# Compilation of Indian Judgments on the Right Against Discrimination

Lalit Panda
Husain Aanis Khan

V | D H | Centre for Legal Policy

## *Note:*

This document accompanies a Vidhi research report titled "The State Shall Not Discriminate: A Roadmap for the Right Against Discrimination in India". This document is a compilation of 117 Supreme Court and High Court judgments (and one Privy Council judgment) on the right against discrimination, and attempts to provide a more comprehensive and accessible resource than has previously been available for practitioners and researchers studying the subject. It is hoped that this resource can serve as a ready reference that can be used to promote the consistent and coherent development of the right.

To this end, the bench strength in Supreme Court cases, the relevant ground(s) of discrimination, and the measure(s) under challenge have all been mentioned. The column to the right titled 'Relevant Findings' summarises and provides paragraph/page numbers for those parts of the judgments that are relevant for discrimination law, explaining matters such as the general principles of discrimination, the relationship between the right against discrimination and the right to equality, significant interpretations of constitutional text, the judicial test to be applied, the actual application of the test in the case, any discussion on the justification of discriminatory measures or exceptions to the right, reasoning that is specific to a particular ground of discrimination, and any other reasoning that has precedential value in future applications of the right.

Where a judgment has multiple opinions that together constitute the majority view, we have attempted to record each opinion. While the details in this document have been recorded with due care, errors are possible and omission of some relevant judgments is inevitable. The explanation of court findings should not be treated as legal advice, especially as a few overruled judgments have been recorded. Further, while the attempt has been made to provide a comprehensive compilation, dissenting opinions are not mentioned and only a selection of cases on reservations is provided.

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| S. No. | Case and Citation | Court | Ground and Impugned Measure | Relevant Findings |
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| 1. | *Punjab Province v. Daulat Singh*<br><br>(1946) FCR 1 | Privy Council | Descent<br><br>Provision prohibiting *benami* transaction by member of agricultural tribe with a non-member | Provision found discriminatory.<br><br>Test is whether "operation" of impugned provision results in a prohibition on the ground of descent. Not relevant whether the Act (on consideration of its scope and object) is "based" on the ground of descent. Object of the Act does not obviate its effect. (pp.73-74) |

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| | | | | Also held that in "some" of the cases (e.g., where a non-member of a tribe resides in the district), the prohibition is "only" on the ground of descent. (pp.74-75) |
| *2.* | *Sri Sri Mahadev Jiew v. Dr B.B. Sen*<br><br>AIR 1951 Cal 563 | Calcutta High Court | Sex<br><br>Rule requiring monetary security from women plaintiffs who do not have sufficient immovable property in India, but from only those men without such property who reside outside India | Rule upheld.<br><br>Art.15(1) requires that "sex by itself alone" should not be a ground of discrimination. If there are other conditions "superadded" to sex, it is not hit by Article 15(1). Here, whether a person owns sufficient immovable property is the additional/important/dominant consideration. (paras 30-32, 38) |
| *3.* | *State v. Sheikh Husein Shaik Mohomed*<br><br>AIR 1951 Bom 285 | Bombay High Court | Place of birth<br><br>Provision enabling externment order against any person who has committed certain offences and if they are not born in Greater Bombay | Provision struck down.<br><br>Provision does not apply to similarly circumstanced person who is born in Greater Bombay, making the provision discriminatory on the ground of place of birth alone. (pp.178-81) |
| *4.* | *State of Madras v. Champakam Dorairajan*<br><br>AIR 1951 SC 226 | Supreme Court (7-judge) | Religion, race, caste<br><br>Government order allocating seats in college to different communities (Non-Brahmin, Backward | Order struck down.<br><br>As per Art.29(2), while a citizen can be denied admission due to lack of requisite academic qualifications, if he has such qualifications, he cannot be denied admission only on grounds of religion, race, caste, language, or any of them. (para 12)<br><br>While there is a directive principle of state policy regarding the promotion of the educational and economic interests of weaker sections with special care, such principles |

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| | | | Hindu, Brahmin, Harijan, Anglo-Indian and Indian Christian, and Muslim) on the basis of fixed quotas | are unenforceable and cannot override fundamental rights. If the directive principle is read to be overriding, Art.16(4) would be redundant. Provision similar to Art.16(4) was not made in relation with admissions to educational institutions. (paras 13-17)<br><br>It was argued that the denial of admission was not just because the petitioners were Brahmins but additionally because two seats had been reserved for Brahmins and they had been filled by more meritorious candidates. Court finds that such reasoning was not applicable when considering the seats that had been reserved for communities other than Brahmins, and for these seats the Brahmins had been denied admission "not on any ground other than the sole ground of their being Brahmins". The order is contrary to Art.29(2) as it proceeds on the basis of religion, race and caste. (paras 19-20) |
| *5.* | *Anjali Roy v. State of West Bengal*<br><br>AIR 1952 Cal 825 | Calcutta High Court | Sex<br><br>Refusal to admit women in an educational institution and instead allow them to receive the same qualifications from a separate facility for women alleged to be inferior in standard of teaching and equipment | Policy upheld.<br><br>Differentiation is discrimination only if invidious. Where "any real difference in the conditions or natural difference between the persons dealt with makes different treatment necessary", such differentiation is legal. (para 16)<br><br>Discrimination based on a listed ground "and also on other grounds" is not hit by Article 15. (para 16)<br><br>Refusal to admit women was not solely on the ground of sex but because of additional consideration that departmental arrangements had been made to establish a college exclusively for women and to relieve pressure from the former college which continued to allow both men and women for other qualifications. (para 17)<br><br>Judgment appealed from had found that the policy was saved under Article 15(3) because a special college set up for the benefit of women was "special provision for women", but this reading is doubted as there is still exclusion from the former college. (paras 18-20) |

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| 6. | *State of Bombay v. Narasu Appa Mali*<br><br>AIR 1952 Bom 84 | Bombay High Court | Religion, sex<br><br>Law prohibiting bigamous marriages between Hindus by voiding them and making them cognizable and non-compoundable offences<br><br>Separate challenge to Muslim personal law permitting polygamy as discriminating on the ground of sex as only men permitted | Law upheld.<br><br>Prohibition placed not solely on the ground of religion but additional consideration of different personal laws, religious texts, paths of evolution, backgrounds, views about marriage and divorce, educational development and readiness for reform of different religions. (para 12)<br><br>Laws on polygamy not only on ground of religion or sex, but social and economic conditions which can change with time. (para 30-31)<br><br>Legislature does not have to undertake all-embracing social reform and may engage in it by stages. (para 12, 36)<br><br>Cognizable and non-compoundable nature of offence and punishment for the same may differ from those provided for certain other religions in the Indian Penal Code, but this is legal as the Hindu community and women in polygamous marriages consider the institution fully justified and a more severe law is needed to make the social reform effective. (para 13, 32)<br><br>Muslim personal law permitting polygamy not open to judicial review as personal laws outside of the meaning of "laws in force" in Article 13(1). (paras 14-16, 23-29)<br><br>Even if personal law is subject to review, polygamy does not discriminate solely on the ground of sex as it is justified on social, economic and religious grounds in the context of its history. (para 17) |
| 7. | *Srinivasa Iyer v. Saraswathi Ammal*<br><br>AIR 1952 Mad 193 | Madras High Court | Religion<br><br>Law prohibiting bigamous marriages between Hindus by voiding them and deeming them to be an offence under the IPC | If law contravenes the prohibition on classification on grounds listed in Arts. 15 and 16, it cannot be held valid on the grounds of reasonable classification. (p.268)<br><br>Power to legislate on personal law indicates recognition of a classification already in existence because of communities being subject to systems of law peculiar to them. Classification not "only" on the ground of religion but on personal laws based on considerations peculiar to each community. These laws have had a long duration of existence and peculiar growth. (pp.268-69) |

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| *8.* | *Thamsi Goundan v. Kanni Ammal*<br><br>AIR 1952 Mad 529 | Madras High Court | Sex<br><br>Provision for maintenance of wives by their husbands | Provision upheld.<br><br>Held that provision not discriminatory as women as a class suffer from several disabilities such as in inheritance. Cannot be disputed that they are a "weaker" class as compared to men. Provision is within the understanding of "special provision" for women as per Article 15(3) intended to prevent the starvation of wives deserted by their husbands. |
| *9.* | *Dattatraya Motiram More v. State of Bombay*<br><br>AIR 1953 Bom 311 | Bombay High Court | Sex<br><br>Law providing reservation for women as municipal councillors | Law upheld.<br><br>Art.16(1) and (2) found not to be relevant as position of municipal councillor not "employment" or an "appointment to any office" or "appointment under the State". (pp.843-45)<br><br>Discrimination in favour of a particular sex is permissible if it is not only on the ground of sex but also the result of "other considerations" besides the fact that the persons belonging to that class are of a particular sex. This includes the backwardness of women and their low rates of participation in public and political life. (p.847)<br><br>Art.15(3) should not be read to mean that the State may only make those special provisions for women that do not discriminate against men, as that would make the clause redundant. Instead, Art.15(3) should be read to permit discrimination in favour of women against men. (p.848) |
| *10.* | *Dr. Dwaraka Bai v. Professor Nainan Mathews*<br><br>AIR 1953 Mad 792 | Madras High Court | Sex<br><br>Provision requiring a woman wanting to divorce her husband to prove cruelty or desertion or other similar conditions in | Provision upheld.<br><br>While the question of constitutionality was raised, court found it unnecessary to go into it for final determination. Remark made that the distinction in grounds of divorce for husband and wife appears to be based on a sensible classification as it takes into consideration "the abilities of man and woman, and the results of their acts" and is therefore "not merely based on sex". Similar examples of valid sex-based differences offered in the form of conscription and adoption. Adultery by husband is different from |

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| | | | addition to the adultery, while husband is only required to prove adultery for similar divorce claim | adultery by wife because husband's adultery does not result in him bearing a child as a result and requiring the wife to maintain the child as a legitimate one. Wife's adultery results in such a requirement for the husband. (para 35) |
| *11.* | *Nain Sukh Das v. State of Uttar Pradesh*<br><br>AIR 1953 SC 384 | Supreme Court (5-judge) | Religion<br><br>Municipal Board elections held along communal lines on the basis of separate electorates | Constitutional mandate not to discriminate on the ground of religion held to extend to political as well as other rights, making any election in pursuance of a discriminatory law repugnant to this mandate. (para 4)<br><br>However, elections not set aside as petitioner found to have not exercised remedy in time. (paras 7-8) |
| *12.* | *Girdhar Gopal v. State*<br><br>1953 Cri LJ 964 | Madhya Bharat High Court | Sex<br><br>Provision criminalising assault or criminal force to woman with intent to outrage her modesty (S.354, IPC) | Provision upheld.<br><br>Discrimination is not "only" on the ground of sex but also on consideration of propriety, public morals, decency, decorum and rectitude. (para 6)<br><br>[Art.15(3) not relied on.] |
| *13.* | *Yusuf Abdul Aziz v. State of Bombay*<br><br>AIR 1954 SC 321 | Supreme Court (5-judge) | Sex<br><br>Provision criminalising adultery by a man with a married woman, but saving the woman from any punishment as an abettor | Provisions upheld.<br><br>Provision saved by Article 15(3) which allows the State to make any special provision for women. (paras 4-5)<br><br>[Judgement was on an appeal from a Bombay High Court decision (AIR 1951 Bom 470). That decision upheld the provision by finding that Article 15(1) was attracted only where discrimination is "only on one of [the] grounds and no other factor could possibly have been present". Provision on adultery not just on grounds of sex but additionally to protect women from unscrupulous practices of their husbands. Article 15(3) also relied on. High Court also remarked on the patriarchal undertones of the provision but found |

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| | | | | that this was an argument in favour of doing away with the provision and not one that showed discrimination against men.] |
| *14.* | *State of Bombay v. Bombay Education Society*<br><br>AIR 1954 SC 561 | Supreme Court (5-judge) | Language, descent<br><br>Order requiring that only children from sections of citizens whose language is English (Anglo-Indians and non-Asiatic citizens) be admitted to English medium schools | Order struck down.<br><br>Even if admissions are not restricted to those of particular descent, question of discrimination on the ground of language still arises. (paras 12-13)<br><br>Protection in Article 29(2) from discrimination in admission to educational institutions extended to all citizens and not just members of minority communities. (para 14)<br><br>Argument based on the word "only" rejected. Held that validity of measure has to be judged not in terms of its underlying object or motive but instead in terms of "the method of its operation and its effect on the fundamental right guaranteed by Article 29(2)". Reliance placed on *Daulat Singh* and *Champakam Dorairajan*. (paras 15-16) |
| *15.* | *Rani Raj Rajeshwari Devi v. State of Uttar Pradesh*<br><br>AIR 1954 All 608 | Allahabad High Court | Sex<br><br>Provision permitting Court of Wards to take over management of a woman's estate if Government declares her incapable of doing so, while management of a man's estate could only be taken over on meeting conditions such as infirmity, conviction etc. along with opportunity of being heard | Provision struck down.<br><br>Argument that the provision is in favour of women rejected as the provision is injurious to their interests. (paras 63-70)<br><br>Argued by State that discrimination not only on the ground of sex but on the basis of determination that the woman is incapable of managing her estate. Held that discrimination is "only" on grounds of sex because the discretion of the government is restricted in finding incapability of men but left unguided in case of women. (paras 72-87)<br><br>Argument that there was reasonable classification rejected on the ground that this is not an excuse when classification is based on sex. Classification forbidden by the Constitution cannot be reasonable. (paras 88-96) |

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| *16.* | *University of Madras v. Shantha Bai*<br><br>AIR 1954 Mad 67 | Madras High Court | Sex<br><br>Directions issued to colleges to not admit women without permission of regulating body which could set the maximum number to be admitted on the basis of amenities and facilities like separate hostels | Directions upheld.<br><br>University found not to be covered under Article 15 as it was not maintained by the State. (pp.667-69)<br><br>Unlike in Article 15, "sex" intentionally not included as a ground of discrimination in matters of admission under Article 29(2) to allow institutions to frame conditions for admitting women. (pp.669-70)<br><br>Directions in any case not discriminatory as they are aimed at ensuring facilities to meet the increasing demand of women for education. Additionally, not discriminatory as directions are against colleges and not women students at all. (pp.670-71) |
| *17.* | *D.P. Joshi v. State of Madhya Bharat*<br><br>AIR 1955 SC 334 | Supreme Court (5-judge) | Place of birth, place of residence<br><br>Requirement for non-residents of state to pay additional fees for studying in a medical college | Requirement upheld.<br><br>Challenge made on the basis that discrimination in fees was on the ground of place of birth since the residence requirement was actually one of domicile. Argument rejected on ground that domicile refers to "permanent home" and even "domicile of birth" is not the same as "place of birth". (paras 6-7)<br><br>"Domicile" should be understood in terms of its popular sense as "residence". (para 11)<br><br>[Discrimination on ground of "place of residence" not pressed as it is only a ground under Article 16 and not Article 15.] |
| *18.* | *Thakur Sheokaran Singh v. Daulatram*<br><br>AIR 1955 Raj 201; 1955 SCC Online Raj 24 | Rajasthan High Court | Religion<br><br>Rule of Hindu Law limiting the amount of interest for a debt to the amount of the original principal (*damdupat* principle) | Rule found discriminatory.<br><br>As the rule of *damdupat* only applies between Hindus and benefits Hindu debtors, its application discriminates on the ground of religion only. State cannot enforce the rule as interest payable for debts is a subject of general civil law and not personal law. Question of whether a statute could enforce the rule left open. (para 13) |

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| *19.* | *Chokhi v. The State*<br><br>AIR 1957 Raj 10 | Rajasthan High Court | Sex<br><br>Provision of the Criminal Procedure Code (S.497(1) read with proviso) prohibiting release on bail if there are reasonable grounds to believe that the detained person is guilty of an offence punishable with death, but permitting court to release on bail of any woman accused of such an offence | Provision upheld.<br><br>State permitted to make special provision for women under Article 15(3) and impugned provision is, therefore, not inconsistent with Article 15. (para 4) |
| *20.* | *Mahant Moti Das v. S.P. Sahi, The Special Officer in Charge of Hindu Religious Trust*<br><br>AIR 1959 SC 942 | Supreme Court (5-judge) | Religion<br><br>Law on Hindu religious trusts excluding Sikh religious trusts from its application and providing differentiated treatment to Jain religious trusts | Law upheld.<br><br>Court applies the reasonable classification test, also recognising the presumption of constitutionality of statutes and the power of the government to recognise degrees of harm and confine restrictions to cases where the need is seen to be clearest. Notes differences in the essential details of different faiths, including in the organisation of their religious trusts. The religious trusts of Hindus, Sikhs and Jains are thus not "situated alike" and may be treated differently without violation of Art.14. (para 7)<br><br>[No discussion of Art.15(1).] |
| *21.* | *Pujari Narasappa v. Shaik Hazrat* | Mysore High Court | Religion<br><br>Provision protecting the rights of | Provision upheld.<br><br>Law and specific provisions are couched in general terms to safeguard agricultural classes and not persons belonging to particular communities. The basis of classification |

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| | AIR 1960 Mys 59; 1958 SCC OnLine Kar 138 | | agricultural classes belonging to certain religious communities (such as Collector's permission to sell lands) | is avocation, as can be seen from the exclusion of certain communities from the protection. "If the classification were based upon religion of the person then all Muslims and all Hindus would have been included instead of exclusion of some particular classes amongst the persons who profess the said religions." Parsis excluded as they are "essentially a commercial community". Classification is neither unreasonable nor based "purely" on religion but on sound principles instead. (paras 18-20)<br><br>The use of the word "only" in Art.15 connotes that discrimination prohibited by the Constitution is discrimination on account "purely and solely" of any of the listed grounds. (para 23) |
| *22.* | *State of Rajasthan v. Thakur Pratap Singh*<br><br>AIR 1960 SC 1208 | Supreme Court (5-judge) | Caste, religion<br><br>Notification exempting "harijan" and Muslim inhabitants from bearing costs for additional police force stationed in their village | Notification held invalid.<br><br>Argument made that the exemptions were made not "only" on the ground of caste or religion but additionally on the consideration that persons from these communities were found by the State to not have been found guilty of the conduct for which the additional force was stationed. Argument rejected as there can be no presumption that every person of the exempted communities is "peace-loving" and "law-abiding" while no person of the other communities is so. (paras 7-9) |
| *23.* | *Gazula Dasaratha Rama Rao v. State of Andhra Pradesh*<br><br>AIR 1961 SC 564 | Supreme Court (5-judge) | Descent<br><br>Provision providing for hereditary village offices | Provision struck down.<br><br>As the Collector was required to select the holder of the office from the family of the last holder, the discrimination was on the ground of descent only. (para 13) |
| *24.* | *General Manager, Southern Railway v. Rangachari* | Supreme Court (5-judge) | Caste<br><br>Reservation of selection posts in railway service in | Reservations upheld.<br><br>Art.16(1) and (2) are of wide amplitude and cover more than just initial employment. They cover the matter of promotions. Art.16(2)'s prohibition on discrimination |

