material has been brought on record for departing from this well-established admission criterion.

(vii) It goes beyond any cavil of doubt that institutional preference is based on a reasonable and identifiable classification. It may be that while working out the percentage of reservation invariably some local students will have preference having regard to the fact that domicile/residence was one of the criteria for admission in MBBS course. But together with the local students, 15% students who had competed in all-India entrance examination would also be getting the same benefit. The percentage of students who were to get the benefit of reservation by way of institutional preference would further go down if the decision of this Court in *Dr Pradeep Jain case*³ is scrupulously followed.

(viii) Giving of such a preference is a matter of State policy which can be invalidated only in the event of being violative of Article 14 of the Constitution of India.

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³ *Pradeep Jain (Dr) v. Union of India*, (1984) 3 SCC 654 : AIR 1984 SC 1420

(ix) The students who would get the benefit of institutional preference being on identifiable ground, there is hardly any scope for manipulation.

a **68.** In *N. Vasundara v. State of Mysore*³⁰ it was observed:

“But cases of hardship are likely to arise in the working of almost any rule which may be framed for selecting a limited number of candidates for admission out of a long list. This, however, would not render the rule unconstitutional.”

b **69.** As noticed hereinbefore, in *D.N. Chanchala case*¹⁴, *M.R. Mini case*¹⁵ and *Jagadish Saran case*⁷ institutional preference has been preferred. It has been reiterated in the law laid down by way of a scheme evolved in *Dr Pradeep Jain*³ and reiterated in *Magan Mehrotra*².

c **70.** We, therefore, do not find any reason to depart from the ratio laid down by this Court in *Dr Pradeep Jain*³. The logical corollary of our finding is that reservation by way of institutional preference must be held to be not offending Article 14 of the Constitution of India.

d **71.** However, the test to uphold the validity of a statute on equality must be judged on the touchstone of reasonableness. It was noticed in *Dr Pradeep Jain case*³ that reservation to the extent of 50% was held to be reasonable. Although subsequently, in *Dr Dinesh Kumar (II) case*¹⁷ it** was reduced to 25% of the total seats. The said percentage of reservation was fixed keeping in view the situation as then existing. The situation has now changed to a great extent. Twenty years have passed. The country has during this time produced a large number of postgraduate doctors. Our Constitution is organic in nature. Being a living organ, it is ongoing and with the passage of time, law must change. Horizons of constitutional law are expanding.

e ³⁰ (1971) 2 SCC 22 : 1971 Supp SCR 381

¹⁴ *D.N. Chanchala v. State of Mysore*, (1971) 2 SCC 293

¹⁵ *M.R. Mini (Minor) v. State of Kerala*, (1980) 2 SCC 216

⁷ *Jagadish Saran (Dr) v. Union of India*, (1980) 2 SCC 768 : AIR 1980 SC 820

³ *Pradeep Jain (Dr) v. Union of India*, (1984) 3 SCC 654 : AIR 1984 SC 1420

² *Magan Mehrotra v. Union of India*, (2003) 11 SCC 186 : (2003) 3 Scale 101

f ¹⁷ *Dinesh Kumar (Dr) (II) v. Motilal Nehru Medical College*, (1986) 3 SCC 727

** [Ed.: To understand this part of the ruling it may be useful for the reader to read the following extracts which contain the two formulations referred to herein:

g In *Pradeep Jain case*, (1984) 3 SCC 654, as far as the permissible level of reservations in postgraduate medical courses on the basis of institutional preference is concerned, it was held that “reservation on the basis of institutional preference should not in any event exceed 50% of the total number of open seats available for admission to the postgraduate course”. (SCC p. 693, para 22) In the case of the permissible level of reservations at the MBBS/BDS level it was held that reservation on the basis of domicile/residence or institutional preference should “in no event exceed the outer limit of 70% of the total number of open seats after taking into account other kinds of reservation validly made” (SCC p. 690, para 21).

h The point that was raised by the Govt. of India in *Dinesh Kumar (II) case*, (1986) 3 SCC 727, 732, para 5, that the phrase “open seats after taking into account other kinds of reservation validly made” was not defined. For the reasons set out in para 5 of SCC, the Supreme Court in *Dinesh Kumar (II) case* changed its formulation in the following way: “Instead of making available for admission on all-India basis 50% of the open seats after taking into account reservations validly made, we would direct that not less than 25% of the total number of seats without taking into account any reservations, shall be made available for being filled on the basis of All India Entrance Examination.” (SCC p. 733, para 5)]

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72. Having regard to the facts and circumstances of the case, we are of the opinion that the original scheme as framed in *Dr Pradeep Jain case*³ should be reiterated in preference to *Dr Dinesh Kumar (II) case*¹⁷. *a*
Reservation by way of institutional preference, therefore, should be confined to 50% of the seats since it is in public interest.