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| | AIR 1962 SC 36 | | favour of members of Scheduled Castes and Scheduled Tribes | emphatically brings out in a negative form the affirmative guarantee of equality of opportunity in Art.16(1). (paras 13-16)<br><br>Argument made that reservations under Article 16(4) are for initial appointments and not selection posts at later stages to be filled through selective promotion i.e., reservations for such promotions would be unconstitutional discrimination. Court finds that the condition for grant of reservations is "adequacy" of representation and considers that inadequacy may be qualitative (and not just quantitative). Selection posts can be considered under such qualitative inadequacy. This gives effect to the intention of the framers to make adequate safeguards for backward classes. (paras 25-26) |
| *25.* | *M.R. Balaji v. State of Mysore*<br><br>AIR 1963 SC 649 | Supreme Court (5-judge) | Caste<br><br>Reservations to the extent of 68% in educational institutions for socially and educationally backward classes identified by caste | Order found unconstitutional.<br><br>Backwardness is not to be determined relative to the most advanced classes. Due to the historical significance of the caste system, caste is relevant in identifying social and educational backward groups of citizens, but its importance should not be exaggerated. It may perpetuate the caste system and would not be readily applicable to groups that do not recognise caste in the conventional sense. Poverty and occupation may also be relevant. Sociological, social and economic considerations must be used by the State to arrive at proper criteria through elaborate investigation and collection of data. Courts only have to assess whether the test is valid under Art.15(4). (paras 21-24)<br><br>Argument made that the reservations are inconsistent with Art.15(4) because the basis adopted for the identification of socially and educationally backward classes is unintelligible and irrational. Court finds that in identifying socially backward classes, the government had adopted caste as "the predominant, if not the sole, test", and this was not permissible under Art.15(4). In identifying educational backwardness, the mere fact that a caste is below the state average of student population would not be adequate to show backwardness. (paras 25-28)<br><br>Argument also made that the extent of reservations provided is unreasonable and extravagant, while State argued that no limitation had been placed in Art.15(4) deliberately. Court finds that the provision for reservations has been made because the |

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| | | | | advancement of weaker elements is in the interest of society at large. A provision in the nature of an exception for one section of society cannot exclude the rest of society completely. The fundamental rights of other citizens cannot be completely and absolutely ignored, and standards of higher education must not be lowered. (paras 30-32)<br><br>Court expresses reluctance in setting any definite provision on the question of the extent of reservations. Considers a maximum of 50% to be appropriate "speaking generally and in a broad way". (para 34)<br><br>Arts.15(4) and 16(4) do not impose obligations and leave it to the discretion of the appropriate government to take suitable action. (para 37) |
| *26.* | *T. Devadasan v. Union of India*<br><br>AIR 1964 SC 179 | Supreme Court (5-judge) | Caste<br><br>Reservations for posts in a given year at a higher proportion than envisaged due to the carrying forward of unfilled vacancies from previous year ("carry forward rule"). | Rule held invalid.<br><br>Where the object of a rule is to make reasonable allowance for the backwardness of members of a class through reservations in public services, the State in fact provides the members of those classes with an opportunity equal to that of the members of more advanced classes. Where reservation is excessive, a member of an advanced class can complain of denial of equality (para 14)<br><br>A perpetual carry forward of unfilled vacancies from previous years could result in reservations for a year crossing reasonable levels. Court considers remark in *M.R. Balaji* on the 50% ceiling on reservations to be a rule against filling more than half the seats in educational institutions through reservations. Reasonable balance needs to be struck between claims of backward classes and claims of other employees. (paras 15-16)<br><br>Each year of recruitment is to be considered by itself and the proviso in Art.16(4) cannot be read to nullify or destroy the main provision. (para 18) |
| *27.* | *R. Chitralekha v. State of Mysore* | Supreme Court (5-judge) | Caste<br><br>Reservations in educational | In ascertaining backwardness of a class of citizens, the government may take caste into account but failure to do so does not make the identification invalid if it is able to ascertain backwardness on the basis of other relevant criteria. Caste should not be the sole or determining criteria in identifying backwardness. Treating "class" as synonymous |

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| | AIR 1964 SC 1823 | | institutions without adopting any caste or residence criteria | with "caste" in reservations law would involve overbroad provision of reservations where a minority sub-caste within a caste, for example, are advanced. (paras 15 and 19-20) |
| *28.* | *M.I. Shahdad v. Mohd. Abdullah Mir*<br><br>AIR 1967 J&K 120 | Jammu & Kashmir High Court | Sex<br><br>Provision recognising effective service of summons to a person if made to adult male members of their family and not to adult female members | Provision upheld.<br><br>Held that service of summons to women may be treated as insufficient as their function in Indian society has largely been as housewives, and also due to widespread illiteracy and *purdah* system. (para 35)<br><br>Further held that the rule was not discriminatory as it did not put women in a disadvantageous position, instead only relieving them of the responsibility of having to convey notice of service. This would be a "special provision" for women saved under Article 15(3). (para 36) |
| *29.* | *Minor P. Rajendran v. State of Madras*<br><br>AIR 1968 SC 1012 | Supreme Court (5-judge) | Caste, place of birth<br><br>Reservation of seats in medical colleges for socially and educationally backward classes and seats further reserved district-wise and claimed on the basis of "nativity" of persons from those districts | District-wise reservation struck down but for violation of right to equality and not right against discrimination.<br><br>Contention made that list of SEBCs is nothing but a list of castes. Held that caste as a whole can be an SEBC if it suffers from relevant backwardness. *M.R. Balaji* relied on for the point that identification cannot be only on the basis of caste. Castes listed by State were identified by it on the basis of backwardness. (paras 7-8)<br><br>On district-wise allocation of seats, found that rules provide for "nativity" on place of passing of an examination, either parent's place of birth, or permanent place of residence of parents/guardian. Held that this does not depend on the place of birth of the candidate. (para 9)<br><br>[Under Article 14 analysis, court identified that the objective of admissions is to find the best possible talent.] |
| *30.* | *Kumari Chitra Ghosh v. Union of India* | Supreme Court (5-judge) | No specific ground<br><br>Reservation of seats in medical college for | Reservations upheld.<br><br>Argument made that reservations for the mentioned categories is not permissible as reservations are provided under Article 15(4) only for SEBCs, SCs or STs. Argument |

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| | (1969) 2 SCC 228 | | Government nominees from certain categories including children of Union Territory residents, children of government servants serving abroad, Colombo Plan Scholars, Jammu & Kashmir State Scholars etc | rejected as the reservations in question do not discriminate on any of the grounds listed in Article 15(1). (para 7)<br><br>[No violation of Article 14 found as there is reasonable classification for all reservations.] |
| *31.* | *Radha Charan Patnaik v. State of Orissa*<br><br>AIR 1969 Ori 237 | Orissa High Court | Sex<br><br>Rule disentitling married women from being appointed to position of District Judge and permitting government for resignation of woman appointed to the position if she marries; further rules barring man who has had bigamous marriage as well as wife of such man | Rule barring/permitting dismissal of married women struck down; rule against hiring persons engaged in bigamy upheld.<br><br>Argument made that the law does not discriminate solely on ground of sex but additionally on ground of marriage with the aim of maintenance of efficiency of service. Argument rejected as marriage is not a disqualification in the case of appointments of men. Discrimination is based on sex. (paras 17-18)<br><br>Rules on bigamy found to be reasonable restrictions aimed at maintenance of efficiency of service. (paras 19-20) |
| *32.* | *Shamsher Singh v. Punjab State* | Punjab & Haryana | Sex | Grant upheld. |

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| | AIR 1970 P&H 372 | High Court | Grant of additional special pay to female Block Education Officers | Argument made that while the State is permitted under Article 15(3) to make special provision for women, no similar exception is carved out in Article 16 in relation with public employment. Thus, no special treatment such as additional pay can be provided for women. Argument rejected as Articles 14, 15 and 16 have to be read harmoniously as a common constitutional code of guarantees and Article 15(3) is an exception to the general guarantee against discrimination in 15(1) which covers the entire field of State discrimination including the subject of public employment. (paras 8-12)<br><br>Article 15(3) permits special provisions for women in derogation of Article 16(2), but such provisions should not give unreasonable benefit or protection. Unreasonable benefit would make the constitutional guarantee against discrimination solely on the ground of sex nugatory. (paras 13-18) |
| *33.* | *Gogireddy Sambireddy v. Gogireddy Jayamma*<br><br>AIR 1972 AP 156; 1971 SCC Online AP 134 | Andhra Pradesh High Court | Religion<br><br>Provision requiring Hindu marriage to be monogamous in the absence of similar requirement for Muslim marriage and given criminal penalty for bigamy in the IPC | Provision upheld.<br><br>Reasonable classification may be based on religion. Legislature may determine which religious community is ready for reform and make laws accordingly. (para 3)<br><br>If discrimination is not on grounds "only" of religion but on "other grounds" as well, it is not hit by Article 15(1). Court differentiates from *Bombay Education Society* by stating that that case allowed for a finding of discrimination if one of the grounds is the "immediate ground and direct cause". (paras 4-5)<br><br>Monogamy was made a part of Hindu law as it already existed to a great degree in practice. Legislatures not debarred from recognising different systems of personal law. Discrimination here is not only on the ground of religion as measure is a reform in the direction of a uniform civil code and, in any case, Hindu law has not been just for Hindus but for members of other religions as well. Classification is made on the basis of subjection to personal law and not adherence to religion. (paras 7-11) |
| *34.* | *R.S. Singh v. State of Punjab* | Punjab & Haryana | Sex<br><br>Order making women ineligible for all posts | Order upheld. |

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| | AIR 1972 P&H 117 | High Court | in men's jails except as clerks or matrons and resulting ineligibility for promotion to the post of Superintendent of Jail | Sex is a sound classification and legislation which takes it into consideration along with other factors would be immune from challenge. The Constitution only bars discrimination when it is on the ground of sex alone. (paras 13-14)<br><br>The impugned order does not discriminate on the ground of sex alone because it additionally takes into consideration the awkward and hazardous position of a woman acting as a jail official "who has to personally ensure and maintain discipline over habitual male criminals". The duties would require direct and continuous contact with hardened and ribald criminals. (para 17)<br><br>Sex discrimination can be reasonable classification having a nexus with the object, and this can have to do with unsuitability to perform the functions required in a job. It is a function of the State to select persons most suitable for the performance of the peculiar duties which attach to a particular post or class of posts. (paras 18-19)<br><br>[Court found it unnecessary to enter into the question of Article 15(3) in the context of its findings on Article 15(1).] |
| *35.* | *Squadron Leader Giri Narayana Raju v. Officer Commanding 48 Squadron*<br><br>AIR 1974 All 362; 1974 SCC Online All 291 | Allahabad High Court | Religion<br><br>Instructions issued to Air Force personnel to wear crash helmets when riding two-wheeled motorised vehicles, but Sikh and other turban-wearing personnel exempted from the requirement | Instructions upheld.<br><br>Argument made that exemption for Sikh personnel is discriminatory and without basis, and thus violative of the general right to equality under Article 14. Rejected on the finding that the classification was not between Sikhs and non-Sikhs but between those wearing turbans and those not wearing turbans. Chances of injury are reduced for a person wearing turban. (paras 11-12)<br><br>Further, wearing of turban by Sikh personnel has religious significance and out of respect for this, the turban has also been made part of the uniform. While the exemption is beneficial to Sikhs on the face of it, no final opinion on that point is expressed. (para 12) |
| *36.* | *Sucha Singh Bajwa v. State of Punjab* | Punjab & Haryana | Sex<br><br>Law imposing ceiling/restriction on | Law upheld.<br><br>"The subject of legislation is the person owning or holding land and not his or her children." The holder is allowed to select certain land and then some additional land for |

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| | AIR 1974 P&H 162; 1974 SCC OnLine P&H 41 | High Court | maximum land holding while permitting land holder to select additional areas of land in respect of each additional son (subject to a maximum calculated together with the son's own land holdings) | adult sons. The subject of the provision is thus treated the same regardless of whether they are male or female. The son is not given the right to select this additional area. It is to be selected by the owner or holder. There is no discrimination between sons and daughters on the ground of sex alone. If there is a distinction, it is "not only on the ground of sex, but also for the reason that a daughter has to go to another family after her marriage in due course, marriage being a normal custom which is universally practised." (paras 13 and 17) |
| *37.* | *State of Uttar Pradesh v. Pradip Tandon*<br><br>(1975) 1 SCC 267 | Supreme Court (3-judge) | Place of birth<br><br>Reservations in admissions to medical colleges for candidates from (a) rural areas, (b) hill areas, and (c) Uttarakhand area | Reservations for candidates from rural areas found unconstitutional but others upheld.<br><br>Contention made that the reservations were not only on the basis of place of birth or caste but also on the basis of place of residence, and so were not hit by Arts.15(1) or 29(2). (paras 12 and 31)<br><br>The traditional unchanging occupation, place of habitation etc. may contribute to an identification of a socially and educationally backward class of citizens. The expression "classes of citizens" indicates a homogenous section of the people grouped together because of certain likenesses and common traits and who are identifiable by some common attributes. Caste, religion or place of birth cannot be the common attribute. (paras 16-17)<br><br>Social backwardness involves a lack of social structure and hierarchy, as well as of technology or inducements for the uplift of people and improvement of economy, buildings, towns, cash economy, effective use of resources etc. Additionally, the remoteness of places, apathy towards education, lack of institutions etc. For these reasons, the hill and Uttarakhand areas are instances of such classes. (paras 18-20)<br><br>In the case of rural areas, court finds it incomprehensible how 80.1 percent of the people of Uttar Pradesh can be considered backward due to poverty. Does not think poverty can be predicated on the trait of rural origin. A division between urban and rural persons |

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| | | | | on the ground that the former are not poor and the latter are poor is not supported by facts nor does it meet the criteria to be considered a socially and educationally backward class because they are not homogenous. (paras 24-26)<br><br>Similarly, finds that neither any special need for medical men in the rural areas nor the lower marks obtained by candidates from such areas would make them socially and educationally backward. Finds that candidates from rural areas are performing well educationally. (para 27)<br><br>Finds that to qualify for the reservation, candidate has to be born in a rural area and have permanent home there in which he is residing, or that he was born in India and his parents are born and are living and earning in rural areas. Finds that birth in rural areas is the basic qualification and this is hit by Art.15(1). (para 29)<br><br>Faced with the plea that the classification is additionally on the ground of place of residence, court finds that the classification in question is not residence in and out of the state. (para 37)<br><br>Finds that the case is not one of under-classification either but one of discrimination in favour of the majority population to the prejudice of the majority category. (para 39) |
| *38.* | *Uma Sinha v. State of Bihar*<br><br>1975 LAB IC 637 | Patna High Court | Sex<br><br>Creation of two separate branches/cadres for male and female officers in education service and linkage of promotional opportunities from these cadres to the size of the cadres | Impugned notification struck down as violative of Articles 14 and 16(1) and (2).<br><br>State action must be based on valid relevant principles that are applicable alike to all those who are similarly situated and it must not be guided by any extraneous or irrelevant considerations because that would be denial of equality. Argument that the petitioner was holding a post "meant for female (sic)" rejected as untenable. (paras 8-10)<br><br>[No reasoning specific to Article 16(2) provided.] |

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| *39.* | *Walter Alfred Baid v. Union of India*<br><br>AIR 1976 Del 302 | Delhi High Court | Sex<br><br>Rule requiring that only women be appointed as senior nursing tutors in nursing school | Rule struck down.<br><br>Argument made that the prohibition on male senior tutors is valid as there is reasonable classification given that the nursing school is predominantly female and the duties of senior tutor make women more suitable for the role. (para 4, 9) On the question of reasonable classification, court finds that Articles 15 and 16 prohibit any classification based solely on the listed grounds even if it were otherwise permissible under the doctrine of reasonable classification under Article 14. (para 7)<br><br>Further argument made that classification is not "only" on grounds of sex but instead on the consideration that the institution is predominantly female and a female senior tutor would not take undue advantage of the female students. (para 9) Court rejects argument and disagrees with *R.S. Singh* by finding that Article 16(2) is more unqualified than Article 14 and does not allow for any classification even if sex has some nexus with the object i.e. it demands "absolute equality between the sexes" in the matter of employment. Court further finds that discrimination would still be on the ground of sex alone if there are additional considerations but these considerations "have their genesis in the sex itself" or are "implied" by sex. (para 10)<br><br>Court finds that it is not possible to justify under law that all members of a sex should be ineligible for any post as, even if the prohibition relies on disparities between the sexes, it would still be discrimination on the ground of sex alone. (para 10)<br><br>Court also disagrees with *Shamsher Singh* on the basis that there is no savings clause in Article 16 such as the one in Article 15(3). Does not consider it possible to read Article 15(3) into Article 16. (para 12) |
| *40.* | *State of Kerala v. N.M. Thomas*<br><br>(1976) 2 SCC 310 | Supreme Court (7-judge) | Caste<br><br>Relaxation in conditions for promotion for members of Scheduled | Relaxation upheld.<br><br>*Ray, C.J.:*<br><br>Arts.14, 15 and 16 supplement each other, and Art.16(1) gives effect to Art.14. Both Arts.14 and 16(1) permit reasonable classification having nexus to the object to be |

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| | | | Castes and Scheduled Tribes | achieved. Inherent limitation to the concept of equality is that it is for those who are equals or are similarly circumstanced. (paras 21 and 24)<br><br>There is no denial of equal opportunity if the person complaining of discrimination is part of a separate class from the person or persons who have been favoured and they are not equally situated. Equality of opportunity should not be confused with absolute equality. (paras 27-28)<br><br>Art.16(4) clarifies that classification on the basis of backwardness does not fall within Art.16(2) and is legitimate under Art. 16(1). The relevant touchstone of validity is to find out whether the rule of preference secures adequate representation for the unrepresented backward community or goes beyond it. (paras 37-38)<br><br>Preferential representation to backward classes with due regard to efficiency is a permissible object and backward classes are a rational classification. (paras 27-28, 37 and 44)<br><br>Art.16(4) is only one of the methods of achieving equality of opportunity under Art.16(1) and the latter not only relates to all matters of employment including promotions but also permits classification on the basis of the object of a law except discrimination prohibited under Art.16(2). Scheduled castes and tribes are not castes within the ordinary meaning of the term but are instead descriptive of backwardness. (paras 46 and 43)<br><br>*Mathew, J.:*<br><br>Proportionate equality is necessary in many spheres to achieve justice. It is attained only by treating equals equally and unequals unequally. (paras 53-54)<br><br>Complete equality of opportunity may be impossible but compensatory measures aimed at mitigating "surmountable obstacles" do not fall foul of Art.16(1). Equality of opportunity requires that there be no *a priori* exclusion on irrational grounds of any section of persons in the allocation of limited goods. The grounds of qualification should |

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| | | | | be such that persons from all sections of society should have an "equal chance" of satisfying them. (paras 57-59)<br><br>Equality of opportunities involves treating "curable" conditions or environments to be a part of "what is done" to the relevant persons and not part of them or their identity. (para 62)<br><br>The mandatory/positive character of Art.16(1) (in comparison to the negative character of Art.14) also implies that affirmative action would be consistent with it. Equality before the law and equal opportunity in public employment require differential treatment of unequals rather than formal equality. (para 66)<br><br>If equality of opportunity under Art.16(1) means effective material equality, then Art.16(4) is not an exception to Art.16(1) but an emphatic expression of the extent to which equality of opportunity could be carried. (para 78)<br><br>Art.16(1) permits classification just like Art.14, but this does not permit classification on the grounds of race, caste etc. But the word 'caste' in Art.16(2) does not include 'scheduled caste'. Though the members of scheduled castes may be drawn from castes, they attain a new status by virtue of their identification in the relevant Presidential notification. (paras 81-82)<br><br>Ultimate reason for equality of opportunity for backward classes is the intrinsic value of all human beings and equal concern for their well-being. (para 89)<br><br>*Krishna Iyer, J.:*<br><br>Equality of opportunity involves redistributive justice in the context of an uneven socio-economic landscape. (paras 117-119)<br><br>Constitution itself demarcates backward classes and Arts.46 and 335 must be considered in interpreting Arts.16(1) and (2). (paras 129 and 134) |

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| | | | | In relation with the prohibition on caste discrimination in Art.16(2), scheduled castes and scheduled tribes are not castes but an amalgam of castes, races, groups etc. or parts thereof found to be in need of State aid. (para 135)<br><br>Art.16(4) is not an exception but an "emphatic statement" of what is one way of reconciling the claims of backward people and the opportunity for free competition that forward sections are ordinarily entitled to. While it may loosely be called an exception, actually it is an illustration of constitutionally sanctified classification to make matters clear and beyond doubt. Reservation based on classification of backward classes is but an application of the principle of equality within a class and grouping based on rational differentia, the object being advancement of backward classes. This does not make Art.16(4) redundant because it can be seen to provide a more rigid monopoly while classification under Art.16(1) can be seen to provide a lesser order of advantage with greater flexibility. (paras 136-137)<br><br>Art. 16(1) permits classification just like Art.14 and there is a rational relation between the classification of harijans as underrepresented and neglected classes and the object of promoting the claims of these classes consistently with maintenance of administrative efficiency. Castes other than harijans do not suffer from as substantial a disparity and would not be able to claim exemption from Art.16(1) and (2) without running the risk of unconstitutional discrimination. Except in exceptional cases, allowing such exemption for other castes would involve making caste the real basis of classification while merely masking it as backward class. For such other groups, Art.16(4) is the only hope. (para 143)<br><br>*Fazal Ali, J.:*<br><br>Article 14 and 16 forbid hostile discrimination and not reasonable classification. The objective of equal opportunity can only be achieved by boosting up backward classes through concessions, facilities, removal of handicaps, and suitable reservations so as to allow for competition with more advanced sections and eventually banish backwardness |

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| | | | | completely. This requires achievement of complete economic and social freedom. (para 158)<br><br>The explicit recognition of scheduled castes and scheduled tribes in the Constitution indicates that they are presumed to be backward classes. This special status means that these groups constitute a class by themselves and are not castes for the purpose of Art.16(2), permitting reasonable classification to uplift them. (paras 167 and 169)<br><br>Art.16(4) is not an exception to Art.14 but an explanation containing an exhaustive and exclusive provision regarding reservations. It deals exclusively with reservations and not other forms of classification permissible under Art.16(1) itself. Being a special provision on reservations, Art.16(4) overrides Art.16(1) and no reservation can be made under the latter. (para 184) |
| *41.* | *C.B. Muthumma v. Union of India*<br><br>(1979) 4 SCC 260 | Supreme Court (2-judge) | Sex<br><br>Rule requiring women member of Indian Foreign Service to obtain permission of the Government before marrying and allowing government to require her resignation if Government finds that her family and domestic commitments come in the way of her duties; further rule stating that no married woman is to be entitled | Government acted to delete impugned rules during the pendency of the case.<br><br>Court finds no reason why family obligations may not come in the way of the discharge of duties by a male member of a service. (para 5)<br><br>Court clarifies that it is not laying down any rule that men and women are equal in all occupations and all situations and agrees that "sensitivities" or "peculiarities" may compel selectiveness based on sex. Unless the validity of such differentiation is demonstrable, equality must be the governing rule. (para 7)<br><br>Government impressed upon to review rules so as to remove instances of sex discrimination. (para 9) |

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| *42.* | *Ambika Prasad Mishra v. State of Uttar Pradesh*<br><br>(1980) 3 SCC 719 | Supreme Court (5-judge) | Sex<br><br>Law imposing a ceiling/restriction on agricultural land holdings while permitting additional land holding to a tenure holder for his adult sons but not for adult daughters (including unmarried, dependent daughters); further provision making the husband the tenure holder even where the owner is actually his wife | Law upheld.<br><br>In keeping with the goal of becoming a socialist, egalitarian society, the law must be judged "not meticulously for every individual injury but by the larger standards of abolition of fundamental inequalities, frustration of basic social fairness and shocking unconscionableness". (para 10)<br><br>Court remarks that an "anti-female kink" is patent in the law and that this aspect of sex discrimination is present in most land reform laws. Considers that this provision may be illiberal and contrary to the times as it deprives women of their fair share, and that "Article 14 and 15 and the humane spirit of the preamble rebel against the de facto denial of proprietary person-hood of womanhood". However, finds that this legal sentiment and jural value "must not run riot and destroy provisions which do not discriminate between man and woman qua man and woman but merely organise a scheme where life's realism is legislatively pragmatised". Considers that the provision may marginally affect gender justice but does not abridge "even a wee-bit" the rights of women. Where land holdings are organised to maximise surpluses without maiming women's ownership, no sex discrimination can be alleged to "sabotage what is socially desirable". "No woman's property is taken away any more than a man's property." (paras 23 and 25)<br><br>The provision in question neither confers property to an adult son nor takes away property from an adult daughter but only allows for a concession from the land restriction to a tenure holder who has propertyless adult sons. The holder is thus "permitted to keep some more of his own for feeding this extra mouth". There would only be some legal injury if the daughter's own property was taken away while the son's was retained or if the daughter gets no share while the son does. Since the legislation has done neither of these things, "no tangible discrimination can be spun out". Requiring additional concession to a tenure holder for his propertyless adult daughters may have grounds rooted in rural realities but requiring this would be judicial legislation. (para 26) |

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| | | | | Provision deeming husband as the tenure holder of property owned by his wife is considered valid as it is only meant to simplify procedural dealings while there are other provisions meticulously protecting the wife's interest. Large landholders should not be allowed to frustrate socially imperative land distribution by using female discrimination as a "mask". (paras 27-28)<br><br>Further approves of and reproduces the reasoning of the High Court in *Sucha Singh Bajwa* on the prohibition on sex discrimination in Article 15, but chooses not to comment on certain observations made by that court. (paras 29-30) |
| *43.* | *Shri Krishna Singh v. Mathura Ahir*<br><br>(1981) 3 SCC 689 | Supreme Court (2-judge) | Caste<br><br>Hindu customary practice preventing a *sudra* from being ordained to a religious order so as to be appointed as a mahant in a *math* | Practice interpreted within the tenets of the Hindu religion to permit the appointment.<br><br>High Court had found that the strict rule from the *smritis* preventing *sudras* from becoming *sanyasis* had ceased to be valid because of Part III of the Constitution [presumably, Articles 15 and 17]. Supreme Court rejected this finding by holding that "Part III of the Constitution does not touch upon the personal laws of the parties". (para 17) |
| *44.* | *Air India v. Nergesh Meerza*<br><br>(1981) 4 SCC 335 | Supreme Court (3-judge) | Sex, place of birth (latter not explicitly mentioned)<br><br>Differential service conditions between two sex-based categories of cabin crew, including in retirement age, compulsory retirement in the event of first pregnancy or | Regulations upheld.<br><br>Different conditions of service can be introduced for dissimilar posts or posts that are "essentially different in purport and spirit". The posts for male and female cabin crew members were different in terms of qualifications, salaries, retirement benefits etc. (paras 39-60)<br><br>As a result of the inherent differences between the categories of posts, the discrimination is not "only" on the ground of sex but "due to a lot of other considerations also". (para 64) |

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| | | | early marriage, and promotional opportunities; differential conditions of service between Air Hostesses recruited from India and those recruited from UK | Retirement on early marriage found reasonable as it would be a successful marriage if undertaken at a more mature age, and due to the expenditure the corporation would otherwise have to incur. (paras 80-81)<br><br>Retirement on first pregnancy found unreasonable as no connection between pregnancy and weakness in physique established. However, proposal for a bar on third pregnancy found reasonable. (paras 82-83)<br><br>Differential conditions for recruits from other countries valid due to local laws and "local influences, social conditions and legal or political pressures" (paras 62-63, 111)<br><br>[Considered in terms of the right to equality and not the right against discrimination]<br><br>Differential retirement ages found to be based on "male chauvinism" and "unfavourable bias" against women, but equivalence in such ages not ordered due to lack of "any cut and dried formula" and award of a settlement that would bind parties. (paras 113-114) |
| *45.* | *Rajamma v. State of Kerala*<br><br>1983 KLT 457; 1983 SCC Online Ker 75 | Kerala High Court | Sex<br><br>Women made ineligible for certain posts due to "arduous and special nature of the duties and responsibilities" and woman applicants with adequate rank in the rank list not appointed even to other posts on ground of inability to ride bicycles | Rule struck down.<br><br>Court finds that the practical "effect" of the policy is that, for one reason or another, no women have been appointed to the Last Grade Service at all. This was done either by requiring the ability to ride bicycles or by directly barring women due to the "arduous" or "special" nature of duties. (paras 15-17)<br><br>Effective denial of appointment of any female candidates ("practical result of the operation" of the rules) was irrational, unjust and unfair and violated the guarantee of equality. This is in part because cycling is not an essential requirement for the mentioned posts. (para 24)<br><br>On exclusion of women from posts because of "arduous" or "special" nature of duties, court finds that the government has provided no answer as to the propriety of such discriminatory exclusion. Once petitioners make out a case of discrimination, it is the burden of the State to provide justification as to the "compelling reason" for such |

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| | | | | treatment. Attitude and measures of the government violate Articles 14 and 15(1). (paras 26, 30, 44, 46)<br><br>Rights of women should not be denied on "fanciful presumptions" of what they can or cannot do. If the duties of any post are unsuitable or humiliating, it is for women themselves to decide on that and not the legislature or executive. (para 44) |
| *46.* | *T. Sareetha v. T. Venkata Subbaiah*<br><br>AIR 1983 AP 356 | Andhra Pradesh High Court | Sex (not explicitly mentioned)<br><br>Provision on restitution of conjugal rights | Provision struck down for violation of the rights to privacy and equality.<br><br>Court notes that the provision on restitution of conjugal rights "works in practice only as an engine of oppression to be operated by the husband for the benefit of the husband against the wife." Court finds that provision for restitution of conjugal rights is violative of the right to equality because it does not have "minimum rationality" (referring to arbitrariness). Also makes reference to the "overclassification" in the law on the basis that it does not subserve any "social good".<br><br>[Does not make specific reference to discrimination on the ground of sex, though indirect discrimination of this kind is an underlying premise. Contrary judgement subsequently affirmed by the Supreme Court.] |
| *47.* | *Partap Singh v. Union of India*<br><br>(1985) 4 SCC 197 | Supreme Court (2-judge) | Sex<br><br>Provision stating that any property possessed by a Hindu female to be held by her as full owner and not as limited owner | Provision upheld.<br><br>Court found that the provision was enacted to remedy to some extent the issue of Hindu women being unable to claim absolute interest in the properties inherited by them from their husbands due to the restrictions placed on a widow's estate under Hindu law. The provision cannot be claimed to be hostile discrimination as it is a special provision enacted for the benefit of Hindu women under Article 15(3). (para 6) |
| *48.* | *Sowmithri Vishnu v. Union of India*<br><br>(1985) Supp SCC 137 | Supreme Court (3-judge) | Sex<br><br>Provision permitting husband to prosecute man committing | Provision upheld.<br><br>Court found that distinction between men and women in conferring the right to prosecute for adultery is permissible as this distinction is part of the definition of adultery, it being an offence that can only be committed by men. (para 7) |

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| | | | adultery with his wife but not permitting wife to prosecute woman committing adultery with her husband | As in the case of the prescription of the maximum punishment for a crime, the question of the definition of an offence and restrictions in the class of offenders are questions of policy and not constitutionality. (para 7)<br><br>No discrimination in not permitting wife to prosecute adulterer husband as husband is not permitted to prosecute adulteress wife. Wife having an illicit relationship with another man is the victim and not the author of the crime. (para 8)<br><br>Adulterer husband is not free to do as he likes as adultery remains a ground for divorce under civil law. However, under criminal law, the legislature is permitted to deal with an evil "where it is felt and seen most" (i.e., in a man seducing the wife of another), and an underinclusive definition is not discriminatory.<br><br>[Judgement subsequently overruled.] |
| *49.* | *St. Stephen's College v. University of Delhi*<br><br>(1992) 1 SCC 558 | Supreme Court (5-judge) | Religion<br><br>Minority educational institutions providing preference or reservations in admissions for candidates from the minority community in question | Institutional policies upheld.<br><br>Institutional preference for candidates based on their religion amounts to discrimination on the ground of religion. Minorities are not permitted to establish institutions for the exclusive benefit of their community. (paras 79-81)<br><br>Non-discrimination under Article 29(2) is only a starting point for treatment of minorities. Differential treatment distinguishing them from the majority is a must to preserve their basic characteristics. Article 30(1) is aimed at the preservation and promotion of minorities as communities. (para 85)<br><br>Non-discrimination under Article 29(2) and minority rights under Article 30(1) must be balanced. A fair degree of protective discrimination in favour of minorities must be recognised. Affirmative action for religious minorities cannot be done in a religion-neutral way. (para 97)<br><br>Minority aided educational institutions are entitled to maintain candidates from the relevant minority community to maintain the minority character of the institution, |

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| | | | | subject to regulations and an overall ceiling of 50 per cent of annual admissions. (para 102) |
| *50.* | *Indra Sawhney v. Union of India*<br><br>1992 Supp (3) SCC 217 | Supreme Court (9-judge) | Caste<br><br>Reservations for Other Backward Classes / Socially and Educationally Backward Classes in the services of the Government of India with (i) candidates from such Classes who are recruited through open competition excluded from the quota requirement, (ii) preference for the poorer sections of such Classes, and (iii) additional 10% reservations for the poorest amongst higher castes and other religions | Reservation policy partially upheld and partially struck down.<br><br>*Jeevan Reddy, J. (with Kania, C.J. and Venkatachaliah and Ahmadi, JJ.):*<br><br>The concept of equality before the law contemplates minimising the inequalities in income and eliminating inequalities in status, facilities and opportunities not only amongst individuals but also amongst groups of people. The educational and economic interests of weaker sections are to be promoted with special care. (para 643)<br><br>Art.16(4) is not an exception to Art.16(1) but an instance of classification implicit in and permitted by the latter, or an emphatic way of stating a principle implicit in Art.16(1). Art.16(1) permits reasonable classification to attain equality of opportunity and Art.16(4) is an instance of such classification put in place to clarify this. Art.16(4) is exhaustive of all special provisions to be made in favour of backward classes of citizens including reservations and all supplemental and ancillary provisions thereto. (paras 741-743 and 859-860(1))<br><br>Clause (1) guarantees equal opportunity to each individual citizen while clause (4) contemplates special provision in favour of socially disadvantaged classes. The two need to be balanced against each other so that neither eclipses the other. (para 814)<br><br>Art.16(4) is not exhaustive of the concept of reservations. It only addresses reservations for backward classes. Further reservations can be provided under clause (1) in very exceptional situations. The special provision to be made in clause (1) thus goes beyond concessions and preferences. (paras 733, 744-745, and 859-860(1))<br><br>"Class" in Art.16(4) means a social class and can include castes. If the caste is socially backward, it can be a backward class under that clause. Among non-Hindus, similar backward classes include occupational groups, sects and denominations that are socially backward. Scheduled Castes and Scheduled Tribes are admittedly backward. Identification of backward classes can begin with castes but then extend to other |

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| | | | | communities, groups etc. with the aim of considering all available groups. The bar in Art.16(2) has no application as the classification is not on the basis of caste, but on the basis of backwardness and inadequacy of representation. Backwardness is not restricted to those suffering lingering effects of past discrimination. (paras 779-784 and 859(3))<br><br>Exclusion of persons who are socially advanced is not a question of permissibility or desirability but of proper identification of a backward class. A class must have persons with common traits. Only after exclusion of 'creamy layer' would the class become a compact class. Such exclusion benefits the truly backward. (paras 790, 792 and 859)<br><br>Backward classes of citizens do not have to be similarly situated to Scheduled Castes and Scheduled Tribes. Backwardness must be judged by the general level of advancement of the entire population. (paras 794-795 and 859)<br><br>Apart from being backward, a class also has to be inadequately represented in the services under the State, with the question of this inadequacy being a matter within the subjective satisfaction of the State, though subject to certain principles of judicial review. (paras 798 and 859)<br><br>A backward class cannot be identified only and exclusively with reference to economic criterion. It may be a consideration in addition to social backwardness but cannot be the sole criterion. This applies to reservations under Art.16(1) as well. (paras 799, 859 and 860(3))<br><br>Identification of backwardness with reference to caste is not the only permissible method. There may be other groups that are not identified by caste e.g., agricultural labourers, rickshaw-pullers, street-hawkers etc. (paras 800 and 859)<br><br>Backward classes may be categorised as backward and more backward. This may be done amongst OBCs where a class that is far less backward takes up the reserved posts. Where to draw the line and effect the sub-classification is a matter for the State so long as it is done reasonably. This follows from the same logic by which SCs and STs are |

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| | | | | provided for separately though they fall within the backward classes. (paras 802-803, 843, 859(5) and 860(5))<br><br>Reservations under Art.16(4) should not exceed 50%. The clause speaks of "adequate" and not "proportionate" representation. The proportion of the population of backward classes can still be relevant. Like every power, the power under Art.16(4) must be exercised in a fair manner within reasonable limits and what is more reasonable than to say that reservation shall not exceed 50% of the appointments or posts in a year, barring certain extraordinary situations subject to extreme caution and a special case being made out e.g., peculiar conditions for the population in a far-flung and remote area. Provision under Art.16(4) in the interest of certain sections of society has to be balanced against the guarantee of equality under Art.16(1) held out to every citizen and to the entire society. Both are restatements of the principle of equality under Art.14 and have to be accordingly harmonised. Backward class candidates selected in open competition are not to be counted against the reservation quota and the 50% limit does not apply in relation with horizontal reservations under Art.16(1). Any carry-forward of unfilled reserved seats from a previous year must not result in the reservations crossing 50% in any given year. (paras 807-818, 859, and 859(6))<br><br>*Kuldip Singh, J.:*<br><br>Art.16(4) is another facet of Art.16(1), exclusively providing for reservations as one form of classification. [In agreement with Sahai, J. on related issues.] (para 382)<br><br>Job reservations should be programmed in a way that the most deserving section of the backward classes is benefited. Economic ceiling is needed to benefit the needy sections. (para 385)<br><br>Reservations under Art.16(4) must remain below 50% and any reservation above this limit is constitutionally invalid. [In agreement with Sahai, J. on related issues.] (para 384)<br><br>*Sawant, J.:* |