73. For the purpose of selecting the candidates, it is necessary to hold an all-India entrance examination by an impartial and reputed body. We must, therefore, lay down the criteria therefor. AIIMS in terms of an order passed by this Court has been conducting the said examination. It may continue to *b*
do so unless a competent body is created by the Central Government in terms of a parliamentary Act or otherwise. All expenses for conducting such examination shall be borne by the Central Government which would also provide the requisite infrastructure therefor. One test shall be held for all the students taking admission throughout the country. This order is passed *c*
keeping in view the fact that now one common entrance test is held for admission against 25% of all-India quota and other tests are being held by the respective universities. Disparities in such tests should be done away with and merit of the students should be judged on the basis of one test held therefor.

74. AIIMS is an institution of excellence. It is a class by itself and pride. We are, therefore, of the opinion that in AIIMS and the medical colleges of *d*
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 respects, the decision of this Court in *AIIMS Students' Union case*⁶ shall operate.

75. Our directions aforementioned, however, are interim in nature. Parliament having regard to Entry 66 List I of the Seventh Schedule of the *e*
Constitution of India has the legislative competence which would take care of the country as a whole. While making such a legislation, Parliament, undoubtedly, would take into consideration the special needs of some small States, having regard to their backwardness — economic, social and educational, as also geographical conditions.

76. Parliament has also the legislative competence in terms of Entry 25 *f*
List III of the Seventh Schedule of the Constitution. It, for education and particularly higher education where excellence is required, while enacting law must also foresee that in the era of liberalisation and globalisation, Indian citizens must compete with their counterparts of the developed countries. Merit, thus, must be allowed to explore to the fullest extent. Genius hidden in *g*
the citizens must be allowed to blossom. Despite 55 years of India's existence as an independent nation, a national policy on higher education has not come into being. Its significance and importance was highlighted in *Dr Pradeep Jain case*³; but Parliament did not pay any heed thereto.

³ *Pradeep Jain (Dr) v. Union of India*, (1984) 3 SCC 654 : AIR 1984 SC 1420

¹⁷ *Dinesh Kumar (Dr) (II) v. Motilal Nehru Medical College*, (1986) 3 SCC 727

⁶ *AIIMS Students' Union v. AIIMS*, (2002) 1 SCC 428 : AIR 2001 SC 3262

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77. The courts are normally reluctant to issue any direction to the Central Government for making law. Following our practice, we refrain ourselves from issuing any direction in this regard. We hope and trust that the Central Government expeditiously considers making of a legislation or taking such steps as are necessary in this behalf keeping in view the requirement of coordination in higher education in terms of Entry 66 List I of the Seventh Schedule of the Constitution of India.

78. For the aforesaid reasons, we do not find any merit in the contentions advanced on behalf of the petitioners. The petitioners are not entitled to any relief. With the aforesaid directions, these writ petitions and the appeal are disposed of.

79. There shall be no order as to costs.

S.B. SINHA, J. (concurring)— I have had the advantage of reading the draft opinion of the Hon'ble the Chief Justice of India. While concurring with the said judgment, I would like to add a few words of mine.

81. The core question involved in these appeals is as to whether by providing for institutional reservation, the equality clause is violated.

82. Article 14 of the Constitution of India prohibits discrimination in any form. Discrimination at its worst form would be violative of the basic and essential features of the Constitution. It is trite that even the fundamental rights of a citizen must conform to the basic features of the Constitution. Preamble of the Constitution in no uncertain terms lays emphasis on equality.