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| | | | | Equality is secured not just by treating equals equally but also by treating unequals unequally through positive measures to abolish inequality. Equalising measures must use the same tools by which inequality was introduced. (para 415)<br><br>Art.16(4) is not aimed at economic upliftment or poverty alleviation but is instead designed to grant due share of State power to those who have remained out of it on account of social (and consequent educational and economic) backwardness. (paras 482 and 492)<br><br>Art.16(4) is not an exception to clause (1) but an emphatic way of stating what is implicit in clause (1). The use of the expression "equality of opportunity" in clause (1) in its positive rather than formal sense was made explicit in clause (4) to remove doubt. Backward classes are specifically carved out in clause (4) out of the various classes for whom reservations can be made only for emphasis and clarity. Clause (4) is exhaustive of the reservations that can be made for backward classes but not exhaustive of the reservations that can be made for other classes under clause (1). (paras 428-431 and 522)<br><br>Backward class of citizens under Art.16(4) is a socially backward class whose educational and economic backwardness is on account of their social backwardness. Caste by itself may constitute a backward class if it meets the conditions of this kind of backwardness. (para 552)<br><br>When provision is made for reservation on the basis of caste, it is not discrimination on grounds "only" of caste but also backwardness of the social group. (para 418)<br><br>To continue to confer special benefits to advanced sections of backward classes would amount to treating equals unequally as well as unequals equally. Excluding these forward sections is thus obligatory. This forwardness has to be judged on the basis of the social capacities gained to compete with the forwards classes. (paras 520-522) |

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| | | | | The backwardness of backward classes other than Scheduled Castes and Scheduled Tribes need not be exactly similar to the backwardness of Scheduled Castes and Scheduled Tribes. (para 447)<br><br>Backward classes are not the same as weaker sections (referred to under Art.46), which may be weaker as individuals and not as a result of past social and educational backwardness or discrimination. This explains why mere poverty or economic consideration cannot be a criterion for identifying backward classes under Art.16(4). The application of economic criterion as the sole test would allow the poor from advanced classes to benefit. The provision for reservation in appointments is not aimed at economic upliftment or poverty alleviation but provision of due share in State power. (paras 480-482, 484, 491-492 and 552)<br><br>Where there is substantial difference in the backwardness, it is not only advisable but also imperative to make sub-classification of the backward classes. Special quota has to be prescribed for each. This is to be done on the basis of degrees of social backwardness and not economic considerations alone. (paras 524-525 and 552)<br><br>There is no mention of the extent of reservations in Art.16(4) but the objective of adequacy of representation provides some guidance. Broadly speaking, the adequacy of representation in the services will have to be proportionate to the proportion of the backward classes in the total population. Adequacy is to be determined on the basis of representation in all posts and levels, and should be aimed at creating effective representation and voice and not just numerical presence. Art.16(4) speaks of adequate and not proportionate representation. Method to determine adequacy should be consistent with efficiency in administration. Framers intended to remove inadequacy of representation while balancing with the interests of the forward classes, the equality provisions under Arts. 14 and 16(1) and the interests of society as a whole. The extent of reservations should be adjusted to meet the legitimate claims of sections that are unable to compete on par though they may not qualify to be considered 'backward'. Ordinarily, reservations under Art.16(1) and (4) should not exceed 50% of appointments in a cadre, |

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| | | | | grade, or service in a given year. This may be exceeded for extraordinary reasons. (paras 495-496, 505-507, 514-518, 522 and 552)<br><br>*Sahai, J.:*<br><br>Abstract equality is neither the theme nor philosophy of the Constitution and real equality through practical means is the avowed objective. The ethical justification for "reverse discrimination or protective benefits or ameliorative measures" is the need for compensating groups for past injustices and promoting social values. This compensatory principle demands provision of assistance to overcome shortcomings until the point that the disadvantage disappears. (paras 616 and 596)<br><br>Art.16(1) and (4) operate in the same field, with the former being broader in applicability and the latter narrower. The former is a right of a citizen representing substantive equality and the latter is an enabling provision for the State representing protective equality. The latter is a complete code on reservations for backward classes. (paras 563-566)<br><br>The word "only" in Art.16(2) mitigates the prohibition on State action based on race, religion, caste etc. If the action is not based exclusively or merely on the prohibited ground, it may not be susceptible to challenge. The word "only" was thus used to save legitimate legislative action. [Finds, however, that this "cannot be utilised by the State to escape from the prohibition by taking recourse to such measures which are race, religion or caste based by sprinkling it with something other as well.] (paras 578, 591 and 593)<br><br>Identification of a group or collectivity on the basis of criteria other than caste such as occupation-cum-social-cum-educational-cum-economic criteria ending in caste may not be invalid. (para 635(2)(b))<br><br>Reservation should not be so vigorously pursued as to destroy the very concept of equality. Benign discrimination cannot become the principal clause, because equality is the rule and protection the exception. Exception cannot exhaust the rule itself. |

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| | | | | Inadequacy of representation cannot become the measure of representation. States and Union have by and large accepted the 50% limit as correct. Being an extreme form of a protective measure or affirmative action, reservation should be confined to a minority of seats. (paras 613, 618-619 and 635(4))<br><br>*Pandian, J.:*<br><br>Art.16(4) is neither an exception nor a proviso to Art.16(1). Art.16(4) is exhaustive of all the reservations that can be made in favour of the backward classes and no reservation can be made under Art.16(4) for classes other than backward classes. Such reservation can be made under clause (1). (paras 167-168 and 243(1)-(2))<br><br>Backwardness can be social, educational, economic, political and even physical backwardness. There is no rigid formula and tests include those of traditional occupation, poverty, place of residence etc. (paras 44-45)<br><br>Group of persons having common traits along with retarded social, material and intellectual development fall within "any backward class of citizens". (para 58)<br><br>A caste must meet the test of backwardness to be considered a backward class. The caste criterion cannot be divorced from other criteria for ascertaining backwardness. Caste can be a primary criterion even at the starting point of identification. The Report of the Mandal Commission is not based solely on caste criteria but on a variety of other factors, social, educational and economic. Backwardness not restricted to lingering effects of past discrimination. Nor is it restricted to classes similarly situated to Scheduled Castes and Scheduled Tribes. (paras 82-83, 126, 130-131, and 161)<br><br>Inadequacy of representation of backward class is within the opinion of the State and the process of formation of this opinion is purely a subjective process. Circumstances must exist that are relevant to the formation of such opinion and it must not suffer from non-application of mind, or formulation of collateral grounds etc. (para 174)<br><br>*Thommen, J.:* |

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| | | | | Class of citizens is not to be classified as backward solely by reason of religion, race, caste, sex, descent, place of birth, residence or any of them, but these factors can be taken into account along with other relevant factors for identifying backwardness. (paras 269, 277-278 and 323(2))<br><br>Economic backwardness without more does not justify reservations. Poverty has to be the result of identified prior discrimination. (paras 323 (12)-(13))<br><br>Preference may be legitimately extended to the comparatively poorer or more disadvantaged sections among the backward classes. (para 324(A))<br><br>Any excessive reservation or unnecessarily prolonged reservation will result in invidious discrimination. Reservation in all cases must be confined to a minority of available posts or seats so as not to unduly sacrifice merit. Such reservation must remain well below 50% to the total posts or seats. (paras 299, 323(8) and (10), 324(C), and 328(8)) |
| *51.* | *V. Sunithakumari v. Kerala State Electricity Board*<br><br>(1992) 2 KLT 157; 1992 SCC OnLine Ker 145 | Kerala High Court | Sex<br><br>Denial of employment assistance to married daughter of employee who died in harness though such assistance is offered to married sons | Denial upheld.<br><br>Court finds that there is reasonable classification in the policy in question as the benefit is restricted to those who are dependents of the deceased employee. So long as a son is unemployed, he remains a dependent of the father. The scheme is not aimed at heirs and only at such dependents. (paras 7-9) |
| *52.* | *Uttarakhand Mahila Kalyan Parishad v. State of Uttar Pradesh*<br><br>1993 Supp (1) SCC 480 | Supreme Court (2-judge) | Sex<br><br>Lower scale of pay to female employees in education work and lady teachers as compared to male teachers, and fewer | Treatment found discriminatory.<br><br>Constitutional arrangement offers no occasion for differential treatment between male teachers and employees and female teachers and employees when they are doing the same job. No justification for preferential treatment in promotional avenues. Direction made to equate pay scales and examine the matter of promotional avenues so as to provide additional avenues to women. (para 4) |

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| *53.* | *Anil Kumar Mahsi v. Union of India*<br><br>(1994) 5 SCC 704 | Supreme Court of India (2-judge) | Sex<br><br>Provision permitting wife to seek divorce on grounds such as conversion and subsequent marriage, rape, sodomy, and bestiality, while husband is not allowed these grounds of divorce and may seek it only on grounds of adultery by wife | Provision upheld.<br><br>The fact that the wife may seek divorce if the husband has both changed religion and subsequently married another woman means that she is actually at a disadvantage as against the husband, who may divorce on the ground of adultery simpliciter. (para 4)<br><br>Regarding the ground of rape, while a woman may be capable of rape under a modern usage of the term, it is understood only as forcible sexual intercourse by a man with a woman both in the dictionary and under the Indian Penal Code. Thus, there is no discrimination if the husband cannot file for divorce on the ground of rape by wife. (para 5)<br><br>Legislature cannot be faulted for not providing to the husband, as grounds of divorce, sodomy and bestiality by the wife, taking into consideration "the muscularly weaker physique of the woman, her general vulnerable physical and social condition and her defensive and non-aggressive nature and role". (paras 6-8)<br><br>[Challenge made on the basis of Art.14 only.] |
| *54.* | *R.C. Poudyal v. Union of India*<br><br>1994 Supp (1) SCC 324 | Supreme Court (5-judge) | Religion<br><br>Constitutional amendment and statutory provisions providing for reservation of one seat in the Sikkim Legislative Assembly in favour of member of the Buddhist Sangha to | Constitutional amendment and statutory provisions found constitutional (Basic Structure of the Constitution not violated).<br><br>Even though the constitutional amendment empowering Parliament to provide for reservation of seats in legislature for certain communities is "notwithstanding" the other provisions of the Constitution, it must be read as consistent with the basic features of the Constitution and not as destroying any such feature. (para 102)<br><br>Majority opinion found that the Sangha's role was interwoven into the social and political life of the Sikkimese people, and statutory reservation of a seat for the Sangha recognises this socio-political role "more than its purely religious identity". A separate electorate for a religious denomination would be "obnoxious to the fundamental |

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| | | | be elected by Sangha members | principles of our secular Constitution", but this would be the case only if provision is made "purely on the basis of religious considerations" and this is not the case here because the Sangha is not "merely" a religious institution. (para 137) |
| *55.* | *Dayandeo Dattatraya Kale v. State of Maharashtra*<br><br>(1995) 2 LLJ 597; 1994 SCC Online Bom 507 | Bombay High Court | Sex<br><br>Concerned authorities of bank instructed not to recommend female candidates for appointment as most postings were in places without residential accommodations for women, proper sanitary arrangements or security | Challenge dismissed as bank found not to be "State" as per Article 12, but additional remarks on legality made.<br><br>*C.B. Muthamma* and *Nergesh Meerza* relied on to hold that there was no fault in the measure adopted by the bank. Proposed alternative that women be allowed postings at Taluka places was rejected as it would confer female candidates with an advantage to the detriment of male counterparts, given that accommodation in a particular place could not be carried throughout tenure of service in the case of a transferable job. (paras 44-47)<br><br>[No discussion of Article 15(3) in rejecting proposed alternative] |
| *56.* | *Hindustan Latex Ltd. v. Maniamma*<br><br>(1994) 2 KLT 111; 1994 SCC OnLine Ker 370 | Kerala High Court | Sex<br><br>Denial of promotion to a lady security guard to the post of Assistant Security Inspector | Denial of promotion found discriminatory.<br><br>Employer contends that the position of lady security guard is a separate and distinct post created in the security department for a specific purpose and with no promotional avenues. Court finds that special provision for women under Art.15(3) cannot be something that discriminates against women and can only be in favour of women. "A provision discriminating in favour of women must necessarily discriminate against men." Art.15(3) is an exception to the prohibition in Art.15(1). (paras 3 and 5)<br><br>Burden is on the employer to show that there are non-discriminatory reasons for the denial of promotion. (para 10)<br><br>Note that the post of female security guard was envisaged to allow for search of females entering or leaving the factory premises. However, court finds that this does not make the post a separate category from security guards in general. The treatment of the two |

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| | | | | as separate categories itself carries the stigma of sex discrimination at the workplace. (para 11)<br><br>Court sees no physical or other disability for women to carry out the functions envisaged for a security guard, even if male security guards, on the other hand, may not conduct searches of females. As there is no distinction in the category of posts, the denial of promotion is held to be sex discriminatory. (paras 17-18) |
| *57.* | *A.M. Shaila v. Chairman, Cochin Port Trust*<br><br>(1995) 2 LLJ 1193; 1994 SCC OnLine Ker 572 | Kerala High Court | Sex<br><br>Exclusion of women from employment as shed clerks in ports | Policy upheld.<br><br>Exclusion of women from a particular kind of employment because of their "physical structure and special susceptibilities" places them in a class by reason of the distinct circumstances and is not "solely" on the ground of sex. Differentiating factors here are physical strength, hazardous nature of work, sensitivities of sex, and social factors like working late at night. (paras 14-15, 24-25) |
| *58.* | *Government of Andhra Pradesh v. P.B. Vijay Kumar*<br><br>(1995) SCC 4 520 | Supreme Court (2-judge) | Sex<br><br>Rule providing that where male and female candidates are equally suited for any post, other things being equal, preference in recruitment to be given to women and they are to be selected for at least 30% of posts in each category | Rule upheld.<br><br>Argument made that sex discrimination in public employment is prohibited under Article 16(2) with reservations permitted only for underrepresented backward classes under Article 16(4) and not for women. Argument rejected as Article 15(3) held applicable to public employment, allowing the government power to make special provision for women in the entire range of State activity including public employment. (paras 5-7)<br><br>"Special provision" for women under Article 15(3) can include affirmative action and reservations, though the impugned rule was not for reservations as such but a limited kind of affirmative action (preference). (paras 8-10) |
| *59.* | *M.C. Sharma v. Panjab University* | Punjab & Haryana | Sex<br><br>Provision requiring only women to be | Provision struck down.<br><br>Discrimination on the ground of sex in the form of reservations is permissible under Article 15(3) if it is found that women are not equal to men and are lagging behind in the |

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| | AIR 1997 P&H 87; 1995 SCC Online P&H 104 | High Court | appointed as principal at a women's college | field where reservation is sought to be made. What is prohibited is discrimination among equals as equals must be treated equally. Reservation in favour of women must be reasonable and the State must show that it is *prima facie* justified. (para 33)<br><br>Argument made that certain officers including the Principal are to be women as this would allow the girl students to have frank communication with them in respect of their problems. Court found this justification to not meet the test under Article 14 to 16. A review of the powers and functions of the Principal also showed that there was no justification for exclusion of males. Court further finds that men are permitted to be Heads of Department and any sort of exploitation could equally take place at that level. Rule excluding men contrary to Articles 14, 15 and 16. (paras 44-46)<br><br>Concurring opinion: No rationale for depriving the senior most teacher of the post solely because he is male. Considerations may be different for appointment of hostel warden or doctor. (para 72)<br><br>Concurring opinion: Considers whether discrimination is solely on the ground of sex or whether the measure was on any considerations other than sex. Does not accept that only a lady Principal can have a better understanding of female student's problems and encourage their involvement in different activities. Finds that male principals in mixed sex colleges are made responsible for the development of female students. (para 73) |
| *60.* | *Ammini E.J. v. Union of India*<br><br>AIR 1995 Ker 252; 1995 SCC Online Ker 47<br><br>[Appears to be equivalent to:<br><br>*Mary Sonia Zachariah v.* | Kerala High Court | Religion, sex<br><br>Provision under which Christian wives are required to seek divorce on the grounds of cruelty or desertion coupled with adultery, while wives from other religions may obtain divorce on grounds of | Provision found unconstitutional.<br><br>Contention made that because Article 44 of the Constitution only sets out a directive principle on a uniform civil code, this means that constitution makers envisaged the continuance of personal laws applicable to different communities for some time, that personal laws not made subject to fundamental rights under Art.13, that Government must take readiness of community into account before legislating on personal laws, and that no comparison can be drawn between personal laws of different communities to allege discrimination. (para 9)<br><br>However, court finds that the requirement of coupling adultery with cruelty or desertion is discrimination on the ground of sex only. Even if adultery by husband and by wife gives |

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| | *Union of India*, 1995 SCC OnLine Ker 288] | | cruelty or desertion independent of adultery; same provision permits husband to obtain divorce on the ground of adultery irrespective of any cruelty or desertion; provision only permits incestuous adultery (and not adultery by itself) as an independent ground of divorce for Christian women | rise to distinct results in terms of maintenance of children from the adulterous union, this is also a discriminatory distinction as it results solely from sex which cannot be treated as a valid justification under Arts.14 and 15. (paras 23-24)<br><br>Court also finds that there are no constitutionally justifiable reasons for Christian spouses to be denied divorce on the grounds of cruelty or desertion for a reasonably long period when spouses under all other religions have such grounds. Such a distinction is discrimination on the ground only of religion. The spouses do not waive fundamental rights by marrying under the relevant law (instead of the Special Marriage Act). Further, even if personal laws are not covered under Art.13, the impugned provision is part of an enactment passed by the legislature and so must pass the test of constitutionality. (paras 36-39)<br><br>Offensive phrases requiring "incestuous" adultery and "adultery coupled with" cruelty or desertion as grounds of divorce found severable even if some of such independent grounds are not made available to Christian husbands. (paras 40-47)<br><br>[Provision also found violative of Arts.14 and 21.] |
| *61.* | *P.P. John v. Zonal Manager, South Central Zone, LIC of India, Saifabad, Hyderabad*<br><br>1996 Lab IC 181; 1995 SCC Online AP 261 | Andhra Pradesh High Court | Religion<br><br>Failure of employer to accommodate religious practice of a denomination under which Saturday is observed as the day of 'Sabbath' during which members are not to work for livelihood | Failure to accommodate upheld.<br><br>State is precluded from mixing religion with any of its secular activities and such neutrality is a constitutional mandate. The right to freely practise religion under Art.25 is made subject to other rights under Part III of the Constitution and Arts.14, 15 and 16 prohibit "any distinction or discrimination based on religion". (paras 30-45)<br><br>A secular state cannot be allowed to favour or disfavour any particular religion or protect or abuse or undermine any of the religious practises. Its neutrality in religious matters is the constitutional mandate. Any deviation in this regard would be plainly obnoxious to the constitutional values. (para 53) |