83. In *Kesavananda Bharati v. State of Kerala*³¹ Shelat and Grover, JJ. stated that: [SCC p. 454, para 582(5)]

“582. (5) The dignity of the individual secured by the various freedoms and basic rights in Part III and the mandate to build a welfare State contained in Part IV (would be illustrative of basic features of the Constitution of India)”

Further, Hegde and Mukherjea, JJ. stated the law thus: (SCC pp. 484-85, para 661)

“661. ... The broad contours, the basic elements or fundamental features of our Constitution are clearly delineated in the preamble. Unlike in most of the other constitutions, it is comparatively easy in the case of our Constitution to discern and determine the basic elements or the fundamental features of our Constitution. For doing so, one has only to look to the preamble.”

84. *Kesavananda Bharati*³¹ has been followed in *L. Chandra Kumar v. Union of India*³².

85. In *Bhim Singhji v. Union of India*³³ Krishna Iyer, J., however, in his characteristic style opined: (SCC p. 186, para 20)

“20. The question of basic structure being breached cannot arise when we examine the vires of an ordinary legislation as distinguished from a constitutional amendment. *Kesavananda Bharati*³¹ cannot be the

³¹ (1973) 4 SCC 225

³² (1997) 3 SCC 261 : 1997 SCC (L&S) 577

³³ (1981) 1 SCC 166

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last refuge of the Proprietariat when benign legislation takes away their 'excess' for societal weal. Nor, indeed, can every breach of equality spell disaster as a lethal violation of the basic structure. Peripheral inequality is inevitable when large-scale equalization processes are put into action. If all the judges of the Supreme Court in solemn session sit and deliberate for half a year to produce a legislation for reducing glaring economic inequality their genius will let them down if the essay is to avoid even peripheral inequalities. Every large cause claims some martyr, as sociologists will know. Therefore, what is a betrayal of the basic feature is not a mere violation of Article 14 but a shocking, unconscionable or unscrupulous travesty of the quintessence of equal justice. If a legislation does go that far it shakes the democratic foundation and must suffer the death penalty."

86. Recently, a question came up before the US Supreme Court in *Jennifer Gratz and Patrick Hamacher v. Lee Boiling*³⁴ wherein the guidelines providing for selection method under which every applicant from an under-represented racial or ethnic minority group was to be *automatically* awarded 20 points out of 100 points needed to guarantee admission, was struck down as has been violative of equality protection clause. It was observed:

"The very nature of a college's permissible practice of awarding value to racial diversity means that race must be considered in a way that increases some applicants' chances for admission. Since college admission is not left entirely to inarticulate intuition, it is hard to see what is inappropriate in assigning some stated value to a relevant characteristic, whether it be reasoning ability, writing style, running speed, or minority race. Justice Powell's plus factors necessarily are assigned some values. The college simply does by a numbered scale what the law school accomplishes in its 'holistic review', Grutter, post, at 25; the distinction does not imply that applicants to the undergraduate college are denied individualized consideration or a fair chance to compete on the basis of all the various merits their applications may disclose."

87. Delivering his minority opinion on his own behalf as also on behalf of Justice Souter, Justice Ginsburg, however, held:

"Our jurisprudence ranks race a 'suspect' category, 'not because (race) is inevitably any impermissible classification, but because it is one which usually, to our national shame, has been drawn for the purpose of maintaining racial inequality'. *Norwalk Core v. Norwalk Redevelopment Agency*³⁵. (footnote omitted) But where race is considered 'for the purpose of achieving equality', *ibid.*, at p. 932, no automatic proscription is in order. For as insightfully explained, 'the Constitution is both color-blind and color-conscious. To avoid conflict with the equal protection clause, a classification that denies a benefit, causes harm or imposes a

34 Decided on 23-6-2003, likely to be reported in (2003) 539 US

35 395 F 2d 920, 931-32 (CA 2 1968)

a burden must not be based on race. In that sense, the Constitution is color-blind. But the Constitution is color-conscious to prevent discrimination being perpetuated and to undo the effects of past discrimination,' *United States v. Jefferson County Bd. of Ed.*³⁶, (Wisdom, J.); see Wechsler, *The Nationalization of Civil Liberties and Civil Rights*, Supp. to 12 Tex.Q.10,23 (1968) (*Brown* may be seen as disallowing racial classifications that 'imply an invidious assessment' while allowing such classifications when 'not invidious in implication' but advanced to 'correct inequalities'). Contemporary human rights documents draw just this line, they distinguish between policies of oppression and measures designed to accelerate de facto equality. See Grutter, post, at 1 (Ginsburg, J., concurring, citing the United Nations-initiated Conventions on the Elimination of All Forms of Racial Discrimination and on the Elimination of All Forms of Discrimination against Women)."

c 88. The validity of institutional reservation must be judged on the touchstone of the equality clause.