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| *62.* | *Pannalal Bansilal Pitti v. State of Andhra Pradesh*<br><br>(1996) 2 SCC 498 | Supreme Court (2-judge) | Religion<br><br>Law regulating administration and governance of all charitable institutions and endowments, but only Hindu religious institutions or endowments in the State of Andhra Pradesh; specific provision for the abolition of hereditary right in trusteeship of charitable and Hindu religious institutions or endowments | Law upheld.<br><br>While a uniform law is highly desirable, enacting such a law in one go could be counter-productive to the unity and integrity of the nation. In a democracy governed by the rule of law, gradual progressive change and order should be brought about. In such a slow process, the legislature may attempt the remedy where the need is felt most acutely. It would be inexpedient and incorrect to require all laws to be uniformly applicable to all in one go. The mischief or defect which is most acute may be remedied in stages. (para 12) |
| *63.* | *Madhu Kishwar v. State of Bihar*<br><br>(1996) 5 SCC 125 | Supreme Court (3-judge) | Sex<br><br>Law providing for succession of property in the male line only by male descendants, specifically in the context of patrilineal inheritance customs amongst tribal communities | The provisions were upheld.<br><br>In agreement with dissenting opinion on the point that it is not desirable to declare the customs of tribal inhabitants as offending Arts.14, 15 and 21 and that each case must be examined when full facts are placed before the court. Does not agree that the general principles of justice, equity and fairplay from other statutes should be made applicable so as to read down the impugned gender-discriminatory provisions. Finds that such an approach would result in other similar pleas in relation with the laws of other communities. "Rules of succession are indeed susceptible of providing differential treatment, not necessarily equal. Non-uniformities would not in all events violate Article 14." (paras 5-6)<br><br>Female descendants of the deceased may still exercise their right to livelihood under Art.21 through constitutional remedy by requiring a stay on holding the land so long as |

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| | | | | they remain dependent on it. Only on exhaustion or abandonment of land by female descendents can the exclusive right of the male heirs activate. (para 13) |
| *64.* | *Ahmedabad Women Action Group (AWAG) v. Union of India*,<br><br>(1997) 3 SCC 573 | Supreme Court of India (3-judge) | Sex, religion<br><br>Rules under Muslim personal law permitting polygamy and unilateral divorce by men; sex-based provision in a law on divorce in Muslim marriages; Sunni and Shia laws on inheritance provide lower shares to women than to men of the same status; sex-based provision in law on Hindu succession; sex-based provision in law on Hindu marriage; sex-based provision in law on Hindu minority and guardianship; sex-based provisions in laws on Christian divorce and succession | Provisions not examined.<br><br>Court observed that arguments made wholly involved issues of State policy to be dealt with by the legislature and with which courts would not ordinarily have any concern. (paras 4 and 11) It further observed that issues concerning personal laws were to be resolved by the legislature. (para 11)<br><br>Nonetheless notes that the court in *Anil Kumar Mahsi* ruled on constitutionality of one of the provisions challenged in this case (and found it valid). (para 16)<br><br>[Does not seem to note *Ammini E.J.*]<br><br>Notes that the constitutionality of one other law challenged in this case was pending before a constitution bench. (para 17). |
| *65.* | *MX v. ZY* | Bombay High Court | HIV-status | Denial found unconstitutional.<br><br>Denial of employment to HIV infected person merely on the ground of HIV status and irrespective of his ability to perform job requirements and irrespective of the fact that |

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| | AIR 1997 Bom 406 | | Denial of employment to HIV positive person | he does not pose any threat to others at the workplace is arbitrary and unreasonable and infringes Arts. 14 and 21. (para 54)<br><br>Capability of performing job functions can be legitimately insisted upon and possibility of posing health hazards can be investigated, but there cannot be any generalisation. (para 55)<br><br>State cannot take the ruthless and inhuman stand that they will not employ a person unless they are satisfied that the person will serve the entire span of service until superannuation. Priority is community support, economic support and non-discrimination of HIV infected persons. State cannot condemn such persons to economic death as it would be contrary to public interest as well as the Constitution. (para 56)<br><br>[Art. 15 not discussed.] |
| *66.* | *Pragati Varghese v. Cyril George Varghese*<br><br>AIR 1997 Bom 349; 1997 SCC Online Bom 184 | Bombay High Court | Sex, religion<br><br>Provision under which Christian wives are required to seek divorce on the ground of incestuous adultery or adultery coupled with bigamy, marriage with another women, cruelty or desertion, while husband may seek divorce on the ground of mere adultery; wives from other religions may obtain divorce on grounds of cruelty or | Provision struck down<br><br>Classification in provision on grounds of divorce place Christian women at a disadvantageous position as compared to their husbands and cannot be justified on the basis that wives belong to the "weaker sex" or so as to establish the superiority of husbands. The discrimination is thus unreasonable under Art.14 and violative of Art.15. It is also differential treatment based merely on the ground of sex. (paras 35-36, and 56)<br><br>Reasoning in *Ammini E.J.* on unconstitutionality and severability reproduced and adopted in full. Resultant position under which husband has fewer grounds for divorce than wife also found to be valid on the basis of reasoning in *Anil Kumar Mahsi*. (paras 37-40)<br><br>Court considers a range of judgments including *Ahmedabad Women Action Group* on the point that courts should not interfere with legislative policy and finds that relief in this case does not amount to re-enactment of the law or interference with the legislative sphere but only striking down portions of provisions that are *ultra vires* of the Constitution. (para 49) |

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| | | | desertion independent of adultery; District Court decrees regarding divorce and nullity required to be confirmed by High Court | Provision on confirmation of District Court decrees found to be arbitrary and unreasonable with no propriety found as to why the procedure should be applied to Christian spouses. However, court only suggests that the legislature should intervene to carry out amendments. (paras 55 and 56) |
| *67.* | *Preman v. Union of India*<br><br>AIR 1999 Ker 93; 1998 SCC Online Ker 158 | Kerala High Court | Religion<br><br>Provision placing conditions on Christians with near relatives before they can bequeath their property for religious and charitable purposes, while members of other religious communities not subject to similar conditions; conditions relate to time period before death within which will is to be executed and time period after execution within which it is to be deposited | Provision struck down.<br><br>Government unable to explain why this special procedure applies to the religious and charitable bequests of Christians alone. Bequests in other religious communities not subjected to this procedure and only Christians singled out. Provision found discriminatory and violative of Arts. 14 and 15 as "all testators who are similarly situated should be subjected to the same procedure". (paras 42-44)<br><br>[Provision also found violative of Arts.25 and 26.] |

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| *68.* | *Javed Abidi v. Union of India*<br><br>(1999) 1 SCC 467 | Supreme Court (2-judge) | Disability<br><br>Orthopaedically handicapped person with 80% locomotor disability not granted air travel concession as granted to persons suffering from blindness | Denial of concession held illegal.<br><br>Persons suffering from locomotor disabilities to a particular extent should be granted concessions as granted to those with blindness. Which disabled person deserves this concession as a separate class depends on the degree of the disability and the difficulty, discomfort or harassment faced by such a person in travelling by train or bus. (para 4)<br><br>Economic capacity is germane but the true spirit and object of the 1995 Persons with Disabilities Act cannot be ignored. (para 4)<br><br>[Article 14 argument raised but not directly discussed by the court] |
| *69.* | *Githa Hariharan v. Reserve Bank of India*<br><br>(1999) 2 SCC 228 | Supreme Court (3-judge) | Sex<br><br>Provision stating that the natural guardian of a Hindu minor boy or unmarried girl, as well of the minor's property, shall be the father and only "after him" the mother | Provision interpreted to permit the mother to be guardian where the father is absent i.e., where he is unable or unwilling to be the guardian.<br><br>No discrimination against mothers in definitions of the terms "guardian" and "natural guardian". (para 7)<br><br>Though the provision states that a mother can only be natural guardian "after" the father, the word "after" makes no difference where there is a dispute before a court as the court is to look solely at the best interest of the child. (para 8)<br><br>Where the matter has not gone to court, the validity of acts done in pursuance of guardianship would depend on the law. The provision should not be read in a manner that violates fundamental rights related to gender equality, but should be interpreted such that it is constitutional. (para 9)<br><br>[Article 15 not applied.] |
| *70.* | *P.E. Matthew v Union of India* | Kerala High Court | Religion<br><br>Provision applicable only to Christians requiring decree for dissolution of marriage | Provision upheld along with direction to consider amendment.<br><br>Court finds that personal laws do not fall within the scope of Art.13(1) and hence are not subject to judicial review, the remedy lying with the legislature instead. Reliance placed on *Narasu Appa* and *Ahmedabad Women Action Group*. (paras 9-12) |

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| | AIR 1999 Ker 345; 1999 SCC Online Ker 126 | | passed by District Judge to be confirmed by a three-judge bench of a High Court | Court notes that the provision in question prolongs the agony of affected parties, has no justification in light of there not being similar provisions in other statutes on divorce, and should be amended urgently. (para 14)<br><br>[Court does not consider applicability of Art.13(1) to codified personal laws.] |
| *71.* | *Dr. Narayan Sharma v. Dr. Pankaj Kr. Lehkar*<br><br>(2000) 1 SCC 44 | Supreme Court of India (3-judge) | Place of birth<br><br>Rule reserving seats in a medical college for candidates recommended by a statutory authority (the North-Eastern Council); while the power to recommend is unguided, the provision is meant for candidates of certain states in the north-east | Rule upheld.<br><br>Court relies on *Chitra Ghosh* to hold that there can be reasonable classification based on intelligible differentia for the purposes of Arts.15(1), 15(4) and 29(2). (paras 14 and 24)<br><br>Candidates from 5 states of the north-eastern region where there is no medical college "form a separate class" and a reasonable provision reserving seats for them in medical courses is not violative of the Constitution. (para 27)<br><br>[Court may have misread *Chitra Ghosh* in its findings in paras 14 and 24.] |
| *72.* | *Indra Sawhney v. Union of India (Indra Sawhney II)*<br><br>(2000) 1 SCC 168 | Supreme Court of India (3-judge) | Caste<br><br>Conferral of reservations under Art.16(4) to Backward Classes without exclusion of creamy layer | Non-exclusion of creamy layer found unconstitutional.<br><br>Caste only cannot be the basis for reservation. It can instead be for a backward class citizen of a particular caste. Therefore, from that class, non-backward citizens have to be excluded. Failure to exclude this creamy layer or inclusion of a forward caste in the list of backward classes results in the same kind of violation not only of Art.14 but also of the basic structure of the Constitution. (paras 8, 65) |

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| *73.* | *Danial Latifi v. Union of India*<br><br>(2001) 7 SCC 740 | Supreme Court (5-judge) | Religion<br><br>Law for maintenance for Muslim divorced women distinct and less advantageous than general provision for maintenance under the Criminal Procedure Code | Impugned law interpreted to allow for the same amount of maintenance as the Criminal Procedure Code.<br><br>Argument made by respondents that the impugned law was enacted on the basis of Muslim personal law which can itself be "a legitimate basis for making a differentiation" and that a separate law for a community on the basis of personal law cannot be discriminatory. (para 12) Court finds that social problems of universal magnitude relating to basic human rights cannot be left to religious faith or communal constraints. (para 20)<br><br>Impugned law interpreted to permit Magistrate to grant the same relief as could be granted under the Criminal Procedure Code. (para 31)<br><br>Impugned law *prima facie* deprives Muslim divorced women of their right to maintenance because the provision it makes is not a reasonable and fair substitute for the provisions of the Criminal Procedure Code and violates the right to live with dignity under Art.21 and results in unreasonable discrimination solely on the ground of religion, thus violating Arts.14 and 15. Proposed interpretation necessary to save the law from invalidity. (para 33)<br><br>[Justification for discrimination on the basis of differences in personal laws not entertained.] |
| *74.* | *Girish Uskaikar v. Chief Secretary*<br><br>(2001) 4 Bom CR 122; 2001 SCC OnLine Bom 41 | Bombay High Court | Religion<br><br>Exemption of Sikhs wearing turbans from provision making helmets compulsory for riders of two-wheeler vehicles | The provision was upheld.<br><br>Reasonable classification test applied. Exemption given to Sikhs is not on the basis of caste, creed or religion. Exemption for Sikhs wearing turbans has a rational relation to the object of protecting the head from injury in case of an accident. (para 11)<br><br>[Art.15 not applied.] |

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| *75.* | *R. Vasantha v. Union of India*<br><br>(2001) II LLJ 843 | Madras High Court | Sex<br><br>Provision restricting women from working in factories during the night shift | Provision struck down.<br><br>Provision argued to be for protecting women from exploitation and ensuring their safety, and is thus a special provision to safeguard the interest of the weaker section. (paras 19 and 24) Court finds that if women are permitted to work in the day, there is no reason not to permit them to do the same work in the night shift. Difference in sex is the sole reason for the discrimination, making the provision violative of Article 15. The provision is not protective as it results in denial of livelihood, status and economic freedom. (paras 54-55, 72) As there is no valid classification, it is also violative of Art.14. (para 56) |
| *76.* | *N. Adithayan v. Travancore Devaswom Board*<br><br>(2002) 8 SCC 106 | Supreme Court (2-judge) | Caste<br><br>Claim that the appointment of a person who is not a Malayala Brahmin as priest in a particular temple violated a mandatory custom/usage and was contrary to the right of worshippers to practise and profess their religion in accordance with its tenets and manage their religious affairs | Claim not accepted.<br><br>Court finds that there was no proper plea or sufficient proof regarding the claimed custom or usage. Also finds that the temple is not of any denominational category with a specialised form of worship. Does not consider it necessary to pronounce on the validity of the practice in the context of Articles 14 to 17 and 21. (para 17)<br><br>Court remarks that any custom or usage, even if proved to have pre-constitutional existence, cannot be a source of law if it is violative of human rights, dignity, social equality and the specific mandate of the Constitution and parliamentary law. Usage that is illegal or contrary to public policy or decency can be upheld by courts. (para 18) |
| *77.* | *T.M.A. Pai Foundation v. State of Karnataka* | Supreme Court (11-judge) | Religion, language<br><br>Ordinance and directive regulating collection of fees and | General questions referred to higher bench on scope of government's power to regulate minority educational institutions.<br><br>A minority institution availing of state aid that denies admission to non-minorities for the purpose of accommodating minority students "to a reasonable extent" would not be |

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| | (2002) 8 SCC 481 | | intake of students in private educational institutions including minority institutions | discriminating "only" on the ground of religion or language but primarily to preserve the minority character of the institution. There can be no fixed percentage to determine the reasonable extent of intake as it may vary on the basis of the type/level of institution, the nature of education (e.g., professional), population and educational needs of the area etc. State must undertake the balancing operation properly. (paras 149-152) |
| *78.* | *K.S. Triveni v. Union of India*<br><br>(2002) III LLJ 320 | Andhra Pradesh High Court | Sex<br><br>Provision restricting women from working in factories during the night shift | Provision struck down.<br><br>Government had carved out exception to the prohibition on night work by women for fish-curing and -canning to prevent deterioration of the raw materials and not on account of inherent safety of women in those lines of work. Court does not see how fish-canning and -curing factories are different from other factories on any relevant count and finds itself in agreement with *R. Vasantha* and strikes down provision for discrimination on the ground of sex. Orders same safeguards for women working night shift as have been afforded to those working in fish-curing and -canning. (paras 1 and 10) |
| *79.* | *Air India Cabin Crew Association v. Yeshaswinee Merchant*<br><br>(2003) 6 SCC 277 | Supreme Court (2-judge) | Sex<br><br>Policy prescribing differentiated retirement ages for male and female cabin crew | Policy upheld.<br><br>The "but-for-sex" test requires that no less favourable treatment should be given to women on "gender-based criterion" and this is akin to the prohibition on discrimination "only based on sex". Male and female members of crew can be in different cadres with different service conditions when there are agreements or settlements fixing lower retirement age for air hostesses. Thus terms set on the basis of collective bargaining as a comprehensive package deal in the course of industrial adjudication cannot be termed as unfavourable treatment for women only on the basis of their sex. (para 41-42)<br><br>The negotiations acknowledged women's experiences and perspectives. The majority of air hostesses demonstrated preference for early retirement from flight duties in favour of ground duties so as to discharge marital obligations. Gender-neutral conditions of service for flight duties may not necessarily be beneficial for women and they may deserve "different and preferential" treatment. (para 42-44) |

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| | | | | If discrimination is found, there would be merger of the two cadres and air hostesses would compulsorily have to continue flight duties till the higher retirement age even if they have contrary health and family interests. (para 52) |
| *80.* | *John Vallamattom v. Union of India*<br><br>(2003) 6 SCC 611 | Supreme Court of India (3-judge) | Religion<br><br>Provision placing conditions on Christians with near relatives before they can bequeath their property for religious and charitable purposes, while members of other religious communities not subject to similar conditions; conditions relate to time period before death within which will is to be executed and time period after execution within which it is to be deposited | Provision held violative of Art.14 and found not to violate Art.15.<br><br>Court finds that classification applying the rule to citizens professing Christianity must be judged against Art.14. Even if they form a class by themselves, the classification is neither based on an intelligible differentia nor does it have any nexus to the object of the law. (para 28)<br><br>Court finds that Art.15 may not be applicable to this case as the prohibition in that provision is against discrimination that is based on the ground that a person belongs to a particular religion. As it is a right conferred on a "citizen", it is an individual and personal right guaranteeing protection against discrimination in relation with rights, privileges and immunities vesting in him "as a citizen". If a statute restricts a right for a class of citizens "who may belong to a particular religion", it does not attract Art.15. (paras 39 and 46)<br><br>[Provision found violative of Art.14 for being unreasonable and arbitrary, the classifications between deathbed gifts and deathbed testamentary dispositions, and between testators on the basis of kind of relative and duration of survival after execution found unreasonable.] |
| *81.* | *State of Haryana v. Ankur Gupta*<br><br>(2003) 7 SCC 704 | Supreme Court of India | Descent<br><br>Compassionate appointment where surviving parent is also in government service | Appointment found contrary to modified policy, but remarks made on nature of such appointments.<br><br>Claim of a person to be appointed on compassionate grounds is based on the premise that he was a dependent of a deceased employee. Such a claim, considered "strictly", cannot be upheld on the touchstone of Arts.14 or 16. However, such a claim is |