89. While considering the reasonableness of institutional reservation, we have taken into consideration the effect of the equality clause contained in Articles 14 and 15 of the Constitution of India.

d 90. The question as regards merit of the students vis-à-vis the right of development and the human rights' angle had been considered at some length in *Islamic Academy of Education v. State of Karnataka*³⁷ and following *Pradeep Jain (Dr) v. Union of India*³ it has been held: (SCC pp. 778-79, paras 177-78)

e "177. For the purpose of achieving excellence in a professional institution, merit indisputably should be a relevant criterion. Merit, as has been noticed in the judgment, may be determined in various ways (paragraph 59). There cannot be, however, any foolproof method whereby and whereunder the merit of a student for all times to come may be judged. Only, however, because a student may fare differently in a different situation and at different point of time by itself cannot be a ground to adopt different standards for judging his merit at different points of time. Merit for any purpose and in particular, for the purpose of admission in a professional college should be judged as far as possible on the basis of same or similar examination. In other words, inter se merit amongst the students similarly situated should be judged applying the same norm or standard. Different types of examinations, different sets of questions, different ways of evaluating the answer-books may yield different results in the case of the same student.

g 178. Selection of students, however, by the minority institutions even for the members of their community cannot be bereft of merit. Only in a given situation less meritorious candidates from the minority community can be admitted vis-à-vis the general category; but therefor the modality has to be worked out. For the said purpose de facto equality doctrine may

h 36 372 F 2d 836, 876 (CA 5 1966)

37 (2003) 6 SCC 697

3 (1984) 3 SCC 654 : AIR 1984 SC 1420

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be applied instead of de jure equality as every kind of discrimination may not be violative of the equality clause. (See *Pradeep Jain (Dr) v. Union of India*³.)”

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91. Even applying the said tests, institutional reservation cannot be held to be unconstitutional.

92. Mr Nariman contended that provision for reservation being a suspect legislation, the strict scrutiny test should be applied. Even applying such a test, we do not think that the institutional reservation should be done away with having regard to the present-day scenario. We may notice that such a test has been applied for upholding a statute recently in *Balram Kumawat v. Union of India*³⁸.

b

DR AR. LAKSHMANAN, J. (concurring)— While concurring with the conclusion arrived at by the Hon’ble the Chief Justice, I would like to add the following few lines for streamlining the policies and processes for admission to medical courses and other professional courses. The issues and options are discussed below:

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Every year during the admission season several lakhs of students undergo immense suffering and harassment in seeking admission to professional courses caused by uncertain policies, ambiguous procedures and inadequate information. The miseries of students and parents are escalating year after year due to boundless expansion in the number of professional institutions and their intake capacity, emergence of a large variety of newer disciplines and mobility of students seeking admissions beyond the boundaries of States. The students who are about to complete their high school education go through a period of acute anxiety caused by the uncertain situation about their chances for further education. The number of qualified students wanting to go for higher studies has been swelling, largely motivated by hopes of better economic security and partly by a desire to attain greater upward social mobility. Then begins their trauma due to many prevailing unfair practices in admissions and devious ways of fee collections exploiting the anxiety of students and uncertainty of procedures. Most of the efforts to deal with these problems are ad hoc in nature often decided under judicial orders. Different State and Central authorities take many different actions often leading to severe inconsistencies. There is substantial scope for streamlining the admission process, even within the regulatory powers of the authorities, provided these issues are not dealt with on an emergency basis during the admission season but done in a coordinated and comprehensive manner ahead of time.

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Issue one

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Entry qualification

94. For admissions to undergraduate programmes, there are several different eligibility norms among the different categories of institutions and among the various States. Some are based on twelfth standard marks or grades only, some are based on the entrance examination only and some are

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³ *Pradeep Jain (Dr) v. Union of India*, (1984) 3 SCC 654 : AIR 1984 SC 1420

³⁸ (2003) 7 SCC 628

determined by a combination of these with different weightages. There is an endless number of justifications for each of the above, confusing the students from different parts of the country.

- a
- 95.** The preferred option, in my view, should be for a designated agency or the university concerned to conduct the entrance examination for professional as well as non-professional institutions in the specified subjects (an option suggested by this Court). The marks awarded in those subjects should be the basis for determining the merits of the students for admission to the institutions to which they apply.

Issue two

Unplanned growth of institutions

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- 96.** The growth of the professional institutions has been at a geometrical rate during the last five years. During recent years the expansion of educational facilities for higher education has been nearly exclusively in the private unaided sector due to the financial incapacity of Governments.

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- 97.** Those who have ventured to start the new institutions are motivated by commercial interests and not by educational and social interests. Political considerations have become paramount in sanctioning of colleges. There has been a high level of exploitation of students in certain disciplines through unethical and illegal collection of unauthorized payments. The discontent among the meritorious students is simmering also because only those, even with poor competence, but who could pay high illegal amounts can get into many institutions.

Options

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- 1.** The country needs to evolve urgently a predictable pattern of growth for the higher education system in technical, managerial, and other professional disciplines as well as in Science and Humanities at least for the next five years. The present level of ad hoc approach and stampede should be eliminated.

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- 2.** The national blueprint and the road map for the development of professional education should be based on maintaining credible level of quality standards and anticipated demand structure in economic and social sectors.

Issue three

Fee structure

98. This Court states:

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- “A rational fee structure should be adopted by the management, which would not be entitled to charge a capitation fee. Appropriate machinery can be devised by the State or university to ensure that no capitation fee is charged and that there is no profiteering.”

Options

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- 99.** One possible remedy is to make a rule under the Prevention of the Capitation Fee Act that collecting any fee that was not previously announced in the college publications and any fee collected without a formal receipt should be punishable offences. This rule should be strictly enforced.

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Issue four

Certificate hassles

100. When we consider the size of our country and the large number of institutions and the huge volume of applicants, the man-hours and money lost in running around for getting the certificates during the admission season must run into equivalent of several crores of rupees. A more hassle-free system for authenticating the required information from students should be evolved. a

Options b

101. Every student be provided with a basic identity certificate while he/she is in the higher secondary stage (10th to 12th standard). This should provide all essential information such as the date of birth, community, domicile, photo identity etc., authenticated by a designated official. This should be acceptable for admission requirements in any institution and in any State in India. c

Superspeciality institutions and institutions where highly skilled training/education is imparted

102. On the issue whether there can be Article 15(4) reservations in superspeciality courses, this Court was categorical when it declared that: *“there could not be any reservation at the level of superspecialisation in Medicine because any dilution of merit at the level would adversely affect the national interest in having the best possible at the highest level of professional and educational training”*. d

103. Similar view was already taken by this Court in *Pradeep Jain (Dr) v. Union of India*³.

104. In similar vein, in *Jagdish Saran (Dr) v. Union of India*⁷ this Court observed that: *merit must be the test when choosing the best, according to this rule of equal chance for equal marks*. This proposition has greater importance when we reach the higher levels of education for postgraduate courses. This Court further observed that a host of variables influence the qualification of the reservation as one factor deserves great emphasis, *the higher the level of the speciality the lesser the role of reservation*. e

105. In the case of Article 15(4) reservations, this Court has made it clear that the claims of national interest demands that *these reservations can never exceed 50% of the available seats in the educational institutions concerned*. f

106. The view was approved by this Court in the case of *Indra Sawhney v. Union of India*³⁹. If one looks at this issue in the light of the spirit of the ratios laid down in *Preeti Srivastava v. State of M.P.*⁴⁰ and in *AIIMS Students' Union v. AIIMS*⁶, one would come to the inevitable conclusion that the constitutional reservations contemplated under Article 15(4) should be kept at g

³ (1984) 3 SCC 654 : AIR 1984 SC 1420

⁷ (1980) 2 SCC 768 : AIR 1980 SC 820

³⁹ 1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1 : (1992) 22 ATC 385

⁴⁰ (1999) 7 SCC 120 : AIR 1999 SC 2894

⁶ (2002) 1 SCC 428 : AIR 2001 SC 3262

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the minimal level so that national interest in the achievement of the goal of excellence in all fields is not unduly affected.