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| | | | | considered "reasonable and permissible" on the basis of a sudden crisis in the family of a person who has served the State and dies while in service. (para 6) |
| *82.* | *Vijay Lakshmi v. Punjab University*<br><br>(2003) 8 SCC 440 | Supreme Court of India (2-judge) | Sex<br><br>Rules providing for the appointment, in a women's college, of a lady Principal, lady teachers, woman superintendent of hostel, and lady doctor | Provision upheld.<br><br>Court lists certain "established propositions" regarding the application of Arts.14 to 16: Art.14 does not bar reasonable classification, reasonable discrimination between males and females is permissible for an object sought to be achieved, the question of unequal treatment does not arise if there are different sets of circumstances, equality of opportunity for unequals can only mean aggravation of inequality, equality of opportunity admits discrimination with reason and requires treating unequals unequally, sex is a sound basis for classification, Art.15(3) empowers special provision for women, and Arts.14, 15 and 16 are to be read conjointly. (para 4)<br><br>On the basis of these principles, court finds that there can be classification of males and females for certain posts, especially if separate schools and colleges for girls are justifiable. The object is a precautionary, preventive and protective measure based on public morals keeping in view the young age of the girl students to be taught. (para 5)<br><br>Such reservation is also permissible under Art.15(3). (para 6) |
| *83.* | *N. Sreedharan Nair v. Mottaipatti Chinna Pallivasal Muslim Jamath, Virudhunagar*<br><br>(2003) 2 Mad LJ 164; 2003 SCC Online Mad 171 | Madras High Court | Religion<br><br>Exemption of tenancies in respect of lands owned by any religious institution or religious charity from a law that provides tenants certain rights | Provision upheld.<br><br>While it was contended that an exemption to tenancies in respect of lands owned by religious institutions and charities amounted to discrimination on the ground of religion only, court found no such discrimination against citizens on the basis of the religions they belong to, the exemption being in respect of the tenancy of lands belonging to all religious institutions. (paras 78-81) |

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| *84.* | *Satyendra Kumar Tripathi v. State of Uttar Pradesh*<br><br>AIR 2005 All 147; 2004 SCC OnLine All 1340 | Allahabad High Court | Caste<br><br>Rule providing preferential rights to certain socially and educationally backward classes traditionally engaged in excavating sand and morrum | Rule upheld.<br><br>Court notes that the preferential rights to the relevant classes were "hedged by limitations" meaning that the preference could not be claimed automatically without meeting conditions. The requirement that the relevant persons be "traditionally engaged" means that the preference is not extended to all members of the said castes and only to such persons who are engaged as of the date of the commencement of the rules. The preference is thus "not simply on the ground of caste only". (para 32)<br><br>Court further finds that Art.15(4) permits special provision for the "advancement" of socially and educationally backward classes of citizens, and the preference to the relevant castes in this case is also for such advancement. Art.15(4) thus saves the preferential treatment even if it is caste-based. Further conditions listed in the rules are also required to be met before grant of preference. It is thus not a blanket reservation or a compulsory vertical preference but only a horizontal one in a limited field. The application of preference is also a remote one in the event of simultaneous applications and is meant to assist in settling mining rights. Members of castes traditionally engaged in such work would also be able to bring their vast experience to advance mining operations. (paras 33-35) |
| *85.* | *Leela v. State of Kerala*<br><br>(2004) 2 KLT 220; 2004 SCC OnLine Ker 1 | Kerala High Court | Sex<br><br>Provision restricting women from working in factories during the night shift | Provision upheld.<br><br>Court notes that there is a presumption in favour of constitutionality. Agrees that times have changed and women are taking up positions of responsibility outside the home. But notes that "the very nature of their commitment to the family and the social environment require that they cannot be entrusted with all those duties which men may be asked to perform." Gives examples of how women are not normally sent to the border to fight, made to patrol at night as lady constables, or made to waitress at night, while they may be "good for managerial jobs". Special provisions to protect and save them and ensure they are not harassed can be and have been made. This is in line with Art.15(3). (para 11) |

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| | | | | Does not agree that the provision creates a bar for women as it does not prohibit employment, and only restricts working hours instead. Provision is protected by Art.15(3) and is not simply an application of Victorian values. (paras 13-15)<br><br>Contention was also made that the denial of night shift also resulted in a denial of equal opportunity in the matter of employment as they are not considered for certain promotions. However, court finds that this situation was addressed by the employer by entering into a settlement where those denied such opportunities were given additional financial benefits. Relies on precedent of such a settlement in *Yeshaswinee Merchant*. (paras 26-27) |
| *86.* | *Rajesh Kumar Gupta v. State of Uttar Pradesh*<br><br>(2005) 5 SCC 172 | Supreme Court of India (2-judge) | Sex, place of birth.<br><br>50% reservation for women in a teacher training course; merit list of candidates prepared at the district level instead of the state level | Policy of district-level merit list struck down.<br><br>Court agrees that the reservation for women is justified as a special provision under Art.15(3), especially keeping in mind that a large number of young girls below the age of 10 were taught in relevant primary schools and it would be preferable for them to be taught by women. (paras 14-15)<br><br>The preparation of a merit list at the district level being recruitment on the basis of candidates from a local area, such a method was hit by Arts.15(1) and 16(2). Court finds that adequate material was not presented to show that candidates should be fluent in regional dialects, that such dialects varied district-to-district or that training was to be in a local dialect. In any case, nothing prevented the state government from requiring knowledge of such dialects as a preferential criterion. (paras 16-17) |
| *87.* | *M. Nagaraj v. Union of India*<br><br>(2006) 8 SCC 212 | Supreme Court of India (5-judge) | Caste<br><br>Constitutional amendments providing for reservations in promotions in public employment | Amendments upheld.<br><br>Equality of opportunity has two distinct concepts: non-discrimination and affirmative action. Balancing comes in when looking at questions of the extent of reservation. If the extent goes beyond the cut-off point, it results in reverse discrimination. Anti-discrimination legislation has a tendency of pushing towards *de facto* reservation. Therefore, a numerical benchmark is the surest immunity against charges of discrimination. (paras 47 and 48) |

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| | | | | The question of extent of reservation is closely linked to the issue of whether Art.16(4) is an exception to or an application of Art.16(1). If it is an exception, it needs to be given limited application so as not to eclipse the general rule. But if it is an application, then the two articles have to be harmonised keeping in view the interests of certain sections of society as against the interests of individual citizens of society. (para 54)<br><br>"Catch-up" and "consequential seniority" are judicially evolved concepts to control the extent of reservations and cannot be elevated to the status of basic features. (para 79, 102)<br><br>Equality has two facets: formal equality (equality in law) and proportional equality (equality in fact). Formal equality exists in the rule of law, while under proportional equality the State is expected to take steps in favour of disadvantaged sections. Egalitarian equality is proportional equality. (para 102)<br><br>As long as the boundaries of 50% ceiling, creamy layer, and quantifiable data on compelling reasons (backwardness, inadequacy of representation, and efficiency of administration) are retained, enabling provisions remain guided and constitutional. (paras 106-107, 122)<br><br>*Indra Sawhney* also applied a numerical benchmark in the form of a 50% ceiling to provide immunity against the charge of discrimination. (para 120) |
| *88.* | *Anuj Garg v. Hotel Association of India*<br><br>(2008) 3 SCC 1 | Supreme Court of India (2-judge) | Sex<br><br>Provision prohibiting women from being employed in premises where liquor or intoxicating drugs were consumed by the public | Provision held unconstitutional.<br><br>Court notes that, in the present case, there is no conflict between individual rights and community interests or some similar question of prioritisation. Instead, there is only a practical problem in implementing or enforcing security. Finds that such concerns, while significant, are not of an equal hierarchical status as individual rights and do not fall in the same class as such rights ontologically. (paras 18-20) |

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| | | | | The makers of the Constitution intended to apply equality of the sexes in all spheres of life. While classification on the ground of sex is not wholly impermissible, the burden to show that is permissible is on the State. (para 21)<br><br>Criteria for classification that might be rational in the early 20th century in the absence of any constitutional provision on sex equality, may not be rational in the 21st century. (para 26)<br><br>Court notes that there is a conflict between the rights to privacy and self-determination and a *parens patriae* power of the state to take action in the best interests of a citizen. (paras 29-32)<br><br>Similarly notes an analogous conflict between the right to employment and security. Security concerns texture the method of delivery of a guarantee of autonomy in choice of profession. However, measures to safeguard the guarantee should not be so strong that the essence of the guarantee is lost. The impugned law victimises women in the name of protection. Protective interference should be proportionate to a legitimate aim, with the proportionality judged on a standard that is reasonable in a modern democratic society. The state should focus on law enforcement strategies instead of curbing citizens. (paras 33-37)<br><br>Legislation with protective discrimination aims can operate as a double-edged sword and should be assessed on the basis of a strict scrutiny test. They should be assessed not just on the basis of proposed aims but rather on the implications and effects. The impugned legislation suffers from incurable fixation with stereotype morality and conception of sexual role. Laws should not perpetuate the oppression of women. Personal freedom should not be compromised in the name of expediency but only for a compelling State purpose. (paras 46-47)<br><br>Test to assess protective discrimination should involve a two-tiered scrutiny: the legislative interference should be i) justified in principle, and ii) proportionate in measure. Here, there should be a relationship of proportionality between the means used and the aim of protecting women, keeping in mind the impact of the means on other |

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| | | | | well-settled gender norms such as autonomy, equality of opportunity, privacy etc. This includes the freedom to pursue varied opportunities and options without discrimination on the ground of sex. The impugned provision involves invidious discrimination perpetuating sex differences. (paras 50-51, 55) |
| *89.* | *Ashoka Kumar Thakur v. Union of India*<br><br>(2008) 6 SCC 1 | Supreme Court (5-judge) | Caste<br><br>Law providing reservations for Other Backward Classes in admissions to Central Educational Institutions | Law upheld. This note is on the limited question of standard of review/scrutiny in affirmative action.<br><br>*Balakrishnan, C.J.:*<br><br>It was contended that the impugned legislation was "suspect" and should be subjected to "strict scrutiny". However, United States Supreme Court decisions have not been applied because of differences between the structures of the Indian and US Constitutions and between the respective social conditions in the two countries. Refers to specific provisions for directive principles on minimisation and elimination of different kinds of inequality. Relies on *N.M. Thomas* for the proposition that Arts.15(4) and 16(4) are not exceptions to Arts.15(1) and 16(1) respectively. Notes the high standard of scrutiny applicable in the US for affirmative action programmes, involving "narrow tailoring" for "compelling purposes". Analogises how, like with race being one of many factors to be taken into account in the US, in India caste may similarly only be "one of the factors that can be taken into account" as long as it is not the "only" factor. However, otherwise, the doctrine of "suspect legislation" is inapplicable in India as there is a presumption of constitutional validity of laws. Strict scrutiny thus not applicable. (paras 188-210, 229)<br><br>*Pasayat and Thakker, JJ.:*<br><br>Article 14 is conceptually different from the US Fourteenth Amendment. Affirmative action has specifically been provided for in the Indian Constitution from the beginning. State has been charged with the duty to secure the interests of weaker sections and minimise inequality. (paras 252-253)<br><br>Doctrine of separation in the US is not applicable in India and the courts here have not applied strict scrutiny as applied in the technical sense in the US. India recognises "rights |

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| | | | | of certain classes of people" and not just individual rights as in the US. (paras 268-269, 274)<br><br>"Strict scrutiny" is not applicable and "in-depth scrutiny" has to be made to decide the constitutionality of a statute. (para 358(10))<br><br>*Bhandari, J.:*<br><br>Indian courts have not adopted American standards of review and they are "not strictly applicable" for challenging the impugned legislation, but the judgments of US courts on affirmative action have persuasive value. (paras 545, 623 and 640-641)<br><br>[Significantly, the judgement also dealt with the question of the applicability of the "creamy layer" rule under Art.15 to OBC persons but not to SC and ST persons.] |
| *90.* | *V. Sivamurthy v. State of Andhra Pradesh*<br><br>(2008) 13 SCC 730 | Supreme Court (2-judge) | Descent<br><br>Appointment of a dependent on compassionate grounds in cases other than death of a government servant in harness, specifically in the case of medical invalidation of the government servant | Appointment upheld.<br><br>Public employment should not be hereditary or by succession. But where compassionate appointment is provided to a dependent of an employee who has died in harness or been medically invalidated, the classification is not "only" on the ground of descent but the additional condition of death or invalidation. (para 9)<br><br>Compassionate appointment based only on descent is impermissible. Such an appointment is an exception carved out in the interest of justice to meet a contingency. This could include death or medical invalidation of an employee or, less frequently, loss of land for a public project. The appointments must be rule-bound, towards existing vacancies in lower category of posts, and for the benefit of dependent family members. (para 8)<br><br>Where an employee dies, the family suffers due to stoppage of income, but the incapacitation of the employee due to illness or accident can result in even greater financial hardship for the family. (para 27)<br><br>Court recognises that there is a charge of hostile discrimination when compassionate appointment is not extended to dependents of persons who are not employed by the |

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| | | | | government but who die or suffer from illness, especially if they are from weaker sections of society. Finds that it is a complex issue but the present question is about comparing death with medical invalidation. Too many exceptions may dilute the efficacy of Article 16(2) but medical invalidation is on an equal footing with death. (paras 28-29) |
| *91.* | *Ranjit Kumar Rajak v. State Bank of India*<br><br>(2009) 5 Bom CR 227; 2009 SCC OnLine Bom 732 | Bombay High Court | Disability, medical condition<br><br>Denial of employment of person who suffered from medical condition of renal failure but who has since become medically fit though still incurring medical costs that are to be reimbursed by the employer | Denial found unconstitutional.<br><br>Employer may have right to select employee but must meet the requirements of Articles 14, 16 and 21. The State cannot deny the right to employment on account of medical conditions if the person is otherwise fit to work and can be reasonably accommodated without causing undue hardship. This right is subject to the State's economic capacity. (para 32)<br><br>Reasonable accommodation forms a part of Indian law even if there is no specific enactment and the State must comply with its requirement at the stage of and during the course of employment. (para 37)<br><br>Illustrative principles for determining what is undue hardship in provision of reasonable accommodation are financial burden on the employer and the morale of other employees. (para 38) |
| *92.* | *Naz Foundation v. Government of N.C.T. of Delhi*<br><br>(2009) 160 DLT 277 | Delhi High Court | Sexual orientation<br><br>Provision criminalising "carnal intercourse against the order of nature" in reference to non-procreative penetration including consensual homosexual conduct | Provisions read down to refer only to non-consensual penile non-vaginal sex and penile non-vaginal sex involving minors.<br><br>Court finds on studying medical evidence that homosexuality is not a disease or mental illness but an expression of human sexuality that cannot be 'cured' or 'altered'. Court also does not find any special link between homosexuality and the spread of HIV-AIDS. (paras 67-68, 72-73)<br><br>Impugned provision, though facially neutral and directed towards certain acts, found by court to unfairly target homosexuals as a class in its operation as that class are closely associated with such acts. (para 94) |

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| | | | | Sexual orientation found to be a ground analogous to the analogous to sex. Court refers approvingly to foreign cases identifying grounds of discrimination as those that are immutable, changeable only at unacceptable cost to personal identity, or linked to associational, intellectual, expressive and religious interests. Discrimination based on sexual orientation is grounded in stereotypical judgments and generalisations about the conduct of either sex. Therefore, such discrimination is prohibited under Article 15. (paras 99-104)<br><br>Heightened standard of judicial review called strict scrutiny applicable to any measure that disadvantages a vulnerable group defined on the basis of a characteristic that relates to personal autonomy but not to affirmative action under Article 15(5). Impugned provision disproportionately impacts sexual minorities solely on the basis of their sexual orientation. (paras 111-113) |
| *93.* | *Vijay Harishchandra Patel v. Union of India*<br><br>(2009) 50(3) GLR 2153; 2009 SCC OnLine Guj 1987 | Gujarat High Court | Religion<br><br>Programme for welfare of religious minorities, including location of developmental projects in minority concentration areas and earmarking of targets and outlays under various schemes for minorities | Programme upheld.<br><br>It is the prime responsibility of the State to provide people with facilities to minimise inequalities. Secularism is not just a passive attitude of religious toleration but also a positive concept of equal treatment that involves bringing the minority community on par with majority communities in terms of social and economic status. No religion can receive special patronage of the State, including by virtue of Art.27. However, funds used for improving the basic amenities, providing infrastructure facilities to minority concentrated areas, improvement of their health, family welfare, safety, general well-being, spreading literacy, providing education, etc. would not amount to inculcating or advancing any religion and would not affect the constitutional requirement of neutrality. The programme does not violate the constitutional principles of equality. [No paragraph numbers provided.] |
| *94.* | *Prafull Goradia v. Union of India*<br><br>(2011) 2 SCC 568 | Supreme Court (2-judge) | Religion<br><br>Provision for subsidies supporting Haj pilgrims | Subsidies held constitutional.<br><br>Challenge raised that taxes raised were being used to subsidise Haj pilgrim which is conducted only by Muslims. This was contended to be violative of Art.27, which prohibits compulsion to pay taxes that are to be appropriated for payment of expenses for |

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| | | | | promoting or maintaining any particular religion. Court found no violation as only a relatively small part of revenue is used in this manner and the constitutional prohibition is violated only if a "substantial part" of a tax collected is thus used. (paras 8-14)<br><br>Arts.14 and 15 are also not violated as facilities are also given and expenses incurred by the government for other religions. Article 14 cannot be interpreted in a doctrinaire manner, and it is not prudent or pragmatic for the court to insist on absolute equality when there are "diverse situations and contingencies". (paras 14-15) |
| *95.* | *K.P.A. Nallamohamed v. Director, Department of Archaeology*<br><br>(2011) 1 CTC 682; 2011 SCC OnLine Mad 145 | Madras High Court | Religion<br><br>Order rejecting application for jobs of archaeologist, epigraphist and curator on ground that applicant did not profess the Hindu religion | Order held unconstitutional.<br><br>Posts in question do not require work in temples and are not created in connection with the affairs of any religion (as mentioned in Art.16(5)). Work of epigraphists and archaeologists cannot be confined to persons professing Hindu religion. All religions have similar heritage and antiquity. Excavation work is also not confined to Hindu religious structures. Call for applications should not have made blanket reservation for Hindus. (paras 14-15, 20-21)<br><br>Relying on *Nergesh Mirza*, court finds that the test is as to whether the discrimination is based "only" on a prohibited ground. Finds further that no attempt has been made to show that this is not the case here. Thus, there is a violation of Art.16(2). (para 22) |
| *96.* | *Mamta Dinesh Vakil v. Bansi S. Wadhwa*<br><br>(2012) 6 Bom CR 767; 2012 SCC OnLine Bom 1685 | Bombay High Court | Sex<br><br>Provisions giving precedence to father's relatives over mother's relatives in determining succession to the property of Hindu males and females who die intestate; rules of succession for such | Provisions found unconstitutional.<br><br>Contention made that discrimination is not only on the ground of sex but also "family ties" that a Hindu develops with her marital family being placed above her ties to her maternal/paternal family. Court remarks that a presumption that Hindu women are expected to do as such could be a discriminatory privilege as found in *Thakur Pratap Singh* in the context of caste and religion (para 65 and 73-76)<br><br>There is no grouping of "specified" Hindu females who are to have a distinct set of succession rules from males. Had that been the case, the court could have accounted for |