- a* 107. Of course, as between the reserved category candidates, there should be inter se merit observed. This has been emphasised by this Court in several cases.

- b* 108. As regards the constitutional validity of institutional/regional/universitywise reservation/preference, in view of this Court's emphasis on the need to strive for excellence which alone is in the national interest, it may not be possible to sustain its constitutional validity. However, the presently available decisional law is in support of institutional preference to the extent of 50% of the total available seats in the educational institutions concerned.

Conclusions

- c* (1) In the case of Central educational institutions and other institutions of excellence in the country the judicial thinking has veered around the dominant idea of national interest with its limiting effect on the constitutional prescription of reservations. The result is that in the case of these institutions the scope for reservations is minimal.

- d* (2) As regards the feasibility of constitutional reservations at the level of superspecialities, the position is that the judiciary has adopted the dominant norm i.e. "the higher the level of the speciality the lesser the role of reservation". At the level of superspecialities the rule of "equal chance for equal marks" dominates. This view equally applies to all superspeciality institutions.

- e* (3) As regards the scope of reservation of seats in educational institutions affiliated and recognised by State universities, the constitutional prescription of reservation of 50% of the available seats has to be respected and enforced.

(4) The institutional preference should be limited to 50% and the rest being left for open competition based purely on merits on an all-India basis.

- f* (5) As regards private non-minority educational institutions distinction between government-aided and unaided institutions. While the Government/State can prescribe guidelines as to the process of selection and admission of students, the Government/State while issuing guidelines has to take into consideration the constitutional mandate of the requirement of protective discrimination in matters of reservation of seats as ordained by the decisional law in the country. Accordingly, the extent of reservation in no case can exceed 50% of the seats. The inter se merit may be assessed on the basis of a common all-India entrance test or on the basis of marks at the level of qualifying examination.

- g* (6) The position with respect to minority-aided institutions is that they are bound by the requirement of constitutional reservation along with other regulatory controls. However, the right to admit students of their choice being part of the right of religious and linguistic minorities, to establish and administer educational institutions of their choice, the managements of these educational institutions can reserve seats to a

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reasonable extent, not necessarily 50% as laid down in *Stephens College case*[†]. Out of the seats left after the deduction of management quota, the State can require the observance of the requirement of constitutional reservation. a

(7) As regards the unaided institutions, they have a large measure of autonomy even in matters of admission of students as they are not bound by the constraints of the demands of Article 29(2). Nor are they bound by the constraints of the obligatory requirements of constitutional reservation. b

109. Before parting with this case, I am of the opinion that *the younger generation in our society nurturing fond hopes and aspiration for their future professional careers should feel it as a pleasurable experience to explore the available options in higher education*. They should be spared from the mental torture due to hassles and unsavoury experiences in getting to the first base. To the extent possible, they should be made to feel that they are part of one nation. Tensions and frustrations at their impressionable age will surely result in a society with distorted and negative values damaging the foundations of a healthy society. The policies and procedures for admissions should be viewed from the larger impact on the future of India. c

[CITED ORDERS]

(1)

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(BEFORE G.B. PATTANAIK, C.J. AND K.G. BALAKRISHNAN
AND S.B. SINHA, JJ.)

MAGAN MEHROTRA AND OTHERS . . . Petitioners;

Versus

UNION OF INDIA AND OTHERS . . . Respondents. e

Writ Petitions (C) No. 417 of 2000 with No. 316 of 2000,
decided on December 17, 2002

Universities — Admission — Medical colleges — Admission to postgraduate courses — Reservation of seats — Proper criterion for preference to those who studied undergraduate course in a particular institution against 15% all-India quota, held, is institutional preference and not residential preference — Information Bulletin of Delhi University for academic session 2001-02 postulating to the contrary, quashed — However, the order directed to be effective from next academic session — States which have adopted the pattern of residential preference directed to follow the pattern of institutional preference — *Parag Gupta (Dr) v. University of Delhi*, (2000) 5 SCC 684, impliedly overruled f

Delhi University issued a Bulletin of Information for the academic session 2001-02 stipulating that the candidates who had passed MBBS examination from any other university under the 15% all-India quota would also be eligible for admission in postgraduate course if they were permanent residents of NCT of g

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[†] *St. Stephen's College v. University of Delhi*, (1992) 1 SCC 558