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| | | | males and females also distinct from each other | some "other special factor" in favour of the discrimination. The classification of Hindu females precludes any intelligible differentia other than sex. (paras 78 and 81)<br><br>Finds that the plea that the discrimination is not "only" on the grounds but based on "family ties" is more an argument to justify discrimination than to contend that there was none. Finds that the provision is out of tune with equality as envisaged in other laws of the same time. Does not find that the general scheme of the provisions is to preserve family property and that thus the provision on heirs of an intestate Hindu male classifies on the basis of males and females. (paras 84, 93-98)<br><br>Family ties also found to be inadequate justification in relation with the classification of heirs of Hindu intestate females. (paras 99-104)<br><br>Contention made that personal laws are not subject to charges of discrimination as they are meant to govern different religions, but court finds that such distinctions in personal laws do not justify discrimination between sexes as "there are no personal laws for different sexes". (para 138)<br><br>Relevant provisions found to discriminate between Hindu males and females with the classification not in fact on the basis of family ties. (para 149) |
| *97.* | *G.K. Pushpa v. State of Karnataka*<br><br>(2013) 1 Kant LJ 411; 2012 SCC Online Kar 8725 | Karnataka High Court | Sex<br><br>Sex-based recruitment to post of Junior Health Assistant (Male) | Provision held unconstitutional.<br><br>Court notes distinctions in the responsibilities in the two categories of posts, but also notes that the qualifications for eligibility for the 'Male' post were met by the female candidates. (paras 4 and 16)<br><br>The guarantee of equality in matters of public employment provided in Arts.14 and 16 does not prohibit the State from making "reasonable classification" in its services. (para 24)<br><br>Court finds that the qualifications for the relevant posts can be acquired by males and females. Once these qualifications are obtained, sex should not come in the way of the consideration of the candidate for appointment. Discrimination is patent in this case and |

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| | | | | occurs merely because of the use of the word "Male" in the designation. There is thus a violation of Arts.14, 15 and 16. (para 25)<br><br>The prohibition on discrimination on the ground of sex alone requires strict observance as, unlike with the freedoms under Art.19, there is "no scope" for restricting the rights under Art.15(1). There is thus "no scope whatever to justify differentiating between the male and female sexes" in the matter of appointment. The right of women should not be denied on fanciful assumptions about what work women could or could not do. (para 29)<br><br>The qualification for a female health worker (including carrying out termination of pregnancy) cannot be acquired by a male, but the qualification for male health workers can be acquired by a female. Exclusion of women from the "Male" post is unconstitutional. (para 31)<br><br>Existence of posts and reservations for women is no justification for their exclusion. (para 33) |
| *98.* | *R. Krishnaiah v. Union of India*<br><br>(2012) 5 ALD 688; 2012 SCC Online AP 113 | Andhra Pradesh High Court | Religion<br><br>4.5% sub-quota for members of socially and educationally backward classes belonging to religious minorities carved out within the 27% reservation generally for socially and educationally backward classes in central educational institutions and | Sub-quota found unconstitutional.<br><br>Court finds that by using the phrases "for minorities" and "belonging to minorities", the relevant memoranda/resolutions create a sub-quota "only on religious lines and not on any other intelligible basis". The identified minorities are religious as under the National Commission for Minorities Act. No empirical evidence is offered to show the requirement for carving out a special class of beneficiaries from the existing backward classes i.e., that they are more backward or require preferential treatment. (paras 24-25)<br><br>Further finds that the sub-quota's classification cannot be saved under Arts.15(4) and 16(4) because the groups clubbed together are not homogenous, the presumption instead being of diversity. The literacy rates of these communities vary from 59.1% to 80.3%. Similar variation in educational attainment and economic indicators. (paras 29-31) |

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| | | | central government jobs | Court does not find any "rational basis" in the classification between minorities and non-minorities in making preferential treatment. The classification cannot be sustained on the principles of reasonable and rational classification. (paras 32-33)<br><br>Agrees that sub-classification of backward classes has been permitted as per *Indra Sawhney* but finds that the statutorily prescribed mode for identification of backward classes under the National Commission for Backward Classes Act has not been followed. (paras 39-40) |
| *99.* | *Mahila Utkarsh Trust v. Union of India*<br><br>2013 SCC OnLine Guj 7642 | Gujarat High Court | Sex<br><br>Provision restricting women from working in factories during the night shift | The provision was held unconstitutional.<br><br>Reproduces *Anuj Garg* in detail and finds that the only distinction between that case and the present one is that there was a total prohibition on women in *Garg* and here there is a prohibition during nighttime. Finds that a partial prohibition would also be an unreasonable encroachment on the fundamental rights of women for the same reason. It is the State's duty to ensure circumstances of safety, including by sharing costs of security with the employer, and inspire confidence in women to discharge duties freely. (para 15.6)<br><br>Finds that the prohibition violates the right to equal opportunity of women as well as her right to carry on her own business with the same privileges as a male citizen. (para 16)<br><br>Observes that while holding the provision unconstitutional and permitting women to work during the night shift, a condition precedent will be for the employer to take adequate measures for their safety and security, including transportation and medicines. (para 25.1) |
| *100* | *Adam Chaki v. Government of India* | Gujarat High Court | Religion<br><br>Scheme providing pre-matriculation scholarships to students belonging to certain minority | Scheme upheld.<br><br>Under Art.15(1), while discrimination on the ground of religion etc. is prohibited, reasonable classification is not. (para 39)<br><br>While scheme is earmarked for minority communities, several other eligibility criteria have to be satisfied, including poverty as a handicap. (para 47) |

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| | AIR 2013 Guj 66; 2013 SCC OnLine Guj 8811 | | religious communities (Muslims, Sikhs, Christians, Buddhists and Parsis) | Art.15(4) being not an exception but only an emphatic manifestation of equality under Art.15(1), it cannot be the litmus test for the impugned scheme. (para 63)<br><br>The scheme is not based on the ground of religion. While five minorities identified under the National Commission for Minorities Act have been grouped together for common treatment, the scheme is framed to encourage students from such minorities to pursue primary education when it was found that they suffer from social handicaps. The basis for the scheme is thus the improvement of the conditions of a disadvantaged group (given their slow progress compared to the national average) rather than religion. If religion was the "sole basis", that would be another issue. (para 64)<br><br>Art.29 and 30 may refer to the rights of minorities, but they do not prohibit the bunching of minorities through reasonable classification if a requirement outside the scope of those provisions so demands. (para 65) |
| *101* | *Bharatiya Janata Party v. State of West Bengal*<br><br>AIR 2013 Cal 215; 2013 SCC Online Cal 15870 | Calcutta High Court | Religion<br><br>Order granting honorarium to imams and muazzins of certain mosques | The order was held as unconstitutional.<br><br>Government cannot spend any money for the benefit of a few individuals of a particular religious community ignoring identically placed individuals of other religious communities since the State cannot discriminate on the ground of religion in view of Art.15(1). No material disclosed to show that imams are living in pitiable conditions without educational opportunities. There has also been no exercise conducted to ascertain the financial condition of various other members of the Muslim community itself. (pp.11-12)<br><br>State cannot patronise, favour or identify itself with any particular religion. Secularism is a part of the basic structure of the Constitution and the State is obligated to offer equal treatment to members of all religions. (pp.16-17) |
| *102* | *National Legal Services Authority v. Union of India* | Supreme Court (2-judge) | Gender identity<br><br>Non-recognition of the gender identity of members of the | Non-recognition held unconstitutional.<br><br>*Radhakrishnan, J.:* |

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| | (2014) 5 SCC 438 | | trangender community | Both gender and biological attributes constitute distinct components of "sex" under Articles 15 and 16. Gender includes self-image, identity and character, and thus discrimination on the ground of gender identity is also a form of discrimination on the ground of sex. (paras 66, 82)<br><br>Transgenders have been systematically denied protection of Article 15(2) i.e., the prohibition on disability, liability, restriction or condition in accessing public places. (para 67)<br><br>Transgenders are socially and educationally backwards classes of citizens and are thus legally entitled to receive special provisions as envisaged under Article 15(4). State is bound to take affirmative action to remedy the historic injustice against the community. Similar discrimination has occurred in relation with public employment contrary to Article 16(2) and State is bound to provide affirmative action through due representation under Article 16(4). (para 67)<br><br>*Sikri, J.:*<br><br>In agreement with Radhakrishnan, J.'s opinion. (paras 84-88)<br><br>Suggests that the reason behind the denial of basic human rights to transgenders is the prevalent judicial assumption that the law should target discrimination based on sex rather than gender. (para 118)<br><br>Court upholds the right of transgenders to decide their self-identified gender including male, female or third gender. Also directs government to take steps to extend reservations in education and employment to them. (paras 135.2 and 135.3) |
| *103* | *Amit Bhagat v. Govt. of NCT of Delhi*<br><br>2014 SCC Online Del 7020 | Delhi High Court | Religion<br><br>Exemption for Sikh women from wearing helmets while riding two-wheeler vehicles | Provision upheld.<br><br>Court finds that it cannot accept the plea that the rule is unconstitutional because it would be difficult to identify whether a woman riding a two-wheeler is in fact Sikh. (para 11) |

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| | | | | After having considered conformity of the exemption with the parent statute, court considers whether there is discrimination on the ground of religion. While *Girish Uskaikar* had held the exemption in the parent statute given to Sikhs wearing a turban to be non-discriminatory as it was borne out of necessity, court does not accept this reasoning as the reason for wearing turban is a religious one. If the ground for that exception was merely inconvenience, then every person could simply create circumstances under which it is inconvenient to follow the rule. The exception is instead to be understood as one clearly made on religious grounds. Court then finds that, if this is so, the government's decision to exempt others on religious grounds cannot be faulted. Government cannot be said to have discriminated against Sikh women. Finds that the prohibition in Art.15(1) is against adverse distinction or an action that distinguishes unfavourably. No hostility towards Sikh women found as they are not barred from wearing a helmet. (paras 21-25)<br><br>"Equality without liberty would denude the individual of its identity and without fraternity, liberty and equality would not nurture." When the liberty sought by Sikhs to follow their religion is weighed against equality, the exemption granted to Sikh women on religious grounds (as has been granted to Sikh men who wear turbans as per their religion) cannot be faulted with. (para 25)<br><br>It is not for the court to determine whether the Sikh religion forbids women from wearing helmets when persons professing the religion say so and the Government finds it to be so. (para 27)<br><br>Art.14 bars class legislation but does not take away the power to classify. The government is not debarred from recognising the existence of different religious laws, and even if two different religions have the same practice, the government is entitled to determine which is ripe for social reform. This would not be discrimination. (para 28) |
| *104* | *Charu Khurana v. Union of India* | Supreme Court of | Sex, place of birth<br><br>Refusal of permission by an association to | Refusal found illegal.<br><br>While the association is not directly subject to fundamental rights, its constitution and bye-laws are to be accepted by the registrar of Trade Unions which is subject to the |

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| | (2015) 1 SCC 192 | India (2-judge) | women to work as make-up artists, permitting them to work only as hairdressers; further restriction of make-up artist work only to persons resident in the state for 5 years | Constitution. Registration of a trade union can be withdrawn or cancelled for violation of the relevant law. Court suggests that bye-laws have violated a provision in the law on trade unions which makes no distinction between men and women. Further suggests that this impacts the right to livelihood under Art.21. Trade union under the law cannot engage in discrimination solely on the basis of sex. (paras 38, 42, 46 and 52)<br><br>On question of residence requirement, court finds that the concept of domicile "has no rationale" and the requirement "invites the frown of Articles 14, 15 and 21". Finds the relevant rules violative of the statutory and constitutional provisions. (para 56) |
| *105* | *Inspector (Mahila) Ravina v. Union of India*<br><br>2015 SCC OnLine Del 14619 | Delhi High Court | Sex, pregnancy-status<br><br>Denial of seniority on promotion that was delayed due to inability to complete pre-promotional course as a result of pregnancy | Denial found unconstitutional.<br><br>Pregnancy cannot be equated with unwillingness to undertake the course as it is a deeply personal choice as well as a physically taxing one. (para 9)<br><br>Equating employees who have to make choices about pregnancy with those that do not and mechanically applying the same standards to both is discriminatory. The denial violates Article 16(1) and (2) as a seemingly neutral criterion like "inability" or "unwillingness" can operate in a discriminatory manner impacting rights. (para 12) |
| *106* | *Ramchandra Machwal v. State of Rajasthan*<br><br>2015 SCC Online Raj 9660 | Rajasthan High Court | Caste<br><br>Practice of individuals reserving plots in burning ghats for members of certain castes only | Practice found discriminatory.<br><br>Municipality maintained that there were no rules preventing the use of the ghats by persons from any community and so there are no provisions under which to take penal action against those preventing usage. (para 7)<br><br>Court finds that it is a matter of common knowledge (of which the court takes judicial notice) that the municipal corporations have divided the burning ghats and allotted them to different communities to be maintained by them. However, finds that the division of the land for purposes of maintenance cannot be ground to exclusively appropriate the use of the lands. Any refusal of usage for any caste is discriminatory and violative of Art.15 and laws prohibiting atrocities against Scheduled Castes. (para 10) |

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| | | | | Court declares that all cremation grounds belonging to the military are to be open for the use of all persons. (para 12) |
| *107* | *Adi Saiva Sivachariyargal Nala Sangam v. Government of Tamil Nadu*<br><br>(2016) 2 SCC 725 | Supreme Court (2-judge) | Caste<br><br>Question of caste discrimination raised in deciding a challenge to a government order permitting any Hindu possessing qualifications and training to become temple priest even contrary to custom or usage | Government order held to be constitutional only to the extent of conformity with Article 16(5).<br><br>Article 16(5) protects the appointment of priests (here, *archakas*) from a particular denomination if this is required by an applicable custom (here, *Agamas*). This is because the provision covers offices in temples that require religious functions. (para 45)<br><br>The custom in question (*Agamas*) extends the prohibition to enter the sanctum sanctorum and perform *pooja* duties even to Brahmins. It is thus not an exclusion based on caste, birth or pedigree. (para 47)<br><br>If a custom or usage is not protected by Article 25 and 26, the management of a temple's affairs can be determined by law contrary to the custom or usage. (para 48)<br><br>Validity of government order depends on facts of each case and the specific *Agama(s)* applicable to any particular temple. The exclusion of some and inclusion of other segments or denominations for appointment as priests would not violate Article 14 so long as such inclusion/exclusion is not based on the criteria of caste, birth or any other constitutionally unacceptable parameter. If any *Agama* is constitutionally valid in this manner and otherwise prescribes appointment from a particular segment or denomination, the government order is invalid to that extent. (para 50) |
| *108* | *Navtej Singh Johar v. Union of India*<br><br>(2018) 10 SCC 1 | Supreme Court (5-judge) | Sexual orientation<br><br>Provision criminalising "carnal intercourse against the order of nature" in reference to non-procreative penetration including | Provision held unconstitutional insofar as it criminalises consensual sexual acts of adults.<br><br>*Misra, C.J. and Khanwilkar, J.:*<br><br>Provision has the effect of targeting the consensual acts performed by LGBT persons owing to inherent characteristics defined by their identity and individuality. This discrimination and unequal treatment to the LGBT community as a separate class of citizens is unconstitutional for violation of Article 14. (para 252) |

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| | | | consensual homosexual conduct | [No further elaboration on discrimination law.]<br><br>*Nariman, J.:*<br><br>Yogyakarta Principles, including principle against discrimination on the basis of sexual orientation and gender identity, cited approvingly, with mention of their relationship with Articles 14, 15, 19 and 21. (para 358-359)<br><br>Mentions violation of Article 15 with no elaboration on its applicability in the present case. (para 367)<br><br>*Chandrachud, J.:*<br><br>Finds that the formalistic interpretation of Article 15 emphasising the word "only" makes the guarantee against discrimination meaningless. It allows stereotypical differences between men and women to be used to justify discrimination. Sex discrimination operates in the context of other identities including socio-political and economic ones. (para 431)<br><br>Discrimination will not survive constitutional scrutiny when it is grounded in and perpetuates stereotypes about a class constituted by the grounds prohibited in Article 15(1). (para 438)<br><br>Finds the formalistic approach exemplified in *Nergesh Meerza* to be incorrect. (paras 434-439)<br><br>Finds that facially neutral action may have a disproportionate impact upon a particular class. Approvingly cites foreign judgments on how distinctions based on personal characteristics and association with a group would be suspect. (paras 442-446)<br><br>One cannot simply separate discrimination based on sexual orientation and discrimination based on sex because discrimination based on sexual orientation inherently promulgates ideas about stereotypical notions of sex and gender roles. (paras 448-453) |

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| | | | | *Malhotra, J.:*<br><br>Finds that the object of Article 15 is to guarantee protection to those citizens who have suffered historical disadvantage of political, social or economic nature. The term "sex" in Article 15 should be read to include "sexual identity and character" extending the prohibition to discrimination on the ground of sexual orientation. Discrimination on the listed grounds are those that undermine an individual's personal autonomy. May be because the traits are immutable or because they involve a fundamental choice. (paras 638.1-638.4)<br><br>Suggests that discrimination on the ground of sexual orientation should be prohibited under Article 15 because it is analogous to the grounds listed in that provision and similarly impacts a person's personal autonomy. (para 638.4) |
| *109* | *Madhu v. Northern Railway*<br><br>2018 SCC OnLine Del 6660 | Delhi High Court | Sex<br><br>Medical benefits denied to wife and daughter of employee because said employee has refused to nominate them as dependents eligible for the benefits | Denial held unconstitutional.<br><br>Argument made that the denial of medical benefits to the appellant women was not because they were women but because the husband/father had not made the requisite declaration. Court finds that Article 15 does not prohibit only intentional discrimination "because" of a listed ground but also discrimination caused by the effects of a measure examined in the social context that it operates. A facially neutral provision can have a disproportionate impact on a constitutionally protected class. (para 17)<br><br>Finds that it is irrelevant whether the denial of benefits was because the appellants were women or whether male dependents may also be denied in a similar circumstance. Large majority of dependents are likely to be women and children and thus the ultimate effect of insisting on the employee's declaration is to place these classes at risk of denial of medical benefits and agency. (paras 29-30) |
| *110* | *Joseph Shine v. Union of India*<br><br>(2019) 3 SCC 39 | Supreme Court (5-judge) | Sex<br><br>Provisions permitting husband to prosecute man committing | Provisions struck down.<br><br>*Misra, C.J. and Khanwilkar, J.:* |

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| | | | adultery with his wife but not permitting wife to prosecute woman committing adultery with her husband | Finds that court needs to expand its horizons in comparison to previous judgments dealing with adultery as subsequent judgments have expanded upon the concept of gender justice. Provisions in question demonstrably treat women as subordinate to men, particularly where it makes an exception for adultery that takes place with the connivance or consent of the husband. This indicates that women are treated as chattel/property subservient to the will of the husband. Further finds the provision violative of Article 14 for being manifestly arbitrary. (paras 28-30)<br><br>[No further elaboration on discrimination law.]<br><br>*Nariman, J.:*<br><br>Notes that *Dattatraya Motiram More* does not present the correct position of law in relation with the applicability of Article 15(3) to pre-constitutional laws. That sub-clause should be read to permit the State to make special provision for women only after the coming into force of the Constitution as, like Article 16(4), it makes no reference to the validity of "existing law" as defined under Article 366 and used in Article 19(2) to (6). Impugned provision being a pre-constitutional/existing law, it cannot be saved under article 15(3). (paras 87-90)<br><br>Provision excusing adultery with consent or connivance of husband shows cannot be explained except by likening women to chattel. This is further bolstered by the fact that woman cannot be punished as abettor. Hinging on the chauvinistic notion that women can only be the victims of seduction, the object of the law is manifestly arbitrary and violative of Article 14. (para 103)<br><br>Further violative of Article 15(1) for the same reason: treating women as chattel is discrimination against women on ground of sex only. (para 105)<br><br>*Chandrachud, J.:* |

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| | | | | Finds that Indian jurisprudence has interpreted the guarantee of sex equality as a justification for differential treatment as such differentiation is in the interest of women. This is a form of "benevolent patriarchy". (paras 141-142)<br><br>Primary enquiry in realising substantive equality is whether provision "contributes to the subordination of a disadvantaged group of individuals". Instead of legitimising patronising attitudes, equality must be linked to the realisation of dignity. "The focus of such an approach is not simply on equal treatment under the law, but rather on the real impact of the legislation." Impugned provision is to be examined in light of "existing social structures" making women unequal participants in marriage. (para 172)<br><br>Impugned provision attaches notions of wrongdoing to wife's exercise of sexual agency, making it contingent on husband's consent. But wife cannot be aggrieved by husband undertaking a similar exercise of agency. This is discrimination on the ground of sex prohibited by Article 15. (para 178)<br><br>Provision perpetuates gender stereotypes of women's submissiveness and naivete, wife's status as property, and normalisation of infidelity by men. Such stereotyping is contrary to Article 15. (paras 179-186, 220.2)<br><br>Article 15(3) refers to protective discrimination but, if read with the rest of the equality provisions, cannot be read to permit entrenchment of paternalistic notions. It is an enabling provision to bring about substantive equality. (para 189)<br><br>*Malhotra, J.:*<br><br>In relation with the offence of adultery, discrimination on the basis of sex alone has no rational nexus with the object sought to be achieved. Both classifications in the provision on who may prosecute and who may be prosecuted are based on a historical context that is no longer relevant or valid. Depriving the woman of the right to prosecute is discriminatory against women. Provision fails to consider men and women as equally autonomous individuals in society. Further perpetuates stereotypes and institutionalises discrimination contrary to Part III. (paras 272.1-272.4, 233.3-233.5) |

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| | | | | Article 15(3) only enables beneficial legislation and affirmative action must be for upliftment and empowerment of women. Legislation taking away the rights of women and perpetuating oppression cannot be considered beneficial. (paras 274, 277) |
| *111* | *Indian Young Lawyers Association v. State of Kerala*<br><br>(2019) 11 SCC 1 | Supreme Court (5-judge) | Sex<br><br>Rule backing/enforcing a custom/usage denying women between the ages of 10 and 50 entry into and worship in a particular temple | Rule and custom/usage held unconstitutional on various grounds including violation of parent statute, violation of right to freely practise religion, right against discrimination, prohibition on untouchability and constitutional morality.<br><br>*Misra, C.J. and Khanwilkar, J.:*<br><br>Right guaranteed under Art. 25(1) is not just about inter-faith parity but also about intra-faith parity, encompassing a non-discriminatory right equally available to men and women of all ages professing the same religion. (para 101)<br><br>Art.25(1) is subject to "morality" which is a reference to "constitutional morality" which involves the principles and basic tenets of the Constitution. This means public morality because the Constitution was not shoved onto Indian people but was adopted by them. (paras 106-110)<br><br>*Nariman, J.:*<br><br>Does not consider it appropriate to read "morality" in Arts.25 and 26 as "constitutional morality" as this would make the right under Article 26 subject to the other provisions of Part III "through the back door" despite explicit omission of such subjection. Nonetheless, finds that Art.26 would have to be balanced against other fundamental rights on a case-by-case basis as a matter of harmonious construction. (fn.59)<br><br>Does not consider it necessary to interpret Art.17 as covering more than just those who were historically considered untouchables at the time of the framing of the Constitution, as that question would not directly arise given the finding that Art.25 has been violated. (fn.60)<br><br>Even if it is accepted that there is a fundamental right of the denomination under Art. 26 to exclude women of the stated age from the temple, this right must on balance yield to |

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| | | | | the Art. 25 right to worship at the temple because it is a right to which women are "equally entitled". The arguments that all women are not excluded and that other similar temples are accessible by women are of no avail as women of the stated age are excluded completely from the temple of their choice on the biological ground of menstruation. Impugned rule violates Art. 15(1) because it discriminates against women on the basis of their sex only. It raises issues for women generally because menstruation is a physiological or biological function common to all women of the stated ages. (para 196-198)<br><br>*Chandrachud, J.:*<br><br>Art. 25(1) protects the "equal" entitlement of "all" persons to the freedom to practise religion, emphasising the universal nature of the right. This is in continuation of the right to equality under Article 14. (para 208)<br><br>Explicit subjection of the freedom of religion to other fundamental rights is a nuanced departure from the position of the other rights and must be given substantive content. Such subjection has not been done for Article 14, 15, 19 and 21. (para 209)<br><br>Arts.25 and 26 are subject to "morality" which is not a reference to transient and popular notions of morality. Instead, it must be read to involve fundamental constitutional principles like justice, liberty, equality, fraternity and secularism. (paras 213-215)<br><br>Unlike Art.25, the right of a religious denomination to manage its affairs under Art.26 has not been explicitly made subject to other fundamental rights, meaning that it cannot be construed as being subordinate to them. But that does not mean that it is unconnected or unconcerned with those other rights. As the fundamental rights are interconnected, the dignity of women under Arts.15 and 21 cannot be dissociated from the exercise of religious freedoms under Art.26. Religious freedom does not permit the assertion of an entitlement that is derogatory to women. (paras 216-219)<br><br>Whether or not Art.15 is attracted due to a particular invasion of rights is not of overarching importance because the fundamental principles of the Preamble infuse constitutional morality into its content. Religious freedom is not immune to these |

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| | | | | principles. To exclude women from worship (including through a physiological feature associated with them) is to place them in a position of subordination. (para 219)<br><br>Age and physiological features offer no rational basis for denying an equal right to worship. Reasoning that women are prohibited from the temple because of the arduous nature of the journey, that women cause male worshippers to deviate from celibacy, or that women would not be able to keep the *vratham* is stereotypical and contrary to the equality and dignity of women under Arts.15 and 21. Exclusion is destructive of dignity. (paras 297-300)<br><br>Art.17's prohibition on the "practice" of untouchability "in any form" should be interpreted as a guarantee to preserve human dignity and against the stigmatisation and exclusion of individuals and groups on the basis of social hierarchism. It covers every manifestation of the practice, including the social exclusion of women on the basis of notions of purity and pollution linked with menstruation. (paras 342-358) |
| *112* | *Union of India v. V.R. Tripathi*<br><br>(2019) 14 SCC 646 | Supreme Court (2-judge) | Descent, legitimacy (of child)<br><br>Denial of compassionate appointment to child from void second marriage of deceased employee | Denial found illegal.<br><br>Compassionate appointment is meant to alleviate the financial hardship and need and prevent destitution and penury of the family of an employee who dies prematurely in service. Compassionate appointment is thus not founded "merely" on parentage or descent, because public employment must be consistent with the equality of opportunity guarantee in the Constitution. Thus, while there is no right to compassionate appointment, there is an entitlement to be considered for such appointment in accordance with provisions made in this regard. (paras 13 and 16)<br><br>Court notes that statutory provision deems the legitimacy of a child born to a void or voidable marriage (in the context of property rights). The State cannot now exclude such a child from compassionate appointment consistent with Art.14. Even under the reasonable classification test, this is illegal as it differentiates between two classes of legitimate children. Court also finds that, even if the exclusion is considered a measure to discourage bigamy, the condition is disproportionate to the object. "Children do not choose their parents." Denying compassionate appointment on this ground is deeply |

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| | | | | offensive to their dignity and the constitutional guarantee against discrimination. (paras 16-18) |
| *113* | *Vikash Kumar v. Union Public Service Commission*<br><br>(2021) 5 SCC 370 | Supreme Court (3-judge) | Disability<br><br>Denial of scribe for writing the civil services examination to a person suffering from writer's cramp/dysgraphia | Denial found contrary to statute.<br><br>The Rights of Persons with Disabilities Act 2016 contains statutory recognition of the rights to equality and dignity contained in fundamental rights such as those in Arts.14, 19 and 21. These constitutionally guaranteed rights would ring hollow if disabled persons are not given the additional support or reasonable accommodation needed to make the rights meaningful. (paras 41-44) |
| *114* | *Secretary, Ministry of Defence v. Babita Punya*<br><br>(2020) 7 SCC 469 | Supreme Court (2-judge) | Sex<br><br>Denial of consideration for Permanent Commissions to women Short Service Commissions officers in the Army | Denial found contrary to policy decision already taken by the Government.<br><br>Prior policy decision of the Government is a recognition of the right of women officers to non-discrimination on the ground of sex under Art.15(1) and equality of opportunity under Art.16(1). The decision recognised that physiological features had no significance to the equal entitlements that such officers enjoyed under the Constitution. Submissions made betrayed a lack of understanding as to the consequences of the government decision. (para 67)<br><br>Argument had been made that women officers had to deal with pregnancy, motherhood and domestic obligations and had physiological limitations which meant that they were not well-suited to the life of a soldier. Further, male soldiers would have to moderate their behaviour and it would be difficult to deploy women to areas with minimal hygiene and habitat facilities. Court rejects these arguments as being based on sex stereotypes premised on socially ascribed roles that discriminate against women. (paras 68-69)<br><br>Blanket non-consideration of women for staff appointments/criteria or command appointments is without rationale and violative of the right to equality. (paras 85-86) |

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| *115* | *Union of India v. Lt. Cdr. Annie Nagaraja*<br><br>(2020) 13 SCC 1 | Supreme Court (2-judge) | Sex<br><br>Restriction of grant of Permanent Commissions to women Short Service Commissions officers in the Navy to specified cadres/branches only and consideration of only future inductees for such grant | Denial found not to supersede previous notifications permitting grant of Permanent Commissions.<br><br>Argument made that denial of sea-going duties to women was not due to gender discrimination but on account of operational reasons such as the lack of return to base and lack of provision for women sailors such as bathrooms. Court finds such reasoning irrelevant to proper discharge of duties and maintenance of discipline. Previous policy letter specifically envisaged such sea-going duties for women. Stereotypical arguments based on physical weakness of women were not constitutionally valid bases for denying equal opportunity. (paras 83-84) |
| *116* | *Patan Jamal Vali v. State of Andhra Pradesh*<br><br>2021 SCC OnLine SC 343 | Supreme Court (2-judge) | Sex, disability, caste<br><br>Question of applicability of an offence in a statute on caste atrocities in a case regarding the rape of a blind Scheduled Caste woman | Discrimination-related offence found applicable. This note outlines the basis on which the court found in favour of applicability, which relates to relevant constitutional provisions.<br><br>Court outlines the concept of intersectionality as a form of oppression that arises out of the combination of various oppressions which, together, produce something unique and distinct from any one form of discrimination standing alone. Finds that a single-axis approach focussing only on one identity essentialises the experience of oppression and creates problems especially when evidence of discrete discrimination or violence on one ground is absent or difficult to prove. (para 19)<br><br>Court notes the need to address the disturbing trend of sexual violence against women and girls with disabilities. (paras 34-51)<br><br>Court notes that the discrimination-related offence in this case requires proof that a serious offence be committed against a person or property "on the ground" that such person is from a Scheduled Caste. The expression "on the ground of" is found to mean "for the reason" or "on the basis of". Notes that such language is an example of a single- |

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| | | | | axis model of oppression and that when there is intersectional oppression, it can be difficult to identify which ground was the basis of the oppression. (para 57)<br><br>Notes previous judgments in which the discrimination-related offence was held not to be made out because there was lack of evidence that the sexual assault was carried out or intended to be carried out only because the victim belonged to a Scheduled Caste. However, notes that the word "only" has not been used in the relevant statute, meaning that the provision is not to be restricted such that the offence is made out if committed only on that ground. A "causal link" between the ground and the harm suffered does still have to be established, but as long as it is one of the grounds for the occurrence of the general offence, the discrimination-related offence can also be made out. (paras 58-62)<br><br>Finds that if, in this case, there was evidence that the offence here was on the ground of caste, there may have been need to refer the matter to a larger bench to resolve the conflict with interpretations in previous judgments. But no such evidence was led. Conviction for discrimination-related offence thus set aside. (paras 62-65) |
| *117* | *Lt. Col. Nitisha v. Union of India*<br><br>(2021) 15 SCC 125 | Supreme Court (2-judge) | Sex<br><br>Procedure for selection of women Short Service Commissions officers for Permanent Commission applied medical criteria, relied on past Annual Confidential Reports, and applied a benchmark of the male officer of lowest merit selected in the previous year in a | Selection practices found discriminatory.<br><br>Argument made that the criteria applied for grant of Permanent Commission to women officers was the same as those applied to other Short Service Commissions officers. However, court found that a formal and symmetric conception of equality would only demand consistency in treatment and remain insensitive to how the operation of a law can result in disproportionate adverse impact. On the other hand, a substantive conception of equality would aim at creating factual equality through the recognition of ground realities involving patterns of discrimination and marginalisation. (paras 46-48)<br><br>This conception of equality requires the recognition of indirect discrimination, which involves facially neutral laws having disparate impact on a group. Here, the focus shifts from the intention and reasoning of the discriminator to the effects of the action. (paras 55-57)<br><br>Indirect discrimination is thus not a function of conscious design or malicious intent but instead unconscious bias or inability to recognise existing structures. The distinction |

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| | | | manner that excluded women officers | between direct and indirect discrimination is thus one between intentions and effects, as any strict requirement of proof of intention creates an insurmountable barrier for those seeking remedies for discrimination. (paras 70-71)<br><br>Statistical evidence is one of the ways of establishing indirect discrimination. But no strict quantitative threshold can be set for such a finding. Lack of statistical evidence would, however, not disprove a claim of indirect discrimination. (para 72)<br><br>There is a two-step test to identify indirect discrimination. First, the court must inquire whether an impugned rule disproportionately affects a particular group. Second, the court must inquire whether the law has the effect of reinforcing, perpetuating or exacerbating disadvantage. This is in light of systemic or historic disadvantages already faced by the group. (paras 69 and 73)<br><br>Indirect discrimination can be justifiable if the narrow criteria the impugned measure applies is necessary for successful job performance and if there are no less discriminatory alternatives to the impugned measure. (para 74)<br><br>Further, exclusive reliance only on the two tools of direct and indirect discrimination could also result in a failure to address patterns and structures of discrimination. Instead of particular practices or provisions, a systemic view of discrimination accounts for the effects of structures, organisations, systems, environments and cultures. This requires not just that actions be identified and struck down but inaction be recognised and adequate reliefs towards social redistribution be structured. (paras 75-77)<br><br>Court found that the application of an external benchmark of the lowest merit male officer selected in the previous year was discriminatory as *inter se* comparison was applied to male officers only if the number of qualifying candidates exceeded the number of allotted Permanent Commissions for a year, and there had been no external benchmark even where this was the case. (paras 93-103)<br><br>Past Annual Confidential Reports were found not to be an appropriate standard for selection as they had been filled out at a time when Permanent Commissions were not envisaged for women. Career enhancement opportunities made available to male |

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| | | | | officers had been denied to female ones. Further, consideration of these Reports was inadequate as they were being considered belatedly and more recent performance would be disregarded. (paras 104-117)<br><br>Medical criteria adopted were not arbitrary but were applied to women at advanced stages in their career unlike in the case of male officers who were assessed on such criteria at earlier stages. Invasion of fundamental rights is not rendered tolerable just because only a few persons are subjected to hostile treatment. (paras 118-130) |
| *118.* | *Janhit Abhiyan v. Union of India*<br><br>(2023) 5 SCC 1 | Supreme Court (5-judge) | Caste<br><br>Exclusion of existing beneficiaries of reservations (Scheduled Castes, Scheduled Tribes and Other Backward Classes) from reservations for Economically Weaker Sections provided for under constitutional amendment | Exclusion upheld.<br><br>*Maheshwari, J.:*<br><br>Exclusion is inevitable for the true operation and effect of EWS reservations. Poverty is a material factor taken into account, along with caste, residence, occupation etc., while recognising a class/caste's entitlement to affirmative action under Arts.15(4) and (5) and 16(4). Given this, if Parliament has considered it proper not to extend to those classes another benefit in the form of EWS reservations, there is no reason to question this judgement. Their existing quotas are not depleted. (paras 137, 140-141)<br><br>Amendment in question makes a reasonable classification between economically weaker sections and other weaker sections. The moment there is a vertical reservation, exclusion is the vital requisite to provide benefit to the target group. The same principle has been applied in the case of other groups as, otherwise, the affirmative action would fail at inception. (para 142)<br><br>In fact, the other classes are "required" to be kept out of the EWS reservation as, otherwise, "the entire balance of the general principles of equality and compensatory discrimination would be disturbed, with extra or excessive advantage being given to the classes already availing the benefit". Without the exclusion, the exercise would itself result in unjustified discrimination. (para 143-144)<br><br>Even otherwise, both forms of reservation, whether under existing provisions or newly-inserted ones, are forms of "compensatory discrimination", which is permissible as |

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| | | | | affirmative action. This is to be distinguished from "direct discrimination" which is impermissible. The exclusion of SEBC/OBC/SC/ST from the EWS reservations is compensatory discrimination of the same species as the exclusion of the general EWS from SEBC/OBC/SC/ST reservations. Provisions like Art.16(4) are exhaustive of the special treatment to be given to the classes mentioned in those provisions. (para 145-150)<br><br>*Trivedi, J.:*<br><br>Treating economically weaker sections of citizens as a separate class would be reasonable classification, because just as equals cannot be treated unequally, unequals also cannot be treated equally. (para 211)<br><br>Classes for whom special provision is made under Arts.15(4) and (5) and 16(4) are a "separate category" as distinguished from the general or unreserved category. The amendment creates a separate class from this general/unreserved category without affecting the special rights of such existing beneficiaries. (para 212)<br><br>*Pardiwala, J.:*<br><br>A classification is reasonable if it follows the twin test of an intelligible differentia having a rational relation with the object of the statute. The differentia used in the amendment is to promote or uplift the economically weaker sections of citizens otherwise not covered under other clauses. As there is a yardstick used for constituting the class for the purpose of the amendment, the insertion of the economically weaker sections as a class is perfectly valid. (paras 393-394)<br><br>Only that difference of treatment that is based on lack of equal concern is inconsistent with the right to equality. Different treatment on the basis of race, religion, caste etc. is not, in itself, bad so long as equal concern or respect is shown to every such group. It becomes vulnerable only when it is based on disrespect, contempt or prejudice towards such a group. If any difference of treatment is not based on such disrespect, contempt or prejudice, it is not discriminatory. (paras 399-400) |

www.vidhilegalpolicy.in

Vidhi Centre for Legal Policy
A-232, Defence Colony
New Delhi – 110024

011-43102767/43831699

vidhi@vidhilegalpolicy.in